

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?
According to Turkish Constitution (1982) the powers are organized on the principle of separation of powers between legislative, executive and judiciary. This also has been recognised indisputably by the case law of the Supreme Court. Article 7 of the Constitution states that; “Legislative power is vested in the Grand National Assembly of Turkey on behalf of Turkish Nation. This power shall not be delegated. Article 8 states that; “Executive power and function shall be exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and laws.” Article 9; Judicial power shall be exercised by independent courts on behalf of the Turkish Nation.”

- 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?

The principle of the separation of powers is indisputable accepted throughout the political and constitutional history of Turkey. All discussions on the matter are only going on to make a better system in the prospective new constitution.

- 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?

Despite occasionally some Supreme Court and Council of State decisions have been criticized whether they are partial or impartial there has been a concrete article in the Constitution. According to the Turkish Constitution (article 138/3); Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.

- 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. Although there has happened some minor amendments regarding administrative structure of the courts (such as number of judges working in the courts, composing members, number of chambers etc.) they did not affect the relationship between the judiciary and the other powers of the state or the separation of powers since those amendments have administrative and functional characters also the relations between the powers and judiciary laid out robustly in the Constitution.

- 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”.

In the widest sense there has been some criticism made by politicians with respect to the role of the judiciary/courts in their capacity. They criticise the courts by claiming that the judiciary interfering the field of legislative and executive.

- 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)?

Courts are pretty much dependent on the financial sense to the Ministry of Justice and consequently to the Ministry of Finance in terms of their equipment requirements. Despite the judiciary is completely independent in terms of conducting its judicial function, in the widest sense the financial dependence of the courts may somewhat affect its independence.

- 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?

Since the relationship between the powers is always difficult to manage in practice, it should be regulated robustly and clearly in the constitution/law not to cause crisis between the powers that may harm the trustworthiness of the public. A democratic and law respected state can only be exist in a well-regulated and balanced system of the separation of powers.

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