EUROPEAN UNION

PHARE TWINNING PROJECT BG-04-IB-JH-04
Improvement of the Magistrates' Legal Status and Strengthening the Capacity of the Supreme Judicial Council

CONSOLIDATED DRAFT OF THE AMENDMENTS TO THE JUDICIAL SYSTEM ACT PASSED ON THE FIRST READING 7 APRIL 2006

24 April 2006

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General remarks:

1.- The following comments constitute only a general approach, a quick and not in depth analysis of the current situation in the amendment of the JSA.

2.- The acceptance of the recommendations produced by this project regarding the Constitution (new item 16 in article 84, new paragraph 4 in article 129 and new article 130a) has been non existent and regarding the amendment in the Judicial System Act is imperceptible although in the report produced on 28 November 2005 the conclusion was that "*although the proposals for reform presented by the Ministry of Justice introduced positive improvements in the selection of junior magistrates and in the new draft of articles 147 (2) and 148 (3), its scope is clearly too short and does not give all the necessary and expected answers to satisfy the current necessities and concerns about the situation of the justice system in Bulgaria*" .

3.-The assessment is that the reforms in the main legislation, as was mentioned in the report by Mrs. Schuster after the 4 peer review, is that "…*The expert finds some of these amendments very worrisome. These concerns stem from the content as well as the way the amendments were drafted and brought into Parliament…*" …. "*To the expert the way these crucial and extremely sensitive amendments were drafted is a clear sign of the lack of structure and vision in implementing a legal reform strategy and additionally the complete lack of understanding of the meaning of basic principles shared by the EU member states e.g. the rule of law and the independence of the judiciary.*"

Mr. Kjell Björnberg in his report for the 4th peer review points out that "…*parts of the proposed amendments to the Bulgarian Constitution, to which I will come back below, not only fails to enshrine the independence of the judiciary in the Constitution, but must furthermore be seen as a step backwards in the process of creating an independent judiciary and can be seen as serving to undermine the independence of*

judges by creating a closer connection of their administrative functions to the executive branch of the government".

4.- Although it has been said that this reform in the main legislation introduces no fundamental changes, it really establish critical and very substantial reforms.

5.- The reform in the main legislation mainly is against and in the opposite direction of the recommendations made by this Twinning Project. These recommendations are based on very basis and fundamental principles:

- Clear division of powers (Minister-Ministry of Justice # Supreme Judicial Council)
- Principle of independency of the SJC (budgetary independency included)
- Strengthening the SJC
- Principle of independency of Judges, Prosecutors and Investigators (independency ad extra and ad intra –limitation of the role of the Administrative Heads-)
- Full accountability of magistrates as correlative consequence of their independency
- Improvement of the magistrates legal status

6.- All the recommendations and proposals produced by this Twinning project intended to fill with real content the mentioned principles

7.- The drafting of a secondary legislation cannot be properly done if its pillars, that is, the main legislation (Constitution and Judicial System Act), do not recognise the proper principles, structure and requirements.

1.- SHORT COMMENTS OF THE AMENDMENTS AFTER FIRST READING

Article 14a shall be created: "Article 14a. The allocation of cases among judges, prosecutors and investigators shall be made on the principle of random selection."	1. It was not in the draft approved by the Council of Ministers in December 2005 2. It strengthens the impartiality principle 3. It partially follows the specific recommendation of the 4 Peer review Mr. Björnberg who advised to fully introduce a system of random allocation of cases as soon as possible. 4. It partially follows the COUNCIL DECISION of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria 5. The acceptance of this recommendations is partial as this provision is a patch work as this

	does not really introduce any system, a transparent case distribution system. This is only a principle: no provision to develop this principle in the secondary legislation through an ordinance or regulation by the SJC is envisage in order to set up a real SYSTEM with rules, procedure, national basis criteria and competences to avoid higher powers of administrative heads, eventual actions by the parties, or responsibilities for the infringement of this kind of system. 6. It does not take into account the different role and principles between Judges, Prosecutors and Investigators.
Article 27, paragraph 1 shall be amended as follows: 1. Item 7a shall be created: "7a. shall make proposals to the Minister of Justice with relation to the drawing up of the draft-budget of the judicial system;" 2. Item 8 shall be amended as follows: "8. shall examine and adopt the draft-budget of the judicial system, submitted by the Minister of Justice;" 3. Item 8a shall be created: "8a. shall present to the Council of Ministers the draft-budget of the judicial system and control its implementation;" 4. Item 9 shall be amended as follows: "9. shall examine the annual reports on the activity of the courts, the prosecutor's offices and the investigation services." 5. Item 10 shall be repealed. 6. In item 17 the words "jointly with the Minister of Justice" shall be added at the end; 7. Item 21 shall be created: "21. shall approve automated information systems supporting the activities of the judiciary."	1. It was not in the draft approved by the Council of Ministers in December 2005 2. About item 7a, 8 and 8a (regarding budgetary competences of the SJC): • The draft wording is against the principle of separation of powers and the principle of independency (independency without economic independence makes clear dependency) • It is against the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions in the Accession Partnership with Bulgaria (2003/396/EC), on the point related with clearly distinguish between the roles of the SJC and of the Ministry of Justice. • It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. In this Report, the recommendation was to avoid the implication of one of the members of the executive in the preparation of the budget and to keep this competence in the SJC, as an essential aspect of the principle of independency and a requirement of the principle of separation of powers. • It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg and Mrs. Schuster, who advise that the SJC shall retain its competence to draft and propose budget for the judiciary to the Council of Ministers. 3. About item 9 and the repeal of item 10: • It ignores the recommendations of the "Report on the Amendments in the Constitution of

	Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. In this Report, the recommendation was that the SJC shall be the competent institution to produce the annual report in all topics related with the situation, functioning and activity of the courts, prosecution offices and investigation services. • It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg. In this report the recommendations was that the responsibility for submitting annual reports on the activities of the courts to the National Assembly shall remain under the competence of the Supreme Judicial Council. Very critical with this is also the report by Mrs. Schuster 4. About item 17: • It is against the principle of separation o powers. • It is against the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions in the Accession Partnership with Bulgaria (2003/396/EC), on the point related with clearly distinguish between the roles of the SJC and of the Ministry of Justice. • It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. The report recommended to keep this competence in the SJC as an essential aspect of the principle of independency and a requirement of the principle of separation of powers. • It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg and Mrs. Schuster. In this report the recommendations was to forsake the proposed amendment to the Constitution giving the Minister of Justice the competence to organize the magistrates qualification. About item 21: It helps to reinforce the role of the SJC in the government of the judiciary system. However, the amendment is wrongly specified from article 36 f) and in fact this is a new step to keep back the SJC and raise the implication of a member of the executive, the Ministry of Justice in

	the Judiciary. It is against the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria (2003/396/EC), on the point related with clearly distinguish between the roles of the SJC and of the Ministry of Justice. This shall be the role and competence of the SJC
Article 30 shall be amended as follows: In paragraph 1, item 11 the words "accompanied by an opinion of the President of the respective District Court" shall be added at the end; In paragraph 5, the words: "Article 127b, paragraph 1", shall be replaced by: "Article 127c, paragraph 3", and the following words shall be added at the end: "based on the allocation under Article 35g, paragraph 4." 3. Paragraphs 6 and 7 shall be created: "6) Proposals for initial appointment to the judicial system bodies shall be made by the President of the Competition Commission under Article 127c, paragraph 3 on the basis of the ranking as a result of the competition under Article 127c, paragraph 5." (7) The judges, prosecutors and investigators shall cooperate with the Proposals and Appraisals Commission to discharge the Supreme Judicial Council powers	It was already in the draft approved by the Council of Ministers in December 2005 Paragraph 7 partially follows the recommendations of the "Report on the Strategic Approach and Priorities Proposals for Amendments in the Main Legislation" by the PHARE TWINNING PROJECT BG-04-IB-JH-04 dated 28 November 2005. There it was proposed to establish an Evaluation and Supervision Department and the legal duty of Magistrates to cooperate with it (the infringement of this duty can

	lead to their accountability)
Article 34a and Article 34b shall be created in Chapter Three, Section I "Minister of Justice" "Article 34a (1) The Minister of Justice shall: 1. propose a draft-budget of the judicial system and submits it to the Supreme Judicial Council for consideration" 2. manage the property of the judiciary; 3. participate in organizing the training of judges, prosecutors and investigators; 4. inspect the organization of the initiation, progress and termination of cases". Article 34b (1) The Minister of Justice shall draw up the draft-budget of the judiciary on the basis of the proposals made by the Supreme Judicial Council and in compliance with the parameters provided for in the State Budget. (2) When drawing up the draft-budget the Minister of Justice may require opinions from the administrative heads of the judicial system bodies."	1. These dispositions were not in the draft approved by the Council of Ministers. 2. The draft wording is against the principle of separation o powers. 3. They are against the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria (2003/396/EC), on the point related with clearly distinguish between the roles of the SJC and of the Ministry of Justice. 4. They ignore the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. In this Report, the recommendation was to avoid the implication of one of the members of the executive in the preparation of the budget and to keep this competence in the SJC, as an essential aspect of the principle of independency and a requirement of the principle of separation of powers. 5. They are against the recommendations of the expert for the 4 Peer review Mr. Björnberg, who advises that - *the Minister of Justice should be removed from the position in the Supreme Judicial Council."*[1] - *that the Supreme Judicial Council to obtain its own administration and finances."*[2] - *the Supreme Judicial Council retains its competence to draft and propose budget for the judiciary to the Council of Ministers, at least as long as the Minister of Justice remains in any position in the Supreme Judicial Council."*[3] - *that the proposed amendment to the Constitution giving the Minister of Justice the competence to organize the magistrates qualification to be forsaken."*[4]

[1] Same recommendation in the mentioned "Report on the Strategic Approach and Priorities Proposals for Amendments in the Main Legislation" by the PHARE TWINNING PROJECT BG-04-IB-JH-04 (28 November 2005).
[2] Same recommendation in the mentioned "Report on the Amendments in the Constitution of Bulgaria 2006", by the PHARE TWINNING PROJECT BG-04-IB-JH-04 (31 January 2006).
[3] Same recommendation in the mentioned "Report on the Amendments in the Constitution of Bulgaria 2006", by the PHARE TWINNING PROJECT BG-04-IB-JH-04 (31 January 2006).
[4] Same recommendation in the mentioned "Report on the Amendments in the Constitution of Bulgaria 2006", by the PHARE TWINNING PROJECT BG-04-IB-JH-04 (31 January 2006).

	-that the legal position of the National Institute of Justice as a fully independent organ and its relation on one hand as free standing from the Ministry of Justice and on the other hand its connection to the Supreme Judicial Council be clarified."[5] *-that, judicial inspectors be removed from within the central organisation of the Ministry of Justice. Judicial inspectors should be re-assigned to work directly under the control of the Supreme Judicial Council.*" [6]
Article 35, paragraph 1, item 6 shall be amended as follows: "6 management of the property of the judiciary;"	It was not in the draft approved by the Council of Ministers. Reflects the criticized new art.130 a of the Constitution
Article 35a, paragraph 3 shall be repealed.	It was already in the draft approved by the Council of Ministers.
Article 35b shall be amended as follows: "Article 35b. (1) Under the Minister of Justice there shall be a Judicial Inspectorate which shall: 1. inspect the organization of the administrative activity of the courts, prosecutor's offices and investigation services; 2. inspect the organization related to the institution and progress of court, prosecution and investigation cases, as well as the termination of cases within the specified time-limits. 3. analyze and summarize the terminated cases and the acts of the judges, prosecutors and investigators;	It was already in the draft approved by the Council of Ministers. 1. It is against the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria (2003/396/EC), on the point related with clearly distinguish between the roles of the SJC and of the Ministry of Justice. 2. It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. 3. It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg, who advises that *judicial inspectors be removed from within the central organisation of the Ministry of Justice. Judicial inspectors should be re-assigned to work directly under the control of the Supreme*

[5] Same recommendation in the mentioned "Report on the Amendments in the Constitution of Bulgaria 2006", by the PHARE TWINNING PROJECT BG-04-IB-JH-04 (31 January 2006).
[6] Same recommendation in the mentioned "Report on the Strategic Approach and Priorities Proposals for Amendments in the Main Legislation" by the PHARE TWINNING PROJECT BG-04-IB-JH-04 (28 November 2005) and in the mentioned "Report on the Amendments in the Constitution of Bulgaria 2006", by the PHARE TWINNING PROJECT BG-04-IB-JH-04 (31 January 2006).

4. prepare, in case of incorrect and contradictory case-law, draft- proposals of the Minister of Justice to the General Meetings of the relevant Supreme Court of Cassation and Supreme Administrative Court colleges for issuing interpretative decisions, as well as draft-opinions of the Minister of Justice upon proposals for issuing of interpretative decisions; 5. inspect the activity related to the institution, progress and termination of the enforcement cases of public enforcement agents, private enforcement agents and of the registration cases and shall summarize and analyze the case-law on these cases; 6. submit to the Minister of Justice and to the Supreme Judicial Council information on the findings and assessment of the organization of the initiation and progress of court, prosecution and investigation cases; 7. carry out continuous control over the proper organization and conducting of the internship for acquiring a legal capacity; 8. perform, within the framework of its competence, other tasks related to the activity of the judicial system bodies, assigned by the Minister of Justice, or with a decision of the Supreme Judicial Council. (2) The Inspectorate may inspect and analyze the activity of notaries and private enforcement agents jointly with the Notary Chamber and the Chamber of Private Enforcements Agents respectively. (3) The heads of the judicial system bodies shall assist the judicial inspectors in exercising their powers and provide access for them to the relevant materials by observing the requirements under the	*Judicial Council*." 4. It ignores the main recommendations in the "Report on the Strategic Approach and Prioritiies Proposals for Amendments in the Main Legislation" by the PHARE TWINNING PROJECT BG-04-IB-JH-04 (28 November 2005) to remove the inspection service from the Ministry of Justice and place this service in the SJC.

Protection of Classified Information Act. (4) The Minister of Justice shall issue, in coordination with the Supreme Judicial Council, Rules for the Organization of the Work of the Judicial Inspectorate	
Article 35c shall be amended as follows: 1. In paragraph 1, the word "two" shall be replaced by "five". 2. Paragraph 6 shall be created: "(6) The Minister of Justice may appoint as inspectors for the term under paragraph 1, without interrupting their activity, also judges from the appellate courts, the Supreme Court of Cassation and the Supreme Administrative Court. The amount of the additional remuneration shall be determined jointly by the Minister of Justice and the Supreme Judicial Council."	Paragraph 1 was already in the draft approved by the Council of Ministers. Paragraph 2 was not in the above mentioned draft. As above and also it is against the independence principle as it permits to share both activities (jurisdictional and inspectorate) and seems to broke the spirit of item 3 of same art. 35 c. On the contrary it is the SJC who should be entitle to appoint magistrates to positions in the SJC Evaluation and Supervision Department and technical units of support to its work and powers
A new Article 35d shall be created: "Article 35d - The inspections under Article 35b, paragraph 1, items 2 – 4 shall be carried out both annually and on a concrete occasion."	It was not in the draft approved by the Council of Ministers. As above; It gives a legal framework to the inspectorate's activities schedule.
Article 35f shall be amended as follows: 1. A third sentence shall be added to paragraph 2: "The funds required for conducting the obligatory training under Article 35g and for the training under paragraph 1 shall be allocated to the budget account of the National Institute of Justice." 2. The second and third sentences in paragraph 5 shall be deleted. 3. A new paragraph 6 shall be created:	It was already in the draft approved by the Council of Ministers. Positive amendment in perfect line with the proposals made by the NIJ

"(6) Judges, prosecutors and investigators acting as full-time trainers shall have the right to a paid official leave, or may be seconded under the relevant procedure by the National Institute of Justice, or by the respective body of the judiciary for the period they act as trainers at the Institute".	
The following amendments shall be made to Article 35g: 1. Paragraphs 1 and 2 shall be amended as follows: "(1) The applicants who have won the competition under Article 127a shall have obligatory training at the National Institute of Justice. (2) The course of training at the National Institute of Justice shall be six months. During this period the trainees shall receive monthly scholarship to the amount of 80 % of the basic monthly remuneration for the lowest position of a judge, prosecutor or investigator. 2. New paragraphs 3, 4 and 5 shall be created: "(3) The course of training at the National Institute of Justice shall be recognized as a work experience under Article 127, paragraph 5. The provisions of Article 11, paragraph 2, Article 12, paragraphs 1 and 2, Article 132, paragraph 1, Article 137, Article 138 and Article 139c, shall also apply for the trainees. (4) The course of training at the National Institute of Justice shall be completed with an examination, passed before the Commissions under Article 127c, paragraph 3. Those who have finished successfully the training course shall be allocated by the commissions under	It was already in the draft approved by the Council of Ministers. However, in a new step to keep back the SJC and raise the implication of a member of the executive as it must be pointed out that in the initial draft an item 6 was included with the following wording: *"Initially starting work in the judiciary bodies, the judges, prosecutors and investigators shall pass a raising qualification course on certain qualification programmes, adopted by the SJC"*

Article 127c, paragraph 3 to the judicial system bodies for which the competition was held, according to their wishes and the examination results. (5) Those, who have finished the course of training, shall undertake the obligation to work in the judicial system bodies for a period of 5 years. A person, who has not finished successfully his training, or who does not fulfill his obligation to work in the judicial system bodies, shall reimburse the training expenses to the State."	
Article 35o shall be amended as follows: 1. A new paragraph 1 shall be created: "(1) The Minister of Justice shall present to the National Assembly annually a report on the situation, structure and dynamics of crime, on the reasons and conditions for them, as well as on the measures undertaken." 2. The current paragraphs 1 and 2 shall become paragraphs 2 and 3 respectively.	It was already in the draft approved by the Council of Ministers This rule strengthens the position of the Minister of Justice. It should be preferable that this annual report was a task of the General Prosecutor as article 114 a) establish
The title of Section VI of Chapter three shall be amended as follows: **"Section VI Management of the Property of the Judiciary"** **§ 14. New Articles 36, 36a and 36b shall be created:** "Art. 36 (1) The Minister of Justice shall organize the management and taking care of the property placed at the disposal of the judiciary and shall secure	It was not in the draft approved by the Council of Ministers. Reflects the criticized new art.130 a of the Constitution It is against the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria (2003/396/EC), on the point related with clearly distinguish between the roles of the SJC and of the Ministry of Justice.

the infrastructure required for the activity of its bodies. Article 36a. (1) The Ministry of Justice may acquire, under the procedure of the State Property Act, real estate and limited real rights on real estate for the needs of the judiciary. (22) The Ministry of Justice shall organize the management, acquisition and disposition of chattel, under the procedure of the State Property Act. Article 36b – The Minister of Justice shall assign the management and taking care for the property of the judiciary to the administrative heads of its bodies."	It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg,
Section VIII "Information Technologies" shall be created in Chapter Three. **Section VIII** **Information Technologies** Article 36f. (1) The information service of the activities of the judiciary shall be based on the use of automated information systems approved by the Supreme Judicial Council. (2) The activities of establishing, introducing and development of the systems under paragraph 1 shall be coordinated by the Ministry of Justice and shall be based on: 1. interagency technological, information and communication standards and methods. 2. information security and sharing system agreed upon; (3) The Ministry of Justice shall be in charge of the operation of the core components of the systems under paragraph 1.	It was not in the draft approved by the Council of Ministers. Positive to introduce the IT However, again a new step to keep back the SJC and raise the implication of a member of the executive, the Ministry of Justice in the Judiciary. It is against the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria (2003/396/EC), on the point related with clearly distinguish between the roles of the SJC and of the Ministry of Justice. This shall be the role and competence of the SJC

(4) The activities under paragraphs 2 and 3 shall be supported by the Ministry of Finance, the Ministry of Regional Development and Public Works, the National Statistics Institute and the Bulgarian Standardization Institute. (5) The Minister of Justice shall issue, in coordination with the Supreme Judicial Council, Ordinance on the Procedure of establishing, introducing and development of automated information systems in the judicial system."	
Article 56 shall be amended as follows: 1. In item 2 "a" the words "under Article 27, paragraph 1, item 10" shall be deleted. 2. In item 3 after the word "initiation" the conjunction "and" shall be deleted and a comma shall be inserted, and after the word "progress" the words "and completion" shall be added.	It was not in the draft approved by the Council of Ministers.
Article 63 shall be amended as follows: 1. In item 2 after the word "initiation" the conjunction "and" shall be deleted and a comma shall be inserted, and after the word "progress" the words "and completion" shall be added. 2. In item 3 "a" the words "before the Supreme Judicial Council" shall be deleted.	1. It was not in the draft approved by the Council of Ministers. 2. Paragraph 2 (regarding item 3 a) weakens the competences of the SJC is against the principle of independency of the higher positions of the judiciary in Bulgaria • It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. In this Report, the recommendation was that the SJC shall be the competent institution to produce the annual report in all topics related with the situation, functioning and activity of the courts, prosecution offices and investigation services. • It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg. In this report the recommendations was that the responsibility for submitting annual reports on the activities of the courts to the National Assembly

	shall remain under the competence of the Supreme Judicial Council. • The Minister of Justice should be removed from the position in the Supreme Judicial Council and provisions for the election of a chairperson the SJC must be introduced in order to have a representative of the SJC who can take this role, have the representation of the SJC before the citizens and the rest of the public powers and talk for and defend the interests of the SJC
Article 79 shall be amended as follows: 1. In item 2 "a" after the words "Supreme Court of Cassation" the conjunction "and" shall be deleted, and the words "before the Supreme Judicial Council" shall be deleted. 2. In item 3 after the word "initiation" the conjunction "and" shall be deleted and a comma shall be inserted, and after the word "progress" the words "and completion" shall be added.	1. It was not in the draft approved by the Council of Ministers. 2. Paragraph 1 (regarding item 2 a) weakens the competences of the SJC is against the principle of independency of the higher positions of the judiciary in Bulgaria • It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. In this Report, the recommendation was that the SJC shall be the competent institution to produce the annual report in all topics related with the situation, functioning and activity of the courts, prosecution offices and investigation services. • It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg. In this report the recommendations was that the responsibility for submitting annual reports on the activities of the courts to the National Assembly shall remain under the competence of the Supreme Judicial Council. • As above
Article 90 shall be amended as follows: 1. The current text shall become paragraph 1 and in item 6 the words "and shall forward it for inclusion in the annual report under Article 27, paragraph 1, item 10" shall be deleted. 2. Paragraph 2 shall be created:	1. It was not in the draft approved by the Council of Ministers. 2. Paragraph 2 weakens the competences of the SJC and is against the principle of independency of the higher positions of the judiciary in Bulgaria • It ignores the recommendations of the "Report on the Amendments in the Constitution of

"(2) The President of the Supreme Court of Cassation shall prepare a summarized Annual Report on the activity of the courts and shall submit it to the National Assembly not later than 31 March. The Report shall be presented to the Supreme Judicial Council as well."	Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. In this Report, the recommendation was that the SJC shall be the competent institution to produce the annual report in all topics related with the situation, functioning and activity of the courts, prosecution offices and investigation services. • It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg. In this report the recommendations was that the responsibility for submitting annual reports on the activities of the courts to the National Assembly shall remain under the competence of the Supreme Judicial Council. • The Minister of Justice should be removed from the position in the Supreme Judicial Council and provisions for the election of a chairperson the SJC must be introduced in order to have a representative of the SJC who can take this role
Article 100 shall be amended as follows: 1. The current text shall become item 1 and in item 6 the words "and shall forward it for inclusion in the annual report under Article 27, paragraph 1, item 10" shall be deleted. 2. Paragraph 2 shall be created: "(2) The President of the Supreme Administrative Court shall prepare a summarized Annual Report on the activity of the administrative courts and shall submit it to the National Assembly not later than 31 March. The Report shall be presented to the Supreme Judicial Council as well."	1. It was not in the draft approved by the Council of Ministers. 2. Paragraph 2 weakens the competences of the SJC is against the principle of independency of the higher positions of the judiciary in Bulgaria • It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. In this Report, the recommendation was that the SJC shall be the competent institution to produce the annual report in all topics related with the situation, functioning and activity of the courts, prosecution offices and investigation services. • It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg. In this report the recommendations was that the responsibility for submitting annual reports on the activities of the courts to the National Assembly shall remain under the competence of the Supreme Judicial Council. • The Minister of Justice should be removed from the position in the Supreme Judicial Council and provisions for the election of a chairperson the SJC must be introduced in order to have a representative of the SJC who can take this role

In Article 114, paragraph 6 the words "shall forward it for inclusion in the annual report under Article 27, paragraph 1, item 10" shall be deleted.	It was not in the draft approved by the Council of Ministers. In line with the above comments
Article 114a shall be amended as follows: "Article 114a (1) The Prosecutor General shall submit to the National Assembly, not later than 31 March, a summarized report on the activity of the prosecutor's office and the investigation authorities. The Report shall be presented to the President of the Republic of Bulgaria, the Council of Ministers and the Supreme Judicial Council as well." (2) The administrative heads of the regional and district prosecutor's offices shall present annually to the Prosecutor General information on the investigations made by the police investigators. The procedure for providing the information shall be determined by a Joint Instruction of the Prosecutor General and the Minister of Interior."	1. It was not in the draft approved by the Council of Ministers. 2. It weakens the competences of the SJC. 3. It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. In this Report, the recommendation was that the SJC shall be the competent institution to produce the annual report in all topics related with the situation, functioning and activity of the courts, prosecution offices and investigation services. 4. It is against the recommendations of the expert for the 4 Peer review Mr. Björnberg. In this report the recommendations was that the responsibility for submitting annual reports on the activities of the courts to the National Assembly shall remain under the competence of the Supreme Judicial Council. 5. The Minister of Justice should be removed from the position in the Supreme Judicial Council and provisions for the election of a chairperson the SJC must be introduced in order to have a representative of the SJC who can take this role
Article 118 shall be amended as follows: **1. New items 1 and 2 shall be created.** "1. shall be in charge of the investigation and supervise the legality thereof"; 2. may make investigation" 2. The current items 1, 2, 3 and 4 shall become items 3, 4, 5 and 6 respectively.	It was not in the draft approved by the Council of Ministers
Article 118a, paragraph 1 shall be amended as follows: "(1) In performing the function under Article 118, item 1 the prosecutor shall be	It was not in the draft approved by the Council of Ministers

in charge of the investigation acting as a supervising prosecutor."	
Article 121 shall be amended as follows: **1.** In paragraph 1 the words "preliminary investigation" shall be replaced by "investigation". 2. In paragraph 1 the words "the preliminary investigation" shall be replaced by "the investigation".	It was not in the draft approved by the Council of Ministers
Article 122, paragraph 5 shall be amended as follows: 1. In item 10 after the word "forward" the words "to the Prosecutor General" shall be added, and the words "under Article 27, paragraph 1, item 10" shall be deleted. 2. In item 11 after the word "initiation" the conjunction "and" shall be deleted and a comma shall be inserted, and after the word "progress" the words "and completion" shall be added.	It was not in the draft approved by the Council of Ministers
Article 123 shall be amended as follows: 1. In paragraph 1 the words "the preliminary investigation" shall be replaced by "the investigation". 2. In paragraph 4, item 8 after the word "initiation" the conjunction "and" shall be deleted and a comma shall be inserted, and after the word "progress" the words "and completion" shall be added.	It was not in the draft approved by the Council of Ministers
Article 127 shall be amended as follows: 1. In paragraph 1 the second sentence shall be deleted. 2. In paragraph 5 the words "and legal capacity" shall be deleted, and the words "or are investigators in the Ministry of	Paragraph 2 (regarding 127.5) was not in the draft approved by the Council of Ministers. Paragraph 1 second sentence deleted according to the recommendations of this Twinning Project

Defence" shall be added at the end.	
Article 127a shall be amended as follows: "Article 127a. (1) The appointment of junior judges, junior prosecutors and junior investigators shall be made after conducting a competition and a successfully finished course of training at the National Institute of Justice. (2) The planning of the appointments of junior judges, junior prosecutors and junior investigators shall be made for each following calendar year by the Supreme Judicial Council, upon a proposal of the heads of the respective judicial system bodies. By 30 June at latest, the Supreme Judicial Council shall announce the competition for junior judges, junior prosecutors and junior investigators, for the following calendar year and shall fix the date for the beginning of the training course, under Article 35 g, paragraph 2 for the applicants who have won the competition. The planned permanent positions for junior judges, junior prosecutors and junior investigators may not be changed after announcing the competition. (4) The competition shall be conducted once a year, but not later than three months after its announcement."	It was already in the draft approved by the Council of Ministers Positive amendment according to recommendations by previous reports and the proposals by the NIJ
Article 127b shall be amended as follows: "Article 127b. (1) The vacancies in the judicial system bodies and the term for applying for them shall be announced in one national daily newspaper and on the Supreme Judicial Council web-site.	It was already in the draft approved by the Council of Ministers 1.- It does not cover entirely the recommendations of the expert for the 4 Peer review Mr. Björnberg - *that all positions as judges, prosecutors*

(2) The introducer of a proposal for appointment, promotion and transfer of an applicant from the judicial system bodies shall enclose also a list of all applicants from the judicial system bodies with the enclosures in accordance with Article 30a, paragraph 6. (3) A judge, prosecutor or investigator may apply for appointment, promotion and transfer through the persons referred to in Article 30 or directly to the Supreme Judicial Council. (4) A competition shall be held also at initial appointment to a position in the judicial system bodies where there is no applicant, proposed by the judicial system bodies until the competition is announced. (5) The competition shall be held centralized, but no more than tree times a year."	*and investigators be filled after a full and open competition based on merits according to official criteria,* *- the present very strong role of court presidents in proposing candidates to vacant positions as judges etc. be reduced and* *-. a full transparency be introduced in the appointment process.* 2.- It does not fully follows the recommendations related to promotion in the "Report on the Strategic Approach and Priorities Proposals for Amendments in the Main Legislation" by the PHARE TWINNING PROJECT BG-04-IB-JH-04 (28 November 2005). The recommendations from this project were the following: - INITIAL APPOINTMENT: o Competition as the only way in to the initial appointment position of junior magistrates. o No direct nomination There should be a clear legal statement pointing this principle o No artificial or deliberately transfer of vacancies to permanent positions o Proposals not by the Administrative Heads but only by the SJC to protect the principle of independency and eliminate cases of lack of objectivity. - COMPETITION: o National basis by the SJC o Mandatory training in the NIJ as a pre-condition o Improvement of its regulation in the main legislation - DISTRICT MAGISTRATES o No exception to the required length of service o Change in all art 127 JSA the word "*person*" by the words "*judges, prosecutors or investigators*", to avoid appointment of persons who previously are not judges, prosecutors or investigators. No other way in but competition - ROLE OF THE ADMINISTRATIVE HEADS o Limit their role to the proposals to the SJC only for determining the number of magistrates

	requires. With all these proposals, the SJC shall take a decision on the real needs on a national basis o In article 30.1 JSA eliminate the words "*appointment, promotion, moving and discharge*". This shall be decided independently by the SJC o The current role of Administrative Heads has been identified as a clear risk to the principle of independency (framework document and seminar, both approved by the SJC) - APPOINTMENT OF ADMINISTRATIVE HEADS o Change in all art 125 b) JSA the word "*person*" by the words "*judges, prosecutors or investigators*", to avoid appointment in the main positions or administrative heads of persons who previously are not previously judges, prosecutors or investigators. Demoralization of magistrates - PROMOTION o Establishment by the SJC of a public national basis (not local) merit concurs based on the principles of merit and capacity, providing a clear legal framework, system and procedure for this merit concurs o Rules for the evaluation in cases of promotion: evaluation criteria, procedure and competent bodies o In this merit concurs, only direct application by magistrates to the SJC with no intervention nor proposals from the Administrative Heads Eventual need to reinforce the departments and the administration in the SJC. Recommendations to create a new Evaluation and Supervision Department in the SJC to make a real evaluation of candidates for promotion of magistrates, providing the Commission for Proposals with the objective data and with the information necessary for it to take a the decision about who should be promoted.
A new Article 127c shall be created: "Article 127c. (1) The competition shall be announced upon a decision of the Supreme Judicial Council, which shall be published in the *State Gazette* and in the Supreme Judicial Council web-site, and	It was already in the draft approved by the Council of Ministers As above

shall contain: 1. The number and type of positions, as well as the judicial system bodies to which they refer; 2. The date, time and place of the competition. (2) In the competition may participate persons who satisfy the requirements of Article 126 and Article 127 for the relevant position. (3) The competition shall be conducted by competition commissions comprising one chairperson, four regular and two reserve members. One of the commission's regular members must have a LLD. The commission members shall be appointed by a decision of the Supreme Judicial Council. (4) The competition shall include a written and oral examination. Applicants shall be admitted to the oral examination after having passed the written examination, with a score not lower than "Very good (4.50)". The applicants who have passed the oral examination with a score not lower than "Very good (4.50)" shall be included in the ranking. (5) The competition commission shall rank the applicants according to their results, where the score of every applicant shall be the sum of the marks from the written and oral examination. In cases where the applicants have equal score, the ranking shall be made according to the average mark of their university semester and state examinations.	

(6) The chairperson of the competition commission shall introduce a proposal before the Supreme Judicial Council for: 1. announcement of the ranking of applicants participating in the competition, under Article 127a; 2. appointment of the applicant who has ranked first in the competition under Article 127b. Where the relevant judicial system body has announced several vacancies for one and the same position, the appointment shall be made according to the ranking."	
The current article 127c and Article 127d shall become Article 127d and Article 127e respectively.	It was already in the draft approved by the Council of Ministers As above
Article 147 shall be amended as follows: 1. The following words shall be added at the end of paragraph 1: "has passed the competition under Article 127a, paragraph 1, and has successfully finished the training course under Article 35g, paragraph 2". 2. A second sentence shall be created in paragraph 2: "The vacant permanent positions may not be transformed". 3. A second and a third sentences shall be created in paragraph 3: "In case of lack of a vacancy in the respective judicial region, a vacancy in another judicial region shall be offered. In case that the applicant refuses the vacancy offered for good reasons, the Supreme Judicial Council shall open a supplementary permanent position in the respective judicial system body."	It was already in the draft approved by the Council of Ministers As above
Article 150 shall be amended as follows: "Article 150. (1) As a public enforcement agent may work a person, who satisfies	It was already in the draft approved by the Council of Ministers.

the conditions of Article 126. (2) The public enforcement agent shall be appointed by the Minister of Justice, upon proposal of the President of the Regional Court after holding a competition. (3) The competition date shall be set by an order of the Minister of Justice, which shall determine the conditions and procedure for conducting the competition. The order shall be published in the *State Gazette*, announced by the Ministry of Justice in an accessible place in the respective regional court and made available in the Internet. (4) The Minister of Justice shall appoint the competition commission members. (5) In case that there is a sole applicant, who has worked as a public enforcement agent for more than five years, he/she shall be appointed without a competition. (6) The Minister of Justice, upon a request of a public enforcement agent who has occupied this position for not less than two years, may transfer him/her to another regional court after taking the opinion of the presidents of the respective regional courts. (7) The number of the public enforcement agents shall be set by the Minister of Justice".	
In Article 152, paragraph 1, item 1 the words "for more than one year" shall be added at the end.	It was already in the draft approved by the Council of Ministers
Article 160 shall be amended as follows: "Article 160. (1) As a recordation judge	It was already in the draft approved by the Council of Ministers

may work a person, who satisfies the conditions under Article 126. (2) The recordation judge shall be appointed by the Minister of Justice, upon proposal of the President of the Regional Court after holding a competition. (3) The competition date shall be set by an order of the Minister of Justice, which shall determine the conditions and the procedure for conducting a competition. The order shall be published in the *State Gazette*, announced by the Ministry of Justice in an accessible place in the respective regional court and made available in the Internet. (4) The Minister of Justice shall appoint the competition commission members. (5) In case that there is a sole applicant, who has worked as a recordation judge for more than five years, he/she shall be appointed without a competition. (6) The Minister of Justice, upon a request of a recordation judge who has occupied this position for not less than two years, may transfer him/her to another regional court after taking the opinion of the presidents of the respective regional courts. (7) In the Recordation Services where there are more than one recordation judges, the Minister of Justice shall appoint one of them as head of the Service. (8) The number of recordation judges shall be set by the Minister of Justice."	

In Article 163, paragraph 1, the words: "three-month service as apprentice" shall be replaced by "six-month service as apprentice".	It was already in the draft approved by the Council of Ministers
In Article 163c, paragraph 1, the words: "three months" are replaced by "six months"	It was already in the draft approved by the Council of Ministers
In Article 166, paragraph 2 the words: "but not earlier than three months" are replaced by "after supplementary two-months of service as apprentice".	It was already in the draft approved by the Council of Ministers
A new Article 167b shall be created: "Article 167b. Judges, prosecutors and investigators who have been assigned with the practical training of lawyers on internship, may receive incentives, upon proposal of the Chairperson of the Supreme Judicial Council, from the funds from the budget of the judiciary, under the conditions and the procedure as determined by the Supreme Judicial Council.	It was already in the draft approved by the Council of Ministers This provision talks about the Chairperson. This is very confusing as there is no such position in the SJC. Only the Minister of Justice chairs the sessions, but he/she should be completely out of the SJC
The current Article 167b shall become Article 167c.	It was already in the draft approved by the Council of Ministers
Article 167d shall be created: "Article 167d. For highly professional and moral qualities while performing their official duties, the public enforcement judges and the recordation judges may be encouraged upon a proposal of the president of the relevant court or at the discretion of the Minister of Justice, with: 1. Official appreciation and a honorary diploma; 2. Monetary reward."	It was already in the draft approved by the Council of Minister No objective criteria, procedure and rules are fixed to guarantee elemental principles of objectivity and justice This represents again an increase of the involvement of the Minister of Justice, an increase of the role of the Administrative Heads and jeopardises the role and functions of the SJC 1. It is against the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria (2003/396/EC), on the point related with clearly

	distinguish between the roles of the SJC and of the Ministry of Justice. 2. It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. The accountability of those who need to be independent in their professional duties shall remain in the Supreme Judicial Council with no intervention of the executive and no outstanding role of the Administrative Heads 3. It is against the recommendations done by EU Experts for the 4 Peer Review, Mr. Björnberg and Mrs. Schuster.(*the Minister of Justice should be removed from the position in the Supreme Judicial Council*)
Article 168 shall be amended as follows: 1. A new paragraph 2 shall be created: "(2) The judges bear disciplinary liability also in the cases where they have guiltily allowed a participant in the proceedings to cause the delay thereof." 2. The current paragraphs 2, 3 and 4 shall become paragraph 3, 4 and 5 respectively.	It was not in the draft approved by the Council of Ministers
Article 172 shall be amended as follows: "Article 172 (1) The disciplinary sanctions shall be imposed by: 1. the administrative head – concerning the sanctions under Article 170, paragraph 1, item 1 and 2. 2. the Supreme Judicial Council - concerning the sanctions under Article 170, paragraph 1, item 3 and 4 and paragraph 2. 3. the Minister of Justice - concerning the sanctions under Article 170, paragraph 3. (2) Proposal for imposing disciplinary sanctions to all judges, prosecutors, investigators, to administrative heads and	It was not in the draft approved by the Council of Ministers. 4. The disciplinary competences of the Minister of Justice will damage the independence principle and separation of powers. 5. It is against the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria (2003/396/EC), on the point related with clearly distinguish between the roles of the SJC and of the Ministry of Justice. 6. It ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. The accountability of those who need to be

their deputies may be made also by the Minister of Justice or not less than one fifth of the total number of the Supreme Judicial Council members. (3) Proposal for imposing a disciplinary sanction to a public enforcement agent or a recordation judge shall be made by the president of the respective regional court or by the inspectorate."	independent in their professional duties shall remain in the Supreme Judicial Council with no intervention of the executive. 7. It is against the recommendations done by EU Experts for the 4 Peer Review, Mr. Björnberg and Mrs. Schuster.(*the Minister of Justice should be removed from the position in the Supreme Judicial Council*) 8. It does not establishes a very systematic regulation 9. Increase significantly the role of Administrative Heads (this was identified as a clear risk to the principle of independency). They can urge imposing the most serious sanction – see 174a.2. 10. Weakens seriously the role of the SJC as the independent institution in charge of governing the magistrates in Bulgaria. The competences for disciplinary liability shall remain in the SJC *11.* Graduation of the infringements is absent. This not only can divide the competences in disciplinary affairs but also gives legal certainty to exactly now what kind of conduct or omission is sanctioned with what type of sanction. Proposals were made since November 2005 to habilitate the SJC for doing this in secondary legislation (the proposal was to amend Art. 168 (1) as follows: *For guilty neglecting of their official duties, as well as for violation of the rules of the professional ethics, the judges, prosecutors and investigators shall bear disciplinary responsibility, in accordance with the severity of the violation and the classification thereof as very serious infractions, major and minor infractions under the Regulation for magistrates liability approved by the Supreme Judicial Council")*
Article 173 shall be amended as follows: "Article 173 (1) Disciplinary proceedings may be initiated up to one year after detection, but not later than two years after the offence was committed.	It was not in the draft approved by the Council of Ministers. Legal habilitation to the SJC in order to produce an ordinance or a regulation should have been established

(2) The terms under paragraph 1 stop running where the person is on leave as established by law. (3) In the event of a disciplinary violation constitutive of a criminal offence established by a sentence that has taken effect, the terms under paragraph 1 shall start running as from the date of entry into force of the sentence."	This is not a full and complete regulation for a proceeding on disciplinary affairs
Article 174 shall be amended as follows: "Article 174 (1) Before imposing the disciplinary sanction the sanctioning body shall hear the person against whom disciplinary proceedings have been initiated or require a written explanation and shall gather all evidence of importance for the case. (2) Where the sanctioning body has not heard the person or has not required written explanation, the court shall repeal the disciplinary sanction imposed without considering the case on the merits. (3) Until enactment of the order or the decision for imposing the disciplinary sanction, no facts and circumstances related to the disciplinary proceedings may be revealed to the public."	It was not in the draft approved by the Council of Ministers. Legal habilitation to the SJC in order to produce an ordinance or a regulation should have been established Eliminate previous and fundamental guarantees, such as the need to separate the investigative functions from the decision functions. This two functions are now concentrated in the Administrative Heads. In this case there are no previsions for fundamental guarantees apart from the previous right to be heard, and there are no procedural rules. This is against and ignore the recommendations proposed up to now by this project
Article 174a shall be created: "Article 174a (1) The disciplinary sanctions under Article 170, paragraph 1, item 1 and 2 shall be imposed by a reasoned order of the administrative head. (2) Where in the course of the disciplinary proceedings it has been established that there are sufficient grounds to impose a sanction under Article 170, paragraph 1, item 3 or 4 or paragraph 2, the administrative head shall terminate the disciplinary proceedings and make a	It was not in the draft approved by the Council of Ministers. Legal habilitation to the SJC in order to produce an ordinance or a regulation should have been established Increase significantly the role of Administrative Heads (this was identified as a clear risk to the principle of independency). They can urge imposing the most serious sanction – see 174a.2.

proposal to the Supreme Judicial Council. (3) The disciplinary sanctions under Article 170, paragraph 3 shall be imposed by a reasoned order of the Minister of Justice."	Weakens seriously the role of the SJC as the independent institution in charge of governing the magistrates in Bulgaria. The competences for disciplinary liability shall remain in the scope of the SJC The disciplinary competences of the Minister of Justice will damage the independence principle and separation of powers, is against the UE Council Decision of 19 May 2003 on the Accession Partnership with Bulgaria , ignores the recommendations of the "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006.and is against the recommendations done by EU Experts for the 4 Peer Review, Mr. Björnberg and Mrs. Schuster.(*the Minister of Justice should be removed from the position in the Supreme Judicial Council*)
In Article 175, paragraph 1 the words "Article 170, paragraph 1, item 1 and 2 and under" shall be deleted	It was not in the draft approved by the Council of Ministers The disciplinary competences of the Minister of Justice will damage the independence principle and separation of powers (as above)
Article 181 shall be amended as follows: 1. Paragraph 3 shall be repealed. 2. In paragraph 4 the words "and 3" shall be deleted.	It was not in the draft approved by the Council of Ministers
Article 182 shall be amended as follows: 1. In paragraph 1 after the words "person … of" the words "the order or", and the words "or the order of the Minister of Justice" shall be deleted. 2. Paragraph 2 shall be repealed	It was not in the draft approved by the Council of Ministers
Article 183a shall be created: Article 183a (1) The order of the administrative head may be appealed from by the interested persons before the regional administrative court within 7	It was not in the draft approved by the Council of Ministers. This is one more example of the effect and aim of this amendment to weaken the role of the SJC.

days after the announcement thereof. (2) The decision of the Court is final."	Apart from empty the competences of the SJC for imposing disciplinary sanctions, this eliminate any possible appeal before the SJC, out of the scope to the regional administrative court in the case of sanctions in 1 and 2 of article 170. This is not in line with the EU standards (France, Italy and Spain) that place the monopoly of review in the Supreme Courts after the administrative decision by the SJC. Obviously this will avoid any kind of unequal or different criteria that will arise at regional level, will limit the role of the Administrative Heads, will protect the principel of independency and will offer unified criteria and legal certainty to magistrates in Bulgaria
The following amendments shall be made to Article 184: 1. Paragraph 1 shall be amended as follows: (1) The decision of the Supreme Judicial Council and the order of the Minister of Justice may be appealed from by the interested persons before the Supreme Administrative Court within 14 days after the announcement thereof." 2. Paragraph 3 shall be repealed.	It was not in the draft approve by the Council of Ministers. The disciplinary competences of the Minister of Justice will damage the independence principle and separation of powers (as above)
Article 186, paragraphs 2 and 3 shall be amended as follows: "(2) The disciplinary sanction, with exception of the dismissal, may be deleted also before the term under paragraph 1 expires by an order of the administrative head, a decision of the Supreme Judicial Council or an order of the Minister of Justice, if the person sanctioned has not committed another violation. (3) The deletion of the sanction imposed ahead of term shall be made on the initiative of the administrative head, and in the cases where the sanction has been imposed by the Supreme Judicial Council – on the proposal of the administrative	It was not in the draft approved by the Council of Ministers Again we criticize the role of the Administrative Heads and of the Minister of Justice All the competences, except for minor offences, shall remain in the SJC

head or the subjects under Article 172, paragraph 2. A proposal for deletion ahead of term of a sanction imposed to a public enforcement agent or a recordation judge shall be made by the subjects under Article 172, paragraph 3."	
A second sentence shall be created in Article 190, paragraph 2, item 1: "The President of the Regional Court shall submit to the Minister of Justice, for information, a copy of the order for unpaid leave allowed and a notification for the use and interruption of paid leave due to pregnancy and giving birth	It was already in the draft approved by the Council of Ministers This role should be taken by or through the SJC as the institution in charge of the judiciary. The commented reforms clearly weaken the position and role of the SJS either increasing the implication of the Minister of Justice in the Judiciary or the role of the Administrative heads. • This is clearly in the opposite direction of the provisions of the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions in the Accession Partnership with Bulgaria, of the recommendations of the: - "Report on the Strategic Approach and Priorities Proposals for Amendments in the Main Legislation" by the PHARE TWINNING PROJECT BG-04-IB-JH-04 dated 28 Nov.2005 - "Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006. - the recommendations of the expert for the 4 Peer review Mr. Björnberg and Mrs. Schuster.
SUPPLEMENTARY PROVISION Everywhere in the Act, the words: "inspector", "inspectors" and "the inspectors" shall be replaced by "judicial inspector", "judicial inspectors" and "the judicial inspectors" respectively, and the words: "Inspectorate" and "the Inspectorate" shall be replaced by "Judicial Inspectorate" and "The Judicial Inspectorate" respectively.	
TRANSITIONAL AND FINAL PROVISIONS	

§ 56. For the serving judicial inspectors the term under Article 35c, paragraph 1 shall start running from the date of their latest appointment. **§ 57.** The lawyers serving internship shall finish their internship for acquiring judicial capacity under the procedure existing hitherto. **§ 58.** The competitions for public enforcement agents and recordation judges scheduled before this Act enters into force shall be held under the current procedure. **§ 59.** In respect of disciplinary proceedings pending before the adoption of this Act, the current limitation periods shall apply. **§60. The following amendments shall be made in the Private Enforcement Agents Act (published SG No …):** In Article 5, paragraph 2 the words "work as police investigators within the system of the Ministry of Interior" shall be replaced by "work in the position of a "police investigator" within the system of the Ministry of Interior or are investigators in the Ministry of Defense". 2. Everywhere the words "inspectors" and "the inspector" shall be replaced by "judicial inspectors under the Judicial System Act" and "the judicial inspector under the Judicial System Act". **§ 61. In the Bar Act (published SG …)** in § 1, item 1 the words "work as police	

investigators within the system of the Ministry of Interior" shall be replaced by "work in the position of a "police investigator" within the system of the Ministry of Interior or are investigators in the Ministry of Defense". **§ 62. In the Notaries-Public and Notaries Operations Act (published SG No...)** in Article 8, paragraph 2 after the words "municipal department" the words "a person working in the position of a "police investigator" within the system of the Ministry of Interior or is an investigator in the Ministry of Defense". **§ 63.** This Act shall enter into force on the day of its publication in the *State Gazette*, except for § 28, item 2 in respect of the "words "and legal capacity" shall be deleted", which shall enter into force as from 01.08.2002.	

2.- SUMMARY LIST OF SOME RECOMMENDATIONS NOT YET REFLECTED IN THE AMENDMENTS OF THE LEGISLATION ON THE JUSTICE SYSTEM IN BULGARIA

(Regarding the the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions in the Accession Partnership with Bulgaria, Framework Document of the Twinning Project, the Conclusions of the Seminar –activity 1.3 of the Twinning-, the Report on the Strategic Approach and Priorities Proposals for Amendments in the Main Legislation" by the PHARE TWINNING PROJECT BG-04-IB-JH-04 dated 28 Nov.2005; the Report on the Amendments in the Constitution of Bulgaria 2006", by the Phare Twinning Project BG-04-IB-JH-04 dated 31 January 2006; the Report for 4 Peer review by EU Expert Mr. Björnberg; and the Report for 4 Peer review by EU Expert Mrs. Schuster)

1. There is not a description of the content or a definition the independence principle in the Bulgarian law.
2. There is not a definition of the Supreme Judicial Council in the Bulgarian Constitution as the independent institution in charge of managing and governing the judiciary.
3. Improvement of the principles of independency and accountability of magistrates in article 132 of the Constitution (magistrates need full independency and full accountability in the performance of their public duties not immunity, only mechanisms to protect their independency from arbitrary attacks)
4. The full governance of the judiciary should remain in the SJC, with no intervention of the executive (independency ad extra) nor competence or outstanding role of the administrative heads (independency ad intra) on the professional status of magistrates.
5. The Minister of Justice, as well as any representative of the Ministry of Justice, should be fully removed from the SJC.
6. The SJC should be chaired by a chairperson, who will represent the SJC and chair the institution. Now this is a collective institution representing judges, prosecutors and investigators with no chairperson. Recommendations to fill this gap in order to:
    a. Have its representation role before the citizens and the rest of the public powers
    b. Talk for and defend the interests of this institution
    c. Avoid conflict of interests
    d. Be accountable for the judicial power

e. Strengthen the institution

7. The SJC working system and conceptual definition: the SJC should either be a permanent institution or have a Permanent Commission.

8. **The SJC anti-corruption commission should recover its investigation powers**

9. The responsibility for submitting annual reports on the activities of the judiciary to the Parliament should remain under competence of the SJC through its chairperson (now inexistent) and not in the way fixed in the new item 16 in article 84 of the Constitution.

10. The **dismissal of the chairpersons of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General before the National Assembly as it is now approved in article 129 of the Constitution is clearly inadequate:**

    a. **Weakens the SJC taking out this competence**

    b. **Political criteria and control in the dismissal of the main position of the judiciary precisely on the grounds that will require evaluation of their work and of their behavior**

    c. **Reduction of guarantees in the dismissal of these main positions**

    d. **Breach of the principle of independency in the aspect related to the need of the intervention of an authority independent of the executive and legislative power in every issue related to the termination of office of these main positions**

    e. **If the current regulation is considered inadequate, an eventual reform should seek to reinforce the principles of independency, separation of power and the role of the SJC as the governing institution of the judiciary, providing it with a proper legal framework to develop its powers.**

11. **New article 130 a) of the Constitution giving new powers of the Ministry of Justice is in the opposite direction to the commitments fixed in the the UE Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions in the Accession Partnership with Bulgaria and against the recommendations made:**

    a. **Takes out to the Minister competences of the SJC, weakening the institution: it is opposite to the reinforcement of the SJC**

b. **Damages to the principle of separation of power and the need to clearly distinguish between the roles of the SJC and of the Ministry of Justice**

c. **Affect the principle of economic independency**

d. **Not respect the principle of independency in the aspect related to the need of the intervention of an authority independent of the executive and legislative power in every issue related to the selection, recruitment, appointment, career progress or termination of office of magistrates**

e. **Affect the current autonomy of the National Institute of Justice from the executive or legislative**

f. **"Control" by the Minister of the work the magistrates: contravene the principle of independency: independency cannot be controlled but submitted to a sounded liability.**

12. The SJC should obtain its own administration and finances, draft and propose the budget for the judiciary through the chairperson now inexistent in the JC (not the Minister of Justice)

It should be necessary to eliminate the inspectorate service from the Ministry of Justice and to create an Evaluation and Supervision Department inside the SJC. For this there is the need of a minor reform in the JSA in order to allow judges, prosecutors and investigators to be appointed for this new Evaluation and Supervision Department (the same as they can be

13. Competence for selection, appointment, promotion or downgrading should be exclusively given to the SJC. The role of the administrative heads should be limited only to the designation of the number of vacancies in their respective courts or offices.

14. The SJC should be entitled to develop regulations on the magistrates legal status. In this sense article amendment in article 27 (11) of the JSA was proposed giving the SJC with competence "*To adopt regulations implementing this law related to the magistrates´ legal status as governing institution of judges, prosecutors and investigators, and to adopt regulations related to the work of the SJC and its administration.*"

15. As for District Magistrates: Change in all art 127 JSA the word "*person*" by the words "*judges, prosecutors or investigators*", to avoid appointment of persons who previously are not judges, prosecutors or investigators. No other way in but competition.

16. Limit the role of the administrative heads to the proposals to the SJC only for determining the number of magistrates requires, eliminating in article 30.1 JSA

eliminate the words "*appointment, promotion, moving and discharge*". This shall be decided independently by the SJC

17. **Regarding the appointment of Administrative Heads, change in all art 125 b) JSA the word "*person*" by the words "*judges, prosecutors or investigators*", to avoid appointment in the main positions or administrative heads of persons who previously are not previously judges, prosecutors or investigators. Demoralization of** magistrates

18. As for the promotion, nowadays the promotion and moving of judges, prosecutors and investigators is mainly conducted from a local point of view. It is necessary to change to a national perspective in which all judges, prosecutors and investigators were able to apply directly and only to the SJC for any position wherever it is, either to a superior position or to an equal level one, by a public merit concurs under the principles of equality, merit and capacity publicly announced and decided by the SJC without interference of administrative heads.

19. **For this, there is a need to reinforce the departments and the administration in the SJC, creating a new Evaluation and Supervision Department in the SJC to make a real evaluation of candidates for promotion of magistrates, providing the Commission for Proposals with the objective data and with the information necessary for it to take a the decision about who should be promoted. This evaluation should not be made at local or regional level by the Administrative Heads or auxiliary local panels.**

20. As for the Disciplinary liability of magistrates, need for legal habilitation to the SJC in the SJA for approval of an ordinance or regulation on this issue. No intervention of Minister of Justice and no role of Administrative Heads except for minor offences. Procedural guarantee, fundamental principles established and need to graduate the infringement by amending art 168 of the JSA (as follows "*For guilty neglecting of their official duties, as well as for violation of the rules of the professional ethics, the judges, prosecutors and investigators shall bear disciplinary responsibility, in accordance with the severity of the violation and the classification thereof as very serious infractions, major and minor infractions under the Regulation for magistrates liability approved by the Supreme Judicial Council*")

21. As for the secondary legislation, recommendations have been made for

    a. Ordinance concerning the Independence of Judges, Prosecutors and investigators

1. SECTION I. INDEPENDENCE INSIDE THE JUDICIAL SYSTEM
    a. A) Judges
    b. B) Prosecutors and Investigators.
2. SECTION II. INDEPENDENCE IN RELATION TO OTHERS BRANCHES OF GOVERNMENT
3. SECTION III. LEGAL REMEDIES (GUARANTEES AGAINST ILLEGAL INFLUENCE)
4. SECTION IV. IMPARTIALITY PRINCIPLE (DEFINTION)
5. SECTION V. LEGAL EFECTS
6. SECTION VI RECUSAL
7. SECTION VII REQUEST FOR THE DISQUALIFICATION OF A JUDGE OR PROSECUTOR
8. SECTION IV PROCEDURE

b. Ordinance concerning the Rights and Obligations of Judges, Prosecutors and investigators

1. CHAPTER I PROFESSIONAL RIGHTS
2. CHAPTER II PROFESSIONAL DUTIES
    a. SECTION I GENERAL PROVISIONS
    b. SECTION II JUDGES
    c. SECTION III PROSECUTORS
    d. SECTION IV INVESTIGATORS
    e. SECTION V . RELATIONS OF JUDGES, PROSECUTORS AND INVESTIGATORS
3. CHAPTER II OFFICE LIMITATIONS. ACTIVITIES INCOMPATIBLE TO THE OFFICE HELD.
4. CHAPTER III TENURE AND IMMUNITY. LEGAL EFFECTS

c. Ordinance concerning the Disciplinary Liability of Judges, Prosecutors and Investigators

1. CHAPTER I. GENERAL PRINCIPLES
2. CHAPTER II. Persons Subject to Disciplinary Liability
3. CHAPTER III. Breaches of Discipline
    a. Section I. Judges
    b. Section II. Prosecutors
    c. Section III.- Investigators
4. CHAPTER IV. Disciplinary Sanctions
5. CHAPTER V. Extinguishment of Disciplinary Liability
6. CHAPTER VI. Disciplinary Proceedings
    a. (a) Competent Authorities
    b. (b) Commencement and Progress of Proceedings
    c. (c) Completion of Proceedings
    d. (d) Appeal

d. Ordinance concerning the Magistrates' Administrative Situation.

CHAPTER I: Administrative status, holidays and time-off

a. Section I ADMINISTRATIVE STATUS
b. Section II HOLIDAYS
c. Section III TIME OFF

e. Ordinance on evaluation

1. Section I General Provisions
2. Section II Grounds for Appraisal
3. Section III Subject-Matter and Criteria for Appraisal of Judges, Prosecutors and Investigators
4. Section IV Indicators for Appraisal of Judges
5. Section V Indicators for Appraisal of Prosecutors
6. Section VI Indicators for Appraisal of Investigators
7. Section VII Methods of Appraisal.
8. Section VIII Unified Form
9. Section IX Competent Bodies and Appraisal Procedures
10. CONCLUDING PROVISIONS
11. Appendix UNIFIED FORM FOR APPRAISAL OF JUDGES, PROSECUTORS AND INVESTIGATORS

f. As for criteria and mechanisms for the selection, appointment, promotion and downgrading of magistrates the initial proposals were produced for draft articles and were officially presented on 13 April 2006.

TITLE 1 - GENERAL PROVISION, SELECTION, RECRUITMENT AND APOINTMENT OF MAGISTRATES
CHAPTER I - General provisions
CHAPTER II – Announcement of Competition
SECTION I - General Provisions on anticipated vacancies
SECTION II - Competition for Junior Judges, Junior Prosecutors and Junior Investigators
CHAPTER III - Application and eligibility rules for competition
SECTION I - Competition (Convening announcement, requirements of applicants, exam papers, Examination Committee, Exam proceedings, competition of applicants)
SECTION II - Training period at the National Institute of Justice (term, legal status of candidates, final evaluation)
SECTION III - Appointment of junior judges, prosecutors and investigators and their legal status
CHAPTER IV - Direct appointment of judges, prosecutors and investigators (Admission to the Judicial bodies through a direct appointment process)

SECTION I- General principles, proposal and requirement of the applicants
SECTION II - Evaluation Committee
SECTION III - Evaluation principles and criteria. Decision making process
SECTION IV - Appointment
CHAPTER VI - Special provisions for Investigators

TITLE II - PROMOTION OF MAGISTRATES
CHAPTER I - General principles and criteria for the appointment to office
CHAPTER II - Organization of this Body
CHAPTER III - Procedure
CHAPTER IV - Appeal or judicial review
CHAPTER V - Specialization of Magistrates
CHAPTER VI - Special rules for the reappointment to a different judicial bodies

TITLE III - DEMOTION OF JUDGES, PROSECUTORS AND INVESTIGATORS
CHAPTER I - General Provisions
CHAPTER II - Retirement
CHAPTER III - Incapacity
CHAPTER IV - Resignation
CHAPTER V – Discharge Following Disciplinary "Dismissal"
CHAPTER VI - Criminal liability
CHAPTER VII - Refusal of acquisition of irremovability status
CHAPTER VIII - Incompatibility
SECTION I - General Provisions
SECTION II - Compatibility statement procedure
SECTION III - Incompatibility as a cause of discharge
CHAPTER IX - Return after temporary substitutions
CHAPTER X - Reinstatement to office of an unlawfully dismissed judge, prosecutor or investigator
CHAPTER XI - Reinstatement

g. Reform the current *Regulation about the Work and Activity of the SJC and its Administration* in order to create in the SJC a new Evaluation and Supervision Department

h. Proposal to the Ministry of Justice for a minor reform in the JSA in order to allow judges, prosecutors and investigators to be appointed for this new Evaluation and Supervision Department and to establish the right of evaluated magistrates to appeal against the SJC decisions concerning the evaluation.

i. Previsions to provide the new Evaluation and Supervision Department of the SJC with the consequent budgetary coverage.

j. Amendment in the "Regulation for the work of the SJC and its Administration" in section 5 of chapter 6 from article 77.

22. The legal position of the National Institute of Justice as a fully independent organ and its relation on one hand as free standing from the Ministry of Justice and on the other hand its connection to the Supreme Judicial Council be clarified.The proposed amendment to the Constitution giving the Minister of Justice the competence to organize the magistrates qualification to be forsaken.

23. Judges should be enabled to organise and form professional associations.

24. The excessive number of courts should be reduced and the workload, premises, equipment etc. better counterbalanced between the courts.

25. The possibility of introducing restrictions in bringing in new facts and evidence in proceedings after an appeal should be considered.

26. The creation of a complete and functioning land-register built on a cadastral system should be given a high priority.

27. Court presidents should be obliged to act in cases of misconduct by judges in the court.