

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

The independence of the judiciary and the balance of power between the three powers of a democratic state: the legislature, the executive and the judiciary, are core elements of the work of the First Study Commission.

The central role of the legislature will not be part of our considerations of this year. In the past the First Study Commission has studied several topics where the relationship between the executive and the judiciary has been an element of the analysis. This year this relationship will be the centre of our investigation.

An examination from this viewpoint may make possible general conclusions on the mutual influence of these two branches of the powers of state and we hope will throw light on the question of the balance of powers in Member States and this specific aspect of independence of the judiciary.

For the purpose of this questionnaire we ask everyone

- (i) to exclude from their consideration the position of the “constitutional court” (if one is part of the judicial system in their country) can be regarded as part of the judiciary system; and
- (ii) to exclude the head of state in their country (as opposed to the head of government) from consideration as a part of the executive, unless the head of the state exercises power or “influence”. If either might be exercised, then it should be noted.
- (iii) “Influence” may be exercised or not; we think that if it might be exercised, then it should be noted.

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

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

Question 3:

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

If yes: describe it.

Question 4:

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

If yes describe it.

Question 5:

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

If yes: describe it.

Question 6:

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

If yes: describe it:

Question 7:

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

If yes: describe it.

Question 8:

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

If yes: describe it.

Question 9:

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

If yes: describe it.

Question 10:

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

If yes: describe it.

Question 11:

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

If yes: describe it.

Question 12:

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

If yes: describe it.

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?

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

Question 14:

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

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)?

If yes: describe it:

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)?

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?

Question 18:

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

Question 19:

Who fulfils the task of prosecution in your country?

Question 20:

Is there a common career of public prosecutors and judges?

Question 21:

Can judges be appointed as public prosecutors and vice versa?

Question 22:

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

Question 23:

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

Question 24:

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

Question 25:

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

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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