

## **Network of the Presidents of the Supreme Courts of the European Union, Colloquium in Warsaw 12 June 2006**

### **Relations between the Supreme Court and the executive branch**

#### **Summary**

##### **Answers to the questionnaire relating to**

- **Introduction: Short description of the constitutional framework**
- **Part A : Budget of the Supreme Court**

The report seeks to facilitate a comparative reading of the replies to the questionnaire.<sup>1</sup> In an examination of this kind, the context and the peculiarities of different national systems may be difficult to discern on the basis of answers to a questionnaire. Misinterpretation is a risk, not only due to rapporteur's the lack of insight, but also because concepts in the questionnaire may be understood differently in different countries.<sup>2</sup> Consequently, the concepts in the replies are not always harmonised. To a large extent the report refrains from using the proper, original titles and names of officials and institutions. These are substituted by more generic terms, e.g. "Supreme Court" instead of "Court of Session".

##### **Introduction: Short description of the constitutional framework**

###### ***1) Are there any constitutional provisions regarding the Supreme Court?***

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<sup>1</sup> Replies have been received from 29 countries: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Roumania, Scotland, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom. The UK is for the purpose of this summary synonymous with England and Wales.

<sup>2</sup> The questions are listed according to the English version of the questionnaire. Apparently, the sequence of questions in the English and French version on some points differ. In part A questions 3, 4, 5 and 6 in the English version correspond in the French version to questions 6, 3, 4, and 5, respectively.

Most countries have constitutional provisions regarding the Supreme Court. In a large group of countries the constitution contains provisions on the jurisdiction of the court (e.g. Austria, Belgium, Bulgaria, Cyprus, Estonia, Germany, Ireland, Italy, the Netherlands and Poland) and/or the appointment or composition of the court (e.g. Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Lithuania, Malta, the Netherlands, Norway, Poland, the Slovak Republic, Spain and Sweden). Thus, it is significant that many countries consider these elements to be of such importance, that the provisions are laid down in the constitution.<sup>3</sup> In some countries the rules on disciplinary proceedings against judges are laid down in the constitution (e.g. Belgium, Ireland and Lithuania). Few countries have provisions on the possibility of judges to exercise political activities (Austria and Finland). The Irish constitution prohibits that the remuneration of judges is reduced during continuation of office.

In Portugal, Romania and Slovenia the constitution only provides that the Supreme Court is the highest court within the judicial hierarchy. A few countries have no special provisions in the constitution relating to the Supreme Court (e.g. Denmark, France, Latvia, Scotland and the UK. However, France has a separate law dating back to 1790 governing the Supreme Court).<sup>4</sup>

## ***2) Which bodies of the executive branch are in relation with the Supreme Court (ministries of justice, of home affairs, court service...)?***

One country (Poland) points out that the notion “executive branch” may be difficult to define precisely, indicating the State Auditor’s office as a borderline example. A large number of countries state, that the Ministry of Justice has the power to influence the practical aspects of the daily work of the Supreme Courts, but of course not the courts’ judicial functions. However, the degree of influence of the Ministry varies from country to country.

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<sup>3</sup> The legislator’s choice between the constitutional level and the ordinary statutory level may also be influenced by the provisions in the constitution relating to the impediments of amendment of the constitution. This aspect, however, is not elucidated in the replies.

<sup>4</sup> In the UK the Constitutional Reform Act 2005 came into effect in April 2006. The Lord Chief Justice of England is the Head of the Judiciary of England and Wales, and in 2009 the Judicial Committee of the House of Lords is to be renamed The Supreme Court of the United Kingdom.

A group of countries, e.g. Austria, Finland, France, Germany, Italy, Luxembourg, the Netherlands and Portugal, have relations to the Ministry of Justice with regard to both administrative services and the budget, while other countries (e.g. Belgium, Greece, the Slovak Republic and Spain) emphasise the Ministry's influence on the budget. Some countries (e.g. Malta, Scotland and Sweden) have relations with an independent court service as well as the Ministry of Justice, while few countries (Estonia and the UK) have relations with other ministries and/or the Ministries of Justice. The UK does not have a Ministry of Justice, and functions carried out by such ministry in other European jurisdictions are carried out by the Home Office, the Department of Constitutional Affairs and by Her Majesty's Court Service (an agency of the DCA). In a small group of countries (Denmark, Ireland and Norway) the court with regard to administrative matters is subject to an independent court administrations in stead of a ministry or some other body of the executive branch.

One country (Hungary) reports that the Supreme Court has no relation to the executive, since the judiciary is totally independent.

## **A – Budget of the Supreme Court**

### ***1) Is the Supreme Court financially independent?***

As pointed out by one country (Belgium) the term “financial independence” may have different meanings. Most replies understand by that notion that the budget proposal is not subject to government approval or review before being presented to Parliament, and the summary follows that understanding. Speaking in broader terms: The lesser influence the executive branch exerts, or is able to exert, in drafting the budget, the greater is the financial independence of the court.

A majority of countries (e.g. Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Malta, Norway, Scotland, the Slovak Republic, Spain, Sweden and the UK) are not financially independent. However, in the Netherlands the budget prepared by the general manager of the Supreme Court usually is adopted by the Ministry of Justice. In Norway, the budget of the Supreme Court is independent of the budget of the lower courts. In Belgium and Malta the salary of judges is fixed by law.

In contrast, the Supreme Courts of e.g. Bulgaria, Cyprus, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovenia may, on the basis of the aforementioned interpretation of this concept, be deemed financially independent. Thus, it is noteworthy, that independence in this respect has come to full maturity in the new democracies in Central and Eastern Europe.

## ***2) Is the Judicial Council financially independent?***

The majority of countries have a judicial council of some sort, but the financial status of these councils varies to a considerable degree. In a number of those countries (e.g. Estonia, France, Malta, the Netherlands, Scotland and Spain) the council is not financially independent. In some countries (e.g. Estonia, France and Scotland) the council does not have its own budget, while this is the case in other countries (e.g. Malta, the Netherlands and Spain).

A number of countries (e.g. Belgium, Bulgaria, Cyprus, Hungary, Italy, Lithuania, Poland, Romania, Slovenia, the Slovak Republic) have independent judicial councils. In Bulgaria, the Ministry of Finance is obliged to incorporate the draft budget of the council into the draft state budget, but the Ministry may make objections, which are usually accepted by Parliament. In the Slovak Republic the budget of the council forms part of the budget of the Supreme Court.

Some countries have no judicial councils, e.g. Austria, Denmark, Finland, Germany, Ireland, Latvia, Norway and the UK. In the Czech Republic a council, which acts as an advisory body to the president of the court, is established at all courts with more than 10 judges. In Ireland it is proposed that a financially independent council will be established in the near future, but such a council will have no role in the administrative activities of the courts.

## ***3) Is there a court service within or outside the Supreme Court or are Supreme Court judges in charge of the financial management?***

The majority of countries have a court service responsible for managing financial affairs within the framework of the Supreme Court. In Germany judges are not concerned with budgetary matters, which are handled by the Head of Administration of the *Bundesgerichtshof*.

A number of countries, e.g. Belgium, Ireland, Luxembourg, Malta, the Netherlands, Scotland, Spain and the UK, have a body, more or less independent vis-à-vis the executive branch, outside the framework of the Supreme Court, charged with managing the court's financial affairs.

In Cyprus there is a department under the Chief Registrar, charged with the management of the financial affairs not only of the Supreme Court, but also of all subordinate courts. The department is in this capacity answerable to the Ministry of Finance.

#### ***4) Which body draws up the budget of the Supreme Court?***

This question is assumed to concern the body in charge of preparation of the draft budget.

In the majority countries (e.g. Cyprus, Estonia, Finland, France, Germany, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia and Sweden) the draft budgets of the Supreme Court is drawn up by the court itself. In Romania the draft budget is prepared by the Supreme Court in consultation with the Ministry of Finance.

A number of countries, e.g. Belgium, Greece, Italy, Luxembourg, Spain and the UK, report that the draft budget is prepared by the pertinent ministry – typically the Ministry of Finance and/or the Ministry of Justice. Belgium and Spain indicate that the Supreme Court has no separate budget. In the UK, a court service under the Department of Constitutional Affairs is charged with managing the budgetary process on behalf of the administration of the courts, but not of the judiciary itself.

In some countries, e.g. Denmark, Ireland, Malta and Scotland, preparation of the draft budget falls under the purview of the court service. In Denmark, the independent court service may address Parliament, if the court service finds that the funds allocated by the government are insufficient. So far, such step has not been taken.

In Hungary the Judicial Council prepares the draft budget. In Bulgaria preparation is a joint venture between representatives of the Supreme Court, the Judicial Council, the

Ministry of Finance and Parliament. In Austria the National Council is responsible for preparing the draft budget.

***5) Who negotiates the budget of the Supreme Court and with whom?***

The replies show a great variety when it comes to the negotiation process leading from draft budget to final budget proposal. There is no emerging picture of a prevailing practice. The procedures may however be identified as belonging to one of two groups: Those where the Supreme Court itself is an integral part of the budget negotiations, and those where the budget negotiations take place without participation of the Supreme Court. In the first group a few courts negotiate directly with Parliament.

In Estonia, the Netherlands, the Slovak Republic, Slovenia and Spain the draft budget is negotiated between the government and the Supreme Court. However with regard to Spain it is important to remember, that there is no individual budget as such. In Luxembourg, the negotiations take place between the *Procureur general* and the Ministry of Justice. In the Czech Republic the Ministry of Justice receives a draft from the Supreme Court. In case the Ministry does not allocate sufficient funds, the Supreme Court may request a reassessment.

In Lithuania, Poland and Romania the Supreme Court negotiates the draft budget directly with the pertinent parliamentary committee. However, in Lithuania the draft budget is subject to prior negotiations between the Supreme Court and the government.

In Austria, Belgium, Finland, France, Germany and Malta the negotiations are primarily an inter-governmental matter – mainly between the Ministry of Finance and the Ministry of Justice. In Finland though, the president of Supreme Court is to some degree initially involved in the negotiations.

In Bulgaria and Hungary the negotiations leading to the presentation of a final budget proposal are mainly conducted within the judicial councils. As mentioned under question 2, in Bulgaria the Minister of Finance must incorporate the draft from the judicial council into the state budget, but the Minister may make objections. They are

usually accepted by the legislator, which again tends to result in substantial reductions.

Some countries, e.g. Denmark, Ireland, Luxembourg, Norway, Scotland, Sweden and the UK, report, that the draft budget is negotiated by either a judicial council, a court service or a similar more or less independent third party on the one hand and the government on the other hand. However, in Scotland the president of the Supreme Court negotiates directly with the government changes in the complement of judges required to serve in the Supreme Court.

***6) Who presents it before Parliament?***

A large majority reports that the government is responsible for presenting the final budget proposal before Parliament.

However, there are a few exceptions:

In the Slovak Republic and Slovenia the government is responsible for presenting the budget. Representatives of the Supreme Court are present during the parliamentary debate and may under some circumstances participate.

In Hungary and Romania the budget proposal is presented before Parliament by the Judicial Council and the Supreme Court, respectively.

***7) As may be, what are the relations between the president of the Supreme Court and such a court service?***

This question concerns the relationship between the president of the Supreme Court and the court service referred to in question 3.

A majority reports that the court service is subordinated the president of the Supreme Court, who in some cases may exercise his duties through a chief registrar, a head of administration or similar official. In Portugal the president chairs the administrative council of the court.

In a number of countries, e.g. Belgium, Ireland, Malta, the Netherlands, Scotland, Spain and the UK, the court service acts more or less independently of the Supreme Court. However, the presidents of the Supreme Court of Ireland and Scotland exercise some influence over such external court services. In Ireland the president chairs the board of the court service, and in Scotland the court service consults with the president. In the reply from Spain it is indicated that budgetary management lies with a body under the Ministry of Justice, and that the president of the Supreme Court has asked the Minister of Justice for budgetary autonomy, but so far without any positive result.

***8) Who manages the budget and who authorizes expenditures within the Supreme Court (judge, clerk, administrator...)?***

It is assumed that this question concerns the part of the budget that the Supreme Court manages.

The respondents may be divided into two groups that seem to coincide with the grouping of responses under question 1, depending on whether the Supreme Court is financially independent or not.

As noted under question 1, the majority is not financially independent. However, they do exercise influence on the day to day management of allocated funds, either through a court registrar, a head of administration or similar official, in some circumstances pending an authorization by the president or another specially appointed member of the bench. In France the competence extends to the remuneration of judges and other employees, and the president has an administrative and budgetary service, headed by a *magistrat*.

In the case of Malta though, an outside agent, the Director General, Courts of Justice Division, is responsible for the financial management of the Supreme Court, in limited circumstances in consultation with the its president.

The group of countries with financially independent Supreme Courts may be further subdivided into two groups: Firstly a group comprising Cyprus, Estonia, Hungary, Latvia, Poland, Romania and the Slovak Republic, where, as above, a court registrar,



a head of administration or similar official is immediately responsible for the financial management, and secondly a group comprising Bulgaria, Lithuania and Slovenia, where either the president of the Supreme Court or a specially appointed member of the bench handles the financial management.

***9) Is there a different budget framework for the judge's salary, the judicial activity, the court building, the staff?***

The main question is, whether there is a single budget covering all expenditures, or if some items of expenditure are covered by other budgets.

Many countries, e.g. Belgium, Bulgaria, Denmark, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Poland, Portugal, Spain and Sweden, have a single budget, divided by sub-headings. Germany indicates that relocation of funds within the sub-headings is possible.

In Cyprus, Estonia, Malta and the Netherlands the judges' salaries are fixed by law. In Malta these salaries are drawn from a separate budget, in the other three countries, the salaries are drawn from the same budget as other expenses.

A number of countries, e.g. Austria, Ireland, Norway, the Slovak Republic and the UK, have a separate budget framework with regard to judges' salaries. In Austria all salaries of those employed by the Supreme Court are drawn from a separate budget. In Norway Supreme Court judges' salaries are handled separately and determined by Parliament. In Ireland a special body reviews the salaries of all senior officials, including judges, and submits its recommendation to the government.

In Italy and Slovenia expenses connected with buildings and maintenance are drawn from separate budgets. Romania, Scotland and Hungary report that expenses connected with different areas, i.e. staff, maintenance etc., are drawn from separate budgets. In Scotland, salaries are outside the control of the court service and are handled by the Executive Justice Department.

Torben Melchior