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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”

NORWAY

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?**

The Norwegian Constitution of 1814 is based on the principle of separation of powers between the executive, the legislature and the judiciary. Until May 2014 the principle of judicial independence was not clearly stated in the Constitution, but was presupposed, e.g. in Article 88, after which the Supreme Court pronounces judgments in the final instance, and Article 90, which states that the judgments of the Supreme Court may in no case be appealed. According to the Constitution Article 22, judges may not, except by court judgment, be dismissed nor, against their will, transferred.

Since 1814 the Norwegian Constitution has been amended several times. By amendments in May 2014 the Constitution now *inter alia* includes basic civil and political rights prescribed for in international Human Rights conventions. One

innovation is the new Article 95 stating an obligation for the state authorities to secure the independence and impartiality of the judges and the courts.

- 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 independence of the judiciary is well respected by the other state powers and in society in general, as indicated by the aforementioned amendments to the Constitution in 2014.

In 2002, there was a major reform in the administration of justice as the ties between the courts and the Ministry of Justice were detached, *inter alia* with the aim of making judicial independence more visible to the society. The National Courts Administration was established and entrusted with the task of administering the courts. The Judicial Appointments Board and the Supervisory Committee for Judges were established at the same time. The Norwegian Association of Judges initiated in 2009 discussions on the need for further reforms regarding the independence of judges, especially due to the predominant role of the government in the procedure for appointing judges, as well as in the procedures for selecting judges as members to the board of the National Courts Administration, the Judicial Appointments Board and the Supervisory Committee for Judges. This has been a continuous and ongoing discussion with the other state powers and others, and hopefully it will soon be ended with successful reforms in this field.

- 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?**

The Norwegian courts have the right and the duty to review the constitutionality of laws when questions in this area arise in connection with cases under consideration. The Norwegian courts undertake constitutional review as well as judicial review of administrative actions. The principle of constitutional review by the courts has prevailed in Norway for almost 200 years. The principle is not stated in the written Constitution, but stems from the practice of the Norwegian Supreme Court and is considered as being a principle of constitutional rank. From time to time this principle is debated.

- 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)?

See answers above.

- 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”.**

No, as indicated above, the independence of the judiciary is well respected both by the other state powers and in society in general.

- 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 Parliament determines the allocation of resources to the courts, but the influence of the government in this respect is very strong. The amount of resources allocated to the courts has no effect on judges' independence in their adjudication, but of course, the resources distributed have a decisive impact on the proper administration of justice. A poor administration of justice may have long-term negative effects on the public confidence in the courts.

The National Courts Administration is responsible for the operation and maintenance of Court houses and for administrative and technical support for judges and staff. The Parliament may give overall instructions for the tasks that are given to the Courts Administration, but the Courts Administration decides its own priorities within the framework of its resources and various tasks. The National Courts Administration has a very free hand in its administration of the courts. Apart from the usual budget reporting, the Parliament will also keep a check on the courts and the Courts Administration through the Office of the Auditor General, which, in addition to auditing the accounts, also is able to audit the administration in the area of the courts.

Judges are appointed by the government on the recommendation of the Judicial Appointments Board. The remuneration of Norwegian judges is determined by the other state powers. The Parliament determines the salary of Supreme Court justices, while the executive by one of the ministries determines the salary of judges in District Courts and Courts of Appeal.

Neither the legislative nor the executive power has ordered investigations in general concerning judges. The Ministry of Justice emphasized, in its note of 19 October 2006 regarding constitutional barriers for inquiries of the courts, whether such inquiry should be carried out, depends *inter alia* on:

- the similarities between an inquiry and a reversal of the case,
- the purpose of the inquiry,
- whether such an inquiry is crucial for the public trust of the courts system,
- the time lapse; inquiries could more easily be set up for elder cases,

- whether the courts decision later on has been reversed by the courts themselves

In 2006 an inquiry commission was established by the government related to a specific criminal case where the conviction was reversed by the court of appeal more than twenty years later. The inquiry was limited to the court orders that controlled the procedural matters of the case.

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?

The vast powers of the government with regard to the procedures for the appointment of judges should be curtailed. The judiciary should be granted a more significant influence in processes concerning selection of judges as members of the Board of the National Courts Administration, the Judicial Appointments Board and the Supervisory Committee for Judges. The arrangement whereby the other state powers fix judges' salaries should be reconsidered. The establishment of a Council for the Judiciary with responsibilities for judges' ethics, disciplinary sanctions against judges, training of judges, and perhaps also the tasks now assigned to the Judicial Appointments Board, should be considered.

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