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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”**

ANSWERS- CROATIA

Questions and answers

- 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 Croatian Constitution (Article 4.) in Republic of Croatia powers are organized on the principle of separation of powers between legislative, executive and judiciary. In the same article it is also stated that beside this principle of separation of powers all three state powers should cooperate and act on the basis of mutual checks and balances.

Judiciary power is executed in courts, judiciary is autonomous and independent, courts are deciding only on the basis of constitution, international agreements and laws, powers are invested in judges personally who carry out judiciary duties in courts. (Article 115. and 118.)

- 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?*

In Croatia position of judiciary has been strengthened during the process of accession to EU. In that process of negotiations basic changes took place in 2010. with amendments to the Constitution.

Positive changes which judiciary in Croatia enjoy so far attained several major issues:

- ***judges are appointed for permanent mandate from the first appointment,***

- ***judges are appointed by judiciary council,***
- ***judiciary council is composed from 7 judges, 2 professors of law, 2 members of the parliament (one form position one form opposition)***
- ***judges in the Council are elected by all judges in secret voting system,***
- ***presidents of courts are appointed by the Council,***
- ***Council decides on disciplinary responsibility of judges,***
- ***judges can be dismissed from office only if they reach age for retirement or such decision is reached after disciplinary proceedings for severe breach of duty***

All this changes were signed in the Accession Agreement with all other EU Member States.

Now in the media, from the journalist close to the Government (centre left) and the President of the Republic (centre left) arguments and opinions are leaking that judges are forming a close society, that they act without any control, that they are controlling themselves, that they are practically “untouchable” , that appointment of judges should be in the hands in powers of the Parliament on the proposal of the President of the Republic with Council only as advisory role.

These opinions are supported by some NGO-os, and partly by the certain circles in the Academia which are closer to now left Government.

- 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 to my knowledge, except that very often high governmental officials, members of the Government, MP-ies, representatives of NGO-os take liberty to comment judgments of the courts before they become final with exposing what decision should be.

- 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)?

Please see answer under 1.

In the last year new Law on Territorial Jurisdiction of Courts has been introduced and came to force. Consequence of it is that number of first instance courts has been reduced from 67 to 24. Some specialization to second instant courts has been introduced in a sense that only few from 16 of those courts will have authority on family, labour or land register cases.

Judges from courts which have been abolished will be transferred to other courts of same jurisdiction. In my opinion this will be breach of the principle that judges cannot be transferred without their consent because change is so wide and will affect such large number of judges that we cannot understand this phenomenon as sporadic and exception where principle could be bypassed in some extraordinary cases of reorganization in system of courts.

- 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".

This problem in Croatia exists all the time.

Essence of such comments, which are coming form media who are close to the Government, from the law professors closer to the Government, and some majority MP-ies , challenge validity of position of judges especially way how they are appointed and dismissed form office and the role of Judiciary Council.

- 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 completely dependent in financial sense to the Ministry of Justice and consequently to the Ministry of Finance. This situation extend to the question of requiring any kind of equipment and courts have no autonomy to procure anything needed for proper regular operation of the courts.

One of the phenomenon is that recent changes to various laws introduce various extrajudicial bodies without those requirements prescribed in Article 6 of ECHR with authority to decide in issues which are essentially reserved to courts.

- 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?

Unfortunately I could only with regret emphasize that question of reaching international accepted standards of independence of judiciary is never ending story and that examples through Europe show as that there is constant danger that to other powers will try to minimize achieved levels of independence of judiciary or they will stay very firmly on to position not to introduce changes which could improve level of independence of judiciary in their countries.

In that respect now more than ever it is important to remember that level of guarantees achieved in the county should not be decreased as it is stated in

Chapter 1.1., last section of Explanatory Memorandum of European Charter on the statute for judges (1998.)

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