

The Polish Judges Association “Iustitia”

MEDEL SIMPLIFIED QUESTIONNAIRE

1.

- there have been problems recently discussed in Poland as far as the jurisdiction system is concerned, who have the obvious influence on the question of independence of judiciary:
 - should be the function of the Minister of Justice separated from the General Prosecutor and divided into 2 different and independent positions?
 - should the position of a Judge be the “crown” of the lawyer’s professions?
 - what model of education for future judges and prosecutors should be chosen?
 - is the judiciary is really the third branch of government or is it dependant from the legislative and the executive branch (which actually decides about the hight of judges salaries according to the legal acts proceedings)?

These are problems concerning strictly the organization of the jurisdiction system. As far as the fundamental freedoms and rights, this is an issue of the verdicts and other decision taken by Polish Courts (judges), including the Constitutional Tribunal, and generally the situation in this field of the legal system has improved significantly for last years. Very important role of the European Tribunal of the Human Rights must be mentioned here, because the verdicts of the Tribunal in many cases, especially in the penal cases concerning the “temporary arrests” have changed the policy and the “spirit” of judiciary in Poland as the new democracy country.

2.

- the independence of the judiciary in Poland is granted by the *article no. 173 and no. 178 of the **Constitution of the Republic of Poland of 2nd of April 1997***:

“The courts and tribunals shall constitute a separate power and shall be independent of other branches of power” (art. 173)

“Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.

Judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties.

A judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges.”(art. 178)

3.

- the judges and the prosecutors in Poland enjoy full freedom of association as well as the other citizens of the Republic of Poland
- there is only one national association of judges: Polish Judges Association “Iustitia” which unites now 20% of judges of Polish different level courts. Every judge might be a member of “Iustitia”.
- there is also an Association of the Polish Family Courts Judges, but it has rather marginal meaning due to its statute goals
- there are two associations of Polish prosecutors
- the judges and the prosecutors in Poland shall not belong to a political party and a trade union (as far as judges are concerned- this is a constitutional rule- vide 2)

4. - 5.

- public opinion about prosecutors and judges in Poland is created mostly by mass media’s commentaries about the verdicts and also – what seems to be a relevant problem – by politicians who in their public speeches show no respect to the courts and the court verdicts. The questioning of the verdicts in mass media has the obvious negative influence on society’s opinion about judiciary and its independence. The criticism about judiciary focuses on two different fields. The first one concerns “the justice” of the verdict in particular cases, especially penal cases, where the verdict is shown in mass media (often not in an objective way) and discussed afterwards by opposite sides - (mainly the ones who are not satisfied with the judgment). The second one concerns “the technical problems” of the jurisdiction system in Poland, especially the length of proceeding, what in many cases has the objective justification, although the cause of this problem seems also be obvious – the lack of money and the need of investments into the court system, which should be done urgently.

6.

- the share of the budget of the judiciary in the overall state budget is about 2%

7.

- the legislation regarding recruitment and education of judges and prosecutors in Poland cannot be precisely defined now, because the project of a new model of such education is being discussed in the government, not even in the Parliament, and must be finally done until spring 2008 - according to the Constitutional Tribunal verdict by fall 2007 which stated as the “unconstitutional” the institution so called “asesor” – the candidate for a position of a judge, a lawyer after a judicial exam, having almost the same rights as the judge; evaluated after 3-4 years practice as the “judge” and then presented to the President who appoints such person as a ‘constitutional judge’.

- no matter what kind of path of education will be finally and formally approved, the judges to the courts of all levels are appointed by the President of Republic of Poland
- the prosecutors are appointed by the Minister of Justice - General Prosecutor

8.

- The National Council of Judiciary has been established by the Polish Constitution – vide: art. 186, 187

Article 186

1. *The National Council of the Judiciary shall safeguard the independence of courts and judges.*
2. *The National Council of the Judiciary may make application to the Constitutional Tribunal regarding the conformity to the Constitution of normative acts to the extent to which they relate to the independence of courts and judges.*

Article 187

1. *The National Council of the Judiciary shall be composed as follows:*
 - 1) *the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and an individual appointed by the President of the Republic;*
 - 2) *15 judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts;*
 - 3) *4 members chosen by the Sejm from amongst its Deputies and 2 members chosen by the Senate from amongst its Senators.*
2. *The National Council of the Judiciary shall choose, from amongst its members, a chairperson and two deputy chairpersons.*
3. *The term of office of those chosen as members of the National Council of the Judiciary shall be 4 years.*
4. *The organizational structure, the scope of activity and procedures for work of the National Council of the Judiciary, as well as the manner of choosing its members, shall be specified by statute.*

9.

- a, b and c: meritum and seniority criteria
- d: there are rules which are setting limits to the duration of a particular function – these rules are defined in the legal act – *Prawo o ustroju sądów powszechnych* (The law on the system of the common courts) and the legal act - *Prawo o prokuraturze* (The law on the prosecution system)

- There are no rules concerning geographical location
- 10.**
- the judges and prosecutors in Poland are not appraised
- 11.**
- according to art. 98 of “The law on the system of the common courts” a judge can return to the original corps and original post pole after exercising different functions (e.g. political) for not longer than 9 years.
- 12.**
- the earnings of judges and prosecutors are the same
 - the salary of the judge and the prosecutor at the beginning of the career is about 4.200,00 PLN netto = 1.280,00 EUR netto
- 13.**
- general rule is: ‘legality of prosecution’
 - the exception to this rule: some categories of the crimes (most of the cases concern *the crime of slander*) might be evaluated as “the acts which do not require the State’s action” and the Prosecutor refuses to take action in such cases in a formal decision; in such cases the citizen has the right to go to the court with “the private claim”
- 14.**
- the criminal policy formally is not defined, but every government and especially the Minister of Justice, has a vision of a criminal policy and can enforce it practically by taking appropriate legislative initiative in the Parliament.
- 15.**
- the prosecutors are not obligated to inform the Minister of Justice - General Prosecutor about the investigations they conduct, but the Minister of Justice – General Prosecutor is entitled to demand from every prosecutor all the information and the case files - on every stage of the investigation
 - there are the rules protecting confidentiality, codified in the Polish Penal Procedure Code and other particular legal acts
- 16.**
- there are no investigative judges in Poland
 - the prosecutor is in charge of criminal investigation and controls the activity of Police and other Secret State Services
- 17.**
- there is no judicial Police in Poland

18.

- citizens are involved in criminal justice by being lay judges- elected for the 4 years period by the local administrative councils
- lay judges act in the criminal cases in the District Courts and in the family and labor law cases

19.

- there is a system of legal, paid by the State's Budget, assistance for poor citizens
- the court decides *in concreto* if the petition of the side (the victim or the accused person) applying for the assistance, is justified or not

20.

- there are some special units in the District and Appeal Prosecutor's Offices who deal with organized group crimes and the most complicated economic and financial crimes
- combating corruption is the main goal of new established formation: Central Anticorruption Office (CBA)
- there have been no terrorism crimes in Poland so far, but if they happen, the units of the District and Appeal Prosecutor's Offices, special Police Units and the Secret State Services and Agencies are prepared and entitled to take all the measures to fight with such danger

21.

- the maximum penalty is 'the life in prison'
- the number of the detainees in the recent years, especially "temporary arrested" has decreased in recent years. Very important role of the European Tribunal of the Human Rights must be underlined as far as this issue is concerned.

22.

- the first instance in the disciplinary court proceeding is the Appeal Court and the second one – the Supreme Court. The proceedings may be initiated by the Minister of Justice – General Prosecutor or by so called 'disciplinary advocate' – which is a function of a judge in a District Court who as a side accuses in a Disciplinary Courts
- the sanctions are: reminder, reprimand, recalling from the function, transfer into the court located in a different town, deprivation of the function of the judge

23.

- there are no codified ethic rules for prosecutors and judges

- The Polish Judges Association “Iustitia” created “Ethical Code”, which contains the ethical rules for judges, useful in their professional activities and recommended by the Association as the ‘demanded ones’.