To

Supreme Judicial Council

President of the Republic of Bulgaria

Minister of Justice

European Commission

Dear Ladies and Gentlemen,

We are addressing you on the issue of the upcoming **election of a new President of the Supreme Court of Cassation (SCC)** and the necessity to revise the "*Procedural rules for the election of candidates for President of the Supreme Court of Cassation, Supreme Administrative Court and a Prosecutor General*", adopted with a SJC Decision № 48/08.11.2012.

The election of President of the SCC is of **key importance for the destiny of the judicial reform in Bulgaria**. The process of determining who will be the new face of the Supreme Court of Cassation is a critical forthcoming step towards the establishment of a new leadership based on trust and broad legitimacy achieved through a real professional authority. It was not accidental that in its January 2014 report the EC underlined that „*A series of cases where professionalism and integrity are the main drivers in an appointment process will be needed to restore public confidence particularly in the case of the most senior appointments.*"[1]

The new President of the SJC will face the task to continue to unite the professional community around a new vision for sustainable reforms. Furthermore, he/she will have to work towards fulfillment of the most important task – guaranteeing that the court will get back its natural role – being **the main holder of the judicial power**[2]. This is the only way to secure a true independence of the Bulgarian judiciary.

The current SJC continued serving to some underhand interests and sacrificed the criteria for integrity and professionalism in favour of imposing the will of administrative lobbies. Thus, the management of the judicial power is on its best way of losing any trust left. Under these circumstances the election of a new President of the SCC can be carried out in a transparent way only after the elimination of any doubts about the rules and

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[1] See http://ec.europa.eu/cvm/docs/com_2014_36_en.pdf, p. 9

[2] Constitutional Court Decision № 8/2005

opening the procedure to the participation of the judges from the SCC. Only the authentically professional authority and the broad participation of peers can establish the basis for the **reinforcement of the trust and legitimacy in the governance of the judicial power**.

The current procedural rules, have already presented some deficiencies during the election of a new prosecutor general. On the first place, there was the absence of a real possibility, under the current legal and constitutional frame, for the magistrates from the respective body to participate in the election and hearing processes. On the second place, the rules **do not guarantee an exhaustive vetting** and elimination of all reasonable doubts in the moral and professional qualities of the candidates. The SJC did not adopt the practice of performing an **adequate check up of the qualities of the candidates**, a fact, which leveled criticism and recommendations in the reports of the EC. Last, but not least, the doubts that the current voting rules guarantee **a fair and equal election** remain relevant. This issue was raised from different sites, including from the current President of the SCC. However, the SJC completely ignored it[3]. In the meanwhile, a recent problem with the electronic voting system at the SJC confirmed the reasonable concern on this issue[4]. At the end, the European Commission evaluated the election of the new prosecutor general as being a "*subject of controversy*", pointing out explicitly that the SJC did not clear out all doubts regarding the integrity of one of the candidates[5].

Nevertheless, the positive, yet scarce practice of the SJC carrying out hearings of candidates for administrative positions in front of the judges' assembly from the respective court should be mentioned. The recent experience with the organization of **internal consultations for the nomination of candidates** for Chief Inspector of the ISJC needs to be recognized too.

Based on the above said, we are calling upon the SJC to revise the above mentioned procedural rules in the following principal directions:

- **Guaranteeing the possibility for participation of the judges' assemblies** of the SCC and the SAC in the process of distinguishing and hearing of candidates for presidents of these respective courts;

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[3] See: http://dariknews.bg/view_article.php?article_id=991706&audio_id=123084. (in Bulgarian only)

[4] See: http://www.mediapool.bg/haos-vav-visshiya-sadeben-savet-zaradi-sistemata-za-glasuvane-news217595.html. (in Bulgarian only)

[5] See Technical Report accompanying the CVM Report from January 2014: http://ec.europa.eu/cvm/docs/swd_2014_36_en.pdf p. 6

- **Establishing guarantees for the high professional and managerial qualities**; the good knowledge of the problems and needs of the supreme courts, as well as the acknowledgement of the candidates by their peers at the respective courts;
- **Foreseeing and performing a real, in depth vetting of all reasonable doubts in the candidates' integrity**, including an appropriate form of monitoring from the professional organizations, so that the requirement for the existence of high moral qualities is fulfilled;
- The actual voting should be performed with an integral ballot paper.

We call upon the other state institutions and the EC to support the efforts for **drafting and adoption of rules** which will guarantee high **transparency and trust** in the procedure for the election of a new President of the SCC and in a long term – relevant changes in the legal frame work.

We are, hereby, declaring our readiness for cooperation with the SJC and participation in the drafting and discussion of particular texts.

Kind regards,

Union of Judges in Bulgaria
Bulgarian Institute for Legal Initiatives Foundation (BILI)
Bulgarian Helsinki Committee
Association for European Integration and Human Rights
Center for the Study of Democracy
RiskMonitor Foundation
NGO Center - Razgrad
Programme for the Development of the Judicial System
Bulgarian Lawyers for Human Rights