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ACTIVITY 1.2.-
FRAMEWORK DOCUMENT

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A) TERMS OF THE TWINNING CONTRACT SIGNED BETWEEN THE SUPREME JUDICIAL COUNCIL IN BULGARIA AND THE CONSEJO GENERAL DEL PODER JUDICIAL IN SPAIN

According to the Twinning Contract, the reform of the Judiciary with a view to ensuring its independence, effectiveness, transparency, agility and quality, is always based both on the existence of an adequate legal order and on the development of a proper institutional structure and framework.

This twinning project refers to these two aspects: it seeks to improve the magistrates' status based on the principles of impartiality, accountability and transparency; and also refers to the need to strengthen the administrative capacity of the Supreme Judicial Council.

Accordingly, the Phare Twinning contract signed between the Supreme Judicial Council in Bulgaria and the Consejo General del Poder Judicial in Spain, aims to provide the judicial system in Bulgaria with a secondary legislation within the competences of the Supreme Judicial Council for the improvement of the Magistrates' legal status[1] (working area nº1) and the strengthening the institutional and administrative capacity of the Supreme Judicial Council (working area nº2).

Eventually, identification of needs for legislative amendments of the related main legislation in line with European standards and best practices may arise. These eventual needs must be always related directly to the subjects which fall within the issues and subjects of this Twinning Project.

The improvement of the magistrates` legal status (working area nº1) aims at raising the quality of justice and the Magistrates' responsibility towards their official duties and work and seeks to increase social confidence in the judiciary.

[1] Literally, according to the Twinning Contract: "*The aim of this working area is the improvement of the legislative framework of magistrates' legal status based on the principles of impartiality, accountability and transparency through the adoption of new secondary legislation and eventually through the identification of requirements for legislative amendments in the following specific subjects:*

- ***General principles*** *of the Judiciary, Prosecutors and Investigators*
- *Mechanisms for the realization of* ***disciplinary liability*** *of magistrates*
- *Mechanisms for their* ***selection, appointment, promotion and downgrading*** *of magistrates*
- *Methods for* ***verification*** *of the quality* ***of the magistrates' work*** *"*

The components, the approach of the subjects which fall within this part of the project (working area nº1), the aspects and aims to cover fixed in the Twinning Contract are, among others, the following:

1.- GENERAL PRINCIPLES OF THE JUDICIARY, PROSECUTORS AND INVESTIGATORS (COMPONENT 2)

- The specific status of each category (Judges, Prosecutors and Investigators) and the need to restructure of the legislation.
- The question about:
  - the principle of the separation of powers,
  - the independence,
  - the "checks and balance" among the three powers and
  - the structure of the Judicial Power
- The way of protecting the judicial independency from unreasonable persecution, pressure, defamation, or obstruction
- The content and rules of the principle of irremovability
- Organization of the hierarchical relationships among the magistrates without interference, affecting the general principles and without unlawful pressure
- Concept of the "judicial independency" as a precondition for the fulfilment of the tasks of the Judiciary
- The position and role of the Supreme Judicial Council related to the magistrates' legal status and the fundamental principles of the Judiciary

2.- MECHANISMS FOR THE REALIZATION OF DISCIPLINARY LIABILITY OF MAGISTRATES(JUDGES, PROSECUTORS AND INVESTIGATORS) (COMPONENT 2)

- The criteria, conditions, competence and procedures for the realization of the disciplinary liability of status of each category of magistrates (Judges, Prosecutors and Investigators)
- Institutional structures in the SJC with competences for the disciplinary liability:
  - Eventual requirement for new units or commissions
  - The need of reforms in the Regulation for the Work of the Supreme Judicial Council and its Administration

- The need of an Unit of Magistrates' for the disciplinary affairs.
- The position of the Evaluation Commission in the SJC: need of reform: internal rules
- The position of the Anti-Corruption Commission in the SJC: investigation powers, and internal rules

3.- MECHANISMS FOR THE SELECTION, APPOINTMENT, PROMOTION AND DOWNGRADING OF MAGISTRATES (JUDGES, PROSECUTORS AND INVESTIGATORS) (COMPONENT 3)

- Criteria of selection and recruitment of each category (Judges, Prosecutors and Investigators) based on the principles of objectivity, transparency and stability
- Relations between "competitive selection" and "initial training"
- The criteria, conditions, competence and procedures for the appointment of the Presidencies in the courts, of the magistrates in managerial positions or administrative leaders at the bodies of the judiciary
- The need to fix terms of office, rotation of magistrates in managerial positions and special procedure and identification of the reasons for an earlier termination of office
- The hierarchical relationships inside the magistrates and the promotion in the career: need of reform to guarantee the full respect to the general principles of the Judiciary and to objectives criteria

4.- METHODS FOR VERIFICATION OF THE QUALITY OF THE MAGISTRATES' WORK MAGISTRATES (JUDGES, PROSECUTORS AND INVESTIGATORS) (COMPONENT 4)

- The verification of the work based on objective criteria
- Design as a mechanism to improve the Administration of Justice and its transparency, quality, efficiency and agility
- Conditions and guarantees: it must be set up by law, transparent, adaptable
- The danger to put the quantity before the quality must be prevented
- It must not affect the judicial independency

B) INTRODUCTION TO THE FRAMEWORK DOCUMENT

The following work constitutes the result of the first activity of this twinning project, defining the road map for the implementation and development the project and particularly of components 2 (general principles and disciplinary liability), 3 (selection, appointment, promotion and downgrading) and 4 (appraisal and evaluation).

Short time experts from members States (Spain and Germany) presented for debate a document with initial proposals of action. This document was examined in depth and enriched with the discussion. The result after these working sessions is this framework documents which collects the approaches and the conclusions achieved after the debates.

In particular, participants analyzed and discussed for each component the following aspects:

- Problem inventory: short identification of current problem (diagnosis)
- Index for the secondary legislation (regulation or regulations) to give answer to the identified problems
- Institutional requirements in the Supreme Judicial Council (commissions, units, staff and working rules)
- Eventual identification of needs for legislative amendments of the main legislation related directly to the subjects which fall within the issues and subjects of this Twinning Project with

In order to achieve the aim fixed for this activity, its agenda was as follows:

- 1. Initial coordination meetings
- 2. Separate meetings (45 min. each) of the participants of each component:
    - Problem inventory, 5 meetings
    - Secondary legislation-index, 6 meetings
    - Institutional needs in the SJC, 3 meetings
    - Conflict with the main legislation, 3 meetings
- 3. Conclusion: presentation of the results

The activity was directed and coordinated by **Mrs. Anita Mihailova** (member of the Supreme Judicial Council and project leader) and **Mr. Manuel Mazuelos Fernández-Figueroa** (Senior Judge and Resident Twinning Adviser).

The participants of the activity were the following:

a) Short-time experts from the EU (Spain and Germany):

1. Mrs. Maria Luisa Martín Morales, Senior Judge, Sala Contencioso Administrativo, Tribunal Superior de Justicia de Andalucia (component 2)
2. Mr. Joaquin Moreno Grau, Senior Judge Sala Contencioso Administrativo, Tribunal Superior de Justicia de Murcia (component 3)
3. Mr. Jose María Calero Martinez, Public Prosecutor, Sevilla (component 2)
4. Mr. Elmar Schuermann, Senior Judge, Vice-president of the Regional Court of Osnabrueck, until 9/2004 (component 4)

b) Experts designated by the Bulgaria counterpart:

1. Mrs. Diana Garbatova – Judge, Supreme Administrative Court (component 2)
2. Mrs. Malena Filipova – Public Prosecutor, Department Director in the Supreme Cassation Prosecutor's Office (component 2)
3. Mrs. Vanya Ancheva - Judge, Supreme Administrative Court (component 3)
4. Mr. Kalin Kalpakchiev – Judge, Sofia Court of Appeal (component 3)
5. Mrs. Slavka Slavova - Public Prosecutor, Department Director in the Supreme Cassation Prosecutor's Office (component 3)
6. Mr. Rumen Kirov – Investigator, National Investigation Office (component 3)
7. Mrs. Bonka Yonkova – Judge, Sofia Regional Court (component 4)
8. Mr. Kamen Mihov - Public Prosecutor, Supreme Cassation Prosecutor's Office (component 4)

The evolution of events related to the judicial reform in the Republic of Bulgaria and the natural changes of the circumstances that may take place during the implementation of this EU project will be taken into account in order to make the adaptations that eventually may be necessary to achieve the mandatory results fixed in the Twinning Contract.

In the reform of the judiciary, now the Supreme Judicial Council has a key role to play, just in this very delicate moment of the process to the accession and in a range of very serious issues.

With the sign of this project of the European Union, the Supreme Judicial Council and its members have clearly stated their responsibility to play this crucial role in order to achieve the long-desired accession to the European Union.

In the entrance to the Supreme Judicial Council session's room we can see a board that reads:

"*THERE IS NO OTHER POWER THAT INFLUENCES IN PEOPLE'S LIFE SO INTENSIVELY THAN THE JUDICIAL POWER … …*

… … THE DECISION AND WORK DEVELOPED BY THE JUDICIAL POWER IS OF THE OUTMOST INTEREST OF THE SOCIETY AND CITIZENS".

This EU project will provide assistance in order to give this society and the Bulgarian citizens the answers they are waiting from the Supreme Judicial Council and its members.

C) BACKGROUND

1.- BACKGROUND FOR THE GENERAL PRINCIPLES AND DISCIPLINARY LIABILITY.

1.1.- INDEPENDENCE PRINCIPLE.

Art. 117 Bulgarian Constitution.

Art. 1.2 and 4.2 Law for the Judicial System in Bulgaria.

Art. 133-136 Individual Status of Magistrates.

Independence means freedom from the control or influence of others. This principle is the consequence of the division of the Powers of the State and the supremacy of the Law.

So, independence principle links the legality principle because judges shall be subservient only to the Law (art. 117 Constitution, art. 13 Law for the Judicial System).

There are two faces of the independence principle:

1.- Ad intra: freedom from the control of a higher court, who only can modify the interpretation of the law applied in a specific case through a process: appeal or cassation. Art. 12 LOPJ (Spanish legislation)

2.- Ad extra: freedom from the control of others powers (public or private). Art. 13 LOPJ. Everyone is compulsory by the judicial independence. When the independence of a judge is injured, there is a process to inform to the Supreme Judicial Council: art. 14 LOPJ y art. 508.2 CP (Spanish legislation).

The judicial branch shall have an independent budget. That means that judges must obtain a salary according to their function.

1.2.- UNITY PRINCIPLE

Art. 119 Bulgarian Constitution.

Art. 2.2 and 3.5 Judicial System Act.

The Judicial Power is one. All the Judges and Magistrates integrate an only one entity or organization. There is only one jurisdiction and it is forbidden special, extraordinary or emergency courts. However, specialised courts may be set up by virtue of a Law.

In relation with this principle, we can speak about the democratic support of the Judicial Power, because it is exercised in the name of the people (art. 118 Bulgarian Constitution).

1.3.- EXCLUSIVE JURISDICCTION PRINCIPLE

Art. 4.2, 12.1, 12.3, 137 and 132 Law for the Judicial System.

This principle has two faces:

1.- Positive: The exclusive jurisdiction means the monopoly of the judicial function, which is only exercised by the judges.

2.- Negative: The judges only can develop jurisdictional functions. Because of that, the Law has to regulate the activities, professions and functions forbidden for the judges.

1.4.- RESPONSIBILITY PRINCIPLE

Art. 129.3.5º Bulgarian Constitution.

Arts. 133-139 Law of the Judicial System.

Responsibility and independence can be considered the two faces of the same coin. The responsibility of a judge is legal and not political.

In Spain there are two proceedings to ask for responsibility:

1.4.1.- Responsibility of the individual judge:

- civil.
- criminal
- disciplinary:

&. Procedural: the higher court can modified the interpretation of the law through the specific process: appeal, cassation.

&.. Disciplinary Liability: when the judge is breaking rules of his functions or when his standard of work is unacceptable. The infringement has to be described previously by the Law and the punishment (also established by the Law) has to be imposed through a legal procedure.

1.4.2.- Responsibility applied to the State:

- Judicial error: mistake showed in a case such as a consequence of the negligence in which the judge is carrying out his duties.

- Improperly administration of Justice.
- Improperly judgment in which a person has been convicted and sent to prison.

In Bulgaria, the legislation only refers the disciplinary responsibility without mentions to the civil or criminal responsibility.

1.5.- IMPARTIALITY PRINCIPLE.

The impartiality means that judges cannot show any bias or favour toward another power or same litigant in the process. Judges have to decide impartially on the basis of the subject applied and the law considered.

The impartiality is granted by the followings considerations:

- The competence of the court must be ruled previously by the Law.
- Being impartial means not being biased or prejudiced, being a third person between the parties of the case. It is necessary to rule the circumstances in which a judge can be removed from a case when his impartiality could be damaged.

1.6.- IRREMOVABILITY PRINCIPLE

Arts. 10, 124, 129-132 Law for the Judicial System

Judges and prosecutors must be appointed, promoted, lowered in rank, transferred and discharged only with the conditions provided in the Law.

The art. 129 Law for the Judicial System establishes the effectiveness of this principle after a period of five years standing like a judge.

1.7.- IMMUNITY PRINCIPLE

Art. 132.1 Bulgarian Constitution

Art. 134 Law for the Judicial System.

Judges, prosecutors and investigators may not be held criminally or civilly liable while conducting their official duties, unless their actions constitute a deliberate indictable offence. They may not be detained, except for a grave crime and with the approval of the Supreme Judicial Council, but this approval is not required in the case of flagrant offence.

1.8.- DISCIPLINARY LIABILITY

It is in relation with responsibility principle.

We can find the regulation for the disciplinary liability in arts. 168-186 Law for Judicial System. Art. 168 says that judges are subject to disciplinary action for failure to perform their duties and for violating the rules of professional ethics. Major amendments to the Judicial System Act by S.G. 74/2002 and 29/2002 have been enacted with the intend of improving the regulation of the process to impose disciplinary responsibility.

2.- BACKGROUND FOR THE SELECTION, APPOINTMENT, PROMOTION AND DOWNGRANDING OF MAGISTRATES

1.- LEGAL FRAMEWORK ON SELECTION, APPOINTMENT, PROMOTION AND DOWNGRANDING OF MAGISTRATES IN BULGARIA

In Bulgaria the judicial branch is composed of Judges, Prosecutors and Investigators, all of whom are deemed Magistrates. The legal framework on selection, appointment, promotion and downgrading can be found within the following set of rules:

1.1. Constitution

- Art. 117 sets the main principles of independence and subservience to law
- Arts. 129 and 131 hold constitutional rules on appointment, promotion and removal of Judges, Prosecutors and Investigators as well as determine when SJC has to make a decision through secret ballot.

1.2. Judicial System Act

(Prom. SG. 59/22 Jul 1994, amend. SG. 78/27 Sep 1994, amend. SG. 87/25 Oct 1994, amend. SG. 93/20 Oct 1995, suppl. SG. 64/30 Jul 1996, amend. SG. 96/8 Nov 1996, amend. SG. 104/6 Dec 1996, amend. SG. 110/30 Dec 1996, amend. SG. 58/21 Jul 1997, amend. SG. 122/19 Dec 1997, amend. SG. 124/23 Dec 1997, amend. SG. 11/29 Jan 1998, amend. SG. 133/11 Nov 1998, amend. SG. 6/22 Jan 1999, amend. SG. 34/25 Apr 2000, amend. SG. 38/9 May 2000, suppl. SG. 84/13 Oct 2000, amend. SG. 25/16 Mar 2001, amend. SG. 74/30 Jul 2002, amend. SG. 110/22 Nov 2002, amend. SG. 118/20 Dec 2002, amend. SG. 61/8 Jul 2003, amend. SG. 112/23 Dec 2003, amend. SG. 29/9 Apr 2004, amend. SG. 36/30 Apr 2004, amend. SG. 70/10 Aug 2004 amend. SG. 93/2004 Oct 2004)

- Art. 35 rules the interaction of the Minister of Justice with the bodies of the judicial system
- Art. 35 f and 35 g contain the basic rules on National Institute of Justice (NIJ)
- Arts. 124 to 148 rule the Statute of Judges, Prosecutors and Investigators

1.3. Regulation nº. 2 on the procedure for conducting competitions for junior Judges, junior Prosecutors and junior Investigators, of july 14, 2004 (s.G. 65/2004)Code of ethics approved by the Supreme Judicial Council on March 10, 2004

1.4. Rules of organization and procedure of the National Institute of Justice, approved in October 1, 2003 by SJC

2. SELECTION AND APPOINTMENT OF THE MAGISTRATES

There is a double selection system. Besides a way of access through a competitive procedure it is allowed to be appointed Magistrate by taking into account only experience in legal professions. Either way the appointed magistrate will remain at office for 5 years after which can achieve the so called "irremovability status" (art. 129 Constitution and 129 JSA)

According to art. 125 JSA the following rank exists, which is ordered from the lowest to the highest level:

- Junior Judge and junior Prosecutor
- Judge in a regional court and Prosecutor in a regional prosecution service
- Judge in a district court, Prosecutor in a district prosecution service and Investigator in a district Investigator service
- Judge in an appellate court, Prosecutor in an appellate prosecution
- Judge of the Supreme Cassation Court, Judge of the Supreme Administrative Court, Prosecutor of the Supreme Cassation Prosecution, Prosecutor of the Supreme Administrative Prosecution and Investigator of the National Investigation Service

- Chairman of a division in the Supreme Cassation Court, Chairman of a division of the Supreme Administrative Court, chief of department in the Supreme Cassation Prosecution, chief of department of the Supreme Administrative Prosecution and chief of department in the National Investigation Service

2.1. SELECTION OF JUNIOR MAGISTRATES

a) The creation of a national competition for junior Magistrates

The JSA was amended in 2002 (SG 74/02) and again in 2004 (S.G. 29/04) to require a national competition for all junior Magistrates to be conducted by the Supreme Judicial Council (**SJC**), [JSA art. 127a(1), (2)].

The criteria and other rules for the competition are set forth in the SJC's REGULATION Nº. 2 ON THE PROCEDURE FOR CONDUCTING COMPETITIONS FOR JUNIOR JUDGES, JUNIOR PROSECUTORS AND JUNIOR INVESTIGATORS, of July 14, 2004 (S.G. 65/2004) The competition is managed by a five-member Competition Commissions or Board [Sect. III JSA REGL. Nº 2 and JSA arts. 127b(1)], appointed by the SJC that conducts a written and then an oral examination. The candidates are rated by their marks (the sum of the grades from the two exams) and the chairman of the competition commission shall put forward a proposal to the SJC for appointment of the candidate who was classified first. When the respective body of the judicial system has announced several vacancies for one and the same position the appointment shall be made by the order of classification [art. 127b (4) JSA], then all selected applicants shall indicate in a statement the position they choose or refuse to take up in the respective judiciary bodies. An appeal process is provided before the SJC, [127c JSA

The JSA does not require the judicial candidates to have any additional legal experience prior to being appointed to the bench, than practical experience they achieve in the regional and district court to which the apprentice is assigned.

Following an announcement in the *State Gazette* that a competition will be conducted [art. 127a (2)], a judicial candidate completes the application not only for the competition, but also for the position and the judicial body he/she would like to be assigned (SECC. II REGUL. Nº 2, position: junior Judge, junior Prosecutor, junior Investigator or all of then).

b) Training of the Junior Judges, Junior Prosecutors and Junior Investigators.-

The National Institute of Justice [art. 35f JSA (amend. SG 61/03 and SG 29/04) and RULES OF ORGANIZATION AND PROCEDURE OF THE NATIONAL INSTITUTE OF JUSTICE, approved in October 1, 2003 by SJC], is a state-funded entity host in Sofia and functioning under the authority of the SJC. NIJ was created in 2002 to carry out the initial training for the junior Judges, junior Prosecutors and junior Investigators and to maintain and improve the qualification of all Magistrates. Immediately after assuming office, junior Judges, junior Prosecutors and junior Investigators are required to participate and pass an obligatory six-month course for their initial training in the National Institute of Justice [art. 35g (2) amend., S.G. 61/03 in force from Jan 1/04].

Pursuant to 2003 amendments to the JSA, the NIJ is now required to provide a compulsory six-month training course to all newly-appointed junior Judges, junior Prosecutors and junior Investigators, immediately after taking office, reducing the compulsory initial training programme from one-year to six months and changing the sequence of training from pre-appointment to post-appointment, eliminating the use of the performance during training as a criterion for judicial appointment.

Art. 147 (2) and (3) and art. 148 (1) and (2) (JSA suppl., SG 29/04) provides that after being appointed by the SCJ, the junior Judges are appointed in a district court, the junior Prosecutors in a district or a regional Prosecutor's office and the junior Investigators in a district investigation office for a two years term which may be prolonged for six months. Junior Judges take part as members when hearing cases with a membership of Judges. Only one Junior Judge can take part in the membership. Upon expiration of the two years term referred in art. 147.2 JSA the Junior Judges, the Junior Prosecutors and the Junior Investigators shall be employed to a position of regional Judges, Prosecutor in a regional prosecution or Investigator in a district investigation office

2.2.- APPOINTMENT OF MAGISTRATES WITHOUT A COMPETITION.

With the miscellaneous amendments to the JSA (S.G. 74/02, 61/03 and 29/2004) the provision of article 127a, (1) was changed, as the **competition** for initial appointment within the judiciary is referred exclusively to the appointment of **junior Magistrates**. In addition to the appointment of *junior Judges, junior Prosecutors and junior Investigators* to the bench, experienced individuals or persons with *time of service at a position or by profession for which higher law education and qualification* is *required* (law degrees) including length of service of the persons with higher law education at a position of preliminary Investigators in the system of the Ministry of Interior [art. 127 (5)] may be firstly appointed to the bench without having undergone a competition and almost no evaluation requirement, because art. 127 (1) in fine stipulates that as an exception, when there is no other candidate, a person can be appointed without the required length of service.

Then, apart from the exceptional situation above mentioned, a person with at least two years of legal service may be appointed to a district court, prosecution office or investigation service; with at least five years of legal service to an appellate court; with at least eight years of legal service for the heads of the district courts, Prosecutor's offices and investigation services, and the requirements; and at least twelve years of legal service for the heads of the Supreme Cassation Court, the Supreme Administrative Court, the Supreme Cassation Prosecution, the Supreme Administrative Prosecution, the appellate courts, the appellate Prosecutors and of the National Investigation Service, [Id. art. 127(1)-(4)].

There is no percentage established in order to limit the number of appointments that can be done by this procedure in relation either with the positions included in announces of competition or the vacancies in superior rank positions. Rules and objective criteria for the direct nominations is also missing.

3.- PROMOTION

3.1-GUARANTEE TENURE. [Law amending the JSA, S.G. 29/2004].

After completing five years in office (instead of the three years of service) and obtaining a positive evaluation conducted by the *Committee for proposals and testimonials* at the SJC, [new art. 30b(1) JSA], Judges, Prosecutors and Investigators acquire *"irremovability status"* and have essentially granted life tenure, [CONST. art. 129(3) SG. 16 sep. 2003 & JSA art. 129(1)]. The requirement of five years term of practice includes the two years served as a junior Judge, junior Prosecutor or junior Investigator, [JSA art. 129(1)].)

3.2-JUDICIAL ADVANCEMENT CRITERIA.

Although the Supreme Judicial Council (SJC) continues to have the ultimate authority to promote Judges, Prosecutors and Investigators [*see* CONST. art. 129(1) & JSA art. 27.(1).4], the **process of promotion**, including the qualifications for promotion, have recently undergone major changes. Legislative changes introduced in the JSA art. 142 (2) (new - SG 133/98; amend., SG 74/02) stipulate that a Judge, a Prosecutor, an Investigator, after at least three years have been served at the corresponding or made equal office, can require to be promoted in rank and salary either through the persons of JSA art. 30 or directly :Those proposals shall be made to the Committee for proposals and testimonials at the Supreme Judicial Council [art. 30a (1) JSA]. The decisions on the proposals shall be adopted by a majority of more than half of the total number of all members of the Supreme Judicial Council by a secret vote [art 30b (72) JSA and art. 131 Constitution SG. 26 sept. 2003],

3.3- APPOINTMENT OF ADMINISTRATIVE HEADS OF BODIES OF THE JUDICIAL SYSTEM

a) President of the regional, district and appeal courts

Recommendations for appointment to the position of president of the regional, district and appeal courts must be made by the president of the immediate higher court, and may also be made by one-fifth of the members of the SJC or by the Minister of Justice, and then submitted to the COMITEE FOR PROPOSALS AND TESTIMONIAL [*Id.* arts. 30(1), 30(2), 30(4), 30a(1)].

Appointment to the position of president of district and appeal courts is limited to a five-year term, and may be renewed only once. [CONST. art. 129(5); JSA art. 125a(5)]. The chairman of the Supreme Cassation Court, the chairman of the Supreme Administrative Court and the Chief Prosecutor shall be appointed for a period of 7 years by the order stipulated by the law, without a right of re-election. [art. 125a (4) JSA].

In assessing the performance of Judges proposed for promotion, the REC must base its decision, in part, on the opinion of the relevant court president; the number, type and complexity of cases the Judge has managed; the Judge's compliance with timelines; and the number of judicial decisions upheld and reversed, and the reasons for such reversals. [Id. art. 30b(4)].

b) President of the Supreme Court of Cassation and the Supreme Administrative Court

The procedures for appointing the presidents of the Supreme Court of Cassation and the Supreme Administrative Court have also undergone several changes. Previously, the law allowed the general assemblies of the Supreme Courts to initially propose a nomination for their respective president, later permitting anyone member of the SJC to propose a nomination. Now the law requires that one-fifth of the members of the SJC or, alternatively, the Minister of Justice, propose the resolution of the nomination. At least two-thirds of the members of the SJC may nominate individuals to the two positions. [art. 28 JSA].. Following their nomination, the candidates are appointed by the President of the Republic of Bulgaria for a non-renewable term of seven years. [CONST. art. 129(2); JSA art. 125a(4)].

c) Art. 125 b (2) JSA provision

In both cases, according to art. 125b (2) JSA, Judge, Prosecutor or Investigator may be appointed as administrative head or his deputy in the bodies of the judicial

system. When the appointed administrative head or his deputy is a person who does not occupy the position of Judge, Prosecutor or Investigator the Supreme Judicial Council shall appoint him simultaneously at the respective position and, where necessary, it will open a position in the respective body of the judicial system.

4.- DOWNGRADING

According to art. 170 JSA it can be a loss of rank which is deemed as disciplinary responsibility

D) PROBLEM INVENTORY; PROPOSED SOLUCIONS

1) COMPONENT 2: GENERAL PRINCIPLES AND DISCIPLINARY LIABILITY

1.1.- JUDICIAL BRANCH IS COMPOSED BY JUDGES, PROSECUTORS AND INVESTIGATORS.

PROBLEM: There are three different bodies: judges (who develop the jurisdictional functions), prosecutors (who develop functions in the criminal jurisdiction and their duties are similar than in the Spanish legislation because they work under the principle of subordination) and investigators Magistrates (who carry out preliminary investigation in the cases provided for by law and investigate cases of particular factual or legal complexity).

The body of investigators Magistrates is established by the Constitution and develops their functions only in pre-trial investigations in relation with very complex crimes under the control of the Public Prosecutor Office.

Nowadays is being under discussion the eventual abolition of this body or the limitation of their competences. It was pointed out that, although regarding to the Investigator's function there seems to be no point in drawing an equivalency with both the Judge's and the Prosecutor's, the nowadays discussion for abolition an limitation could mean a risk for independence principle as all the criminal investigations will be done directly by the police who is under de Ministry of Interior.

1.2.- DAMAGES TO THE INDEPENDENCE PRINCIPLE.

PROBLEM: There is not a description of the independence principle.

PROPOSAL OF SOLUTION: It is necessary to establish a description of this principle, distinguishing the independence ad intra and ad extra, and regulating a specific process to follow when a judge considers that his/her independence is in damage. Il could be necessary to introduce a description of the subordination principle such as a basis of the public prosecutor structure.

PROBLEM: The Chairmen of the Supreme Cassation Court (art. 90.4 Law), the Supreme Administrative Court (art. 100.4), the Appeal Court (art. 79.7 and 78) and the District Court (art. 63.6 and 62) have the faculty to propose the allocation of judges in colleges and departments. Debate if this regulation is respectful and guarantees this principle of independency and elemental requirements of the principles of merit, equality and ability. Risk of taking decisions to "satisfy" their superiors.

SOLUTION: New competences of the Supreme Judicial Council for these appointments, its conditions and procedure in order to offer guarantees in this process that avoid this serious risk.

PROBLEM: There is a lack of independent budget for the judiciary and this is a risk for de independence principle.

SOLUTION: To establish on law a compulsory minimum percent of General Budget of the State for Judiciary.

1.3.- IRREMOVABILITY PRINCIPLE:

According to the recent reforms following EU recommendations Judges, prosecutors, investigators acquire irremovable status and have essentially granted life tenure, after completing five years in office and obtaining a positive evaluation conducted by the Committee for proposals and testimony at the Supreme Justice Council (art. 30 b, 129 Law).

With this system there is a guarantee to evaluation the capacity of the judges.

1.4.- DAMAGES TO IMPARTIALITY PRINCIPLE.

PROBLEM: There is not a description of this principle.

PROPOSAL OF SOLUTION: It is necessary to approach a legal definition of this principle, because the Bulgarian law only consider the consequences of this principle (art. 5 and 6 JSA) and improve the current and fragmentary regulation (art. 25 Criminal Proceeding Code and art.12 Civil Proceeding Code) of the specific situations in which a judge would became partial, and the proceeding to remove him/her from the specific case (abstentions and objections).

1.5.- DAMAGES TO UNITY PRINCIPLE.

PROBLEM: There is not a definition of this principle.

PROPOSAL OF SOLUTION: It is necessary to establish a definition of this principle and regulate with details it to complete the current references (art. 1 JSA) to the consequences of this principle.

1.6.- DAMAGES TO IMMUNITY PRINCIPLE

Recent amendments to the Constitution and the Law for the Judicial System were done according to recommendations from the EU.

1.7.- LACK OF PRINCIPLES´ DEFINITIONS

PROPOSAL OF SOLUTION: It is necessary a complete regulation of each principle in a methodical way, especially for the independence, impartiality and unity principle.

1.8.- DAMAGES TO RESPONSIBILITY PRINCIPLE.

PROBLEM: Provide a full and integrated regulation for the criminal and civil responsibility.

PROPOSAL OF SOLUTION: Draft proposals to rule this subject.

PROBLEM: In relation with the disciplinary liability, there is not a comprehensive regulation on this subject with a definition of the actions that would be considered an infringement. There is not a complete regulation of the procedure and its guarantees. The current regulation has a catalogue of sanction (art. 170 JSA) but without a description of their and without a link between each infringement.

PROPOSAL OF SOLUTION: Draft proposals to rule this subject.

PROBLEM: The current regulation contains many procedural rules (arts. 172-186Law), but it is not regulated in a comprehensive way.

PROPOSAL OF SOLUTION: Taking a view of the regulation of the process established in the Law, it is compulsory to develop a logic and methodical regulation of all the stages in the proceedings. The proposal must contain: the beginning (the start of the process, the instructor and the proposal), the development (audience of the responsible, evaluation of the evidence, presentation of documents) and the resolution with the possibility of appeal.

PROBLEM: The Supreme Justice Council has the authority to decide disciplinary cases but there is no permanent Disciplinary Commission to take decisions and no Unit in the Supreme Judicial Council to provide information and conclusions to the Disciplinary Commission and to the Evaluation Commission.

PROPOSAL OF SOLUTION:

Provide a comprehensive secondary legislation on the subject and a permanent institutional structure (commission, units, staff) inside the Supreme Judicial Council regarding the disciplinary liability.

2) COMPONENT 3: MECHANISMS FOR THE SELECTION, APPOINTMENT, PROMOTION AND DOWNGRADING OF MAGISTRATES (JUDGES, PROSECUTORS AND INVESTIGATORS)

2.1 THE CONCEPT "MAGISTRATE"

Below the word magistrate are joined very different professional categories. It can be thought of an equivalency between judicial and Prosecutors careers, but only at the selection stage. Beyond from this moment the principles which lead each profession are different and sometimes even incompatible. Consequently the field for discussion to have separate councils one for the Judiciary and one for the Prosecution and to place the Prosecution in the Ministry of Justice is opened.

The body of investigators Magistrates is established by the Constitution and develops their functions only in pre-trial investigations in relation with very complex crimes under the control of the Public Prosecutor Office.

Nowadays is being under discussion the eventual abolition of this body or the limitation of their competences. It was pointed out that, although regarding to the Investigator's function there seems to be no point in drawing an equivalency with both the Judge's and the Prosecutor's, the nowadays discussion for abolition an limitation could mean a risk for independence principle as all the criminal investigations will be done directly by the police who is under de Ministry of Interior.

2.2 DIRECT APPOINTMENT OF MAGISTRATES

a) Lack of objectivity, lack of regulation, lack of guarantees

Art. 127a) JSA does not require any qualification for applicants out of their length of service. This rule, apart from going against the foundations of an independent judicial power, shall discourage applicants through the competitive procedure so that superior rank positions are directly covered and the gaps are filled avoiding junior Magistrates to get into attractive positions after passing their two first professional exercise years or upon obtaining irremovability status. The Supreme Judicial Council did not produce a regulation of this issue in order to avoid arbitrariness. The decisions of the Council must be also subjected to the law.

b) No limit in the number of appointments

There is no percentage fixed between the number of positions to cover by direct appointment and applicants to become magistrate after undergoing competition

process or to get upgrade within their respective bodies. It is a major obstacle to shape a real career. Moreover, it eases public power ways of influence over Judicial Power which can be modelled at convenience opening, as a result, a dangerous path to corruption and nepotism. Simultaneously it demoralizes junior Magistrates who are overtaken by other professionals without judicial experience, without any control and without any training.

2.3 TRAINING AT NIJ

The training stage at NIJ is not valuable to form the overall mark of aspirants as junior Magistrates access their appointment before undergoing it.

This seems a major flaw as the trainees are not encouraged by the result of the practice period.

The situation regarding with the directly appointed Magistrates is even worse. Those do not even have to attend any practice period at NIJ. As a result the established system of direct access into a position of Judge, Prosecutor or Investigator allows entering individuals with no judicial experience to superior rank positions so that there is neither guarantee nor control of the real professional competence of directly appointed Magistrates.

2.4 PROMOTION

a) Guarantee tenure

The procedures envisaged by the April 2004 amendments to the JSA, represents a positive change not only because enlargement of the practice term means more professional experience qualification, but also for the creation of a national evaluation mechanism by which all Judges will be assessed under the same standardized and centralize procedures in contrast to the past during which evaluations were conducted locally.

Despite that advantage, a problem can be remarked. During this five years period the Judges, Prosecutors or Investigators don't have tenure so they can be forced to give Judgements, pass sentences or make decisions trying to satisfy those who have to issue the testimony referred at art. 30 b). It could easily place Magistrates in a subordinate way of working incompatible with independence and subservience to the law principles which rule the acts of the Judicial branch of Government (art 117 Constitution

b) Administrative heads.-

N*ew Art.125B, para 2* sets a rule that allows people from outside the judiciary (attorneys, notaries, law professors, legal experts etc.) to become court chairperson. In such a case Supreme Judicial Council shall give the individual respective title and function as a Judge, Prosecutor or Investigator, as the case may be. Then Courts may be managed by people with no judicial experience, selected on unclear criteria (discretion of their superiors) and the chairpersons are responsible for the selection of the Judges in their courts.

On the other hand, *Art. 30 para 1, p.11* JSA allows Chairpersons of the Regional courts to make proposals for appointment of Judges in their courts. (*Art. 30* before amend., just Chairperson of the District Court can make proposals for appointment of Judges to the Regional courts of their Judicial district).

Accordingly, as there is no real judicial district oversight of the appointment process and external candidates, with legal but no judicial experience can be appointed directly heads of courts, prosecution and investigation services (and subsequently, they are supposed to make the selection and proposal of candidates for Magistrates on their solely discretion), the opportunity for placement of Junior Judges into the Regional Courts is minimized.

2.5 DISCIPLINARY RESPONSIBILITY

1.- Allowing only the presidents of courts to submit a recommendation to discipline or a recommendation for removal imposes a heavy burden on these few individuals who, for a variety of reasons, may be dissuaded to file a valid recommendation

2. - By limiting the initial investigation to 14 days, the timeframe is too short in order to allow for a thorough examination of the facts, before any disciplinary proceeding is initiated.

3. - Further, mandating formal disciplinary proceedings in certain cases limits the SJC's discretion to dismiss groundless claims, while subjecting innocent Judges, Prosecutors or Investigators to unnecessary public scrutiny

4. - Additionally, the new category as a basis for removal of Judges, "activities undermining the judicial system's prestige", is too general and vague. Without specific guidelines, the SJC, and, if its decision is appealed, the SAC has considerable discretion to widely/broadly interpret the category.

2.6 JUDICIAL ADVANCEMENT CRITERIA

The criteria fixed in art. 149 JSA introduce to some degree, the objective principle of merit into the promotion process.

The risk of basing promotion on court records and statistics [(art. 30b (3) JSA], that are essentially a compilation of numbers is to promote Judges who concentrate on the quantity rather than the quality of their work. Judges work must always be a question of quality not of quantity.

Nevertheless, these two last issues belong to the Components Two and Four of the Project and any conclusion in this ground should be liaised with further results reached within those Components.

2.7 WAY AHEAD FOR THE IMPROVEMENT OF THE SELECTION, APPOINTMENT, PROMOTION AND DOWNGRADING OF THE MAGISTRATES IN THE REPUBLIC OF BULGARIA

Preliminary note: through the next points will be described the steps to follow to be appointed magistrate either by competition or not. In either cases, a stage at the NIJ must be undergone by the trainees. According to the discussions, this stage can be deemed as a part of the initial training to become Magistrate or as a part of the practical exercise of the profession having been appointed magistrate which will be evaluated altogether with the first work period as Judge, Prosecutor or Investigator.

That is why it will be proposed alternative options.

2.7.1 GENERAL PRINCIPLES FOR THE SELECTION AND APOINTMENT OF JUNIOR MAGISTRATES

1.- A procedure to foresee the vacancies at the lowest courts which will have to be covered in the next year need to be established. In order to set a way of foreseeing future needs, it is proposed the following structure for a possible further national procedure of selection:

- Proposal to the SJC from the different Administrative Heads in order to take knowledge of needs
- Budgetary assessment by the SJC and report to the Government of needs within the Judiciary
- National Budget gives a final budgetary assignation to create new positions

- The positions budgetary covered are to be opened to be covered by competition

2.- The competitive procedure must be held once a year or each two years at least on a national basis, not regional.

3.- The SJC must annually set out and announce in the S.G. the number, positions and judicial bodies for which a competitive procedure will be held during the next year. Also must be published the date of competitions and the start date for the initial training at the NIJ.

4. - The positions may be occupied as at the time of announcement of the competition but it may be expected that they will be vacated.

5. - The competition will be organized by the SJC administration in coordination with the NIJ.

6. - The competition will consist like current regulation of a written and an oral exam, but the written exam must be aim at reducing the applicants to an acceptable number so that the oral exam can be held by one Competition Committee or Board only in order to improve the objective criteria.

7. - Depending on the numbers of applicants, the SJC may designate no more that three Competition board, hosted in the same venue, to hold a single competition.

8. - The four regular members and the chairman of the competition board must be totally dedicated to it during the business or working days when the competition is held.

9. - Junior Magistrates must be appointed after a competition procedure complete with an initial training at the NIJ, as a pre-condition to be appointed according to the EU standards.

The NIJ training, six months time long, must be a compulsory initial training program required to provide before to the appointment of the junior Judges and Prosecutors. The time for initial training shall take into account that later on control through the guarantee tenure is also set in the law.

The approach of study plans at the NIJ must be mainly practical. During this time trainees may not administer justice, (just the performance of draft resolutions).

A final examination or evaluation must follow the completion of the training course.

A person who has not completed the training successfully may have the opportunity to repeat the course just once.

Alternative: Magistrates will undergone a practice period at the NIJ after being appointed magistrates and for a period of six months.

The approach of study plans at the NIJ must be mainly practical. During this time trainees may not administer justice, (just the performance of draft resolutions).

A final examination or evaluation must follow the completion of the training course. The outcome mark of the stage at the NIJ will be taken into account in the evaluation that will be issued by the SJC before tenure is granted to each magistrate after the practice period in a court.

10.- Those who have successfully completed the competition process and the training stage will be appointed in the respective judiciary bodies. The judicial candidates will choose the place of their first appointment in view of their results. Thus, every judicial candidate's overall mark comprises the mark from the competition and the continuing evaluation during the training in the NIJ.

Alternative: Those who have successfully completed the competition process and the training stage will be appointed in the respective judiciary bodies. The judicial candidates will choose the place of their first appointment in view of their results.

11.- Training at the NIJ will also be considered length of service, under Art. 127, para. 5. JSA.

12. - The provisions of art. 11, (2), art. 12, (1) and (2), art.132, (1), art. 136, art.137, art.138, art. 139c of the JSA, will also apply to judicial candidates.

13. - Disciplinary power over the judicial candidates is exercised by the NIJ Management Board and NIJ Director unless the matter concerns dismissal from the NIJ in which case the SJC has competence about this upon proposal from the NIJ Management Board.

2.7.2 APPOINTMENT OF MAGISTRATES WITHOUT A COMPETITION.

1.- A procedure to foresee the vacancies at the higher courts which will have to be covered in the next year has to be established. In order to set a way of foreseeing future needs, it is proposed to follow proposed in point 1 of the former paragraph.

The direct nomination without competition is an option not necessary and is dangerous for the general principles of the judiciary. Suggestion for its elimination was highly mentioned.

2.- In order to create a screening mechanism to control quality of applicants outside of the judicial system, such as a lawyer, a sort of competitive procedure or a

exam (specific for then) must be established followed by an initial training at the NIJ before getting the position.

Alternative: In order to create a screening mechanism to control quality of applicants outside of the judicial system, such as a lawyer, a sort of competitive procedure or a exam (specific for then) must be established followed by an initial training at the NIJ after getting the position.

3. - Applicants outside of the judicial system must have at least five years length of service to apply for the position.

4. - The number of the vacant positions offered to them must be legally predetermined, (maximum 1/5 of all the positions offered to the respective judiciary body). It should be split two different levels of accession: either to Junior Magistrate category or to superior rank positions. In either level the percentage should be fixed in relation with the vacancies that are foreseeable to be covered. Memberships of bodies of the judicial system are to be entitled to apply for a position before it is offered to outsiders.

5.- Any decision taken in this issue must be taken in the framework of a special regulation respectful with the principles of transparency, objectivity, merit, equality and capacity.

2.7.3 PROMOTION

a) Guarantee tenure. [Law amending the JSA, S.G. 29/2004]

The procedures envisaged by the April 2004 amendments to the JSA, (art. 30b) on acquiring a status of immovability represent a positive change towards the creation of a national evaluation mechanism by which all Judges will be assessed under the same standardized and centralize procedures in contrast to the past during which evaluations were conducted locally.

Despite that advantage, this five years period of lack of inamobility can collide against independence principle.

It would be advisable to find a half point way where practical evaluation of Magistrates respects the judicial independence principle according EU standards. While the magistrates are during the practice period on court, their mechanism of defending Junior Magistrates before pressures must be strengthened.

b) Judicial advancement criteria.

1.- The criteria used to evaluate the performance of a Judge for promotion must not be limited to the length of service, the number and type of cases assigned to a Judge, the number of reversals, and the Judge's compliance with timelines, particularly

given the manipulation of case assignment and the flawed appellate procedure. Those criteria facilitate that some Judges might believe that their superiors are more concerned with the statistics of case management rather than the integrity of the judicial process. The solution for that deleterious effect on the work product of Judges allows us to suggest that an advisable canon for promotion, as well as for tenure, should be expanded to specifically include the quality of the Judge's judicial decision-making process, including its objectivity and neutrality, the Judge's character for honesty and integrity, and the Judge's professional excellence and experience.

2. - The effect of having legal professionals who are not actively serving as a Judge as a court president or vice president [art. 125b(1) JSA], may result in a demoralized judiciary where political considerations rather than professional occupation as a Judge is the determinative factor for promotion. Then the candidates for the presidency or vice-presidency of these courts, prosecution or investigation offices must have previously qualified to serve as a magistrate (Judge, Prosecutor or Investigator), and be required to be currently serving as a sitting Judge, Prosecutor or Investigator.

3.- In accordance with the current procedure, the evaluation of Magistrates actually follows the initiative for promotion, have a evident risk when there is a determination of the relevant administrative head for promotion of a certain magistrate, [art. 167a (3) JSA] an evaluation of him/her is being conducted overall others. A better legislative solution would be if an obligatory and annual evaluation of all Magistrates is introduced. This would allow for an objective comparison between them and namely the results from the evaluation would be a ground for promotion initiative. Thus, one of the most recent steps in this respect is the expected establishment of a working group for preparation of amendments in the regulation for evaluation of Magistrates before the end of 2004. Consequently, the Supreme Judicial Council will further clarify the issues in this subjective matter.

3) COMPONENT 4 EVALUATION OF THE MAGISTRATES' WORK

3.1.- INTRODUCTION

Verification of the quality of Magistrates' work rests on the following general principles and aims:

1.1. Judicial independence;

1.2. Objective criteria;

1.3. Transparent legal framework;

1.4. Quality, efficiency and agility of the system;

1.5. Quality supercedes quantity;

1.6. Enhanced motivation of magistrates;

1.7. Bulgarian law harmonised with the European standards.

1.8. Clear criteria for skills and abilities.

1.9. Simplified

3.2.- PROBLEM INVENTORY

3.2.1. Several sources of regulations

PROBLEM: There are regulations on the verification of the quality of magistrates work in the Judicial System Act, in the Temporary Rules on the Procedure for Appraising the Work Performance of Judges, Public Prosecutors and Investigators, as well as in the Code of Ethics of the Bulgarian judges and prosecutors.

PROPOSED SOLUTION: The rules on this subject-matter should be improved and developed in the secondary legislation in a comprehensive way.

3.2.2. Doubtful criteria for skills and abilities of magistrates

PROBLEM: The criteria for skills and abilities of magistrates are not sufficiently clear or valid;

PROPOSED SOLUTION: There should be new criteria for the skills and abilities providing a clear specification of the skills and abilities, based on aspects such as:

Specialised knowledge

Analytical thinking

Ability to decide

Verbal and written expression

Cooperation

Persuasion and negotiation skills

Skills in public sittings

Reliability and attitude to work

Flexibility, including the use of new technologies

Participation in advanced vocational trainings

Punishments or disciplinary sanctions

These aspects should be specified and defined.

As concerns the personality and work attitude of judges and prosecutors, the relevant Bulgarian codes of ethics should to be considered.

3.2.3. Difficulties with the quantitative evaluation

PROBLEM: The Bulgarian statistical data are not valid for evaluation purposes.

PROPOSED SOLUTION:

- Quantitative evaluation constitutes a major part of the appraisals rules. However, the number of files and cases and the time taken by a Magistrate (Judge, Prosecutor, Investigator) is not an objective way to measure the value of their work. Objective indicators must be established nationwide. A workload system must be implemented in order to evaluate the work of an individual Magistrate. But there are further reasons to justify the introduction of such a system, such as:
    - Calculation of workforce
    - Evaluation of the effectiveness and capacity of the judicial system
    - Personal planning
    - Transparency and fair distribution of work
    - Motivation of the magistrates
    - Budgeting
    - Consequences for the individual magistrate

- Workloads should be established for the relevant categories of cases and for the different levels of courts and offices considering the differences in their

organization, procedure, and differentiation between first instances and appeal. Take into account the special workloads, as for example administrative work; exceptions should be made for regional differences, excessively complex cases and special matters among others. The system should be defined by the number of comparable proceedings of certain kinds of cases to be dealt with within a year.

3.2.4 . Difficulties with qualitative evaluation

PROBLEM: The current qualitative evaluation is not valid.

PROPOSED SOLUTION: The most difficult problems are connected with the qualitative evaluation. The number of confirmed, rescinded, modified and abandoned cases due to the higher instance control is an uncertain indicator of quality and causes damage to the principle of independence. A high number of confirmed cases might be mentioned in the appraisals as a positive aspect. On the other hand, too many serious faults in the proceedings rules can be considered a negative aspect.

3.2.5. Nationwide appraisals

PROBLEM: No uniform standards of evaluation.

PROPOSED SOLUTION: This can be improved as follows:

- The appraisal should take the form of a written statement that draws on the said criteria. A unform official form including the criteria (see above) should be used for all magistrates nationwide to ensure equal standards;
- The different careers within the Judiciary should carry different job specifications. So the ideal profiles may differ.

3.2.6. Reasons and occasions for appraisals

PROBLEM: The regulation of the reasons and occasions for appraisals is not sufficiently clear.

PROPOSED SOLUTION:

- The appraisals should be conducted periodically or occasionally;
- Consider periodical appraisals of life-time magistrates every 4-5 years. An annual appraisal for all magistrates is not useful, it requires a lot of work and has no practical application.
- The occasional appraisals are necessary for the following reasons:
    - Appointment

- Promotion
- Changing positions within the Judiciary System
- Magistrates without a competition

3.2.7..The procedure of appraisals

PROBLEM: The Comission for Proposals and Testimonials has no personal impression of the appraised magistrate and has to evaluate the data of other authorities (statements of administrative heads, statistics);

PROPOSED SOLUTION:

- These difficulties should be the reason to establish a new unit in the Supreme Judicial Council in order to introduce equal stadards and valid appraisals nationwide.
- This new " unit" or "Evaluation Board" should prepare the decisions of the Commission for Proposals and Testimonials. The rationale is to enhance the efficiency and provide comprehensive knowledge on the evaluation, as well as protect the independence of Magistrates from local heads of administration.
- The new unit can collect information from different sources such as:
  - Statistical data (if possible based on a new workload system, see above)
  - Abilities and skills known only by the local administrative heads of the magistrates (cooperation skills, use of new technologies, etc.) who can report in written by a fact-based statement.
- The new unit should also obtain a personal impression of the applicant appraised and attend some performances and sittings.
- In case of evaluating magistrates without competition the unit should have special resources for evaluation.

3.2.9 Codetermination

PROBLEM: The Commission for Proposals and Testimonials is comprised of members who are at the same time members of the SJC.

PROPOSED SOLUTION:

- Discuss if instead of placing all the evaluation competences inside the Supreme Judicial Council, the creation of two boards of codetermination can

be a better alternative ensuring the impartiality and objectivity. If it is the case, two boards are proposed: one for judges, the other for prosecutors / investigators. The judges and all prosecutors/investigators in Bulgaria will elect the boards, which will then receive all the information from the Commission for Proposals and Testemony (statistics, statements, written apraisals).The codetermination board will agree or disagree with the proposal of the Commission. In case of disagreement a special settlement procedure must be considered.

E) SECONDARY LEGISLATION: PROPOSALS FOR STRUCTURE AND DRAFT INDEX

TITLE I: GENERAL PRINCIPLES FOR MAGISTRATES.

Chapter I. Unity and exclusive jurisdiction principles.
Chapter II. Independence principle
- **Section I. Definition**
- **Section II. Independence inside the judicial system**
- **Section III. Independence in relation with others powers.**
- **Section IV. Legal Remedies (guarantees against illegal pressures)**

Chapter III. Impartiality principle (definition)
Chapter IV. Irremovability principle (definition).
Chapter V. Responsibility principle (description)
Chapter VI. Special regulation for Investigating Magistrates.

TITLE II: LEGAL STATUS FOR MAGISTRATES.

Chapter I. Professional duties
- **Section I. Judges**
- **Section II.Prosecuters**
- **Section III.Investigators**

Chapter II. Forbidden activities and incompatibility.
Chapter III. Irremovability. Consequences.
Chapter IV: Immunity. Consequences.
Chapter V: Impartiality:
- **Section I. Consequences.**
- **Section II. Abstention**
- **Section III. Challenge**
- **Section IV. Procedure**

TITLE III: SELECTION AND APPOINTMENT OF MAGISTRATES.

Chapter I. General provisions

Chapter II. Announcement of competition
Section I General provisions on vacancies forecast
Section II Free competition to Junior Magistrate
Section III Direct appointment of Magistrates
Chapter III. Application and eligibility rules for free competition
Section I. Competition
(proposal for opening competition, requirements of the applicants, exercises of the competition, competition Board, development of the competition, evaluation of applicants).
Section II. Practise in the National Institute of Justice
(period of time, legal status of applicants in practices and evaluation).
Section III. Appointment of junior Magistrates and their legal status.
Chapter IV. Direct appointment of Magistrates
Section I. General principles, proposal and requirement of the applicants.
Section II. Committee of Evaluation
Section III. Evaluation principles and criteria. The decision making
Section IV. Appointment
Section V. Procedure and judicial review
Chapter V. Special provisions for the Investigators

Title IV: INAMOBILITY STATUS

Title V: PROMOTION OF MAGISTRATES

Chapter I. General principles and criteria for the designation of positions

Section I. Judges.

Section II. Prosecutors

Section III. Investigators

Chapter II. Competent body

Chapter III. Procedure

Chapter IV. Appeal or judicial review

Chapter V. Specialization of Judges and Prosecutors

Chapter VI. Special rules for the change of judicial bodies and jurisdictional order. Changes in the Prosecution Office

Section I. Judges.

Section II. Prosecutors

Section III. Investigators

Title VI: DOWNGRADING OF MAGISTRATES

Chapter I. General provisions

Chapter II. Judges

Chapter III Prosecutors

Chapter IV Investigators

Title VII: RESPONSIBILITY OF MAGISTRATES.

Chapter I. Civil responsibility

Chapter II. Criminal responsibility

Chapter III. Disciplinary responsibility:

Section I General principles

(definition, legality principle, non bis in idem, proceeding guarantees).

Section II. Catalogue of infringements

a) For Judges

b) For Prosecutors

c) Investigators.

Section III. Persons to be liable

Section IV . Catalogue of punishments or sanctions.

a) For Judges

b) For Prosecutors

c) For Investigators.

Section V. Extinction of the disciplinary liability
Section VI. Disciplinary Procedure
a) Competent bodies
b) The starting of the procedure
c) The development of the procedure
d) The finalization of the procedure
e) The judicial review or appeals
Chapter IV. Responsibility of the State:
Section I. Error
Section II . Improperly Justice Administration.

Title VII: EVALUATION OF MAGISTRATES
Chapter I General principles for evaluation

Section I General criteria and principle
Section II Skills and abilities: Knowledge Competence, Personality Competence, Social Competence
Section III Nation wide system for all careers and positions of the Magistrates
Section IV Transparency
Section IV Equality

Chapter II Information for evaluation
Section I Written appraisals
Section II Quantitative measurement
I Statistics containing valid data
II Work time estimations
III Workload system

Section III Qualitative measurement
I Fact based statements
II Decisions (judges)
III Dossiers (prosecutors)

Section IV Written statements of the administrative heads
I Cooperation competences
II Other competences limited to local experience

Chapter III Criteria in the written appraisals for competences, skills, abilities

Section I Detailed list of criteria
Section II Definitions of the criteria

Chapter IV Form of the written appraisals

Section I Uniform schedule (form, schedule) for all different careers and positions of magistrates
Section II Alternative: Different schedules for different positions (judges, prosecutors and investigation officers)

Chapter V Written appraisals procedure

Section I Evaluation Unit
Section I The board prepares the decisions of the Commission for Proposals and Testimonials
Section II Permanent unit for professional evaluation
Section II Evaluation by the unit
I Information gathering(Chapter II)
II Hearing of the magistrate
III Evaluation of statistics, files and performance of the magistrate

Chapter VI Reasons and occasions for appraisals

Section I Periodical
Section II Occasional
I Irremovability status
II Promotion
III Trial period
IV Change of positions in the judiciary
V Assessment without competition

Chapter VII Competent bodies

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F) STRUCTURAL AND ADMINISTRATIVE REQUIREMENTS IN THE SUPREME JUDICIAL COUNCIL

1. Provide a permanent institutional structure (commission, unit and staff) inside the Supreme Judicial Council regarding the disciplinary liability.
2. Provide a permanent institutional structure (commission, unit and staff) inside the Supreme Judicial Council regarding the evaluation of the work of the magistrates.
3. Alternatives for a codetermination board.

G) IDENTIFIED NEEDS OF AMENDMENTS IN THE MAIN LEGISLATION

1. Constitution. Article 132.1 says "While administering justice judges, prosecutors and investigating magistrates shall not be held liable for any law for their acts during office...". However article 169 JSA says " the disciplinary responsability shall be born regardless of the civil, criminal and administrative responsability if so stipulated". If the secundary legislation makes references to the civil and criminal responsibility of magistrates, constitutional modification may be necessary.
2. State Liability Act may require modification in its art. 80 to refer to the civil responsibility of magistrates. This kind of responsibility must be mention by law and its development must be done by secondary legislation.
3. Classified Information Act. Art39.3.3. establish difficulties for access to all levels of information on proceedings investigation for liability with regard to classifies information used by judges , prosecutors and investigators.
4. Penal Code. It could be necessary to introduce new offences to improve the independence principle from illegal pressures on magistrates. It could be insert in chapter dedicated to crime against the judiciary.
5. **Art. 35 g) JSA** This article imposes that the training stage at the NIJ must be undergone by trainees after being appointed as Magistrates. If finally it is decided to change the order Magistrates have to undergone the NIJ period this article should be amended.
6. **Art. 125 b (2) JSA.** This article makes it possible to appoint as Administrative Heads of Courts people without judicial background. It is advisable to amend this provision to avoid this risk of damage to essential principles of the judiciary.

7. **Art. 127 a) JSA.** This article allows appointing Magistrates with no more qualification than length of service in legal professions. This article must be overruled. The regulation should aim at establishing a procedure on the basis of the criteria described above (point 2.7.2).
8. Possibility to amend the JSA in order to establish the competition as the only way of access to the position of judge, prosecutor and investigator. Direct nominations is not necessary if there is a good plan and experience clearly shows that direct nomination without competition is a door open to abuses.