Regarding the questionnaire „The relationship between the executive and the judiciary in a democratic society; the question is – who should be master?“

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

**Answer:**
The principle of independence of the judiciary is established in Constitution of The Republic of Lithuania and in the Law on Courts.

The Part 2 of Article 109 of the Constitution:
„While administering justice, the judge and courts shall be independent”.

The Article 3 of the Law on Courts:
“Article 3. The independence of judges.
1. The guarantees of independence of judges and the status of judges are established in Constitution of The Republic of Lithuania, this Law and other legal acts.
2. The judges, while administering justice, act independently and obey the law.
3. The judges, while administering justice, are independent from the participants in a proceeding, the courts administration, other judges, state authority institutions, officials and other persons. Any political, economic, psychological pressure or other kind of illegal impact, which can influence the decisions, shall not be exercised against judges.
4. Nobody is entitled to demand an account from the judge regarding a particular decision in a case.
5. The judges are provided with social guarantees, which correspond to their status and safeguard their independence.

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

**Answer:**
The principle of balance of powers is enshrined in the Constitution and developed through legal doctrine, especially by constitutional legal doctrine.

The Article 5 of the Constitution:
“In Lithuania, State power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary. The scope of power shall be limited by the Constitution.”

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

If yes describe it.
Answer:
The role of the executive is limited to some explicitly defined functions. The procedure of appointment of judges depend on the court to which a judge will be appointed. Only the President of the Republic (not the Government) is directly involved in the procedure of appointment of judges.

According to the Article 112 of the Constitution:
Judges of the Supreme Court as well as its Chairperson chosen from among them shall be appointed and dismissed by the Seimas upon the submission of the President of the Republic.
Judges of the Court of Appeal as well as its Chairperson chosen from among them shall be appointed by the President of the Republic upon the assent of the Seimas.
Judges and chairpersons of district, county, and specialised courts shall be appointed, and their places of work shall be changed by the President of the Republic.
A special institution of judges provided for by law shall advise the President of the Republic of Lithuania on the appointment, promotion, transfer of judges, or their dismissal from office.

For the President of the Republic of Lithuania, the pretenders to the vacant positions of judges are chosen by a special institution of judges – the Commission for selection of judges. This commission consists from 7 members. They are appointed by the President of the Republic of Lithuania (two members), the Chairperson of the Council of judges (two members), The Chairperson of Seimas (two members), one more is appointed by the Minister of Justice.

Question 4:
Is there any influence of the executive on the promotion of judges?
If yes describe it.

Answer:
The executive does not exercise any influence on the promotion of judges other then the right to appoint several members of the Commission for selection of judges (See previous answer). This commission is also responsible for selection of persons, who seek the career of a judge (who seek to be appointed as a judge into the court of a higher instance).

Question 5:
Is there any influence of the executive on the selection, or appointment or dismissal of presidents of court?
If yes, describe it.

Answer:
The role of the executive on the selection, or appointment or dismissal of chairpersons of court is limited to some explicitly defined functions and depends on the court.
Chairpersons of district and county courts of the common competence as well as chairpersons of administrative courts are appointed by the President of the Republic of Lithuania upon the advice of the Council of judges. The candidates are selected and proposed by the Commission for selection of judges.

The Chairperson of the Court of Appeal from the judges, who serve in this court, is appointed by the President of the Republic of Lithuania upon the approval of Seimas. The President of the Republic of Lithuania is advised by the Council of Judges. The candidates are selected by the Commission for selection of judges.

The Chairperson of The High Court from the judges, who serve in this court, is appointed by Seimas upon the submission of the President of The Republic of Lithuania.
Additionally please see the answer to the question No.8.
**Question 6:**
Is there any influence of the executive on the distribution of cases /assignment of judges to certain cases?
*If yes: describe it:*

**Answer:**
There is no any influence of the executive on the distribution of cases /assignment of judges to certain cases.
Taking the pending cases in the courts and the judges’ specialization into consideration, in the courts of the republic of Lithuania the right to assign the cases to the judges is approved by the chairperson of the court or the chairperson of the divisions of the court while following the decision No. 13P-506 “The Rules Related to the Case Assignment in the Court of Appeal of Lithuania, county courts, county administrative courts and district courts of the Republic of Lithuania” reached by the Council of Judges on 19 August 2006. This decision defines the court officials who are responsible for the case assignment.

**Question 7:**
Is there any influence of the executive on the transfer of judges to other courts
*If yes: describe it.*

**Answer:**
The President of the Republic of Lithuania on the advice of the Council of judges is entitled to transfer a judge into another court. The agreement of this judge is necessary, except temporary transfers in order to ensure a proper functioning of a court.
Additionally please, see the answer to the 3 and the 4 question.

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

**Answer:**
The President of the Republic of Lithuania is entitled to dismiss judges. Regarding the dismissal of judges, the President is advised by the competent institution (the Council of Judges).

**Question 9:**
Is there any influence of the executive on the disciplinary procedure against judges?
*If yes: describe it.*

**Answer:**
The executive is not entitled to initiate or present proposals to initiate disciplinary procedures against judges. The executive also does not exercise any functions in hearing the disciplinary case or passing a decision in such a case.
Following Article 83 of the Law on Courts, the right to propose to start a disciplinary case is entitled to the Council of Judges as well as to the chairperson of the court where a judge against whom the disciplinary case is initiated works or the chairperson of any higher court. A
motivated proposal to initiate disciplinary case against a judge is submitted to a Commission of Ethics and Discipline of Judges. This Commission decides, whether disciplinary proceedings have to be initiated, and has the right to initiate disciplinary proceedings against chairpersons of courts, vice-chairpersons of courts, chairpersons of divisions in courts or other judges.

When disciplinary proceedings are initiated, the Court of Honour hears the disciplinary case and passes a decision.

Both, Members of the Commission of Ethics and Discipline of Judges as well as members of the Court of Honour are appointed by the Council of judges. The Court of Honour consist of one member from the High Court of Lithuania, two members of the Court of Appeal, one member from the Supreme Administrative Court of Lithuania, two members from county courts and one member from district courts.

**Question 10:**
Is there any influence of the executive on the initial training of judges?
If yes: describe it.

**Answer:**
The Ministry of Justice together with the Council of judges are responsible for organization of training for judges, training programs and methodical material.

The Minister of Justice is entitled to approve the training programs, rules of testing of knowledge, annual plans of training, types of trainings which are foreseen, the scope and financing of trainings. This is done after the Council of judges has given its approve.

The trainings are financed by the state. The necessary finance is foreseen for the Ministry of Justice. The sum of money for the training of judges is defined in the Law on Courts as no less than 1.5 per cent of assignations for the salary of judges.

**Question 11:**
Is there any influence of the executive on the in-service training of judges?
If yes: describe it.

**Answer:**
Please see the answer to the question No.10.

**Question 12:**
Is there any influence of the executive on the salaries of judges?
If yes: describe it.

**Answer:**
The salaries of judges are foreseen in a special Law. According to this law, basic part of a salary shall be calculated by applying the base amount of a basic salary, which, on the recommendation of the Government, after having evaluated the proposals of the organisations representing state politicians, judges and state officials, an average annual inflation of the last year (calculating a national consumer price index) and an influence of other factors which have an impact on the amount and change of average earnings in the public sector, shall be approved by the Seimas. A new base amount, which is being approved, may not be less than the present base amount.
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.

Answer:
Courts are financed from the state budget. Every court has his own draft estimate of expenses. In a defined occasions foreseen by law, courts might be financed from other financial sources of the state.
The draft estimate of expenses are discussed in the Council of judges and when approved by the Council of Judges the draft estimate of expenses are discussed in the Government.
The Government shall prepare a draft State Budget and submit it to the Seimas for consideration and approval by Law.

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

Answer:
The executive does not exercise any rights of influence on the selection and appointment of clerks of the court.
Following Part 1 of the Article 10 of the Law on Public Service, the chairperson of the court appoints clerks of the court (exception: Chancellor of a court appoints clerks in The high Court of Lithuania and in the Supreme administrative court).
The chairperson of the court is entitled to organize recruitment to the Civil Service in the court (Part 8 of the Article 10 of the Law On Public Service).

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:

Answer:
Following the Part 2 of Article 119 of the Law on Courts, the Council of Judges consists of 15 members. They are: The Chairperson of the High Court of Lithuania, the Chairperson of the Court of Appeal, the Chairperson of the Supreme Administrative Court. Other members are elected by confidential elections in general meeting of judges (tree members must be from the High Court of Lithuania, one member of the Court of Appeal, one member from the Supreme Administrative Court of Lithuania, four members from five county courts, two members from all district courts and one member from all county administrative courts.
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:

Answer:
The executive does not exercise any rights of influence on the work of the Council of Judges.

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 judiciary does not have any other influence on the executive other then to exercise justice in a form of deciding civil, criminal and administrative cases. In this way, the decision of an official or institution can be checked in the aspect of conformity with the competence defined by laws.

The Constitutionality of acts of The Government or The President of the Republic of Lithuania can be checked in the Constitutional Court.

Generally, the judiciary does not exercise a power to oversee the appointment of members of the executive. Only the Constitutional Court, upon a request of a competent authority, is entitled to give its conclusion, whether the laws on election of the President of Republic of Lithuania were breached during the elections.

Question 18:
What power does the judiciary have over other public bodies (eg the police, or other quasi - governmental powers) in your country?

Answer:
Please, see the answer to the 17 question.

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

Answer:
Prosecutors are entitled to full-fill the task of prosecution in Lithuania.
According to Article 118 of the Constitution, prosecutors shall organize pre-trial investigation and supervise it. Prosecutors shall on behalf of the state bring charges in criminal cases. In cases provided for by laws prosecutors protect rights and legal interests of a person, society, state.

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

Answer:
The career of public prosecutors and the career of judges are separated.
Experience of service as a prosecutor is important while seeking to start a career of a judge. The law foresees some defined exemptions in the procedure of selection of persons seeking the career of a judge.

Experience of service as a judge is important while seeking to be appointed as a prosecutor.

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

**Answer:**
A judge can decide to change his career and to become a prosecutor or vice versa. It is a personal choice of a lawyer (a judge or a prosecutor). Ordinary rules of selection of candidates, with the defined exceptions, for a post of a judge or a prosecutor are applied.

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

**Answer:**
The executive does not exercise any rights to influence the appointment/promotion of public prosecutors. Only the Prosecutor General and his/her assistants (vice-prosecutors) are appointed by The President of The Republic of Lithuania.

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

**Answer:**
The executive does not exercise any rights to influence on the cases public prosecutors are in charge. Prosecutors are independent while performing their duties and obey the Constitution and other legal acts.

**Question 24:**

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

In Lithuania, the Council of Judges consists only of judges (please, additionally see the answer to question No. 15). The executive is not represented now as the Constitutional Court of Lithuania in 2006 declared that the provision of the Law on Courts to the extend that it determines that members of the Council of Judges are not only judges is contrary to the Constitution, constitutional principle of separation of powers, constitutional principle of law-governed state.

**Question 25:**
Are there concrete projects to change elements in the relations between the executive and the judiciary? What would this change mean?
Answer:
Recently, the Parliament (Seimas) considers the Project of amendments of a number of Articles of the Law on Courts. Proposed changes will not bring fundamental changes in relations between the executive and the judiciary. Changes also will not reduce the level of independence of the judiciary.