

First Study Commission

MALTA

The role and function of the High Council of Justice or analogous bodies in the organisation and management of the national judicial system

(2003)

1. Constitution/Composition

1.1 Is there a Superior Council of the Judiciary or an analogous body, or bodies, in your Judicial System? (Please state title)

Yes, the Commission for the Administration of Justice.

1.2 Give a brief summary of the role or function of such body or bodies.

The Commission's functions include

- a) Supervising the workings of the Courts and making recommendations to enhance their efficiency.
- b) Advising the Minister responsible for justice on any matter relating to the organisation of the administration of justice.
- c) Advising the Prime Minister, when so requested by him, on the appointment of the Chief Justice, judges and magistrates.
- d) Drawing up separate Codes of Ethics for members of the Judiciary and for advocates and legal procurators
- e) Exercising discipline over practising advocates and legal procurators.
- f) Drawing the attention of any judge or magistrate to any shortcoming in his court or his conduct or to any failure on his part to abide by the Code of Ethics.
- g) Investigating and determining, on evidence produced before it, whether there is a prima facie case for the impeachment of a judge or magistrate, on the ground of proved inability to perform the function of their office or proved misbehaviour. The impeachment proper is carried out by the House of Representatives only if the Commission decides that there is such a prima facie case against the judge or magistrate. The power to remove judges and magistrates is reserved to the House of Representatives if the relative motion is supported by a qualified majority of two thirds of all the members of the House.
- h) Considering reports filed by judges and magistrates on cases which have been pending for over five years.

1.3 Who are members of the body? (number, composition and qualifications of the members).

The commission is composed of ten persons. Its chairman is the President of Malta, who only has a casting vote and there are nine other members, that is five members of the judiciary and four other members. Besides the President, the other members are :

- a) the Chief Justice
- b) two judges elected by the judges themselves
- c) two magistrates elected by the magistrates themselves
- d) the Attorney General
- e) the President of the Chamber of Advocates
- f) one member appointed by the Prime Minister and another member appointed by the Leader of the Opposition. These two members must be at least forty five years old; they must enjoy the general respect of the public and must have a reputation of integrity and honesty.

1.4 How is the body constituted and what are the procedures for the appointment of members?

The Commission is constituted by Section 101A of the Constitution of Malta.

1.5 Is there a majority of Judges on the body?

Out of ten members, five are members of the judiciary, but the President has only a casting vote.

1.6 Are any of the members of the body elected by Judges and if so how many? What is the period of office of a member of the body and under what conditions does the term of office come to an end?. May a member be removed from office against his will and if so under what circumstances.?

Four members are elected by judges and magistrates. Each is elected for a period of four years. The two members appointed respectively by the Prime Minister and Leader of the Opposition hold office for four years. The other members hold office "ex officio".

A member of the Commission may be removed from office by the President acting in accordance with the advice of the body or the holder of the office appointing such member. However, such removal must only be based on misbehaviour or inability to discharge the functions of the office.

1.7 To what extent is there a de facto influence on the work of the body by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities.

In the exercise of their functions, the members of the Commission act on their individual judgement and are not subject to the direction or control of any person or authority.

2. Responsibilities of the Superior Council or the analogous body

(If the Superior Council or the analogous body does not have responsibility in a particular field referred to below, please indicate, by reference to it's name only, the authority, which has responsibility.)

2.1 Is the Supreme Court subordinate to the Superior Council of the judiciary? If yes, describe in what respect.

No.

2.2 In so far as the role of the Superior Council or analogous body involves a sharing of judicial power with non-judicial persons or representatives, does the functioning of the Council/body conflict with a strict separation of powers between the judiciary and other state powers, the Executive and Legislative.

I do not perceive any such conflict.

2.3 Does the Council/body have responsibility for the nomination or appointment of a judge? If yes, give a brief description.

No. But the Prime Minister can, if he so wishes, can seek the advice of the Commission when making appointments to the Bench.

2.4 Does the Council/body have responsibility for the promotion of judges? If yes, give a brief description.

No. But the Prime Minister can, if he so wishes, can seek the advice of the Commission when promoting a judge to a Chief Justice.

2.5 Does the Council/body have responsibility in the appointment of Presidents of Courts? If yes, give a brief description.

No. The reply to the previous question applies here too.

2.6 Does it have responsibility for organising the training or continuing education of judges? If yes, give a brief description.

No. This responsibility rests on the recently appointed Judicial Studies Committee. Its direction and control belong to the Judiciary itself.

2.7 Does the Council/body have responsibility for the initiation or conduct of a disciplinary procedure against a judge? If yes, give a brief description.

Yes. See the answers to 1.2(f) and (g).

2.8 Does such Council/body have responsibility in the evaluation of the work of a judge? If yes, give a brief description.

In a way, yes. See that answer to 1.2 (h).

2.9 Does it have responsibility for the drafting or preparation of the budget of the judiciary? (If yes, describe).

No.

2.10 Does it have responsibility concerning the allocation of resources (personnel and financial) within the budget approved by Parliament or Government? If yes, give a brief description.

No.

2.11 Are there any other significant responsibilities of the Council/body not already mentioned? (e.g. the drafting of a judicial code of ethics).

No.

3. Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages

(Note: In some countries the question whether a Superior Council should be created is the subject of continuing debate. In this respect the experience of judges associations of other countries may be of interest. One of the key issues may be the independence of the judiciary).

3.1 If you have such a body, please list, very briefly the advantages and disadvantages.

Advantages :

- a) It maintains control of the discipline of Judges and Magistrates, for lesser shortcomings, entirely within a body in which the judiciary has the majority of votes.
- b) It assures the filtering out of ill-considered or groundless motions of impeachment of judges and magistrates introduced in the House of Representatives. Such a motion would not be made public or proceeded with unless the Commission rules that there is a prima facie case for the removal of the judge or magistrate because of proved misbehaviour or inability to perform the functions of office (whether arising from infirmity of body or mind or from any other cause).
- c) Other advantages are self evident if one considers the functions of the Commission as per 1.2.

Disadvantages :

- a) it has no say on the funding of the courts and the administration of justice. This competence belongs exclusively to the executive power.
- b) It has practically no say in the appointment or promotion of members of the judiciary because this power belongs exclusively to the executive power. The Prime Minister can, if he so wish, seek the advice of the Commission on such appointments, but this facility has been used only once by the Prime Minister and the

advice given by the Commission was disregarded. It is to be noted that Judges are appointed from among practising lawyers of experience and standing in their profession.

3.2 If you do not have such a body:

- (a) Is the creation of such a body contemplated?
- (b) How do you view the advantages and disadvantages of such a body?

Not applicable.

4. Particularities/Criticisms

4.1 Are there some special features concerning the Superior Council or body in your country which might be of special interest to others from a comparative point of view? If yes, describe.

No.

4.2 Are there particular fundamental problems concerning the role of the Council/body in your country? If yes, describe.

No

4.3 Are reforms of such a Council/body under discussion or proposed? If yes, describe briefly.

No.

5. Topics

5.1 What topics do you propose for next year's meeting of the Ist Study Commission?

- a) The role of judicial education in enhancing the judicial function.
- b) The effect of the media on the judicial function.
- c) Should the judiciary be regulated by a formal code of ethical principles?

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