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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

on the basis of comments by

Mr J. Hamilton (Member, Ireland)
Mr J. Said Pullicino (Member, Malta)
Ms H. Suchocka (Member, Poland)

Introduction

1. By letter dated 15 April, Mr. Stankov, Minister of Justice of Bulgaria, requested the Venice Commission to give an opinion on the Bulgarian Draft Law on Amendments and Addendum on the Judicial System Act (CDL (2002) *). The Draft Law was adopted by the Bulgarian Council of Ministers on 4 April 2002. On 10 April some concerns were raised in a meeting of the Supreme Judicial Council. Document CDL (2002) * contains the motives advanced in favour of the amendments as well as those concerns raised.

2. The Venice Commission invited Ms. Suchocka and Messrs. Hamilton and Said Pullicino who in 1999 had already acted as rapporteurs on a previous draft on the Reform of the Judicial system ([CDL-INF \(99\) 5](#)) to assume the same task in respect of the on the new Draft Law. Their individual comments (CDL (2002) 69, 62 and 63 respectively) are attached to the present introduction.

3. The principal changes proposed are as follows:

- a) Changes to the rules relating to the Supreme Judicial Council, in particular providing for the situation where a member is elected who does not meet the legal requirements for membership.
- b) A new system for evaluation of judges, prosecutors and investigators during the three-year period before they become irremovable.
- c) A procedure to allow for the demotion of certain judges.
- d) The introduction of a competitive procedure for the appointment of certain judges and prosecutors
- e) Provisions relating to the training of judges and the establishment of a National Institute of Justice.
- f) Provisions relating to the qualification of judges.
- g) The administration of the Supreme Judicial Council and judicial bodies.

4. Following an examination of the Draft Law, the Commission comes to the conclusion that it represents a thorough, coherent and comprehensive code for the judiciary, prosecutors and investigators. Many of the proposed changes are very positive. The Commission notes with satisfaction that the Supreme Council of Justice will have wide powers and that the role of the executive, i.e. the Minister of Justice, in the administration of justice remains limited.

5. Nevertheless, there are a number of concerns which relate essentially to the independence of the judiciary. The Commission is of the opinion that the draft should be amended in relation to the following points:

- a) The Minister of Justice as the chairman of the Supreme Council of Justice should not be able to be able to block the discussion of a particular issue within this body. When the Council is discussing proposals made by the Minister it would be preferable that some person other than the Minister ought to chair it.
- b) The role of inspectorate situated inside of the Ministry of Justice in the light of expanding competencies of the Supreme Judicial Council is not very clear. The Ministry of Justice should not be in a position to determine which information stemming from the Inspectorate is passed on to the Council.
- c) Changes to the rules relating to the Supreme Judicial Council, in particular providing for the situation where a member is elected who does not meet the legal requirements for membership. The Supreme Judicial Council, especially its

parliamentary component, should not be in a position to decide on the validity of the election of a member of the judicial component of the Council.

- d) The composition of the Supreme Council of Justice should be depoliticised by providing for a qualified majority for the election of its members.
- e) The evaluation of judges, prosecutors and investigators during the three-year period before they become irremovable in their office should be restricted to courts of first instance. The annual evaluation of judges may create problems related to independence of the judges. The criteria for this evaluation seem to be too vague.
- f) The incentives for magistrates provided for in Article 167a should only be applicable after the retirement from office.
- g) The envisaged Code of Ethics should be approved by the Supreme Judicial Council but regulated at the level of law. It should precisely spell out the consequences of a breach of its rules.
- h) Procedural rules for disciplinary proceedings should guarantee a due process. In particular, a member of the Supreme Judicial Council, who calls for disciplinary action against of a magistrate (or the lifting of immunity) should not be entitled to vote on his or her own proposal. Once the disciplinary panel of the Supreme Judicial Council has found in favour of the judge, this decision should be final. The relocation of a magistrate to another district or demotion to a lower court is doubtful as a disciplinary measure.
- i) The procedure for lifting the immunity of magistrates should be improved.
- j) The reasons for the dismissal of a judge (Article 131 of the draft law) cannot go further than the respective constitutional provisions (Article 129).
- k) The appointment of retired judges where there are no other applicants seems to be inconsistent with judicial independence since such persons are not irremovable and may therefore be subjected to improper pressure.
- l) Provisions relating to the training of judges and the establishment of a National Institute of Justice. These provisions should be more detailed and should determine the main action of the Institute. The Institute should be controlled by the Supreme Judicial Council rather than the Ministry of Justice.
- m) The Judiciary should continue to be entitled to an autonomous budget.

6. For a detailed discussion of these and other issues raised by the rapporteurs, the Commission refers to the individual comments by the rapporteurs which are attached to this document.