

Strasbourg, 6 January 2015

## CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

### 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”**

### Introduction

The following questionnaire aims at gathering essential information on constitutional provisions and other laws (whether statutory or otherwise) concerning the relations between the three powers of state: judicial on one side, and the executive and legislative powers on the other. Where appropriate, the answers to the questionnaire should also provide information on specific issues and concerns in the respondent country on this topic. Answers will provide important material for the CCJE Opinion No. 18 to be prepared in 2015 as well as for the CCJE's next Situation Report.

### Questions

- 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 the executive and legislative powers on the other side?  
**In the Constitution of 1960, there is an inherent complete separation of the three powers, and this has been recognised repeatedly by the case law of the Supreme Court. The three state powers are governed and regulated by different sections of the Constitution.**
- 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?  
**Yes, this is and has been widely accepted throughout the political and constitutional history of Cyprus. All and any discussions on the matter have never disputed the principle of separation of the three powers.**
- 3) Has there been any significant debate on the issue of “judicial restraint” or “judicial moderation” with regard to the exercise of the judicial 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?

No. Any decisions of the courts that deal with and exercise control over executive or legislative acts or aspects relating to their respective fields of power (these judgments or decisions mainly come from the Supreme Court in its administrative or constitutional jurisdiction) are well respected although there always may be voices to the contrary. But no actual debate concerning the above has taken place.

- 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?  
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.  
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. There is however a pending Bill in Parliament for creating a separate Administrative Court so as to ease the heavy workload of the Supreme Court which according to the Constitution has exclusive jurisdiction to hear and determine all administrative court cases under Article 146 of the Constitution. The idea of creating a separate Court came from the Supreme Court itself and after quite a few discussions the government accepted it and promoted a Bill to that effect.

- 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".

No. In general there is a lot of respect for the judiciary especially now during the economic crisis as people look to and expect the judiciary to try cases that come to Courts as a result of this crisis, be they of a civil or criminal nature. Mostly what is discussed in the media, by the politicians etc, are decisions that do not accord to the "public feeling" at large and sometimes it is not easy for laymen, even politicians but for their own reasons, to understand the notion of an independent judiciary.

- 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 budgets, the relevant ministry with respect to information technology in courts, the cour de compte, parliamentary investigations etc. or any other external influence by other powers of the state)?

The judiciary in Cyprus is quite independent as indicated above. But this concerns its purely judicial functions. The Minister of Justice has nothing to do with the judiciary, the appointment or promotion of judges, which comes within the exclusive jurisdiction of the Supreme Council of Judicature, a body composed solely of judges. Also the Attorney-General and its Office act in their capacity of state prosecution and adviser of the government. The Attorney-General is a lawyer and his Office employs lawyers acting as advocate of the state. They are not judges. However the Ministry is responsible for the Court buildings and the Court's finances depend on the Ministry of Finance, while Parliament may affect the budget or the general working of the system by voting for or against measures to alleviate the problems. There are no Parliamentary investigations that may affect the judiciary as this is not accepted due to the separation of powers doctrine. There are views voiced that the Courts should have an autonomous and independent budget but this is not easy to attain.

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

It is true that executive and legislative functions do not always like the idea of a completely independent judiciary which proves to be the machinery of controlling any arbitrary decisions by both powers. However the separation of powers has many advantages and ultimately any truly democratic society depends on the existence and practical application of the rule of law.

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