



Rule of Law Report

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

Sustainable Governance
Indicators 2020

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. In the World Justice Project's Rule of Law Index 2019, Germany was ranked sixth out of 128 countries; this was an improvement of two ranks compared to the 2015 – 2016 report, but was the same rank achieved in the 2017 – 2018 report.

Citation:

<https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019>

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 have 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, labeling it a “chronic problem” for the business environment.

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: 28.10.2019.

2. FICIL Sentiment Index 2015 and 2018. Available at: <https://www.sseriga.edu/centres/csb/sentiment-index>, Last assessed: 28.10.2019.

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 direct political intervention and has not (yet) 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.

Greece

Score 8

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). After the government turnover of July 2019, the new, single-majority government passed a law reorganizing the top echelons of the government and the monitoring of public services with the intention of bolstering the rule of law across the administration (law 4622/2019). This campaign appears to be far better planned than previous haphazard efforts in this area, but its results remain to be seen.

The practice of frequently amending recently passed legislation has continued unabated. On average, a new law is voted on by the Greek parliament every week (according to research by the Athens-based Dianeosis organization). Given such uncoordinated overregulation, the legal framework in major policy sectors, such as the regulations governing taxation and foreign investment, still exhibits 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

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.

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 were 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.

In late 2019, huge bribes to Namibian ministers and others paid by Iceland's largest fishing firm, Samherji, to secure fishing rights in Namibian waters were exposed by Wikileaks. This revelation led to the immediate arrest of two ministers and four other individuals in Namibia. In contrast, the reaction of political and judicial authorities in Iceland to this scandal has been more muted than in Namibia. However, the case is still under investigation. At the time of writing, it is not clear whether the Wikileaks accusations are correct.

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 were a prominent example of an arbitrary decision by a regional decision-maker that lacked a legal basis and ignored the constitution. However, this was an exceptional and unusual development that the central institutions managed with response based on the rule of law. 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

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.

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:

<https://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/ha0ro937gcuc7l7deffksulhg5h7mbp1/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 the financial crisis in 2008 – 2009, when taxes were raised to increase budget receipts. 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 serving coalition government pledged to introduce more predictable policies. However, in late 2019, business associations criticized the debates over potential new tax-code changes as being chaotic, and as violating a two-year-old agreement with the social partners in which the government had promised to ensure the stability of the tax regime.

Laws are often 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.

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.

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.

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 2018, 81.3% of the 25 adopted legislative acts in the National Assembly were subjected to the fast-track or shortened legislation procedure (compared with 48.4% in 2017). 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.

National Assembly. (2019). Report on the work of National Assembly for 2018. (https://fotogalerija.dz-rs.si/datoteke/Publikacije/PorocilaDZ/Porocilo_o_delu_Drzavnega_zbora_v_obdobju_2018_%E2%80%932022_p_rvo_letu_mandata_2018__22__6__2018_%E2%80%9331__12__2018.pdf).

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 that regulations are interpreted inconsistently, and “opaque regulatory decision-making remains a significant concern” according to the U.S. Department of State. 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.

In 2019, the substantial discretionary power exercised by prosecutors in Korea became a major political issue. Prosecutors in South Korea lead the investigation of criminal cases, and also have considerable flexibility in deciding whether to prosecute a suspect or not. Together with prosecutors’ limited degree of independence from the government (see “Judicial Review”), this broad discretion has politicized the legal system, with prosecutors appearing more reluctant to investigate acting government officials than the representatives of previous governments.

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

French authorities usually 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 tax on dividends imposed in 2012 by the Hollande administration despite the strong reservations of legal advisers. 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 €10 billion, which the government had to pay back to the companies. This forced the government to set up an exceptional tax on those companies amounted to half of the reimbursement due.

Israel

Score 6

Several institutions in Israel are responsible for reviewing the activities of the government and public administration. The State Comptroller, the attorney general 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, the Israeli Supreme Court has struck down only 18 laws since 1992, a relatively low number 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:

"Administrative detention," B'tselem http://www.btselem.org/administrative_detention/statistics

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

Bob, Y. J. "Court orders Government to pass a new law or draft all Haredim," JPost, 12/9/17, <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/Court-orders-govt-to-pass-new-law-or-draft-all-haredim-504901>

The Israel Democracy Institute. "Q&A on the Override Clause," 17.5.2018: <https://en.idi.org.il/articles/23521>

"Knesset opens Winter Assembly; Speaker Edelstein: "Parliament's status eroded due to lack of separation of powers," The Knesset Website, 23/10/2017: https://www.knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=13599

Luria, G "How many Laws are dismissed in the world?" IDI, 22.4.18: <https://www.idi.org.il/articles/23326>

Weitz, Gidi. "In Israel, No Gatekeepers to Stop Netanyahu's War on Media," Haaretz, 02/04/2017: <https://www.haaretz.com/israel-news/.premium-1.780680>

Transparency International, "Israel releases first ever National Integrity System report on Israel's government, institutions," 11.11.2014: 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.

Minister’s increasing use of social media (e.g., Twitter and Facebook) to communicate decisions before they are formally announced creates a degree of legal uncertainty. Under the first Conte government, Minister of the Interior Salvini engaged in this practice with particular frequency. Moreover, he had a strong tendency to trespass into other ministries’ turf, especially on matters of rescuing immigrants at sea. However, some of Salvini’s decisions have been overturned by the courts.

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.

In a more abstract sense, the idea of the rule of law per se does not command much of a following in Japan. 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 meant to serve the common good, and are not regarded 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. It is not certain that the public will give its consent for the reformed constitution. 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. The bad acoustics in Luxembourg City's courtrooms present another problem. Visitors and journalists regularly fail to understand what is being said in the hall because microphones are not used. The international press has also covered this embarrassing state of affairs.

:

Trausch, Gilbert (2008): "Die historische Entwicklung des Großherzogtums – ein Essay," in: Wolfgang H. Lorig/Mario Hirsch (eds.): *Das politische System Luxemburgs: Eine Einführung*, Wiesbaden, pp. 13–30.

Zenthöfer, Jochen: "Ein Prozess wie im Stummfilm," *Frankfurter Allgemeine Zeitung*, 11 April 2017. <http://www.faz.net/aktuell/feuilleton/debatten/prozess-gegen-holocaustleugner-in-luxemburg-14966362.html>. Accessed 22 Oct. 2018.

Cames, Michel: "Pragmatisch, flexibel, schnell – Wirtschaftspolitische Besonderheiten von Kleinstaaten am Beispiel Luxemburg." *Forum.lu*, September 2013. www.forum.lu/pdf/artikel/7692_332_Camest.pdf. Accessed 22 Oct. 2018.

"Gaël Arellano: New Luxembourgish constitution project scrapped in favor of 'substantial revision'." *RTL Today*, 27.11.2019. <https://today.rtl.lu/news/luxembourg/a/1437408.html>. Accessed 15 Dec. 2019.

"Cordula Schnuer: Constitutional reform hits new hurdle as lawmakers shelve draft law." *Luxembourg Times*, 27.11.2019. <https://luxtimes.lu/luxembourg/39150-constitutional-reform-hits-new-hurdle-as-lawmakers-shelve-draft-law>. Accessed 14 Dec. 2019.

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. The appointment of a commissioner for standards in public life has already begun to bear fruit.

However, reports from public bodies such as the Ombudsman 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 and a lack of transparency in the allocation and terms of public contracts. In 2019, the courts ruled that restrictions imposed on the Ombudsman in the investigation of complaints from armed forces personnel were unlawful, thereby extending its jurisdiction. The work of these two offices together have afforded greater transparency in the allocation and terms of public contracts. Parliament is 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. The government has in some cases made subsidiary law that violates primary law. 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. However, the higher courts have become stronger in enforcing constitutional provisions. Since the Maltese legal system does not include the doctrine of judicial precedent, this may also mitigate against legal certainty. The length of court cases also undermines the process. The recent practice of placing members of parliament on regulatory boards is also unconstitutional, and has been condemned by the commissioner for standards in public life.

Malta has become the first jurisdiction to provide legal certainty to the cryptocurrency field.

Citation:

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

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

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

Minister reacts as auditor criticizes re ranking of bidding firms Times of Malta 5/03/14
 Updated; Government asks AG to amend unconstitutional industrial tribunal law Independent 12/02/16
http://www.maltatoday.com.mt/news/national/76165/maltese_perceive_judicial_independence_to_be_fairly_good#.WesFh1uCyM8
 The Independent 20/12/17 Kevin Aquilina, The Rule of Law a La Maltese
 Malta Today 9/10/17 Former Planning and lands minister is now lawyer for both planning and lands authority
 Times of Malta 7/10/17 Ombudsman queries positions of trust
 Times of Malta 11/11/17 Ministry spends almost 30,000 euros on Liquor for EU Presidency
 Interview with Prof Kevin Aquilina Dean of Law 12/17
<https://www.timesofmalta.com/articles/view/20181003/local/aquarium-only-cost-developer-one-fifth-of-its-value-nao-finds.690656>
<https://www.timesofmalta.com/articles/view/20180911/local/maltas-whistleblower-laws-rank-second-in-the-eu-ngo.688903>
 bitcoinist.com Malta becomes first world jurisdiction with legal certainty in cryptocurrency field
 Grima, J., (2017) Legal Certainty and the Constitution: is Malta ready for the doctrine of Judicial Precedent?

Netherlands

Score 6

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 Rule of Law Index 2019, the Netherlands was again ranked fifth out of 126 countries. However, the no more than slight decline in its score curiously disregards previous warnings from legal experts that the situation is rapidly deteriorating, and that it was indeed nearing crisis levels in 2019.

In a “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. Moreover, there has been a considerable quantity of unambiguous failures. For example, there is evidence that the accumulation of so-called administrative sanctions has driven people into poverty, and additional evidence that tax authorities have illegally stopped tax benefits for childcare to eligible families. The process of seeking

compensation for physical or psychological harm is called a “tombola” (a kind of lottery-based gambling game), with widely divergent outcomes in terms of whether and when victims are granted funds. Police and the judicial system are losing the war on drugs.

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 a clear failure in 2017 and 2018. Its chair declared that the judiciary was outdated for a modern, rapidly changing society. Citizens and businesses alike stated that judicial procedures were 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 have focused on the budget for the judiciary (€900 million), and on 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; this has not happened, but the judicial-affairs budget was increased in 2018. 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

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

NRC Handelsblad, 24 September 2019. Top fiscus wist van toeslagstop.

NOS, 28 August, 2019. Drugscriminaliteit Amsterdam heeft vrij spel

NRC Handelsblad, 13 June 2019. Onhoudbare situatie bij forensische opsporing.

NRC Handelsblad, 26 February 2019. De pijlers van de rechtsstaat voelen zich terecht verwaarloosd.

NRC Handelsblad, 30 July 2019. Rechtbanken verliezen zeggenschap.

NRC Handelsblad, 13 March 2019. Hoe de kritiek op onterechte straffen werd weggepoetst.

NRC Handelsblad, 18 January 2019. Kamer, kijk niet toe bij afbraak rechtsbijstand.

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 increasing level of political polarization has made many laws rather short lived. As a result of frequent amendments, many laws have become inconsistent, even contradictory. 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 EU member state constitutional courts, particularly the German one, others have been based on specific and not always transparent views of individual justices.

In the period under review, the debate on the low quality of laws in Slovakia again intensified. While in the past, this concern was primarily raised by lawyers and political scientists, this time the warning has come from the business sector and from the European Commission. Contradictory laws, with different ministries adopting different interpretations, and the resulting lack of predictability are increasingly seen as a problem for the business environment.

Citation:

Minarechová, R.(2019): Quality instead of quantity. members of parliament should think about the laws they submit, businesses say, in: Slovak Spectator, August 30 (<https://spectator.sme.sk/c/22199157/businesses-call-for-more-predictable-legislation.html>).

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.

An interesting test case arose as a result of the fraught stand-off between Parliament and the government during the autumn of 2019 when the former passed an act obliging the government to send a letter requesting an extension to the Article 50 deadline. The government did comply, albeit with bad grace and with two accompanying letters, saying it disagreed with the obligation. Despite these theatrics, the law was followed and an extension agreed with the European Union.

The process of delivering Brexit has seen considerable uncertainty about whether successive deadlines would be met and how different interests would be affected. The "Great Repeal Bill," the European Union (Withdrawal) Bill 2018, promised to bring all legislation derived from the European Union back into the UK legal system. Although the bill finally achieved a second reading at the end of October 2019, its further progress to becoming an Act of Parliament was interrupted by the calling of a general election. Completing Brexit will also entail a large number of statutory instruments, a form of legislation that limits the legislature's ability to scrutinize. There were also concerns that a large proportion of the legislation necessary to implement Brexit would be introduced in this way – with critics deploring so-called Henry VIII Clauses, referring to the 16th century English monarch's propensity to over-ride Parliament. Given the volume of legal changes needed, the balance between primary legislation and a resort to statutory instruments is a delicate matter,

but it would be incorrect to regard the government as not acting in accordance with legal provisions.

The uncertainty has long been 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 more than three million EU citizens currently living and working in the United Kingdom has still not been reliably clarified.

Citation:

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

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

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. Legal certainty is diminished by the fact that laws usually give the administration sizable scope for discretion, while also suffering from internal inconsistencies and contradictions that make it possible to find ad hoc legal justifications for virtually any decision. Thus, executive action is not only relatively unpredictable, but may involve applying the law differently to different citizens or firms, thus creating privileges and inequality before the law.

Croatia

Score 5

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

Cyprus

Score 5

Following the collapse of bi-communality in 1964, the law of exception leaves the State with very powerful executive and "independent officers," whom are subject to very little or no control. Decisions often exploit excessive discretionary powers of the Council of Ministers and other authorities, which show limited concern for rule of law principles.

A number of recent court decisions have confirmed the validity of questions raised regarding the legitimacy of measures to face the crisis. The latest (2019) court decision declared the cuts to pensions and salaries unconstitutional. Many laws passed by the parliament are ultimately judged unconstitutional by the Supreme Court. Action on important matters is either delayed or consists of partial measures that are inefficient or unjust. The ESTIA scheme designed to mitigate the impact of non-performing loans on the Cypriot banking system was amended after the European Commission and ECB warned of “moral hazard risks and fairness issues” and against some amendments being pursued by the parliament.

Revelations about the granting of citizenship to the Cambodian dictator’s family and a Malaysian citizen wanted by Interpol are indicative of actions that violated basic rules and legality.

Thus, actions inconsistent with the rule of law persisted in 2019. Clashes between various high-level state officials continued. These factors contributed to further undermining people’s trust, meritocracy, administrative efficiency and law enforcement.

Citation:

1. Estia scheme rewards strategic defaulters, Cyprus Mail, 3 September 2019, <https://cyprus-mail.com/2019/09/03/our-view-estia-scheme-rewards-strategic-defaulters/>
2. Data watchdog ‘duty-bound to report audit boss’ over whistleblower, Cyprus Mail, 21 December 2018, <https://cyprus-mail.com/2018/12/21/data-watchdog-duty-bound-to-report-audit-boss-over-whistleblower/>
3. More questions raised about Malaysian businessman’s passport, Cyprus Mail, 5 November 2019, <https://cyprus-mail.com/2019/11/05/more-questions-raised-about-malaysian-businessmans-passport/>

United States

Score 5

There is little arbitrary exercise of authority in the United States, but the legal process does not necessarily provide a great deal of certainty. 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. These include supplanting the authority of elective policymaking institutions, reducing administrative discretion, causing delays in decision-making, and increasing reliance on courts and judges to design policies and/or administrative arrangements. When it comes to 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 heavily criticized 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. The Trump administration has ignored clear legal obligations on some investigation-related matters, which includes refusing to provide Trump's tax returns to Congress, and failing to forward a whistleblower's report that had been referred by the intelligence community's inspector general. Trump has also invoked emergency powers, without credible grounds, to transfer funds from military construction projects to the construction of his proposed wall on the Mexican border. In his letter of resignation as secretary of defense, James Mattis criticized Trump for ignoring the limits of his legal authority in multiple matters.

At the time of this writing (early 2020), on the heels of Trump's impeachment by Congress, it seems clear that the United States is in the midst of a constitutional crisis in which there is severe uncertainty regarding assured adherence to the rule of law within the executive in particular.

Citation:

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

Milkis and Jacobs

Mexico

Score 4

Legal certainty is formally guaranteed by the Mexican constitution. With the government of López Obrador holding a majority in Congress, legal procedures are formally well-respected. De facto, 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%. 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.

In other areas of the law, for instance in the realm of business and the broader economy, the situation regarding legal certainty is much less dire.

Hungary

Score 3

As in other countries with authoritarian tendencies, the Orbán government believes that the law is subordinate to government policies, with the latter reflecting the “national interest,” which is sacrosanct and exclusively defined by the government majority. As the Orbán governments have taken a voluntarist approach toward lawmaking, legal certainty has 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.

Poland

Score 3

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 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. Despite numerous complaints about and international criticism of this issue, nothing has changed. The controversial creation of a new disciplinary chamber in the Supreme Court, which has the power to initiate disciplinary investigations and sanctions against ordinary court judges on the basis of the content of their judicial decisions, has further increased legal uncertainty.

Romania

Score 3

Legal certainty has strongly suffered from the tug-of-war over the reform of the judiciary. Moreover, the Dăncilă government made widespread use of government emergency ordinances (OUG). To cite but two examples, it used them both for its hectic tax reforms at the end of 2018 and for controversial reforms of the judiciary in early 2019. 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. The use of emergency government ordinances (EGOs) remains a routine mechanism for the Romanian government to pursue legislative or judicial reforms, without appropriate preparation or consultation that often results in considerable controversy.

In February 2019, the American Chamber of Commerce in Romania issued a statement asserting that the pace of changes to legislation by emergency ordinance is unjustifiably fast and non-transparent, sounding the alarm on what the Chamber

considered to be “accelerated degradation” of the quality of public policies, regulation and governance in Romania. The Chamber stated that emergency ordinances have “turned the National Reform Program into an obsolete document for outlining nationwide reform priorities,” and called on the government to ensure predictability and align with the EU’s “better regulation” approach.

Citation:

American Chamber of Commerce in Romania (2019): Warning Signal: Counterproductive Measures Adopted without Impact Assessments and without Observing the Legal Requirements for Transparency Reach an Alarming Level at the Beginning of 2019. Bucharest, February 1 (<https://www.amcham.ro/communication/amcham-press-releases/warning-signal-counterproductive-measures-adopted-without-impact-assessments-and-without-observing-the-legal-requirements-for-transparency-reach-an-alarming-level-at-the-beginning-of-2019>).

European Commission (2019): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism. COM(2019) 499 final, Brussels (https://ec.europa.eu/info/files/progress-report-romania-2019-com-2019-393_en).

Turkey

Score 3

Turkey is in an unsettled state of political transformation, as the executive system transitions from a state of emergency to a presidential system.

Under the state of emergency, 36 decrees were issued, which restricted civil, political and defense rights, and expanded powers for the police and prosecutors. These decrees facilitated the dismissal of more than 152,000 civil servants, including academics, teachers and public officials. 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.

Following the state of emergency and during the ongoing transition toward presidentialism, the absence of a law concerning general administrative procedures, which would provide citizens and businesses with greater legal certainty, complicates administrative procedures and exacerbates administrative burdens. The main factors affecting legal certainty in public administration are a lack of issue-specific regulations, 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 large number of amendments made to some basic laws under certain circumstances have led 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 retrial. Legal as well as judicial instruments are sometimes used against government opponents, especially those in the media.

The number of cases annulled by the Constitutional Court has been increasing since 2015. In 2018, the court annulled 87 out of 119 cases. Unconstitutional laws cause double standards and lead to unfair practices in daily life.

Citation:

European Commission, Turkey 2019 Report, Brussels, 29.5.2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf> (accessed 1 November 2019)

TC Anayasa Mahkemesi Yıllık Rapor 2018, <https://www.anayasa.gov.tr/tr/yayinlar/yillik-raporlar/> (accessed 1 November 2019)

World Justice Project, Insight on Access to Justice 2019, <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf> (accessed 1 November 2019)

“TÜSİAD’dan yeni vergilere tepki: Eşitlik ve adalet ilkesine uygun değil,” Milli Gazete, 13 November 2019, <https://www.milligazete.com.tr/haber/3306324/tusiaddan-yeni-vergilere-tepki-esitlik-ve-adalet-ilkesine-uygun-degil> (accessed 1 November 2019)

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.

Germany

Score 10

Germany's judiciary works independently and effectively protects individuals against encroachments by the executive and legislature. The judiciary invariably has a strong position in reviewing the legality of administrative acts. The Federal Constitutional Court ensures that all state institutions obey the constitution. The court acts only when an appeal is made, but holds the right to declare laws unconstitutional and has exercised this power a number of times. In case of conflicting opinions, the decisions made by the Federal Constitutional Court 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 Federal Constitutional Court in particular, enjoy a high reputation for independence both domestically and internationally. In the World Economic Forum's Global Competitiveness Report 2019, Germany's relative performance on judicial independence has declined in recent years, with Germany now ranked 31th out of 138 countries after ranking 25th in 2018 and 17th in the previous years. However, the World Justice Report's Rule of Law Index 2019, which includes judicial review as one topic, assigned Germany sixth place out of 128 countries.

Citation:

<https://www.weforum.org/reports>

<http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2019.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 government, which is very common among Commonwealth countries, 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.

:

<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

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.

Estonia

Score 9

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. However, the radical-right EKRE, which entered the government in 2019, has attacked the courts (promising that "heads will roll") for, among other things, recognizing same-sex marriages.

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 Sipilä government was 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 were 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 overseeing executive norms and decisions. The process of challenging decisions is rather simple. 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. The Constitutional Council has gradually become a full-fledged court, the role of which was dramatically increased through the constitutional reform of March 2008. Since that time, any citizen has been able to 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 can be passed to the Constitutional Council if legally sound. The Council's case load has increased from around 25 cases to about 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 that can be exerted by the Council before the promulgation of a law, provided that three authorities (the president of the republic and the presidents of the two assemblies) or 60 parliamentarians (typically from the opposition) make 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 Vilmorius opinion surveys, public trust in the courts is low. Between 2016 and 2018, these levels showed some modest increase, but an October 2019 Vilmorius survey indicated renewed decrease to about 20%. This was associated with a major corruption probe in which numerous judges were alleged to have taken bribes during criminal proceedings. Public trust in the Constitutional Court is higher (34% in October 2019).

Citation:

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

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

Luxembourg

Score 9

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.

Frictions between the judiciary and parliament emerged in the summer of 2019.

Attorney General Martine Solovieff and the Chairman of the Supreme Court, Jean-Claude Wiwinius, objected to two parliamentary questions submitted on the subject of the judiciary. As a result, they wrote in August to the speaker of the Chamber of Deputies, expressing their displeasure over the large number parliamentary inquiries regarding the issue of police registry data protection, particularly with regard to applications for a criminal-record certificate (i.e., *casier judiciaire*). Noting parliament's right to act as a check on federal powers, Solovieff and Wiwinius emphasized the judiciary's independence, asserting that such inquiries could involve a violation of the separation of powers.

The president of parliament, on the other hand, stated that the judiciary was not entitled to interfere in parliament's affairs, an action that would violate the separation of powers.

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 the 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 intervened in various ways by blocking the Trump administration's Muslim travel ban and forcing major modifications to the administration's harsh treatment of asylum-seekers.

As of late 2019, the Trump administration has not yet defied final rulings by the judicial branch. It remains to be seen whether it will comply with such orders in the multiple cases currently at various stages of appeal.

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.

The FPÖ, which controlled the Ministry of the Interior and therefore the police, was criticized for using politically appointed personnel (e.g., ministerial staff) to control autonomous parts of the bureaucracy. A police raid (obviously orchestrated by the ministry) of the semi-autonomous government agency (the BVT) responsible for monitoring political extremism and potential terrorism was seen as an attempt by the FPÖ to widen the party's control over non-FPÖ-controlled agencies. One aspect of this activity (sharply criticized by the media and opposition parties) was the FPÖ policy of appointing members of the far-right "Burschenschaften" (dueling fraternities) to key positions in the security apparatus.

Citation:

Hans-Henning Scharsach: “Stille Macht-Ergreifung. Hofer, Strache und die Burschenschaften.” Wiern 2017 (Kremayr & Scheriau)

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. In the second half of 2019, a dispute between the Supreme Court and the Constitutional Tribunal emerged over the issue of judicial supremacy. As the judicial institution in charge of reviewing potential infringements of fundamental rights, the Supreme Court argued that this mandate gave it the power to review sentences rendered by the Constitutional Tribunal. The dispute had not been resolved by the end of the period under review.

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 so 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>

<https://www.latercera.com/nacional/noticia/corte-suprema-tribunal-constitucional-disputa/853582/>

Cyprus

Score 8

The addition of the Administrative Court in 2016 had limited effect on lengthy court procedures that plague the administration of justice. A functional review of the courts found that cases take up to 9.5 years.

There are proposals and plans for resolving serious problems such as sluggish decision-making, a lack of material infrastructure and rules of procedure that negatively affect the efficiency of the courts. However, at present, judicial review remains highly problematic. In addition, the judiciary's integrity was subject to question in late 2018 when claims of nepotism and links between justices' families and leading law firms emerged. These developments prompted a GRECO extraordinary mission to Cyprus, though no relevant report has thus far been made public..

Decisions by trial courts, administrative bodies and other authorities are reviewed by the Administrative Court and (appellate) Supreme Court. Appeals are decided by panels of three or five judges, with 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/Ail/4FAD54FDA1155764C225825F003DC397?OpenDocument>

2. If only our judges were capable of showing humility, Cyprus Mail, 20 January 2019, <https://cyprus-mail.com/old/2019/01/20/our-view-if-only-our-judges-were-capable-of-showing-humility/>

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. The Constitutional Court decision that attracted the most public attention during the period under review was the October 2019 invalidation of a controversial law taxing restitution payments to the churches; this had been initiated by the Communist Party (KSČM) as one of its preconditions for its support of the ANO-Social Democrat minority government. The appointment of Marie Benešová as justice minister in May 2019 has raised some concerns about

the independence of the judiciary. She has clashed repeatedly with the Prosecutor General, and her proposal to set new term limits for prosecutors has been perceived by the majority of the judiciary and most experts as an attempt at political interference with the courts.

Citation:

Pospíšil, I. (2020): *Activist Constitutional Court as Utility Tool for Correcting Politics: Structure, Composition and Case law*, in: A. Lorenz, H. Formánková (eds), *Czech Democracy in Crisis*. Cham: Palgrave Macmillan, 133-155.

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 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 in primarily, if not exclusively, investigating 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. More broadly, the period under review saw a tug-of-war between the government and the justice system, rendering judicial review a sensitive and unpredictable process. This pattern was continued into the second half of 2019, when courts again overturned several clauses of the recently passed pension legislation, dubbing them unconstitutional.

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. In recent years, public trust in the judicial system has sharply declined.

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, Amir Ohana, and the former minister of justice, Ayelet Shaked, have proposed substantial reforms of the judicial branch and especially the Supreme Court. These reforms are intended to weaken its powers of oversight over the political 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).

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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>.

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Plesner, Yohanan. "The Knesset and the Court: Is This Israel's Override Election?," The Israel Democracy Institute, 16.9.2019: en.idi.org.il/articles/28629

Svorai, Moran, "Judicial independence as the 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 government actions, and order correctives if necessary. The main problem is 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 introduced new measures designed to speed civil proceedings, particularly those related to economic activities. A 2017 report issued by the minister of justice suggested that these measures have had some success. The first Conte government promised to increase judicial efficiency, but did nothing substantial in this area before its fall.

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, represents another preemptive control.

Citation:

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

Latvia

Score 8

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

However, the court system suffers from a considerable case overload, leading to substantial delays in proceedings. According to the court administration statistical overviews, 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 2018, the court received 363 petitions, of which 182 were forwarded for consideration. The court initiated 23 cases, dealing with a wide range of issues, including maternity leave, the remuneration of medical practitioners, the issuing of industrial security certificates and the ban on people who had been active in the Communist party after 1991 from running as candidates in Saeima elections.

Citation:

1. Judicial Information System Database, Available at: http://tis.ta.gov.lv/tisreal?FORM=TIS_STaT_O
2. The Constitutional Court Case Database, Available at: <http://www.satv.tiesa.gov.lv/?lang=1&mid=19>
3. Valts Kalniņš (2011), Assessment of National Integrity System, p.99, Published by DELNA, Available at: http://www.transparency.org/whatwedo/pub/national_integrity_system_assessment_latvia, Last assessed: 25.10.2019
4. Constitutional Court (2019). Overview of the work of the Constitutional Court 2018. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2019/01/Satversmes-tiesas-gada-gramata-2018-A4_small_file_size_L.pdf, Last assessed 25.10.2019

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 2018 stood at 1,743, a slight decrease vis-à-vis 2017 (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.

During the period under review, the Assembly of the Republic approved measures to broaden public access to the courts.

Judges' and magistrates' associations called for strikes over pay and working conditions during the period under review. This resulted in increases for judges' pay, approved in May 2019.

Citation:

Jornal de Negócios (2019), "Deputados aprovam estatuto que permite aos juizes terem salário acima do primeiro-ministro," available online at: <https://www.jornaldenegocios.pt/economia/politica/detalhe/deputados-aprovam-estatuto-que-permite-aos-juizes-terem-salario-acima-do-primeiro-ministro>

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

<https://observador.pt/2018/.../associacao-sindical-dos-juizes-estima-90-de-adesao-a-gr.>

<https://www.portugal.gov.pt/pt/gc21/comunicacao/noticia?i=aprovado-novo...>

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. The Cerar government 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.

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. 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 an effective guardian of the constitution, although it has been comparably weak on anti-discrimination issues and the defense of political liberties on issues relating to the security threat posed by North Korea.

Citation:
JoongAng Ilbo. "Selective justice." October 10, 2019
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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

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. Malta has a strong tradition of judicial review, and the courts have traditionally served as a restraint on the government and its administration. A recent court ruling found that the justice minister's orders to clear items memorializing a slain journalist away from a war memorial was in breach of the freedom of expression. Individuals who feel that their human rights have been breached also have recourse to the European Court of Human Rights (ECHR). Fully 90% of the human-rights cases that have been taken up by the ECHR Court have produced rulings that Malta has violated the complainant's human rights; however, a number of these have dealt with property leases and old tenancy laws.

The role of the Office of the Attorney General, which has been controversial since the position's inception in the 1964 constitution, underwent a reform in 2019. Previously, the attorney general was both the state's chief prosecutor and an adviser to the government. Following the reforms, the attorney general will retain responsibility for prosecutions and criminal matters, but a new state advocate will be responsible for all government advisory and legal representation functions in the field of constitutional civil and administrative law. The opposition did not vote in favor of this act in parliament, objecting to a number of articles including the process of selecting the state advocate. A new state advocate has been appointed under the new legislation after being unanimously recommended by the appointments commission following a public call. The process by 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 2019 Justice Scoreboard noted that while more cases were being dealt with and the time needed to resolve cases had fallen, the percentage of resolved cases and pending cases remained stable. The report emphasized the lack of internet-based

tools for legal-rights education, information on eligibility for legal aid, and information for children. The number of female judges in the court of first instance have increased substantially, but the numbers still remain low for the court of second instance. In a survey, 56% of the public and 62% of firms rated the independence of the courts and the judiciary as good or very good, an improvement relative to 2018. Reasons cited for the lack of independence included pressure from the government, politicians and economic groups. Nonetheless, this is more of a perception than a confirmed statistic. 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 five years. Malta has the EU's fourth-highest rate of judges 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. An internal debate is taking place on this latter issue. Measures to deal with court backlogs remain weak. The World Economic Forum's global score board for 2019 states that "the judiciary is fairly independent and efficient and provides strong protection of property rights." On the issue of the independence and impartiality of the judiciary, Malta here achieved a score of 50.4%. 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. Online information on published judgments is available, and enough information is now provided to monitor the stages of a proceeding. Delays and deferments may still lengthen the process, but have diminished in recent years. In 2018, parliament passed a bill to establish a first hall of the civil court in Gozo.

Citation:

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Times of Malta 06/12/19 Malta's first state advocate named

2019 Index of Economic Freedom

Recent developments in the Judicial field

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Times of Malta 06/12/19 Malta's first state advocate named

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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.

In 2018, the intensity of judicial review of executive actions reached an all-time high. This attracted international attention when a Dutch appeals court upheld a landmark climate-change ruling, instructing the Rutte government to raise its greenhouse-gas reduction goal of 17% to at least 25%. However, the judiciary itself also came under increasing scrutiny, both with regard to its internal functioning and the degree to which it was truly independent of politics.

Several glaring miscarriages of justice have raised public doubts as to the quality of justice in the Netherlands. This has led to renewed opportunities to reopen previously tried cases in which questionable convictions have been delivered. In 2017, a deputy minister of legal affairs openly admitted that he reduced the provision of state-supported legal assistance to ordinary citizens in order to achieve more punitive court sentences. And in the drugs- and crime-ridden province of Brabant, police, mayors and fiscal authorities sometimes “harass” suspects rather than initiating legal procedures, which they perceive as a time-consuming nuisance. Judges have voiced concerns as to the quality of the work performed by lawyers, and thus directly about professional practices and indirectly about the legal-education system. The reputation of the public prosecution service (Openbaar Ministerie, OM) too has come under public scrutiny. It has been criticized for striking mega-deals (such as fines) with corporations and banks, which are presumably deemed more efficient than conducting full-fledged trials of legally sanctionable financial or managerial misconduct. Evidence has shown that OM staffers lacking the proper professional accreditation have rendered decisions on thousands of criminal cases with insufficient evidence. The prosecution service’s degree of independence from the government has also come under public and journalistic scrutiny, and integrity problems within the organization itself have almost paralyzed its functioning. The legal trial for hate speech by Dutch parliamentarian Geert Wilders may fail due to alleged political interference in the judicial procedure.

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. Some observers defend this structure, arguing that only an entity with detailed and intimate knowledge of the practical difficulties associated with policy implementation and legal enforcement can offer sound advice to the government in this area.

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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 the trial of 12 Catalan independence leaders between February and October 2019. For Spanish justice, this process has been one of the most significant cases since the start of constitutional democracy in 1978, with regards to the nature of the facts judged, and national and international repercussions.

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 greater efficiency were recommended. The 2019 EU Justice Scoreboard indicated that most respondents found the judicial system to be too slow. 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. The 2019 EU Justice Scoreboard also shows that challenges regarding the perception of judicial independence are growing in Spain. Finally, the capacity of some powerful private interests (such as the banking system) to influence judicial decisions was the subject of extensive debate, following a controversial ruling in October 2018 by the Supreme Court on taxation.

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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. Having then fallen to 36% in 2018, the rate peaked in 2019 when Gallup reported it to be 47%.

Many observers consider the courts biased, as almost all judges attended the same law school and few have attended universities abroad. 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.

In 2017, a sitting Supreme Court justice sued a former justice for libel in a case that awaits a verdict by the Supreme Court. Then, in 2019, the former justice sued another sitting justice over a private land dispute. Disputes among justices do not inspire confidence and trust, least of all when they trade accusations of illegal behavior.

Citation:

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Japan

Score 6

Courts are formally independent of governmental and administrative 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 its 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.

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 occupied senior judicial positions between 1998 and 2014. 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 have persisted. They have been more than confirmed by the revelations about the entanglement of many justices in the corruption network of Marian Kocner, the man behind the murder of Kuciak and Kušnírová. In 2019, the Judicial Council twice failed to select the president of the Supreme Court. The next election round is scheduled for January 2020.

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 the former president, Kiska, and parliament over the appointment of new justices, and the politicization of appointments. Moreover, a controversial decision in January 2019 – in which the Constitutional Court, for the first time in Slovak history, declared a constitutional law unconstitutional – has raised concerns about the role of the court.

According to the 2019 EU Justice Scoreboard, 64% of Slovaks do not trust the courts. Public confidence in the independence of courts and judges is – tied with Hungary – the worst in Europe. Over 50% of respondents stated that interference from government and politicians was the main reason for the lack of judicial independence (only Hungary polled higher).

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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 (CVM) by its partner countries from the European Union. In the fall of 2019, the European Commission announced that it planned to terminate Bulgaria's coverage by the CVM, but as of the time of writing, it remained unclear whether this decision was based on the progress made to date or the conclusion that the mechanism had proven ineffective.

Since 2015, judges have become formally more independent from prosecutors and investigators in the Supreme Judicial Council. However, despite the formal changes, the Supreme Judicial Council remains politicized, and its decisions continue to suffer from a significant lack of transparency and accountability. In 2019, the Council was strongly criticized for its highly nontransparent and noncompetitive procedure for electing a new prosecutor general, leading to citizen protests.

Citation:

European Commission (2019): Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism. COM(2019)498 final, Brussels (https://ec.europa.eu/info/files/progress-report-bulgaria-2019com-2019-498_en).

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Croatia

Score 5

Croatia has the highest number of judges per 100,000 people in the EU-28 and spends almost 0.45% of GDP, the fifth highest share in the European Union, on the judiciary. At the same time, the independence, quality and efficiency of the judiciary have been limited. The level of trust in the Croatian judicial system remains the worst of any EU member state, both among ordinary citizens and businesses.

The fact that in recent years a number of prominent individuals accused of crimes were acquitted has underscored the Croatian judiciary's lack of effectiveness and independence. The main impediment to the perceived lack of courts' independence is to be found in interference by government and politicians, which is closely followed by interference from economic or other specific interests. The State's Attorney Office is also often perceived as lacking skilled personnel with integrity, and under constant pressure from powerful political players to either start or stall processes against their adversaries.

In Croatia, judges of ordinary courts are appointed by the National Judicial Council, an independent body consisting of 11 members – 7 judges, two 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.

The long duration of judicial procedures and the large backlog of cases continue to be a major problem in Croatia's judicial system. Successive ministers of justice have failed to deal with the backlog. Dražen Bošnjaković, HDZ's incumbent minister, has also prioritized it, together with digitalization of the judiciary.

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.

The government of López Obrador has initiated a judicial sector reform, with more than 50 new laws. This includes the creation of a unit in the Secretaría de Gobernación to promote the reform of criminal law.

Overall, the courts do a poor job of enforcing compliance with the law, especially when confronted with powerful or wealthy individuals. Concern is growing that the government will undermine judicial independence. In general, mistrust in the judicial system is widespread, 68% of Mexicans think judges are corrupt and 45% do not trust them.

Citation:

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Hungary

Score 4

The independence of the Hungarian judiciary has drastically declined under the Orbán governments. 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 main player in the judicial system is Péter Polt, the Chief Public Prosecutor, a former Fidesz politician, who has persistently refrained from investigating the corrupt practices of prominent Fidesz oligarchs. He was appointed for an initial nine years, before being reappointed for a further nine years in late 2019. 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. Following uproar at home and abroad, in 2019, the Orbán government shelved its plan to establish a new branch of the judiciary, the so-called administrative courts, which would have been entirely under governmental 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 limited the independence of the Supreme Court and ordinary courts, and were pushed through despite massive domestic and international protests. 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 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. The struggle between the Polish government and the European Union over judicial reform has continued in the period under review. On the one hand, the government created a controversial disciplinary chamber for the Supreme Court, which has stubbornly resisted government control, and sought to limit the possibilities for escalating cases of Polish justice to the European Court of Justice (ECJ). On the other hand, the ECJ, in a decision in November 2019, questioned the independence of the disciplinary chamber and encouraged the Supreme Court to rule against it.

Citation:

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Romania

Score 4

Weakened independence of the judiciary continues to threaten Romania's capacity for judicial review, with the executive often influencing judicial matters. In the period under review, government influence on the management process of key

judicial institutions, including the Superior Council of Magistracy (SCM) and the Prosecutor's Office, continued to raise concerns about the judiciary's independence and authority. The government's role in appointments of prosecutors was of particular concern during 2019. In August 2018, when the term for the management team at the SCM expired, the government did not launch a public and competitive process but instead filled the position of chief inspector through an emergency government ordinance on an ad interim basis. The ad interim appointment remained until May 2019, when the same chief inspector was formally appointed to the role. The establishment of ad interim management compromised the ability of the SCM to provide effective checks and balances to defend the independence of judicial institutions. These concerns were exacerbated by the government's amendments to justice laws which made it possible for decisions on key issues to be determined by only a few members of the SCM. Additionally, statements issued by the SCM are often signed by only some of its members, pointing to fractures within the institution.

The Minister of Justice continued to control the functioning of the judiciary at the highest level, which is evidenced by Justice Minister Toader's efforts to remove the prosecutor general in 2018-2019, despite objections by the SCM and the European Commission. In late 2018, the minister indicated his intention to remove Prosecutor General Augustin Lazar. The request was denied by President Iohannis in January 2019. In April 2019, Toader moved forward with establishing an appointment process to fill the vacancy following the anticipated expiration of the prosecutor general's term in May 2019. The minister rejected all candidates, including the candidacy of the incumbent prosecutor general, Augustin Lazar. In the midst of this process, Justice Minister Toader resigned from his position on April 19, 2019, after failing to put forward the government's controversial emergency ordinance amending the criminal code. The incoming justice minister then canceled the appointment process to "avoid deterioration of the situation and give space to improve the procedure." With no candidates and no appointment process, the deputy prosecutor general at the time, Bogdan Licu, was selected by the Prosecutor's Section of the SCM as interim prosecutor general. The position continues to be filled on an interim basis, following a broader pattern of interim management at the highest levels of the Romanian judiciary.

Government interference and uncertainty in top prosecutorial positions have raised criticisms within Romania and abroad. Partially in response to the country's deteriorating capacity to maintain an independent judiciary free from the influence of government or powerful individuals, the European Commission's Cooperation and Verification Mechanism (CVM) added eight additional recommendations to their 2018 progress report for Romania. In 2019, the Commission continued to point to backtracking on rule of law-related issues, highlighting the dismissal of the prosecutor general as a point of concern. The Commission cites the pattern of disciplinary proceedings against magistrates, document leaking, and the government's prolongation of management positions as threatening judicial review in the country.

At its investiture, the Orban government announced that the appointment of prosecutors general was its top priority, and promised to make the process transparent and meritocratic. Orban noted that most top prosecutors are ad interim. The selection process for appointing prosecutors is scheduled to end by late January 2020.

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Turkey

Score 4

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.

The European Commission's 2019 report observes that judicial staff are still being dismissed or forcibly transferred, and that this risks engendering widespread self-censorship among judges and prosecutors. This may weaken the judiciary as a whole, its independence and the separation of powers. No measures were taken to restore legal guarantees to ensure the independence of the judiciary from the executive or to strengthen the independence of the Council of Judges and Prosecutors. No changes were made to the institution of criminal judges of peace, which risks becoming a parallel system. The recommendations from earlier reports therefore remain valid. There is no human resources strategy in place for the judiciary, which struggles to effectively perform its tasks in the wake of a substantial reduction in experienced personnel. The recruitment of a large number of inexperienced judges and prosecutors using fast-track procedures without adequate pre-service and in-service training has failed to remedy these concerns.

In 2018, the Council of State – which consists of 15 departments, two plenary sessions (one for administrative law divisions and one for the tax law chambers) and the country's highest administrative court – reviewed 135,368 cases, while a further 165,079 cases remain pending for 2019. The average length of time spent on each case was estimated to be 565 days. Compared to 2017, this long duration was due to problems in integrating new members and a lack of sufficient senior judges. As of November 2019, the cumulative number of administrative cases – transferred from 2018 and new cases arrived in 2019 – reached 514,292, of which 266,129 are still pending. Over the same period, a total of 443,791 administrative cases were reviewed. The Council of State's 2018 report admits to major weaknesses in administrative jurisdiction, including a lack of qualified legal personnel, lengthy trials, the unpredictability of trial periods and excessive workload.

The Constitutional Court, as the Supreme Court, dealt with a total of 204 cases (annulments and objections) and concluded 119 cases in 2018. The court received 87 annulment cases, of which six were approved, 41 were rejected and one was united. The court rejected 54 out of 77 objections, annulled 11 and united six. The total number of individual fair trial appeals reached 38,186 in 2018, of which 35,395 were concluded. The cumulative number of pending applications is 39,285.

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 undersecretary of the National Intelligence Service (MİT) is subject to the approval of the president. Acts within the president's area of competence, decisions of the Supreme Military Council (excluding acts relating to promotion or retirement), and decisions of the Council of Judges and Public Prosecutors (except for dismissals of public officials) are open to judicial review.

The Justice Academy of Turkey was re-established by presidential decree, after it had previously been closed under the state of emergency.

European Commission, Turkey 2019 Report, Brussels, 29.5.2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf> (accessed 1 November 2019)

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)

European judicial systems Efficiency and quality of justice CEPEJ STUDIES No. 26, 2018 edition (2016 data), <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c> (accessed 1 November 2019)

TC Anayasa Mahkemesi Yıllık Rapor 2018, <https://www.anayasa.gov.tr/tr/yayinlar/yillik-raporlar/> (accessed 1 November 2019)

TC Danıştay Başkanlığı 2018 Yılı İdari Faaliyet Raporu, <https://www.danistay.gov.tr/upload/2018-Yilii-Idare-Faaliyet-Raporu.pdf> (accessed 1 November 2019)

TC Danıştay Başkanlığı 2018 Yılı Sonuçlanan ve 2019 Yılına Devreden Dosya Sayıları, <https://www.danistay.gov.tr/upload/istatistikler-2016-2017-2018/2018/2018-1.pdf> (accessed 1 November 2019)

TC Yargıtay Başkanlığı 2018 Yılı Faaliyet Raporu, <https://www.yargitay.gov.tr/documents/ek1-1557233459.pdf> (accessed 1 November 2019)

Yargıtay Ceza ve Hukuk Daireleri İle Cumhuriyet Başsavcılığının 2018 Yılına Ait İş Durumunu Gösterir Çizelge, <https://www.yargitay.gov.tr/documents/2018.pdf> (accessed 1 November 2019)

HSK 2018 Yılı Faaliyet Raporu, <http://www.hsk.gov.tr/Eklentiler/Dosyalar/2018-FAALİYET%20RAPORU.pdf> (accessed 1 November 2019)

03.09.2019 Tarihi İtibariyle Hakim ve Savcılara İlişkin İstatistiki Bilgiler, <https://www.hsk.gov.tr/Eklentiler/Dosyalar/a062014e-6b7b-4ff7-bc47-4ba6a4478b6b.pdf> (accessed 1 November 2019)

YOK, Number of Students & Teaching Staff By Educational Institutions, 2018 – 2019 <https://istatistik.yok.gov.tr/> (accessed 1 November 2019)

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.

“Dommerudnævnelserådet,”

<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 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. Though, following the collapse of the ÖVP-FPÖ coalition, a key question for the next government will be: How should the government use its constitutional powers to influence the recruitment of members of, for example, the Constitutional Court?

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. In recent years, there have been several cases in which the judiciary has acted to check executive power. This has come in the area of environmental policy, for example, in which the Supreme Court has affirmed its autonomy and independence from political influence.

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 was ranked 53rd out of 141 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 2019 Global Competitiveness Report of the World Economic Forum: http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf
The EU Justice Scoreboard, see http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

Luxembourg

- Score 9** The Constitutional Court of Luxembourg is composed of nine members, all of whom are professional judges. They are appointed by the Grand Duke upon the recommendation of the 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. However, the members of these two

bodies are appointed by the Grand Duke on the recommendation of the Courts themselves, so their recommendations cannot be viewed as entirely independent. 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.

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., Clara 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.

In May 2019, in a rare resignation, Clara Sottomayor resigned from the Constitutional Court. In September 2019, she explained that she had resigned in protest to the process of elaborating an opinion, which fails to sufficiently safeguard dissenting views within the court.

Citation:

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

Maria Clara Sottomayor (2019), “Quem guarda o guardador?,” in Público online, available at: <https://www.publico.pt/2019/09/23/politica/opiniao/guarda-guardador-1887519>

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 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 Federal Constitutional Court 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, judges in Germany 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. In November 2018, Stephan Harbarth, previously a member of the German Bundestag, was elected as a new vice-president of the Federal Constitutional Court. This election received substantial press coverage, with discussions as to whether a former member of parliament who worked as a lawyer has the right profile for this position. This example seems to indicate that the new and open procedure has had a positive effect on public awareness.

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. Since the law was amended in 2008, it was held that in order to appoint a justice to the Supreme Court, the nominated candidate should have the support of a majority of seven committee members. This amendment has since further intensified struggles between committee members.

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.

Since the establishment of the Judicial Selection Committee in 1953, various initiatives have sought to change it. In 2019, the former minister of justice, Ayelet Shaked, presented a proposal to change the committee. According to her proposal, a justice of the Supreme Court will be nominated by the government and approved by the Knesset following a public hearing, similar to the U.S. system for choosing justices to the U.S. Supreme Court. This proposal aims to reduce the Supreme Court's judicial activism. Elected officials – including some ministers, such as Ayelet Shaked – have sought to appoint judges with a conservative judicial view who, they hope, would be less activist. In her term, however, Shaked pushed for the appointment of conservative judges. Her success on these grounds was attributed to her partnership with the former head of the Israeli Bar Association, Efi Naveh. In 2019, he was arrested under a sex-for-judgeship scandal, according to which he tried to appoint and promote judges in return for sexual favors.

The spirit of judicial independence is also evident in the procedure for nominating judges and in the establishment of an ombudsman for the 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 and 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.

Citation:

Bob, Yonah Jeremy. "Will Nave replacement end Shaked's judicial revolution? - analysis." The Jerusalem Post, 12.6.2019: <https://www.jpost.com/Israel-News/Will-new-lawyers-president-end-Shaked's-judicial-revolution-Analysis-592167>

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>

Jerusalem Post Staff, Yonah Jeremy Bob. "Efi Nave, Head of Israeli bar, arrested in sex-for-judgeship scandal." The Jerusalem Post, 16.1.2019: <https://www.jpost.com/Breaking-News/Senior-lawyer-arrested-on-suspicion-of-illegal-appointment-of-judges-577580>

Lurie, Guy. "The Judicial Selection Committee." Jerusalem: Israel Democracy Institute, 2019.

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 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.

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 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 European Networks of Councils for the Judiciary (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 (in Latvian): http://titania.saeima.lv/LIVS11/saeimalivs_imp.nsf/0/AB89B4FC4C69868DC22579410042BEF9?OpenDocument, Last assessed: 01.11.2019

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: 01.11.2019

Mexico

Score 8

Mexican Supreme Court justices are nominated by the executive and approved by a two-thirds majority in the Senate. However, if no candidate achieves a majority, the president can appoint a justice without Senate approval. 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.

With the support of a majority in the legislative, AMLO has appointed two new judges to the Supreme Court, with a third one to follow soon, and three judges to the Consejo de la Judicatura Federal. The opposition has criticized all the appointments arguing that the candidates are loyal allies of the president, which would undermine judicial independence. Until 2021, AMLO will be able to appoint at least one more judge. In addition, a reform project proposed the creation of a new anti-corruption chamber in the Supreme Court, giving AMLO the option to appoint a further five judges.

Citation:

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

Mexico Evalua 2019: Diagnostico inaugural, <https://www.mexicoevalua.org/diagnostico-inaugural/>

Latin News 2019: Weekly Report – 10 October 2019 (WR-19-40), MEXICO: Judicial autonomy under threat?

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. By contrast, in the case of the two most recent appointments of Constitutional Court justices in late 2018 and June 2019, the governing coalition ignored and over-voted the opposition.

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. The latest round of appointments in 2016 included many judges with dubious backgrounds.

Cyprus

Score 7

The judicial system functions on the basis of the 1960 constitution, albeit with modifications to reflect the circumstances prevailing after the collapse of bicomunal 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. GRECO 2016 recommendations to deepen participation in the SCJ by including trial court judges and rendering the procedure and criteria for selecting judges more transparent were at best only partially implemented. Similarly, the recommendation to institute a process for representation within the judiciary was also not followed. In late 2018, claims of nepotism and the corruption of justices were lodged; GRECO is expected to publish a special report regarding these claims.

In 2019, the EU recommended that Cyprus accelerate the pace of reforms in the judicial system (e.g., establish a commercial court, promote e-justice and strengthen the enforcement of decisions).

The gender balance within the judiciary as a whole is approximately 60% male to 40% female. Four (five until October 2019) of the 13 Supreme Court justices and five of the seven Administrative Court justices are female.

Citation:

1. 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>
2. Greco suggestions 'not optional,' Cyprus Mail, 9 February 2019, <https://cyprus-mail.com/old/2019/02/09/greco-suggestions-not-optional/>

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 unsuitable 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.” The bill finally passed the Seanad in December 2019 and was returned to the Dáil.

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), "...[I]n 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 of the lower administrative courts. Only Geert Wilders, parliamentarian for the right-wing populist Party for Freedom, has proposed (in 2011) to substitute a five-year term for judges' current lifetime appointment.

The Netherlands' highest court, the Council of State, is subject to relatively strong political influence, mainly expressed through the appointment of former politicians, 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

NRC Next, 8 March 2011. Wilders pareert kritiek op plan tijdelijke benoeming rechters (nrs.nl, accessed 4 November 2019)

South Korea

Score 7

The appointment process for Constitutional Court justices generally serves to protect the court's independence. Judges 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. All nine judges are appointed by the president, with three of the nine selected by the president, three by the National Assembly and three by the judiciary. 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>

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. During the period under review, the General Council of the Judiciary, which is an autonomous body composed of judges and other jurists that aims to guarantee the independence of the judges, could not be renewed due to the political deadlock.

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>

El diario, November 2018, El Consejo de Europa lleva desde 2014 criticando a España por la politización del sistema que designa al Poder Judicial https://www.eldiario.es/politica/Consejo-Europa-Espana-Poder-Judicial_0_836066745.html

El país, October 2019, El Supremo rechaza paralizar los nombramientos del Poder Judicial en funciones https://elpais.com/politica/2019/10/01/actualidad/1569950347_255722.html

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.

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. In a departure from past practice, the Republican Senate has confirmed several Trump nominees whom the American Bar Association had rated “not qualified.”

Given the fact that federal judges are appointed for life, 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. Within the Senate, voting on the confirmation of Supreme Court judges is a partisan manner as bipartisan consensus has all but vanished. All of the Trump administration’s federal judge appointees have demonstrated allegiance to the president, and some have few credentials beyond their hardline conservative views.

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 state attorneys-general, which are the chief law officers at the state level, 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 and criminal law court (Areios Pagos) and administrative law court (Symvoulitis 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.

In this respect, it is telling that just prior to the July 2019 parliamentary elections, the Syriza-ANEL government appointed new heads for the Areios Pagos Court and the General Prosecutor's Office. This initiative provoked an additional last-minute conflict with the government in waiting, the New Democracy party, which had long held a clear lead in the polls. Eventually, the president of the republic refused to sign off on the Syriza-ANEL government's decisions just before elections were held. The process of selecting and appointing these high-level judges and prosecutors was repeated in the parliament that was convened after the elections.

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) 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.

In February 2019, the tenure of nine out of the court's 13 justices expired. The process of replacing the justices was highly polarized, especially after former prime minister Robert Fico was nominated as a candidate. The recently introduced public hearings for candidates attracted a lot of media and public attention, but probably discouraged several qualified candidates from standing. In April 2019, the first three justices were appointed, but it took another nine months and five votes in parliament to finalize the other six appointments.

Citation:

Ovádek, M. (2019): 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/>).

VIA IURIS (2019): Non-election of the sufficient number of 18 nominees for constitutional judges mean that Constitutional Court will function with difficulties, March 4, Banská Bystrica (<https://viaiuris.sk/en/news/via-iuris-non-election-of-the-sufficient-number-of-18-nominees-for-constitutional-judges-mean-that-constitutional-court-will-function-with-difficulties/>).

VIA IURIS (2019): The election of constitutional judges – incomprehensible hazard with the protection of citizens' rights, May 22, Banská Bystrica (<https://viaiuris.sk/en/news/via-iuris-the-election-of-constitutional-judges-incomprehensible-hazard-with-the-protection-of-citizens-rights/>).

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.

The collection of signatures for a popular initiative aiming to have federal judges selected by lottery rather than through election in parliament began in 2018. In September 2019, the Federal Administration concluded that the required number of signatures for the initiative had been collected.

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. This is balanced by the fact that three different bodies are involved, and appointments are spread over time. Equal shares of the 12 justices of the Constitutional Court are appointed personally by the president, by the National Assembly with a simple majority, and by a joint plenary of the justices of the two supreme courts (the Supreme Court of Cassation and the Supreme Administrative Court), also with a simple majority. 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' joint plenary (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 constitutional 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, 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 by which Supreme Court justices are appointed in the United States than to usual European practices. Contrary to U.S. practice, however, the French parliament has not yet exerted thorough control over these appointments, instead pursuing a rather hands-off approach, particularly when appointees are former politicians. In 2017, a Senate president's nominee for the council (a senator and former minister of justice) was forced to withdraw after he had passed all the necessary parliamentary checks. This was prompted by a newspaper report that he had recruited (and paid with public money) his children as

personal assistants. While not forbidden by law, the public disapproval following Fillon scandal proved to be a sufficient deterrent. The case underlined the leniency of parliamentary control vis-à-vis former politicians.

Other top courts (penal, civil and administrative courts) are comprised of professional judges, and the government has more limited influence on their composition. In these cases, the government is empowered only to appoint 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 two nine-year appointments in May 2019 have confirmed this pattern. First, President Klaus Iohannis appointed his former adviser, Simina Tanasescu, to replace judge Lazaroiu whose nine-year term expired. Tanasescu was the subject of controversy after being forced to resign as Iohannis' adviser following a meeting with Lazaroiu in June 2018. The meeting was perceived by members of the public and the media as an attempt by the president's office to pressure Lazaroiu following the judge's involvement in the decision to dismiss Laura Kovesi as head of the National Anti-corruption Directorate in 2018. After the meeting, which resulted in Tanasescu's resignation, Lazaroiu stated that his discussion with Tanasescu could have been an attempt by the president's office to create a conflict over his mandate in order to cast doubt on the Constitutional Court's decision that forced the president to dismiss Kovesi. The second appointment, made by parliament, replaced judge Stefan Minea with Gheorghe Stan, the head of the Section for Investigating Magistrates. Nominated by the ruling Social Democratic Party, Stan played a key role in the criminal investigation of Laura Kovesi and declared publicly that recommendations made by the Cooperation and Verification Mechanism and the Venice Commission are non-binding. Stan was confirmed with 174 votes in the house through secret ballot.

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, including the security of tenure of judges and magistrates and the inviolability of their salaries. The

constitution also 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, and the final decision continues to lie with the executive. Numerous bodies have called for further reform. In 2019, the justice minister stated that the government was planning further changes to the process, which would ultimately ensure that the executive was no longer involved in the appointment of judges and magistrates. Instead, a reformed Judicial Appointments Committee would be empowered to act independently in the selection process. However, a number of new judges and magistrates were appointed under the current system in 2019. These appointments have been challenged in court by Repubblika, a civil society organization. The first Hall of the Civil Court has referred the case to the European Court of Justice, which has been asked to rule on whether the powers accorded to the prime minister in the appointment process are in conformity with European laws. The justice minister appointed in 2020 has stated that the judicial-appointment reforms are imminent.

On another issue, a recent law on the suspension of judges has been criticized by the dean of the law faculty at the University of Malta, on the basis that suspended judges have no right to challenge the suspension, and that the removal or dismissal of a judge should not be done by a body that is part of the legislature.

Citation:

European Council calls on Malta to improve transparency of Judicial Appointments. Independent 10/02/14
<http://www.timesofmalta.com/articles/view/20150517/local/government-ignored-bonello-commission-recommendations-on-appointments.568405>
<http://www.timesofmalta.com/articles/view/20150819/local/minister-warns-against-reforming-judicial-appointments-system-for-the.581166>
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 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>
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<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
https://www.maltatoday.com.mt/news/national/93687/magistrate_yana_micallef_stafrace_not_recommended_for_promotion_to_judge_by_the_judicial_appointments_committee#.XZxKpWAzbIU
 Times of Malta 25/11/2019 Foundation of Justice system in serious doubt says maltese judge in urgent reference to European Court
 Times of Malta 11/02/20 Judiciary reform on the way

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 was meant 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.

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. 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. In March 2019, the European Court of Human Rights ruled that the Icelandic state was guilty of breaking the law when 15 judges were appointed to the Landsréttur (a new intermediary court).

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.

Citation:

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

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).

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Turkey

Score 3

To be appointed to the Constitutional Court, a candidate must be either a member of the teaching staff of an institution of higher education, senior administrative officer, lawyer, first-degree judge or Constitutional Court rapporteur who has served at least five years; 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. A recent scholarly article stated that the Constitutional Court is highly politicized, its reviews have an ideological bias and its judges are not independent, as can be also seen in previous recruitment patterns. 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. 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. Under current conditions, this creates opportunities for the president and his political network to directly influence the executive, the parliament and the judiciary. In addition, the armed forces continue to wield influence over the civilian judiciary, as two military judges are members of the Constitutional Court.

Following the 2017 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.

Since the coup attempt of 2016 and the subsequent transition from a state of emergency (OHAL) toward presidentialism, the Constitutional Court has not performed consistently in terms of defending political stability, and human and civil rights. The court declared its non-jurisdiction over presidential decrees during OHAL, and cases in which it failed to defend the rights of detained journalists and other oppositional forces went viral. In the case of the detained journalist Ahmet Altan, the European Court of Human Rights delivered a landmark decision in April 2019, which strongly disagreed with the Constitutional Court's justification of Altan's arrest.

Citation:

European Commission, Turkey 2019 Report, Brussels, 29.5.2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf> (accessed 1 November 2019)

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03.09.2019 Tarihi İtibariyle Hakim ve Savcılara İlişkin İstatistiki Bilgiler, <https://www.hsk.gov.tr/Eklentiler/Dosyalar/a062014e-6b7b-4ff7-bc47-4ba6a4478b6b.pdf> (accessed 1 November 2019)

T. Çetin and A. Pişkin, “Judicial Independence under Political Conflict: An Empirical Investigation of Constitutional Review in Turkey,” January 2018, https://www.academia.edu/35753423/Judicial_Independence_under_Political_Conflict_An_Empirical_Investigation_of_Constitutional_Review_in_Turkey (accessed 1 November 2019)

Al-Monitor.com (2019) Turkish Constitutional Court caught red-handed, 24 April 2019, <https://www.al-monitor.com/pulse/originals/2019/04/turkey-turkish-constitutional-court-caught-red-handed.html>

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 transparent and legitimate, the appointment processes rarely receive public attention or media coverage. Supreme Court justices are rarely, if ever, criticized for being politically biased.

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. As Fidesz regained a two-thirds majority in the 2018 parliamentary elections, it has complete control over the appointment of Constitutional Court justices.

Japan

Score 2

According to the constitution, Supreme Court justices are appointed by the cabinet, or in the case of the chief justice, named by the cabinet and appointed by the emperor. However, the actual process lacks transparency. Supreme Court justices are subject to a public vote in the lower house elections following their appointment, and to a second review after 10 years (if they have not retired in the meantime). However, in all of postwar history, no justice has ever been removed based on this procedure. In response to calls for more transparency, the Supreme Court has put more information on justices and their track record of decisions on its website. The Tokyo District Court ruled in 2019 that voters living overseas cannot be denied the right to review Supreme Court justices, strengthening the role of the constitution.

Citation:

Indictment of Diet inaction over rights to review justices, Editorial, The Asahi Shimbun, 4 June 2019, <http://www.asahi.com/ajw/articles/AJ201906040042.html>

Poland

Score 2

Formally, the Constitutional Tribunal has 15 justices which are elected individually by the Sejm for terms of nine years, on the basis of an absolute majority of votes with at least one-half of all members present. The president of the republic then selects the president and the vice-president of the Constitutional Tribunal from among the 15 justices, on the basis of proposals made by the justices themselves.

The appointment of justices to the Constitutional Tribunal has been a major political issue since PiS came to power in 2015. The PiS government questioned the appointment of the five justices elected in the final session of the old parliament. Conversely, the sitting justices did not accept the justices appointed by the new parliament. The resulting stalemate took until December 2016 when the term of Constitutional Tribunal President Andrzej Rzepliński expired and the government succeeded in installing Julia Przyłębska as his successor by legally dubious means. In November 2019, the Sejm elected two highly controversial justices. Both of whom are former PiS members of parliament, were initially considered too old and have previously shown disrespect for civil rights.

Citation:

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

Denmark is among the least corrupt countries in the world and ranked first in the Transparency International's Corruption Perception Index 2018. Norms against corruption are strong and the risk of media exposure is high. In the past, there were occasional cases 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 (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).

Transparency International Corruption Perception Index 2018. <https://www.transparency.org/cpi2018> (Accessed 18 October 2019).

New Zealand

Score 10

New Zealand's public sector is perceived to be 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.

The 2018 World Bank Governance indicators put New Zealand in the top 0.5 percentile regarding “control of corruption.” However, this does not mean that the country is free of corruption. For example, Deloitte Bribery and Corruption Survey 2017 found that approximately 20% of New Zealand companies surveyed had come across some form of corruption. There are also concerns about “revolving door” practices, whereby individuals shift between government positions and private sector jobs, and vice versa. In addition, critics have pointed out that local government struggles with issues of transparency, accountability and financial management to a much greater extent than political institutions at the national level.

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/ijcsd.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>

Edwards, Political Roundup: The Government’s revolving door for lobbyists, New Zealand Herald (https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11998380)

Transparency International, Corruption Perceptions Index 2018 (<https://www.transparency.org/cpi2018>)

World Bank, Worldwide Governance Indicators (<https://info.worldbank.org/governance/wgi/Home/Reports>)

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.

The number of registered corruption offenses remained about the same level in 2018 as in 2017, although the number of corruption cases in the healthcare sector increased substantially. Most corruption offenses relate to bribery and abuses of power in public procurement. The number of municipal-level corruption cases has decreased, with most cases (59%) occurring in the governmental sector. Notably, no recent corruption case at the central government level has involved an elected politician in contrast to municipal-level cases.

Citation:

Ministry of Justice (2019). Kuritegevus Eestis 2018. Crime in Estonia 2018. <https://www.kriminaalpoliitika.ee/et/kuritegevus-estis-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. Transparency International's 2018 Corruption Perceptions Index ranked Finland at third place out of 180 countries. The country was also ranked third in 2017 and 2016. 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 2018,"

<https://www.transparency.org/cpi2018>

Norway

Score 9

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.

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.

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 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

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.

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. The other investigative committee will look into the political background of the “BVT affaire” – the police raid of the government agency responsible for observing political extremism and terrorism.

Belgium

Score 8

While outright corruption is very uncommon in Belgium, several scandals involving abuse of public-office positions came to the fore. 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.

The most recent case concerns a large public-private company in Wallonia. The company’s board of managers was tasked with divesting and privatizing a number of

assets, but eventually had to be sacked for alleged abuse (with some lawsuits under way). This case follows a number of others, and may prove a turning point toward a stricter implementation of anti-corruption and abuse of public office legislation in Belgium.

In the public sphere, rules are increasingly being tightened. Yet, according to Cumuleo, an activist group seeking to improve the regulation and oversight of public offices, Belgium still occasionally suffers from deep malpractice in reporting public decisions and a lack of actual control from the authorities that are expected to oversee these decisions (<https://www.cumuleo.be/presse/cp/02-09-2019.php>).

Citation:

WEF: Schwab, Klaus (ed) (2019). The Global Competitiveness Report 2019. World Economic Forum.

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

<https://www.sudinfo.be/id149334/article/2019-10-31/nethys-stephane-moreau-pol-heyse-et-benedicte-bayer-se-sont-remuneres-en-cash-et>

<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 of wrongful travel and living allowance expense claims by members of the Canadian Senate. The Senate expense scandal renewed calls to reform the Senate or abolish the upper house entirely, and in early 2014, Liberal Party leader Justin Trudeau expelled all 32 Liberal senators from the party, asking them instead to sit as independents, part of a proposed plan to overhaul Senate appointments to ensure it is a non-partisan body.

Another significant scandal emerged in 2019, when it came to light that Trudeau had used his powers as prime minister to influence the actions of the attorney general to prevent the criminal prosecution of SNC-Lavalin for bribing the son of former Libyan Prime Minister Muammar Qadhafi. The scandal also illuminated what many regard as a flaw in the governance structure of Canada's justice system. The roles of the minister of justice and attorney general of Canada are held by the same person. When Attorney General Jody Wilson-Raybould resisted government pressures, the prime minister moved her to a different cabinet position, terminating her role as attorney general in the process. Wilson-Raybould later resigned, and was ousted

from the Liberal caucus. A special adviser subsequently reviewed the roles of the attorney general and the minister of justice. In its report, the adviser concluded that the dual roles could compromise the ability to exercise independent judgment when making decisions about specific prosecutions, and that an attorney general serving as a member of the cabinet might be influenced to exercise his or her authority in specific prosecutions so as to promote the cabinet's policy agenda and/or improve the electoral prospects of the government. However, the adviser's report also stated that "no further structural change" would be required [...] to protect prosecutorial independence and promote public confidence in the criminal justice system."

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

Report of the Office of the Conflict of Interest and Ethics Commissioner- Trudeau II Report, August 4, 2019, posted at <https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/TrudeauIIReport-RapportTrudeauII.aspx>

Honourable A. Anne McLellan, P.C., O.C., A.O.E, Review of the Roles of the Minister of Justice and Attorney General of Canada,

June 28, 2019, posted at <https://pm.gc.ca/en/news/backgrounders/2019/08/14/review-roles-minister-justice-and-attorney-general-canada>

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 nations, with the country ranked at 7th place out of 215 countries in 2019 (World Bank 2019).

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. Until 2013, provisions concerning the income declarations required of members of parliament were comparatively loose. For example, various NGOs had criticized the extra-income documentation requirements, which merely stipulated that lawmakers identify which of the three tax rate intervals they fall under. This procedure provided no clarity with respect to potential external influences associated with politicians' financial interests. However, beginning with the 2013 – 2017 parliamentary term, members of the German Bundestag have had to provide additional details about their ancillary income in a 10-step income list.

A total of 202 members of parliament out of 709, or 28.5%, declared additional income in the term that ended in July 2019. Within the FDP parliamentary party, half of the lawmakers had additional income, while CDU politicians showed the highest incomes overall. The Green parliamentary party has the lowest share of members reporting additional income, at only 15%. In the AfD parliamentary party, 21% of the parliamentarians have additional income, a share is higher than that of the SPD, the Left and the Greens.

Critics argue that the current system incentivizes the declaration of auxiliary income in slices of comparatively low amounts, and remains insufficient with regard to ensuring transparency or preventing corruption or conflicts of interest in a reliable way.

Citation:

World Bank (2018): <http://info.worldbank.org/governance/wgi/index.aspx#reports>

<https://www.abgeordnetenwatch.de/blog/nebeneinkunfte-2019>

Luxembourg

Score 8

In general, corruption is not tolerated in Luxembourg. However, because small gifts may be accepted in some parts of the public administration, a code of conduct for all public servants seems to be necessary. Informal conversations between individual political parties, related officials and certain economic sectors (e.g., finance and construction) are common.

Large-scale corruption cases which have in some cases developed into political issues are referred to in Luxembourg as “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.

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 such as ministers often donate a part of their salaries to their parties.

Citation:

“Luxembourg Corruption Report.” <https://www.business-anti-corruption.com/country-profiles/luxembourg/> Accessed 19 Nov. 2019.

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 19 Oct. 2019.

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

Australia

Score 7

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 – most recently occurring after the May 2019 election.

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>

France

Score 7

Up to the 1990s, corruption plagued French politics. 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. Various scandals have provoked further legislation. After a former minister of finance was accused of tax fraud and money laundering in March 2013, a new rule obliged government ministers 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 are forbidden to publish them. Only individual citizens can consult these disclosures, and only within the constituency in which 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 introduce a bill dealing with the “moralization of public affairs.” The new law contains many additional restrictions, such as a prohibition on parliamentarians employing members of their family, and the suppression of “loose money” that members of parliament had previously been able to distribute and use without constraint or control. The new legislation constitutes a major contribution with regard to reducing conflicts of interest, and may help to clean the Augean stables. As a consequence of the new rules, as well as the activism of the press on these issues, the appointment of ministers is kept secret for a few days before being officially announced. This allows an independent authority time to check and clear the legal, fiscal and financial backgrounds of potential nominees.

This persistent strengthening of the rules has been justified by recurrent corruption scandals relating to the funding of political campaigns by African states, the irregularities in the accounts of Sarkozy’s 2012 electoral campaign, and the misuse of funds provided by the European Parliament discovered in 2017, to cite a few examples. On 1 October 2019, the country’s highest court (Cour de Cassation) confirmed that former President Sarkozy should be prosecuted before a penal Court (Tribunal correctionnel).

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 Noirín 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 office-holder 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.

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 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 charged with bribery and money laundering. His trial started in early November 2019. He has not stepped down from his position, although his six-year tenure ended on 21 December 2019. More recent cases include the investigation of a former justice minister, Baiba Broka, and a former mayor of Riga, Nils Usakovs.

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, while the successes of the country's investigative and auditing bodies have remained limited, greater activity over the last 18 months has increased activists' confidence that investigations will also soon conclude with convictions.

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Netherlands

Score 7

The Netherlands is considered a relatively corruption-free country. 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 prosecute 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, healthcare 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 whistleblowers entered into force. Experts consider the law to be largely symbolic, with real legal protection remaining minimal despite high administrative costs. A “house for whistleblowers,” intended to protect whistleblowers and facilitate their activities, proved to be a failure. The increasing amount of public sector corruption cases indicates either confusion or a political unwillingness to tackle the issue effectively.

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<https://tradingeconomics.com/netherlands/corruption-index>

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.

The Council of Europe’s Group of States against Corruption (GRECO) compliance report published in June 2019 found that Portugal had satisfactorily implemented only one of the 15 recommendations published in 2016, with eight partially implemented, while the remaining six had not been implemented. This marked a minor improvement vis-à-vis the results published in March 2018, with the conclusion being that “the current very low level of compliance with the recommendations remains ‘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 previous SGI reports, we noted a number of high-profile cases. Some of these concluded during the current review period. In the Golden Visa case, which involved a number of high-ranking civil servants and a former minister of internal affairs, Miguel Macedo (2011 – 2014), the sentence was proffered in January 2019, with the former minister being found not guilty, but with two high-ranking public officials being found guilty. In the Fizz case, a magistrate was found guilty of accepting bribes from a former vice-president of Angola in December 2018. Meanwhile, a number of other cases are ongoing, including the Lex case, involving another Portuguese judge; the Banco Espírito Santo (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 has been widely interpreted as indicative of the crucial role of leadership in prosecuting corruption in Portugal. The new attorney general, Lucília Gago, took office in October 2018 and has not shied away from controversial decisions. This was evidenced most recently when the PPS pressed charges against the former minister of defense, Azeredo Lopes (who was in office until October 2018 and served in the first António Costa government). The charges (involving the covering up of information relating to the robbery of arms in Tancos) were submitted on 25 September 2019, in the middle of campaigning for the 6 October 2019 election, which was criticized by the incumbent Socialist Party.

Citation:

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South Korea

Score 7

Following massive corruption scandals involving the two previous governments, the situation in South Korea has improved in this area. Nevertheless, the abuse of power for private gain remains a major problem. 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. The Me Too movement has also brought many abuse-of-power cases to light. Courts have been tough on former public officials involved in corruption scandals, handing down prison sentences to many involved, including the two previous presidents. President Moon has promised to strengthen anti-corruption initiatives further, announcing that members of the elite involved in corruption scandals would not be granted pardons. However, the recent scandals surrounding former Justice Minister Cho Kuk showed that the current government too has been subjected to abuse-of-office accusations. On the other hand, the case also showed that checks and balances have improved as there appears to be increasing readiness to investigate serving high-level officials. In the past, public officials were usually investigated and prosecuted only after they left office, as prosecutors have considerable discretion with regard to deciding who to prosecute. President Moon has proposed an institutional reform that would shift the power to investigate and prosecute corruption among high-level officials from the prosecutor's office to a new agency. While this could theoretically make the new agency less opportunistic and more independent from political meddling, it remains to be seen how such independence would be institutionally guaranteed. Positive institutional changes made in past years, such as the “improper solicitation and graft” act (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 limited success in curbing corruption and influence peddling by big business groups, and courts are much more lenient toward businessmen than toward public officials.

Citation:

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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. The fact is that – political-party funding aside – few corruption cases have involved career civil servants. Everyday interactions between citizens and public administration are typically characterized by a high level of integrity. In 2019, Spain's score in Transparency International's CPI marked a slight improvement, although Spain continues to rank 41 out of 183 countries.

During 2018, the Special Prosecutor's Office for Corruption started 678 judicial proceedings compared to 609 in 2017 and 524 in 2016. However, these figures do not represent a real increase in corruption cases, but are rather a consequence of the separation of criminal proceedings in order to facilitate their processing.

Several measures for preventing corruption have been put in place in recent years. 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.

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. No matter what their ideological position, political and economic elites overlap significantly, thus reinforcing privilege. However, this connection has tended to be more evident in the current Piñera government, 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 mandating transparency for potential conflicts of interest among high-ranking politicians (e.g., the president or government ministers). The corruption scandals revealed in recent years have shown that such questionable practices are more common than the country's scores on international transparency indexes might suggest.

In response to the corruption scandals earlier in the decade, 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. Restrictions on private campaign funding (Ley sobre Fortalecimiento y Transparencia de la Democracia) and the creation of a public register for all lobbyists were subsequently implemented in 2016. In August 2018, President Piñera announced a draft law on transparency (Ley de Transparencia 2.0) aimed at improving 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. These include maintaining popular trust in public management, including trust in bank managers and owners of large public-oriented corporations; ensuring the proper conduct of public servants; and 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 to ensure 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.

Criminal inquiries into politicians are common. In November 2019, Israel's attorney general charged Prime Minister Benjamin Netanyahu with bribery, fraud and breach of trust. It is the first time in Israel's history that a serving prime minister has faced a criminal indictment. Earlier in 2019, the attorney general indicted the minister for welfare and social services, Haim Katz, for fraud and breach of trust. Also in 2019, Israel's state attorney recommended to the attorney general that the minister of the interior, Aryeh Deri, be indicted for tax crimes, fraud and money laundering. These recent cases join an extensive list of past corruption cases. 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. Former tourism minister Stas Misezhnikov, of the Yisrael Beytenu party, was also sentenced to 15 months in prison for fraud and breach of trust.

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 first Conte government introduced a new bill on corruption (the so-called Spazza-Corrotti bill; Legge 9 gennaio 2019, n. 31) that increased punishments for corrupt activities. For instance, individuals or firms convicted of corruption will be prevented from participating in public contracts or procurement processes.

In general, the ongoing reform of public administration should contribute further to a reduction of administrative abuses.

Citation:

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<https://www.gazzettaufficiale.it/eli/id/2019/01/16/18G00170/sg>

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. In the Transparency International Corruption Perception index, Lithuania scored 59 out of 100, and was ranked 38th out of 180 countries in 2018, down from 32nd in 2015. In the new Index of Public

Integrity, Lithuania was ranked 25th out of 105 countries overall, but only 85th out of 105 countries on the issue of 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. The Special Investigation Service has also launched a high-profile corruption probe into the alleged illegal activities of 48 people (mostly judges and lawyers) suspected of various crimes involving around 110 individual criminal acts. Based on evidence collected during the pretrial investigation, judges may have both offered and been paid bribes ranging from €1,000 to €100,000 in exchange for favorable rulings, with the total amount of bribes amounting to €400,000 .

According to a 2019 World Economic Forum report, Lithuanian firms still perceive corruption as one of the most important problems for doing business in the country (with the country ranked 36th out of 141 countries in terms of the incidence of corruption). 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 healthcare and improve the control of conflicts of interest declarations made by public officials.

At the end of 2018, the Lithuanian government created a new Commission for the Coordination of the Fight Against Corruption, which will provide a cross-institution forum to steer implementation and monitoring of the National Anti-Corruption Program. Lithuanian authorities also increased penalties for corruption-related crimes, linking these to the damage caused or benefits obtained from the illegal activities. The government recently approved the establishment of an institute for civil confiscation of assets as a means of preventing illegal enrichment (however, as of the time of writing, this controversial decision had yet to be approved by the parliament). President Nausėda devoted attention to the reduction of corruption by bringing public attention to the new initiatives and to good practices.

Citation:

The Worldwide Governance Indicators of World Bank are available at

<http://info.worldbank.org/governance/wgi/#home>

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The 2019 Global Competitiveness Report of the World Economic Forum: http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

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the Transparency International Corruption Perception index for Lithuania is available at <https://www.transparency.org/country/LTU>

The Index of Public Integrity is available at <http://integrity-index.org/>

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United States

Score 6

The first two years of the Trump presidency have brought an unprecedented disregard of established practices to prevent conflicts 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. Thanks to 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 conflicts 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 the abuse of public resources, for example, the use of military aircraft for vacation travel.

Trump has demonstrated a lack of respect for laws, constitutional provisions and established practices in order to profit personally from the presidency. His hotels have received millions of dollars in payments from foreign governments (in apparent violation of the Constitution’s “emolument’s clause”), American military personnel, and his own travel and security staff. In 2019, uncontroverted testimony emerged showing that Trump used the threat of withholding \$400 million of military aid from Ukraine to coerce Ukraine to investigate one of Trump’s likely 2020 election rivals, former Vice President Joe Biden.

In December 2019, the House voted on and approved two Articles of Impeachment against Trump. One of them concerned the abuse of power in the Ukraine affair, and one concerned the obstruction of Congress. The House had considered including various additional articles, including Trump's violation of the emoluments clause (i.e., financial corruption) and the obstruction of justice in the Mueller investigation, but decided to focus on the two articles whose evidence and importance were most readily demonstrable.

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) and has remained in prison awaiting trial.

However, the Syriza-ANEL's February 2018 drive to open criminal investigations against two former prime ministers and eight ministers who had served in governments prior to Syriza's rise backfired. The criminal investigation was not based on adequate evidence, and quickly ran into legal obstacles. Ultimately it was abandoned altogether. After the elections of July 2019, a several of the politicians accused of wrongdoing sought to clear their names, and further asked that Syriza

government officials and public prosecutors who had worked under their instructions themselves be investigated by a parliamentary committee put in place in October 2019.

Generally, Greece's system of anti-corruption policies and mechanisms has not been stabilized. According to a July 2017 report by the Hellenic Federation of Enterprises (SEV), the state has shown a fragmentary approach, as well as a lack of determination in 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. Moreover, most institutions tasked with combating corruption are not furnished with sufficient resources to accomplish their tasks.

Citation:

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

https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table

For the SEV report, see

http://www.sev.org.gr/Uploads/Documents/50462/Special_Report_25_7_2017.pdf

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 those with genuine membership-based organizations (i.e., the Japanese Communist Party and the Komeito).

Financial and office-abuse scandals involving bureaucrats have been rare in recent years. This may be a consequence of stricter accountability rules devised after a string of ethics-related scandals 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 so-called Moritomo Gakuen scandal of 2017, a private school close to the prime minister and his wife was able to buy a plot of land at a reduced price. The Finance Ministry was later found to have manipulated documentation about the proceedings. No officials were charged by prosecutors despite an independent judicial panel's request to review the case. This high-profile case sends a worrying message.

In 2017, Japan joined the UN Convention against Transnational Crime and the UN Convention against Corruption, which have respectively existed since 2000 and 2005. Still, a 2019 OECD report found the enforcement of Japan's foreign bribery law to be lacking.

Citation:

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

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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. Malta has faced various calls for reform in this sector, and the government continues to heed these calls through changes in legislation and strategic plans.

A number of institutions and processes work to prevent corruption. These include 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." In 2019 the government appointed a Police Governing Board to assist in reform of the corps, and to extend oversight more generally.

There is a separate Code of Ethics that applies to ministers, members of parliament and public servants, and a recently appointed Commissioner for Standards in Public Life, whose officeholder is selected by a two-thirds majority vote in parliament, has already produced results. 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. However, the functioning of this committee requires review in order to ensure it is satisfying its remit. Internal audit systems can also be found in every department and ministry, but it is difficult to assess their effectiveness.

The government has introduced a number of reform. In 2013, it reduced elected political figures' ability to evade corruption charges by removing statutes of limitation on such cases, and introduced a more effective Whistleblower Act, although this needs further reforms; in 2016, it passed a law on standards in public life; and in 2018, the government and the opposition agreed on the appointment of the person who will 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. Whether they should or not is a debatable issue. In 2018, the NAO launched a five-year plan to improve governance across the public service and reduce levels of non-compliance. 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, though the minister for environment has committed his ministry to setting up a register where all meetings with lobbyists would be registered. The Permanent Commission Against Corruption, established in 1988, has proved ineffective despite having investigated some 300 cases of alleged corruption; none of these cases have been prosecuted. The Public Service Commission, which is tasked with ensuring fairness in recruitment and promotions in the public service, remains underresourced. However, these institutions along with the recent FOI act allow for greater exposure of corruption.

Conflicts of interest remain common across both parties. 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. In 2020, the prime minister appointed a committee to review the Vitals hospital deal, which involved the leasing of three government hospitals by an international consortium, in order to ensure it fulfilled public-procurement regulations. Malta's Planning Authority (MEPA) has been under scrutiny for decades 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. Many also sit on government boards, a practice which the new commissioner for public standards has deemed to contravene the spirit of the constitution. 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's

score in the 2019 Corruption Perceptions Index was 54% (with 100% being the best possible score), reflecting such issues as politically exposed persons' (PEPs) involvement in the Panama papers, the collapse of a Malta-based bank and recent findings linked to the murder of a Maltese journalist. The 2019 GRECO report notes that opinion polls show perceptions of a high level of corruption, and that to date, there has been no visible disciplinary or criminal-justice response to a number of allegations, even though some have been confirmed by subsequent audits by the National Audit Office. The senior officials who have been accused of criminal or ethical misbehavior are still in their positions. Malta clearly lacks an overall strategy and coherent risk-based approach when it comes to integrity standards for government officials. The GRECO report also recommended that measures resolving the legal situation of persons of trust be implemented, that the number of such discretionarily appointed officials be limited to an absolute minimum, that robust and systematic awareness-raising measures be introduced, that the outcomes of public consultations be published, that new procedures for lobbying be introduced, and that the FOI Act be improved.

Citation:

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

No independent testing of concrete at child development center in Gozo Times of Malta 14/12/2015

Audit office calls for better verification of applications for social assistance Times of Malta 14/12/2015

<http://www.timesofmalta.com/articles/view/20160503/local/minister-to-keep-pressure-on-mfsa-independent-regulator.610814>

<http://www.timesofmalta.com/articles/view/20160928/local/government-statement-pm-has-no-clue-if-chief-of-staff-will-benefit.626373>

<http://www.timesofmalta.com/articles/view/20160510/local/zammit-dimech-cachia-caruana-deny-panama-papers-links.611633>

<http://www.timesofmalta.com/articles/view/20151129/local/minister-tells-his-business-partners-to-obey-the-law.593836>

<http://www.timesofmalta.com/articles/view/20160407/local/konrad-mizzi-to-address-labor-conference-as-pressure-over-panama.608123>

<http://www.timesofmalta.com/articles/view/20161008/local/does-keith-schembris-opm-contract-contain-conflict-of-interest-rules.627308>

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

The Global Competitiveness Report 2017-2018

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

Ombudsman Report 2018

<https://www.timesofmalta.com/articles/view/20181008/local/audit-office-adopts-new-strategy-to-improve-governance.691098>

GAN Business anti-corruption Portal 2018 Malta Corruption Report

The Cost of Corruption across the EU. The Greens/EFA Group 2018

<https://tradingeconomics.com/malta/corruption-index>

<https://www.mfsa.mt/firms/anti-money-laundering/about-aml/> includes risk assessments

GRECO Report on Malta 2019 <https://rm.coe.int/grecoeval5rep-2018-6-fifth-evaluation-round-preventing-corruption-and-/168093bda3>

<https://www.islesoftheleft.org/digging-deeper-into-the-root-cause-of-clientelism-in-malta/>

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 healthcare 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. A survey commissioned by the Greens in the European Parliament suggests that systemic corruption costs Slovenia €3.5 billion each year, or 8.5% of GDP.

Citation:

The Greens/EFA in the European Parliament (2018): The Costs of Corruption Across the European Union. Brussels (<https://www.greens-efa.eu/en/article/document/the-costs-of-corruption-across-the-european-union/>).

Bulgaria

Score 4

Bulgaria's formal legal anti-corruption framework is quite extensive, but has not proven very effective. Measurements of corruption have remained stable over the last five years at levels indicating that corruption is a serious problem. While the number of criminal prosecutions of high-profile political actors has been high from a comparative perspective, no actual convictions of such persons can be reported.

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. However, new agency has not been very effective either in bringing cases of high-level corruption to court or in confiscating illegally acquired property. During the period under review, investigative journalists uncovered highly dubious practices (personal-property construction in violation of municipal regulations) by the head of the agency, who was forced to resign as a result. Meanwhile, well-documented allegations of conflicts of interest and illicit enrichment through real-estate deals on the part of members of the governing elite, including the deputy chair of the senior ruling-coalition party and the minister of justice, were glossed over and exonerated. No corruption charges were ever pursued, and the only consequences were ultimately political, as both individuals had to resign their party and ministerial positions.

Citation:

Popova, M., V. Post (2018): Prosecuting high-level corruption in Eastern Europe., in: *Communist and Post-Communist Studies* 51(3), 231-244.

Croatia

Score 4

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, final sentences have been conspicuously absent. In the nine years since Sanader was arrested, only one out of six indictments raised against him received a final sentence. The Constitutional Court's repeal of the final verdict against Sanader in the case of INA-MOL in 2017 has proven to be highly controversial and many criminal code experts deem the court's decision to constitute a serious legal mandate overreach. In 2019, four ministers (G. Marić, G. Žalac, T. Tolušić and L. Kuščević) resigned due to inconsistencies or irregularities in their publicly available personal asset list, which raised suspicions of corrupt practices. However, swift, impartial and transparent judicial investigations have been lacking in the aftermath. All of this has additionally shaken citizens' confidence in the judicial system and the government's ability to fight corruption.

Czechia

Score 4

Successive governments have emphasized a commitment to fighting corruption, but in fact have done little of substance to address the issue. Two significant changes were implemented in 2017, with amendments passed to the law on party finances and the law on conflicts 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 main issue concerns the use of EU funds, intended for SME support, to finance a business that was temporarily detached from his conglomerate but returned to his control after the subsidy had been received. It later emerged that nominal ownership had simply been transferred to members of his family, but police investigations reached no definite conclusions.

Despite demands from the opposition for his resignation and public demonstrations in Prague and other cities, Babiš has been emboldened by the sympathetic treatment he has received from the media outlets he controls. In March 2019, he appointed Marie Benešová, a friend of President Zeman, as minister of justice, triggering significant protests across the country. The move was seen as an attempt to curtail the independence of the judiciary. In September 2019, Prague prosecutor Jaroslav Saroch decided to drop the case and thus avoid charging the prime minister and his family on fraud charges, but was overruled by Prosecutor General Pavel Zeman in December 2019.

Iceland

Score 4

Rightly or wrongly, 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 clearly 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, remains a serious concern. Other, subtle forms of in-kind corruption, which are hard to quantify, also exist. Erlingsson and Kristinsson (2016) write 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 2018, which measures business corruption, Iceland scored 76 out of 100, where a score of 100 means absolutely no corruption. Iceland is well behind the other Nordic countries with scores 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 a 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:

Erlingsson, Gissur Ó., and Kristinsson, Gunnar H (2016), "Measuring corruption: whose perceptions should we rely on? Evidence from Iceland," *Icelandic Review of Politics and Administration*, Vol. 12, Issue 2, 215-236. <http://www.irpa.is/article/view/a.2016.12.2.2/pdf>. Accessed 22 December 2018.

Erlingsson, Gissur Ó. (2014), *CORRUPTION IN LOW CORRUPT COUNTRIES: THE CASE OF SWEDEN*. Open lecture given at the University of Akureyri, Iceland 19 September 2014.

Félagsvísindastofnun Háskóla Íslands (Social Science Research Institute, University of Iceland), 2018. http://fel.hi.is/stjornmalamenn_spilling_2018. Accessed 20 December 2018.

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Gallup (2013), Government Corruption Viewed as Pervasive Worldwide, <http://www.gallup.com/poll/165476/government-corruption-viewed-pervasive-worldwide.aspx>. Accessed 22 December 2018.

Gylfason, Thorvaldur (2015), "Social Capital, Inequality, and Economic Crisis," *Challenge* 58, No. 4, July, 326-342.

Mexico

Score 4

Corruption is widespread in Mexican politics, the judiciary and the police. Anti-corruption efforts so far have failed. During his presidential campaign, AMLO promised to prioritize the fight against corruption. So far, it is unclear how that could happen. According to Transparency Mexico, the president is widely considered to be honest by the public, while a majority of 61% of Mexicans believe he is doing a good job in fighting corruption.

Corruption was a key topic in the 2018 elections following widespread corruption scandals that are shaken the political arena. At the same time, efforts to implement the National Anti-Corruption System (SNA), which had been signed into law by President Nieto in 2016, floundered. 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 138 out of 180 countries in 2018, a significant deterioration in the country's ranking compared to 2012.

The AMLO administration has intensified the fight against corruption. Nonetheless, the SPA, which is filled with MORENA allies, features only one position that has been subject to a proper nomination process: the head of the Special Prosecutor's Office for Combatting Corruption. The SNA is currently developing an inclusive consultative process involving citizens, institutions, businesses, academia and subnational governments to improve national anti-corruption policies. A national SNA digital platform will provide information and improve coordination. In addition, the government has further integrated corruption into the criminal law system, increasing punishments and detention while awaiting trial. The Unidad de Inteligencia Financiera (UIF), a government agency focused on detecting and preventing financial crimes, has been the central actor in fighting corruption to date. High-ranking politicians, like the former Pemex CEO or the head of Pemex's workers' union, are the target of corruption charges related to the Odebrecht corruption scandal in Latin America.

Citation:

Latin American Regional Report: Mexico & NAFTA (August 2017) "Anti-corruption reform fails to convince."
Transparencia Mexicana 2019: Barómetro Global de la Corrupción, <https://www.tm.org.mx/barometro-al-2019/>

Poland

Score 4

Corruption has remained a major political issue in the period under review. On the one hand, the PiS government has continued to accuse the opposition, especially representatives of 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. As many PiS members and followers have been placed in management positions, a widespread clientelistic network has emerged, and some high-rank politicians (e.g., the new minister of the interior and the director of the State Audit Office) have been convicted of abuse of office or investigated for failing to declare income from dubious economic activities.

A law on transparency in public life, which was introduced in March 2018, was supposed to tackle corruption, but has been widely criticized. The law 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:

Citizens Network Watchdog Poland et al. (2018): Major Challenges Regarding the Draft Law on 'Transparency' in Public Life. Warsaw (<http://citizensobservatory.pl/ustawa/major-challenges-regarding-the-draft-law-on-transparency-in-public-life-communique-of-the-5-ngos/>).

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Romania

Score 4

Romania continued to face scrutiny from the European Commission on corruption prevention. In July 2019, a Group of States Against Corruption (GRECO) report criticized Romania's lack of progress in adopting measures to prevent corruption among lawmakers, judges and prosecutors and addressing concerns about its controversial reform of the judiciary. The November 2018 Cooperation and Verification Mechanism (CVM) report recommended Romania immediately suspend the justice laws and emergency ordinances, revise them in light of the recommendations of the Venice Commission and GRECO, suspend all ongoing appointments and dismissals for senior prosecutors, appoint a new head of the National Anti-corruption Directorate (DNA), and annul amendments to the Criminal Code and Criminal Procedure Code. The European Commission's First Vice-President Frans Timmermans lamented the recent "regrettable regress related to amending the laws on justice, the magistrates' independence, and the fight against corruption." Justice Minister Teodor Toader criticized the report for containing double standards and political undertones.

Anti-corruption efforts were also hindered by the ad interim leadership of top anti-corruption agencies – the DNA and the Directorate for Investigating Organized

Crime and Terrorism (DIICOT). After the dismissal of its top prosecutor Laura Kovesi in 2018, deputy chief prosecutors became DNA interim top leaders. While the DNA continued to work, these temporary appointments added uncertainty and vulnerability to the Directorate. Similarly, the DIICOT operated without a chief prosecutor several months until President Iohannis appointed Felix Banila, although DIICOT prosecutors criticized Banila for an “inexcusable and superficial knowledge” of the DIICOT’s activity. President Iohannis dismissed Banila on October 1, 2019 for lack of professionalism and credibility in a high-profile case.

Despite the uncertainty at top levels and lack of independence, the judiciary continued to prosecute high-level corruption-related offenses. The DNA focused primarily on recovering damages, with criminal files focused on high-ranking officials of the state, magistrates, policy officers, company managers, and officials in the education and health systems. The DNA sent to the courts case files with total estimated damages at €112 million, which was more than double that of 2017. The DNA received just 1,513 complaints from citizens, about half of the previous year. The number of yet unsolved files fell by 19% to 9,191. Further, in the first half of 2019, the High Court of Cassation solved three high-level corruption cases at first instance and settled four high-level corruption cases by final decision. The Public Ministry solved 2,065 corruption cases, and the DIICOT seized more than €1 billion in provisional measures related to tax evasion, €24 million in money laundering, and €10 million in smuggling.

The PREVENT system is an important deterrent to corruption in the public procurement process. It has analyzed 33,384 public procurement procedures and issued over 100 integrity warnings that amount to over €243 million.

The anti-corruption effort was partly derailed by the continued hounding of former DNA Chief Prosecutor Laura Kovesi, who was appointed as the first Chief Prosecutor of the European Public Prosecutor’s Office. Complaints against her included corruption-related offenses, accepting bribes and abuse of offices. Kovesi rejected the charges as intimidation attempts. The Superior Council of Magistrates president took issue with the “continuous and aggressive way” the allegations were pursued which serve to “intimidate and seriously affect” the independence of the prosecutors involved in solving a case which implicates Kovesi.

Citation:

Council of Europe, Group of States Against Corruption (GRECO)(2019): Follow-up Report to the Ad hoc Report on Romania (Rule 34). Greco-AdHocRep(2019)1, Strasbourg.

European Commission (2019): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism. COM(2019) 499 final, Brussels (https://ec.europa.eu/info/files/progress-report-romania-2019-com-2019-393_en).

Slovakia

Score 4

Corruption has been the most sensitive political problem undermining political stability and quality of democracy in Slovakia for some time. The revelations that have followed the murder of Ján Kuciak and Martina Kušnírová have confirmed the prevalence of corruption in the country. Despite widespread public dissatisfaction with corruption, as evidenced by the mass demonstrations in 2018 and the election of Zuzana Čaputová as president in March 2019, the Pellegrini government has been slow to improve integrity mechanisms. The government has not embraced the comprehensive recommendations proposed early on by the new initiative Chceme Veriť (We Want to Believe), which was launched by several leading NGOs (Fair-Play Alliance, VIA IURIS, Slovak Governance Institute, Human Rights League, Open Society Foundation, Pontis Foundation and Stop Corruption foundation). Instead, the government has largely confined itself to updating its anti-corruption strategy in a routine manner. Its anti-corruption strategy for 2019 – 2023, as approved in December 2018, has remained rather vague.

Citation:

Council of Europe, Group of States against Corruption (GRECO) (2019): Evaluation Report Slovak Republic. GrecoEval5Rep(2018)9. Strasbourg (<https://rm.coe.int/grecoeval5rep-2018-9-final-eng-slovakrep-public/168096d061>).

OECD (2019): Tackling Fraud and Corruption Risks in the Slovak Republic: A Strategy with Key Actions for the European Structural and Investment Funds. Paris.

Cyprus

Score 3

Numerous cases of corruption resulted in the conviction of officials and others since 2014. However, the EU urged Cyprus in 2019 to accelerate the pace of reforms and strengthen the capacity of law enforcement, as provided in an 2017 anti-corruption national plan.

GRECO observed in 2018 that only two out of 16 anti-corruption recommendations from 2016 were implemented. Cyprus tops the list of countries regarding non-compliance to recommendations on issues relating to parliamentarians and holds a poor record of overall compliance. On issues in which GRECO considered implementation satisfactory, such as party financing, practice revealed loopholes and problems in policies that seriously affect efficiency.

In 2019, the European Commission observed that the adoption of laws for an independent anti-corruption agency and whistleblower protection were still pending. Though introduced years ago, we note that no evaluation mechanisms or reports exist on the implementation of codes of conduct for the public service and ministers.

The credibility of anti-corruption efforts was severely tarnished when convicted politicians were freed before completing half of their sentences. Also, official reactions to criticism on the citizenship-by-investment scheme and other issues tend to deflect attention from the substance of the problem and its potential to induce corruption.

Citation:

1. Cyprus amongst worst offenders in corruption report, 26 June 2019, <https://www.news.cyprus-property-buyers.com/2019/06/26/cyprus-amongst-worst-offenders-corruption-report/id=00156859>
2. 'Unfair for Cyprus to be singled out for golden visa criticism,' Cyprus Mail, 1 December 2018, <https://cyprus-mail.com/2018/12/18/unfair-for-cyprus-to-be-singled-out-for-golden-visa-criticism/>

Hungary

Score 3

Corruption is one of the central problems of Hungary. 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 large-scale 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). By 2019, Mészáros, a close friend of Orbán, has become the richest man in Hungary. In the period under review, the case of Zsolt Borkai, the mayor of Győr, attracted a lot of attention. 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. 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 European Union. 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 collected signatures to join the European Public Prosecutor's Office, refused by the Hungarian government.

Citation:

- Szücs, Á. (2019): Hungary at the top of OLAF's fraud statistics, in: Index, September 3 (https://index.hu/english/2019/09/03/hungary_at_the_top_of_olaf_fraud_statistics/).

Turkey

Score 2

Both the legal framework and the institutional structure continues to allow undue executive influence in the investigation and prosecution of high-profile corruption cases, and need to be improved in line with international standards. The limited accountability and transparency of public institutions remains a matter of concern. The absence of a robust anti-corruption strategy and action plan is a sign of the lack of political will to decisively tackle corruption. The Council of Europe's Group of States against Corruption (GRECO) recommendations have not been implemented.

An amendment to legislation relating to the audit court has limited the degree to which state expenditures can be audited. Public-procurement safeguards have been undermined by legislation that allows 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 or appointed public officials.

Law No. 657 on Civil Servants and Law No. 5393 on Municipalities, among other laws, include principles and rules of integrity. The asset-declaration system was established in 1990 by Law No. 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.

There is a high risk of corruption in public procurement. Tender notices and business opportunities are published on the website of the Public Procurement Authority. Companies are recommended to use a specialized public procurement due diligence tool to mitigate corruption risks related to public procurement in Turkey. Procurement legislation has been amended 186 times since 2002.

Impunity for corrupt officials is widespread. Turkey's land administration has made progress in terms of reducing 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.

Turkey's Financial Crimes Investigation Board (MASAK), established in 1996, is a main service unit of the Ministry of Finance within the scope of Law No. 5549 on Prevention of Laundering Proceeds of Crime and Financing of Terrorism. In 2018, based on suspicious transaction reports, 35,649 financial transactions with a total value of approximately TRY 800 million were suspended. The National Risk Assessment Report was prepared in compliance with Financial Action Task Force (FATF) methodology and submitted to FATF Secretariat at the end of 2018.

Turkey is a signatory to the United Nations Convention Against Corruption (UNCAC), the OECD Anti-Bribery Convention, and the Council of Europe's Criminal Law Convention on Corruption and Civil Law Convention on Corruption. The UNCAC and the Council of Europe conventions are not effectively used. Turkey is a member of GRECO, but its recommendations are not fully implemented. Turkey's authorities do not have an established track record of successfully prosecuting high-level corruption. Turkey needs to adopt an anti-corruption strategy, which reflects the political will to effectively address corruption, and is underpinned by a credible and realistic action plan.

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