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OPTION REPORTS

TERM LENGTH FOR JUDGES OF THE HIGEST ORDINARY COURTS

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The following report is one of a series produced by the Constitutional Design Group, a group of scholars dedicated to distributing data and analysis useful to those engaged in constitutional design. The primary intent of the reports is to provide current and historical information about design options in written constitutions as well as representative and illustrative text for important constitutional provisions. Most of the information in these reports comes from data from the Comparative Constitutions Project (CCP), a project sponsored by the National Science Foundation. Interested readers are encouraged to visit constitutionmaking.org for further resources for scholars and practitioners of constitutional design.

Note that the dates provided herein for constitutional texts reflect either the year of initial promulgation or of a subsequent amendment, depending on which version was used for analysis. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

1. INTRODUCTION

The length of the term for judges of the highest ordinary courts is an important provision that affects judicial independence from other branches of government as well as external political pressures. Many believe that longer terms lead to more independence, though there are also some criticisms in the scholarly literature of life terms as found in the US Supreme Court. We describe below the range of constitutional provisions regarding the term length for judges of the highest ordinary court.

2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix to view the question text). As of this writing, the project's sample includes 705 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

3. CLASSIFICATION AND HISTORICAL TRENDS

40% of constitutions in the sample specify some term length for judges of the highest ordinary court. Table 1 shows the breakdown of the provisions.

Table 1. Distribution of Provisions about Term Length for Judges of the Highest Ordinary Court

Term Length	Number of Cases	Percent of Cases
1 Year	2	0.28%
2 Years	2	0.28%
3 Years	4	0.57%
4 Years	63	8.94%
5 Years	30	4.26%
6 Years	35	4.96%
7 Years	7	0.99%

Term Length	Number of Cases	Percent of Cases
8 Years	3	0.43%
9 Years	6	0.85%
12 Years	23	3.26%
15 Years	2	0.28%
Life term with retirement age	37	5.25%
Life term	71	10.07%

As Table 1 suggests about 10% of constitutions grant the judges an unlimited term and 5% specify an unlimited term subject to a mandatory retirement age. Note that even in cases in which there is no retirement age specified in the constitution, there may be one that operates at the level of ordinary statute. Figure 1 suggests that the provisions for life tenure for judges (with and without retirement age) have remained stable over time with around 20% of constitutions providing for life tenure since 1850. In 2000 the number of constitutions in force that provided for life term tenure for judges of highest ordinary courts increased to about 26%.

Figure 1. Percent of Constitutions that Provide for Life Term for the Judges of the Highest Ordinary Court by Year (N=705)

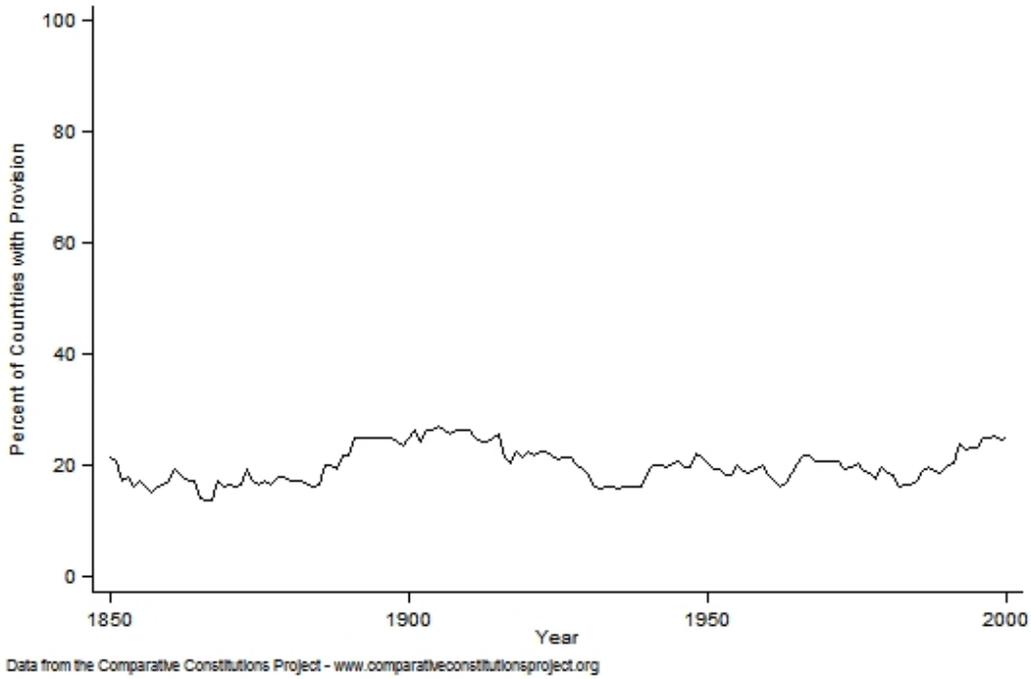


Figure 2. Percent of Constitutions that Provide for Life Term for the Judges of the Highest Ordinary Court in 2000 by Region (N=188)

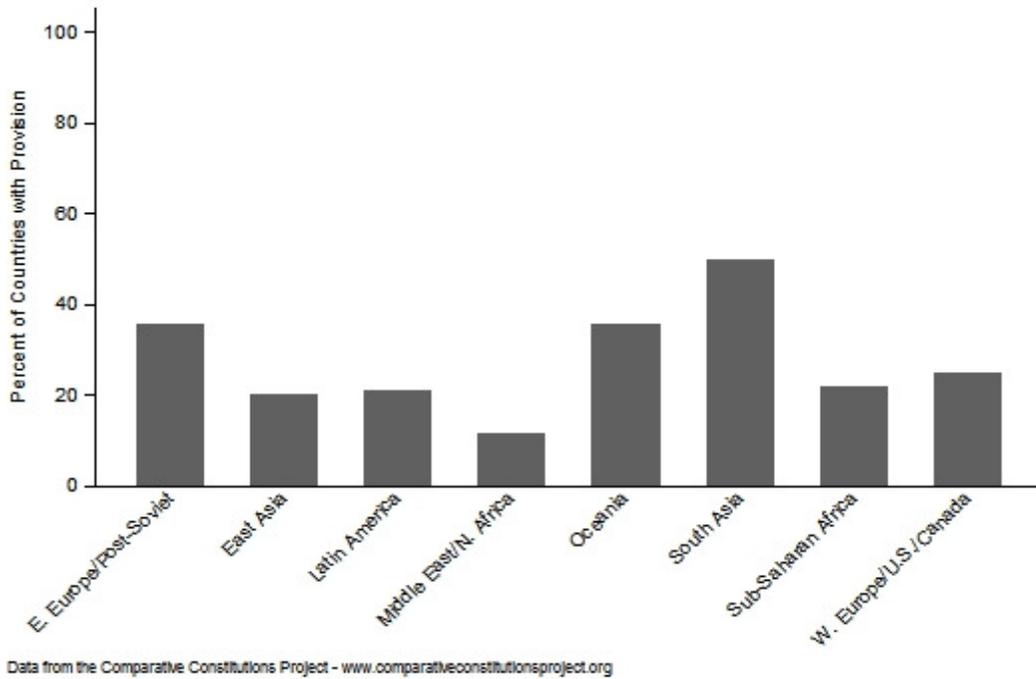


Figure 2 shows that the provision is most common in South Asia, Oceania, and countries of Eastern Europe and former Soviet Union but even there less than 50% of constitutions provide for life tenure for judges of highest ordinary courts. The provisions are least common in Middle East/North Africa.

4. NOTES ON ATYPICAL CASES

If the constitution specifies a mandatory retirement age but does not explicitly specify the term length, we counted that as an instance of “life term with mandatory retirement age.” If the constitution specifies that judges hold office “during good behavior” we treat it as a life term. We do not systematically record instances in which a probationary period is included before the life appointment becomes permanent. South Africa’s 1996 constitution specifies that judges hold their offices until they are discharged by an act of parliament. Such cases were coded as “other” in our scheme.

5. SAMPLE CONSTITUTIONAL PROVISIONS

(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)

The set of sample provisions is divided into sections on:

1. Life term
2. Life term with mandatory retirement at certain age

5.1. Life term

1. Judges are irremovable.
2. A judge cannot have his powers terminated or suspended except under procedures and on grounds established by federal law.
 - *Russia 1993, Article 121*

Judges are appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary.

- *Poland 1997, Article 179*

The judges, both of the Supreme Court and of the inferior courts of the Nation, shall hold their offices during their good behavior, and shall

receive for their services a compensation that the law shall determine and that shall not be diminished in any way while they remain in office.

- *Argentina 1994, Article 110*

A judge cannot be removed, whether temporarily or permanently, from the post he occupies except by trial and proof of his guilt, or in consequence of a violation entailing his dismissal. A judge cannot be transferred or redesignated without his consent, except in cases when the interest of society necessitates it, that too, with the decision of the head of the judiciary branch after consultation with the chief of the Supreme Court and the Prosecutor General. The periodic transfer and rotation of judges will be in accordance with general regulations to be laid down by law.

- *Iran 1989, Article 164*

Judicial functionaries shall be appointed by presidential decree in compliance with a law specifying the qualifications and the procedure for their selection and are appointed for life.

- *Greece 2002, Article 88.1*

5.2. Life term with mandatory retirement at certain age

Subject to the provisions of this article a judge shall hold office until he attains the age of sixty-two years.

- *Bangladesh 1972, Article 96*

Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years.

- *India 2002, Article 124.2*

Judges shall remain in office during their good behavior; but lower-court judges shall perform their respective judgeship for the period determined by law.

Notwithstanding the above, judges shall cease their functions upon attaining 75 years of age; or by renunciation or legal incapacity, or the occurrence of being deposed from their positions by legally sentenced cause. The norm relative to age shall not apply with regard to the President of the Supreme Court who shall continue in office until the end of his term.

- *Chile 2001, Article 77*

Subject to this Article, a Judge of the Supreme Court shall hold office until he attains the age of 65 years or such later time not being later than 6 months after he attains that age, as the President may approve.

- *Singapore 2002, Article 98.1*

The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

- *Philippines 1986, Article 8.11*

6. APPENDIX

This report is based on the following question(s) from the Comparative Constitution Project's "survey instrument":

[SUPTERM] What is maximum term length for judges of the highest ordinary court?

1. 1 year
2. 2 years
3. 3 years
4. 4 years
5. 5 years
6. 6 years
7. 7 years
8. 8 years
9. 9 years
10. 10 years
11. 11 years
12. 12 years
13. 13 years
14. 14 years
15. 15 years
88. Life term with mandatory retirement at certain age
89. Life term
90. left explicitly to non-constitutional law
96. other, please specify in the comments section
97. Unable to Determine
98. Not Specified

Instructions: If the constitution specifies mandatory retirement age but does not explicitly specify term length, please code “life term with mandatory retirement age.” Please answer “life term” if judges hold office “during their good behavior.” If a review period before life appointment is specified, please code “life term” and comment.

For additional documentation on the Comparative Constitutions Project, (including the full codebook, the sample, the sources of constitutional texts and translation issues related to those texts, coding procedures, publicly available data, etc.) please visit the project website at www.comparativeconstitutionsproject.org.