

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?

This relations are regulated by the Constitution of the Czech Republic, art. n. 81, 82. Formally are all these three powers equal, but in reality the judicial power is the most weak and heavy influenced by the executive power.

- 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, it is, but only when some problem of administration of justice must be solved. Czech republic has no Council of Justice and all important decision are made by the Ministry of Justice. And this is an execution power body. A lot of these decisions are criticized by judges and by media.

- 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?

Yes they have been. But all this debates are now only about better administration of justice. Model of administration justice by Minister of justice, who is a politician, is old fashioned and not functional. Politicians are looking for other model, but problem is that they would like to retain their powers towards the justice.

- 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 changes has been adopted.

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.

There was created a commission for improving administration of justice. Now is known only name of its chairman. This is Dr. Baxa, chairman of the Supreme Administrative Court.

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)?

Discussions are, but I am not sure, if they are really serious.

- 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”.

I don't know about any such comments.

- 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)?

Justice is directly administrated by the Ministry od Justice. All important personal decision are made here. All financial and budget decisions are made by the Ministry of finance.

- 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?

From my point of view there is no such a big problem independence of judges in the Czech Republic. Problem is the administration of justice, it means independence of justice as whole. Especially personal and fiscal independence must be guaranteed by other body then the Ministry of justice is.

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