

Access to Information Programme
Association for European Integration and Human Rights
Bulgarian Helsinki Committee
Bulgarian Institute for Legal Initiatives
Bulgarian Judges Association
Bulgarian Lawyers for Human Rights
Institute for Public Environment Development
RiskMonitor

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Members of Council of Europe Parliamentary Assembly (PACE)

Dear Members of PACE,

We are writing to support the proposed Resolution on Bulgaria and, in particular, continuation of the post-monitoring dialogue.

We represent a group of the leading Rule of Law and Human Rights NGOs in Bulgaria, and based on our work we would like to share our assessment of the progress of the judicial reform in our country. In what follows, we would like to briefly substantiate our conclusions that:

- the principal challenge faced by the Bulgarian judicial branch is that its independence continues to be seriously undermined;
- the key factor eroding judicial independence has been pressure by the government and political and economic vested interests;
- fundamental structural reforms are needed to eliminate the institutional basis for corruption and political and economic pressure;
- sustainable reforms in Bulgaria can only be ensured by international involvement.

We believe that these conclusions provide a strong argument in favor of the concerns and the recommendations of the draft Resolution, as well as for preserving the post-monitoring dialogue as a means of ensuring that they will be addressed by Bulgarian authorities.

i. The independence of the judicial branch remains challenged

The European Commission in its July 18, 2012 Report under the Cooperation and Verification Mechanism on Bulgaria (hereafter "CVM Report") noted that "*Questions remain about judicial independence*"¹ and implied that Bulgaria is still to "*achieve standards comparable to other Member States*"². As organizations representing judges, lawyers, human rights defenders and legal policy experts we have expressed on numerous occasions

¹ See at pg. 5, but also at pg. 2, 6 and 8, at http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf.

² Ibid. pg 3.

our growing concern that independence of the judiciary in Bulgaria continues to be undermined and addressing this issue is not a priority for the national institutions.

ii. Political pressure is chief among the factors eroding judicial independence

In its July 18, 2012 Report, the European Commission noted that: *“Independence has also come in question following a series of direct political criticisms of individual judges”* and *“[T]he overall impression is of a failure to respect the separation of the powers of the state which has direct consequences for public confidence in the judiciary”*.³ Similarly, a 2011 Mission Report by a delegation of the European Association of Judges found that *“It is evident that [...] the suggestions and even accusations of the Minister of the Interior about corruption and incompetence of judges jeopardize the independence of the judiciary and seriously infringe the rule of law. They inflict heavy pressure on individual judges [...]”*.⁴ The International Commission of Jurists cited *“repeated verbal attacks on the judiciary by Members of the Government, in particular by the Minister of the Interior, which pose a threat to judicial independence in the country.”*⁵

This trend culminated in a series of verbal attacks by the Minister of the Interior, Tzvetan Tzvetanov, against the Bulgarian Judges’ Association and its former president, judge Miroslava Todorova who was eventually dismissed from the bench on highly questionable disciplinary grounds. A great number of professional organizations, NGOs, and individual judges from all levels of the judiciary defined the dismissal of judge Todorova as a politically motivated reprisal against her for her staunch defense of judicial independence on behalf of the Bulgarian Judges’ Association. 180 judges participated in an unprecedented public demonstration over this case. The July 2012 Report of the European Commission expressed its concern over the case. The International Commission of Jurists stated that it *“considers that the case against Judge Todorova may involve a misuse of the judicial disciplinary process to remove a judge due to her publicly expressed concerns at government interference with judicial independence”* and *“is particularly concerned that the sanction of dismissal is a highly disproportionate and therefore inappropriate sanction for the misconduct of which Judge Todorova is accused [...]”*. The dismissal is contrary to principle 18 of the UN Basic Principles on the Independence of the Judiciary”.⁶

Furthermore, this has not been the only, or the last case of attack against judges. Following that, as recently as January 18, 2013, the Ministry of the Interior acted, for the second time, on a previous public threat of minister Tzvetanov to name police operations after judges that, in his opinion, are to be blamed for the fact that the targets of those operation are at large. As on a previous occasion, the Ministry named an operation for the arrest of a serial car thief with an abbreviation of defamatory qualifications that, in abbreviation, formed the family name of a judge who, for medical reasons, released the man from detention and imposed on him house arrest instead.⁷ Such personal attacks against

³ Ibid., at pg 6.

⁴ See Meelis Eerik, Gerhard Reissner, Maarten Steenbeek, “EAJ Delegation Report; Visit to Sofia on January 27 and 28, 2011”, at 4.1. See the text at:

http://www.judgesbg.org/data/document_downloads/172/EAJ_DELEGATION_REPORT_Bulgaria.doc

⁵ ICJ, Public Statement, August 2012, at <http://www.icj.org/bulgaria-icj-raises-concern-at-dismissal-of-judge-todorova/>.

⁶ Ibid.

⁷ See (in Bulgarian) “Tzvetanov Promoted a Second Operation Named After a Judge – M.I.L.E.V.”, “Praven Sviat”, January 18, 2013, at <http://legalworld.bg/show.php?storyid=29460>.

judges have had a demoralizing effect on the judiciary and have contributed to a lack of public trust in the justice system.

In addition to those attacks, the ruling majority has continued the longstanding practice of undermining judicial independence by making appointments⁸ of members of the Supreme Judicial Council, court presidents or other court officers, not based on their professional merit or even regardless of their questionable integrity, but solely on considerations of political expediency, such as political connections. Such persons would be then responsive to pressure by political and economic vested interests and would use their formal and informal powers to influence outcomes on particular court cases. This leads to the establishment of corruption lobbies within the judiciary who trade in power with the economic and political vested interests. This vicious circle accounts for systemic corruption in the judicial branch and for its inefficiency in cases of high-profile corruption. It also perpetuates, as well as feeds on, various forms of bad governance within the judicial branch.

iii. The fundamental reforms needed

In its February 2012 CVM Report, the European Commission called on Bulgaria “to establish a track record in appointments and appraisals respecting transparency, independence, integrity and professional merit”⁹ and recalled its earlier recommendation that Bulgaria should “take further steps towards a fundamental reform of the judicial system, notably [...] of the Supreme Judicial Council and the prosecution”.¹⁰ As in the later July 2012 CVM Report, the Commission also underlined that such reforms should be defined and implemented in dialogue with the civil society.

Respectively, in February 2012 a coalition of 12 leading Rule of Law Bulgarian NGOs proposed a detailed reform plan,¹¹ addressing both the procedure for electing the new Supreme Judicial Council (hereafter “SJC”) and the structural changes needed in this body. Regrettably, the government only incorporated the proposals concerning the election of the parliamentary quota in the SJC and ignored the rest of the demands. Nevertheless, the public and the judiciary had great expectations that the election of a new SJC and a new Prosecutor General, in accordance with new procedures providing nominally for greater public participation and scrutiny of the candidates, would become an impetus for overall reform.

The new SJC assumed office on October 3, 2012 and elected a new Prosecutor General on December 20, 2012. Parallel to these appointments, in the autumn of 2012, Parliament had to appoint two justices of the Constitutional Court and the Chief Inspector of the SJC Inspectorate. We, the undersigned, monitored all these procedures and our conclusions are that, regardless of the superficial publicity of the process, the appointments:

- Gave many signs of undue interference by the Prime Minister and the Minister of the Interior, creating an impression of predetermination of the outcome that reduces the decision-making within the procedure to a mere imitation;

⁸ Previous examples from the term of this government include the scandalous appointments of the presidents of the Sofia Court of Appeals (2009), the Supreme Administrative court (2011), and the Sofia City Court (2011) – all referred to in the 2011 CVM Report, see at pg. 3: http://ec.europa.eu/cvm/docs/com_2011_459_en.pdf.

⁹ See, at pg. 3, http://ec.europa.eu/cvm/docs/com_2012_57_en.pdf.

¹⁰ Ibid, at pg. 4.

¹¹ See (in English) “Concept Paper on Amendments to the Judicial System Act”, February 14, 2012, at http://www.bili-bg.org/cdir/bili-bg.org/files/Amendments_to_SJC_EN-2-20.09-.pdf

- Did not include an exhaustive proactive examination of all facts that may cast doubts over the integrity of the candidates – questions were not asked and a formal absence of a conviction or disciplinary sanction was equated to the requisite high morals;
- Did not include a serious discussion of the professional capacity and merit of the candidates;
- Fenced off effective public participation: civil society questions, proposals and nominations were ignored, and journalists who published materials on the candidates or asked questions were attacked verbally by the Minister of Interior and other leading figures of the majority; NGOs were subjected to smear campaigns in pro-governmental media.

As a result, again, people whose integrity is made dubious by unresolved questions and whose professional merit has not been proven were elected.

Thus, the issue of the structural reforms needed becomes ever more relevant since merely changing the manner of electing the heads of the judiciary has proven to be insufficient for the purposes of severing the channels of undue influence and producing responsible leadership and competent governance.

Structurally, Bulgaria needs to:

- Bring the structure of its SJC to the standard requiring that it be composed of “a substantial majority” of judges elected by judges,¹² meaning a sizable reduction of the parliamentary quota and separation of the administration of judges from that of prosecutors and investigators;
- Reform the structure of the prosecution office so as to ensure its effectiveness, accountability and the specific professional independence of individual prosecutors;¹³
- Reform the status of court presidents to limit their ability to affect individual judges and case outcomes;¹⁴
- Introduce greater self-governance of judges and direct election of the judges’ quota in the SJC;¹⁵
- Introduce a number of important policies, such as work-load regulation, appraisals based on the quality of work, fair disciplinary proceeding¹⁶, and effective random case assignment.¹⁷

We have to underline that none of these reforms are on the agenda of the government at present.

¹² See Opinion no. 10(2007) of the Consultative Council of European Judges, it. III, A, 18:

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007_EN.pdf.

¹³ See the respective recommendations of the July 2012 CVM Report. The need for coming up with a new institutional model of the prosecution office is based on the failure of most of the cases on high-level corruption. It also follows from the findings of series of ECtHR, see for example Kolevi v. Bulgaria, no. 1108/02, 5 November 2009, see at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-95607> and Biser Kostov v. Bulgaria, no. 32662/06, 10 January 2012, see at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108423>.

¹⁴ See our proposals in the February 2012 Concept Paper on Amendments to the Judicial System Act, cited above at footnote 11.

¹⁵ Ibid.

¹⁶ On disciplinary procedure see Opinion 515/2009 - CDL(2009)050 of the Venice Commission – at <http://www.venice.coe.int/webforms/documents/?opinion=515&year=all>

¹⁷ On these issues, see the respective criticism and recommendations in the July 2012 CVM Report.

iv. The importance of continued international support and monitoring

If Bulgaria is to make any meaningful progress, it needs to implement reforms forcing the current political and economic vested interests to relinquish their shadowy power ensuring them immunity from accountability before the law. Our experience as reform advocates has unequivocally taught us that adequacy, sustainability and irreversibility of reforms in Bulgaria is only ensured by international support. Unfortunately, the government and Parliament have proven on a great many occasions that they would ignore proposals and demands by the NGO sector. Only where international organizations have put their weight behind the initiatives of the civic sector, have they been effectively considered by the government. The freedom of the media erosion in Bulgaria is also a factor limiting the internal reform resources of our society. Controlled by the government or by economic vested interests focused on preserving their impunity, media outlets are not as vigilant a watch-dog as the fight against entrenched high-level corruption requires.

International support is needed in this precise moment for another reason too: for several years now, judges, supported by civil society organizations, have been increasing their resistance against the erosion of their independence. They have been learning to more directly oppose the increasing attacks on them by the much stronger, in terms of propaganda capacity, executive, which has caused them to suffer more pressure. Similarly, independent journalists have been increasingly pressured by government attacks and misuse of economic and legal instruments and pro-government media has launched smear campaigns against NGOs. These bold professional communities do merit the support of the Council of Europe!

Conclusion

Based on the above, and,

- Considering that Bulgaria needs to implement complex structural reforms requiring genuine political will;
- Recognizing that Bulgarian civil society has reached a high-level of reform consensus and is facing oppression by powerful vested political and vested interests;
- Acknowledging that Bulgarian governments have so far failed to adopt the necessary extensive and detailed structural reform action plan and that none of the reform priorities identified in the draft of the Resolution are on the agenda of the government;
- Remembering that Bulgaria has a track record of unfinished, or unimplemented reforms, not least in terms of complying with the decisions of the European Court of Human Rights;
- Considering that CoE is the oldest and most respected champion of democracy and rule of law in Europe, commanding unrivalled wealth of expertise to meet Bulgaria's current needs;
- Recalling that if Bulgaria succeeds with its judicial reform and democratic maturation, this would be well-deserved proof of the relevance and the efficiency of the CoE instruments;
- Taking into consideration the fact that the European Commission is continuing its Cooperation and Verification Mechanism and is even considering how to use the experience from it to create generally applicable tools of its own to safeguard democracy on the continent

We call on you to support the text of the proposed Resolution on Bulgaria in its current version and to continue the post-monitoring dialogue to ensure the completion of the needed complex reforms in Bulgaria.