



Strasbourg, 2 March 2009

CDL(2009)038*

Opinion No. 515/2009

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

**ON THE DRAFT LAW
ON AMENDMENTS TO THE LAW ON JUDICIAL POWER
OF BULGARIA**

by

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The request to comment the draft amendments and supplements to the LAW FOR JUDICIAL POWER, enacted in 2007 is accompanied by the report of motives which lead to the proposed draft of law. The proposed amendments and supplements are not self-understanding and need to be read in the context of the existing law but the report of motives is very helpful.

A

The existing law regulates the conduct, the organisation, interaction, the duties etc. of the Judicial bodies which include:

- (a) Judges
- (b) Prosecutors
- (c) Investigating Magistrates.

One main topic of the law is the institution of the **Supreme Judicial Council**, defined as a moral person, instored as a permanent body representing the Judiciary and securing its independence. [S. Art 16 of the law.] The Supreme Judicial Council is of crucial importance within the Bulgarian Judicial System. Therefore, and although the request to the Venice Commission is strictly **limited to the comment of the amendments** [and not to the law itself or to the constitution], it should be recalled that - as far as the Constitution is concerned - the Venice Commission did make a critical comment in its opinion no. 444/2007 (OPINION ON THE CONSTITUTION OF BULGARIA) CDL-AD(2008)009, adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008).

In this opinion the Venice Commission especially pointed out the following matters, well stating that these **critics were of abstract nature and did in nothing concern the persons in charge**:

- (a) The election of the parliamentary component by simple majority:
Eleven members of the SJC are still elected by the Parliament by **simple** majority [Points 24 to 26 of CDL-AD(2008)009] which - in the eyes of the Venice Commission - puts at risk of politicisation (and thus at risk the independence) the Supreme Judicial Council. The arguments of the Bulgarian authorities were taken into consideration but at the end the commission stated that it did not orient its non-binding recommendations at the lowest common denominator of existing systems but will focus on what in its opinion is needed to fully comply with European standards.
- (b) The Role of the Minister of Justice as chair of the Supreme Judicial Council:
The Commission [points 29 to 32 of the opinion] did also criticize the function of the Minister of Justice within the Supreme Judicial Council; mainly the fact that the Minister of Justice chairs (without voting right) the SJC and has also the right constitutionally given to him to submit to the SJC proposals and specially in relation with suggestions of appointing and dismissing judges; proposals for draft budgets for the judiciary, make proposals for appointment, promotion, demotion, transfer and removal from office, to manage the property of the judiciary, and to participate in the organization of the training of judges, prosecutors and investigators underlines the fact that the Minister will be the driver of the Council's activities; this did seem to the Venice Commission not to be in accordance with the principle of judicial independence.

(c) Representation of judges, prosecutors and investigators in the Supreme Judicial Council;

The Venice Commission saw a risk of compromising the independence of the judicial branch by the various bodies of the Judicial power (judges, prosecutors and investigating magistrates) not so much because of being organised together in the SJC but because of the fact that due to this common organisation the distinction between these three bodies could be fading away so that one branch might be too much involved in the administration of the other groups [see points 34 to 40 of the opinion]. This is the case e.g. when the representatives of the procurators have to vote on nominations and revocations of judges or are implicated in disciplinary measures against judges this could be seen as critical and the fact that the procurators are in minority is not seen by the commission to give sufficient guarantee that the Parliament – in another composition – could change its opinion that the proportion is to be safeguarded. [point 36 of the opinion.]

B

Having recalled these basic remarks the following **comments** are given:

The Motives for the changes of the law for the judicial power is explained [see Motives to the Law for Amendment and Supplement of the Law For the Judicial Power] by the facts of (a) amendments of the Constitution of the Republic of Bulgaria since 2006 and 2007, (b) the accession of the Republic of Bulgaria to the European Union, as well as (c) the recommendations of European Bodies (monitoring reports of the European Commission and European expert reports) and (d) recommendation of magistrates.

Many changes are therefor of purely **technical** nature.

The other changes may be highlighted as follows:

1. Power and competences of the **Minister of Justice** within the Supreme Judicial Council.
Here the competences of the Minister are slightly adapted to the needs of the day to day administration and the possibility to act in cases of absence of the Minister of Justice is now introduced; but he continues to be the drive of the Supreme Judicial Council and so far these changes do not significantly modify his important position. However – bearing in mind what has been said – the amendments do not attract further remarks and may be qualified as useful.
2. An obligatory **insurance system** is created for the members of the Supreme Judicial Council at charge of the budget of the judicial power and other rules with reference to the status of the persons belonging to the Judicial power are introduced. This type of amendment or completion is welcomed as it underlines the independence of the Judicial power itself.
3. The draft amendments foresee the adoption (by the Supreme Judiciary Council) of a **Code of Ethics** common to judges, prosecutors and investigators and the judicial officials as a unified Code of Ethics for the Judicial Power. This unified Code of Ethics for the Judicial Power is a welcome initiative.
4. The **number of judicial officials** shall now be determined by the Supreme Judiciary Council instead of the managers of the different Judicial Bodies. The demand thereto comes from the managers of the different bodies who argue that the budget is attached to the Supreme Judicial Council and therefor the number of officials who burden the budget shall better be determined by that Supreme Judiciary Council

itself. Although the argumentation about the budget is intelligible, the question remains to know if a sufficient number of officials (within the possibilities of the budget) will be allocated to the different bodies not equally represented in the Supreme Judicial Council. However, this might well be determined by the day to day experience rather than by theoretical discussion.

5. The inspectorate at the Supreme Judicial Council is a moral person with its seat in Sofia; the nomination of its members [the Inspector General and the inspectors] is submitted to the National Assembly (Art. 49 of the Law) for election. The inspectorate is basically in charge of the control of the organisation and functioning of the courts, prosecution offices and investigation bodies. It has to submit to the Supreme Judicial Council an annual programme and a report on its business (Art. 55, par. 1, no. 8 of the law). The proposed change concerns the faculty given to the Supreme Judiciary Council to recommend to the Inspectorate within the SJC to carry out inspections which are outside of the annual programme of its activities. This in order to follow up with frequent signalisations of citizens and public bodies. The amendment of the law in this regard is very welcome and surely is a good instrument of resolving problems and therefor very welcome.
6. Further improvements of the law are proposed in matter of investigative services, inspectorate, disciplinary procedure and interaction between the judicial and executive powers. In this context the differentiation between executive and judicial powers is accentuated [§ 99 of the draft].
7. In Art 387 to 390 the management of the property (real estate and movables) by the Minister of Justice is ruled. In a proposed amendment the power of the Minister of Justice he has under the present law to shift assets from one body to another (with the consent of the administrative managers of the judicial bodies) is now proposed to be given to the Supreme Judicial Council and not any more be left with the Minister of Justice. This proposal clearly underlines the independence of the Judicial power and is seen to be a real improvement.
8. And finally the Security Service for the safeguard of the Judicial power is proposed [§ 107 of the draft] to be become a judicial entity although left with the secondary budget of the Ministry of Justice and being "at the Ministry of Justice". The main purpose of this amendment is said to be of budgetary clearness, although the bulgarian authorities see it also as a further underlinement of the independence of the Judiciary power. The question may remain open.

As a general conclusion (embedded in what has been set out in relation to the opinion CDL-AD (2008)009 of the Venice Commission) the proposed amendments, are mostly welcome changes and deserve support.