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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT LAW

AMENDING THE LAW ON JUDICIAL POWER

OF BULGARIA

**DRAFT LAW
AMENDING THE LAW ON JUDICIAL POWER**

(Promulgated, SG, No 64/7 Aug 2007, amended SG, No 103/29 Dec 2009, amended SG, No 69/5 Aug 2008, amended SG, No 109/23 Dec 2008, amended SG, No 25/3 Apr 2009, amended SG, No 33/30 Apr. 2009, amended SG, No 42/5 Jun 2009, amended SG, No 102.22 Dec 2009, amended SG, No 103/29 Dec 2009)

§ 1. Art. 38 is amended as follows:

1. New par. 3 is created:

“(3) Proposals to the Commission on proposals and attestation of judges, prosecutors and investigators in relation to its powers under par. 1 concerning the specialized courts and the specialized prosecutor’s offices shall be made by no less than one-fifth of the members of the Supreme Judicial Council”.

2. Par. 3 becomes par. 4 and in it:

a) in point 1, (b) after “the appellate courts”, a comma is put and the words “of the appellate specialized criminal court” are added”.

b) in point 3, (c) the words “as well as for the chairpersons of the specialized prosecutor’s offices” are added at the end.

c) in point 4 after the words “the appellate military prosecutor” the words “and the chairperson of the specialized prosecutor’s office” are added and after the words “the appellate military prosecutor’s office” the words “and the appellate specialized prosecutor’s office” are added.

d) point 5 is amended as follows:

“5. by the district military prosecutors and the chairperson of the specialized prosecutor’s office - for their deputies, for the prosecutors at the district military prosecutor’s offices and at the specialized prosecutor’s office, for the military investigators and for the investigators at the investigative departments of the specialized prosecutor’s office”.

e) point 8 is amended as follows:

“8. By the chairpersons of the appellate courts, of the appellate military court and of the appellate specialized criminal court for:

a) their deputies and for judges at these courts,

b) the chairpersons of the respective district and military courts as well as the chairperson of the specialized criminal court”.

e) Point 12 becomes point 13.

f) Points 13 and 14 becomes points 14 and 15 accordingly.

3. Present par. 4 becomes par. 5.

4. Present par 5 becomes par. 6 and is amended as follows:

“(6) The heads of the district investigative departments and the head of the investigative department at the specialized prosecutor’s office may submit proposals before the heads of the district prosecutor’s offices and the head of the specialized prosecutor’s office regarding the investigators from the respective departments”.

5. Present par. 6 becomes par. 7.

6. Present par. 7 and 8 become par. 8 and 9 accordingly.

§ 2. In art. 61 par. 1 is amended as follows:

“(1) The courts in the Republic of Bulgaria shall be regional, district, administrative, military, appellate courts, a specialized criminal court, an appellate specialized criminal court, a Supreme Court of Cassation and a Supreme Administrative Court”.

§ 3. In art. 63 the following amendments are made:

1. Par. 1 is amended as follows:

“(1) The regional, district, administrative, military courts and the specialized criminal court shall hear cases specified by law as first instance courts”.

2. New par. 5 is created:

“(5) The appellate specialized criminal court shall hear as a second instance court appeals against decisions of the specialized criminal court”.

3. Present par. 5, 6,7 and 8 become par. 6,7,8 and 9 accordingly.

§ 4. In art. 68 the following amendments are made:

1. New par. 2 is created:

“(2) The municipal council of Sofia shall nominate the lay assessors at the specialized criminal court”.

2. Present par. 2 becomes par 3 and a new point 3 is inserted into it:

“3. specialized criminal court – by the general assembly of the judges of the appellate specialized criminal court”.

3. Present par. 3 becomes par. 4.

§ 5. In chapter four section VIa “Specialized criminal court” including art. 100a – 100f is created:

“Section VIa Specialized criminal court

Art. 100a (1) The jurisdiction of the specialized criminal court shall be established by law.

(2) The specialized criminal court shall have the rank of a district court and its seat shall be in Sofia.

Art. 100b The specialized criminal court shall consists of judges and shall be headed by a chairperson.

Art. 100c (1) The specialized criminal court shall hear cases in panels composed of one judge and two lay assessors unless otherwise provided for by law.

(2) The panel shall be presided over by the most senior judge.

Art. 100d The specialized criminal court shall have a general assembly that shall consist of all judges. Art. 98, par. 2-4 shall apply for the general assembly.

Art. 100e The chairperson of the specialized criminal court shall have accordingly the powers of the chairperson of the district court.

Art. 100f (1) Where the position of a judge at the specialized criminal court is not taken or a judge is prevented from performing his office and may not be replaced by another judge of the same court, the chairperson of the appellate specialized criminal court may second in his stead a judge from the appellate specialized criminal court if the requirement of art. 227 are observed.

(2) When the secondment under par. 1 shall not be possible the chairperson of the Supreme Court of Cassation may second a judge from a district or an appellate court having the necessary rank if the requirements of art. 227 are observed.

(3) The secondment of the judge shall be coordinated with his administrative head and the order for the secondment shall contain reasons”.

§ 6. In chapter four section VII a “Appellate specialized criminal court” including art. 107a – 107c is created:

“Section VII a Appellate specialized criminal court

Art. 107a (1) The appellate specialized criminal court shall hear cases for appeals against decisions of the specialized criminal court. Its seat shall be in Sofia.

(2) The appellate specialized criminal court shall consist of judges and shall be headed by a chairperson.

Art. 107b. (1) Where the position of a judge at the appellate specialized criminal court is not taken or a judge is prevented from performing his office and may not be replaced by another judge of the same court, the chairperson of the appellate specialized court may second in his stead a judge from the specialized criminal court if the requirements of art. 227 are observed.

(2) When the secondment under par. 1 shall not be possible the chairperson of the Supreme Court of Cassation may second a judge from a district or appellate court having the necessary rank if the requirements of art. 227 are observed.

(3) The secondment of the judge shall be coordinated with his administrative head and the order for the secondment shall contain reasons.

Art. 107c. Articles 104 – 106 shall apply in respect of the appellate specialized criminal court as well”.

§ 7. Par. 1 in art. 136 is amended as follows:

“(1) The Prosecutor’s Office of the Republic of Bulgaria shall consist of a Prosecutor General, a Supreme Prosecutor’s Office of Cassation, a Supreme Administrative Prosecutor’s Office, National Investigative Service, appellate prosecutor’s offices, appellate specialized prosecutor’s office, appellate military prosecutor’s offices, district prosecutor’s offices, specialized prosecutor’s office, district military prosecutor’s offices and regional prosecutor’s offices. At the district prosecutor’s offices and at the specialized prosecutor’s office there shall be district investigative departments”.

§ 8. Art. 140 is amended as follows:

“Art. 140. The administrative heads of the regional, district, specialized, district military, appellate, appellate specialized and appellate military prosecutor’s offices shall organise and direct the work thereof and shall appoint and relieve from office the clerks thereat”.

§ 9. In par. 1 of art. 141 after the words “appellate prosecutor’s offices” the words “and the head of the appellate specialized prosecutor’s office” are added and after “district military prosecutor’s offices” a comma is put and the words “as well as of the appellate specialized prosecutor’s office” are added.

§ 10. Par. 1 of art. 148 is amended as follows:

“(1) Investigative bodies are the National Investigative Service, the district investigative departments of the district prosecutor’s offices and the investigative department of the specialized prosecutor’s office”.

§ 11. Art. 151 is amended as follows:

“Art. 151 (1) The district investigative departments at the district prosecutor’s offices and the investigative department at the specialized prosecutor’s office shall consist of investigators.

(2) The place of work of each investigator and clerk from the district investigative departments and the investigative department at the specialized prosecutor’s office shall be set by the administrative heads of the respective prosecutor’s offices”.

§ 12. Art. 152 is amended as follows:

“Art. 152. The investigators from the district investigative departments and the investigative department at the specialized prosecutor’s office shall work on cases assigned to them by the administrative head of the respective prosecutor’s office”.

§ 13. In art. 153 the following amendments are made:

1. New par. 3 is created:

“(3) The investigative department at the specialized prosecutor’s office shall be directed by a head of department, appointed by the head of the specialized prosecutor’s office; he shall have the rank of a prosecutor heading a department at the appellate prosecutor’s office and shall get remuneration equal to the remuneration of the deputy head of the specialized prosecutor’s office”.

2. Present par. 3 becomes par. 4 and is amended as follows:

“(4) The heads of the specialized departments at the National Investigative Service, the heads of the district investigative departments at the district prosecutor’s offices and the head of the investigative department at the specialized prosecutor’s office shall:

1. provide administrative and organisational direction of the investigators from the respective department;
2. at the end of each month prepare and present to the head of the respective prosecutor’s office information about the opening, progress and termination of the cases;
3. prepare 6-month and annual reports on the department’s activity and present them to the head of the respective prosecutor’s office”.

§14. Points 2 and 3 in art. 163 are amended as follows:

“2. a judge at the appellate court, a judge at the appellate military court, a judge at the appellate specialized criminal court, a prosecutor at the appellate prosecutor’s office, a prosecutor at the appellate military prosecutor’s office and a prosecutor at the appellate specialized prosecutor’s office

3. a judge at the district court, a judge at the administrative court, a judge at a district military court, a judge at the specialized criminal court, a prosecutor at the district prosecutor’s office, a prosecutor at a district military prosecutor’s office, a prosecutor at the specialized prosecutor’s office, an investigator at a district investigative department and an investigator at the investigative department at the specialized prosecutor’s office”.

§ 15. Art. 164 is amended as follows:

1. New par. 3 is created:

“(3) As a judge at the specialized criminal court and as a prosecutor at the specialized prosecutor’s office shall be appointed a judge or a prosecutor who shall have at least 10 years professional experience and has served at least 5 of them as criminal judge, prosecutor or investigator.

2. Present par. 3 and 4 become par. 4 and 5 accordingly.

3. New par. 6 is created:

“(6) As a judge at the appellate specialized criminal court and as a prosecutor at the appellate specialized prosecutor’s office shall be appointed a judge or a prosecutor who shall have at least 12 years professional experience and has served at least 8 of them as a criminal judge, prosecutor or investigator”.

4. Present par. 5 becomes par. 7.

5. Present par. 6 and 7 become par. 8 and 9 accordingly and the words ”par. 1-5” in their texts are replaced by the words “par. 1-7”.

§ 16. Points 2 and 3 in art. 167, par. 1 are amended as follows:

“2. chairperson of an appellate court, of the specialized appellate court and of the appellate military court, appellate prosecutor, appellate military prosecutor and head of the appellate specialized prosecutor’s office;

3. chairperson of district, administrative, specialized criminal and military court, district prosecutor, district military prosecutor and head of the specialized prosecutor's office".

§ 17. Art. 170 is amended as follows:

1. New par. 3 is created:

"(3) As chairperson of the specialized criminal court, the appellate specialized criminal court and as head of the specialized prosecutor's office and the appellate specialized prosecutor's office shall be appointed a judge or a prosecutor with at least 12 years professional experience of which at least 8 years as a criminal judge or prosecutor.

2. Present par. 3 becomes par. 4 and the words "art. 164, par. 5" in its text are replaced by the words "art. 167, par. 7".

§ 18. In art. 171, par. 1 after the words "deputy thereof" the words "open vote ballot and" are added.

§ 19. Art. 172 is amended as follows:

1. In par. 1 the word "and" after the words "national investigative service" is replaced by a comma and the words "the head of the investigative department at the specialized prosecutor's office" are added at the end.

2. In par. 3 the word "and" after the words "national investigative service" is replaced by a comma and after the words "prosecutor's office" the words "the head of the investigative department of the specialized prosecutor's office" are added.

§ 20. In art. 178 par. 3 is created:

"(3) Par. 1 shall not apply in respect of the vacant positions at the specialized courts and specialized prosecutor's offices".

§ 21. In art. 203 par. 4 is created:

"(4) The attestation of judges, prosecutors and investigators from the specialized courts and the specialized prosecutor's offices shall be performed by the Commission on proposals and attestation of judges, prosecutors and investigators".

§ 22. Art. 218 is amended as follows:

1. New par. 3 and 4 are created:

"(3) Judge from the specialized criminal court shall get the same remuneration as a judge from an appellate court and judge from the appellate specialized criminal court shall get the same remuneration as a judge from the Supreme Court. Prosecutor from the specialized prosecutor's office shall get the same remuneration as a prosecutor from an appellate prosecutor's office and prosecutor from the appellate prosecutor's office shall get the same remuneration as a prosecutor from the supreme prosecutor's office.

(4) The chairperson of the specialized criminal court and the head of the specialized prosecutor's office shall get the same remuneration as the chairperson of an appellate court and the head of an appellate prosecutor's office. The chairperson of the appellate specialized criminal court and the head of the appellate specialized prosecutor's office shall get the same remuneration as a chairperson of a section at the Supreme Court and the head of department at the Supreme Prosecutor's Office of Cassation".

2. Present par. 3 and 4 becomes par 5 and 6 accordingly.

§ 23. Art 233 is amended as follows:

1. In par. 2 after the words “city court in Sofia” a comma is put and the words “at the specialized criminal court” are added.

2. In par. 3 after the words “city prosecutor’s office in Sofia” the words “and the prosecutors from the specialized prosecutor’s office” are added.

3. Par. 4 and 5 are created:

“(4) The judges at the appellate specialized criminal court shall have the rank of judges at the Supreme Court of Cassation.

(5) The prosecutors from the appellate specialized prosecutor’s office shall have the rank of prosecutors from the Supreme Prosecutor’s Office of Cassation”.

§ 24. Art. 244 is amended as follows:

“Art. 244 (1) There shall be judicial assistants at the district, administrative and appellate courts, at the Supreme Court of Cassation and at the Supreme Administrative Court as well as at the specialized criminal court and the appellate specialized criminal court.

(2) There shall be prosecutorial assistants at the district and appellate prosecutor’s offices, at the Supreme Prosecutor’s Office of Cassation and the Supreme Administrative Prosecutor’s Office as well as at the specialized prosecutor’s office and the appellate specialized prosecutor office”.

§ 25. Art. 245 is amended as follows:

1. New par. 2 is created:

“(2) As judicial and prosecutorial assistant at the specialized courts and at the specialized prosecutor’s offices shall be appointed an individual who fulfills the requirements provided for in par. 1 and has professional experience of at least 3 years.”

2. Present par. 2 becomes par. 3.

§ 26. In art. 304, par. 1 after the words “of an appellate” the words “of the appellate specialized criminal” are added, after the word “district” the words “of the specialized criminal” are added and after the words “district military prosecutor” the words “the heads of the specialized and the appellate specialized prosecutor’s offices as well as” are added.

§ 27. Art. 338 is amended as follows:

1. New point 4 is created:

“4. the chairperson of the specialized criminal court – for the judges from this court”.

2. Present points 4, 5 and 6 become points 5, 6 and 7 accordingly.

3. New point 8 is created:

“8. the chairperson of the appellate specialized criminal court – for the judges from the appellate specialized criminal court and the chairperson of the specialized criminal court”.

4. Present point 7 becomes point 9 and the words “and the appellate specialized criminal court” are added at the end.

5. Present point 8 becomes point 10.

6. Present points 9, 10, 11 and 12 become points 11, 12, 13 and 14 accordingly.

7. New point 15 is created:

“15. the head of the specialized prosecutor’s office – for the prosecutors and investigators at the specialized prosecutor’s office; the head of the appellate specialized prosecutor’s office – for the prosecutors at the appellate specialized prosecutor’s office and the head of the specialized prosecutor’s office”.

8. Present point 13 becomes point 16 and after the words “appellate military prosecutor” in its text the words “the head of the appellate specialized prosecutor’s office and” are added.

9. Present point 14 becomes point 17.

§ 28. In art. 340, par. 2 the word “and” after the words “prosecutor’s offices” is replaced by a comma and the words “and of the investigative department of the specialized prosecutor’s office” are added.

§ 29. In art. 396, par. 1 the words “based on the principle of random selection” are deleted.

§ 30. Art. 398, par. 1 is amended as follows:

“(1) Lists of specialists approved to become expert witnesses shall be drawn up for the judicial area of each district, administrative and specialized criminal court”.

§ 31. Art. 399, par. 3 is amended as follows:

“Proposals for including specialists in the lists under art. 398, par. 1 shall be made to the chairperson of the respective court.”

§ 32. Art. 401, par. 1 is amended as follows:

“(1) Lists under art. 398, par. 1 shall be approved by a commission composed of the chairperson of the appellate court or a judge thereby designated, the chairperson of the appellate specialized court or a judge thereby designated, the appellate prosecutor or a prosecutor thereby designated, the head of the appellate specialized prosecutor’s office or a prosecutor thereby designated, the chairperson of the district court, the chairperson of the specialized criminal court, the district prosecutor, the head of the specialized prosecutor’s office and the chairperson of the administrative court”.

Transitional provisions

§ 33 (1) Within 15 days of the entrance into force of this law the Supreme Judicial Council shall approve the number of the judges, prosecutors and investigators who shall work at the specialized courts and at specialized prosecutor’s offices as well as the number of the deputy chairpersons of the specialized courts and of the deputy heads of the specialized prosecutor’s offices.

(2) The positions for judges, prosecutors and investigators at the specialized courts and prosecutor’s offices shall be ensured also by transferring positions which remain unoccupied at the moment of entering into force of the law.

§ 34 (1) Within 45 days of the entrance into force of this law the Supreme Judicial Council shall appoint the chairpersons of the specialized criminal courts and the heads of the specialized prosecutor’s offices.

(2) Within 4 months of the entrance into force of this law the Supreme Judicial Council shall appoint the judges, prosecutors and investigators at the specialized criminal courts and the specialized prosecutor’s offices.

§ 35 (1) Within 6 months of the entrance into force of this law the general assembly of the judges at the appellate specialized criminal court shall approve the lay assessors who shall participate in the work of the specialized criminal court.

(2) Up to the approval of the lay assessors under par. 1 in the court hearings of the specialized criminal court shall participate lay assessors from the city court in Sofia.

§ 36. Within 3 months of the entrance into force of this law the chairpersons of the specialized criminal courts and the heads of the specialized prosecutor's offices shall appoint the judicial and prosecutorial assistants and the administrative staff members at the respective courts and prosecutor's offices.

§ 37. Within 1 month of the entrance into force of this law the Council of Ministers shall provide buildings for the specialized criminal courts and for the specialized prosecutor's offices.

Reasons for proposing the draft law amending the Law on Judicial Power

The accession of Bulgaria to the European Union on 1 January 2007 was accompanied by establishment of Cooperation and Verification Mechanism. In its Reports under this Mechanism the European Commission has made a number of recommendations for adopting more effective measures for fighting organized crime and corruption at the highest level of government.

A successful step in this respect was the establishment of joint specialized investigative teams in September 2009 including prosecutors, police officers and agents from the State Agency for National Security. The success of these teams has proved the need of specialization of the law enforcement and judicial bodies for effective fight against more serious types of crime. Currently Strategy for reform of the judicial system of Bulgaria as a full member of the EU is discussed; it provides for the establishment of specialized judicial bodies. The first step in this respect is the establishment of such bodies dealing with organized crime and corruption and providing justice of high quality due to their specialization.

The main objective of the draft law is the establishment of specialized courts and prosecutor's offices capable of delivering justice of high quality (rendering correct and lawful judgments) and in reasonable time. Specialization is expected to lead to the following results: enhancing the capacity of the investigative bodies, prosecutor's offices and the courts; appointment of magistrates with higher professional qualifications; special care by the state through material and technical support.

The establishment of specialized courts and prosecutor's offices requires amendments to the Law on Judicial Power and Criminal Procedure Code. The constitutional basis for these amendments is art. 119. par. 3 of the Constitution which provides for the establishment of specialized courts by law and art. 126, par. 1 of the Constitution which reads that the structure of the prosecutor's office corresponds to that of the courts.

The proposed amendments to the Law on Judicial Power govern the structure of the specialized courts and prosecutor's offices, the appointment of the magistrates thereat, the powers of the administrative heads of these bodies.

The model consists of one specialized criminal court with the rank of a district court and a seat in Sofia, one appellate specialized criminal court located in Sofia as well and the Supreme Court of Cassation acting as a third instance court. Specialized prosecutor's office and appellate specialized prosecutor's office will be established at the respective specialized courts. The specialized prosecutor's office will have an investigative department which consists of investigators.

It is proposed in the draft law that the magistrates in these specialized bodies will be appointed by the Supreme Judicial Council according to the general rules under the Law on Judicial Power with some specifics corresponding to the specifics of these new bodies. The draft law sets higher requirements as to the professional qualification of the magistrates and excludes the possibility persons outside the judiciary to be appointed at the specialized bodies. The proposals to the Supreme Judicial Council concerning appointments may be made by 1/5 of its members or by the administrative head of the respective specialized body. The higher requirements regarding the professional qualification and experience of the magistrates call for providing them with adequate judicial rank and remuneration. For these reasons the draft law contains provisions under which the judges and prosecutors from the specialized criminal court and specialized prosecutor's office have the rank and remuneration of judges and prosecutors at the appellate court/prosecutor's office and the judges and prosecutors from the appellate specialized court and appellate specialized prosecutor's office have the rank and

remuneration of judges and prosecutor at the Supreme Court of Cassation and the Supreme Prosecutor's Office.

These specifics do not change the nature of the decision-making and the appointment procedure followed by the Supreme Judicial Council, the independence of the magistrates working at the specialized bodies and the independence of these bodies.

Another specific provision stipulates that the attestation of the magistrates will be carried out only by the Commission on proposals and attestation of judges, prosecutors and investigators of the Supreme Judicial Council. There are amendments governing the status of the magistrates (secondment, leaves, etc.). Other provisions of the draft law concern the election of lay assessors, the requirements for the administrative staff.

The transitional provisions set the time limits for the establishment of these specialized judicial bodies.