

## **FIRST STUDY COMMISSION - JUDICIAL ADMINISTRATION AND STATUS OF THE JUDICIARY**

### **The role and function of the High Council of Justice or analogous bodies in the organisation and management of the national judicial system**

#### *Answers by the Lithuanian Association of Judges*

### **1. Constitution/Composition**

#### **1.1 Is there Superior Council of the Judiciary or an analogous body, or bodies, in your Judicial System? (Please state title)**

Article 112 of the Constitution of the Republic of Lithuania states that a special institution of judges provided by law shall submit recommendations to the President concerning the appointment of judges, as well as their promotion, transference, or dismissal from office.

Such an institution was established by the Law on Courts (adopted on 1994) and is called Judicial Council. The composition and competence of this body was changed significantly by adopting a new Law on Courts, which will come into force on 1<sup>st</sup> of May 2002. Thus mainly the provisions on the new Law on Courts (further in the text – new LOC) will be dealt with onwards. The provisions of Law on Courts, effectual until 1<sup>st</sup> of May 2002 (further in the text – LOC) will be dealt with only where in our opinion the comparison would be purposive.

#### **1.2 Give a brief summary of the role or function of such body or bodies.**

According to Article 119 of the new LOC, the Judicial Council is the executive self-government institution of courts. As it was mentioned above, the main constitutional function of Judicial Council is to submit recommendations to the President of the State concerning the appointment of judges, as well as their promotion, transference, or dismissal from office. However, this function is the main, but not sole function of the Judicial Council. According to the Article 120 of the new LOC, the functions of Judicial Council are as follows:

- 1) to elect the vice-president and secretary of the Judicial Council;
- 2) to approve the Regulations of the Judicial Council;
- 3) to submit recommendations to the President of the State concerning the appointment of judges, as well as their promotion, transference, or dismissal from office;
- 4) to submit recommendations to the President of the State concerning the appointment as well as dismissal of chairpersons, deputy chairpersons and division chairpersons of courts;
- 5) to submit recommendations to the President of the State concerning the determination or change of the number of judges in courts;
- 6) to compose the Examination Commission for the candidates to judges, to appoint the president of the commission, to consider and approve the regulations of the commission and the exam programmes.
- 7) to approve the order of registration of persons to the list of candidates to the local court judges as well as the order of registration to the list of judges seeking the promotion;
- 8) to compose the Selection Commission of judges as well as other permanent and temporary commissions and approve their regulations;
- 9) to appoint the members and the president of the Commission of Judicial Ethics and Discipline;
- 10) to appoint the members of the Court of Honour of Judges;
- 11) to approve the regulations of the Court of Honour of Judges;
- 12) to approve the regulations and to decide other matters related to the administration of courts;

- 13) to approve the standard structures and list of positions in local, regional and regional administrative courts as well as description of such positions;
- 14) to decide and approve proposals on the projects of investment programs of courts, as well as projects of budgets of local, regional and regional administrative courts, to submit the projects to the Government;
- 15) to control the activity on National Administration of Courts, to hear its working reports;
- 16) to convene the General Meeting of Judges when necessary;
- 17) to collaborate with other institutions and organisations on matters of self-government, administration and activity of courts;
- 18) to solve other matters assigned to the Judicial Council by laws.

### **1.3 Who are members of the body? (Number, composition and qualifications of the members).**

The composition of Judicial Council has changed several times starting from the adoption of the LOC in 1994. At first, it was composed of 9 members; all of them judges (the chairperson and division chairpersons of the Supreme Court of Lithuania and the chairperson of the Court of Appeal of Lithuania *ex officio* as well as 5 judges selected by the General Meeting of Judges for the term of 5 years). On April 1998, this provision of LOC was changed by the new provision, stating that the Judicial Council consists of 14 judges: 5 of them elected by the General Meeting of Judges, 1 – elected by the Lithuanian Association of Judges, 2 judges appointed by the President of the State, 2 judges appointed by the Minister of Justice, *ex officio*: the chairperson and division chairpersons of the Supreme Court of Lithuania and the chairperson of the Court of Appeal of Lithuania. This composition of the Judicial Council remains today, until the new LOC will come into force.

Article 119 of the new LOC states that the Judicial Council shall consist of 24 members, 18 of them shall be judges, others – representatives of legislative and executive. 15 members (all judges) shall be elected. 9 persons (3 judges and 6 state officials) shall become the members of the Judicial Council *ex officio*.

### **1.4. How is the body constituted and what are the procedures for the appointment of members?**

According to the new LOC, *ex officio* members of the Judicial Council shall be:

- 1) Chairperson of the Supreme Court of Lithuania, chairperson of the Court of Appeal of Lithuania and Chairperson of the Supreme (Vyriausiasis) Administrative Court of Lithuania;
- 2) One representative delegated by the President of the State, one representative delegated by the Chairperson of the Seimas (parliament), chairperson or deputy chairperson of the Committee on Legal Affairs of Seimas, chairperson or deputy chairperson of the Committee on Budget and Finance of Seimas, Minister or Vice minister of Justice, and Minister or Vice minister of Finances.

15 members of the Judicial Council (as it was mentioned above – all judges) shall be elected for the term of 4 years. 1 member shall be elected by the most numerous non-governmental organisations of judges (at present there is the only such organization - the Lithuanian Association of Judges), 14 others – by the General Meeting of Judges.

The following representative criteria are determined for the candidates, elected by the General Meeting of Judges: one candidate from the Supreme Court of Lithuania, one - from the Court of Appeal of Lithuania, one – from the Supreme Administrative Court, 5 candidates from regional courts (one from every of 5 regional courts of Lithuania), 5 judges of local courts (each one from a different region), one – from all regional administrative courts.

The candidates shall be nominated by the corresponding institution and appointed by the General Meeting of Judges for the term of 4 years. The candidate may not be appointed to the Judicial Council more than 2 times successively.

There is also a provision in a new LOC stating that a judge, if he/she has less than 5 years of judicial practise, or if disciplinary measures were ever applied to him/her, may not be nominated as a candidate to the Judicial Council.

The chairperson of the Supreme Court of Lithuania shall be the president of the Judicial Council *ex officio*.

### **1.5. Is there a majority of Judges on the body?**

Yes. Under the new LOC 18 of 24 (3/4) members of Judicial Council shall be judges.

### **1.6 Are any of the members of the body elected by Judges and if so how many? What is the period of office of a member of the body and under what conditions does the term of office come to an end? May a member be removed from office against his will and if so under what circumstances?**

As it was already described above, judges shall elect 15 members of the Judicial Council. The term of tenure for the members of the Judicial Council (with the exception of members *ex officio*) shall be 4 years and not more than 2 cadencies successively.

No specific grounds for the removal of members of Judicial Council are foreseen in LOC, or in the new LOC. In addition for the expiration of term of the membership, the grounds for removal are the same as for judges, as at present all the members of Judicial Council must be judges.

The same system will remain under the new LOC: the grounds for removal for the elected members of Judicial Council would be the expiration of term of membership or loosing of the status of a judge. For the *ex officio* members the ground for removal would be loosing of the corresponding position.

### **1.7. To what extent is there a *de facto* influence on the work of the body by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities.**

The influence on the work of Judicial Council by the Executive was not significant, as during the current procedure the Executive (the Minister of Justice and the President) has only had the right to appoint 4 members of the Judicial Council (from among 14). Moreover, all those candidates had to be judges. However the Executive could not really influence the work of that body. On the other hand, the competence of the Judicial Council was not wide. Many functions under previous LOC were given to the Ministry of Justice.

The Constitutional Court of Lithuania has declared certain provisions of the former LOC unconstitutional on December 21, 1999, because of improper influence of the Executive into the activity of courts. It has to be said however that those provisions were not related to the activity of Judicial Council, and were connected to the functions of Ministry of Justice, determined by LOC.

The aforementioned Ruling of the Constitutional Court has resulted into drafting the new LOC, under which certain functions, previously carried out by the Ministry of Justice (regarding appointment, dismissal, disciplinary responsibility of judges, etc.), are given to the Judicial Council. However, as it was mentioned above, the new LOC will come into force only on 1<sup>st</sup> of May 2002. Thus a *de facto* influence on the activities of the Judicial Council by the Executive today is hardly prognosticated.

## **2. Responsibilities of the Superior Council or the analogous body**

*(If the Superior Council or the analogous body does not have responsibility in a particular field referred to below, please indicate, by reference to its name only, the authority, which has responsibility.)*

**2.1. Is the Supreme Court subordinate to the Superior Council of the judiciary? If yes, describe in what respect.**

No, as it could be seen from the list of functions of the Judicial Council, the Supreme Court is not subordinate to it in any respect. It has to be noticed that the status of the Supreme Court of Lithuania is quite autonomous in respect to other institutions, including The Supreme Administrative court, the Court of Appeal and other courts. Even the advisory function of the Judicial Council according to LOC is not applicable in respect of appointment of judges of the Supreme Court (in this case the recommendation (what is not binding) to the President of the State is submitted by the Chairperson of the Supreme Court).

**2.2. In so far as the role of the Superior Council or analogous body involves a sharing of judicial power with non-judicial persons or representatives, does the functioning of the Council/body conflict with a strict separation of powers between the judiciary and other state powers, the Executive and Legislative.**

Participation of the members of Executive and Legislative in the work of Judicial Council is a new trend in Lithuania – as it was mentioned above, prior to the new LOC all members of Judicial Council had to be judges. The compromise was made in case to avoid the opinion that this institution is clubby, bearing in mind the expansion of powers of the Judicial Council. The problem may arise, however, bearing in mind the provision of Constitution, stating that recommendations to the President concerning the appointment of judges, as well as their promotion, transference, or dismissal from office, shall be submitted by the special institution *of judges*, as according to the new LOC the Judicial Council can hardly be recognized as *purely* judicial institution.

Despite that, the contradiction to the principle of separation of powers may hardly be seen in the functioning of the Judicial Council, as non-judicial representatives compose only ¼ of this institution, thus their function may be seen as mainly consultative. On the other hand, functions of the Judicial Council do not expatiate to the sphere of functioning of the Executive.

**2.3 Does the Council/body have responsibility for the nomination or appointment of a judge? If yes, give a brief description.**

Yes, it does. According to the new LOC, the Judicial Council shall have quite a wide responsibility in the appointment of judges, in particular:

- 1) to nominate 3 candidates (from 7) to the Examination Commission for the candidates to judges, to approve the composition of the Commission, to appoint the president of the Commission, to consider and approve the regulations of the Commission;
- 2) to consider and approve the examination programmes for the candidates to judges;
- 3) to hear appeals on the decisions of the Examination Commission (decision of the Judicial Council is final);
- 4) to approve the Order of registration of persons to the list of candidates to the local court judges.
- 5) to submit recommendations to the President of the State concerning the appointment of judges (with the exception of judges of the Supreme Court).

**2.4 Does the Council/body have responsibility for the promotion of judges? If yes, give a brief description.**

Yes, it does. One of the functions of Judicial Council is to approve the Order of registration of judges to the list of judges seeking the promotion as well as to submit recommendations to the President of the State concerning the promotion of judges.

**2.5 Does the Council/body have responsibility in the appointment of Presidents of Courts? If yes, give a brief description.**

Yes, it does. The Judicial Council shall submit recommendations to the President of the State concerning the appointment as well as dismissal of chairpersons, deputy chairpersons and division chairpersons of courts (with the exception of the Supreme Court of Lithuania).

**2.6 Does it have responsibility for organising the training or continuing education of judges? If yes, give a brief description.**

Yes, it does. According to Article 93 of the new LOC, the Judicial Council in cooperation with the Ministry of Justice shall organise the judicial training, prepare teaching and methodical materials for the training. The Judicial Council shall also appraise the judicial training programmes, rules of examination, annual training schedules and timetables, sorts, scope and funding of training.

**2.7 Does the Council/body have responsibility for the initiation or conduct of a disciplinary procedure against a judge? If yes, give a brief description.**

Yes, it does. Judicial Council shall have a right to initiate the disciplinary action against a judge. Moreover, the consent of Judicial Council shall be compulsory if a disciplinary action is instituted against a member of Judicial Council.

It is also important that the Judicial Council shall appoint all members of the Commission of Judicial Ethics and Discipline and Court of Honour of Judges.

The Court of Honour of Judges shall have to notify the Judicial Council about all the decisions made.

**2.8 Does such Council/body have responsibility in the evaluation of the work of a judge? If yes, give a brief description.**

Unfortunately, this is not clear yet. Possibly, through the work of the permanent Commission within the Judicial Council it could be done in the future. Maintenance of statistical reports on the work of judges fall under the competence of National Administration of Courts, which is subordinate to the Judicial Council.

**2.9 Does it have responsibility for the drafting or preparation of the budget of the judiciary? (If yes, describe).**

According to the provisions of the new LOC, every court (with the exception of the Supreme Court, the Court of Appeal and the Supreme Administrative court) shall submit the proposal on its budget to the Judicial Council for consideration. After consideration and approval, the Judicial Council shall submit the projects to the Government.

The Supreme Court, the Court of Appeal and the Supreme Administrative court shall submit their budgets directly to the Government.

**2.10 Does it have responsibility concerning the allocation of resources (personnel and financial) within the budget approved by Parliament or Government? If yes, give a brief description.**

No. According to the new LOC, the material-technical supply within the approved accounts shall be organised by the chairperson of court. While organising its material-technical supply, every court shall be self-dependent.

The chairperson of court shall also have the responsibility concerning the allocation of personnel recourses within the list of standard positions in courts, approved by the Judicial Council. The requirement to follow the standard list of positions shall not be applicable to the Supreme Court, the Court of Appeal and the High administrative court.

Buildings and other property, given to the courts, is recognized the property of a state. However, it may not be taken without consent of the Judicial Council.

**2.11 Are there any other significant responsibilities of the Council/body not already mentioned? (e.g. the drafting of a judicial code of ethics).**

No, there are not.

**3. Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages**

*(Note: In some countries the question whether Superior Council should be created is the subject of continuing debate. In this respect the experience of judges associations of other countries may be of interest. One of the key issues may be the independence of the judiciary).*

**3.1. If you have such a body, please list, very briefly the advantages and disadvantages.**

The mere existence of the Judicial Council in Lithuania must be analysed within the provisions of the Constitution and the doctrine of independence of the judiciary, explicated in the Rulings of the Constitutional Court of Lithuania.

As it was already mentioned, article 112 of the Constitution of the Republic of Lithuania states that a special institution of judges provided by law shall submit recommendations to the President concerning the appointment of judges, as well as their promotion, transference, or dismissal from office. Thus the existence of the Judicial Council is determined by the constitutional provision.

Moreover, the Constitutional Court of the Republic of Lithuania has stressed that judges and courts may not be sufficiently independent if the independence of courts as the system of the institutions of the judiciary is not ensured. While ensuring the independence of judges and courts, it is of much importance to separate the activity of courts from that of the executive. The activity of courts is not and may not be considered an area of administration ascribed to any institution of the executive. After the Ruling of the Constitutional Court of 21<sup>st</sup> of December 1999, declaring unconstitutional certain provisions of LOC, the question arose, what institution must carry out the functions, previously carried out by the Ministry of Justice. Bearing in mind the mere spirit of the rulings of the Constitutional Court, it has to be judicial institution. Thus those functions were given to the Judicial Council. It had to ensure the institutional independence and self-government of the judiciary, what, in the wording of the Constitutional Court, is the main guarantee of actual independence of the judiciary.

The opponents may argue, that the existence of the Judicial Council may make the judiciary in-crowd and uncontrolled. The practise of democratic states, however, shows the opposite. On the other hand, involvement of certain officials of Executive and Legislative into the composition of the Judicial Council under the provisions of the new LOC was somewhat a halfway decision.

**3.2 If you do not have such a body:**

**(a) Is the creation of such a body contemplated?**

**(b) How do you view the advantages and disadvantages of such a body?**

**4. Particularities/Criticisms**

4.1 Are there some special features concerning the Superior Council or body in your country which might be of special interest to others from a comparative point of view? If yes, describe.

No.

4.2 Are there particular fundamental problems concerning the role of the Council/body in your country? If yes, describe.

No.

**4.3 Are reforms of such a Council/body under discussion or proposed? If yes, describe briefly.**

The main reforms proposed in a new LOC are already described above. In summary, the main reforms are: changes in the composition of the Judicial Council, including as members certain officials of the Legislative and Executive, as well as expansion of powers of the Judicial Council, transferring to it certain functions, previously carried out by the Ministry of Justice.

**5. Topics**

5.1 What topics do you propose for next year's meeting of the Ist Study Commission?

Topics will be proposed later.

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