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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**REPORT OF MOTIVES ON
THE DRAFT LAW AMENDING
THE LAW ON JUDICIAL POWER**

MOTIVES

to the

LAW FOR AMENDEMENT AND SUPPLEMENT OF THE LAW FOR THE JUDICIAL POWER

In 2007 a new Law for the Judicial Power (LJP) was adopted which was promulgated in « State Gazette », issue 64 as of 7 August 2007. The adoption of this law was imposed by a number of circumstances, the more substantial ones were the amendments of the Constitution of the Republic of Bulgaria since 2006 and 2007, the accession of the Republic of Bulgaria to the European Union, as well as the recommendations of the monitoring reports of the European Commission for the Republic of Bulgaria and of the European experts reports of the partnering examinations under Chapter twenty four “Justice and Home Affairs”.

In the process of implementation of the new LJP for a period of a little more than one year (the law entered into force on 11 August 2007), the judicial power bodies identified some of its shortcomings. It imposed the establishment of a working group through an ordinance of the Minister of Justice, which was aimed at initiating monitoring of the results of the implementation of the law. Within the working group, magistrates recommended imposed urgent amendments and supplements of the LJP on the basis of which the proposed draft of a Law for amendment and supplement of the LJP was prepared.

The more substantial guidelines where respective amendments and supplements are recommended are related to the:

- **Status and organization of the work of the Supreme Judicial Council (SJC)** as a permanently functioning body which represents the judicial power and provides its independence;

- **Some problems related to the functioning of the separate judicial power bodies and of the judicial system as a whole;**

- **Status of the Inspectorate to the SJC and of the experts** supporting the Chief Inspector and the inspectors in carrying out their activity;

- disciplinary proceedings;

- **The powers of the Minister of Justice** imposed to him by the Constitution and the present law to carry out the interaction between the judicial and executive powers.

The more substantive amendments in the guidelines outlined above are the following:

1. With the aim of optimizing the status and powers of the SJC and improvement of the organization of its activity as well as the activity of the judicial power bodies, the following amendments and supplements are done:

- A major rule of the LJP related to the **organization of the work of the SJC** is that the Minister of Justice organizes and manages holding of the sessions of the SJC. The draft law envisages that when the **Minister of Justice is absent, the sessions are chaired by the representing the SJC**. In cases when the both Minister of Justice and the representing person are absent in a session, the sessions are chaired subsequently by a member of the SJC by seniority.

An additional legal opportunity is created to **summon sessions of the SJC by the representing person when the chairing one is absent**.

These rules provide an opportunity when the Minister of Justice is prevented from summoning and attending session of the SJC or for a prolonged period of time he is not able to execute his powers to organize and manage them, the latter to be carried out by other persons.

- A gap is filled in in relation to the **status of the members of the SJC** as legal opportunity for their obligatory public and health insurance is created as well as the obligatory insurance against accident on the account of the budget of the judicial power. In the LJP such security and insurance are envisaged for the magistrates, for the judicial officials and the Chief Inspector and the inspectors at the SJC. In relation to the identification of the amount of the additional remuneration for continued work, compensation for dismissal and the size of the annual leave for the members of the SJC, the draft law refers to the respective rules for magistrates.

- It is envisaged that **the SJC adopts Code of Ethics of the judges, procurators and investigators and Code of Ethics of the judicial officials**. The adoption of such a unified Code of Ethics is imposed due to the necessity of standardization of the requirements to all magistrates, stemming from the rules for professional ethics, adopted by separate guilds by now, as well as from the establishment of rules for overcoming conflict of interests. This Code will support in the qualification and individualization of the disciplinary violation «derogation of the reputation of the judicial power», which has not created problems up to now in imposing disciplinary punishments.

- Except for the number of magistrates, the **SJC will henceforth determine also the number of the judicial officials** - by the recommendation of the administrative managers of the judicial power bodies. An argument in this respect represents the fact

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that the SJC controls the execution the budget of the judicial power, including in relation to the labour remunerations of the judicial officials, due to which their number in the whole judicial system should be bound by the provided resources for salaries for each current year.

- An explicit legal opportunity is created, the **SJC to recommend to the Inspectorate within the SJC carrying out of examinations**, which are outside the annual programme for its activity. A regulation of that sense should be legislatively consolidated to the LJP due to the fact that a number of warnings for citizens and public bodies arrive at the SJC, examinations under which, the Inspectorate within the SJC is competent to carry out.

- Aiming at improving reporting and judicial statistics, it is envisaged that **inquiries and statistical data in an electronic format to be produced by the judicial power bodies by sample, approved by the SJC and not by the Minister of Justice, as it was done so far**. With the same end in view, it is envisaged, periodic information for the formation, movement and termination of the cases also to be provided to the SJC and not only to the Inspectorate within the SJC and to the Minister of Justice.

- **The regulations, envisaging opportunity for commissioning of magistrates** are amended as the limitations drop off the commissioning to be carried out in a single way within three years for a period of 6 months. These limitations do not comply with the actual needs of the judicial power bodies, if it is necessary for a magistrate to be replaced, nor with the aims of the commissioning.

- To guarantee maximum **openness and transparency of the court acts**, the draft law envisages instead of on a quarterly basis, these acts to be published immediately after their enacting on the Internet.

- In the envisaged regulation for the attestation, criteria for attestation of magistrates and of administrative managers of the judicial power bodies will be developed in a new way in relation to which some of the regulations of the law are to be revoked.

- **The competition procedure is optimized as problems occurred in the process of law enforcement are eliminated**. In view of the improvement of the personnel policy of the SJC, as well as in view of objectivity, exactness and justice in the attestation of the magistrates in the process of their career development, it is envisaged for the attestation of judges, procurators and investigators, a regulation to be adopted by the SJC at the place of the existing method which did not show the expected results. The regulation is adopted under the implementation of the whole section, regulating the attestation of magistrates for the different cases envisaged by the law. This regulation aims at eliminating the shortcomings existing so far in the process of attestation which has a fundamental role in the evaluation of the magistrates in the process of their career development. It is envisaged that upon the attestation, the time served as a permanent teacher at the National Judicial Institute to be taken into consideration.

- **The assuming office in the cases of appeal of the decisions of the SJC** for the appointment of magistrates at the respective post has not been explicitly arranged so far, a proposal legitimately done by this draft law.

- **There is no requirement for standing included in the existing law upon appointment of an administrative manager of a regional procurator's office**, a requirement introduced now - at least 5 years of standing, analogical to the requirement of an administrative manager of a regional court. **The district level is differentiated of the regional one**, where the requirement is for 10 years of standing. **The requirement for standing is increased in occupying a post of magistrates at the highest level** at the judicial power bodies - where the standing from 12 years becomes 15 years, respectively of the requirements for a high level of professional qualification.

- An opportunity is envisaged as well for the Procurator General, together with the managers of ministries and public institutions to create **specialized interagency investigative units** under the procedural direction of a procurator designated by him as an additional measure for combating corruption and organized crime. Currently, there is no legal opportunity for the establishment of specialized interagency investigative units which include procurators, tax and customs officials, officials of the State Agency for National Security and etc.

In view of the specifics of investigating of a certain category of crimes, the work of the specialized interagency investigative units including investigative bodies, experts of different institutions and specialized services under the management of a supervising procurator would provide a more comprehensive, complete and effective investigation and termination of cases. The personnel will be determined by the administrative manager of the respective procurator's office for each case in view of the specifics of the investigated crime concerted with the managers of institutions whose employees will be included as for the period of investigations they are dismissed of other official duties.

- It is envisaged that there are also judicial assistants at the regional court in view of their large extent of workload. In the expiry of the five-year period of their appointment at the respective judicial power body, the judicial assistant and procurators assistants can be appointed at the post of a judge at regional court, respectively - procurator at country procurator's office without holding competition.

-**The draft law envisages that as of the day of the entry into force of the law, district investigative services are closed down as the post of junior investigator drops off. In this respect, the SJC in a 45-day period of entry into force of the law, reappoints without competition, investigators of the district investigative services who have declared in a 30-day period of the entry into force of the law their written consent** for that.

The reappointment of investigators can be carried out at the post of procurator at district or country procurator's office, judge at regional court or investigator at territorial investigative unit under Art. 149, par. 4, **in preserving the rank which they had.**

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This change in the system of the judicial power is based in the common position of the European Union for the role, place and functions of the investigative bodies in the Republic of Bulgaria, declared yet in the month of October 2003 in closure of Chapter twenty-four "Cooperation in the area of justice and home affairs". Then our country intended to review the issue with the functioning of the investigative phase which to be implemented in the respective legal changes. This change together with the respective change in the Penal - Procedural Code is undertaken with the aim of effective and transparent functioning of the investigative proceedings as well as in the direction of continuation of the development of the investigative phase in compliance with the best practices of the member-states of the European Union, incl. with art.5 and 6 of the European Convention for the human rights and major freedoms. **The National Investigative Service** is preserved as a body which carries out investigation of international cases within the international legal cooperation. The capacity of the investigators will be fully used under these changes.

- In the Chapter regulating the judicial holiday and leave (Chapter eighteen) a **clarification** of the types of cases which are reviewed during the judicial holiday is done - **cases upon requests for child adoption.**

2. The draft law recommend some amendments in Chapter three «Inspectorate within the SJC», which are the following:

- The Chief Inspector and the inspectors should be dismissed prior to the expiry of their mandate **in permanent actual impossibility to perform their duties for more than a year and as so far - 6 months.** The proposed amendment equals and brings into line the status of the Chief Inspector and the inspectors with the respective rules in the Constitution and in the LGP concerning the members of the SJC and the magistrates.

- A proposal is done in accordance to which the **remuneration of the experts at the Inspectorate within the SJC to be equal to the remuneration of a judge at a regional court.** The reasons for that are the following: Requirements envisaged for holding the post of "an expert" are higher and are in accordance with a certain level of professional qualification required, necessary minimal legal standing of 5 years related to the actual exercising of the judicial profession, necessary judicial literacy, knowledge and knowledge of foreign languages, additional qualification in the work with information systems and other requirements. The volume of the specialized preparation and the level of practical knowledge of the experts can not be and should not be made equal to the requirements for levels of preparation and standing of the general administration. Therefore, they should be made equal to the status and requirements to a level of regional judge.

3. Changes in the disciplinary proceedings are envisaged as well resolving to the following:

- Firstly, amendments are introduced in relation to the **types of disciplinary**

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violences which can be present also in the cases of acts of omissions. They can be **omissions** which unreasonably delay the proceeding as well as such which could lead to impairing of the reputation of the judicial power.

- **Terms are prolonged for the initiation of disciplinary proceeding** as it is ascertained in practice that in a number of cases for severe violences, the disciplinary proceeding are terminated due to running of the statute of limitations.

- Due to frequent cases of termination of penal proceeding after reaching agreement in the order under Art. 381 and case of the Penal - Procedural Code in the cases of which the defendant pleaded guilty under the existing wording of the text, a disciplinary liability can not be borne, as the case is terminated. This imposes the clarification, according to which upon **determination entered into force for the termination of the criminal proceedings, the terms start running from the entry into force of the determination**. The same is valid for the termination of the case due to running of the statute of limitations, which is not rare in practice.

- The administrative punishing body, can be except one also collective in the different hypothesis. This provides grounds for inconsistent interpretation in practice who should hear person brought to disciplinary punishment - the disciplinary personnel within the SJC or the SJC itself. The hearing of the person brought to disciplinary liability as a method for collecting evidence and exercising the right for defense due to which the **hearing should be carried out to the disciplinary personnel of the SJC undertaking the disciplinary proceeding**, independently of the SJC being the administratively punishing body.

- The disciplinary proceedings under the LJP are administrative due to which the **references to some regulations should be to the Administrative - Procedural Code**, which provides the general rules of proceedings to the administrative bodies and not to the Civil - Procedural Code which provides the legal proceedings between equal subjects on the occasion of civil disputes.

Undertaking actions which impair the reputation of the judicial power is the most severe disciplinary violation due to which the terms related to it start to run as of the public announcement of the actions derogating the reputation of the judicial power.

- **The term is prolonged (from 7 - day to a month as of the last session of the disciplinary personnel), in the framework of which the disciplinary personnel adopts decision** with the help of which it ascertains the facts subject to proof, makes its attitude known concerning the circumstances and the legal grounds for imposing of disciplinary punishment and proposes the type and size of the punishment. This term is considered adequate in view of the importance of the decision for the professional career of the magistrates whose disciplinary liability is sought.

- **Prolonged is also the term in which the SJC reviews the proposal of the disciplinary personnel for imposing of disciplinary punishment - from a 7-day to a 14-day period of its submission**. The amendment is necessary for provision of an adequate term for the members of the SJC for a more in-depth familiarization with the proposal of the disciplinary personnel.



- Prolonged is also the term for appeal of the decision if the SJC or the ordinance of the Minister of Justice which the disciplinary punishment is imposed with to the Supreme Administrative Court from a 7-day to a 14-day period of its announcement. In these cases, the 14-day term for appeal under the APC common for all of the administrative acts should be applied.

- The organization of the legal proceeding for the appeal of the decisions of the SJC for imposing disciplinary punishments is changed as well as it is envisaged that a right for appeal of the decision of the three-member composition of the Supreme Administrative Court, independent of the result. The principle of two-instance of the administrative legal proceedings should be subsequently carried out. In this case, the common 14-day period of appeal of the decision of the first legal instance is introduced.

4. Some amendments are also proposed in Chapter twenty «Interaction between the judicial and executive powers»:

- The arguments for the proposed amendments in relation to the information systems in Section III of Chapter twenty of the LJP, in general lead to the following:

There is a serious imbalance among the existing texts of the section. 8 out of 10 articles of the section are devoted to the Unified System for Counteracting Crime (USCC) and only two regulated the rest of the issues of the information servicing of the activities of the judicial system.

In the LJP, there is a description of the concrete technical resolution of the USCC (the concept is 12 years old), terminology is used having sense in a specific technical application of the USCC and no definition is given to these terms (nucleus, communication component and etc.). In the fast technological development information technologies this concreteness will lead to (and is already leading to) serious discrepancies.

The described specific technical resolution of the USCC has not been synchronized with the Law for the electronic management and with other laws creating danger for the information systems at the judicial power to be isolated of the general development of the information technologies in the state.

Even in the concrete description of the USCC there are a number of gaps, for example -it is assigned to the Ministry of Justice to disseminate standards but it is not indicated who creates these standards.

The USCC in its nature is an interagency system which comprises of activities carried out at the Ministry of Interior, Ministry of Defense and the National Statistics Institute which rises the question whether the organization of the system should be in the LJP.

In view of the considerations pointed out in the draft law a more different conceptual approach is proposed in relation to the establishment, maintenance, use and development of the USCC, activities which are provided to the SJC.

-On the basis of the changes in the Constitution and the practice of the Constitutional Court (Decreee № 8 as of 2007 under file № 5 as of 2007) in the draft



law a **clear differentiation between executive and judicial powers is done in the area of financing and property issues** and a balance is achieved between the judicial power bodies and the Minister of Justice. The powers of the Minister of Justice are aimed at establishing effective interaction with the judicial power bodies without impairing their independence in reviewing and resolving of the cases.

A **clarification of the regulation concerning the budget of the judicial power** is envisaged, enforced by wording in compliance with the constitutionally established power of the Minister of Justice to propose a draft of a budget of the judicial power and to submit it for discussion at the SJC.

It is clearly regulated in the draft law, that the **Minister of Justice** organizes the management of the property of the judicial power distributing the use of the **immovable property** provided to the judicial power among its separate bodies and can assign their maintenance to the administrative managers. For this purpose the resources for construction and repair of the immovable property as well the resources for liabilities stemming from the ownership on the property - taxes, fees, rents, insurances and reevaluations are provided by the budget of the Ministry of Justice.

At the same time, with the consent of the administrative managers of the judicial power bodies, the **SJC** can provide the management of the **movable things** from one body of the judicial power to another. The means for acquisition, maintenance and management of movable things are provided by the budget of the judicial power.

- In accordance with the LJP, the Minister of Justice carries out the general direction of the activity in safeguarding the judicial power, which is carried out by the General "Security" Directorate". On the basis of the draft law, it is envisaged that the **General "Security" Directorate", which is currently an administrative structure of the Ministry of Justice becomes a judicial entity - secondary administrator of budget credits to the Minister of Justice.**

The reasons for this proposal are as follows:

On the basis of the General "Security" Directorate" as a judicial entity- secondary administrator of budget credits to the Minister of Justice, finance and accounting activity of the Ministry of Justice will be optimized. At the same time, there will be an opportunity for improvement of the financial management and control over budget expenditures for activities of safeguarding of the judicial power bodies.

The proposed draft law represents further development of the priorities of the judicial reform, part of the Updated Strategy for Reform of the Bulgarian Judicial System. The changes in it are aimed at consolidating the independence and effectiveness of the judicial power whose reforming will provide entire protection of the principles of the legal state and effective implementation of the European standards in the jurisdiction. These changes are also in compliance with the main guidelines of the judicial reform in progress.