Rule of Law Report

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

Sustainable Governance Indicators 2022

SGI Sustainable Governance Indicators

BertelsmannStiftung

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.

During the state of emergency in 2020, the primary modes of contacting the judicial authorities were telephone, email and electronic services. Agencies in the Ministry of Justice's administrative branch continued to inform the public about current issues in their areas of responsibility and the level of preparedness in their respective sectors. Courts postponed hearings and canceled some already scheduled hearings. These changes in the operating environment lengthened the average duration of proceedings (Ministry of Justice, 2020).

As outlined in Martin Scheinin's article (see "Civil Rights"), the problem with declaring the state of emergency in Finland was that there was no parliamentary scrutiny of the decision. The cabinet, acting jointly with the president of the republic, declared that Finland was in a double emergency: a health emergency and an economic emergency. The emergency declaration itself was not reviewed by parliament, but when the cabinet issued a decree to use specific powers under the Emergency Powers Act (EPA), this decree was subject to parliamentary scrutiny (Scheinin 2020).

Finland does not have a Constitutional Court, but does have a parliamentary constitutional committee that consists of politicians and in which the government has a majority. As outlined in Finnish legislation, the Constitutional Law Committee (CLC) of the parliament has reviewed the constitutional compatibility of special legislation and government decrees. The CLC highlighted shortcomings in the government's compliance with the EPA.

The chancellor of justice is tasked with scrutinizing the legality of law reforms proposed by the government before they are debated in parliament. During the COVID-19 crisis, the issue of the independence of the chancellor of justice was raised. However, among legal scholars there is a "consensus that the principles of democratic decision-making have been respected in the handling of the pandemic, as parliamentary oversight functions well, and the parliament still wields the highest legislative power in Finland" (Kimmel and Ballardini, 2020). Most of the measures implemented to contain the spread of the virus in Finland took the form of recommendations (e.g., regulations concerning the right to assembly, contact restrictions) (Tiirinki et al. 2020).

Citation:
Finnish Business and Policy Forum, 2020. Coronan and Politicial Views. Finnish Business and Policy Forum (EVA). Accessed, 28.12. 2020. https://www.eva.fi/en/blog/2020/06/11/covid-19-crisis-had-anexceptional-impact- on-finnish-political-views/
Ministry of Social Affairs and Health, 2020. Corona Virus Informations. Accessed, 28.12. 2020. https://valtioneuvosto.fi/en/information-on-coronavirus/ministry-of-social-affairs-and-health
Kimmel, Kaisa-Maria and Ballardini, Rosa Maria, 2020. Restrictions in the Name of Health During COVID-19 in Finland. Harvard Law Blog. Accessed 11.1. 2021. https://blog.petrieflom.law.harvard.edu/2020/05/14/finland-global-responses-covid19/
Scheinin, Martin, 2020: The COVID-19 Emergency in Finland: Best Practice and Problems, VerfBlog, 2020/4/16. Accessed 18.12. 2020. https://verfassungsblog.de/the-covid-19-emergency-in-finland-bestpractice-and-problems/, DOI: 10.17176/20200416-092101-0.
Tiirinki H, Tynkkynen LK, Sovala M, et al. COVID-19 pandemic in Finland – Preliminary analysis on health system response and economic consequences. Health Policy Technol. 2020;9(4):649-662. doi: 10.1016/j.hlpt.2020.08.005

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." German authorities also live up to this high standard in practice. Relative to other countries,

Germany generally scores very highly on the issue of the 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 2021, Germany was ranked fifth out of 139 countries (World Justice Project 2021).

Citation:
World Justice Project (2021): Rule of Law Index, 2021 Insights, Highlights and Data Trends from the WJP Rule of Law Index 2021.

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. For example, Freedom House's 2021 Freedom in the World report awarded New Zealand a perfect score of 4/4 on the rule-of-law dimension (Freedom House 2021).

Citation:
Freedom House (2021) Freedom in the World 2021: New Zealand. https://freedomhouse.org/country/new-zealand/freedom-world/2021
McLean and 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. In principle, the Supreme Court may test the constitutional legality of a government decision, though it has not done so for many years.

Sweden

Score 10

The Swedish legal framework is robust, and the rule of law is a fundamental norm. The country is governed by a Weberian-style public administration and the prevalent values of legal security, due process, transparency and impartiality.

Administrative reforms privileging performance and effectiveness have the potential to threaten legal certainty. For example, Greve, Lægreid and Rykkja (2016) observed that the third generation of administrative reforms in the Nordic countries foreground state-centered solutions in the context of a complicated set of governmental mechanisms and institutional complexity.

Generally, there is a tension between New Public Management as a philosophy of public sector reform, and efforts to reemphasize trust ("tillit") as a normative foundation of the public administration. A recent commission of inquiry (Regeringskansliet, 2018) reported that the interface between administrative personnel and citizens requires a stronger focus on citizen needs, increased attention to a holistic approach, better leadership, increased competence levels, and more openness.

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 ombuds 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.

Citation:
Greve, Carsten, Per Lægreid, and Lise H. Rykkja. (eds.) 2016. "Nordic Administrative Reforms: Public Sector Organizations, Public Sector Organizations." London: Palgrave Macmillan.

Regeringskansliet (Government Offices of Sweden). 2018. "Tillitsutredningen. Med tillit Växer Handlingsutrymmet – Tillitsbaserad Styrning och Ledning av Välfärdssektorn." SOU, 2018:47. https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2018/06/sou-201847/

Australia

Score 9

Governments and administrations generally adhere to existing laws and respect court decisions. That said, jurisdictional uncertainty between the federal and state governments is an issue that means the legality of some actions by the executive is tested in court and on occasion found not to be legal. 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.

The COVID-19 pandemic saw state governments assert their considerable powers under the constitution. Notably, state governments closed their borders to residents of other states and territories, which many people had thought was unconstitutional, but which the High Court found was in fact constitutional.

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

https://www.abc.net.au/news/2020-11-06/clive-palmer-loses-high-court-challenge-against-wa-border-close/12855286

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, 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. In 2021 however, the FICIL commended amendments to the Law on Residential Properties, which previously had prohibited the division of a residential house into residential properties if it shared the same land parcel with other residential houses, a provision that violated the principle of legal certainty.

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-caseon-judge-and-public-prosecutors-remuneration-reform/, Last accessed: 09.01.2022.

2. FICIL Sentiment Index 2015 and 2018. Available at: https://www.sseriga.edu/centres/csb/sentimentindex, Last assessed: Last accessed: 09.01.2022.

3. FICIL (2021) FICIL welcomes the amendments to the Law on Residential Properties, Available at: https://www.ficil.lv/2021/07/14/ficil-welcomes-the-amendments-to-the-law-on-residential-properties/, Last accessed: 09.01.2022.

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 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 counter argument is that public prosecutors' bureaucratic position opens the door to political influence. To counter this possibility, a new branch of prosecutors dedicated to combat 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. In light of recent investigations, which featured prominent members of Austria's leading government party ÖVP, the political corruption branch of the prosecutors (WKStA) has come repeatedly under heavy verbal fire from high-ranking members of government.

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 and do respect the legal norms passed by parliament and monitored by the courts. The inquiries by corruption prosecutors into possible illegal activities of Chancellor Kurz in 2021, which eventually led to his downfall, became an impressive example of the power of the judicial branch in Austria (or its anticipatory effects for that matter).

This overall favorable assessment is in line with recent assessments in the European Commission's 2021 Rule of Law Report's chapter on Austria.

Citation:
https://ec.europa.eu/info/sites/default/files/2021_rolr_country_chapter_austria_en.pdf

Canada

Score 8

Canada's government and administration rarely make unpredictable decisions. Executive action is generally guided and bounded by legislation. 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. In a minority government situation, the House of Commons can also make the government fall if it feels it has not authorized a policy or course of action.

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.

The events in Catalonia during the 2012 – 2017 period offered a high-profile 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.

In July 2021, the Constitutional Court declared the first state of alarm to have been unconstitutional, and concluded that the government should have resorted to a state of emergency – which requires prior parliamentary approval – to limit fundamental rights for the nationwide lockdown. In October 2021, the Constitutional Court also declared that the second state of alarm was unconstitutional. All fines had to be refunded, but these rulings also led to a broad debate about the legal certainty of the government's actions.

Citation:
Ombudsman of Spain (2021): Impact of 2020 rule of law reporting, available at https://ennhri.org/rule-of-law-report-2021/spain/

United Kingdom

Score 8

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.

Completing Brexit entailed 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. However, it would be incorrect to regard the government as not acting in accordance with legal provisions. Uncertainty has long been a source of great concern for the business community and

international investors in the United Kingdom. Since the passing of the EU-UK Trade and Cooperation Agreement, the situation has improved considerably in terms of legal certainty, even if details still need to be clarified.

Some of the measures introduced to cope with the pandemic relied on statutory instruments after the Coronavirus Act was passed (for England), with a similar law in Scotland, while Northern Ireland and Wales used regulations. Parliaments have to agree to an extension of the duration of lockdown powers. These powers include a mix of obligations with (as the Boris Johnson may find) potential fines for breaches and guidance to citizens. Latterly, the balance has shifted back toward guidance.

Citation:
https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments
Fore Keidanren source: https://www.ft.com/content/37e87630-a9eb-11e8-94bd-cba20d67390c

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.

Czechia

Score 7

In Czechia, executive actions have tended to be predictable and undertaken in accordance with the law. Government adherence to the law was stretched by the COVID-19 pandemic. During the initial phases, the publication of government directives on pandemic mitigation was chaotic, with numerous ad hoc changes and in a number of cases independent courts concluded that the restrictions on individual liberties had not been adequately justified. These included a judgment in April 2020 by the Prague Municipal Court against the limits imposed on freedom of movement and the compulsory closure of large shops, and a judgment in February 2021 by the Constitutional Court against part of the government ban on some retail and services due to the pandemic. The Supreme Administrative Court also rejected numerous directives by the Ministry of Health.

Greece

Score 7

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

Since the start of the COVID-19 pandemic in February 2020, the government has repeatedly passed new legislation to adapt to changing circumstances, particularly public health risks and the pandemic's negative economic impact. In the period under review, the government resorted to governing by decree to prevent the spread of COVID-19 in the country.

Regardless of the pandemic, a law passed in July 2019 helped reorganize the top echelons of the government and monitor all central public services with the intention of bolstering the rule of law across public administration. For example, in contrast with the pre-2020 period, ministries are now obliged to schedule the drafting of any new legislation in advance and publish every December their legislative plans for the year to come. The law established a Westminster-style, centralized body (the General Secretariat of Legal and Parliamentary Affairs) to be the "gatekeeper" for quality regulatory, parliamentary and legislative drafts, as well as two intra-governmental committees, the Committee of Scrutiny of Legislative Process (tasked with ensuring the regulatory quality of new bills) and the Committee for Codification (tasked with scrutinizing existing legislation).

Nevertheless, the practice of frequently amending recently passed legislation has continued. Given the overproduction of regulations, the legal framework in major policy sectors, such as regulations governing taxation and pensions, still suffer from loopholes and contradictions that negatively impact on legal certainty.

Citation:
The law passed in July 2019 to reorganize the central public administration and the planning and implementation of laws is L. 4622/2019

International Association for Legislation, Innovative Drafting Strategy and Manuals in Greece, 15 May 2020 (https://ial-online.org/innovative-drafting-strategy-and-manuals-in-greece/)

Iceland

Score 7

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 concerned journalists' freedom of speech.

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 late 2019, Iceland's largest fishing firm, Samherji, was accused of paying huge bribes to Namibian ministers and others in order to secure fishing rights in Namibian

waters. This was 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. The case remains under investigation and the defendants are still held in police custody in Namibia, where the state prosecutor – having without success asked the Icelandic government to extradite three senior Samherji managers in order for them to be interrogated – has asked Interpol to intervene.

Citation:
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.

Sigmundsdóttir, Alda (2019), "Of political corruption and misdeeds in Iceland and Namibia," https://aldasigmunds.com/of-political-corruption-and-misdeeds-in-iceland-and-namibia/. Accessed 3 February 2022.

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. Notably, prior to the pandemic, 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.

There were many examples of emergency legislation being introduced within the context of the government's response to the COVID-19 pandemic throughout 2020 and 2021. Such legislation – pertaining, for example, to the curtailment of economic and social activity and to the administration of the healthcare service – were subject to parliamentary scrutiny and were time limited.

Notably, an active COVID-19 special parliamentary committee has provided legislative oversight throughout the COVID-19 pandemic (Colfer & O'Brennan, 2021). In its final report in October 2020, the committee called for an inquiry into coronavirus-related deaths in care homes, which accounted for more than half of all COVID-19 deaths in 2020 (Oir, 2020).
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.

Questions around planning and access to housing returned to the top of the political agenda in 2022, especially in Dublin where the cost of an average home now exceeds €500,000 (Burke-Kennedy, 2022).

Citation:
Burke-Kennedy, E. (2022) €500,000 price tag for 'average' Dublin property, The Irish Times, 16 February, available at: https://www.irishtimes.com/business/economy/500-000-price-tag-for-average-dublin-property-1.4804058#:~:text=Dublin%20prices%20%E2%80%93%20where%20the%20average,price%20under%20Central%20Bank%20rules.

Colfer, B. & O'Brennan, J. (2021) Ireland Report – Sustainable Governance in the Context of the COVID-19 Crisis, Bertelsmann Stiftung (Ed.), available at: https://www.bertelsmann-stiftung.de/en/publications/publication/did/ireland-report-en

Oir (2020), 'Final report of the special committee on Covid-19', Houses of the Oireachtas, October 06, https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/special_committee_on_covid_19_response/reports/2020/2020-10-09_final-report-of-the-special-committee-on-covid-19-response-sccr004_en.pdf

The report of the Inquiry into the behaviour of the police in relation to allegations of misconduct and corruption is available here: http://www.merrionstreet.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 2020 Worldwide Governance Indicators, Lithuania scored at the 82nd percentile with respect to the rule of law – a rank that has not changed appreciably throughout the 2015 – 2020 period. 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. An OECD report in 2021 noted a problem with the "inflation of legal norms." A substantial number of laws (e.g., 40.4% of all laws adopted by the parliament between 2012 and 2016) are deliberated according to the procedure of special urgency, which limits the ability to discuss proposals thoroughly 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 previous coalition government had 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.

The pandemic introduced profound levels of unpredictability and has – arguably inevitably – resulted in frequent and substantial regulatory changes. Nevertheless, it would be inappropriate to conclude that the quality of the rule of law or the regulatory regime has deteriorated, as the pandemic itself represented a major exogenous shock. Furthermore, its management required balancing predictability on the one hand and acting flexibly in adapting governmental rules and responses to the rapidly changing circumstances on the other. However, the use of government decrees instead of laws adopted by the parliament for managing the pandemic and in introducing important restrictions on citizens' activities has been criticized.

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.

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.

OECD, Lithuania: Indicators of Regulatory Policy and Governance 2021, https://www.oecd.org/gov/regulatory-policy/lithuania-country-profile-regulatory-policy-2021.pdf

OECD, Mobilising Evidence at the Centre of Government in Lithuania. Strengthening decision-making and policy evaluation for long-term development. Paris: OECD 2021.

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.

South Korea

Score 7

While government actions are generally based on the law, discretionary interpretation and application of laws (particularly new laws) remains a challenge. Foreign companies sometimes complain that regulations are interpreted inconsistently because they lack sufficient detail. In Korea, personal relationships influence decision-making, while legal rules are sometimes seen as an obstacle to flexibility and quick decisions. While Korea has consistently scored 0.73 (on a scale of 0-1) on the World Justice Project Rule of Law Index since 2016, its government corruption score (0.67) is one of the lowest components of its score.

Throughout his tenure, President Moon took steps to strengthen the rule of law, including by "completely separat[ing] powerful institutions from domestic politics and install[ing] systems to make any such institutions unable to wield omnipotent power." In December 2020, the National Assembly adopted three legislative reforms to this effect. These included: 1) a major police law revision that introduces a local autonomous police system and allows the establishment of a national investigation office; 2) a revision of the National Intelligence Service Act which strips the National Intelligence Service of its authority to conduct criminal investigations into violations of the National Security Law; and 3) a bill establishing the new Corruption Investigation Office for High-ranking Officials (CIO). The establishment of the CIO is part of Moon's efforts to check the power of the Supreme Prosecutor's Office, while also preventing it from interfering in politics. Prosecutors in South Korea lead the investigation of criminal cases, and also have considerable flexibility in deciding whether to prosecute a suspect or not. Unlike judges, prosecutors are not independent, and there have been cases in which they have used their power to harass political opponents. Typically, prosecutors appear more reluctant to investigate acting government officials than the representatives of previous governments. Under President Moon's directive, two ministers of justice (Cho Kuk and Choo Mi ae) pursued prosecutorial reform in 2019 and 2020. Having been chosen expressly to lead this reform, former Minister of Justice Cho was forced to resign after only a few weeks in office after the Supreme Prosecutors Office turned the tables and charged several members of Cho's family with corrupt and illicit activities. Cho's replacement, Minister Choo, then sought to suspend Prosecutor General Yoon Seok Youl on grounds of ethical misconduct. Yoon successfully challenged his suspension; but eventually resigned, as did Minister Choo. Thus far, the establishment of the CIO (to which prosecutors are now to cede some of their investigative authority) is the most concrete step toward prosecutorial reform.

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Belgium

Score 6

The rule of law is generally strong in Belgium. However, the COVID-19 crisis created the necessity for frequent changes in legal rules, making law enforcement particularly difficult, and occasionally nigh impossible. Many decisions were challenged, sometimes successfully, in court. Different courts actually interpreted newly passed measures differently. For instance, the digital COVID certificates granted to those who had been vaccinated, received negative tests or recovered from the coronavirus (called "Covid-Safe Tickets" in Belgium) either should be or could not be subjected to examination by the police, depending on the local interpretation of the law. Earlier in the crisis, the question of whether citizens had the right to buy their food in a store outside their own city was also interpreted differently by different police zones.

However, such chaotic circumstances are the exception rather than the rule. Traditionally, officials and administrations act in accordance with the law. The most salient weakness of the country is probably its evolving devolution of responsibilities from the federal to the regional governments, which complicates the homogeneity of the law, and hence its application by citizens and authorities alike.

Citation:
https://www.lesoir.be/art/d-20211118-GR04MC

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, amounting 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 is in charge of making sure that government actions are conducted in accordance with the rule of law. The Supreme Court hears appeals from citizens, and Palestinian residents of the West Bank and Gaza Strip, which force the state to explain and justify its actions.

The government of Israel can make extensive use of emergency regulations to determine its policies, since Israel has been under a state of emergency since its founding in 1948 (Gross & Kosti 2021). Emergency regulations can change Knesset legislation, temporarily expropriate legislation or set different conditions for a limited period of three months. In addition, some legal arrangements provide for ad hoc state action to deal with security threats and the Emergency Powers (Detention) Law of 1979 provides for indefinite administrative detention without trial.

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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 highly discretionary decision-making and the conditions 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 pandemic emergency has led to the introduction of many new rules and regulations, which are often confusing for the authorities that are responsible for applying them and for citizens.

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.

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.

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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.

Discrimination on the basis of race, religion, disability, age, sex, gender identity or sexual orientation is prohibited by law. The rights of LGBT+ people are generally protected and respected. In recent years, women have increased their participation in working life, and have benefited from reductions in the gender pay gap.

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Malta

Score 6

Since Malta joined the European Union, the predictability of the majority of decisions made by the executive has steadily improved, with discretionary actions becoming more constrained. Overall, legal certainty is robust, though there continue to be instances where the rule of law is misapplied by state institutions. These

shortcomings are generally highlighted by NAO and Ombuds Office reports. 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. These reports from public bodies 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. The publication of an annual report by the head of the public service, setting out how the service has implemented the recommendations of the NAO and the Ombuds Office, is a significant step forward.

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. There has also been a critique of the arbitrary issuance of freezing orders in courts. 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. Two recent decisions by the courts, which ruled that the defendants did not enjoy legal standing, are said to have set a dangerous precedent for NGOs, which rarely have a direct interest in any matter that is the subject of judicial proceedings instituted by them. The main opposition party (Nationalist Party) has recently set up its own injustice commission to become operative once in government. Kevin Aquilina (an academic and legal expert) states that these commissions contribute to subverting the ombudsman and commissioners, which harms the rule of law and the principle of legal certainty by undermining rulings given by these institutions.

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

Citation:

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Malta Today 9/10/17 Former Planning and lands minister is now lawyer for both planning and lands authority
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Times of Malta 11/11/17 Ministry spends almost 30,000 euros on Liquor for EU Presidency
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https://timesofmalta.com/articles/view/civil-service-head-fires-barb-at-ombudsman-on-persons-of-trust.919864
Times of Malta 05/02/22 Two steps forward two back
Times of Malta 19/02/22 Freezing orders and the arbitrary face of justice

Netherlands

Score 6

Dutch governments and administrative authorities have allegedly 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 2021, the Netherlands was again ranked sixth out of 129 countries. However, the no more than slight decline in its score since 2016 curiously ignores the dominant opinion in politics, civil society and legal academic circles in the country itself.

In a “stress test” examining the state’s performance on rule-of-law issues in 2015, 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 were no longer sufficiently in place. The trend was 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. As one commentator aptly observed: rule-of-law considerations have become a mere footnote to desirable policies proposed by the government and rubberstamped by coalition political parties in parliament. Many of the recent scandals (the childcare benefits scandal; the mess around earthquake damages compensation in the former gas-producing areas of the province of Groningen; the illegal collection and linking of large data sets about citizens by the police, anti-terrorism organizations, and the military) boil down to violations of fundamental human and citizen rights or of legal rules, and to an obstinate perseverance in implementing merciless and badly designed laws.

This mood or attitude exploded into political crisis when the childcare benefit affair came to light during the fall of 2020, eventually causing the entire Rutte III government to step down in January 2021. The childcare benefit affair is a policy catastrophe demonstrating that over the past decade, all branches of government have been complicit in negligence and indifference to rule-of-law considerations in public policy. Parliament insisted on an “all-or-nothing” fraud hunt, disregarding

signals from whistleblowers in the tax services, and neglecting warnings from lawyers and a deputy minister that strict law enforcement would make many eligible and deserving families suffer because of a small number of rule-breakers. In the end it was clear that tax authorities had legally stopped tax benefits for thousands of families, and required huge recovery payments sometimes amounting to many years of benefits received for trivial errors like spelling mistakes, errors in birth dates and response deadlines that had been missed by just a few days. The large repayment sums demanded pushed poor and frequently second-generation Dutch families into debt and poverty, often leading to the loss of housing, divorce and even loss of parental custody. Because judges and the Supreme Court routinely ruled in favor of the tax authorities in the cases brought against them, a parliamentary investigation concluded that the judiciary had for too long been looking the other way. It took the foreign eyes of the Council of Europe's international rule-of-law inspectorate, in a report on Dutch practice by the Venice Commission, to humble the Dutch parliament into admitting that it was its own insistence on hardline fraud control that had initiated and maintained a process with a catastrophic outcome.

Many other serious concerns about the state of the judiciary as a branch of government have also been raised in recent years. In an exceptional move, lawyers, judges and prosecutors recently wrote a joint letter to the government expressing their "fear for the future of the judiciary branch." The chair of the Council of Jurisprudence, a body established in 2002 as an independent advisory commission sitting between the Ministry of Justice, parliament and the judiciary, publicly admitted that the judiciary as constituted 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. Indeed, the penal code required a complete modernizing overhaul. Meanwhile, the digitalization of routine judicial procedures has been a failure, and has cost the government dearly.

Judging by the coalition agreement for the Rutte IV government, reform of the judiciary is finally high on the political agenda. Not for nothing does the agreement open with an entire chapter on rule-of-law issues. The new government has promised to overhaul legislation, implementation practices and case law in order to prevent another childcare benefit scandal. Improved implementation institutions will be more reliable, just and serviceable, it says. The state will not rely on impersonal algorithms alone to render mass decisions on benefits in social security policies. Respect for general principles of "decent" governance (beginselen van behoorlijk bestuur) like appropriateness and proportionality will be strengthened, and the people implementing policies will be granted more discretionary power. An inspectorate for algorithms (Algoritmetoezichthouder) and an equivalent of the U.S. Taxpayers Advocate Service will be set up. More money will be available for police forces in their combat with organized crime, especially the illegal drugs trade.

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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. Like its predecessors, the center-right government has passed many laws following a fast-track procedure that is at odds with the constitution. Legislative disorder has been increased by conflicts between the coalition partners. Sme-Rodina in particular has frequently broken previous agreements.

Slovenia

Score 6

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 over 20,000, including 840 laws, in December 2020. 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 the 2018–19 period under the Šarec government, 67% of the 91 adopted legislative acts in the National Assembly were subjected to the fast-track or shortened legislation procedure. In 2020, under the Janša government, 59% of the 78 adopted legislative acts were subjected to the fast-track or shortened legislation

procedure, most of those with relation to so-called anti-COVID-19 legislation.
Attacks by the prime minister on the judiciary have been known and documented since March 2020. In March 2021, the Slovenian Association of State Prosecutors told the Council of Europe division for the independence and efficiency of justice that Prime Minister Janša and pro-government media (Nova24TV.si and Demokracija) exert “inadmissible pressure” on prosecutors. The government has been holding up the appointment of state prosecutors, including two European delegated prosecutors. The Slovenian Association of Prosecutors suspects that the selected candidates “fell out of favor with the SDS and its chairman Janez Janša.” That is why the government rejected the Ministry of Justice’s amendment to the law regulating the status of seconded prosecutors.

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United States

Score 6

There is little arbitrary exercise of authority in the United States, but the legal process does not necessarily provide a great deal of certainty. 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.
President Trump was impeached twice by the House of Representatives: the first time in December 2019, for obstruction of Congress and the abuse of power, and again in January 2021, barely a week before the end of his presidency, for incitement of insurrection in the aftermath of the January 6 attack on the U.S. Capitol. In both cases, however, the Republican-controlled Senate acquitted President Trump. Yet, in July 2021, the U.S. House Select Committee on the January 6 Attack began its work. This Committee is discussing “whether to recommend that the Justice Department open a criminal investigation into the former president” (Hamburger et al. 2021).

The Biden Administration came into office on a promise to strengthen democratic institutions again and has taken several critical steps to revitalize norms that have been violated by the Trump Administration. Biden issued an Executive Order requiring an ethics pledge from all executive branch appointees. Biden also returned to pre-Trump norms by voluntarily disclosing his tax returns. In addition, Biden issued a memorandum laying out standards and procedures to prevent the politicization of scientific research at government agencies. More recently, the White House Counsel's Office and the Department of Justice issued policies limiting contacts between the two, ending a problematic relationship between the two institutions under the Trump Administration.

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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. Frequent changes in criminal laws have also had a negative impact on legal certainty in Croatia. Some amendments to acts have been implemented even without the much-needed majority in the parliament, which further negatively affected the level of legal certainty.

Mexico

Score 5

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.

Judicial reforms have been a key focus for the López Obrador government. Several have been undertaken so far, and more have been announced. Am important reform in December 2020 gave the Consejo de la Judicatura Federal (CJF) more power.

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.

Bulgaria

Score 4

Bulgaria's government is legalistic and favors a strict interpretation of the legal code in justifying its actions. Another problem is the legal consistency of the content of the law. Executive action is not only relatively unpredictable, but may be applied ad hoc, thus creating privileges and inequality before the law.

Deficiencies in the area of the rule of law crowd out FDIs. There were attempts led by prosecutors and individual judges to redistribute market and economic influence in 2014, 2016-2017 (against foreign interests) and 2019-2020. These efforts failed, however, thanks to the fact that EU ambassadors, investigative journalists and NGOs targeting corruption made this information public. It is anybody's guess what the situation was with local companies that have no foreign ambassadors to speak out for them.

In the period from 2015 to 2019, Bulgaria's prosecutor general, who was able to act without accountability, created and/or gained control over specialized organs of the justice system (i.e., commissions tasked with special investigations, prosecution and forfeiture, anti-corruption efforts and conflict of interests). These "reforms" were ostensibly pursued in an effort to fight high-profile cases of corruption, terrorism and organized crime but, in fact, served instead as an instrument of protection and racketeering.

The situation deteriorated after the election of Ivan Geshev as prosecutor general in December 2019, who has proven to be inefficient, demonstrated clear bias in his interpretation of certain cases, failed to presume innocence until proven guilty in specific cases and has publicly taken issue with the division of powers. In June 2020, prosecutors raided the offices of two advisors to then-President Radev. The prosecutors explained the action as part of their investigation of suspected influence peddling and disclosure of state secrets. Many protesters viewed the raids as attacks carried out by the prosecutor general and motivated by an escalating conflict between Radev and Borissov.

Marking a setback for prosecutorial reform in Bulgara, the Constitutional Court ruled in 2021 against a new law designed to establish accountability and criminal liability for the office of the prosecutor general, stating that the law was in violation of the constitution.

The first months of the COVID-19 pandemic in 2020 saw increased activity on the part of the prosecutor general. The non-parliamentary opposition, NGOs and independent journalists increased their criticism and disseminated factual evidence of embezzlement, extortion and abuse of public office with the help of individual prosecutors.

Citation:
https://acf.bg/en/osemte-dzhudzheta/

Cyprus

Score 4

Under the law of exception since 1964, the state features a very powerful executive and "independent officers," who take decisions that frequently exploit excessive discretionary powers. In many instances, the Council of Ministers and other authorities show limited concern for principles of the rule of law.

Court decisions before 2019 confirmed that measures to tackle the economic crisis of 2013 were not consistent with the law. In recent years, laws passed by the parliament were declared unconstitutional by the Supreme Court. Various measures promoted by the government and/or the parliament to deal with non-performing loans are also problematic.

Revelations about the so-called Cyprus Investment Program, linked with the granting of citizenship, showed that basic rules and legality were violated. The inquiry committee found that more than half of the passports granted to "investors" were in violation of the law.

In July 2020, President Anastasiades appointed two of his ministers to be attorney general and deputy attorney general, positions that are responsible for handling cases related to government decisions in which they participated.

Sustained clashes between the president, who stated that the "strict application of regulations can harm public interests," and his government, on the one hand, and the auditor general, on the other, also took the form of threats that the auditor general would face prosecution.

Citation:
1. More than half citizenships given through investment unlawful, inquiry concludes (updated), Cyprus Mail, 16 April 2021, https://cyprus-mail.com/2021/04/16/more-than-half-citizenship-given-through-investment-unlawful-inquiry-concludes/

2. Ministry defends decision to green light multi-story building in down town Nicosia, Cyprus Mail, 21 December 2021, https://cyprus-mail.com/2021/12/21/ministry-defends-decision-to-green-light-multi-story-building-in-down-town-nicosia/

Romania

Score 4

The 2021 EU Rule of Law report indicated favorable trends in Romania's commitment to reforming its legislative and judicial frameworks, and its political environment to favor the rule of law.

While parliamentary and legislative activity was limited due to parliamentary elections, and the pandemic in 2020 and 2021, the Constitutional Court retains an active role in reviewing legislative activities to ensure legal frameworks are consistent with the Romanian constitution. In 2020, a significant ruling by the Constitutional Court found that the government's emergency ordinance that established fines for non-compliance with the restrictions during the pandemic was unconstitutional, leading to an exodus of patients from government-mandated quarantines. By July 2020, the health minister had estimated that up to 30,000 people might have left isolation, quarantine or medical surveillance. While the court's decision may have impeded the government's ability to respond effectively to the pandemic, which continued to ravage the country at the end of 2021, the government's respect for abiding by the order reflects positively on trends in legal certainty.

In addition, since the May 2019 referendum, which limited the government's ability to issue emergency ordinances (a practice that was criticized for circumventing normal legislative procedures), there have been very few cases of emergency ordinances being used. Further, the number of emergency procedures concerning the justice laws, criminal code and criminal procedure code, the legal framework on integrity, and the fight against corruption has significantly decreased since the 2019 EU Commission Cooperation and Verification Mechanism report. This shift introduces enhanced stability into political and legislative procedures, and has a positive impact on legal certainty.

Citation:
European Commission (2021): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism. COM(2021) 370 final, Brussels (https://ec.europa.eu/info/files/progress-report-romania-2019-com-2019-393_en).

European Commission: 2021 Rule of Law Report. Country Chapter on the rule of law situation in Romania, Brussels 20 July 2021 SWD(2021) 724 final

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. Moreover, ever since the 2015 "refugee crisis," the government has relied on special decree powers (ICJ 2022). On 20 March 2020, the government's two-third supermajority in parliament adopted the so-called Coronavirus Defense Act (also known as the Authorization or Enabling Act) that came into force the next day. The act gave the government the right to suspend or override any law. In mid-June 2020, the state of emergency, which stirred massive criticism both within and beyond the country's borders was lifted, but then transformed into a "medical emergency." In November 2020, parliament then declared a new state of emergency, which was later extended several times. All three states of emergency gave the government more powers than foreseen in the Fundamental Law, the Hungarian constitution, before its ninth amendment in December 2020.

Citation:
International Commission of Jurists (ICJ)(2022): A Facade of Legality: COVID-19 and the Exploitation of Emergency Powers in Hungary. Geneva (https://www.icj.org/hungary-authorities-must-halt-abuse-of-emergency-powers-in-hungary-during-covid-19/).

Poland

Score 3

Under the PiS government, legal certainty has strongly declined. Some of the government's many legal initiatives, including major parts of the "Polish Deal" announced in May 2021, have been so half-baked that they had to be amended or suspended. 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 (Baczyńska 2021). 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. The controversial creation of a new disciplinary chamber in the Supreme Court, which has the power to initiate disciplinary investigations and sanctions against justices of ordinary courts judges based on the content of their judicial decisions, has further increased legal uncertainty. Legal uncertainty has been further exacerbated by the ignorant responses of PiS politicians to critical rulings by the Court of Justice of the European Union and the European Court of Human Rights, and the October 2021 ruling by the Constitutional Tribunal that questioned the supremacy of EU over national law (Łazowski/ Ziółkowski 2021).

Citation:
Baczyńska, B. (2021): Zwischen Verfassung und Präsidentenwillen. Der Umbau des Justizsystems in Polen, in: Polen-Analysen Nr. 283, 2-8 (https://www.laender-analysen.de/polen-analysen/283/zwischen-verfassung-und-praesidentenwillen-der-umbau-des-justizsystems-in-polen/).

Łazowski, A., M. Ziółkowski (2021): Knocking on Polexit's door? Poland, the Constitutional Tribunal and the battle over the primacy of EU law. CEPS, October 21 (https://www.ceps.eu/knocking-on-polexits-door/).

Turkey

Score 3

The transition to a presidential system of government was introduced by a series of decrees (i.e., state of emergency decrees and presidential decrees) rather than via legislation, as is required by the constitution. The restructuring of the 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.

Citation:
European Commission. “Turkey Report 2021. Commission Staff Working Document.” October 19, 2021. https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021_en

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 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, the scope for judicial review of government actions is very much affected by legislation allowing for or denying such review. Nonetheless, government and administrative decisions are frequently reviewed by courts. There is a strong tradition of independent judicial review of executive decisions. This tradition stems to a significant extent from the evolution of administrative law, which has spawned an administrative courts process through which complainants may seek a review of executive action. The executive branch generally has very little power to remove judges, which further contributes to the independence of the judiciary. Furthermore, there are many instances in which courts have ruled against the executive. The executive has in the past generally accepted the decisions of the courts or appealed to a higher court, rather than attempting to circumvent the decision.

Denmark

Score 10

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

be transferred against their will, except in such cases where a rearrangement of the courts of justice is made."

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

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

Estonia

Score 10

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

Judges are appointed by the national parliament or by the president of the republic for a lifetime, and they cannot hold any other elected or nominated position. The status of judges and guarantees of judicial independence are established by law. Together with the Chancellor of Justice, courts effectively supervise the authorities' compliance with the law, and the legality of the executive and legislative powers' official acts.

Germany

Score 10

Germany's judiciary works independently and effectively protects individuals against encroachments by the executive and legislature. The judiciary inarguably has a strong position in reviewing the legality of administrative acts. The Federal Constitutional Court 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).

Since the beginning of the pandemic, the judiciary has proved effective in keeping the executive from overstepping its powers and encroaching on individual fundamental rights and political liberties. All courts were able to carry out their duties without constraint, even during the most severe lockdowns.

Beginning with various lower courts at the state level and extending to the Federal Constitutional Court, the courts have frequently reviewed various details of the lockdowns and have set certain limits through their jurisprudence. The case law of the Federal Constitutional Court was particularly important in this regard, because it occasionally overturned government decisions, especially with regard to the restrictions placed on the right to assemble. At the end of the first waves of the pandemic, state courts sometimes obliged state governments to lift various lockdown measures earlier than had been planned by the executive.

Both domestically and internationally, Germany's courts in general, and the Federal Constitutional Court in particular, are highly regarded for their independence. The World Justice Project's Rule of Law Index 2021 ranked Germany third among 139 countries on civil justice and sixth with regard to criminal justice (World Justice Project 2021).

Citation:
World Justice Project (2021): Rule of Law Index 2021, Report.

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.

Citation:
http://www.justice.govt.nz/courts/māori-land-court (accessed October 20, 2015).
Pohlmann, Martin. 2017. he 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. 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

Generally, the Swedish judiciary system is more fragmented than systems in the Anglo-Saxon tradition, and there is no constitutional court (Larsson and Bäck 2008). Sweden has a system of judicial preview in which 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 council has a purely advisory (nonbinding) role, however, which means that the parliament may ignore its findings.

Notably, until 2011, the judiciary and the government administration were regulated by the same chapter in the Swedish constitution. Judicial review is mainly carried out by the government and public agencies, with the Swedish courts traditionally serving as tools of political executive power rather than as a means of balancing power (Ahlbäck Öberg and Wockelberg 2016). In the Swedish system, agreements are typically reached by political parties and other actors, rendering judicial intervention less important than in the United States, for example, where the courts are quite commonly used as adjudicators.

Citation:
Ahlbäck Öberg, Shirin and Helena Wockelberg. 2016. "The Public Sector and the Courts" In Jon Pierre (ed.) "The

Oxford Handbook of Swedish Politics." Oxford University Press. 130-146.

Larsson, Torbjörn and Henry Bäck. 2008. "Governing and Governance in Sweden." Malmö: Studentlitteratur.

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.

The Swiss Federal Supreme Court is the highest judicial authority in Switzerland. It adjudicates, in last instance, appeals of rulings of the high cantonal courts of appeal, the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court. The concerned areas of law are civil law, criminal law and administrative law. Violations of federal law, international law, inter-cantonal law or constitutional rights can be invoked. The Federal Supreme Court's jurisprudence ensures the uniform application of federal law throughout the country. The other courts and the administrative authorities comply with the Federal Supreme Court's case law and adopt its principles. The Federal Administrative Court rules on the legality of rulings issued by the federal administration. The court also adjudicates on appeals against certain decisions of the cantonal governments, for example, in the area of health insurance.

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, both federal and provincial, pursue their reasoning free from the influence of governments, powerful groups or individuals. The Supreme Court of Canada (SCC) is the country's final court of appeal. The structure and proceedings of the SCC are grounded in the Supreme Court Act, last amended in 2019.

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.

Early in the COVID-19 pandemic, parliamentary oversight came under pressure in Finland. As outlined in an OECD report, the operations of the legislature were threatened by health and safety concerns, and the government asked the legislature to accommodate swift policy action, either through faster budget procedures or by improvising new ones (OECD 2020).

The government cabinet, jointly with the president of the republic, declared that Finland was in a double emergency: a health emergency and an economic emergency. The emergency declaration itself was not reviewed by parliament, but when the cabinet issued a decree to use specific powers under the Emergency Powers Act (EPA) the decree was subject to scrutiny (Scheinin 2020). However, as outlined in Finnish legislation, the Constitutional Law Committee (CLC) of the parliament carefully assessed whether the special legislation and government decrees were compatible with the constitution.

Most of the measures to contain the spread of the virus in Finland took the form of recommendations (e.g., regulations concerning the right of assembly, and contact restrictions) (Tiirinki et al. 2020). However, at times, there were problems in communicating these recommendations. For example, the government may have exceeded its mandate when it ordered elderly citizens to remain indoors. When this oversight was discovered, the government argued that it had issued a recommendation, not an order. As public trust in authorities is high, Finnish people tend to take recommendations quite literally.

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

Kimmel, Kaisa-Maria and Ballardini, Rosa Maria, 2020. Restrictions in the Name of Health During COVID-19 in Finland. Harvard Law Blog. Accessed 11.1. 2021. https://blog.petrieflom.law.harvard.edu/2020/05/14/finland-global-responses-covi d19/

OECD, 2020. Policy Responses to Corona. Accessed, 28.12 2020. https://www.oecd.org/coronavirus/policyresponses/ legislative-budget-oversight-of-emergency-responses-experiences-during-the-coronavirus-covid-19-pandemic-ba4f2ab5/

Scheinin, Martin, 2020: The COVID-19 Emergency in Finland: Best Practice and Problems, VerfBlog, 2020/4/16. Accessed 18.12. 2020. https://verfassungsblog.de/the-covid-19-emergency-in-finland-bestpractice-and-p roblems/, DOI: 10.17176/20200416-092101-0.

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-fleshed court, the role of which was dramatically increased through the constitutional reform of March 2008. Since that time, any citizen is 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 75 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 one of 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 decision-making processes and the fairness of any 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, hears 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 independent of 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. The consolidation of district and regional administrative courts will distribute cases more evenly.

According to Vilmorus opinion surveys, public trust in the courts is low. Between 2016 and 2018, these levels showed some modest increase, but an October 2019 Vilmorus 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. In December 2021, the public trust level stood at 22% (with 31% expressing distrust). Public trust in the Constitutional Court is higher (47% in May 2021). The OECD has noted that confidence in the judiciary over the last decade was the highest level among OECD members.

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
OECD, Government at a Glance 2001, Lithuania Factsheet, 2021, https://www.oecd.org/gov/gov-at-a-glance-2021-lithuania.pdf

Luxembourg

Score 9

Luxembourg's judiciary is largely independent of government influence. Judges are appointed by the Grand Duke and enjoy the security of lifetime tenure. In 2020, the Chamber of Deputies debated a constitutional amendment strengthening the independence of judiciary. A Council of Justice was subsequently created with the responsibility of nominating candidates for all judicial posts and establishing ethical standards for judges.

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.

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, for instance. Many citizens in Luxembourg are annoyed that they cannot understand the laws and procedures in court. Many people 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.

Since early 2021, the Ministry of Justice has been pursuing an efficiency program aimed at making country's judicial system faster and more effective. The law of 15 July brought a major reform by implementing the New Code of Civil Procedure with the goal of boosting and simplifying the procedural rules in civil and commercial matters. These long-awaited adjustments are intended to relieve congestion in the district courts, increase the efficiency of court proceedings and enhance the country's business attractiveness.

The coronavirus pandemic has given a boost to the five-year "paperless justice" project that has been under way since 2018, and which is aimed at integrating digital tools into the justice system, as has been done in France and Belgium. Courts, in cooperation with the Bar Association, have improved digital exchanges and communications. However, the implementation of this project is currently behind schedule.

In January 2022, the minister of justice presented Draft Law 7945 transposing the EU Directive 2019/1937) on the protection of persons who report breaches of law (whistleblowers). The draft law establishes an office for whistleblowing notifications, principally to inform potential whistleblowers of the relevant procedures, and to guide them through the process.

Citation:
"Rule of Law Report. Luxembourg: 2021." European Commission (2021). https://ec.europa.eu/info/sites/default/files/lu-input.pdf. Accessed 14 january 2022.

"Coronavirus pandemic in the EU –Fundamental Rights Implications: Luxembourg." European Union Agency for Fundamental Rights & University of Luxembourg (4 May 2022).

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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.
Sam Tanson a présenté le projet de loi relatif à la protection des personnes qui signalent des violations du droit de l’Union européenne “. Le Gouvernement luxembourgeois (12 January 2022). https://gouvernement.lu/fr/actualites/toutes_actualites/communiques/2022/01-janv ier/12-tanson-projet-loi-ue.html. Accessed 14 January 2022.

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“The Law of 15 July 2021 reinforcing the efficiency of the administration of civil and commercial justice – a substantial amendment to the New Civil Procedure Code.” https://www.dsm.legal/en/the-law-of-15-july-2021-reinforcing-the-efficiency-of-t he-administration-of-civil-and-commercial-justice-a-substantial-amendment-to-the -new-civil-procedure-code/. Accessed 14 January 2022.

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.

In late September 2020, after the passing of Justice Ruth Bader Ginsburg, President Trump nominated Amy Coney Barrett to the Supreme Court. Her confirmation the following month durably tilted the Supreme Court to the right. In late January 2022, Joe Biden announced he planned to nominate a yet unnamed black woman to the Supreme Court, but the presence of 50 Republicans in the Senate appeared as a potential obstacle for her confirmation.

In April 2021, Biden issued an Executive Order forming the Presidential Commission on the Supreme Court, presenting major reform proposals for the Supreme Court. In its final report, the Commission identifies considerable bipartisan support for implementing an 18-year term-limit for the justices. But there was no agreement on whether Congress should expand the court beyond its current nine seats, a proposal that was support by the progressive wing of the Democratic party.

Austria

Score 8

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 very high fees, creating some bias toward the wealthier portions of the population.

In particular, the Constitutional Court's power, status and role are advanced by international standards. All Austrian laws and executive actions can be reviewed by the Constitutional Court on the basis of their conformity with the constitution's basic principles. On several recent occasions (e.g., the repeat of the presidential election in 2016), the court has proven resistant to overriding political gridlock. On other occasions, the court has not hesitated to repeal major pieces of government legislation (e.g., the ban on face veils in schools in 2020). In most years, the court ranks as the most trusted institution in Austrian politics.

Citation:
Eberhard, Harald, The Austrian Constitutional Court after 100 Years: Remodelling the Model?, Zeitschrift für öffentliches Recht, Juni 2021, Heft 2, 395-411.

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. Also, during the COVID-19 pandemic and the month-long state of catastrophe, independent courts and the Comptroller General's Office exercised their right to monitor administration acts in conformity with the law, although with reduced operational capacity due to the public health restrictions.

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 handed down by the Constitutional Tribunal. The dispute had not been resolved by the end of the period under review.

In the recent past, 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:

Carey, "El funcionamiento de los tribunales nacionales a raíz del COVID-19", 21 March 2020, https://www.carey.cl/el-funcionamiento-de-los-tribunales-nacionales-a-raiz-del-covid-19, last accessed: 13 January 2022.

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Czechia

Score 8

Czech courts operate independently of the executive branch of government. The ordinary courts and the Constitutional Court alike have continued their work even during the states of emergency and have been quite active during the COVID-19 pandemic. They have annulled several government measures and have forced the government to act in a less erratic manner (Vikarská 2021). Unlike the Supreme Administrative Court and the lower courts, the Constitutional Court initially

exercised self-restraint. In a controversial decision in April 2020, supported by only eight out of 15 judges, it declared the government's declaration of a state of emergency constitutional and limited the scope for the judicial review of the emergency measures. Over time, the court has changed course and has re-widened its mandate. In February 2021, it repealed crucial provisions of the electoral law regarding the allocation of seats and the threshold for coalitions (Antoš/ Horák 2021). The surprising ruling forced the political parties to agree on new rules for the parliamentary elections in October 2021. Four of the 15 judges did not join the majority decision.

The appointment of Marie Benešová as justice minister in May 2019 raised some concerns about the independence of the judiciary. 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. She continued to clash repeatedly with the Prosecutor General Pavel Zeman, who resigned on 14 May 2021 after more than a decade in office, citing undue pressure from the justice minister. Zeman's last major case was the 2014 explosion of the ammunition depot in Vrbetice, for which – as revealed in 2021 – the Russian secret service GRU was responsible. In July 2021, the government appointed Zeman's deputy, Igor Striz, prosecutor general. The opposition criticized the choice as Striz was a military prosecutor during the communist era.

Citation:
Antoš, M., F. Horák (2021): Better Late than Never: The Czech Constitutional Court Found the Electoral System Disproportionate 9 Months before Election, in: VerfBlog, February 20 (https://verfassungsblog.de/better-late-than-never/, DOI: 10.17176/20210221-033756-0).

Vikarská, Z. (2021): Czech and Balances – One Year Later, in: VerfBlog, March 30 (https://verfassungsblog.de/czechs-and-balances-one-year-later/, DOI: 10.17176/20210330-195055-0).

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. An exception to this is the appointment of the most senior judges and prosecutors. The body of judges and a higher organ of the parliament are consulted on the appointment of the most senior judges and prosecutors, although eventually the government decides. Successive governments have not resisted the temptation to handpick their favored candidates for the president posts of the highest courts. Nevertheless, according to the Greek constitution, 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. However, there is a dire need to restructure the courts, which are spread all over the country, meaning that resources are thinly distributed. Moreover, to this day, there is

no code of conduct for judges. 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. Periodically, there is a tug-of-war between the government and the justice system, rendering judicial review a sensitive and unpredictable process. For instance, it is not uncommon for courts to overturn clauses of pension legislation, judging them to be unconstitutional and thus upsetting the government's drive to contain public pension costs.

Overall, in 2020–2021, the capacity of courts to control whether the government and administration acted in conformity with the law was strengthened. The appointment of senior judges and prosecutors was less biased than in previous periods. There was also some progress made in making courts more efficient, as a new law on the management of the clerical staff of courts was passed in 2021, while there were some improvements in the electronic coding of cases in criminal proceedings and the electronic filing of cases in administrative courts.

Citation:
Articles 87-91 of the Greek constitution provide for the independence of judges and articles 93-100 for the independent organization of courts.

Information on the extent and quality of judicial review is available at the European Commission's latest (2021) report on Rule of Law in Greece, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0709

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. The Israeli Supreme Court has struck down only 18 laws since 1992, a relatively low number compared to other countries. 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. Nevertheless, the Supreme Court has maintained its position as one of the three governing institutions with the highest level of trust (after the IDF and the president of Israel)

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.

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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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 and prevents 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 (Council of Europe report 2020). Successive governments have made some efforts to increase the efficiency and speed of the judicial system. The Draghi government has devoted special attention to these aspects. Digitalization of procedures has been promoted.

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:
Council of Europe CEPEJ evaluation report 2020: https://rm.coe.int/rapport-evaluation-partie-1-francais/16809fc058 (accessed 31 December 2021)

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.

The court system suffers from a case overload, leading to delays in proceedings. According to the court administration's statistical overviews, 88.19% of cases in 2020 concluded within 12 months' time (18.7% take between six and 12 months), while 11.81% took longer than that.

The Constitutional Court reviews the constitutionality of laws and occasionally that of government or local government regulations. In 2019, the court received 728 petitions, 258 of which were forwarded for consideration. The court initiated 70 cases, dealing with a wide range of issues, including human dignity, non-discrimination, the right to social security, and the right of minorities to use their mother tongue in early education.

Citation:
1. Court Statistics (2020) Available at: https://dati.ta.gov.lv/MicroStrategy/asp/Main.aspx?src=Main.aspx.2048001&evt=2048001&documentID=BF8E206E48039A9F66E436BB511763C6&currentViewMedia=1&visMode=0&Server=10.219.1.47&Port=0&Project=TA+Dati&, Last accessed: 10.01.2022

2. Constitutional Court (2020). Overview of the work of the Constitutional Court 2020. Available at: https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/02/WEB_pa_lapam_2020_Satversmes-tiesas-gada-gramata.pdf, Last accessed 10.01.2022.

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 2020 stood at 1,731, 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. The European Commission's 2021 Rule of Law Report on Portugal finds that there are still concerns with regard to human resources in the judicial system. It also notes that while the system has become more efficient, shortcomings remain in the administrative and tax courts.

Citation:
European Commission (2021), "2021 Rule of Law Report: Country Chapter on the rule of law situation in Portugal," available online at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0723&from=EN

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

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. In a demonstration of judicial independence, the Seoul Administrative Court in December 2020 ruled against the government after Prosecutor General Yoon challenged his suspension by the minister of justice.

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.

With COVID-19 restrictions heading into a third year, the number of complaints and lawsuits brought against the government for violation of individual or collective rights is growing. Businesses forced to close have mostly petitioned the president. Civic groups and churches have filed court cases regarding the legality of government bans on political rallies. Courts have largely ruled in favor of the government and upheld the bans. However, in some instances, courts have

overturned government decisions and allowed rallies to proceed. In October 2021, the Seoul Administrative court noted that a complete ban on outdoor rallies in Seoul was excessive, and pointed to the double standard of allowing in-person church services and other personal events (e.g., weddings). Such rulings suggest that courts are carefully considering the justifiable limitations of constitutional rights.

Citation:
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Song, Jung-a. "South Korea's Megachurches Take on Government in Coronavirus Battle." Financial Times, September 18, 2020. https://www.ft.com/content/db67713b-e1d9-4e84-8a40-e3d0f3e1ed57.

Spain

Score 8

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 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.

During the first nationwide state of alarm, citizens had access to legal recourse, in the sense that they could challenge violations of their fundamental rights and urgent cases could be heard in court. Spanish courts have been quick to react to appeals against measures adopted by the executive, and courts upheld appeals against restrictions placed on fundamental rights, for example by allowing demonstrations to take place. Regional high courts across the country overturned restrictions implemented by autonomous communities and local administrations on the basis that only the central government could restrict fundamental rights (e.g., freedom of movement) under the constitutional authority of a state of alarm.

The politically fragmented parliament remained unsuccessful in mustering the three-fifths majority necessary to appoint new members to the General Council of the Judiciary – an autonomous body composed of judges and other jurists, which aims to guarantee the independence of the judges. The incumbent council continued to operate on an interim basis at the end of 2021, raising concerns about the legitimacy of its judicial appointments and other decisions.

The 2021 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 2021 EU Justice Scoreboard also shows that

Spain's public increasingly perceives courts and judges as lacking independence. The main reasons given by members of the general public for this relate to perceived interference or pressure by the government and politicians.

However, there were also some improvements in this area.

In March 2021, a new statute for lawyers was approved that protects their independence. The statute provides that chambers of lawyers shall be democratic, autonomous and transparent. Under the new statute, chambers are obliged to publicize their services online. It also sets provisions relating to the right to training and the promotion of gender equality in the legal profession.
In March 2021 the parliament adopted a new law which reinforces provisions on data protection, setting the frequency of payment in certain autonomous communities that have not taken over powers in the management of the justice system, and establishing the creation of the National Council for Free Legal Aid.

The government has also continued in its efforts to increase the efficiency of the justice system. In October 2021, the government approved the preliminary Draft Law on Digital Efficiency of the Public Justice Service, which will enhance legal provisions relating to data management, and allow for interoperability of applications within the justice system.

Finally, the judges had an active role in 2020 – 2021 in reviewing the measures adopted by national and regional governments to manage the pandemic.

Citation:
EC(2021), "EU Justice Scoreboard"
https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2021.pdf

EC (2021) The rule of law situation in the European Union, COM/2021/700 final - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0700

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.

After the Supreme Court decision declared the first Johnson government's attempt to prorogue Parliament in 2019 illegal, the new government questioned the existing balance of judicial and parliamentary powers, which in their view had become distorted over the previous decade. Attorney General Suella Braverman argued that to restore the supremacy of Parliament, courts should no longer be able to question primary legislation enacted by Parliament or interfere in parliamentary proceedings. The proposed Judicial Review and Courts Bill has met much criticism, however, with a cross-party group of members of parliament and peers, but also Conservative MP David Davis saying it could endanger government accountability and should therefore be dropped.

Citation:
https://researchbriefings.files.parliament.uk/documents/CBP-9006/CBP-9006.pdf
https://www.gov.uk/government/speeches/judicial-review-trends-and-forecasts-2021-accountability-and-the-constitution
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Cyprus

Score 7

The Administrative Court, which was established in 2016, contributed to somewhat speeding up the administration of justice, but failed to meet critical challenges. A Supreme Court 2021 study showed that backlogs (cases older than two years) counted for 58% of the total cases in trial courts; in appeal courts the rate was 63% for civil law and 44% for administrative law.

Studies, proposals, plans and actions recently have taken attempted to shorten delays in proceedings. Meanwhile, an upgrading of material infrastructure has started, e-

justice is making its first steps, a school for judges was established by law in 2020 and new rules of procedure are awaiting a parliamentary vote. However, the major issue is a long-awaited vote in parliament on critical reforms.

A survey of lawyers identifies problems in the judicial system and questions the judiciary's integrity. Since late 2018, claims of nepotism, and links between justices' families and leading law firms have been raised. However, in its compliance report, published in November 2020, GRECO concludes that all of its 2016 recommendations for the judiciary were satisfactorily implemented.

Without a vote on and the implementation of reforms, timely judicial review remains highly problematic. Public authorities feel free to violate the law, since justice is applied belatedly.

Citation:

1. http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/ΕΚΘΕΣΗ ΚΑΘΥΣΤΕΡΗΜΕΝΕΣ ΥΠΟΘΕΣΕΙΣ (BACKLOG) - Γ. ΕΡΩΤΟΚΡΙΤΟΥ.pdf
2. GRECO – Cyprus - Fourth Evaluation Report Corruption prevention in respect of members of parliament, judges and prosecutors November 2020 https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a06389
3. Most lawyers doubt impartiality of judges, Cyprus Mail, 16 December 2021, https://cyprus-mail.com/2021/12/16/most-lawyers-doubt-impartiality-of-judges/

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. The EU barometer has noted important improvements with respect to judicial independence in Malta through reforms enacted by the government between 1920 and 1921. 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, the vast majority of these have dealt with pre-1979 legislation.

The role of the Office of the Attorney General, which unlike in other several EU member states has never been a political office, underwent reform in 2019. 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. A new state advocate has been appointed under the new legislation after being unanimously recommended by the appointments commission following a public call. These reforms are in line with the recommendations of the Venice Commission. The European Commission 2021 Rule of Law report on Malta, however, stated that "the removal of the attorney general can be carried out by the president of Malta following a resolution adopted by a two-thirds majority in parliament. Similar changes have been introduced for the State Advocate In its October 2020 Opinion, the Venice Commission recommended that an expert body should decide on the grounds for removal, or that an appeal to the Constitutional Court should be possible against a decision of a parliamentary committee, before the plenary of parliament takes the final decision on the removal."

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 2021 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 remains high. The report emphasized the lack of internet-based tools for legal-rights education, and information for children. Information for the eligibility of legal aid has been made more transparent by a new IT system. In a survey, nearly 70% of the public and 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 colored by smallness. There is general agreement among international bodies that the judiciary is fairly independent and efficient and provides strong protection of property rights. 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 and judges must enforce more discipline.

Citation:
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Aquilina Kevin The State Advocate Bill No 83 of 2019 OLJ Online Law Journal http://lawjournal.ghsl.org/viewer/263/download.pdf

Slovenia

Score 7

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 limitation of the right to assembly and protest, and the right to free movement during the COVID-19 epidemic. However, the lower courts have sometimes been criticized for letting influential people off the hook.

In January 2020, parliament passed a law amending the Classified Information Act, which restricts access rights for deputy ombudsmen. They can no longer fulfill their obligations without restrictions. At the same time, the Union for Civil Liberties reports that prosecutors and courts frequently withhold information contrary to the provisions of the Access to Public Information Act.

Citation:
ENNHRI, The rule of law in the European Union Reports from National Human Rights Institutions, p. 203
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Ottavio Marzocchi 2021: The situation of Democracy, the Rule of Law andFundamental Rights in Slovenia. Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE 690.410
https://www.europarl.europa.eu/cmsdata/231906/SLOVENIA%20IDA%20DRFMG.up date.pdf

Civil Liberties Union for Europe 2021: EU 2020: Demanding on Democracy. Country & Trend Reports on Democratic
Records by Civil Liberties Organisations Across the European Union. https://dq4n3btxmr8c9.cloudfront.net/files/AuYJXv/Report_Liberties_EU2020.pdf

Iceland

Score 6

Iceland's courts are not generally subject to pressure from either the government or powerful groups and individuals. The jurisdiction of the Supreme Court to rule on whether the government and public administration have conformed to the law is beyond question. According to opinion polls, public 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%. It remained near that level in 2021 at 46%.

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, have maintained control over the Ministry of Justice for 85 out of the 94 years between 1927 and 2021.

In 2017, a sitting Supreme Court justice sued a former justice for libel in a case that awaits a verdict by the Supreme Court. The plaintiff, then chief justice, lost his case at the Supreme Court in 2021. Then, in 2019, the former justice sued another sitting justice over a private land dispute, a case that is still pending. Disputes among justices do not inspire confidence and trust, least of all when they trade accusations of illegal behavior.

Citation:
Gallup (2022), Traust til stofnana (Trust in Institutions), https://www.gallup.is/nidurstodur/thjodarpuls/traust-til-stofnana/. Accessed 3 February 2022.

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

Japan

Score 6

Courts are formally independent of governmental 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 the court is careful to come in direct conflict with the government so as to avoid unwanted political attention. Perhaps because of this, the Supreme Court engages only in judicial review of specific cases, and does not perform a general review of laws or regulations.

The conventional view is that courts tend to treat government decisions quite leniently. This is not to suggest that the future Japanese government might curtail the

freedom of the courts if they decide in a way that disagrees with the government. Indeed, some of the recent cases suggest that the court is taking positions that are not in agreement with the government. The evidence is thus more mixed.

Netherlands

Score 6

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 one is barred from judging parliamentary laws in terms of their conformity to the constitution. This is supposed to be a task for parliament itself, especially the Senate as a chamber of deliberation and reflection. Partially making up for this lack of a constitutional conformity review is the fact that parliament is supposed to check that new legislation conforms with EU and other international law to which the country is signatory. However, this task is often neglected or, given the political mood over the last decade, deliberately disparaged; this has helped prompt strong criticism of the quality of parliamentary legislative work.

Offering further testimony to the fact the Dutch governmental system is not about the separation of powers, but rather about mutual checks and balances between the three branches of government, is the fact that the intensity of judicial review of executive actions has peaked since 2015. This attracted international attention when a Dutch appeals court upheld a landmark climate change ruling, confirmed in a Supreme Court verdict in 2019, instructing the Rutte government to raise its greenhouse-gas reduction goal of 17% to at least 25%. Meanwhile in 2019, another such Supreme Court ruling ordered the government to tighten its nitrogen emission rules, leading to an immediate cessation in the issuance of many new licenses for farming, road construction and housing construction activities. Even the private sector has not escaped the larger scope of judicial review: In May 2021, Shell was legally obliged to halve its CO2 emission in the next nine years. The ensuing deep policy paralysis still awaits a political settlement even after the new coalition agreement of December 2021. These events have initiated a new debate on the proper relations between politics/policy and the judiciary/legal system; some believe that legal activism (or even dikastocracy) is infringing the primacy of politics and its sovereignty. This offers further evidence of the practice of checks and balances; the judiciary itself came under increasing political and civil society scrutiny, both with regard to the degree to which it is truly independent of politics and in its internal functioning.

In 2017, a deputy minister of legal affairs openly admitted that he had reduced the provision of state-supported legal assistance (fees for pro deo social lawyers) to ordinary citizens in order to achieve more punitive court sentences. Only the new coalition agreement of December 2021 turned this decision around, by providing more state resources to social lawyers. And in the context of anti-drugs and crime-control policy, police, mayors and fiscal authorities often “harass” suspects rather

than initiating legal procedures, which are perceived as a time-consuming nuisance with zero practical impact. 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 striking mega-deals (such as fines) with corporations and banks, which in light of a neoliberal efficiency analysis are presumably deemed more efficient than conducting full-fledged trials responding to 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 hampered its proper functioning.

Whereas the Supreme Court is part of the judiciary and is supposedly "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 have not to date been 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 (uitvoering) and law enforcement (handhaving) can offer sound advice to the government. The ruling on climate goals and nitrogen emissions appear to support this evaluation. However, the child benefits scandal and other cases involving illegal data collection and sharing about citizen behavior demonstrate that the judiciary often, due to executive organizations' (like the tax authorities, or the Integration and Naturalization Service (IND)) willful or practically incomplete disclosure of information, lacks detailed information about implementation practices. Regarding the childcare benefits affair, the Administrative Court's highest judge recently apologized that the courts had stuck to a strict law enforcement "groove" far too long, attributing this state of affairs to a "political climate" of pressing for "zero tolerance" and "strict, stricter, strictest." In addition, fragmented legislation – for example, citizens had to appeal consecutive and interdependent tax decisions one by one – hampered judges' ability to gain a clear overall view of the situation, the judge

added. The Supreme Court was also charged with making rulings that were too "executive friendly" when dealing with information from refugees and foreigners, for politically inspired reasons. However, new EU directives have been able to offer more leverage to lower court judges.

Citation:
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NRC-H, Sillevis Smitt, 22 June 2021, Vreemdelingenrechters zoeken steun tegen strenge Raad van State

NRC-H, Jensma, 2 October 2021. Het is tijd om aan rechten als objectieve wetenschap te gaan twijfelen.

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Slovakia

Score 6

The Slovak court system has for long suffered from low-quality decisions, a high backlog of cases, rampant corruption and repeated government intervention. As it has turned out in the proceedings, high-profile judges and prosecutors have been involved in the criminal network of Marian Kočner, the man who is accused of standing behind the murder of Kuciak and Kušnírová. As a result, the lack of Slovak citizens in the judicial system has been low.

Judicial reform has been a major issue in the 2020 election battle and has featured prominently in the government manifesto of the new center-right government. Already at the end of 2020, the government adopted a comprehensive judicial reform prepared by Minister of Justice Mária Kolíková (Za ľudí – For the People) (European Commission 2020, 2021). The reform has included a reform of the Judicial Council, the establishment of a new, Supreme Administrative Court, property checks of justices, an age cap for justices, changes in the appointment of Constitutional Court justices as well as changes in the territorial layout of district and regional appeal courts. However, the implementation of these reforms has faced

resistance not only by the “old guard,” that is, those justices and prosecutors most affected by such reforms. The originally planned reduction in the number of district courts, which aimed at weakening long-established ties between justices, politicians, oligarchs and organized crimes, has been blocked by Sme-Rodina. Maroš Žilinka, the new prosecutor general appointed in December 2020, has taken a number of dubious decisions. In particular, he has shielded the well-connected former director of the Slovak Intelligence Service and four other high-profile individuals against corruption charges (Ovádek 2021).

During the COVID-19 pandemic, the courts have remained operational. The Constitutional Court found the government’s declaration of a state of crisis in October 2020 constitutional, but has declared individual government measures unconstitutional

Citation:
European Commission (2020): 2020 Rule of Law Report. Country Chapter on the rule of law situation in Slovakia. SWD(2020) 324 final, Brussels (https://ec.europa.eu/info/sites/default/files/sk_rol_country_chapter.pdf).

European Commission (2021): 2021 Rule of Law Report. Country Chapter on the rule of law situation in Slovakia. SWD(2021) 727 final, Brussels (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0727&from=EN).

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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.

Since 2015, judges have become formally more independent from prosecutors and investigators in the Supreme Judicial Council, although the prosecutor general has had informal leverage to influence Council decisions through different standing committees and Council members from the investigation.

However, despite the formal independence of various committees within the Council, its work remains politicized and its decisions are influenced by the political establishment. The office of the prosecutor general also lacks transparency and accountability. The Council was heavily criticized in 2019 for the highly opaque and non-competitive manner in which it went about appointing a new prosecutor general, which met with public protest.

Despite the fact that judges who decide in favor of the government are promoted more quickly than judges who act independently, the latter continue to act with

integrity in observation of the law and legal procedures. However, the judiciary's ability to act as a check on the executive has been compromised in many ways.

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 Sectretariá 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.

Judicial reform is a key element of President López Obrador's agenda. However, the opposition usually criticizes all efforts as a strategy to undermine judicial independence. Critics from the opposition claim that judicial independence has been undermined, since the power of the chief justice, Arturo Zaldívar, has been increased considerably, and Zaldívar is seen as an ally of President López Obrador.

Citation:
EFE México (2018). Sistema penal acusatorio en México, avance histórico frenado por corrupción. https://www.efe.com/efe/usa/mexico/sistema-penal-acusatorio-en-mexico-avance-historico-frenado-por-corrupcion/50000100-3498116
Mexico Evalua 2019: Diagnostico inaugural, https://www.mexicoevalua.org/diagnostico-inaugural/

Hungary

Score 4

The Hungarian judiciary performs well in terms of the length of proceedings and has a high level of digitalization. However, its independence has drastically declined under the Orbán governments (European Commission 2021). 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. Likewise, Péter Polt, the Chief Public Prosecutor, a former Fidesz politician, has persistently refrained from investigating the corrupt practices of prominent Fidesz oligarchs. As a result of the declining independence and quality of the Hungarian judiciary, trust in the Hungarian legal system among the general public has dropped over time. 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.

During the first lockdown, proceedings at ordinary courts were suspended, officially due to fears of spreading the virus. This also meant that ordinary people were no longer able to initiate cases that could get to the Constitutional Court. Under these circumstances, except for some Fidesz-controlled bodies, only one-quarter of members of parliament were able to call on the Constitutional Court, which would have required the far-right and the left to act together. The Constitutional Court has refused many requests for constitutional reviews and has not dared to challenge the Orbán government's power-grab during the COVID-19 pandemic. In October 2020, the government consolidated its control over the Kúria, as the Fidesz supermajority in parliament elected Zsolt András Varga (a member of the Constitutional Court, who does not have any experience working as an ordinary judge) as its new president, despite the wide and angry reactions this elicited among judges and their professional organizations, and despite the fact that the National Judicial Council has issued a negative opinion.

Citation:
European Commission (2021): 2021 Rule of Law Report. Country Chapter on the rule of law situation in Hungary. SWD(2021) 714 final, Brussels (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0714&from=EN).

Poland

Score 4

Polish courts are relatively well-financed and adequately staffed, but have increasingly come under government influence under the PiS government (Baczyńska 2021). The takeover of the Constitutional Tribunal in the PiS government's first year in office has been followed by a series of reforms that have limited the independence of the National Council of the Judiciary, the Supreme

Court and ordinary courts, and have been pushed through despite massive domestic and international protests. The laws have given the minister of justice, as well as the general prosecutor, far-reaching powers to appoint and dismiss court presidents and justices. Filled with government-friendly judges, the Constitutional Tribunal did not question the weak justification and limited specification of the government's emergency measures during the COVID-19 pandemic, which did not meet constitutional requirements (Jaraczewski 2020). Meanwhile, the Supreme Court was quick to declare the 2020 presidential elections valid, despite almost 6,000 complaints regarding difficulties in voter registration, on-time ballot deliveries and voting abroad. The struggle between the Polish government and the European Union over judicial reform has continued. Poland has been urged to abolish the newly created Disciplinary Chamber of the Supreme Court as well as the January 2020 "muzzle law," which allowed judges who sent preliminary references to the Court of Justice of the European Union to be punished. In autumn 2021, the Court of Justice of the European Union sued the Polish government, arguing that Poland should pay a fine of €1 million per day because it had not dissolved the Disciplinary Chamber yet.

Citation:
Baczyńska, B. (2021): Zwischen Verfassung und Präsidentenwillen. Der Umbau des Justizsystems in Polen, in: Polen-Analysen Nr. 283, 2-8 (https://www.laender-analysen.de/polen-analysen/283/zwischen-verfassung-und-praesidentenwillen-der-umbau-des-justizsystems-in-polen/).

Jaraczewski, J. (2020): An Emergency By Any Other Name? Measures Against the COVID-19 Pandemic in Poland, in: Verfassungsblog, April 24 (https://verfassungsblog.de/an-emergency-by-any-other-namemeasures-against-the-covid-19-pandemic-in-poland/).

Romania

Score 4

Both domestic and international (European) courts have weighed in on Romanian legislative processes through 2020 and 2021, in addition to regular activities by the Romanian Constitutional Court to review legislation and ensure compliance with existing legal frameworks. In 2017–19, the governing majority amended the laws on the status of judges and prosecutors, judicial organization, and the self-governing body of the judiciary (Superior Council of Magistracy). This reform created, among other things, the special prosecutorial Section for the Investigation of Offenses in the Judiciary (SIIJ).

The European Union monitors judicial reforms and anti-corruption policies in Romania under the Cooperation and Verification Mechanism (CVM) in order to check whether Romania complies with commitments agreed in its EU Accession Treaty from 2004. Driven by the interest in ending the CVM, several governments have sought to support an independent judiciary and to respect judicial review procedures.

The European Commission has set several objectives that need to be met for the CVM to be closed. These include dismantling the SIIJ, disciplinary, civil and

criminal liability regimes for judges and prosecutors, and increasing accountability over the appointment and dismissal of judicial inspection management and senior prosecutors.

The dismantling of the SIIJ is of particular concern, as it has been observed to impede the independence of the judiciary by placing undue pressure on prosecutors, which can intervene with high-level corruption cases. While the justice minister drafted a proposal to disband SIIJ in 2020, parliament later rejected the draft initiative introduced by a group of members of parliament to dismantle the section. In early 2021, the government drafted a new law to abolish the SIIJ, which was shared with the Superior Council of Magistrates (SCM) for its opinion. The SCM issued a negative opinion, arguing it needs additional guarantees to protect magistrates from potentially abusive corruption investigations. However, the government did not follow on the SCM's opinion and adopted the draft law on 18 February 2021 through normal process. During the Chamber of Deputies reviews in March, provisions were added that were meant to "protect magistrates against abusive corruption investigations," proposing that a request for approval should first pass through the SCM. This additional step brought criticism from civil society and the judiciary, and from the SCM, saying that it equated to new a form of immunity and could limit the accountability of magistrates. The draft law was sent to the Venice Commission for review and the SIIJ remains in effect at the end of 2021. The abolishment of the SIIJ in order to increase the protection of prosecutorial and judicial independence would be a positive advancement in ensuring independent and thorough judicial review in Romania.

In May 2021, the Court of Justice of the European Union (CJEU) ruled that the CVM objectives have direct effect, and are binding on government and courts. These rulings were opposed by the Romanian Constitutional Court (RCC) in June 2021. The RCC claimed that EU law does not have primacy over the Romanian constitution. Thus, domestic courts would not be entitled to disregard laws they considered to be in violation of EU law or to check whether laws declared as constitutional would conform to EU law. According to the RCC, courts would not have to respect and apply CVM obligations, and the SIIJ would conform to Romania's constitutional rule of law provisions. Reacting to this decision, in December 2021, the CJEU reaffirmed the primacy of EU law over national law, including national constitutional law.

Citation:
European Commission (2021): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism. COM(2021) 370 final, Brussels (https://ec.europa.eu/info/files/progress-report-romania-2019-com-2019-393_en).

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Tănăsescu, Elena-Simina; Selejan-Gutan, Bianca: A Tale of Primacy: The ECJ Ruling on Judicial Independence in Romania, VerfBlog, 2021/6/02, https://verfassungsblog.de/a-tale-of-primacy/, DOI: 10.17176/20210602-123929-0.

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Turkey

Score 3

Several articles in the Turkish constitution ensure that the government and public administration act in accordance with legal provisions and those citizens are protected from the state. Article 36 guarantees citizens the freedom to claim rights and Article 37 concedes the guarantee of lawful judgment.

However, judicial review has been seriously undermined in line with tightening authoritarianism in recent years. Most notably, the local courts sometimes do not implement the rulings of the Constitutional Court or the European Court of Human Rights, which are legally binding. This tends to occur following pressure placed by political authorities on the judiciary, as in the trials of the prominent political figures such as former CHP vice-chair Enis Berberoğlu and former HDP co-chair Selahattin Demirtaş.

Judicial staffers are still being dismissed or forcibly transferred. This risks engendering widespread self-censorship among judges and prosecutors. This may weaken the judiciary as a whole, while further undermining its independence and the separation of powers. No measures have been 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 have been made to the institution of criminal judges of peace, which risks becoming a parallel system.

There is no human resources strategy in place for the judiciary, which struggles to perform its tasks effectively in the wake of a substantial reduction of 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.

The Judicial Reform Strategy’s effort to improve the quality and the number of staffers has not so far created the intended result. The backlog persists. Large-scale dismissals, including over 3,968 judges and public prosecutors, for being Gülenists has increased the backlog of cases. As of June 2021, a total of 43,372 cases were still pending at the Constitutional Court, while 133,428 cases were pending in front of the Council of State. The Constitutional Court had finalized 257,108 cases out of 295,038 individual applications since September 2012. The number of judges and prosecutors totaled 21,979 in 2020.

Citation:
European Commission. “Turkey Report 2021. Commission Staff Working Document.” October 19, 2021. https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021_en

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.

Formally 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.

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

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 a transparent process.

In the case of the Constitutional Court, 10 magistrates are appointed in the following manner:
a) Three are appointed by the president of the republic.
b) Four are elected by the National Congress. Two are directly appointed by the Senate and two are previously proposed by the Chamber of Deputies for approval or rejection by the Senate. The appointments, or the proposal as the case may be, must be made in a single vote, and require for their approval the favorable vote of two-thirds of the senators or deputies currently in office.
c) Three are elected by the Supreme Court in a secret ballot, to be held in a session specially called for such purpose.
The members of the court serve for a term of nine years and are renewed every three years.

In the case of the Supreme Court, the 21 ministers are appointed by the president of the republic, with the agreement of the Senate. The candidates are approved by two-thirds of the currently serving members in a session specially called for such purpose. The president may only submit to the Senate for approval one person from a list of five proposed by the Supreme Court itself.

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 being very good or fairly good, a share that has gradually increased over the 2016 – 2021 period. Companies' assessments were even more positive.

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.

Luxembourg's constitutional reform calls for the creation of a Supreme Justice Council. This new institution, which will not be a supreme court in the purest sense of the word, is aimed at ensuring the independence of the judiciary and protecting the separation of powers. The council will be composed of six judges, including the

president or another judge of the supreme court, the state prosecutor or another judge of the public prosecutor's office, and the president of the administrative court or another judge of that court. In addition, one lawyer will sit on the council as well as two people nominated by parliament based on their skills and expertise in the field, but who are not directly affiliated with the courts.

Citation:
Sauer, Carola. "Luxembourg's constitutional crescendo: will incremental reforms succeed where overhaul failed?" (28 Occtober 2021). https://constitutionnet.org/news/luxembourgs-constitutional-crescendo-will-incremental-reforms-succeed-where-overhaul-failed. Accessed 14 January 2022.

"Court and tribunals." The Government of Grand Duchy of Luxembourg. https://gouvernement.lu/en/systeme-politique/cours-tribunaux.html. Accessed 14 January 2022.

Loi du 27 juillet 1997 portant organization de la Cour Constitutionnelle.
Loi du 7 novembre 1996 portant organization 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

All judges are formally appointed by a government decision that is made based on a recommendation issued by an autonomous body, the Instillingsrådet. This body is composed of three judges, one lawyer, a legal expert from the public sector and two members who are not from the legal profession. The government almost always follows the recommendations. Supreme Court justices are not considered to be in any way political and their tenure security is 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.

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.

Austria

Score 8

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 is usually 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 (six judges) or one of the two houses of parliament (three judges each). However, importantly, there is no two-thirds majority requirement for the election of candidates in the Nationalrat and Bundesrat, as in many other countries. The president and vice-president of the Constitutional Court are nominated by the federal government.

Members of the Constitutional Court must be completely independent from political parties (under Article 147/4). They are not allowed to represent a political party in parliament nor be an official of a political party. In addition, the constitution allows only highly skilled persons, trained lawyers who have pursued a career in specific legal professions, to be appointed to the court. This is seen as guaranteeing a balanced and professional appointment procedure.

While this regime has worked reasonably well in the past, recently there has been debate about possible improvements in terms of openness and transparency, among other things.

Citation:
Ehs, Tamara, Demokratiepolitische Dimensionen der Verfassungsgerichtsbarkeit: Auswahl- und Bestellmodus der Mitglieder, Sondervotum, Öffentlichkeit, in: Zeitschrift für öffentliches Recht, September 2020, Heft 3, 575-599.

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, based on 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. Moreover, the involvement of both the president and the Senate increases the likelihood of balance in judges' political views and other characteristics. As a result, President Zeman's proposals have remained uncontroversial. This also applies to the appointment of Pavel Šámal, a professor of criminal law and former head of the Supreme Court, to the Constitutional Court in February 2020.

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 Federal Council). 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 elected by a special committee, which consists of nine members: the president of the Supreme Court, two other Supreme Court judges, the minister of justice (who also serves as the chairman) and another minister, two Knesset members, and two representatives of the Chamber of Advocates. Since 2008, a nominated candidate must gain the support of at least seven, instead of five, committee members. This change limited the power of the five non-politicians in the committee, and requires cooperation and compromises within the committee.

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.

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-Shakeds-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). The promotion of a judge from one level to another requires parliamentary approval. Parliamentarians vote on the appointment of every judge, and are not required to justify refusing an appointment. Judges are barred from engaging in political activity.

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 (2020) 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). A total of 19% of Latvian judges reported being subjected to inappropriate pressure, and 11% reported that corruption occurs regularly. Some 43% of judges in Latvia felt that the media has a large impact on their decisions.

Citation:
1. 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/partieslietu-padomi/the-competence-of-the-council-for-the-judiciary-in-appointing-chairs-of-courts-and-intransfer-of-judges-shall-be-expanded-9374?year=2018&, Last accessed: 11.01.2022

2. On Courts (1993) Available (in Latvian): https://likumi.lv/ta/id/62847-par-tiesu-varu, Last accessed: 11.01.2022.

3. ENCJ (2019) Independence and Accountability of the Judiciary: Survey on the independence of Judges, Available at: https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/Reports/Data%20ENCJ%202019%20Survey%20on%20the%20Independence%20of%20judges.pdf, Last accessed: 10.01.2022.

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 Congress, President López Obrador has to date been able to appoint four justices out of 11 justices in total. The opposition has criticized all the appointments, arguing that the candidates were loyal allies of the president, and that this would undermine judicial independence. The four justices appointed by President López Obrador indeed hold veto power, since repealing laws and resolving matters of constitutionality require a supermajority of eight justices.

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?

Netherlands

Score 8

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 lower-level criminal and civil courts, indirect political influence by the executive is possible through the Council for the Judiciary (Raad voor de Rechtspraak). Its members are appointed by the minister for justice and safety; council members choose the administrators and directors (bestuursleden) of lower courts, who in turn provide (or fail to provide) opportunities for individual judges.

The Netherlands' highest court, the Council of State, is subject to relatively strong political influence, mainly expressed through the appointment of former politicians. This may explain why the council sides with government most of the time; as shown in instances such as appeals of the tax authorities' decisions in the childcare benefits scandal, or appeals of decisions made by the Immigration and Naturalization Service in immigration cases. 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). Only Geert Wilders, parliamentarian for the right-wing populist Party for Freedom (PVV), has proposed (in 2011) a reform creating a five-year term instead. At this moment the appointment procedure for High (Supreme) Court judges combines peer- and political selection. A selection committee made up of High Court members draws up a list of six candidates that are recommended to the Parliament's Second House. The House then picks three of them in order of preference and invites the highest-ranking judge for a non-public hearing. If the candidate passes this selection hurdle, the minister of justice proposes him or her for appointment by the government.

Reforms that would limit the influence of the executive and the legislature in the appointment of Supreme Court judges and members of the Council of the Judiciary have not been formally approved. In the case of appointments for lower court judges, the new procedure lends more weight to peer selection by giving local court administrators and sitting judges a stronger voice in selecting additional and new single judges. For the Supreme Court, the selection committee will consist of one member of Parliament (appointed by all other members of parliament), one member of the Supreme Court (appointed by its president), and another legal expert appointed jointly by the parliament and the Hight Court. This tripartite committee would make a binding selection, and the candidate would then be appointed by the government. This reform will require a change of the constitution, and will take several more years to come in force.

of Law Report The rule of law situation in the European Union Brussels, 30 September 2020

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

De Correspondent, Chavannes, 3 March 2021. De benoeming van rechters in Nederland is niet onafhankelijker dan in Polen of Hongarije

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

Mr., 2 March 2021. Rechters krijgen meer zeggenschap over benoeming gerechtsbestuurders

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

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 Removel 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

Portugal

Score 8

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. In November 2021, four new judges were elected, three of whom had been nominated by the PSD and one by the PS. That said, the PS and PSD have in the past voted to appoint 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 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.

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

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 December 2020, a new Supreme Court justice was appointed on the second attempt, as there was no political majority in support of the first attempt in July 2020, as the candidate was coming from academia with no previous experiences in the courts. In November 2021, a new Constitutional Court justice was finally appointed by the National Assembly on the fourth attempt, as the first three candidates narrowly failed to secure the required parliamentary support.

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.

The most important issue related to the appointment of judges in 2021 concerned the election of the president of the Supreme Court. The president of the republic has the right to nominate a candidate for the head of that court; however, the Law on Courts stipulates that he must nominate someone from the circle of candidates who apply to the State Judicial Council (DSV). However, President Milanović proposed Zlata Đurđević, a distinguished professor of criminal procedural law from the University of Zagreb, who did not apply in this manner. As this led to a dispute between President Milanović and the HDZ-controlled government bodies, the Constitutional Court had to rule on all of this. In March, the Constitutional Court ruled that the president of the republic could not voluntarily propose to parliament any candidate for the presidency of the Supreme Court that he wanted, but only one of the candidates who had applied through the DSV. Professor Đurđević subsequently applied in this way, but in June 2021, the parliament rejected her with 81 votes against (76 votes were needed for a majority).
After President Milanović and Prime Minister Plenković finally agreed on a candidate for the president of the Supreme Court in July 2021, Radovan Dobronić was elected to the post in October. Dobronić came to this position as a judge of the Commercial Court, outside the circle of judges of the Supreme Court, and he gained wide popularity in the public when in 2013 he ruled against banks in their dispute with Swiss-franc-denominated account-holders.

Greece

Score 7

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), administrative law court (Symvoulio tis Epikrateias), the audit office, as well as senior prosecutors 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 senior justices (listed above). This arrangement has been criticized by international observers (the European Commission and the Council of Europe) for allowing the government to limit the judiciary’s independence.

In the past, the government used to apply the seniority principle, rather than political criteria, in selecting justices to serve at the highest echelons of the justice system. However, in 2015–2019, the appointment of judges became more politicized,

provoking tensions among judges. After that period, although the government retained the competence to appoint the most senior judges and prosecutors, calmness was more or less restored, as the justices selected for the highest posts were overall respected by their colleagues.

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.

The European Commission's view is available in the latest Rule of Law report for Greece(2021), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0709

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 followed 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 regarding 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 introduced a new bill to establish the Judicial Appointments Commission to replace the JAAB. The new body would 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 was supported by then Minister for Transport Shane Ross, who argued it would help to end "cronyism" in appointments. The bill attracted opposition from

some judges and opposition politicians, who claimed that it may undermine judicial independence. By December 2018, the bill had not yet passed the Seanad. In the committee stage, 191 amendments were tabled to the bill (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.

Under the general scheme of what is now the Judicial Appointments Commission Bill 2020, the nine-member Judicial Appointments Commission would be established to replace the Judicial Appointments Advisory Board (JAAB). The commission would be chaired by the chief justice rather than by a lay chairperson, as had been envisaged in the 2017 bill. A majority of the commission (four out of nine) will be lay members (DOJ, 2020).

While the process of judicial appointments 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.

Controversy enveloped the most recent appointment to the Supreme Court in summer 2020 when a dinner was held in the west of Ireland by the Houses of the Oireachtas Golf Club shortly after the country's pandemic restrictions had been reduced. While no rules were deemed to have been broken, the fallout from the negative coverage of the event saw the resignation of a senior government minister and the country's representative on the European Commission. Justice Séamus Wolfe was in attendance at the dinner and agreed to delay his start date on the court and he donated part of his salary to charity in response to the controversy (McConnell, 2020).

Citation:
Cahillane, L. (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.

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

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

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

McConnell, D. (2020) Daniel McConnell: Have we all got it wrong on Seamus Woulfe? Irish Examiner, 10 November, available at: https://www.irishexaminer.com/opinion/commentanalysis/arid-40079342.html

Slovakia

Score 7

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), until recently 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. 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 new public hearings for candidates attracted a lot of media and public attention, but probably discouraged several qualified candidates from engaging in a candidature. 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. In 2020, one of the judges – Mojmír Mamojka – resigned due to the involvement in the criminal network of businessman Marián Kočner.

Part of the new center-right government's comprehensive judicial reforms have involved changes being made to the appointment process for the CC (Farkašová 2021). First, proposals by the parliament must now be based on a three-fifths or, if not achieved, at least an absolute majority of votes. Second, the president is no longer bound to proposals by the parliament, if the latter fails to propose the required number of candidates within specified time limits. These amendments have aimed at limiting the influence of the governing coalition on the composition of the CC by introducing special majority requirements and at strengthening the incentives for parliament to agree on a sufficient number of proposals.

Citation:
Farkašová, S. (2021): Constitutional aspects of the current reform of the selecting constitutional judges in the Slovak Republic and the comparative perspectives in Europe, in: Tribuna Juridica 11(2): 150-173 (https://ideas.repec.org/a/asr/journl/v11y2021i2p150-173.html).

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

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.

Given criticisms of the courts during the course of the Brexit process and especially after the Supreme Court judgment on the prorogation of Parliament in 2019, and given government attempts to restrict judicial review as well as the role of the prime minister in this process, the continued independence of judicial appointment from political interference will be important. However, a public outcry would be expected if independence were seen to be seriously threated.

Citation:
https://commonslibrary.parliament.uk/decision-of-the-supreme-court-on-the-prorogation-of-parliament/

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.

During his tenure, President Trump appointed and the Senate confirmed three Supreme Court justices. In 2021, during his first year in office, President Biden saw "more judges confirmed to the federal bench than any first-year president since Ronald Reagan, and experts say a growing list of judicial vacancies could allow him to appoint even more in 2022" (Raymond, 2021). After Justice Breyer announced his retirement, Biden promised to nominate an African American woman to the Supreme Court.

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 who appointed them often decades earlier. Within the Senate, voting on the confirmation of Supreme Court judges is a purely partisan manner.

Citation:
Raymond, Nate. 2021. "Biden finishes 2021 with most confirmed judicial picks since Reagan," Reuters, December 28. https://www.reuters.com/legal/government/biden-finishes-2021-with-most-confirmed-judicial-picks-since-reagan-2021-12-28/

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

The current process for appointing Supreme Court of Canada judges has been in place since 2016. Qualified candidates apply through the Office of the Commissioner for Federal Judicial Affairs. An independent Advisory Board, composed of three members appointed by the Minister of Justice and four members appointed by legal organizations, evaluates the applications and submits a short-list of the best candidates to the prime minister. The Advisory Board also produces a public report on how it chose the names on the short-list. The prime minister then selects a nominee. The Minister of Justice and the Chair of the Advisory Board appear before the House of Commons Standing Committee on Justice and Human Rights to explain the decision. The nominee participates in a question and answer period with Members of Parliament and Senators, only for information purposes. The prime minister ultimately makes the decision on appointments to the Supreme Court of Canada, as the approval of neither the House of Commons nor the Senate is required. The appointment process is covered by the media. Although the appointment process is sometimes criticized for not involving the consent of either of the two federal legislative bodies or the provinces, appointments of individual Supreme Court of Canada judges are rarely controversial and most often widely praised.

Citation:
Robin MacKay and Maxime Charron-Tousignant, “The Role of the Supreme Court of Canada. Membership and the Nomination Process,” HillNotes, Ottawa: Library of Parliament, 14 June 2021. https://hillnotes.ca/2021/06/14/the-role-of-the-supreme-court-of-canada-membership-and-the-nomination-process/

Cyprus

Score 6

The judicial system functions on the basis of the 1960 constitution, albeit with modifications to reflect the circumstances prevailing after the collapse of bicommunal 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. In response to GRECO’s 2016

recommendations, a draft law includes provisions that deepen and extend participation in the SCJ. Rules of procedure and criteria for selecting judges were adopted in late 2019 and posted on the Supreme Court's web portal.

Reforms awaiting parliamentary approval would change the structure of the courts and number of justices, and create the Supreme Constitutional Court and Supreme Appellant Court. These courts will assume the competences of the current Supreme Court.

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

Citation:
1. GRECO – Cyprus – Fourth Evaluation Report Corruption prevention in respect of members of parliament, judges and prosecutors November 2020 https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a06389

Spain

Score 6

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. The incumbent council continued to operate on an interim basis at the end of 2021, raising concerns about the legitimacy of its judicial appointments and other decisions.

In October 2021, Spain's ruling Socialist party reached a deal with the main opposition People's Party to renew the line-up of the Constitutional Court, paving the way to ending a years-long stalemate. The approval of the judges for the 12-strong top court, a third of whom had reached the end of their nine-year term over the past two years, requires a three-fifths majority in parliament. However, the examination of some of the candidates in the Congress of Deputies was accompanied by controversy, raising concerns about their ideological affiliation with political parties.

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:
Euronews, Brussels warns Spain over judicial appointments standoff, 22/09/2021 – https://www.euronews.com/2021/09/20/brussels-warns-spain-over-judicial-appointments-standoff
EC (2021) The rule of law situation in the European Union, COM/2021/700 final - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0700

Switzerland

Score 6

The judges of the Federal Supreme Court are elected for a period of six years in a joint session of both chambers of parliament, with approval requiring a majority of those voting. A parliamentary commission prepares the elections by screening the candidates. Unwritten rules stipulate a nearly proportional representation of the political parties then in parliament. By tradition, judges voluntarily pay part of their salary to the political party to which they are affiliated. This is considered a tax on their salary, which they would not have without the support of their party. In 2017, a committee of the Council of Europe criticized this arrangement and recommended: "the system should be backed up by safeguards to ensure the quality and objectivity of the recruitment of federal judges. Once judges have been elected it is important to sever the ties with the political powers by doing away with the practice whereby judges pay part of their salary to their party" (GRECO 2017:4).

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

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

In 2021, a popular initiative aiming to have federal judges selected by lottery rather than through election in parliament was rejected in a popular vote.

Also in 2021, parliament started to discuss the legitimacy of contributions of federal judges, which they have to make to the parties that nominated them.

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, GERCO: 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

Because there are no special majority requirements specified in the procedures for appointing Constitutional Court justices in Bulgaria, appointments are often a political manner. 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. The most recent election was among 10 candidates.

One of the challenges in 2021 was the uncertainty surrounding the election of the individual to act as chair of the Supreme Court of Cassation by the existing Council, whose members include individuals who are not judges and has a record of engaging in suspicious activity. On 14 January 2022, after six hours of a publicly broadcasted hearing, a female judge with an impeccable reputation was elected to the post. As the first woman in the country to hold this position, her election bodes well for improvements in the appointment and career prospects of junior judges.

Estonia

Score 5

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.

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, Nicolas Sarkozy and François Hollande) are de jure members of the council but have decided not to 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 the 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 only 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.

Malta

Score 5

Since 2020, Superior Court judges and magistrates are appointed by the president, acting in accordance with the advice of the Judicial Appointments Committee (JAC). This has contributed to strengthening judicial independence. The new system of judicial appointments, adopted in July 2020, was assessed by the Venice Commission in its opinion of October 2020. The Venice Commission welcomed the reform, positively assessing the new composition of the JAC, the publication of judicial vacancies, the JAC's direct proposals regarding judicial candidates to the president of Malta, the submission of detailed reports on candidates by the JAC and the presentation by the JAC of the three most suitable candidates for appointments.

The independence of the judiciary is further safeguarded through a number of constitutional provisions, including the security of tenure of judges and magistrates and the inviolability of their salaries.

The number of female judges in the court of first instance has increased substantially, but the number of female judges still remains low for the court of second instance.

The reform of the procedure for dismissing magistrates and judges has also strengthened judicial independence. Under the new system, the dismissal procedure has been placed under the remit of the Commission for the Administration of Justice, which is largely composed of members of the judiciary, as opposed to the previous system where parliament was in charge of the procedure. In its October 2020 opinion, the Venice Commission considered the reform to be generally in line with existing standards.

Steps have been taken to depoliticize the appointment of the chief justice. The chief justice is appointed by a two-thirds majority of all members of parliament.
Concerns have been raised about the significant number of specialist tribunals that continue to operate, with many of these involving executive power.

Citation:
European Council calls on Malta to improve transparency of Judicial Appointments. Independent 10/02/14
http://www.timesofmalta.com/articles/view/20150517/local/government-ignored-bonello-commission-recommendations-on-appointments.568405
http://www.timesofmalta.com/articles/view/20150819/local/minister-warns-against-reforming-judicial-appointments-system-for-the.581166
http://www.timesofmalta.com/articles/view/20150518/local/bonnici-we-will-reform-way-judiciary-appointed.568596
Judicial appointments and the executive: Government cannot continue to delay reform Independent 2/10/2015
http://www.timesofmalta.com/articles/view/20160225/local/judicial-commission-to-vet-nominees-to-bench.603674
http://www.timesofmalta.com/articles/view/20160718/local/historic-constitutional-amendments-on-judicial-appointments-discipline.619296
http://www.timesofmalta.com/articles/view/20160720/local/judiciary-welcomes-judicial-reform-legislation.619498
Interview with Professor Kevin Aquilina
Malta Independent 20/01/19 Government will have no say in judicial appointments in upcoming reform – Owen Bonnici
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 11/02/20 Judiciary reform on the way
https://www.maltatoday.com.mt/news/court_and_police/101443/chamber_of_advocates_welcomes_appointment_of_new_chief_justice#.YdgMDtSEApg

Romania

Score 5

There have been no substantial changes in the legal framework with respect to the appointment of justices since the regressive judicial reform packages of 2018 and 2019. Accordingly, two main themes arise when assessing this topic: inefficiency in the appointment process; and reduced transparency and accountability, perceived or otherwise, in the appointment of prosecutors.

In terms of appointments in 2020 and 2021, the Romanian justice system continues to struggle under a human resources deficit with 10% of judicial and 16% of prosecutor positions vacant as of December 2020. These vacancies can partially be explained by the fact that there were no new competitions to recruit magistrates in 2020 following a Constitutional Court ruling that declared the requirement for the Superior Council of Magistrates (SCM) to approve regulations of the organization and conduct of competitions for admission to the judiciary unconstitutional, creating a legal void which prevented the implementation of new processes. However, as part

of a package of justice reforms proposed by the government in September 2020, in January 2021 the government proposed two accelerated, more specific legislative amendments, which outlined temporary measures on admission to the judiciary. The amendments were adopted by parliament on 3 February 2021, though some provisions were found to be unconstitutional by the Constitutional Court on 17 March 2021. The amendments will allow for competitions to take place in 2021 and 2022, easing the human resources deficit.

With respect to high-level appointments, in early 2020, the justice minister increased transparency in selection procedures to appoint new leadership to the country's prosecution services (DNA), in addition to a new prosecutor general and a chief prosecutor for the Directorate for the Investigation of Organized Crime and Terrorism (DIICOT). While the new DNA chief was appointed following a positive opinion from the Superior Council of Magistrates (SCM), both the prosecutor general and the chief prosecutor for the DIICOT were appointed following negative opinions. In response, the justice minister stressed the advisory nature of the SCM, noting that their opinions were not binding on government. As a result, the Section for Prosecutors of the SCM reported that they were subject to pressure from the contentious special prosecution unit for investigating crimes within the judicial system (SIIJ), which has been criticized for pressuring judges and prosecutors to change the course of some high-level corruption cases. These challenges were in addition to instances in 2020 where the minister of justice disregarded the opinion of the SCM concerning deputy management posts. The same year, the DIICOT appointee resigned after her husband was convicted of illegally accessing a computer system.

By September 2021, the Justice Ministry had announced that 11 bids had been filed for vacant management positions at the Attorney General's Office, DNA and DIICOT. The selection process took place at the justice minister's headquarters, with the list of prosecutors who met the requirements for the selection process and the candidates who were invited to the interview process headed by the justice minister shared publicly.

Additionally, the high-profile rulings of both the Court of Justice of the European Union (CJEU 2021) and the European Court of Human Rights (2020) further highlights the inconsistencies in the appointment process in Romania. The 2021 CJEU ruling considered provisions in Romania's controversial justice laws in light of Articles 2 and 19(1) of the Treaty of the European Union, and of the Cooperation and Verification Mechanism decision, in particular with regards to the SIIJ and the interim appointments to management positions within the judicial inspectorate, as well as the personal liability of judges as a result of judicial error. The court recalled that an EU member state cannot amend its legislation, particularly as it regards the organization of justice in such a way as to bring about a reduction in the protection of the value of the rule of law. This has increased pressure on Romania to amend its controversial judicial reforms.

The 2020 European Court of Human Rights also found Romania in violation of European convention when it concluded that Romania had violated the right to a fair trial and freedom of expression enshrined in the European Convention of Human Rights following 2018 dismissal of chief DNA prosecutor Laura Kovesi. The ruling drew attention to the growing importance attached to the intervention of an authority independent of the executive and the legislative branch in respect of decisions affecting the appointment and dismissal of prosecutors.

Citation:
European Commission (2021): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism. COM(2021) 370 final, Brussels (https://ec.europa.eu/info/files/progress-report-romania-2019-com-2019-393_en).

Iceland

Score 3

To date, all Supreme Court and district court judges have been appointed by the ministers of justice or the interior, without any involvement from or oversight by parliament or any other public agency. However, in recent years, 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 has been appointed case by case 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 one instance, the prime minister whose responsibility it was to appoint a new Supreme Court justice (because the minister of justice was embroiled in a legal battle concerning an earlier judicial appointment) received a letter of recommendation for one of the applicants from a large group of lawyers, a letter that could be traced to the successful applicant's own personal computer. Among current Supreme Court justices, three are full professors of law at the University of Iceland and one is an associate professor.

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 disappointed applicants sued and were awarded damages by the Supreme Court. The Supreme Court ruled that the minister of justice broke the law when she bypassed the recommendations of the review committee. In 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). The minister resigned.

For all but 10 years between 1927 and 2021, 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).

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

GRECO (2022), Reports on Iceland, https://www.coe.int/en/web/greco/home. Accessed 7 February 2022.

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"Letter of support composed in the office of Jón Steinar" (Stuðningsbréf samið á skrifstofu Jóns Steinars), DV 25 September 2004, https://timarit.is/files/51173190. Accessed 4 February 2022.

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. The appointment of Constitutional Court judges does not take place based on 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 rest of the seats are appointed by the minister of justice and the deputy minister, who is directly connected to the president. The HSK does not offer adequate safeguards for the independence of the judiciary, and indeed considerably increases political influence over the judiciary.

Ahmet Şık, an opposition member of parliament, disclosed the list of 90 prosecutors and judges who have worked within the ranks of the AKP. Each year, large-scale transfers occur among judges and prosecutors. With the main decree in 2020 alone, a total of 4,726 judges and prosecutors were relocated. The government often takes this occasion to punish judges and prosecutors who resist political pressures.

Citation:
European Commission. "Turkey Report 2021. Commission Staff Working Document." October 19, 2021. https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021_en

Cumhuriyet. "Hâkim ve savcı olarak atanan AKP'lilerin listesi ortaya çıktı," February 18, 2019. https://www.cumhuriyet.com.tr/haber/hakim-ve-savci-olarak-atanan-akplilerin-listesi-ortaya-cikti-1254227

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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 had complete control over the appointment of Constitutional Court justices during the 2018–2022 term. In 2020 and 2021, parliament elected two new members of the Constitutional Court, both close to Fidesz, one as a replacement for Zsolt András Varga, who, in a controversial move, had been installed as president of the Kúria (Supreme Court).

Japan

Score 2

According to the constitution, Supreme Court justices are appointed by the cabinet, or in the case of the chief justice, named by the cabinet and appointed by the emperor. However, the actual process lacks transparency. Supreme Court justices are subject to a public vote in the lower house elections following their appointment, and to a second review after 10 years (if they have not retired in the meantime). 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, thus 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

The appointment of justices to the Constitutional Tribunal and the Supreme Court has been a major political issue since PiS came to power in 2015. By manipulating and/or changing the appointment processes, the government has gradually succeeded in staffing both courts with loyal justices (Sadurski 2019).

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. Upon coming to office, the PiS government questioned the appointment of the five judges 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 lasted 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. Like most of their predecessors, the two new justices appointed in 2020 have been criticized for their lack of independence from the government.

The justices of the Supreme Court are appointed by the president of the republic upon a motion of the National Council of the Judiciary. In order to gain control over the Supreme Court, which remained highly critical of the government's judicial reforms for a long time, the PiS first changed the rules governing the National Council, so that its members are no longer chosen by justices, but by the Sejm. In addition, the PiS government for some time tried to get rid of unwanted justices by lowering the retirement age for justices. When the term of Małgorzata Gersdorf, the first president of the Supreme Court since 2014 and an outspoken critic of the government's assault on judicial independence, expired in April 2020, the government succeeded in making a justice loyal to PiS her successor.

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 ranks first (together with Finland and New Zealand) on Transparency International's Corruption Perceptions Index 2021. 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 2021, https://www.transparency.org/en/cpi/2021 (accessed 20 February 2022)

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 2020 Corruption Perceptions Index published by Transparency International even ranked New Zealand at first place (together with Denmark) in terms of anti-

corruption efforts (Transparency International 2020). However, this does not mean that the country is free of corruption. For example, the 2020 Deloitte Bribery and Corruption Survey found that a considerable number of company executives found corruption to be "significant risk" to their organizations (Deloitte 2020). There are also concerns about "revolving door" practices, whereby individuals shift between government positions and private sector jobs, and vice versa (Kuhner 2020).

Citation:
Deloitte (2020) The Deloitte Australia and New Zealand Bribery and Corruption Report 2020. https://www2.deloitte.com/nz/en/pages/risk/articles/bribery-corruption-survey-2020.html

Kuhner (2020) "Reputation vs reality: how vulnerable is New Zealand to systemic corruption?" The Spinoff. https://thespinoff.co.nz/politics/06-03-2020/reputation-vs-reality-how-vulnerable-is-new-zealand-to-systemic-corruption

Transparency International (2020) Corruption Perceptions Index. https://www.transparency.org/en/cpi/2020/index/nzl

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. Political party financing is regulated by the Act of Political Parties and monitored by a special body, the Political Parties' Financing Surveillance Committee.

The number of registered corruption offenses decreased substantially in 2019–2021, with the largest decline being in healthcare sector. 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 (49%) occurring in the governmental sector.
The factor of concern is that during the first coronavirus wave, government support for enterprises was channeled through the government-controlled foundations KredEx and MES without transparent rules. Eventually, some criminal cases were opened (a Porto Franco loan from Kredex and a case against the management board of MES) regarding non-purpose loans/grants they have delivered.

Citation:
Ministry of Justice 2021. Kuritegevus Eestis 2020. https://www.kriminaalpoliitika.ee/kuritegevus2020/korruptsioon-ja-majanduskuriteod (accessed 03.01.2022)

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 brides; 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 charges of political corruption involving 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 very few instances of corruption in Norway. The cases that have surfaced in recent years have been at the municipal level and are related to public procurement. As a rule, corrupt officeholders are prosecuted under established laws. There is a great social stigma against corruption, even in its minor manifestations. During the last decade, 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. In 2020, the country ranked third in the world with a score of 85/100 (Transparency International, 2021) with regard to the citizens' perceptions of corruption (with high scores indicating less corruption). Thus, levels of public trust in democratic institutions and public

administration are comparatively high, though there are signs that political trust may be on the decline even in Sweden (see Zahariadis et al., 2021). Indeed, this is a corollary of transparency, freedom of information and access to information as part of an open government enshrined in the constitution (see Greve, Lægreid, and Rykkja (2016) for a discussion of the Nordic administrative tradition).

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 reports of corruption and court decisions on related charges (Bergh et al., 2016). Additionally, the public sector has been slow to produce material requested by the Coronavirus Commission assessing the country's response to the pandemic. Though Sweden is at the top of the rankings, the score (85/100) has remained the same rather than improving (Transparency International Sweden, 2021). The issue here is that the world expects more out of Sweden, which has traditionally been a leading country in preventing corruption in the public sector.

Citation:
Bergh, Andreas, Gissur Ó. Erlingsson, Richard Öhrvall, Mats Sjölin. 2016. "A Clean House? Studies of Corruption in Sweden." Lund: Nordic Academic Press.

Greve, Carsten, Per Lægreid, and Lise H. Rykkja. (eds.) 2016. "Nordic Administrative Reforms: Public Sector Organizations, Public Sector Organizations." London: Palgrave Macmillan.

Transparency International. 2021. "Corruption Perceptions Index." https://www.transparency.org/en/cpi/2020

Transparency International Sweden. 2021. "CPI2021: Arbetet mot Korruption Stagnerar när det Behövs som Mest." https://www.transparency.se/nyheter/cpi2021

Zahariadis, Nikolaos, Evangelia Petridou, Theofanis Exadaktylos, and Jörgen Sparf. 2021. "Policy Styles and Political Trust in Europe's National Responses to the Covid-19 Crisis." Policy Studies: 1-22.

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.

There are recurrent scandals about corruption. However, the level of corruption seems to be very low in Switzerland as compared to other countries. The problems listed above are clearly minor in international comparison.

Austria

Score 8

Corruption has become a major topic of public debate 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. As a consequence, a special branch of the public prosecutor's office dealing especially with corruption (Korruptionsstaatsanwaltschaft) has been established in 2009. This office marked a significant improvement on the previous 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.

The Federal Audit Office is another widely respected agency, whose careful ex post inquiries in government activities (including state spending and regulation of party financing) have helped to establish tangible anticipatory effects in fighting corruption. More specifically, the anti-corruption regime established by the government is subject to constant evaluation by the Federal Audit Office.

Citation:
https://www.derstandard.at/story/2000124539122/korruptionsermittler-im-scheinwerferlicht-wer-ist-die-wksta

https://www.wienerzeitung.at/nachrichten/politik/oesterreich/2096021-Tadel-fuer-Agrarressort-bei-Korruptionsbekaempfung.html

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.

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/
www.cumuleo.be/presse/cp/02-09-2019.php

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. There is an Auditor General to audit government spending. There is also a Conflict of Interest and Ethics Commissioner to help prevent conflict between public duties and private interests. There is a strong investigative media. Generally, societal tolerance for corruption is really low. Nevertheless, a significant scandal emerged in 2019, when it came to light that Justin 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 produced a report endorsing the current structure, stating that "no further structural change is required in Canada to protect prosecutorial independence and promote public confidence in the criminal justice system" (McLellan, 2019, 1).

Citation:
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 some corruption scandals – the recent ones involving the procurement of masks during the pandemic – Germany performs better than most of its peers in controlling corruption, outperforming countries such as France, Japan and the United States. But it does not perform as well as the Scandinavian countries, Switzerland, Singapore and New Zealand.

Nonetheless, there are a number of issues that have been raised by the Council of Europe's Group of States against Corruption (GRECO). The recent GRECO compliance report (GRECO 2021) concludes that Germany has satisfactorily implemented or dealt in a satisfactory manner with only three of GRECO's eight recommendations and therefore the current level of compliance remains "globally unsatisfactory." Since the publication of this compliance report, further progress has been achieved with the enactment of the Lobbying Register Act in March 2021, which requires representatives of special interests to register as such. Deficiencies cited include the lack of ad hoc disclosure rules designed to prevent conflicts of interest with regard to members of parliament acting on issues under parliamentary consideration. In terms of ensuring the transparency of federal judges' secondary activities, Germany is also not in compliance with GRECO recommendations.

Citation:
GRECO (2021): Council of Europe, Group of States against Corruption, Fourth Evaluation Round, Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors, Adopted 25 March 2021.

Ireland

Score 8

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

In January 2014, the 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." This was followed up by the Our Public Service 2020 plan, which contains 18 actions, including new initiatives and actions focused on building on reforms already in place, such as the need to accelerate the digital delivery of services (DPER, 2020).

On 6 September 2017, Assistant Garda Commissioner Michael O'Sullivan published a report showing that out 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: systems failures, difficulties in understanding Garda policy, and oversight and governance failures. It is highly regrettable that the Department of Justice and Garda authorities have not seen it appropriate 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 having had allegations of child sexual abuse made against him) by certain sectors of the police force. The report also vindicated Garda Commissioner Noirín O'Sullivan and former Minister for Justice Frances Fitzgerald, but was highly critical of the behavior of former Commissioner Martin Callinan, who resigned in 2014, and former Garda press officer Superintendent David Taylor, who retired early in 2018.

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.

In 2021, Ireland ranked 13th in the world (out of 180 countries) in the Corruption Perceptions Index by Transparency International.

Citation:
Transparency International (2021) Ireland, Corruption Perception Index, https://www.transparency.org/en/countries/ireland

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

Luxembourg

Score 8

In the 2020 Corruption Perception Index released by Transparency International, Luxembourg was ranked ninth among 180 countries, with a score of 80 out of a possible 100. New Zealand and Denmark (both 88 out of 100) came in at first place, while Finland, Switzerland, Singapore and Sweden (85/100) share second place. Belgium ranked 15th and France 23rd.

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 representatives of certain economic sectors (e.g., finance and construction) are common.

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.

In December 2021, the Chamber of Deputies created for its members a mandatory transparency register. The Group of States against Corruption (GRECO) had pointed out the absence of such a transparency register. Thus, members of parliament are obliged to reveal which interest group representatives they meet. The register is expected to give citizens an overview as well as an indication of where each member of parliament gets their policy proposals from.

Citation:
"Abgeordnete verabschieden Transparenzregister." Reporter.lu (10 December 2021). https://www.reporter.lu/luxemburg-parlament-verabschiedet-transparenzregister/. Accessed 8 February 2022.

"Corruption Perceptions Index: 2020." Transparency International (February 2021). https://www.transparency.org/en/cpi/2020/index/nzl. Accessed 14 January 2022.

"Luxembourg Corruption Report." Risk&Compliance Portal (June 2020). https://www.ganintegrity.com/portal/country-profiles/luxembourg/. Accessed 14 January 2022.

GRECO, "Fourth evaluation round. Corruption prevention in respect of members of parliament, judges and prosecutors. Second compliance report. Luxembourg." https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a0424d. Accessed 8 February 2022.

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. In the 2019 election campaign, the Morrison government pledged to introduce a Commonwealth Integrity Commission, a centralized, specialist center for investigating corruption in the public sector, but has so far failed to do so. There are also concerns that the body currently being contemplated by the government will not have sufficient powers to adequately counter corruption.

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:
https://www.ag.gov.au/integrity/consultations/commonwealth-integrity-commission-consultation-draft

https://www.lawcouncil.asn.au/resources/submissions/commonwealth-integrity-commission-proposed-reforms

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

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 were 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 submit their personal finances to an ad hoc independent authority, 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 elimination of the so-called 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 eradicate corrupt practices. 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 the 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). The first-instance court handed down a guilty verdict in 2021, but Sarkozy has appealed this judgment.

Latvia

Score 7

Latvia's main integrity mechanism is the Corruption Prevention and Combating Bureau (Korupcijas novēršanas un apkarošanas birojs, KNAB), which the Group of States Against Corruption has recognized as an effective institution. The Conflict of Interest Law is the principal legislation regarding officeholder integrity.

In recent years, KNAB has experienced several controversial leadership changes and has 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 of whom then appealed their dismissal. These scandals have weakened public trust in the institution. A new, well-qualified and seemingly independent director, was appointed in 2017.

In 2018, a Whistleblowing Law was introduced that allows whistleblowers to expose offenses against the public interest. In the first year of the law's operation, 119 out of

435 reports received were confirmed as whistleblowing cases. Tax evasion, violations by officials and waste of property were among the most common themes covered by the reports.

While Latvia does not currently have a lobbying law or regulation, the Open Lobbying working group in the Saeima's Committee of Defense, Internal Affairs and Corruption Prevention is working on a new legislative proposal that is expected to be presented to the Saeima in 2022.

Overall, the Latvian government has successfully made an effort 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.

Nevertheless, the Freedom House report of 2021 allocated Latvia just 4.5 out of seven points in their corruption evaluation, claiming that corruption has remained among the weakest spots in Latvian democracy. The report notes that corruption scandals on the national and municipal levels had remained a common topic covered by the national news, signaling that corruption remains one of the most topical concerns. Trials associated with corruption have typically been long, often stretching on for years, and have in a number of cases resulted in mild monetary penalties or even acquittals rather than imprisonment. However, high-profile cases are investigated and reported in the mass media, which indicates that corruption as such is recognized as problematic. For example, 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.

More recently, the trial of oligarch Aivars Lembergs reached the final stage in the court of first instance in 2020. In March, the prosecution concluded its yearlong (80 sittings) discussions, requesting that Lembergs be charged a fine of €64,500 and serve an eight-year prison sentence. Lembergs was found guilty and sentenced to five years in prison, the confiscation of property and a fine of €20,000.

In June 2020, a new Criminal Law was passed, which may help to solve the issue of extremely long trial processes, such as the one involving Lembergs. For example, the new amendments to the law stipulate that the accused is required to speak the truth, with failure to do so being regarded as aggravating circumstances. The judge is now able to limit the time available for debate and the closing arguments of the defense (a strategy notoriously used by Lembergs' defense). The law also prescribes greater transparency in trial processes by giving reporters greater freedom in criminal courts (at judges' discretion).

Citation:

1. Corruption °C (2017), Updated Statistics on Convictions for Corruption Offences (2016 Data Added), Available at: http://providus.lv/article/jaunaka-statistika-par-korupcijas-lietu-iztiesasanu-latvija, Last accessed: 15.01.2022.

2. Group of States Against Corruption (GRECO)(2012), Fifth Evaluation Round, Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies, Evaluation Report, Available at: https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/16808cdc91, Last accessed: 15.01.2022.

3. State Chancellery (2019) Whistleblowing and Protection of Whistleblowers: Annual Report, Available (in Latvian) at: https://www.trauksmescelejs.lv/sites/default/files/buttons-card-files/TC_GADA_PARSKATS_2019-1-29-compressed2.pdf, Last accessed: 15.01.2022.

4. Freedom House (2021), Nations in Transit, Country Report, Available at: https://freedomhouse.org/country/latvia/nations-transit/2021?fbclid=IwAR1Z9BONWT_e88Ql7Ai-pY0oZ8YJwSM5F3PZZrTgSng-wrrWvH6UqXfsgQo#footnote8_l55a7mg, Last accessed: 15.01.2022.

5. Saeima (2022) Information (in Latvian) on Open Lobbying working group's activities and meeting agendas, Available (in Latvian) here: https://aizsardziba.saeima.lv/darba-grupa-lob%C4%93%C5%A1anas-atkl%C4%81t%C4%ABbas-likuma-izstr%C4%81dei, Last accessed: 15.01.2022.

6. Amendments to the Criminal Law (2020) Available (in Latvian): https://likumi.lv/ta/id/315653-grozijumi-kriminallikuma, Last accessed: 15.01.2022.

7. Euronews (2021) Aivars Lembergs: One of Latvia's richest men is jailed for bribery and money laundering, Available at: https://www.euronews.com/2021/02/23/aivars-lembergs-one-of-latvia-s-richest-men-is-jailed-for-bribery-and-money-laundering, Last accessed: 15.01.2022.

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) interim compliance report published in April 2021 found that Portugal had satisfactorily implemented only three of the 15 recommendations published in 2016 (an improvement of two relative to 2019), with seven partially implemented (eight in 2019). The remaining five had not been implemented (six in 2019). The report assesses this as "only minor progress."

In April 2021, the government approved a National Anticorruption Strategy for 2020-2024. This was revised in parliament during negotiations between the PS and the PSD, and was unanimously approved in parliament in November 2021. It is as yet too early to assess any results, but the government's strategy was not warmly received by the Portuguese branch of Transparency International, which called it "clearly insufficient."

Citation:
Diário da República n.º 66/2021, Série I de 2021-04-06, páginas 8 – 49, Resolução do Conselho de Ministros n.º 37/2021, available online at: https://dre.pt/dre/detalhe/resolucao-conselho-ministros/37-2021-160893669

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RTP (2021), "Pacote anticorrupção aprovado por unanimidade no Parlamento," available online at: https://www.rtp.pt/noticias/politica/pacote-anticorrupcao-aprovado-por-unanimidade-no-parlamento_v1364522

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South Korea

Score 7

The Korea Independent Commission Against Corruption, established under the Anti-Corruption Act, handles whistleblowers' reports, recommends policies and legislation for combating corruption, and examines the integrity of public institutions. The Public Service Ethics Act is designed to prevent high-ranking public officials from reaping financial gains related to their duties both during and after their time of public employment. Existing laws and regulations on the issue are generally effective in holding politicians and public servants accountable and in penalizing wrongdoing. Courts have also been tough on those involved in corruption scandals, handing down prison sentences to many involved, including ex-President Park and her predecessor Lee Myung-bak. That said, there are ways around these regulations. For example, after obtaining special permission from public service ethics committees, it is not uncommon for retired bureaucrats to receive golden-parachute appointments in the same industries they were charged with regulating.

President Moon promised to strengthen anti-corruption initiatives further, announcing that members of the elite involved in corruption scandals would not be granted pardons. While the 2019 scandal surrounding former Justice Minister Cho Kuk showed that the Moon government was not above abuse-of-office accusations, 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. During the Moon administration, in addition to the investigation into Minister Cho, there were various high-profile investigations of ruling party members, including the 2019 conviction of the South Chungcheong Province governor for sexual assault, and the April 2020 resignation of the mayor of Busan after admitting to sexual harassment. Throughout his tenure, President Moon took steps to "separate powerful institutions from domestic politics and install systems to make any such institutions unable to wield omnipotent power." One such reform was the launch in 2021 of the new Corruption Investigation Office for High-ranking Officials (CIO). This

institutional reform shifts the power to investigate and prosecute corruption among high-level officials from the prosecutor's office to a new agency. The intent is for the new agency to be less opportunistic and more independent from political meddling.

Despite the strong campaign against corruption in the public sector, there has been minimal success in curbing corruption and influence peddling by big business groups. One serious concern is the massive degree to which economic power is concentrated, and the lack of respect that some economic elites show for the law. Courts are much more lenient toward businessmen than toward public officials. In February 2018, an appellate court reduced the five-year prison sentence handed down to Samsung Electronics Vice Chairman Lee Jae-yong to a suspended sentence of two-and-a-half years. This was seen as extremely lenient when compared to the long jail sentences given to former public officials. In January 2021, following a retrial, Lee Jae-yong was sentenced to an additional two-and-a-half years. He was released on parole in August 2021. Relatedly, many were surprised by President Moon's decision to pardon former President Park Guen-hye in December 2021.

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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. Spanish courts have a solid record of investigating and prosecuting corruption cases, but the system is often overburdened, and cases move slowly. In 2020, Spain's score in Transparency International's CPI fell slightly, although Spain continues to rank comparatively highly, at 32nd place out of 180 countries (2019: 30 out of 180 countries).

The second GRECO compliance report for the country states that the organization considers four of the 11 recommendations made to Spain in 2013 to be fulfilled. Two others were considered to have already been fulfilled in 2019.

In October 2020 a Code of Conduct for Parliament (i.e., for both chambers, the Congress and Senate) was adopted. The code contains provisions on ethical principles, transparency and the prevention of conflicts of interest, and provides for sanctions if breaches occur. A new Office on Conflicts of Interest was created in the Congress of Deputies. There is also a legislative proposal underway that would regulate lobbying, including through the establishment of a lobbying register.

In 2021, the regulation of money laundering offenses was modified by Organic Law 6/2021 of 28 April. The reform aligned Spanish money laundering regulations with EU guidelines.

Citation:
GRECO (2021), Fourth Evaluation Round – Second Compliance Report, 30 September 2021 https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a3fd50

Code of Conduct for Parliament https://www.congreso.es/public_oficiales/L14/CORT/BOCG/A/BOCG-14-CG-A-70.PDF

United Kingdom

Score 7

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 the 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 most recently in August 2019) and are publicly available.

During the coronavirus pandemic, things took a turn for the worse when a number of scandals over firms associated with Conservative members of parliament – which had been awarded highly profitable pandemic-related contracts – led to an inquiry by the National Audit Office (see section G13.1) in which existing government practices were criticized. In a separate case, in January 2022, the High Court ruled that the use of a "high priority lane" through which contracts were awarded to firms

personally known to members of parliament and members of the government had been illegal. While unfortunate, the most plausible explanation for these actions is desperation on the part of the government to secure the necessary supplies, leading to a lack of due diligence, and not so much deliberate corruption

In November 2021, Conservative MP Owen Paterson stepped down after the Parliamentary Commissioner for Standards had found him in breach of lobbying rules and described his actions as "paid advocacy," something members of parliament are not allowed to do. In what became one of a number of criticisms of his style of government, Boris Johnson attempted to engineer a change the rules to enable Paterson to avoid what would have been a short suspension from Parliament, despite concerns from many of his own members of parliament. What proved to be a badly misjudged attempt to support Paterson met with widespread protest and Johnson had to abandon the plan. On 16 December, the Liberal Democrats won the byelection in Paterson's vacated seat with a 34% swing in votes in what was widely seen as protest against government action in the Paterson case.

Citation:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf
https://www.theguardian.com/politics/2022/jan/12/use-of-vip-lane-to-award-covid-ppe-contracts-unlawful-high-court-rules
https://www.bbc.com/news/uk-59188972

United States

Score 7

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.

Trump demonstrated a lack of respect for laws, constitutional provisions and established practices in order to profit personally from the presidency. His hotels 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 then former Democratic Vice President Joe Biden.

In this context, it is not surprising that fighting corruption became a major theme of Joe Biden's 2020 presidential run. Once in the White House, President Biden pushed

for the adoption of new anti-corruption measures with an eye on national security. These efforts must be understood as part of a broader attempt to repair the reputational and policy damage caused by the Trump administration in that area. So far, much of the Ant-Corruption Strategy remains aspirational and requires legislative and regulatory action to be implemented.

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 tended to be more evident in the Piñera government, as many members of the Chile Vamos – including the president himself – were powerful businesspeople. Such entanglements produce conflicts of interest in policymaking (e.g., in regulatory affairs), as the recent "Dominga case" (Caso Dominga), a controversial mining project on the north-central coast of Chile which involved the current president, his family and several important businessmen.

There are no regulations mandating transparency with regard to 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. Especially at the municipal and regional level, contracting and public tenders tend to be more susceptible to corruption.

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.

Under President Piñera, a modification of the law on transparency (Ley de Transparencia 2.0) was passed in order to improve the existing regulation in the field of active transparency. The amendment specifically addressed nonprofit legal entities that receive transfers of public funds and companies that are awarded concessions to provide public services.

Citation:
Presidential Council on Corruption (Consejo Asesor Presidencial Contra los Conflictos de Interés, el Tráfico de Influencias, y la Corrupción), April 2015, http://consejoanticorrupcion.cl/lanzamiento-final, last accessed: 13 January 2022.

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Centro de Investigación Periodística (CIPER), “Pandora Papers: Familias Piñera y Délano sellaron millonaria compraventa de Minera Dominga en Islas Vírgenes Británicas”, 3 October 2021, https://www.ciperchile.cl/2021/10/03/pandora-papers-familias-pinera-y-delano-sellaron-millonaria-compraventa-de-minera-dominga-en-islas-virgenes-britanicas, last accessed: 13 January 2022.

Greece

Score 6

In 2020, Greece ranked 59th among countries surveyed by Transparency International and scored 50 out of 100 on the Corruption Perception Index (CPI). In terms of perceptions of corruption, progress has been made since the beginning of the economic crisis commensurate to legal and organizational improvements in anti-corruption.

Above all, amendments to the constitution in 2019, which entered into force in 2020, substantially reduced the leniency of anti-corruption provisions for high-level corruption. The statutory limit for criminal investigations into members of parliament and government ministers was extended, reducing their immunity.

While improvements have been made to the functioning of integrity mechanisms over time, organizational instability has plagued such mechanisms. Particularly during 2012–2018, new integrity mechanisms were periodically established and abolished. Between 2015 and 2018, these mechanisms became extremely politicized, as anti-corruption policies were exclusively aimed against opposition politicians.

Thereafter, the organizational landscape of integrity mechanisms was stabilized with the establishment of the National Transparency Authority in 2019, and the merger of the Office of the Economic Crime Prosecutor and the Anti-Corruption Prosecutors in 2020. The National Anti-Corruption Plan was updated in 2020 and a new one for 2022–2025 is being prepared. Numerous integrity mechanisms, such as corps of inspectors, were subsumed under the National Transparency Authority.

While the National Transparency Authority grew in 2020–2021 in terms of available personnel and resources, in other integrity mechanisms (e.g., offices of prosecutors), there was a lack of administrative staff, skilled staff to monitor cases of sophisticated financial crimes, appropriate digital tools and a system of case management.

Generally, in the period under review, some progress was made in strengthening the regulatory framework and preserving integrity. Constitutional impediments to tackling high-level corruption were lifted. Greece’s integrity mechanisms were better organized than in the past, but still lacked sufficient resources to accomplish their tasks.

Citation:
For the ranking of Greece by Transparency International in 2020, see https://www.transparency.org/en/cpi/2020/index/grc

Article 86 of the constitution of Greece was amended in 2019 to improve on integrity mechanisms.

For the European Commission's assessment of anti-corruption policies, see the latest (2021) EC report on Rule of Law in Greece, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0709

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; 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. Prominent examples in recent years include charging Prime Minister Netanyahu with bribery, fraud and breach of trust; indicting the minister for welfare and social services, Haim Katz, for fraud and breach of trust; the minister of the interior, Aryeh Deri, signing a plea deal for tax crimes; the sentencing of former Prime Minister Ehud Olmert to six years in prison for accepting bribes while serving as mayor of Jerusalem; and the sentencing of former Tourism Minister Stas Misezhnikov to 15 months in prison for fraud and breach of trust.

Citation:
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Transparency International, Corruption Perception Index 2019, 2020, https://www.transparency.org/cpi2019
Wootliff, Raoul, and ToI, "Liberman opposes forming Knesset committee just to reject Netanyahu immunity," ToI, 26.11.2019, https://www.timesofisrael.com/liberman-opposes-forming-knesset-committee-just-to-reject-netanyahu-immunity/

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 (ANAC) has been significantly strengthened and its anti-corruption activity progressively increased. The annual reports of the ANAC offer very detailed analyses of corruption cases (ANAC, Relazione annuale). The Draghi government has promoted a reform of the public procurement system, with the goal of simplifying and speeding up procedures (Relazione PNRR page 41–42). This reform also includes a special agreement with the Anti-Corruption Authority, which enables it to verify effectively the regularity of public contracts.

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

Citation:
https://www.anticorruzione.it/-/relazione-annuale-2020 (accessed 31 December 2021)
https://www.governo.it/sites/governo.it/files/RelazionePNRR.pdf (accessed 31 December 2021)

Lithuania

Score 6

Corruption is not sufficiently contained in Lithuania. In the World Bank's 2020 Worldwide Governance Indicators, Lithuania scored at the 80th percentile on the issue of corruption control, up from 69th in 2018. In the new Index of Public Integrity, Lithuania was ranked 35th out of 114 countries overall, but only 87th 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 2020, measured by the Special Investigation Service based on surveys, the

institutions viewed as most corrupt were hospitals, the court system, the parliament and local authorities. A total of 35% of the general population indicated that corruption was a very serious problem. However, there are some positive trends. Compared to previous surveys, the general population, civil servants and business people were for the most part less likely to claim that corruption has become worse, and were more optimistic about the future. For instance, 33% of the general population and as much as 77% of civil servants think that corruption has decreased over the last five years.

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.

In 2020 and 2021, the Special Investigation Service launched several prominent corruption investigations targeting the judicial and healthcare sectors, along with government institutions responsible for granting building permits and territorial planning.

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 counties 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.

In 2020, a major scandal broke out when two lobbyists – the heads of the Lithuanian Business Confederation and the Lithuanian Banks Association – were detained as part of an investigation into large-scale bribery. The allegations were related to the use of illegal influence to change legislation. Following the scandal, laws on lobbying were amended, "although their implementation and efficacy are still uncertain" (Nations in Transit 2011). According to the OECD, Lithuania currently has "has good structures in place to monitor and report on integrity and lobbying."

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. President Nausėda devoted attention to the reduction of corruption by bringing public attention to the new initiatives and to good practices. Laws on corruption prevention were amended in 2021 with the aim of making corruption prevention efforts more comprehensive.

Citation:
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The Index of Public Integrity is available at http://integrity-index.org/
The European Commission. Annex 15 to the EU Anti-Corruption Report: Lithuania. Brussels, 3.2.2014. COM (2014) 38 final.

Netherlands

Score 6

The Netherlands is considered a relatively corruption-free country, both in the international rankings of perceptions of corruption and in its own self-conception. The Transparency International Corruption Perceptions Index ranks the Netherlands at fourth place in Europe and eighth globally with regard to low levels of perceived corruption. In a Eurobarometer study, 71% of Dutch respondents believe corruption is widespread, yet, in spite of reading daily about corruption cases in the media, only 4% believe it affects their daily lives. Also, 60% have high confidence in the effectiveness of public authorities in fighting corruption. This contrasts strikingly with the opinions of professional corruption fighters, who publicly doubt the effectiveness of anti-corruption measures as being too little and too late.

Probably due to this hubristic self-image among the people and politicians, Dutch anti-corruption policy was until recently underdeveloped, if not outright naïve. It focused on petty corruption and minor integrity issues in the public sector. But this is no longer the case. Authorities have realized that the Netherlands shows tendencies of becoming a narcostate: drug use has been normalized among the population, and has created a highly profitable market. The country produces synthetic drugs and cannabis, and large amounts of cocaine enter through Dutch (Rotterdam, Vlissingen) and Belgian harbor cities (Antwerp). The illegal drug production and trafficking has led to the distribution of drugs labs all over the country, especially in less populated rural areas, as well as to more (lethal) violence in the streets due to drug organizations fighting among each other. It has also meant an increase in corruption, not only among customs officers and other harbor workers, but also in areas involving gambling, hospitality, sports/health centers and other infrastructural

services, much of this a result of the massive amounts of money earned in drug trafficking. There are small local governments whose budgets are dwarfed by the amount of money earned in drugs trafficking within their borders.

The marketing of drugs is facilitated by underfunding and neglect of youth care policy in certain city quarters, where disadvantaged youths are easy to recruit as drugs runners or for other similar jobs. Organized crime thrives on conditions of pauperization and exploitation, where younger people, lacking proper education and job opportunities, choose criminal careers because they feel they have nothing to lose. It is believed that most leading criminals in the so-called mocro-mafia started their careers this way. Apart from investing in sophisticated crime fighting investigation equipment, like tools to hack criminal communication channels, better youth care services in the larger cities are badly needed. The Netherlands' highly favorable business climate and its flexible financial system have also proven to be fertile ground for corruption, as they attract criminal activities in the form of front companies engaging in money laundering and other illegal activities. By linking corruption fighting to a more realistic diagnosis of its causes, Dutch anti-corruption policy is coming of age.

Several other problems also have been highlighted by national and international watchdogs, including integrity violations within police forces with respect to leaking information and having connections with organized crime. In some cases, similar problems have also been identified with respect to local politicians.

On the national level, the country has seen high profile cases of people abusing access to high level (party) officials and ministers. For example, Sywert van der Liendsen used his connections to obtain business deals relating to medical protection materials and allegedly defrauded the government of millions of euros.

Citation:
Transparency International: 2021 Corruption Perceptions Index (CPI),
January 28, 2021

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS 2020 Rule of Law Report The rule of law situation in the European Union Brussels, 30 September 2020

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https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d

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.

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.

There has been some signs of legal action being taken against political corruption in recent years. For example, in 2021, LDP lawmaker, Tsukasa Akimoto, was arrested and sentenced to four years in prison over bribery involving a casino project, and the Komeito lawmaker, Kiyohiko Toyama, was arrested for illegal loan brokering.

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

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.

Since the start of its tenure, the government has introduced a number of reforms. 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 reform. 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. In 2019, the government appointed the Police Governing Board to assist in reforming the corps and to extend oversight more generally.

A new targeted anti-fraud and corruption strategy was approved by the government. While investigative and prosecution bodies have improved their capacity for dealing with corruption cases, as shown by the increase in the number of cases opened, investigations continue to be lengthy, depending on their complexity, and few high-level cases result in convictions. The reforms concerning the appointment of the police commissioner and of the commissioners of the Permanent Commission against Corruption, as well as the reorganized cooperation between the police and the attorney general are recent. The results of these reforms are yet to be seen. Concerning the rules on integrity for public officials, including members of parliament and ministers, further changes are envisaged. Specific guidelines were put in place to mitigate the risk of corruption in public procurement during the COVID-19 pandemic.

According to the European Commission 2021 report on rule of law in Malta, “Since October the Attorney General has taken over the prosecution of certain serious crimes including high-level corruption. A total of 14 prosecutors are dedicated to financial crimes and, since the second quarter of 2020, a task force on complex financial crimes has been in place. The number of financial crimes cases investigated and solved has increased substantially, following the recent increase of resources and capacity of the financial crimes investigations department (FCID) that took place between 2019 and September 2020 69. However, the investigation and prosecution of corruption remains a lengthy process, especially in those cases that require large financial data analysis or that are considered complex. There are currently several high-level corruption cases that remain pending before the court.”

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 (who 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 investigate public-expenditure decisions to ensure that money spent or contracts awarded are transparent, and conducted according to law and general financial regulations. Unfortunately, this committee tends toward a partisan approach which diminishes its effectiveness. Internal audit systems can also be found in every department and ministry, but it is difficult to assess their effectiveness.

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. However, Malta has faced various calls for reform in this

sector. In 2021, Malta was grey listed by the FATF. The government has embarked on a program of reform involving the updating of legislation, strategic plans, and stronger monitoring and enforcement.

Conflicts of interest remain common across both parties. The 2020 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 minster appointed a committee to review the Vitals hospital deal, which involved the leasing of three government hospitals by an international consortium and was mired in numerous allegations of corruption, including the non-fulfillment of 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. How this figure was arrived at has been contested. According to the 2021 Corruption Perception Index, Malta scored 54 out of 100 points, an improvement of one point from the previous year.
In 2022, the Nationalist Party proposed 12 legislative bills focused on fighting corruption. The bills included the creation of a special magistrate to focus solely on corruption by public officers and the introduction of a new crime for abuse of public office. However, the bills have not found the requisite support needed in parliament to become law.

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https://www.islesoftheleft.org/digging-deeper-into-the-root-cause-of-clientelism-in-malta/
Malta Today 08/01/22 Bernard Grech unveils PN's anti-corruption package of 12 legislative bills

Slovakia

Score 5

Corruption has been the most sensitive political problem undermining political stability and the 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 and has largely confined itself to updating its anti-corruption strategy in a routine manner. The investigations and trials in the context of the murders of Kuciak and Kušnírová have revealed how deeply politicians of the Fico/Pellegrini government and persons with high positions in justice or legislation have been involved in a network of criminal state activity. The victory of OĽaNO at the parliamentary elections in 2020 traces back to the strong anti-corruption stance of this party and its leader Igor Matovič. The fight against corruption has been one of the key priorities of the new center-right government, which announced a range of reforms in this area. As a matter of fact, the numbers both of initiated proceedings in corruption cases of individuals convicted for corruption offenses have risen substantially in 2020 and 2021. By contrast, progress with institutional reforms has been slow. While the new Office for the Protection of Whistleblowers, formally created in 2019, eventually began taking action in late 2021, draft legislation on lobbying, "revolving doors," asset declarations, conflicts of interest of members of parliament and public procurement remain at the initial stage (European Commission 2021: 10-15).

Citation:
European Commission (2021): 2021 Rule of Law Report. Country Chapter on the rule of law situation in Slovakia. SWD(2021) 727 final, Brussels (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0727&from= EN).

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. However, Novak resigned in July 2021 and was replaced by David Lapornik in October 2021. Allegations of corruption have featured prominently in debates about foreign investments (banks, Magna), construction of public infrastructure (railways, highways) and over-payments in the healthcare system. The most recent case involves the purchasing of COVID-19 protection equipment during the first COVID-19 wave in spring 2020, which is being investigated by two parliamentary investigation commissions, the police and the Public Prosecutor's Office. The parliament finally managed to adopt an ethical code for members of parliament in June 2020. But the inability of the prosecution to present strong cases, which would enable courts to convict several major political players (e.g., Zoran Janković, mayor of Ljubljana), have raised further doubts about the political elite's commitment to fighting corruption.

In May 2020, the government and general director of the police replaced the heads of several independent bodies, including the director of the Specialized Anti-corruption Police Department, the director of the Statistical Office (SURS) and the Director of the Financial Intelligence Unit, for the first time without stating a cause. The dismissal of the director of the National Bureau of Investigation was subsequently annulled by the Administrative Court.

On 19 March 2021, the OECD issued a report stating, "Slovenia's lack of enforcement of foreign bribery remains a serious concern as allegations of political interference in criminal investigations and prosecutions escalate." Whistleblowers are only partly protected by law and face the threat of losing their job, at least in the procurement of personal protective equipment case involving Economy Minister Zdravko Počivalše.

A survey commissioned by the Greens in the European Parliament suggests that systemic corruption costs Slovenia €3.5 billion each year, 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/).

Ottavio Marzocchi 2021: The situation of Democracy, the Rule of Law andFundamental Rights in Slovenia. Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE 690.410 https://www.europarl.europa.eu/cmsdata/231906/SLOVENIA%20IDA%20DRFMG.up date.pdf

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OECD Anti-Bribery Convention 2021: Implementing the OECD Anti-Bribery Convention Phase 4 Report: Slovenia https://www.oecd.org/daf/anti-bribery/slovenia-phase-4-report-en.pdf

Bulgaria

Score 4

Bulgaria's formal legal anti-corruption framework is quite extensive, but has not proven very effective.

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, the 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 reported on the agency head's highly dubious practices (personal-property construction in violation of municipal regulations), who was then 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 as two individuals were exonerated. No corruption charges were ever pursued, and the only consequences were ultimately political, as both individuals had to resign from their party and ministerial positions.

It is too early to comment on provisional changes made in 2021, but all members of the governing parties campaigned during the years on the ticket of "zero tolerance to corruption."

Some gains have been made, particularly with regard to access to information, the fact that the National Revenue Agency has publicly disclosed so-called tax beneficiaries, and the new provisions requiring government to inform the public of decisions being made. The restoration of the media's independence bodes well for future improvements.

It remains unclear, however, if reforms to public procurement processes and the judiciary will be introduced.

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 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. In November 2021, an investigation was launched into the "Software" affair, which related to public procurement of a software system that was awarded to a company with links to then-Minister of Regional Development and EU Funds Gabrijela Žalac. Tamara Laptoš, European prosecutor at the European Public Prosecutor's Office in Croatia, confirmed in the media that the case was initiated by that office, following an OLAF (European Anti-Fraud Office) report. At the same time, it emerged that the report to OLAF derived from the investigative work of independent journalists, and that the indictment documents in the Software case had not been addressed by Croatian judicial authorities, who apparently did not intend to prosecute.

Czechia

Score 4

In Czechia, corruption and clientelism remain widespread. Successive governments have emphasized their commitment to fighting corruption, but have done little to address the issue. Two significant changes were implemented in 2017: amendments were made to the law on party finance and to the law on conflicts of interest. However, major cases take years to resolve and often end in mistrials. There are no public statistics on the number of cases of successfully prosecuted public officials.

Problems with fighting corruption are highlighted by the case of Andrej Babiš, prime minister from 2017 to 2021. The main issue concerns the use of EU funds, which were intended to support SMEs, to finance a business that was temporarily detached from his conglomerate, but returned to his control after the subsidy was received. Despite demands from the opposition for his resignation, and public demonstrations in Prague and other cities, Babiš weathered the storm – governing to the end of his term, as the prosecution case against him progressed at a snail's pace. MAFRA media portrayed the case as a witch hunt by the opposition and the European Union. Agrofert holding and its subsidiaries remained the largest recipient of EU and Czech government funds in Czechia. In April 2021, the European Commission published the conclusion of its audit, which stated that Babiš still controlled the business, despite having set up trust funds to hold the shares, and that his company must repay the estimated €11 million it had received from the European Union since February

2017. A further case revealed in October 2021 in the Pandora Papers that Babiš had used an offshore company to buy property in France, hoping to avoid French and possibly also Czech taxes. There were multiple signs of corruption during the pandemic, with contracts allocated to apparently inappropriate companies, while Agrofert became one of the major producers of anti-COVID-19 disinfectants.

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 occur. Regulatory amendments in 2006, which introduced requirements to disclose sources of political party financing, should reduce such type of 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, including judges, 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. Two of the 10 members of parliament in question still sit in parliament and the cabinet, and one is the finance minister, without having divulged whether or how they settled their debts. Write-offs of bank debt are not made public in Iceland. 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 2021, which measures business corruption, Iceland scored 74 out of 100, where a score of 100 means no corruption. Iceland's rank has fallen to 13 out of 180 countries, leaving the country well behind the other Nordic countries with scores between 85 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, came to light in 2017. This information led to a gag order being imposed on the newspaper Stundin shortly before the 2017 election, an order that was lifted in late 2018, long after the election.

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 3 February 2022.

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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 Corparmex, the Mexican confederation of business owners, corruption costs Mexico around 10% of its GDP.

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 Combating 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 Lozoya or the head of Pemex's workers' union, are the target of corruption charges related to the Odebrecht corruption scandal in Latin America.
The end of impunity for presidents, a law passed by Congress in December 2020, represents a step forward in the fight against corruption.

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 under the PiS government. On the one hand, the latter has continued to accuse the opposition, especially representatives of the previous government, of corruption, and has emphasized its own commitment to the fight against it. On the other hand, the government has itself been under fire for corruption and cronyism (Makowski 2020). Many PiS members and followers have been placed in positions in the state administration or in state-owned enterprises, so a widespread clientelistic network has emerged. However, only a few senior politicians have been convicted of abuses of office or investigated for failing to declare income from dubious economic activities. Since the public prosecutor is also the justice minister and the high courts are no longer politically independent, there is a lack of checks and balances, and control over state institutions. The government itself lacks the political will to fight or prevent corruption. The latest

GRECO rapporteurs were not satisfied with their application and found that only one out of 21 recommendations from previous evaluations had been fully implemented (GRECO 2021). In autumn 2020, the government tinkered with the idea of passing a COVID-19 impunity law, which would have exempted anyone from punishment for breaking the law if they did so in the public interest in order to tackle the COVID-19 pandemic.

Citation:
Council of Europe, Group of States against Corruption (GRECO) (2021): Fifth Evaluation Round. Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies. Compliance Report Poland. Strasbourg (https://www.coe.int/en/web/human-rights-rule-of-law/-/poland-greco-publishes-two-compliance-reports).

Makowski, G. (2020): Poland's hidden corruption, in: Notes from Poland, February 28 (https://notesfrompoland.com/2020/02/28/polands-hidden-corruption/).

Romania

Score 4

High levels of corruption continue to persist throughout Romania. The Transparency International Corruption Index issued Romania a score of 44 out of 100 in its 2020 index, with the country ranking 19th in the European Union. However, despite lingering high-level corruption, and a perception at the local level and within the business community that corruption is widespread throughout the country, 2020 and 2021 saw some positive advancements in terms of progress in lifting the European Commission's Cooperation and Verification Mechanism (CVM) and implementing anti-corruption strategies.

With respect to the CVM, progress in reversing the damaging legislative amendments to the justice laws between 2017 and 2019 led the European Commission to support Romania's argument for listing the CVM at the end of 2021. This is supported by legislative amendments working their way through the parliamentary process, which would abolish the SIIJ, increase the professional independence of prosecutors, remove the early retirement scheme for magistrates, modify the provisions on the civil liability of magistrates, remove restrictions on freedom of expression for magistrates, and amend the procedures for appointing and removing senior management prosecutors. These legislative amendments have been described within Romania as a "new coat" for the judiciary and the European Commission has expressed support for the proactive participation of Romanian authorities throughout the CVM process. The European Commission's 2020 Rule of Law report also notes that legislative and institutional anti-corruption frameworks are broadly in place, with the Ministry of Justice coordinating the implementation of National Anti-Corruption Strategy.

However, institutional challenges and high-level corruption continue to overshadow the Romanian political environment. In 2021, DNA prosecutors requested approval for a criminal probe into former Prime Minister Tariceanu for accepting bribes in

2007–2008. President Iohannis sent the justice minister a request for a criminal investigation of the former environment minister for bribery and embezzlement, and both the daughter of former President Basescu and his former tourism minister were sentenced to prison for their roles in illegally financing his 2009 presidential campaign. In addition, Cristian Popescu Piedone was elected in September 2021 as mayor of Bucharest's fifth borough, despite being sentenced to eight years in prison on charges of abuse of power in connection to the 2015 Colectiv nightclub fire.

Politically, in October 2021, the Alliance for the Union of Romanians (AUR) accused the ruling National Liberal Party (PNL) of offering bribes to members of parliament in exchange for abstaining from a no-confidence vote, which ultimately failed due to the lack of quorum. The AUR claimed that members of parliament were offered lucrative positions for associates or relatives at state-owned energy companies in return for boycotting the vote. Just a month earlier, the USR-PLUS party withdrew its support from the government after then-Prime Minister Florin Cîțu asked the president to remove Stelian Ion, the justice minister and a member of USR-PLUS, after Ion blocked an investment program that would provide RON 10 billion in funding to upgrade local government infrastructure. Opponents say the investment project was an attempt to buy political support using public funds of local mayors ahead of a party leadership campaign. In response, USR-PLUS called on the prime minister to resign and claimed that the proposed infrastructure scheme would allow wealthy individuals to access easy financing without the checks of EU-funded projects, a claim supported by non-governmental organizations based on the outcomes of previous programs. The USR-PLUS, in an effort to unseat Ludovic Orban as party chief, also accused Cîțu of using the scheme to garner support for his then-upcoming leadership campaign.

Political shenanigans at this level contribute to persistent perceptions of corruption throughout the country. Transparency International's 2020 index reports that 83% of Romanian respondents consider corruption to be widespread in the country, while 64% of respondents report that they feel personally affected by corruption in their daily lives.

The country's principle anti-corruption institution, the DNA, reported a lack of sufficient resources to carry out its activities "under good conditions," after receiving just RON 6 million in the first budget of 2021 instead of the RON 30 million it had requested. However, the DNA indicated that it was hopeful that it would receive additional funding in subsequent budget revisions throughout the year. More positively, Anti-Corruption Directorate General officers were trained by the U.S. Federal Bureau of Investigation via webinars, and studied best practices in preventing and combating corruption, discussed ways to improve the legislative framework, and developed new approaches and partnerships in the global fight against corruption. However, this represents a minor step in equipping the country's anti-corruption apparatus.

Citation:
European Commission (2021): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism. COM(2021) 370 final, Brussels (https://ec.europa.eu/info/files/progress-report-romania-2019-com-2019-393_en).

Cyprus

Score 3

The conviction of officials and others for corruption since 2014, and successive plans presented by the government have been received with skepticism by a public that is not convinced that a true will to fight corruption exists.

GRECO observed in its 2020 compliance report that most of its anti-corruption recommendations for the parliament were not implemented. We note, however, that rules on party financing, introduced in compliance with recommendations, have gaps and problems that affect transparency and effective control.

The European Commission repeated in late 2021 its 2019 observations on corruption. A draft law for an anti-corruption agency is still under examination, while a whistleblower protection issue remains pending. A critical issue is that, for existing codes of conduct, no monitoring, evaluation mechanisms or reports are established. This is the case for ministerial and public sector codes of conduct.

Media, the auditor general and government-appointed inquiry committees established that officials, including the Council of Ministers, acted in violation of laws and/or ethical standards in connection to the granting of passports to investors. Officials choose to talk about mistakes or abuse of the system, refuting the real problem, corruption, which is not an issue of mistake. Without accepting the facts, the credibility of any anti-corruption plan or effort remains low.

Citation:
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2. Anastasiades feels vindicated by passport probe, Knews-Kathimerini, 3 July 2021, https://knews.kathimerini.com.cy/en/news/anastasiades-feels-vindicated-by-passport-report
3. More than half citizenships given through investment unlawful, inquiry concludes (updated), Cyprus Mail, 16 April 2021, https://cyprus-mail.com/2021/04/16/more-than-half-citizenship-given-through-investment-unlawful-inquiry-concludes/

Hungary

Score 2

Corruption is one of the central problems of Hungary (European Commission 2021: 10-14). 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. They have enjoyed the protection by parts of the judiciary, as Péter Polt, the chief public prosecutor and a former Fidesz politician, has persistently refrained from investigating the corrupt practices of prominent oligarchs. Hungary has led OLAF's list of member states where irregularities in the use of EU funding have been known for some time and has conspicuously failed to cooperate with the European Union's anti-fraud agency. In 2021, the legal anti-corruption framework was further weakened by the narrowing of the application scope for public procurement rules. The government has taken no specific measures to limit corruption in the context of the COVID-19 pandemic during which special procurement rules have applied.

Citation:
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Turkey

Score 2

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 that reflects the political will to address corruption effectively, and which is underpinned by a credible and realistic action plan.

Both the legal framework and the institutional structure continue to allow undue executive influence in the investigation and prosecution of high-profile corruption cases. These need to be improved in line with international standards. The limited amount of accountability and transparency at public institutions remain 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 tackle corruption decisively.
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 must 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. Companies are recommended to use a specialized public procurement due to diligence tool to mitigate corruption risks related to public procurement in Turkey. Procurement legislation has been amended 191 times since 2002. The changes mainly serve the interests of party-affiliated businessmen. This group, which is called "beşli çete" (gang of five) among the opposition circles, were expected to receive public procurement contracts worth $150 billion worth.

Turkey's Financial Crimes Investigation Board (MASAK) is the 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 2019, a total of 203,786 requests were submitted to MASAK. Of these, 20,850 requests were related to the financing of terrorism, of which 98% were related to the financing of the FETO/PYD organization. Criminal complaints were filed against 220 people. Assets worth TRY 9 million, belonging to 1,149 people, were confiscated due to illegal betting.

Citation:
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