

In Bulgaria the Political Influence over the Judiciary Still Hinders Its Independence

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Nowadays there are a couple of hot topics in the Bulgarian public space: judicial reform, the fight against corruption and freedom of media. Simultaneously, they are all connected and carrying certain specifics. However, the judiciary is the one empowered to *make* the final judgment and to decide whether someone is guilty or not, whether an act is defined as a crime or not. That's why it is good to get a bird's eye view on the judicial structure and the political components within:

- Firstly, what do we know about the judiciary? The overall and ultimate, yet fragile judicial power. The judiciary shall be independent. It is not called upon to defend itself on a daily basis. Compared to the legislative and executive branches (quite vocal on their own), the judicial is encapsulated and conservative. Therefore, even after the EU accession, the political interference within, and particularly within the Supreme Judicial Council (SJC), remains unreasonably high. In a country where the rule of law is not well established, such features are detrimental to any structure.
- Secondly, the political influence in the SJC is conditioned by its very nature of formation. The Council is comprised of equal parliamentary and professional quotas (11 members each), and the parliamentary choices are craftily distributed between the Judges' and Prosecutors' colleges. In such a ratio the professional quota cannot dominate the political one. During the last parliamentary quota elections (2017) and the hearings before the parliamentary Committee on Legal Affairs, NGOs presented more than 20 questions to the nominees for members of the SJC. The Chair of the Commission neglected those questions and any attempt for debate with the candidates was impossible. The civic society did not receive new information about the candidates or their vision on crucial issues for the judiciary. In such scenario, the perception of preliminary political arrangements becomes extremely tangible. In this regard, the Venice Commission has repeatedly recommended that "judges elected by their peers should represent at least half of the members of the judicial chamber of the SJC"¹. In other words, a political appointment of a high-rank judicial decision-maker is a potential factor for distributing political influence on local level and in major courts and prosecution offices. Naturally this happens mostly through the election of administrative heads of judicial authorities.

¹ See Opinion adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017): [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e);

Not without reason, the November 2017 CVM progress report also noted that it will be pivotal for the new SJC “to create an atmosphere of open debate and transparency on key decisions so as to recreate the trust among magistrates and the wider public which is fundamental to a well-functioning judiciary”². Over the years, the appointment policy of the SJC has produced controversy. An emblematic case that seems to sum up the vices in high-level judicial decision-making is the election of the Chair of the Sofia Court of Appeal in April 2015. Back then, a new procedure was instituted after two failed elections, and the only candidate for the office was a well-known reform oriented judge. It was acknowledged by the standing committees on Appraisals and Professional Ethics and Prevention of Corruption that her professional and moral qualities were impeccable. She was also supported by 40 of her colleagues. During the hearing none of the SJC spoke negatively about her candidacy. There is no clear reason for not electing her to the office – yet she was not elected nonetheless. Judge Kutsikova appealed the decision of the SJC to the Supreme Administrative Court, which revoked the Council’s decision. This case (one of many) exposed the hidden and brutal dependencies that characterize the judicial elite.

Unfortunately, there are no universal answers to the problems in the judicial system and the prosecution, although well-thought constitutional amendments toward reducing the parliamentary quota might be a step in the right direction. The authority of the Prosecutor General to oversee the legality and provide methodological guidance to all other prosecutors and his/her 7 years term also needs reconsideration. However, after the insufficient constitutional amendments in 2015, the political nomenclature demonstrates a satisfying feeling of a job well-done and appears to move on to other topics. By all means, in order to overcome such dependencies, an internal purge is necessary. Magistrates shall be irreconcilable and step up for themselves. No one but them knows with absolute precision how networks of potential influences are formed in the system, whether they are political, economic or media and how other campaigns are being orchestrated.

If we look at the positive side, the Bulgarian Presidency of the Council of the EU may be a good time to vocalize long-term problems. If the CVM continues at least for the next 2 years, the Bulgarian civic society will stay focused: the mechanism provides objective proof of the effectiveness of the judicial reform. Although the improvement is wobbly, awareness is buildable and the critical professional mass that strives for change is getting stronger.

² Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-Operation and Verification Mechanism (Brussels, 15 November 2017): https://ec.europa.eu/info/sites/info/files/comm-2017-750_en_0.pdf;