

Zagreb 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”**

### **ANSWERS- MALTA**

- 1) The constitution of Malta provides for complete separation of powers between the three organs of the state. It is provided that no authority may interfere with the decision making role of the judiciary who are independent of the executive. I am not aware of any attempt by the executive to influence any Judge in his decision making process.
- 2) Government and the Judiciary are in talks for the setting up of a commission to regulate the behaviour of judges and exercise discipline. Discussions are largely centred on the composition of the commission and the extent of its powers, with Government insisting that it wants representatives of the “public” on the commission to promote transparency; who will have the majority on the commission and what powers are to be given to it are the main issues. This matter is also being debated in the media. The stand of the Judiciary is that we accept that the commission will have power to discipline members of the Judiciary, without impinging on our independence, but we are insisting on having the final say on the matter. Government and the media raise doubts as to whether the Judiciary can discipline itself. The appointment of retired Judges to sit on the commission and whether there should be a right of appeal to the Supreme Court are also issues being discussed.
- 3) There has not been any significant debate on the issue of judicial moderation. It is not the first time that the ordinary Courts, in the exercise of their powers of general review of administrative action, have sanctioned a Government authority for acting unreasonably or against the law, and while certain judgments are criticised by the media, especially by those seen to be in favour of the party in Government, after some time the matter is dropped. It will surface again after some other controversial judgment, but no public debate on the matter has ever been held. It is generally accepted that the State is subject to certain judicial control.

- 4) To date there are no steps that can be taken against a member of the Judiciary, and they only remedy for any misbehaviour is impeachment by a two-third majority by Parliament. Such an extreme measure was adopted twice, but it failed in both instances. In the first case, the matter took a political tinge and the impeachment motion did not get the required majority, while in the second case, the Judge concerned retired on reaching the age limit before Parliament took a vote on the motion. This situation is seen as being inadequate as it does not provide for less serious acts of behaviour and leaves the matter in the hands of politicians. The idea is that certain disciplinary measures should be available – apart from impeachment – and the how and wherefore is being discussed. If the commission, as originally proposed, will have a majority of State appointees there could be issues affecting the separation of powers. Government seems to have backed down from this original proposal but we are still discussing the composition of the said commission.
- 5) There have not been significant public declarations affecting the Judiciary, except that the Government frequently repeats that it has no intention of minimizing the independence of the Judiciary.
- 6) Yes, the Judiciary and the Court administration depend on Government funding which is extremely lacking. Within the European Union, in Malta the percentage of the annual budget dedicated to Justice is the lowest. There are always promises that Government will increase the vote but nothing ever happens. This affects the proper administration of justice in various ways. The number of judges and magistrates is very low in relation to the workload and population. Again, the EU has recommended that the number should be doubled, but nothing has been done. In effect, each Judge and Magistrate is doing the work of two with the resulting delay, which is then seen as our responsibility! Also, since the Court is a government department, recruiting of staff is managed by the Office of the Prime Minister and dismissals through the Public Service Commission, which results in delay and political interference in both processes. Many staff are not up to standard. Anything we as the Judiciary require, including extra shelves or cupboards and IT is subject to control and administration by Government officials, and is, as a result, subject to government bureaucracy and budget limitations. The library budget is extremely low, and our complaints are always met with the stock answer that no funds are available. Few judicial assistants are available, again due to lack of funds. In other words, although no interference is recorded in the decision process by the Judiciary, there are various other factors which control and limit the way the Judiciary operates.
- 7) The Judiciary in Malta does not have a good relationship with the press. The press pick and choose what and how to report our work, and are not always faithful in their reporting. On one occasion, for example, they gave a false figure representing the number of judgments pending for more than 5 years; we issued a correction, but it took them months to report the true much lower figure. Judgments are not always reported correctly and often given a slant to make the judge or magistrate seen in bad light. Our Judiciary takes the position of not commenting on press reports unless to correct facts connected with administration, but what is said about us and our judgments is generally left unanswered; we do not find it fruitful to enter into polemics with the press. The press, generally, do not have trained personnel and base their reports on what they pick up from Joe public and from certain lawyers who, to improve their own ego, pass on certain information (obviously tainted) about cases to the press; reportage is, often, done without further investigation. Calls for the press to be more responsible have been made even by the Government, but little progress has been seen. The press, also, sometimes picks on a particular case and

sensationalize same, with the result that some sort of pressure is possibly made on the Judge or Magistrate hearing the case.

With best wishes.

Mr Justice Tonio Mallia  
Court of Appeal, Malta