[*symbol of Germany*]

German
Bundestag
Petitions
Committee
Chairwoman

Jakob & Kollegen Law Firm
Mr Simon G. Jakob
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69115 Heidelberg

[***Stamp: received from Jakob & Kollegen 14 June 2016***]

Berlin, 8 June 2016
Re: Your petition of 6 May 2013;
Pet 4-17-07-1000-052018
Attachments: 1

Kersten Steinke, MdB
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Dear Mr Jakob,

The German Bundestag discussed your petition and resolved on 2 June 2016:

To close the petition process.

It therefore complies with the recommendation of the Petition Committee (BT official records 18/8418), whose reasoning is attached.

With the resolution of the German Bundestag, the petition processes is concluded.

Yours faithfully,

[***signature***]

Kersten Steinke

Pet 4-17-07-1000-052018 6911 Heidelberg

Federal Constitution

Recommended Resolution To

conclude the petition process

Reason

With the petition, an amendment of the Constitution would be required to create the conditions for judicial self-administration.

As justification, the petitioner essentially states that judicial independence is harmed by incorporating the administration of justice into the Executive Branch. While judges are officially independent, in actual fact the Executive Branch has critical influence over the judiciary through appointments and promotions. This is especially true for the financial and tax courts. Even the selection process for Constitutional Court judges is dubious, because the criteria for choosing judges is partially based on partisan political and tactical reasons. Moreover, the petitioner criticises the subordination of public prosecutors, fearing the enormous influence this affords to the Executive Branch. This violates the separation of powers and puts the entire independence of the judiciary in doubt.

Regarding the other specific arguments, we refer to the documents submitted by the petitioner.

The Petition Committee gave the Federal Government several opportunities to express its position on the issues raised by the petition. Furthermore, the Petition Committee asked the Judiciary Committee of the 17th legislative period for its opinion on the petition, under §109, Par. 1, Clause 2 of the German Bundestag's Procedural Rules, since the petition concerns a matter of discussion for that Committee. The Judiciary Committee gave notice that the petition was submitted (BT official records 17/4516) as a bill was being debated to amend the Constitution – establishing the official independence of the Judiciary (BT official records 17/11703).

The plenary session of the German Bundestag of the 17the legislative session took up the issue several times and discussed it in detail (minutes of Plenary Session 17/217 of 13/01/2013 and 17/250 of 27/06/2013).

Both bills were rejected by the German Bundestag of the 17the legislative session by a majority.

The results of the parliamentary review, including the input of the responsible committee and the Federal Government, can be summarised as follows:

Judicial independence in Germany is guaranteed by the Constitution (Article 97 of the Basic Law). The German justice system is highly regarded by its citizens.

It is also highly regarded at the international level. Around the world (see “The Global Competitiveness Report 2012-2013”), the German judiciary is considered one of the most independent and non-partisan justice systems. According to the Global Competitiveness Report, Germany is one of the highest ranking countries in the world with respect to judicial independence. Countries that have an organisationally independent judiciary lag far behind Germany in terms of its justice system.

Moreover, the judiciary guarantees a significant level of self-administration of the courts. Each court forms an executive committee that determines the allocation of judges to the judicial bodies of the courts, and has sole responsibility for the assignment of proceedings.

The appointment of judges to the financial and taxe courts is governed by §9 of the German Judiciary Act (DRiG). Under this act, the general conditions for the appointment of judges in

in specialised courts are established. The federal states are solely responsible for establishing specific criteria for court appointments in accordance with Article 33, Par. 2 of the Constitution. Other special conditions are not required to underscore the equality of all judicial appointments by law for the exercise of judicial offices in certain court branches, such as the tax and administrative courts. However, §14 DRiG provides for the possibility of appointing civil servants for life or, for those qualifying for a judgeship, by commission for a specific period of time or for life when necessary. The proportion of judges appointed by commission is appropriately determined to provide the specialised jurisdictions with the broad expertise that is required. This particularly applies to the tax courts, which are officially staffed by judges in the R2 pay grade and cannot resort to entry-level candidates. The permissibility of appointing judges by commission is not absolute, but only to the extent allowed by law, and only to verify whether a civil servant or a judge is qualified to be appointed for life or a specific period.

By establishing that half of the judges of the Constitutional Court are to be appointed by the Bundestag and half by the Bundesrat (Article 94, Par. 1, Clause 1 GG), the Constitution has deliberately moved this selection process into the political sphere. It is not just the special importance of the constitutional justices that is expressed in this provision. It is also supposed to give all judges a special democratic legitimacy with respect to their responsibility and power. Experience has shown that this selection process does not affect the independence of those who are appointed. Therefore, an amendment of Article 94, Par. 1, Clause 1, of the Constitution is not necessary.

The German Bundestag saw no need for structural reforms to the German justice system in the last legislative period. Therefore, during the plenary session on 27 June 2013, it rejected by majority a bill to establish the institutional independence of the justice system.

However, the independence of the judiciary remains a topic of debate during the current legislative period. The “Judicial System” Commission, under the academic leadership of Prof. Dr. Peter-Alexis Albrecht (Goethe University Frankfurt am Main), began meeting in January 2013 with the participation of the justice ministers of the German states of Brandenburg, Hesse, Rhineland-Palatinate, as well as the Federal Ministry of Justice, and has since concluded its work. The commission assessed the experiences of European judiciary councils and their local self-administration practices. The commission did not express support for the need to reform the German justice system. Rather, it became clear that a uniform assessment of different judiciary systems is not possible due to the diversity of the judicial self-administration models in European countries. The commission’s findings will be the basis of a further debate on participatory elements in Germany and the EU.

Regarding the petitioner’s criticism of the subordination of public prosecutors, the Committee notes the following:

Public prosecutors are a part of the Executive Branch. However, they are not subordinate to the Interior Minister but the Justice Minister. At the same time, public prosecutors (and their civil servants) are also organs of the administration of justice. However, this does not make them part of the judiciary. The federal Constitutional Court (BVERG) clarified this again several years ago, emphasising the unrestricted assignment of public prosecutors to the Executive Branch, despite their inclusion in the justice system (BVerfG, ruling of 20 February 2001, 2 BvR 1444/00 = NJW 01, 1121 ff. – The search of a home due to imminent danger).

Strict limits are imposed on the possibilities of a government to exercise influence on public prosecutors. Public prosecutors are not bound by instructions that require them to do something unlawful. A public prosecutor is obliged by the principle of legality established in

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§152 of the Code of Criminal Procedure (StPO) to conduct investigations if there is sufficient evidence that a criminal offence has been committed. If he does not, he risks being charged with obstruction of justice. On the other hand, if an investigation is initiated when there is no evidence of wrongdoing, he risks being exposed to charges of malicious prosecution of an innocent person. Furthermore, it is the duty of the courts as part of the judiciary to review the legality of investigatory measures of an intrusive nature, such as search and seizure. This provides for checks and balances within the judicial institutions.

It is true that ministerial authority over public prosecutors has drawn considerable criticism both in Germany and within Europe. This is also reflected in a resolution of the Parliamentary Assembly of the Council of Europe of 30 September 2009 (Resolution 1685 [2009]).

In the debate about whether to abolish the possibility for the minister of justice to give the prosecution instructions, the following should be noted:

The reason for this authority to give instructions is that public prosecutors are part of the Executive Branch. They are subordinate to their supervisors and ultimately the justice minister of their state. In turn, the justice minister must answer to Parliament for all official decisions and actions of his ministry. Since he is responsible to Parliament for the actions of the public prosecutors, he requires supervisory and executive powers, and ultimately the power to issue instructions, in order to fulfill this responsibility. This power to issue instructions is established by ordinary law in sections 146 to 147 of the German Judicature Act.

In practice, justice ministers make only very restrained use of their authority to issue instructions, partly to avoid the appearance of political influence. Nevertheless, the judicial administration issues general instructions (“Guidelines for Criminal Procedures and Fines).

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to be followed by the prosecutors handling the case that are intended to ensure uniform practices.

The discussion about how and in what way the relationship between parliamentary and ministerial responsibility on the one hand, and the guarantee of a politically independent justice system on the other hand, should be structured, and what role public prosecutors should assume in the separation of powers, is the subject of an ongoing controversial legal policy debate that is not over yet.

Despite this ongoing legal policy debate, the Petition Committee currently sees no need for legislative action. It therefore recommends that the petition process be closed because the request cannot be met.