

The relationship between the executive and the judiciary in a democratic society;
the question is - who should be master?

Answers of the Icelandic delegation.

Question 1: Is the principle of independence of the judiciary enshrined in the constitution or a comparable legal source in your country?

Answer: Yes.

Question 2: Is the principle of balance of powers enshrined in the constitution or a comparable legal source in your country?

Answer: Yes, by interpretation, not in letter.

Question 3:

Is there any influence of the executive on selection and the first appointment of judges?

Answer: Yes.

If yes: describe it.

The Minister of Justice has the final power to decide who is appointed. Lately he has repeatedly gone against the recommendations of an appointment committee established by the law. The minister is not bound by its recommendations.

Question 4:

Is there any influence of the executive on the promotion of judges?

Answer: Judges are appointed for life. As to becoming a justice of the Supreme Court there is an independent application process. The Supreme Court itself evaluates the candidates and makes its recommendation to the Minister of Justice. Lately the minister has repeatedly gone against the recommendation of the Court. Once appointed it is for life.

Question 5:

Is there any influence of the executive on the selection, or appointment or dismissal of presidents of court?

Answer: Yes, at the district courts. Not at the Supreme Court. (Court system is two levels.)

If yes: describe it.

The Minister Justice has the final decision power as to the choice of a chief judge at the district courts. The judges at the respective court choose the chief judge by vote. The minister has not gone against the choice of the judges.

Question 6:

Is there any influence of the executive on the distribution of cases /assignment of judges to certain cases?

Answer: No.

If yes: describe it:

Question 7:

Is there any influence of the executive on the transfer of judges to other courts

Answer: No.

If yes: describe it.

Question 8:

Is there any influence of the executive on the termination of office of judges?

Answer: No.

If yes: describe it.

An exception is if a judge has committed a crime or is found to have behaved in a manner so immoral that it is not compatible with holding the post of a judge. In such a situation the Minister of Justice has the role of bringing a case to court to have the judge removed from office.

Question 9:

Is there any influence of the executive on the disciplinary procedure against judges?

Answer: Yes.

If yes: describe it.

There is a disciplinary committee of three. The Minister of Justice appoints one, who also is the chair of the committee. This person shall have the qualification to apply for the office of a Supreme Court Justice. This committee can reprimand a judge. To have it revoked the judge has to sue the minister on behalf of the State within a month.

Question 10:

Is there any influence of the executive on the initial training of judges?

Answer: No.

If yes: describe it.

Question 11:

Is there any influence of the executive on the in-service training of judges?

Answer: No.

If yes: describe it.

Question 12:

Is there any influence of the executive on the salaries of judges?

Answer: Yes.

If yes: describe it.

A committee established by law decides the salaries. It is composed of five members, three are appointed by the Parliament, the Supreme Court appoints one and the Minister of Finance one. The government has a right to present an exposition.

Question 13:

Is there any influence of the executive in deciding on (a) the overall budget of the judiciary; and/or (b) how the funds designated for the judiciary are to be spent?

Answer: a) Yes. B) No.

If yes (in either (a) or (b)), describe it.

- a) The budget is decided by Parliament on the recommendation of the Ministry of Justice. The ministry also controls the budget recommendations for the police and the prosecution. The Judicial Council is given the opportunity to explain the financial needs of the district courts before the ministry makes its recommendations to the Parliament. The same goes for the Supreme Court.
- b) When the budget has been decided by the Parliament it is the responsibility of the Judicial Council to distribute it to the district courts. Each court spends the lot it gets in accordance with the plan previously sent to the Judicial Council. The Supreme Court has a separate designation of funds, but also through the ministry. Neither the district courts nor the Supreme Court get enough funds.
- c)

Question 14:

Is there any influence of the executive on the selection and appointment of clerks of the court?

Answer: No.

If yes: describe it:

Question 15:

Is there any influence of the executive on the composition of the Council of the judiciary or a similar body (if such a body exists)?

Answer: Yes.

If yes: describe it:

The Minister of Justice appoints all five members of the Council, one at his own choice (usually not from the judiciary), two judges according to the result of a vote of the judges, two chief judges according to the result of a vote of chief judges.

Question 16:

Is there any other influence of the executive on the work of the Council of the judiciary or a similar body (if such a body exists)?

Answer: No.

If yes: describe it:

Question 17:

What influences (if any) does the judiciary have on the executive power of central/local government? In particular, (a) does the judiciary have any power to control the exercise of executive power (by virtue of orders that the court can make on the application of parties to the court) and (b) what power (if any), does the court have to oversee the appointment of members of the executive?

Answer: The constitution states that the courts shall decide on the limits of the powers of government in individual cases.

- a) The Act of the Judiciary states that a committee of evaluation shall review all applications for the post of judges at the district courts and rank the applicants before sending its recommendations accordingly to the Minister of Justice. The minister is however not bound by these recommendations. Judges at each court vote the chief judge and send it to the Minister of Justice for confirmation. The minister is not bound by their choice. The Supreme Court reviews applications for the post of Justices at the Court and sends its recommendations to the Minister of Justice. The minister is not bound by the recommendation.
- b) The courts, most often the Supreme Court, and the Association of Judges often by law have the role to nominate people to sit on boards or committees that function within the executive.

Question 18:

What power does the judiciary have over other public bodies (eg the police, or other quasi – governmental powers) in your country?

Answer: None. (Apart for demanding the police to arrest and bring to court an accused or a witness who has not turned up in court.)

Question 19:

Who fulfils the task of prosecution in your country?

Answer: The Public Prosecutor and the police depending on the type of case.

Question 20:

Is there a common career of public prosecutors and judges?

Answer: No.

Question 21:

Can judges be appointed as public prosecutors and vice versa?

Answer: Yes, if they go through the application process and resign from their present post.

Question 22:

Is there an influence of the executive on the appointment/promotion of public prosecutors?

Answer: Yes, the final decision is in the hands of the Minister of Justice.

Question 23:

Is there a possible influence of the executive on the cases public prosecutors are in charge of?

Answer: No.

Question 24:

Which problems (if any) do you see in the relationship between the executive and the judiciary in your country?

Answer: The power the executive has in respect to the appointment process, and in respect to the budget, is detrimental to the independence of the judiciary.

Question 25:

Are there concrete projects to change elements in the relations between the executive and the judiciary ? What would this change mean?

Answer: Most judges agree today that the application process needs to be changed, because they feel the minister has abused his power, but there are different opinions about how. As to the budget there is also dissatisfaction. Some feel simply that the Ministry of Justice should show the courts more respect! Others find that the courts' budget should be handled by the Ministry of State. Yet others think that the Judicial Council should approach the Parliament directly.

The members of the First Study Commission are asked to send their answers to this questionnaire to the General Secretariat as well as to the members of the presidency committee of the Study Commission not later as **July 5th 2008**

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