The relationship between the executive and the judiciary in a democratic society: who should be master?

**ISRAEL**

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 judicial 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?

The principle of the independence of the judiciary is enshrined in the Basic Law: Judiciary, a constitutional provision, which states that there is no authority over a judge except the authority of the law; i.e. the executive or any other authority cannot influence the decision of a judge who is guided only by the provisions of the law.

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

The principle of the balance of power is enshrined in the judgments of the Supreme Court of the country. For example H.C. 306/81 Plato Sharon v. The Knesset Committee P.D. 35 (4) 118,141; H.C. 910/86 Ressler v. Minister of Defense, P.D. 42 (2) 441,518.

**Question 3:** Is there any influence of the executive on selection and the first appointment of judges?

If yes: describe it.

All judges of all levels and courts are appointed only by an independent commission of 9 members established by law. (The Basic Law: Judiciary.) The commission includes by law three justices of the Supreme Court including always its president. The two other justices are appointed by the plenum of the justices of the Supreme Court. Two other members of the commission are appointed by the government, including always the Minister of Justice. Two other members are elected by Parliament (The Knesset) by secret ballot and two additional
members are appointed by the Bar, according to an election by the Bar, including always its chairman. All judges are sworn in by the President of the State, but the decision to appoint them is only of the above mentioned commission, and the President has no discretion.

Question 4:
Is there any influence of the executive on the promotion of judges?

If yes describe it.

The promotion of judges is also in the hands of the above mentioned commission, and therefore there is no influence of the executive on the promotion of judges.

Question 5:
Is there any influence of the executive on the selection, or appointment or dismissal of presidents of court?

If yes: describe it.

Presidents of courts are appointed according to sec 9 of the Courts Law (Consolidated Version), 1984. This sec provides that presidents and vice presidents of magistrates courts and of district courts shall be appointed by the Minister of Justice by agreement with the President of the Supreme Court. The President of the Supreme Court shall be appointed by the above mentioned commission that appoints all Justices. (See sec 4 of the Basic Law: Judiciary.) There is therefore no control of the executive on the selection of the Chief Justice (i.e. The President of the Supreme Court) and only restricted control (namely the power of the Minister of Justice, but restricted by the need of an agreement of the President of the Supreme Court) in the selection of other Presidents and Vice Presidents

Question 6:
Is there any influence of the executive on the distribution of cases /assignment of judges to certain cases?

If yes: describe it:

There is no influence of the executive on the distribution or assignment of judges to certain cases. This is an internal power of the President of the court.

Question 7:
Is there any influence of the executive on the transfer of judges to other courts

If yes: describe it.

Transfer of Judges is regulated in sec 9 of the Basic Law: Judiciary. No judge shall be transferred from his place of service except by agreement of the President of the Supreme Court or on the basis of a decision of a Disciplinary Tribunal. A judge shall not be appointed to act in a lower court except by his agreement.

Question 8:
Is there any influence of the executive on the termination of office of judges?
If yes: describe it.

Judges serve until reaching the age of 70, except if they ask to retire earlier after having served a minimum time provided by Law, they resign, they are appointed to any other public office, or they have to resign according to a decision of the Disciplinary Tribunal of the Judges Appointment Commission.

Question 9:
Is there any influence of the executive on the disciplinary procedure against judges?

If yes: describe it.

Disciplinary procedure can be started by the Minister of Justice according to sec 18 of the Courts Law.

Question 10:
Is there any influence of the executive on the initial training of judges?

If yes: describe it.

The initial and in-service training of judges is only in the hands of The Judges School, run by the judiciary itself.

Question 11:
Is there any influence of the executive on the in-service training of judges?

If yes: describe it.

No.

Question 12:
Is there any influence of the executive on the salaries of judges?

If yes: describe it.

The salary of judges is fixed according to the decision of the Finance Committee of the Legislature. (The Knesset). There is therefore no direct influence of the executive. Representative of the executive may naturally appear before the Finance Committee in order to express their position.

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.

The Budget of the Judiciary is part of the budget of the Ministry of Justice, although a separate part. Court Houses are built by funds allocated by the executive, but the Supreme Court building was built entirely by the donation of an external body not involved in any way in business in Israel.
The executive has influence on the number of judges and the number of public officials serving in the court system.

Question 14:
Is there any influence of the executive on the selection and appointment of clerks of the court?

If yes: describe it:

The law provides that every appointment of a public official shall be made only in consequence of a public tender. The tender commission in the case of courts includes representatives of the courts and representatives of the executive.

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:

There is no council of the Judiciary of Israel.

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:

See answer to question 15.

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?

The judiciary has the power and authority to quash decisions of the executive which are by law in excess of the jurisdiction of the executive or of the legislature, respectively, or are in excess of the powers of the official who exercised them. The same applies to acts which are illegal or unreasonable. The Supreme Court decided in the past on the termination of service of a member of the government who had committed serious offences and was not dismissed by the Prime Minister (H.C. 3094/93, The Movement for Quality of Government v. Government of Israel, P.D. 47 (5) 404).

Question 18:
What power does the judiciary have over other public bodies (eg the police, or other quasi – governmental powers) in your country?
The same powers as described in the answer to question 17 apply to the jurisdiction of the court in relation to other public bodies. (e.g. the police)

**Question 19:**
Who fulfils the task of prosecution in your country?

**Response:**
The task of the prosecution is in the hands of the State and District Attorneys and their staff who are all subject to the Attorney General who is independent of the Minister of Justice and of the executive generally.

**Question 20:**
Is there a common career of public prosecutors and judges?

**Response:**
The answer is negative.

**Question 21:**
Can judges be appointed as public prosecutors and vice versa?

**Response:**
The answer is negative. Judges cannot serve in any other position, private or public.

**Question 22:**
Is there an influence of the executive on the appointment/promotion of public prosecutors?

**Response:**
The prosecutors are public officials and as such part of the executive. But in professional matters they are subject only to the authority of the Attorney General who is independent of the executive.

**Question 23:**
Is there a possible influence of the executive on the cases public prosecutors are in charge of?

**Response:**
See answer to question 22.

**Question 24:**
Which problems (if any) do you see in the relationship between the executive and the judiciary in your country?

**Response:**
The judiciary has the power to quash executive decisions or legislation exceeding the power of Parliament. This creates criticism on the action of the judiciary which is described as striving to achieve the supreme power in the country.

**Question 25:**
Are there concrete projects to change elements in the relations between the executive and the judiciary? What would this change mean?

**Response:**
There have been public debates on the above mentioned relationship, but no concrete measures or changes of the Law have been made. The chance of the adaption of any effective changes is minimal.