

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 the Icelandic constitutional law (1944) the powers of the state are divided into three independent parts, the executive power, the legislative power and the judicial power. According to the law about courts (1998) judges are independent in exercising their judicial work and carry it out on their own responsibility. When judges lay judgement on judicial dispute they shall only follow the law. A judicial decision shall only be reviewed by an appeal to higher court.

- 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?**

There has been no serious discussion about the independency of the judicial power against the other two powers in Iceland the last 10 years except for a discussion about the financial independence of the judicial power. In Iceland the executive power

(government) is strong. The budget of the courts is in reality administered by the executive power although in the end the legislative power has the last word. In that respect the judicial power is relatively weak against the two other constitutional powers.

- 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?**

There was a discussion in Iceland in the year of 2000 hence to a judicial decision rendered by the Supreme Court of Iceland in a case where the executive power (the government) was on the opinion that the court had gone too far and acted as the legislative power in the court's decision. This discussion led to a change of the law the court had clarified and interpreted.

- 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)?**

There has been no discussion in Iceland regarding the above mentioned issues.

- 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”.**

There has been a discussion about the heavy case load of The Supreme Court of Iceland in recent years and if the court, which is very efficient, is by that reason generally speaking able to guarantee the legal security. Nevertheless no special examples have been given in that respect. In Iceland there are only two levels, District Court (8) and the Supreme Court. This discussion has led to a law proposal where a new level, Higher Court, shall be established so that the levels will be three, District Court, Higher Court and the Supreme Court. If this law proposal will be legalized it will lead to much less case load of the Supreme Court.

- 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 administration of justice is limited by the annual budget proposed by the Government and approved by the Althing (Parliament). In recent years there has been a

cut of budget which has affected the activity of the courts. As mentioned in answer to the second question the judicial power in Iceland is weak in that respect. The governing of the district courts is carried out by The Icelandic Judicial Council but The Supreme Court of Iceland is governed by itself. Therefore the governing of the courts is not affected by the Ministry of Justice in their daily work. The courts are neither affected by parliamentary investigations nor other external influence by other powers of the state.

- 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?**