

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” ESTONIA**

### 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?

*The Constitution states the main principle of separation of powers: “The activities of the Riigikogu<sup>1</sup>, the President, the Government of the Republic and the courts are organised in accordance with the principles of separation and balance of powers.” (Art 4).*

- 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?

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<sup>1</sup> Parliament of Estonia

*Yes, there has been discussion about self-governance of the judicial power.*

*At the moment, Courts of the first instance and courts of appeal (as state authorities) are administered in co-operation between the Council for Administration of Courts and the Ministry of Justice. The budget of the Supreme Court (as constitutional institution) is set independently. According to the State Budget Act “this Act concerning the ministry, the area of government of the ministry and the state authorities shall apply to the constitutional institutions and the authorities in their area of adminis”.*

*Discussions about the self-governance ended up with the Bill of the Courts Act but did not made it to the voting at the Riigikogu (due to the elections which made all bills to drop). Later, no new bills have been introduced.*

- 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.*

- 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?

*Last major change concerned courts merger in 2006. There has been relatively minor changes in the courts structure later as well (for example Registration Department reform).*

- 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.

*Not at the moment.*

- 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)?

*Not at the moment.*

- 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.*

- 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 main responsibilities of the Ministry of Justice (concerning the first and second degree courts) are:*

- *provide budget for the first and second degree courts;*
- *appoint the courts presidents after having considered the opinion of the full court;*
- *determine the exact location and service areas of courthouses and territorial jurisdiction of courts;*
- *determine the number of judges in each court and their division among courthouses after having considered the opinions of the presidents the courts in whose territorial jurisdiction the court is located;*
- *run the courts information system;*
- *exercise supervisory control over the performance of the duties by the presidents of courts;*
- *approve the standard format for reporting and the term for submission of the courts;*
- *announce a public competition for a vacant position of judge.*

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?

No.