**Judicial reform top 3**

*The first three things which the parliament should do*

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Currently there are negotiations going on among the parties in the parliament for an eventual bringing together on key issues. The risk for new snap elections is not yet overcome. Here are some reasons arguing that the better decision will be for this parliament to continue working at least for couple of months and not couple of days as it was with the previous 45th parliament.

**Reason # 1 the Inspectorate to the Supreme Judicial Council (ISJC)**

The mandate of the inspectors and the Chief Inspector expired at the beginning of last year. At that time, we did alarm that the continuation of the mandate beyond its term is in a sharp contrast with one of the main principles of a functioning democracy, namely – having mandates. Later on, we have publicly appealed to the Chief Inspector Mrs. Tochkova to resign and by doing this to urge the parliament to start the procedure. Sadly, she preferred to remain "in obedience" and so did the other inspectors. The ISJC is an extremely important body, because it can perform check-ups on all organs within the judiciary. Furthermore, after the changes in the Constitution from December 2015 the ISJC can perform check-ups related to conflict of interest and integrity on all magistrates, as well as their asset declarations; it can determine actions with which they have harmed the prestige of the judicial system. These broader rights of the Inspectorate are directly connected to a higher level of responsibility not only to the magistrates, but also to the society at large. Part of this increased responsibility is taking under consideration the expiration of the mandate and the setting off of the new election procedure. Unfortunately, the ISCJ was again not at the level of the requirements prescribed by the Constitution and the Judicial System Act.

According to the law, the election procedure for new inspectors and chief inspector should start not earlier than 6 and not later than 2 months before the expiration of the mandate. At the current situation, however, the parliament can initiate the procedure at any time, because the terms have already expired last year. Looking at the parties which are at the 46th parliament, one can draw the conclusion that there is a desire for real work on the issues of the neverending judicial reform, hence, one of the first things the MPs can do are, to start the procedure for election of new inspectors and chief inspector at the ISJC. In a way this election will be a test for the MPs as to their authentic will for a change and opening of a new page in Bulgaria's' governance. A test because both the inspectors and the chief inspector are elected with a qualified majority – 2/3 of the members of the parliament.

**Reason # 2 the Constitutional court (CC)**

At the end of this year and the beginning of the next one, the mandates of 4 judges from the Constitutional court are expiring. These are: judge Anastas Anastasov from the parliamentary quota, judge Grozdan Iliev also from the parliamentary quota (he was elected couple of months later, because of the failed appointment of judge Veneta Markovska), judge Georgi Angelov elected by the general assembly of the two Supreme courts and judge Boris Velchev (the current President of the court) appointed by the President of the Republic. Two of the places have to be filled in by the parliamentary quota and the procedure needs to start this fall. There are couple of possibilities at the 46th parliament – it can carry out one procedure for the election of the lawyers to fill in its quota, but the one who will

be replacing judge Iliev will start later when the 9 years mandate have actually expired. This is also the more efficient possibility. The other one will be for the parliament to carry out two separate procedure and consecutively fill in the two empty seats at the court. What cannot happen though is the situation with the ISJC described above. There used to be a text in the Constitutional Court Act allowing the judges to continue beyond their mandate, but this text was pronounced to be anti-constitutional with Decision № 1 of the CC from 2006.

Consequently, the election of a new President of the CC will be performed at the beginning of next year when all quotas are filled in. In that situation there will be a short period of time where the Constitutional Court will operate without a president, but the law foresees that the oldest judge will act as such. It can be interpreted, by analogy, that the oldest judge will perform the functions of the president until a new president is elected. This is also similar to the National Assembly where the oldest MP presides the parliamentary session until the election of a hew Head of the parliament. In the current situation this will be judge Grozdan Iliev and after he is replaced – judge Mariana Karagyozova-Finkova.

**Reason # 3 President of the Supreme Court of Cassation (SCC)**

The procedure for election of a President of the SCC is carried out among 4 institutions situated in different power domains. The Supreme Judicial Council which can not only nominate (at least 3 members of the Judges College), but also organizes the actual election procedure; the Minister of Justice who has the right to nominate; the Plenary of the SCC which also has the right to nominate and the President of the Republic of Bulgaria who actually finalizes the procedure by issuing a decree for the appointment of the person elected and has the right to return once to the SJC the elected person.

In its current composition the SJC has failed as a supreme cadre body, especially when it comes to elections on the leadership positions in the judiciary (the election of President of the Supreme Administrative Court, the election of a prosecutor general, the election of President of the Sofia City Court and recently the selection of European Delegated Prosecutors, among others). Therefore, it is completely justified to ask the following question – do politicians want to leave this SJC to elect the next President of the SCC? If we take into account some of the statements coming from the 46th parliament, the answer to the question looks to be negative. Having said this, it is completely realistic to make some changes in the Judicial System Act regarding the parliamentary quota of the SJC which can lead to election of 11 new members from this quota who can finish the mandate (it expires in October 2022) and participate in the election of new President of the SCC. Of course, there are no guarantees that the new members will be able to completely clean the mess in the current SJC, but fact is that the parliament possesses these rights and can at least make use of them.

**The Gordian knot of the judicial reform**

These are the procedures for election of magistrates on the leadership positions in the judiciary and the election of members of the body responsible for this, namely the Supreme Judicial Council itself. Its unravelling goes through overcoming of the notorious Decision № 3 of the CC from 2003. It was recently used again as a flag under which all defenders of the unaccountable figure of the prosecutor general lined up. According to the Constitution one of the subjects empowered to ask the CC are the MPs – 1/5 of them or 48 members of the parliament. Simple calculations show that in the current parliament there are parliamentary groups which can submit a question to the CC revising Decision №

3 on their own, without needing to make a coalition with somebody else. Such action will be logical if the desire is really for a change and not just a replacement with something similar and for a "deep" reform in the judicial system. Are there 48 members of the parliament in the current 46 National Assembly who will realize the right given to them by the Constitution or the statements thereof will remain again only election campaign slogans?

These are only a few among other urgent actions that the parliament must undertake and that are an additional argument for its longer existence. However, the conversation about the changes in our judicial system and in other areas of our life is much more comprehensive and long.