

October 24, 2019

COMMENT ON THE LAST REPORT OF THE EU UNDER THE CVM

The November 2018 CVM report opened the process for the official termination of the monitoring over Bulgaria. It was also the first strongly political report which did not take under consideration some negative developments in the country. As a result, it suggested that benchmarks one */judicial independence/*, two */legal framework/* and six */organized crime/* could be provisionally closed.

The last report published on October 22, 2019 continues that political line considering that "... the progress made by Bulgaria under the CVM is sufficient to meet Bulgaria's commitment made at the time of its accession to the EU".¹ It presents the facts which dominated the legal and public life in the last year, however, their interpretation or the lack of such raises questions. For example, the unprecedented attack against judges for a decision they have made in September and the following attacks against the Bulgarian Judges Association and other members of the legal profession is mentioned. In addition video materials from protests against the magistrates */part of these attacks/* have been used as part of the local election campaign of some of the candidates running for mayor of Sofia, which is a very serious violation of the judicial independence. The latter remained unnoticed by the report. Earlier this year, the personal data of a criminal judge and all her family was published online by the Inspectorate to the SJC with a very suspicious name of the file itself, namely "To not delete". This was the only such omission of the Inspectorate. Again, that gross violation of the law and the personal life of a magistrate are not mentioned at all in the report.

Furthermore, the report states that "Since 2017, the government has established a regular cycle of monitoring and reporting on progress in the implementation of the judicial reform strategy".² However, it does not take under consideration the fact that the Council on the Implementation of the Updated Strategy under the auspices of the Ministry of Justice hasn't met since July 2019. No reports about the progress on the implementation of the Updated Strategy have been published since December 2018.

The report correctly describes the adoption of a Decree of the Council of Ministers for the establishment of a national monitoring mechanism through a special Council. It should be noticed that the statement made in the report – "It could also contribute to holding the relevant authorities to account where necessary and appropriate"³ is not correct. The Decree does not include a mechanism for accountability for any of the institutions which will be members of the Council. It is explicitly arranged in the Decree that the Council does not exercise control over the activities of the various state institutions. Civil society members, professional organizations and organizations of employers recognized on a national level will participate through a "civic council" – as observers. At present, it is still unclear how the Council will function in practice.

¹ P. 13 at https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf

² P 7 at https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf

³ P 4 at https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf

The changes in the Judicial System Act from 2016 have been in line with the Updated Strategy for Judicial reform and have stimulated some positive processes in the system. However, since then, additional legislative changes /related to the secondment of magistrates, to the performance evaluation, to the remuneration and others/ are reversing the positive developments and at present, there is a step back in these legislative initiatives.

It is striking that the report almost neglects the negative developments related to the Head of the Anti-corruption Commission and the reputational damage it suffered thereof. Concerns about “possible politicization” of the agency’s management are raised however, they are related only to the simple majority in the National Assembly which elects the Head of the Commission and no to the procedural aspects of the appointment that do not guarantee a merit based approach.

These are only a few examples confirming the conclusion about the political character of the last CVM report. The key word /most repeated one in the report/ is “commitment”. It is confusing to see that 12 years after the establishment of the CVM, the European Commission still relies on commitments coming from the Bulgarian government and/or “Prime Ministerial level”. It also contradicts to the Commission’s expectations for the “irreversibility” of the reforms. Even though the report refers couple of times to the “comprehensive rule of law mechanism”, at an EU level it is still not clear what the shape, the scope and the functioning of this mechanism will be. In the meanwhile, the situation with the independence of the judiciary, the freedom of speech and association and the civil society in Bulgaria will continue to deteriorate.

It is clear that the last report on the CVM is a political promise kept without paying attention to the real situation in the country. The timing of its publication additionally feeds into that narrative. It is for the EC together with the other European institutions to uphold the democratic values on which the Union is built. It remains questionable, whether they are willing to pursue this. The responsive EC actions will undoubtedly reverberate on the confidence that Bulgarian citizens have in the EU institutions.