

## IAJ – 1<sup>st</sup> Study Group, Questionnaire 2008 – Answers Finland

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

Yes, in the Constitution of Finland:

*Section 3 - Parliamentarism and the separation of powers*

*The legislative powers are exercised by the Parliament, which shall also decide on State finances.*

*The governmental powers are exercised by the President of the Republic and the Government, the members of which shall have the confidence of the Parliament.*

*The judicial powers are exercised by independent courts of law, with the Supreme Court and the Supreme Administrative Court as the highest instances.*

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

There is no special provision for the principle of balance of powers. The whole Constitution contains exact provisions for the three powers of the state. Maybe the section 2 says it best: *“The exercise of public powers shall be based on an Act. In all public activity, the law shall be strictly observed.”*

Question 3:

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

Yes.

According to the section 102 of The Constitution of Finland:

*Tenured judges are appointed by the President of the Republic in accordance with the procedure laid down by an Act. Provisions on the appointment of other judges are laid down by an Act.*

According to the section 2 of the Act on Judicial Appointments:

In accordance with the Constitution of Finland, appointments to tenured positions in the judiciary shall be made by the President of the Republic, on the basis of a draft decision submitted by the Government.

The Government shall designate the Judicial Appointments Board for a period of 5 years once

(1) the Supreme Court has nominated the member and alternate member from among itself;

(2) the Supreme Administrative Court has nominated the member and alternate member from among itself;

(3) the Presidents of the Courts of Appeal have nominated the member and alternate member from among themselves;

(4) the Chief Judges of the Administrative Courts have nominated the member and alternate member from among themselves;

(5) the Supreme Court has nominated members and alternate members from among the Chief Judges of the District Courts, the Senior Justices or Justices of the Courts of Appeal, and the District Judges, on the basis of expressions of interest;

(6) the Supreme Administrative Court has nominated members and alternate members from among the Administrative Court Judges and Judges of the special courts, on the basis of expressions of interest;

- (7) the Finnish Bar Association has nominated members and alternate members to represent the profession of advocacy;
- (8) the Prosecutor-General has nominated members and alternate members to represent the public prosecutors; and
- (9) the Ministry of Justice has nominated members and alternate members to represent the research and teaching of law.

In practice the authorities named before have respected proposals made by committees who have prepared the proposals.

Question 4:

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

No

Question 5:

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

No.

Question 6:

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

No.

Question 7:

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

According to the section 103 of The Constitution of Finland:

*A judge shall not be suspended from office, except by a judgement of a court of law. In addition, a judge shall not be transferred to another office without his or her consent, except where the transfer is a result of a reorganisation of the judiciary.*

*Provisions on the duty of a judge to resign at the attainment of a given age or after losing capability to work are laid down by an Act.*

*More detailed provisions on the other terms of service of a judge are laid down by an Act.*

The Ministry of Justice has some influence on the reorganization of the judiciary and so indirectly influences on transfers and terminations.

Question 8:

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

See question 7.

Question 9:

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

According to the section 108 of The Constitution of Finland:

*The Chancellor of Justice shall oversee the lawfulness of the official acts of the Government and the President of the Republic. The Chancellor of Justice shall also ensure that the courts of law, the other authorities and the civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Chancellor of Justice monitors the implementation of basic rights and liberties and human rights.*

*The Chancellor of Justice shall, upon request, provide the President, the Government and the Ministries with information and opinions on legal issues. The Chancellor of Justice submits an annual report to the Parliament and the Government on his or her activities and observations on how the law has been obeyed.*

According to the section 109 of The Constitution of Finland:

*The Ombudsman shall ensure that the courts of law, the other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Ombudsman monitors the implementation of basic rights and liberties and human rights.*

*The Ombudsman submits an annual report to the Parliament on his or her work, including observations on the state of the administration of justice and on any shortcomings in legislation.*

Question 10:

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

As the only influence of the executive on the initial training of judges can be considered is the distribution of the necessary means to the court budget.

The Ministry of Justice arranges education for all judges, but the participation is voluntary.

Question 11:

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

See question 10.

Question 12:

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

Yes. The salary of judges is decided by the state and the union of the state officials for a period of 1-2 years. The judges are members of that union.

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?*

The Parliament decides on the state budget annually. The budget of the judiciary is to be set up and organised by the ministries in charge. This budget of the judiciary is part of the budget of the ministry. It is the ministry to distribute the funds and pay the expenses for structure, personnel, buildings, equipment etc. This has a direct influence on the resources of the courts. The funds are limited and mainly used for salaries, buildings, equipment and so on.

Question 14:

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

No

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)?*

There is no Council of the judiciary or a similar body in Finland.

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)?*

See 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?*

a) There is no power to control the exercise of executive power.

The chief judges and the representatives of the Ministry of Justice negotiate a few times per year. The purpose is to achieve good working conditions and to discuss necessary alterations to the proceedings, the budget etc.

b) There is no power 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?*

There is no power over other public bodies.

Question 19:

*Who fulfils the task of prosecution in your country?*

The task of prosecution is executed by public prosecutors.

Question 20:

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

There is no common career of prosecutors or judges by law. Both are chosen from graduates of law students and usually they have experience as an assistant in the judiciary or public prosecution service. There are no different requirements for becoming a public prosecutor or a judge.

Question 21:

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

Yes.

Question 22:

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

No. All other public prosecutors are appointed by the Public Prosecution Service.

Question 23:

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

No. According to the section 2 of Act on Public Prosecutors a prosecutor is independent in the assessment of the charge in a case being considered by him or her.

Question 24:

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

The executive sets the framework for judicial work and takes relevant decisions in questions of structure, personnel, buildings and equipment. All these influence judicial work indirectly.

The most important thing nowadays is that the government has decided to decrease the number of personnel of the state and also the number of personnel of the judiciary.

Question 25:

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

Last spring the Ministry of Justice has started to prepare a settlement of the founding of a Council of the Judiciary.