

## **SJC in the crooked mirror of media populism**

### ***Why does the council tolerate attacks on judges - whether because it fails to cope or because it does not want to***

April 2018. Judge Katerina Encheva from the SCC sent a preliminary ruling to the EU Court in Luxembourg asking whether the Bulgarian law on civil confiscation is not contrary to the EU law. The inquiry is related to the confiscation case against the owner of the bankrupt CCB Tsvetan Vasilev. Following a statement by the chairman of the new anti-corruption commission Plamen Georgiev, in which he suggests that the Bulgarian court is incompetent, dependent and bound. There is no institutional response from SJC to these hints. Support came only from a part of the guild represented by the Bulgarian Judges Association (BJA), which was released with an open letter sent to the SJC.

May 2018. Judge Sylvia Hazerbasanova of the Sofia District Court (SDC) convicted at first instance "Pick News" EAD for insulting and slandering on a claim brought by Emil Jassim. The media outlets which are part of the company started a fierce attack on the judge who has been subjected to serious psychological harassment, including being watched. Due to the lack of an institutional response from the SJC, the SDC leadership issued an unprecedented open statement in defense of the judge, which, among other things, recalls the great responsibility that the media bear. It forces the judges' chamber at the SJC to consider the matter, but yet there is no decision/opinion or any other form of reaction. The tension is growing, followed by new open statements, this time by judges of the SDC and other courts in the country, as well as by the BJA. Eventually, on May 14, the judges' chamber at the SJC accepted an opinion in which its members stated that "we will respond in every attempt to influence and attack the independence of the judiciary, the court and every Bulgarian judge" and urge everyone to "support us in the confrontation of ongoing public attacks and the defamation of the court".

July 2018. Judge Polina Yakimova-Ilieva from the Sofia City Administrative Court (SCAC) pronounced a decision recognizing the right of residence in the country of a same-sex married couple from another country on the grounds that one of the members of that family is a citizen of an EU Member State. Again, there is a brutal media attack against the judge. The SJC judges' chamber this time explicitly refused an institutional response after the chairman of the Supreme Court of Cassation (SCC) Lozan Panov proposed to issue an opinion or a statement in defense of the magistrate. Again, the guild reaction was only coming from the BJA, which in an open call urged the SJC to publicly disclose the criteria and rules under which it exercises its duty to assert the independence of the judiciary when publications concerning individual judges and the judiciary as a whole arise.

### **Absurd reaction with a prosaic explanation**

The SJC's response was more than absurd - on July 20th, the judges' chamber issued a statement that the problem in formulating council positions as a collective body is that "the expression of a reaction - positions, statements or declarations requires their approval after a debate has been held and voting by the SJC Plenum or the respective chambers" and " the statutory structure and functions of the SJC as a collective body are the cause in specific cases, that after discussions and voting, no decisions have been taken ". Therefore, the judges' chamber has realized the need to "establish criteria to outline elements of constitutional guarantees for "the independence of the judiciary "as well as the standards under which it can be accepted that the authority and independence of the court and the magistrates are harmed ". It is paradoxical that the members of the council are yet to clarify these basic standards, and they are magistrates with many years of experience whose main function is to make decisions on the application of the law in far more complicated cases.

A far more prosaic explanation is that the council is simply "buying" time and is about to produce the next document as an explanation why it does not respond to crystal clear situations where judges are being defamed for their decisions without substantive arguments.

#### **Otherwise, there are rules of action in such cases**

In 2015 the SJC adopted the so-called Communication Strategy of the Judiciary 2014-2020, which explicitly states that it "builds on the communication documents, policies and practices of the judiciary bodies" and "represents a platform for synchronizing the communication policies of the individual judiciary authorities". A special place in this 130-page document is dedicated to "*Countering Negative Campaigns against the Judiciary,*" stating explicitly that "the long-term inability to effectively resist negative campaigns threatens to deepen the crisis of public confidence in the judiciary and increased political and social pressure against it." And what happened to the judges from the SCC, the SDC and the SCAC is the proof that the pressure on the judiciary is increasing. The strategy does not only indicate the problems and the real risks; it specifies concrete actions listed in item 3.2.8., which can be taken to respond to crisis situations and have real opposition to negative campaigns against justice in order to "bring the judiciary out of the spiral of cascading scandals." In other words this means that the judiciary and its face - the SJC, should act proactively rather than react and be constantly catching up and explaining.

#### **The document proposes, among other specific measures and activities:**

"Creating a short-term plan for communicating the activities of the judiciary on reforming and improving its processes in order to promote its independence.

Establishment of a unified crisis plan for communication of the judiciary, integrating communication actions of all the affected bodies.

Enhancing the skills of the judiciary to make effective use of specific communication solutions for communication in times of crisis."

Already in 2013 the SJC adopted a communication policy even before the Communication Strategy was drafted (amended in 2016 by this SJC). Article 2.7. of this document is entitled "Communication in Crisis Situations" and provides for the training of SJC members and representatives of the administration on how to act in crisis communication, drafting a crisis plan for communication, as well as the elaboration of a mechanism for assessing the crisis and "the damages " on the public image of the SJC, including its members, the effect of the actions taken, etc.

And that's not all. Again in 2013, an Action Plan for the Implementation of the Communication Policy of the SJC 2014 - 2018 was adopted, last amended also in September 2016 by this SJC. The commitments are even more specific: increasing the capacity of the plenum, the chambers, the committees and members of the SJC to act in crisis situations, as well as the SJC adopting a crisis plan, a crisis assessment and management mechanism, "damage" to the public image of the SJC, as well as the effect of the actions taken. The SJC and the administration are expected to be trained to act in cases of crisis communication once again.

With the statement of the judges' chamber from July 20th, it is clear that the current SJC staff is aware of the above documents. The concern in this case is that there is obviously no desire to apply the rules.

Instead of seeking "strategic allies," the SJC is isolating itself more and more from the system for which administration and image it bears the responsibility, and this leads to everything else but not to the already lost meaning of "increasing the credibility and authority of the judiciary."

Taking a look from outside, it seems as if something forces the supreme administrative authority of the judiciary to tolerate such attacks. And that raises the question - why? One possible answer is that perhaps the body, which is obliged to defend the independence of the judiciary, fails or does not want to do this simply because it is not independent itself.

Bilyana Wegersteder