

## REPÚBLICA FEDERATIVA DO BRASIL

### 1a. Comissão de Estudos – UIM – 2009

**"Ways to identify and classify criteria, objective and subjective, by reference to which the independence of the judiciary may be assessed."**

Questionário:

1. Does your country's judiciary include prosecutors (or equivalent)? If so, do prosecutors benefit from the same guarantees of judicial independence as other judges?

*In Brazil, Public Prosecution Office (Ministério Público) members have their own careers and autonomy and have the same constitutional guarantees as magistrates to act with functional independence.*

2. How would you define "judicial independence" in the context of the political and social system of your country today?

*Judicial Independence can be defined as the constitutionally-ensured and effectively maintained possibility for Judiciary Branch members to preside over cases and issue judicial decisions without being subject to any conditions other than the ones stemming from constitutionally-valid legal norms and their own consciences. Currently, in Brazil, magistrates enjoy strong constitutional guarantees so they can act with functional independence. As such, the legal system ensures judicial independence even so as to control the constitutional nature of the acts enacted the Legislative and Executive Branches, both in the concentrated path (Supreme Federal Court) as well as in judicial review, by all magistrates in the country.*

3. Which objective criteria would you identify as indicating that the judiciary of your country is independent and why?

*The objective criteria for ensuring that the Brazilian Judicial Branch is independent lie in the constitutional norms that ensure such independence, by establishing lifelong guarantees, irreducible earnings and immovability for all magistrates. Also, the National Justice Council, a body belonging to the Judiciary Branch and composed mostly by magistrates, has been acting in the sense of effectively ensuring that*

*magistrates will not be subject to any type of undue pressure vis-à-vis their functional independence, even if such pressure is internal, that is, from within the Judiciary Branch administration itself.*

4. Which subjective criteria would you identify as indicating that the judiciary of your country is independent and why?

*Public opinion in Brazil, which heavily criticizes the Judiciary Branch due to its usual slowness in definitively trying Brazilian legal cases has, however, shown that the Judiciary Branch enjoys a high degree of respect in terms of judicial independence.*

5. If you have to identify the three most important criteria for indicating judicial independence in your country, what would they be and why?

*- Having its own autonomous body of magistrates recruited through a public entry contest, with career paths managed by the Judicial Branch itself, with its own structures and actions independent from other public or private bodies or institutions.*

*- Having constitutional guarantees ensuring the independent exercise of jurisdiction by all magistrates.*

*- Having the Judiciary Branch under the management of its own members, having its own specific and guaranteed budget, set forth by a law proposed the Judiciary Branch itself, as well as administrative and financial autonomy.*

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