

Answers from Finland
Prepared by
Mr Timo ESKO, President of Turku Court of Appeal
29 January, 2015



CCJE-BU (2015)1

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?

A: Section 3 of the Constitution of Finland of 11 June 1999 reads as follows:

Section 3 - Parliamentarism and the separation of powers

The legislative powers are exercised by the Parliament, which shall also decide on State finances.

The governmental powers are exercised by the President of the Republic and the Government, the members of which shall have the confidence of the Parliament.

The judicial powers are exercised by independent courts of law, with the Supreme Court and the Supreme Administrative Court as the highest instances.

- 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: The economic depression has led to restructuring of judiciary. In this connection, the independence of judiciary has become under discussion to some extent. The main concern has focused on people's access to justice. The spirit in this discussion has been positive towards the judiciary and executive powers have been criticized for some measures taken.

- 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?

A: There have been some individual voices (professors) expressing the opinion that judiciary has interfered in the field of legislative power. On the other hand, judiciary has pointed out that legislative power has been reluctant to enact new legislation in cases where, for example, international development in human rights (like *ne bis in idem*) has made it necessary. In cases like this judiciary has had no other choice but take the rôle of legislative power by giving necessary precedents.

One may also mention that there is no Constitutional court in Finland. The questions which may arise concerning the constitutional aspects concerning a government bill are studied by a parliamentary committee as part of the legislative process. However, according to the Constitution

Section 106 - Primacy of the Constitution

If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution.

There have been cases where a Court of law has found some rules included in a parliamentary act to be contrary to the Constitution in a case before the Court although the parliamentary committee has found no such contradiction in its *ex ante* investigation. These cases have been few but they have generated quite a lot discussion in public.

- 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)?

A: As stated above, there has been restructuring of judiciary (like reducing the number of district courts) going on in Finland during the last years, but the question of division of powers has never been brought up.

- 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”.

A: No, there have not been any such significant comments made by politicians or other relevant groups.

- 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)?

A: There is no Council of Judiciary in Finland, but the establishment of a Council is under preparation and is (nowadays) supported also by the Ministry of Justice. The budget of the judiciary is prepared by the Ministry of Justice in cooperation with the Ministry of Finance. The Ministry of Justice discusses its plans and proposals with the representatives of judiciary and the budget is finally decided by the Parliament.

The budgetary powers of the Ministry of Justice are wide, but in general we are adapted to work under these conditions. In some cases, however, the Ministry has allocated budgetary resources in a very detailed way which can be questionable from the point of view of the independence of judiciary. Certain allowances may have been “ear-marked” to be used in proceedings against economic criminality, for example, On the other hand, some courts may have demanded extra allowances for certain exceptionally large proceedings. These questions are now under discussion and we hope that there will be some change in this respect.

- 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?

A: No other comments.