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До
Председателя на комисия
„Международна дейност“ на
Висшия съдебен съвет

ВИСШ СЪДЕБЕН СЪВЕТ	
Регистрационен индекс	Дата
М-ОМ-015	23-02-2015

ДОКЛАД

от Майя Русева, съдия в Софийски апелативен съд, командирована
във Върховния касационен съд
член на Консултативния съвет на Европейските Съдии /CCJE/

Уважаема госпожо Председател,

Във връзка със задължението ми да информирам регулярно
Висшия съдебен съвет за дейността си в Консултативния съвет на
Европейските съдии /решение от заседание на ВСС на 11.02.2010г./,
заявявам следното:

Към настоящия момент е в ход изготвяне на Становище №.18
на Консултативния съвет на Европейските съдии относно
независимостта на съдебната власт и връзките ѝ с другите власти в
модерната демократична държава.

За подготовката му е разработен подробен въпросник,
изпратен на членовете на съвета от различните държави за отговор
на един от работните езици. Същият съдържа въпроси относно
взаимодействието между властите - конституционна уредба на
разделението на властите, евентуални промени в съдебната власт
в най-общ смисъл през последните 10 години, функционирането ѝ
във взаимодействие с останалите власти, дискуссионни теми.
Въпросника съм попълнила на английски език и съм изпратила
своевременно на съответния технически сътрудник на съвета.
Представям копие от същия.

Междувременно съм оказала съдействие по молба на
представителя на Словакия до представителите на останалите
държави-членки, постъпила чрез секретариата на Консултативния
съвет на европейските съдии. Същата касаеше искане за
предоставяне на информация относно ВКС – щатна численост,

натовареност, обезпеченост с помощен персонал, нормативна уредба на освобождаване от длъжност поради пенсиониране. По тези въпроси съм изпратила подробен отговор, вкл. на основа официални данни за дейността на съда.

Предвид извършения от Министерство на правосъдието превод на последните три становища на Консултативния съвет - Становище №.15 за специализацията на съдиите от 2012г., Становище №.16 относно отношенията между съдии и адвокати от 2013г. и Становище №.17 относно оценяването на дейността на съдиите от 2014, съм изпратила същите на секретарията на ССЈЕ за поставянето им на официалната страница на Съвета. Така по настоящем всички становища вече са надлежно преведени на български език и с това сме изпълнили съответното си задължение за обезпечаване на официалния им превод.

През месец март 2015г. предстои събиране на работната група за изготвяне на Становище №.18 – в която съм избрана и аз, в гр. Страсбург, Франция.

При последващи дейности във връзка с работата на Консултативния съвет на европейските съдии ще продължа да информирам регулярно Висшия съдебен съвет.

Приложение:

1. Въпросник за изготвяне на Становище №.18 на Консултативния съвет на Европейските съдии

12.02.2015г.

С УВАЖЕНИЕ:



Гр.София

/Майя Русева – съдия в Софийски
апелативен съд, командирована във
Върховния касационен съд/



CCJE-BU (2015)1

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”**

Replies from Bulgaria

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 principle of **separation of powers** is proclaimed in the **Constitution** (adopted in 1991).

It provides that:

State power shall be divided between a legislative, an executive and a judicial branch of government /Article 8/

(1)The judiciary shall protect the rights and legitimate interests of the citizens, the legal persons, and the State.

(2) In the performance of the functions thereof, all judges, jurors, prosecutors and investigating magistrates shall be subservient only to the law.

(3) The judiciary shall be independent and shall have an independent budget /Art.117/

(1) Justice shall be administered by a Supreme Court of Cassation, a Supreme Administrative Court, appellate courts, district courts, military courts, and regional courts.

(2) Specialized courts may furthermore be created by statute.

(3) Extraordinary courts shall be inadmissible /Article 119/

(1) The courts shall exercise review as to the legality of the acts issued and the actions performed by administrative bodies.

(2) Citizens and legal persons may appeal against any administrative act which affects them except such as is expressly specified [as unappealable] by statute /Article 120/

(1) The courts shall ensure equality and adversarial conditions to the parties in a judicial proceeding.

(2) Judicial proceedings shall ensure the establishment of the truth.

(3) All courts shall hear the cases in sessions open to the public, unless provided otherwise by law.

(4) All acts issued in the course of administration of justice shall be reasoned /Article 121/

The Supreme Court of Cassation shall exercise supreme judicial supervision as to the accurate and equal application of the laws by all courts /Article 124/

(1) The Supreme Administrative Court shall exercise supreme judicial supervision as to the accurate and equal application of the laws in administrative justice.

(2) The Supreme Administrative Court shall rule on all disputes as to the legality of acts of the Council of Ministers and of the individual government ministers, as well as of other acts specified in the law /Article 125/

(1) Judges, prosecutors, and investigating magistrates shall be elected, promoted, demoted, transferred and removed from office by the Supreme Judicial Council.

(2) The President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, and the Prosecutor General shall be appointed and removed by the President of the Republic on a motion by the Supreme Judicial Council for a single term of seven years. The President may not refuse to decree any such appointment or dismissal upon a second motion.

(3) (Amended, SG No. 85/2003) After completing a fifth year in the office of judge, prosecutor or investigating magistrate and upon certification, judges, prosecutors and investigating magistrates shall become irremovable by a decision of the Supreme Judicial Council. They, including the persons covered under Paragraph (2), may be removed from office solely upon:

1. attainment of the age of 65 years;
2. submission of resignation;
3. entry into effect of a sentence imposing a penal sanction of deprivation of liberty for a premeditated offence;
4. sustained actual inability to discharge the duties thereof for a period exceeding one year;
5. grave breach or systematic dereliction of the official duties, as well as actions damaging the prestige of the judiciary.

(4) (New, SG No. 27/2006, declared unconstitutional by the Constitutional Court of the Republic of Bulgaria, judgment promulgated - SG No. 78/2006)

(5) (New, SG No. 85/2003, renumbered from Paragraph (4), SG No. 27/2006) Once acquired, irremovability shall be restored upon resumption of the office of judge, prosecutor or investigating magistrate in the cases of removal under Items 2 and 4 of Paragraph (3).

(6) (New, SG No. 85/2003, effective 1.01.2004, renumbered from Paragraph (5), SG No. 27/2006) The administrative heads in the judicial authorities, with the exception of such covered under Paragraph (2), shall be appointed to the managerial position for a term of five years and shall be reappointable. /Art.129/

(1) The Supreme Judicial Council shall consist of 25 members. The President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, and the Prosecutor General shall be ex officio members of the said Council.

(2) Eligibility for non-ex officio membership of the Supreme Judicial Council shall be limited to jurists of high professional standing and moral integrity who have practised law for at least 15 years.

(3) Eleven of the members of the Supreme Judicial Council shall be elected by the National Assembly, and eleven shall be elected by the judicial authorities.

(4) The elected members of the Supreme Judicial Council shall serve terms of five years. They may not be re-elected immediately upon expiration of the said term.

(5) The meetings of the Supreme Judicial Council shall be presided over by the Minister of Justice. The said Minister shall attend in a non-voting capacity

(6) (New, SG No. 12/2007) The Supreme Judicial Council shall perform the following functions:

1. appoint, promote, demote, transfer and remove from office the judges, prosecutor, and investigating magistrates;

2. impose the disciplinary sanctions or demotion and removal from office on judges, prosecutors, and investigating magistrates;

3. organize the continuing education of judges, prosecutors, and investigating magistrates;

4. adopt the draft judiciary budget;

5. determine the scope and structure of the annual reports referred to in Item 16 of Article 84 herein.

(7) (New, SG No. 12/2007) The Supreme Judicial Council shall hear and adopt the annual reports of the Supreme Court of Cassation, of the Supreme Administrative Court and of the Prosecutor General on the application of the law and on the operation of the courts, the prosecuting magistracy and the investigating authorities and shall lay the said reports before the National Assembly.

(8) (New, SG No. 12/2007) The term of office of an elective member of the Supreme Judicial Council shall be terminated upon:

1. resignation;

2. an effective judicial act on a criminal offence committed by the said member;

3. sustained actual inability to discharge the duties thereof during a period exceeding one year;

4. removal from office by reason of breach of discipline or disqualification from practicing a legal profession or activity.

(9) (New, SG No. 12/2007) Upon termination of the term of office of an elective member of the Supreme Judicial Council, a replacement shall be elected from the relevant quota to serve for the remainder of the term of office [of the member whose term of office is terminated] /Article 130/.

The Minister of Justice:

1. shall propose a draft judiciary budget and shall lay the said draft before the Supreme Judicial Council for discussion;

2. shall administrate the property of the judiciary;

3. may propose the appointment, promotion, demotion, transfer and removal from office of judges, prosecutors and investigating magistrates;

4. shall participate in the arrangements for upgrading the qualifications of judges, prosecutors and investigating magistrates;

5. (repealed, SG No.12/2007) /Article 130a/

Upon exercise of judicial power, judges, prosecutors and investigating magistrates shall not incur criminal and civil liability for the official actions thereof and for the acts decreed thereby, save where what is done shall be a premeditated offence at public law /Article 132/.

(New, SG No. 12/2007) (1) There shall be established an Inspectorate with the Supreme Judicial Council, which shall consist of an Inspector General and ten inspectors.

(2) The Inspector General shall be elected by the National Assembly by a majority of two-thirds of the National Representatives for a term of five years.

(3) The inspectors shall be elected by the National Assembly for a term of four years according to the procedure established by Paragraph (2).

(4) The Inspector General and the inspectors may be re-elected, but not for two sequential terms of office.

(5) The budget of the Inspectorate shall be adopted by the National Assembly within the judiciary budget.

(6) The Inspectorate shall examine the operation of the judicial authorities without affecting the independence of judges, jurors, prosecutors and investigating magistrates in the performance of the functions thereof. The Inspector General and the inspectors shall be independent in the performance of the functions thereof and shall be subservient only to the law.

(7) The Inspectorate shall act on its own initiative, on the initiative of citizens, legal persons or state bodies, including judges, prosecutors and investigating magistrates.

(8) The Inspectorate shall present an annual report on the operation thereof to the Supreme Judicial Council.

(9) The Inspectorate shall approach other state bodies, including the competent judicial authorities, with alerts, proposals and reports. The Inspectorate shall make public information on the operation thereof.

(10) The terms and procedure for the election and removal of the Inspector General and of the inspectors, as well as the organization and operation of the Inspectorate, shall be regulated by statute /Article 132a/

The organization and procedure of the Supreme Judicial Council, of the courts, the prosecuting and the investigating authorities, the status of the judges, prosecutors and investigating magistrates, the terms and the procedure for the appointment and removal from office of judges, jurors, prosecutors and investigating magistrates, as well as the exercise of the responsibilities thereof, shall be regulated by statute /Article 133/ (Judicial System Act – adopted 2007, amended and in force now)

- 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 separation of powers has never been disputable. However, the question how the separate branches shall cooperate and act on the basis of the system of checks and balances has often been discussed. In the meantime there is a large discussion how the Supreme Judicial Council shall be composed (at present it consists of 25 members – 3 *ex officio* members (President of Supreme Administrative Court, President of Supreme Court of Cassation, Chief Public Prosecutor), 11 members elected by Parliament, 11 members elected by the judicial authorities (courts, prosecution offices, investigation – Art.130 Constitution) and sitting when deciding on matters concerning only judges or prosecutors (in panel or in two cameras so as the prosecutors' elected members decide only about prosecutors and the judges' elected members decide only about judges), and which is the proper way of introducing such reform in the legislation.

In January 2015 the Parliament adopted a revised Strategy on Judicial System Reform, proposed by the Minister of justice. It contained problems in the judicial system and measures to be undertaken aiming to strengthen the judiciary, its proper functioning and independence, and a right to court of full value.

- 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 are no opinions that judiciary has impermissibly interfered in the field of executive or legislative power or discretion. However, through the years there have

been cases when high State officials (for example Interior Minister) have commented pending cases, courts' orders (ex. pre-trial detention orders/release on bail) and judgements. The European Court of Human Rights has twice found violation of the presumption of innocence (Art.6.2 ECHR) in cases against Bulgaria because of Interior Minister's comments that certain persons had been guilty – made the day after their arrest and even before they had been brought before a court (Gutsanovi v. Bulgaria - application No.34529/10, Toni Kostadinov v. Bulgaria - application No.37124/10)

- 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?

Administrative jurisdiction reform had been completed in 2007. The 1991 Constitution restored the Supreme Administrative Court as a separate body. In 2007 28 administrative courts started functioning thus forming the separate branch of administrative jurisdiction.

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.

A Strategy on Judicial System Reform is adopted in January 2015 by the Parliament. It aims strengthening the judiciary, its proper functioning and independence, and a right to court of full value. However at that stage the strategy is quite general, it has just been adopted and is widely discussed - various comments and proposals are made.

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 answer b)

- 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".

Serious discussions on the proper functioning of courts and judges were provoked two months ago by the French Ambassador's comment regarding the actions of a particular judge handling bankruptcy proceedings of two companies with French capital. Although it was disputable whether such comment had been permissible, it opened a wide discussion about the proper functioning of that court, its administration, the computer case distribution system applied (as a guaranty for equal work load and an anticorruption measure) and the particular judge running the case. Judges of the court concerned also insisted on carrying out a thorough examination on the court's administration admitting that there had been serious problems which harmed the image of their court, and seeking the head of the court and the vice-heads resignations. This resulted in special measures undertaken by the Supreme Judicial Council – it started inspection proceedings, heard in plenary judges of the court concerned who insisted to introduce the problems, reopened disciplinary proceedings against the judge running the bankruptcy case and temporarily removed her from office. At present a special commission of Supreme Judicial Council members examines the functioning of that court, the problems and the complaints raised – making an on spot investigations and hearing all interested parties.

- 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 judiciary shall have an independent budget. However, the budget of the judiciary shall be adopted by Parliament. Although the Supreme Judicial Council has always proposed draft budget, the Parliament usually adopts the Ministry of Finance draft budget – which provides less finance and leads to insufficient financial security of courts. The appointment and promotion of judges is within the competence of the Supreme Judicial Council; the information technologies in courts are also provided by it and paid by the budget of the judiciary. There is an Inspectorate to the Supreme Judicial Council which has competence, *inter alia*, to check the organisation of administrative business in courts, the arrangements made for the institution and progress of case files, as well as the disposal thereof within the established time limits, to propose imposition of disciplinary sanctions on judges and administrative heads. The Ministry of justice is in charge of court buildings and security. The Minister of justice shall preside the Supreme Judicial Council meetings and shall attend in a non-voting capacity

- 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 Strategy on Judicial System Reform is expected to strengthen the judiciary, its proper functioning and independence, and to improve the system of checks and balances. At present it is largely discussed in the political and legal field, in university and academic circles. Comments and proposals are welcomed and will be taken into account. However, as far as legislative measures would have to be undertaken, the final result would depend on the Parliament.