

## Fourth Study Commission Questionnaire 2022, Israel

### JUDICIAL WORKPLACE AND JUDICIAL INDEPENDENCE

**Q: What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision making, governance, assignments, fund and other resources)?**

**Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.**

A:

#### **The impact of appointments on the independence of the judiciary**

In January 2022, a referendum on adopting the Amendments to the Constitution in its part relating to the judiciary was held in Serbia. The approved amendments improved the position of the judicial power. The most significant changes are as follows:

- Removal of the initial (temporary) term of office for judges, meaning that all judges shall be elected for permanent office;
- Judges and presidents of courts (except for the president of the Supreme Court) shall no longer be elected by the National Assembly, as a legislative body; the election shall be entrusted to the High Judicial Council, as an independent state authority;
- Out of eleven members of the High Judicial Council, six shall be elected by the judges themselves, and four shall be elected by the National Assembly (with the President of the Supreme Court remaining as the eleventh member)
- The Minister of Justice and the President of the Parliamentary Committee for the Judiciary shall no longer be members of the High Judicial Council, and
- Provisions on the non-transferability of judges have been enhanced.

The work on drafting judicial laws (the Law on Judges, the Law on Organization of Courts and the Law on the High Judicial Council) is underway, in order to harmonize these laws with the adopted Constitutional Amendments, which should further develop mechanisms for strengthening the independence of the judiciary.

#### **The impact of governance and financing on the independence of the judiciary**

According to the current solution from Article 70 of the Law on the Organization of Courts, the judicial administration tasks are carried out by the High Judicial Council and the Ministry responsible for the judiciary. The judicial administration-related duties performed

by the High Judicial Council are, among others, proposing the part of the budget intended for operation of courts relating to running costs, except for the costs for judicial staff and maintenance of equipment and facilities, as well as allocation of these funds, oversight of authorised spending of budgetary funds, and oversight of financial and material operations of courts.

Judicial administration-related duties performed by the ministry responsible for the judiciary are comprised of, among others, proposing the part of the budget intended for costs for judicial staff and maintenance of equipment and facilities, as well as allocation of these funds, proposing the part of the budget intended for investments, projects and other programs for operation of judicial authorities, ensuring spatial requirements, equipment supply and security of courts; oversight of financial and material operations of courts; organisation and development of the judicial IT system; development and implementation of capital projects and other programs for judicial authorities.

It is clear, based on the abovementioned, that financing all infrastructural resources in the judiciary is within the competence of the executive power, while their management is the competence of the judicial power.

Given this divide, it is necessary to determine appropriate cooperation mechanisms, which will ensure more efficient functioning in practice, or to transfer the entirety of budgetary financing of the judiciary to the competence of the High Judicial Council, which was unsuccessfully attempted since 2010.

Insufficient and inadequate infrastructural capacities have a significant impact on the performance and quality of work of all employees in the judiciary, and thus on the public's impression of the independence of the courts.

In spite of the fact that strategic documents recognize the importance of strengthening the Information and Communications Technologies sector, in practice, this sector is not adequately financially supported, so the courts lack the means to acquire a sufficient amount of equipment that would enable more efficient work on case management, as well as the performance of all the functions that have been put in competence of the courts (electronic notice boards, issuing of e-certificates, electronic submission of judgments and probate proceedings decisions to the cadastre, etc.)

The crucial problem in court management regarding infrastructure resources is insufficient transparency of data on funds for infrastructure investments, undefined criteria for allocation of funds, as well as insufficient and inadequate communication between the courts and the responsible ministry in this segment, often without feedback on the requests made by the courts.

In order to further strengthen the independence of the courts, it is necessary to:

- establish and publicly announce criteria for the distribution of funds for all infrastructure resources, their acquisition and maintenance,
- organize occasional meetings of court presidents intended for direct presentation of existing problems, exchange of experiences and information, as well as familiarization with examples of good management practices in certain courts, which will improve the consultative process of the relevant ministry with representatives of the judiciary, and achieve better coordination of different levels of management, i.e. leadership, and thus determine in a more adequate way the necessary funds for efficient and independent functioning of the courts, and
- put effort in strengthening the capacity of the High Judicial Council to take over all budgetary responsibilities for the functioning of the courts.