

Bratislava, 9 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?

According to the Art. 141 of the Slovak Constitution, Justice in Slovakia is administered by independent and impartial courts and at all levels independently of other state bodies. Under the Art. 143 the judicial system shall be composed of the Supreme Court of the Slovak Republic and other courts, while further details of the judicial system shall be laid down by law. Under the Art. 145 the President of the Slovak Republic shall appoint and recall judges on the basis of a proposal of the Judicial Council of the Slovak Republic; they are appointed without time restrictions.

- 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?

Since 1993 the judicial system in Slovakia was gradually more and more approaching to the European standard. In the nineties were established the councils of judges at all the court levels, in 2002 the Judicial Council, in 2003 was created separate budget chapter of the Supreme Court and in general the position of judiciary has been strengthened during the process of accession of Slovakia to EU in 2004.

But, after the parliamentary elections in June 2010 a wide campaign was launched by the Government directed against judges and courts highlighting the catastrophic state in the Slovak judiciary despite the fact that, the speed of judicial proceedings has been improved at average and the number of pending cases was substantially reduced. This culminated in elaboration of the governmental draft amendments to the statutory laws of judges without any cooperation with the Judicial Council, the authorities of the judicial self-governance or discussion in the professional public about the need for such new arrangements. In addition, these amendments has significantly intervened in the independence of judges and the judiciary particularly in the fields of appointment, nomination and promotion of judges, disciplinary proceedings education and training of judges and remuneration. At the same time raised profanation of judges and the Judiciary by politicians, NGOs and media (for more details please see my letters to former CCJE President Mr. Orlando Alfonso from 3 February and 27 September 2011). Some of these changes have been approved, some of them Constitutional Court declared unconstitutional, some were changed after the general elections in 2012.

But the biggest interference with judicial independence were constitutional amendments approved by the Parliament in 2014 (for more details please see also answer under 4).

- 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, as far as I know. However, very often, politicians, NGOs and the media comment on the decisions of the courts even before the judgments become final and express their expectations of how the court should decide in particular case.

- 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)?

Yes, in 2011 were adopted amendments to the statutory laws of judges (please see the answer under 2) and in 2014 Slovak Constitution was amended. Positive changes in the Constitution are new creation of the Judicial Council (9 from 18 members are judges elected by their peers) and certain broadening of its competences.

But negative changes are very serious. As I wrote in my letter from 11 June 2014, according to this amendment (art. 154d) all judges must fulfill the condition of their “security reliability”. This lies in the fact that judges must ask for so called “security clearance”, during which Slovak Intelligence Services, the police and the National Security Office will gather about the judge and his family a variety of information, subsequently this information will be evaluated by the secret services and a judges who will be indicated as “unreliable” will than be summoned to the Judicial Council, which will vote on whether the judge can or can not remain in his/her office. During this procedure judge concerned will not be guaranteed any rights as those during the disciplinary procedure. This judicial cleansing should have started from 1 September 2014, but according to the Constitutional Court decision they have been temporarily postponed relating to all judges in office. However the condition of “security reliability” must comply with all new judges. It is a part of competition proceedings.

Second negative change is in art. 136(3), by which the Constitutional Court gives consent only to the taking into custody of a judge. Formerly consent was also required to the criminal prosecution of a judge.

- 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”.

Unfortunately, the term “third power of the state” in relation to the Slovak judiciary sounds rather ironically. Independence of judges is “explained” by politicians, some NGOs and media in that sense, that judges think they can do what they want, that they act without any control as they are controlling themselves and are in fact an untouchable close society. That is the reason why appointment of judges, nomination, promotion and competition proceedings should be in the hands of executive power, disciplinary proceedings of judges should be public, in disciplinary chamber should seat also laics. There are also voices regarding to the restriction of the remuneration, because in public opinion only judges are responsible for unenforceability of law, for delays etc...The criticism of the court decisions, specific comments expressing doubts about the correctness of judicial decisions, as well as the profaning and offensive statements of the executive and legislature representatives addressed to judges and the judiciary as a whole became a part of everyday life in Slovakia.

- 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)?

Administration of justice in Slovakia is fully dependent on the executive and legislative power. Although the Supreme Court has a separate chapter in state budget the amount of the chapter depends on the decision of the Ministry of

Finance. Other courts have not separate chapters and, in financial, staff, material and technical matters are totally dependent on the Ministry of Justice

- 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?

Before the parliamentary elections in 2012, the then opposition leaders promised to improve the situation in the judiciary, especially judges working conditions, better legislation and correct errors caused by the previous government. Unfortunately after winning parliamentary elections, none of these promises were fulfilled, on the contrary, changing the Constitution affected the independence of the judiciary in an unprecedented manner.

In my opinion the CCJE and its work is now needed more than ever. The most recent developments not only in Slovakia, but also in some of the other member states gives cause for ongoing concern for the protection of the rule of law.

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