

1st Study-Group Questionnaire 2008 – Report by Liechtenstein

Dr. Lothar Hagen, judge and president of the Liechtenstein Association of Judges

To question 1:

The principle of independence is mainly regulated in art. 95 of the Constitution, which provides: The judges are when acting in their function as judge independent. Influence by other bodies of the state is only in so far possible as the constitution expressly provides for (art. 12). Art. 12 of the constitution contents only the power of pardoning by the prince. Further provisions are established in the Act of Judges Service (Richterdienstgesetz). The main provision is art. 2, which provides: judges are independent in their function und the judges can't be removed or transferred with exception of disciplinary reasons by disciplinary Court.

To question 2:

There is no special provision for the principal of balance of powers. But the whole constitution contents exact provisions for the three powers of the state. Chapter V deals with the Legislative (vom Landtage), chapter VII with the executive power (von der Regierung) and capture VIII with the judiciary (von den Gerichten).

To question 3:

For the selection and appointment of judges exists a special panel (Richterbestellungsgremium) composed by the head of government, a member of each political party elected in the parliament, the Prince and the same number of persons as from the political parties appointed by the Prince. Just an example: At this time the Prince appointed our Honory President Dr. Ernst Markel as member of this panel. The Richterbestellungsgremium makes a proposal to the parliament which elects the judges by majority. Then the judge is appointed by the Prince. In the case of differences between the panel and the parliament would be held a referendum for the election of the judge/judges.

To question 4:

See question 3).

To question 5:

For the selection and appointment see question 3). A dismissal by the executive power is not possible.

To question 6:

No influence is possible. Only the general assembly of the judges is competent for the allocation of the files (Art. 11 of the Courts Organisation Act).

To question 7:

No influence is possible.

To question 8:

No influence is possible.

To question 9:

No influence is possible.

To question 10:

As the only influence of the executive on the initial training of judges can be considered the distributing of the necessary means to the courts budget. Otherwise no influence is possible.

To question 11:

See question 10.

To question 12:

No influence is possible. The yearly salary is regulated by law.

To question 13:

The budget for the judiciary is adopted by the parliament. The funds designated for the judiciary have to be spent in the frame of this budget and of the accounts. The control is done by a special authority (Finanzkontrolle), within all states authorities control.

To question 14:

The clerks of the court are selected and employed by the States Office for Employees and Organisation, which is competent for all states employees with the exception of the judges and the highest employees of the government.

To question 15:

Liechtenstein has only the panel for judges' appointment, which is composed as it is stated to question 3).

To question 16:

The panel for judges' appointment acts completely autonomously. An influence of the executive can only be seen in the membership of the Head of Government and the Prince in this panel.

To question 17:

An influence can only be seen in the last control of all acts of the executive power by the High Administrative Court, which is also completely independent.

To question 18:

There is no power with the exception as indicated to question 17.

To question 19:

In Liechtenstein the task of prosecution is executed by public prosecutors (Public Prosecution Service)

To question 20:

Liechtenstein has no common career of public prosecutors and judges guaranteed by law. Prosecutors are dealt like other civil servants. In practice they have of course the same professional education. The panel for judges' appointment is not dealing with the appointment of prosecutors.

To question 21:

Art. 14 of the Act of Judges Service (Richterdienstgesetz) provides that the service as a prosecutor during five years immediately before the application to a post as judge substitutes the special educational trainings for the appointment as judge.

To question 22:

All public prosecutors are appointed by the government

To question 23:

The prosecutors are responsible to the government as the whole executive power. In absence of a special Act of Prosecution there are no legal provisions for the relationship between the government or the members of the government and the Prosecution Service. In practise the executive power takes no influence to the Prosecution Service.

To question 24:

We don't have any problems. The independence of judiciary is strictly acknowledged by the executive power (ministries, administrative bodies and the Prince).

To question 25:

There are no concrete projects at this time.

Vaduz, 17.07.2008
Dr. Lothar Hagen