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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW**  
**ON AMENDMENTS TO THE**  
**JUDICIAL SYSTEM ACT OF BULGARIA**

**Comments by**  
**Ms H. Suchocka, Member, Poland**

## Opinion on the Law on Amendments of the Judicial System Act in Bulgaria

The fundamental principles of the Judiciary are proclaimed by the Constitution from 1991. The Constitution establishes the general rules concerning the judicial power, i.e. independence of courts and judges, the system of courts and prosecutor's office and the role of Supreme Judicial Council. The constitutional provisions concerning the Supreme Judicial Council are of great importance because they completely change the system of judiciary existing before. Article 129 providing for the establishment of a special body entrusted with a great competencies with respect to courts and judges changed radically the position of the minister of Justice. Judicial Councils with nationwide competence have taken over competencies exercised previously by the executive. The constitution has created a framework and basis for the ordinary legislation in this matter. The Law on Judiciary has been adopted in 1994. In 1998 important amendments were made to this Law. The draft being now under discussion proposes the new amendments to the Law, mainly in three areas: the competencies of the Supreme Judicial Council; some questions concerning irremovability of judges and training of magistrates and especially the establishment of National Institute of Justice.

As it has been stated in the Motives to the Law to amend the Judicial System act, the commitments undertaken by Bulgaria in its National program for Adoption of the *acquis* and the priorities listed in the Accession Partnership, require to reinforce the judicial system and especially the professional training of magistrates, and better operation of Supreme Judicial Council. I would like to concentrate myself only on this two points.

### 1. Provisions concerning the role of Supreme Judicial Council.

The new amendments do not change substantially the role of the Council. As I mentioned above, the position of the Council has been clearly described in the Constitution with a widely defined competencies and the ordinary law can not change this position.<sup>1</sup> The now proposed amendments are rather of technical nature. (Art. 20 p. 2 ,5 concerning the situation when a member is elected who does not meet the legal requirements.) In art. 27 there are the new competencies of the Council p. 10-15, they don't involve any objection. It is a logical consequence of the very strong position of the SJC. In the light of art. 27 (1) p.3 the SJC shall determine the number not only of judges but also prosecutors, investigators, bailiffs, recordation judges, and court officials at all courts, prosecution offices and investigation services while the Minister (art. 30 p. 6) may only make proposals and provide opinions on

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<sup>1</sup> It has been stated very clearly in the report on Bulgarian Judiciary in: *Monitoring the EU Accession Process: Judicial Independence* ed. by Central European University Press, Budapest 2001: " Bulgarian Supreme Judicial Council has broad competencies, it determines the number of judges, draws up the draft budget for the judiciary and submits it to the Government, makes the proposal to the President of the Republic as to the appointment of the Presidents of the Supreme Court and of the Supreme Administrative Court, further the Council operates as the disciplinary authority. What is rather exceptional is that it is in the Council's competence to appoint and dismiss judges. As the appointing body the Council also has the power to lift judges' immunity if requested by the General Prosecutor. It should be recalled, however, that the Council is the representative body of all three groups making up the magistracy (judges, prosecutors and investigators), further that these three branches elect only 11 members of the Council. Another 11 members are elected by Parliament whereas the President of the Supreme Court, the President of the Supreme Administrative Court and the General prosecutors sit *ex officio* in the Council.

In Bulgaria the draft budget of the judicial branch is drawn up and submitted to Government by the Supreme Judicial Council. The Bulgarian Constitutional Court held that the executive has no power in the process of drafting the judiciary's budget, it is obliged to incorporate the Council's proposal in the draft state budget and submit it to the National Assembly. The Government may formulate its own proposals and objections but may not alter the draft budget elaborated by the Council.

the legality of the proposals to the Supreme Judicial Council. It can involve questions: what exactly is the role of the Minister of Justice.<sup>2</sup> With a view to strengthen institutional capacity of the Council and its ability to carry out management activities, the Supreme Judicial Council is gradually creating and expanding its own administration. Taking into account that the Supreme Judicial Council comprises not only judges but also the prosecutors and investigators it is obvious that the Council would replace the ministry of Justice and become an organ with all administrative competencies and organizational structures typical for the Ministry of Justice. It is very clearly seen in the chapter sixteen on the Administration of the bodies of the Judiciary. Art. 187 p.2 states that the administration of the bodies of the Judiciary shall be the administration of the Supreme Judicial Council, of the Supreme Court of Cassation, of the Supreme Administrative Court, of the Chief Prosecutor, of the Supreme Prosecution Office of Cassation, of the Supreme Administrative Prosecution Office, of the National Investigation Service, of the courts, prosecution offices and investigation services. In the field concerning the administration of the bodies of Judiciary minister of Justice shall act in strict coordination with the Supreme Council of Judiciary (art. 188.2) The administration of the Supreme Judicial Council shall be headed by the new administrative office Secretary General. It is a model going very far to create a very strong Council with a very strong administration and decision making competencies while the Minister is rather an opinion making organ. This kind of model is not very often met in the EU countries.

The model proposed for Bulgaria is now much closer to the model existing now in Hungary. This Hungarian solution is not free of critics. According to some critics the operation of the Council is rather bureaucratic resulting in the increase of the administrative burden of judges.<sup>3</sup> Some argue that it is actually the Office of the Council composed of civil servants, which has the real power and not the Council itself. Many of the employees of the Office used to work at the competent department of the Ministry of justice prior to the reform and their mentality still reflects the old times when courts were clearly subordinated to the bureaucracy of the Ministry.

However in Bulgarian model there still is a structure within the Ministry of Justice, the *Inspectorate*, (chapter 4) which inspects and summarises the administrative activities of courts, as specified in this chapter. Though the Inspectorate has no direct supervisory or administrative authority over the judicial branch, it carries out regular inspections of the courts in order to track civil and criminal cases through the lower courts and to ensure that standards regulating the progression of a case through the courts have been met. The

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<sup>2</sup> It is worthwhile to remember here that the discussion on the competencies of the ministry of Justice took place in year 1998/1999. The amendments to the JSA introduced in November 1998 have extended the Minister's participation in the operational work of the SJC by way of empowering the Minister to make proposals as to the appointment, promotion, demotion, reassignment and dismissal of judges; as to lifting immunity of judges and their suspension; as to initiating disciplinary proceedings against any member of the judiciary; and as to his competence "to draw judges' [except from the two Supreme Courts] attention to failures to observe the rules of handling cases and duly inform the SJC. Even such a limited competencies have been seen by many as a challenge to the principle of separation of powers and is even as compromising the independence of the judiciary. The Constitutional Court has ruled on the constitutionality of Minister's extended competencies and has upheld them in its judgment of 14 January 1999. The judgment states: The right of the Minister of Justice to table a motion to the effect of the appointment, promotion, demotion, reassignment and dismissal of judges does not violate the principles of separation of powers and independence of the judiciary since the [SJC] is the only organ having the right to take decisions on these issues. When these decisions are being taken, the Minister is not entitled to a vote.

<sup>3</sup> As concerns the evaluation of judges, for instance, the Council elaborates the criteria but the extremely time consuming evaluation itself is done by the judges themselves.

*Inspectorate* analyses and summarizes cases and acts of judges and reports back to the SJC in matters that might affect promotion or result in disciplinary action.

The role of inspectorate situated inside of the Ministry of Justice in the light of expanding competencies of the SJC is not very clear.

## 2. Training of Judges

Art. 146a introduces to Bulgarian legal system the new institution in charge of training all magistrates i.e. National Institute of Justice. It is a very positive solution. In my opinion it is a very good idea that the Institute being a second/level budget spending unit with the Minister of Justice shall be founded through the budget of the Ministry of Finance and through international programmes and projects. There arise however some doubts concerning the role of the Institute. The judicial authority in most of the countries comprises *exclusively judges* in the strict sense and the special school, institute are created only for training judges. In Bulgaria *judges, public prosecutors and investigators* form part of the judicial branch and all together are called magistrates. In such a situation it could be difficult in practice to organise the training for all the groups by one common Institute of Justice. I have such an impression that this provision is of very general nature and it should be much more detailed described not to be only theoretical solution but exactly working institution.