

Questionnaire for the preparation of CCJE Opinion No. 18 (2015): The independence of the judiciary and its relations with the other powers in a modern democratic state

1. How does the constitution, or the other laws of your country, if there is no written Constitutional document, regulate relations between the judicial power on one side, and executive and legislative powers on the other side?

The procedures on forming the judiciary power and its independence are determined by the Constitution of the Republic of Azerbaijan and written normative legal acts. According to Article 7 of the Constitution, Azerbaijan is a democratic, legal, secular and unitary republic. State power in the Republic of Azerbaijan is based on the principle of division of powers: the Milli Majlis exercises the legislative power; the executive power belongs to the President; courts exercise the judicial power.

According to provisions of the Constitution, legislative, executive and judicial powers interact and are independent within the ambits of their competences.

Article 8 of the Constitution states that the President of the Republic of Azerbaijan is the guarantor of the independence of the judicial power.

The Milli Majlis establishes general rules concerning the following matters: judicial system and status of judges, general-prosecutor's office, bar, legal proceedings, execution of court verdicts.

The executive and legislative powers have the following competences in appointing judges: President submits proposals to the Milli Majlis about appointment of judges of the Constitutional Court, the Supreme Court and the Courts of Appeal. The Milli Majlis appoints judges of the Constitutional Court, the Supreme Court and the Courts of Appeal. Judges of other courts are appointed by the President.

The Law on "Courts and Judges" contains the rules on forming an independent judicial power. The selection of judges, assessment of their work, promotion, replacement, disciplinary liability etc. are regulated by the Law on "Judicial-Legal Council".

2. Is there now, or has there been in the last 10 years, any important discussion in your country on this topic, either in the political/legal field, in university/academic circles, by NGOs, or in the media?

A number of conferences, symposiums and round tables have been held on the independence of the judicial power in the last 10 years.

3. Has there been any significant debate on the issue of "judicial restraint" or "judicial moderation" with regard to the exercise of the judiciary function vis-a-vis the other powers of the state? In particular, are there examples where public opinion and /or the other powers of state have suggested that the judiciary (or an individual judge/court in a particular decision) has impermissibly interfered in the field of executive or legislative power or discretion?

As stated before, the judicial power is independent and any pressure and intervention into its work is prohibited. Judges are independent; they are subordinate only to the Constitution and laws of the Republic of Azerbaijan and cannot be replaced during their tenure.

Furthermore, direct and indirect impediment to legal proceedings is considered as an illegal influence, threat and interference. Such kind of intervention entails criminal liability in line with section 32 of the Criminal Code.

4. a) In your country, in the last 10 years, have there been any changes in the constitution/law regarding the judiciary (in the widest sense: structure, courts, judges) which have, arguably, affected the relationship between the judiciary and the other powers of the state or the separation of powers in your country?

No

b) In your country, are there any current proposals for changes in the law as referred to under a)? In each case, please indicate the "official" reason for the changes or proposed changes.

No

c) In your country, are there any serious discussions or debates (in political circles, by the public generally or in the media) with a view of introducing changes in the law as referred to under a)?

No

5. In your country, have there been any significant comments by politicians or other relevant groups with respect to the role of the judiciary/courts in their capacity as the third power of the state? If so, please briefly identify their nature and content and indicate the reaction of the public or media reporting of "public opinion".

The Decree of 19 January 2006 on "Modernization of the judicial system of the Republic of Azerbaijan" highlights a number of important issues such as the facilitation of the citizens' access to judiciary, reducing workload of judges and provision of courts with new information technologies.

The decree of 13 February 2014 on "Electronic Court Information System" is destined to further expand the citizens' access to judiciary by means of the new information technologies, to ensure transparency and to strengthen control over courts decision.

6. To what extent, if at all, is the proper administration of justice affected by the influence of the other state powers (e.g. the ministry of finance with respect to administering budget, the relevant ministry with respect to information technology in courts, the cour de compte, parliamentary investigations etc.or ant other external influence by other powers of the state)?

While exercising its authority, the judicial power is not dependent on any state bodies.

7. Dou you have any other comments to make with regard to the relations between the judiciary and the other powers of state in your country?

No.