



Strasbourg, 28 June 2002

Restricted
CDL (2002) 106
English only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

BULGARIA
EXPLANATORY MEMORANDUM
ON THE DRAFT AMENDMENTS
TO THE JUDICIAL SYSTEM ACT AND STATEMENTS
EXPRESSED AT THE MEETING
OF THE SUPREME JUDICIAL COUNCIL

**MOTIVES TO THE LAW
TO AMEND AND SUPPLEMENT
THE JUDICIAL SYSTEM ACT**

The Judicial System Act furthers the fundamental principles of the Judiciary proclaimed by the Constitution of the Republic of Bulgaria, the status of judges, prosecutors and investigators, the powers of the Supreme Judicial Council and the powers of the Minister of Justice.

The Judicial System Act was passed in 1994 and essential amendments were made to it in 1998.

The ongoing process of judicial reform, which mirrors the reform of society, again necessitates amendments to the Judicial System Act. The changes proposed do not violate the principle of legislative stability, as they only purport to improve the provisions on well established institutes and relations.

Over the period since the last essential amendments, the need has become clearer to adopt a new Law to Amend and Supplement the Judicial System Act. The Reform Strategy for the Bulgarian Judicial System, the commitments undertaken by Bulgaria in its National Programme for the Adoption of the *Acquis* and the priorities listed in the Accession Partnership all require to reinforce the judicial system; enhance the professional training of magistrates; improve the administrative work of the judicial system; and better the operation of the Supreme Judicial Council. Thus, some of the political criteria for membership of the European Union will be met.

The draft law improves the rules on the election of the Supreme Judicial Council by providing an opportunity to take steps when a member is elected who does not meet the legal requirements. The powers of the Supreme Judicial Council are further refined and developed (Articles 20, 27, 28).

Evaluation is introduced plus a mechanism for its efficient implementation before judges, prosecutors or investigators have become irremovable (Art. 129 ff.). A procedure is envisaged to demote magistrates who lack the required abilities to fulfil their professional duties (Articles 131, 131a).

It is provided that junior judges and junior prosecutors, regional judges and prosecutors at regional prosecution offices, and investigators shall be appointed after a contest (Article 127a).

The draft also covers the training of magistrates. A legal framework is set for such training and its implications for the career of magistrates in the official hierarchy.

Legal rules are introduced to set up a National Institute of Justice as a public institution in charge of training all magistrates (Art. 146a).

The provisions on the qualification to practice are improved. The duration of apprenticeship is reduced to three months and those having passed semester exams at the university shall be apprentices before the final exams. The qualification to practice as a judge, prosecutor and investigator shall be obtained upon successful completion of the training at the National Institute of Justice (Articles 163, 167).

The status of officials at the administration of the bodies of the Judiciary and the administration of the Supreme Judicial Council is covered as well (Articles 188, 188a, 188b).

A National Investigation Service is set up which shall ensure the administrative and financial management of, and provide methodological guidance to, investigation services (Art. 122).

The draft law will put in place a structure to provide security and support to the bodies of the Judiciary (Art. 200a).

The adoption of the Civil Servants Act has made it necessary to regulate, in line with Art. 1, para 3 of the State Administration Act, the special status of judges, prosecutors, investigators, bailiffs, recordation judges and court officials. In that connection, amendments are proposed to the Code of Compulsory Social Security and to the Health Insurance Act.

**STATEMENTS ON THE LAW ON AMENDMENTS
AND ADDENDUM OF JUDICIAL SYSTEM ACT
EXPRESSED AT THE MEETING
OF THE SUPREME JUDICIAL COUNCIL
ON APRIL 10TH, 2002**

At its meeting concerning the discussion on the Draft Law on Amendments and Addendum of Judicial System Act the members of the Supreme Judicial Council (SJC) took into consideration certain aspects of the Draft, which according to their opinion are not in compliance with the provisions of the Bulgarian Constitution

One of the major points of concern of some members of the SJC is that the interference of the executive power in the activity of the judiciary, as provided for in the Draft Law, would lead to a breach of the principle of the separation of powers.

According to the presented opinions, this interference is possible due to the unclear formulation of the distinction of the functions of the SJC and the Ministry of Justice. In addition the recruitment of the staff of the Supreme Court of Cassation and the Supreme Administrative Court through the Minister of Justice might also be considered as violation of the rules of the Bulgarian Constitution because the statute of the above-mentioned courts does not allow recruitment through the MJ.

Some members of the SJC emphasised that the issue of the statute of the National Institute of Justice is subject to discussion due to the fact that the training of judges should be held independently from executive power. This is why the legislative decision that the National Institute of Justice to be placed under the authority of the Minister of Justice and not the SJC proves to be contrary to the principle of separation of powers.

Some of the members of the SJC regard the introduction of term of office for the presidents both of the Supreme Court of Cassation and the Supreme Administrative Court as inadmissible. On the other hand, several members are in the opinion that the number of the subsequent terms of office should not be limited.

Another aspect of the amendments presented by the Draft Law, regarded as unconstitutional by part of the members of the SJC, is related to the restriction of the powers of the Prosecution office.

The proposed proceedings for disciplinary responsibility is defined as heavy and incompatible with the principle of right to defence, granted by the Constitution to all citizens.

The proposed preservation of the statute of magistrates for the inspectors during their office according to art. 35 of the Draft is subject to discussion and criticism.