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THE INDEPENDENCE OF THE JUDICIARY AND THE ROLE OF THE PUBLIC PROSECUTOR'S DEPARTMENT: CONSTITUTIONAL ASPECTS

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An independent judiciary is fundamental to any modern democratic society and something to which every State should aspire.

However, the constitutional principles governing the judiciary set out in the organisational Charter of 4 October 1958 for the public authorities in France only provide limited protection for the independence of the judiciary.

The 1958 Constitution only refers to a "judicial authority" whose independence is guaranteed by the Head of State, assisted by a Higher Council of the Judiciary whose members he appoints.

Under the Constitution only the judges of the ordinary courts ("magistrature de siege") are irremovable.

In these circumstances, how does the principle of the independence of the judiciary operate in the context of the key role adopted by the Public Prosecutor's Department which is composed of officials of the executive authority working in the courts and receiving instructions from their hierarchical superiors and from the Minister of Justice?

More generally, how can the functional independence inherent in the judge's role be reconciled with the organisational dependence which results from the fact that the judiciary is part of the public service?

Does the Constitution of 4 October 1958 guarantee effectively the independence of the judicial authority, or does it need to be revised in this area?

Without going as far as changing the Constitution, should not serious thought be given to the role and status of the Public Prosecutor's Department?

This examination of the French institutional system would clearly have much to gain from a comparison with the systems in other countries, each country conducting its own examinations of the independence of the judicial authority and the role of the Public Prosecutor's Department.

However, as justice is the only institution which bears the name of a virtue, and since it is dispensed by human beings for human beings, we should never lose sight of the task which devolves on judges and of the need to give them the incentive and the means to carry out that task in a satisfactory manner, for, in the last analysis, the independence of the judiciary depends much more on character than on institutional factors.

THE INDEPENDENCE OF THE JUDICIARY AND THE ROLE OF THE PUBLIC PROSECUTOR'S DEPARTMENT: CONSTITUTIONAL ASPECTS

An independent judiciary is one of the basic characteristics of any democratic form of government. It is therefore not surprising that, in common with many foreign constitutions, France's Constitution of 4 October 1958 proclaims and provides for the independence of the judicial authority.

Part VI, Article 117 of the Spanish Constitution of 4 October 1978, which deals with "Judicial authority", lays down the principle that judges and magistrates are "independent, irremovable, responsible and subject solely to the authority of the law". Article 97 in Part IX of the German Basic Law of 23 May 1949, on "Judicial authority", deals with the independence of the judiciary and states that judges shall be subject only to the law. Article 101 in Part IV of the Italian Constitution of 27 December 1947, concerning "the Judiciary", stipulates that "judges are subject only to the law" and that the judiciary is "an autonomous body independent of any other authority". For the sake of brevity we shall confine ourselves to citing one last example - Part V, Article 206 of The Portuguese Constitution of 2 April 1976, which deals with "the courts" and states that "the courts shall be independent and subject only to the law".

It seems, however, to have become customary in France to make any problem concerning the administration of justice into a dispute about the independence of the courts. This obsession reveals the deep anxiety felt by those who are always ready to believe that the executive is controlling or severely curtailing the activity of the judicial authority.

Not a week goes by without a statement on the need to reform the judiciary. The independence of the judges is continually queried and all too often contested.

Recent events linked to political and financial scandals involving the financing of political parties have moreover alerted public opinion to the need for greater independence on the part of the judiciary.

We need therefore to examine the meaning of the concept of independence of the judiciary, the way in which judges who enjoy that independence are selected and how it is guaranteed today.

The traditional view is that, according to Article 64 of the Constitution of 4 October 1958, the independence of the judicial authority is based on three fundamental constitutional principles: first, the President of the Republic, assisted by the Higher Council of the Judiciary, is its guarantor; secondly, an organic law defines the status of law officers; thirdly, members of the bench are irremovable.

In other words the constitutional rules laid down in 1958 provide a threefold guarantee of the independence of the judiciary, by establishing the principle and defining the details while at the same time giving the legislator the right to intervene.

But is that enough?

Any ambiguity which exists is due to the fact that because professional judges are State officials and therefore agents of the government, there needs to be some guarantee of their freedom of conscience and of judgment vis-a-vis the government.

This explains why judge's clear organisational dependence on the executive authority must be counterbalanced by functional independence guaranteed by an appropriately defined legal position and status.

Is this, in fact, the case?

PART I: THE CONSTITUTIONAL CONCEPT OF THE

INDEPENDENCE OF THE JUDICIARY

a) The judicial authority

Part VIII of the 1959 French Constitution deals with the judicial "authority", thereby implying the non-existence of any real judicial "power" since the courts have never actually constituted a power in the political or constitutional sense of the term. It is, however, interesting to note that in Germany and Spain the Constitution devotes a whole chapter to the "judicial power" unlike the French Constitution which prefers the term "judicial authority" so as to stress the specific character of the judicial function as compared to the functions performed by the executive and the legislature.

a) The judgmental function in fact derives from the indivisible authority of the State, responsibility for which devolves on the President of the Republic, and which can under no circumstances constitute a third power comparable to the executive or the legislature. The judicial authority, or judiciary, is therefore a public service and as such is subject to the authority of a minister, viz. the Minister of Justice, but because of the special task which it is called on to perform, it enjoys certain guarantees.

This analysis is borne out by the fact that, as public officials, judges and other law officers are appointed by the executive and that the courts do not control the way in which they are organised but are dependent in this regard on the legislative and executive authorities.

b) Article 64 of the Constitution states that "the President of the Republic shall be the guarantor of the independence of the judicial authority. The article thus substitutes the term "authority" for the word "power", thereby solving the problem of the separation of powers while at the same time formally declaring this authority independent.

The President's responsibility for guaranteeing the independence of the judicial authority corresponds to the role, traditionally assigned to him by Article 5 of the Constitution, of ensuring the Constitution is respected and, through his arbitration, ensuring the proper functioning of the public authorities and the continuance of the State.

What exactly does this independence mean?

B) Independence

Although everyone agrees on the absolute necessity of an independent judiciary, the notion itself is ambiguous.

In its widest sense, it is understood as the freedom which all judges must have in dispensing justice.

They must be immune to pressure from political or economic authorities, public opinion and even their own feelings or personal prejudices.

In the constitutional sphere, however, the independence of the judicial authority raises the fundamental problem of the relationship between the judiciary and political power, i.e. that of the separation of powers, since a sound system of justice must above all else be genuinely independent.

Today, however, there are repeated claims of alleged interference in the judicial system by civil servants and politicians, whose insistent demands make a mockery of the principle of the independence of the judicial authority.

The source of the entire problem, of course, is the fact that judges are civil servants with careers to pursue and therefore dependent on the executive authority, which has the task of appointing and promoting them. How can a judge's role as a government official be reconciled with the need to exercise independent judgment?

Although the executive is currently promising that it intends to strengthen the independence of the judiciary by improving its status, it is obvious that only sweeping constitutional reform along these lines can really help to consolidate the rule of law.

But, who guarantees this independence now, and whom does it benefit?

C) Protagonists and beneficiaries

a) It is paradoxical that the Head of the French State has been made the guarantor of the independence of the judiciary when the aim is precisely to guarantee the independence of the judiciary vis-a-vis the executive authority. However, it should be borne in mind that, under the Fifth Republic, the President of the Republic acts as an arbitrator, which gives legitimacy to this guarantor role.

Moreover, the powers invested in the President of the Republic in this area are accompanied by guarantees designed to ensure the independence of the judiciary.

He is assisted, in the first place, by the Higher Council of the Judiciary, which he chairs, and of which the Minister of Justice is the Vice-Chairman.

This body is composed of nine members appointed for four years by the Head of State - six from lists drawn up by the bureau of the Court of Cassation, one from a list drawn up by the General Assembly of the Council of State and two at his own discretion from outside the judiciary. The Council proposes to the Head of State the appointment of presidents and counsellors to the Court of Cassation as well as the first Presidents of the Courts of Appeal, but simply gives an opinion on other appointments to the bench.

In addition to being consulted on pardons, the Higher Council of the Judiciary also exercises disciplinary power over the judiciary. It is then chaired by the first President of the Court of Cassation. The Head of State and the Minister of Justice do not attend.

This demonstrates the central role played by the Council in guaranteeing the independence of the judiciary.

b) Secondly, an institutional act brought in by an order of 22 December 1958 stipulates the legal status of judges bracketing together under the general title of "judiciary" auditeurs de justice (legal assistants), law officers working in the Ministry of Justice, judges and law officers in the Public Prosecutor's Department.

The 1958 Constitution lays down the circumstances in which the legislator intervenes in respect of the judiciary. Article 64 stipulates: "An organic law shall determine the status of judges".

The statutory rules governing judges have a particularly high legal standing since they are covered by the guarantees incorporated in the procedure for adopting institutional laws, relating in particular to the intervention of the Constitutional Council.

c) Moreover, the interpretation of the provisions of Article 34 of the Constitution on the "creation of new juridical systems" has led the Constitutional Council and the Council of State to conclude that only the legislator is empowered to issue rules governing the appointment of persons to serve as judges and the competence of the courts.

d) Finally, under the Constitution only members of the bench are irremovable . They are also protected by the Higher Council of the Judiciary whose function is to judge.

On the other hand, law officers in the Parquet (Attorney General's Department) who constitute what is known as the Ministere public (Public Prosecutor's Department) are under the direction and control of their immediate superiors and under the authority of the Minister of Justice.

Their function is not to judge but to demand that the law be applied. Their duty is to defend the interests of society as a whole and of the law which expresses those interests.

In other words, the Public Prosecutor's Department consists of law officers whose function is to act in the courts on behalf of the executive and whose primary duty is to defend the general interest in the name of the State and to express the views of the executive on the basis of its instructions.

In the exercise of this function they may of course receive instructions from the Minister of Justice or from their immediate superiors requiring them to act or not to act.

Since they are responsibility for initiating criminal prosecutions under the authority of the government, they play a fundamental part. But as they clearly do not act as judges, it is neither objectionable nor contrary to legal principles that they should be closely subordinate to the executive authority and that, as a result, they are not protected by the principle of irremovability. Moreover, France is not the only country which has opted for this type of system. The principle of the hierarchical dependence of the prosecution also applies in the Kingdom of Spain and the Federal Republic of Germany.

Thus the French Constitution explicitly enshrines the distinction between the judiciary, which is responsible for judging cases, and the prosecution which represents the State in court proceedings.

Some authors point out that an autonomous prosecution service would lack legitimacy. If all links with the executive authority were severed it would inevitably be influenced by local pressures which, even if they were less apparent, would be no less to be deprecated.

Moreover, it was this consideration which led the United Kingdom Government to opt, in the 1986 "CROWN PROSECUTION SERVICE ACT" for a centralised and hierarchical integrated national prosecution system.

However, the real justification for the limitations on the action and the status of the Public Prosecutor's Department derives from the 1789 Declaration of the Rights of Man, which states that "a public force being necessary to give security to the rights of men and of citizens, that force is instituted for the benefit of the community, and not for the particular benefit of the persons to whom it is entrusted".

Any system of criminal procedure must take care not to leave the State powerless to combat crime: through the prosecution system it must give the state the means to institute criminal proceedings and bring charges.

However, in Italy, as the result of a form of osmosis between the two professions, the rules governing the judiciary give prosecutors the same level of real independence as ordinary judges.

This independence is further strengthened by the principle of mandatory prosecution and Article 107 of the Constitution, which states that judges are irremovable and that they are distinguished only by the different functions they perform.

The Portuguese Public Prosecutor's Department also enjoys organisational autonomy vis-a-vis the Ministry of Justice under the 1976 Constitution, since the 1989 reform did not amend the text of the basic provision in Article 221 whereby the prosecution service enjoys autonomy under the law. Its functional autonomy is therefore established.

The regrettable fact that a French investigating judge, who is an irremovable member of the judiciary appointed by decree of the President of the Republic, and an essential part of the judicial system, can be relieved of his investigative duties by the appointing authority, even though he still remains a member of the judiciary, shows that he is de facto not totally independent of the executive.

It is also regrettable that he cannot take up a case proprio motu : the power like the other courts to investigate a particular case is conferred on him by the prosecuting authority, i.e., the State Prosecutor's Office, or the victim.

Finally, it should be pointed out that the Commission on Penal Law and Human Rights established in 1988 by Pierre ARPAILLANGE outlined a novel procedural system which criticised the fact that the investigating judge has both investigative and jurisdictional functions.

The Commission recommended in its conclusions that the investigating judge's function should be strictly jurisdictional and that the Attorney General's Department should be responsible for investigations.

Perhaps the far-reaching proposals made at that time will one day come to fruition.

However, the institution of investigating judge has traditionally been linked to the 'inquisitorial' model whereby the judge, to whom a case has been referred by the public prosecutor or the victim, is responsible for directing the investigation and deciding whether or not the case should go to trial. Thus prosecution, which is the responsibility of the Public Prosecutor's Department is separate from the jurisdictional and investigative functions which are carried out by the investigating judge.

In practice, however, the institution of investigating judge has come to be questioned by several countries which copied it from the French system.

It has been almost completely abandoned in Germany, Portugal and, even more recently, in Italy.

Even in France the institution of investigating judge is gradually being phased out. With the development of the rights of the defence and the strengthening of the jurisdictional function and independence of the investigating judge vis-a-vis the Public Prosecutor's Department, the prosecution is imperceptibly learning more and more to bypass the investigating judge.

The trend throughout Europe towards the elimination of the investigating judge is at the same time strengthening the hand of the Public Prosecutor's Department. In Italy the 1989 penal law reform gave the latter responsibility for conducting the investigation. This has also been the case since 1987 in Portugal where the autonomy of the Public Prosecutor's Department derives the legitimacy from the Constitution. In Portugal the Public Prosecutor's Department has ceased to be a party to proceedings and has become a fully-fledged judicial authority required to conduct investigations with independence and impartiality.

PART II: HOW THE INDEPENDENCE OF THE JUDICIARY COULD BE IMPROVED

A) How the Higher Council of the Judiciary should be reformed

This body, which in its present form is the executive's Trojan Horse within the judiciary, has been criticized on several counts in France.

a) In the first place, the President of the Republic plays too large a role in the appointment of the members of the Council. It is regrettable that none of its members is elected directly by the judiciary as a whole. Consideration could be given to establishing the principle that some of its members were elected by various bodies such as Parliament, judges' and barristers' associations or the Economic and Social Council, and to encouraging the appointment of persons chosen for their specialist skills outside the judiciary.

It is clearly desirable to establish a system for recruiting to the Council people more independent of the political establishment.

Moreover, it is inappropriate for the executive to preside over the Council, the very body responsible for ensuring the independence of the judiciary.

This arrangement underlines the relative organisational subordination of the Higher Council of the Judiciary to the executive, which not only appoints its members but also presides over its discussions, controls the agenda and convenes Council sessions.

There are also several other questions. Why not extend the term of office of members of the Council and establish the principle that their mandate in not renewable? The present term of office is too short, and the fact that it is renewable is further indication of the Council's functional dependence on the executive. An increase in the number of its members could also be envisaged.

Much could be learned from a comparison with other countries in this regard. For example, in Italy the President of the Republic presides over the Higher Council of the Judiciary and the First President and the Attorney General at the Court of Cassation are ex officio members. Two thirds of the remaining members are elected by all the ordinary judges from among the members of the different categories, and one third by the Parliament from among professors of law and barristers of at least fifteen years' standing.

Their term of office is four years and is not immediately renewable.

In Portugal the Higher Council of the Judiciary is presided over by the President of the Supreme Court and is tripartite in composition. Two of its members are appointed by the Head of State, seven are elected by the Assembly of the Republic and seven by the judiciary from among its own members on the principle of proportional representation.

Finally, in Spain the General Council of the Judiciary is presided over by the President of the Supreme Court and is composed of twenty members appointed by the King for five years. Twelve of its members are chosen from among the judges and magistrates, four on the proposal of the Congress of Deputies and 4 on the proposal of the Senate. In both cases they are elected by a majority of three-fifths of the members from among barristers and lawyers of more than fifteen years' standing.

b) Where the powers of the Higher Council of the Judiciary are concerned, these could perhaps appropriately be extended, since the institution is, together with the Head of State, a "co-guarantor" of the independence of the judiciary,

To enable it effectively to safeguard that independence, why not involve the Council not only in appointments but also in the management of the judiciary as a whole? The 1946 Higher Council could serve as a model for widening the role of the present body. That earlier Council had the right of nomination with regard to the judiciary as a whole, whereas the present body can only nominate members of the Court of Cassation and the First Presidents of the Court of Appeal, i.e, only about one hundred of the three-and-a-half thousand members of the judiciary.

Is it not also desirable that the Higher Council of the Judiciary should at least be involved, if only on a purely consultative basis, in the career progress of law officers the Attorney General's Department, something which is currently not possible under the Constitution?

Indeed, it is desirable that the Council should be consulted on all appointments, and even transfers, in the interest of the service, of all law officers employed in the Public Prosecutor's Department.

Why not enable it, through an amendment to the Constitution, to act as disciplinary board for law officers in the Attorney General's Office, under the chairmanship, for example, of the Attorney General at the Court of Cassation?

These reforms would clearly bring about a genuine change in the status of prosecutors who, unlike the members of the judiciary, are not irremovable.

Moreover, these reforms would be based on the principle of the unity of the judicial profession laid down in Article 1 of the order of 22 December 1958 on the status of the judiciary, which defines the judicial profession as comprising all court judges and law officers in the Attorney General's Department; transfers are moreover always possible from the judiciary to the Attorney General's Department and vice versa.

Finally, why not introduce greater flexibility and freedom into the institution by enabling it to meet on its own initiative without being convened by the Head of State or the Minister of Justice?

Any progress in this area would in any event carry symbolic value.

The practice in other countries, especially Italy and Portugal, argues in favour of strengthening the powers of the Higher Council of the Judiciary in France. The corresponding Councils in Italy and Portugal play a much more important role than their French counterpart.

B) The case for reexamining the Public Prosecutor's Department

The fact that, in principle, French judges are subject only to the law and that their independence is guaranteed by the Constitution naturally raises the question of the justification for the hierarchical link which has traditionally existed between the Ministry of Justice and the Attorney General's Department.

The idea of the Public Prosecutor receiving his instructions directly from the Minister of Justice is becoming increasingly repugnant to public opinion, which wants to see the links between the Attorney General's Department and the Ministry of Justice severed so as to enable the prosecuting authorities to become an autonomous body.

Others countries are clearly ahead of France in this area.

M. Truche, who was one of the authors of the report of the Commission on Penal Law and Human Rights during his term of office as Chief Public Prosecutor at the Paris Court of Appeal, also signed a document in 1988 calling for reform of the status of the Attorney General's Department. The chapter on the Public Prosecutor's Department proposed replacing the "obligation to comply with guidelines" incumbent on magistrates in the Attorney General's Office by genuine freedom of conscience.

Although the very idea of definitively severing the link which subordinates the Public Prosecutor's Department to the Ministry of Justice might understandably seem unduly radical today, a case can surely be made for trying to strengthen the system in France by giving the Attorney General's

Department greater independence by substantially increasing its statutory guarantees.

The idea referred to above of transferring disciplinary authority over the Attorney General's Department from the Ministry of Justice to the Higher Council of the Judiciary would be a significant step forward, and an improvement on the present system whereby protection is provided by the Disciplinary Committee of the Attorney General's Department, without whose approval no sanction can be imposed.

It is interesting to examine the example of Portugal, where the Public Prosecutor's Department is hierarchically structured and the appointment, assignment and promotion of prosecutors, together with disciplinary action, are the responsibility of the "Procuradoria-geral da Republica" a body to which the Public Prosecutor's Department is subordinate, which is presided over by the Attorney General of the Republic and whose members are elected by the law officers of the Public Prosecutor's Department from among their own number and by the elected members of the Assembly of the Republic.

Why not take this system as a model and try to adapt it to the situation in France?

In view of the importance of the decisions they are called on to take, the independence of the prosecution authorities is a fundamental issue.

It should be remembered that it is the public prosecutor who decides whether to prosecute in criminal cases, since it is he who receives complaints and decides what action is to be taken.

Furthermore, the principle of discretionary prosecution was recommended by the Committee of Ministers of the Council of Europe on 17 September 1987.

However, the fact that he is hierarchically subordinate to the Principal Public Prosecutor at the Court of Appeal and to the Minister of Justice, both of whom can instruct him to prosecute or not to prosecute, clearly raises the problem of the guarantee of independence which he must enjoy.

It should also be borne in mind that even if the victim of a crime sets the machinery of the law in motion by claiming damages in the criminal courts, he has no say in the subsequent prosecution, which is entirely in the hands of the Public Prosecutor's Department.

Fortunately, the saying traditionally applied to the Public Prosecutor's Department "la plume est serve, mais la parole est libre" (having made the formal written submission, the prosecutor is free to put the case differently in his oral pleadings) shows that prosecutors exercise a two-fold function, as public officials and as law officers.

In other words they are only obliged to comply with their instructions in their written submissions, and remain free when expressing themselves orally.

However, public opinion is becoming increasing aware of the problem of the independence of the prosecution vis-a-vis the Ministry of Justice. Although the creation of an independent Public Prosecutor's Department has been rejected for the moment, the idea of ensuring greater transparency in the relations between it and the Ministry of Justice is emerging in the natural concern to guarantee transparency where government intervention in criminal proceedings is concerned.

The discussion of the role of the prosecution authorities is at the very heart of the matter since the status of prosecutors is basic to any substantive examination of the dependence or independence of the judiciary and therefore of the courts vis-a-vis the government. The status of the Public Prosecutor's Department varies widely from one country to another. In Germany and France it is dependent and strong, in England it is dependent and weak and in Italy and Portugal it is independent and strong.

The situation in England is a special case. The "Crown Prosecution Service" has not been given the right to initiate prosecution, that being the traditional prerogative of the police, who have no intention of relinquishing it, nor of presenting the prosecution case in court, which is the jealously guarded prerogative of the bar.

In Germany, the Public Prosecutor's Department is, in principle, required to prosecute all offences brought to its notice on the basis of the principle of the mandatory prosecution of all offences. However, the 1975 reform permits conditional nolle prosequi decisions, giving it conciliatory powers similar to those which are being developed in France on the basis of the principle known as the principle of discretionary prosecution, but with greater transparency in that it must give reasons for its decision.

C) Constant reference to the traditional duties of judges

Since it is the judges who dispense justice and since the independence of the judiciary depends on the independence with which think and act, any discussion of the independence of the judicial system leads inevitably to the question of the role which judges are called on to fulfil.

a) The judge's primary duty is to hear and determine cases and to give each person his due, in other words, the judge is required to apply to each individual case the appropriate rule of law.

Is the rule good or bad?

The question is irrelevant, since this is not for him to decide, although he may deplore the outcome of the strict application of the law.

The judge cannot be criticised for applying the law.

At the same time, however, there is no such thing as automatic justice and the judge has to pass judgement not only on the offence but also on the person who committed it, taking into account the particular circumstances of the case. The judge must avoid judging disembodied acts: he must examine the circumstances in which they were committed, and above all why and by whom.

Giving everyone his due means treating all individuals evenhandedly. Since the law exists for everyone, it must be administered on the basis of the criteria which best apply to the circumstances in which each individual finds himself.

However, this also means that no-one must be able to escape justice.

b) The judge must dispense justice in the name of the French people. i.e., he must ensure that his decisions are understood by the French people and likewise that he understands them.

He must therefore use a language which is comprehensible, dispense justice rapidly and take account of the higher interests of the country, i.e. the common good. At this point the crucial and persistent question reemerges.

Should the judge be basically intransigent and impervious to all influence, sure of doing the right thing because it is he who administers the law, or should he in certain cases sometimes take the view that the people themselves expect him to assist the public authority?

This in turn raises another question, namely is this authority the Authority of the State or of a particular the government?

In other words, should the justice he administers be immutable and unmoving, a rigid sword which nothing can deflect, or should it tilt to one side or the other like the scales which are its symbol?

And while judges must clearly be guided by their conscience in dispensing justice in the name of the French people, they must also be given means to do so.

c) Finally, the judge must not exceed his authority, otherwise he runs the risk of damaging his image, his credibility and his independence.

A judge is neither an avenger, nor a journalist, nor a more or less autonomous writer of autobiographic novels about his profession, shamelessly revealing his inner feelings.

Let us bear in mind that the independence of the judiciary is more a question of character than of law, because it is primarily a question of human beings and only secondarily one of institutions.

Desirable as it may be to initiate constitutional reform in France, the outcome is at the very least uncertain. The revision of the French Constitution involves setting in motion a very cumbersome procedure requiring the assent of both houses of parliament and approval by referendum or, under Article 89 of the Constitution, approval of the text by a three-fifths majority in Congress (joint session of both chambers).

In any event, we can be sure that public opinion is the best judge of that independence, and the indignant and critical attitude of the people to any attempt to put pressure on judges is its most effective safeguard.

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