



**PHARE TWINNING PROJECT
BG-04-IB-JH-04**



Manuel MAZUELOS FERNÁNDEZ-FIGUEROA

EU Resident Twinning Adviser

SUPREME JUDICIAL COUNCIL

9, Saborna Str

1000 SOFIA (Bulgaria)

☎: +359 2 930 4990

☎/Fax: + 359 2 981 5851

E-mail: manuel.mazuelos@vss.justice.bg

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TO:

- PROFESSOR TOKUSHEV, PRESIDENT OF THE LEGAL POLICY COMMISSION AT THE SUPREME JUDICIAL COUNCIL
- ALL THE MEMBERS OF THE SUPREME JUDICIAL COUNCIL

Esteemed Professor Tokushev:
Distinguished members of the SJC:

I am hereby presenting to your attention the outcomes of two activities that were recently completed jointly with the Bulgarian experts:

- One is the National Seminar that took place from 7 to 9 June concerning the *General Principles of the Judiciary (Division of Powers and Independence, i.e. collective - of the SJC, and individual - of every Magistrate) and the Disciplinary Liability of Magistrates* (component 2 of this project).
- The other activity lead to a final proposal by the experts for the improvement of the Magistrates' Legal Status as regards their *Selection, Appointment, Promotion and Demotion* (component 3 of this project).

Moreover, several suggestions considered by this Project in previous analyses and proposed recommendations were also identified in the recently approved "ACTION PLAN" setting out "*Measures for Implementation of the European Commission recommendations, identified in its Comprehensive Monitoring Report of 16 May 2006*".

In section III concerning *The Reform of the Judicial System*, the Action Plan reads:



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- ... *“ii. Analysis by the working group on constitutional changes of the comments by the experts - proposals to be elaborated by this group if agreement can be reached on need to make further amendments - also looking at the Law on Judiciary*
- *Further action/ Measures planned by the Bulgarian side*
- *Remove the ambiguities as regards the full respect of the independence of the Judiciary ...*
- ... *Drawing up a new Law on Judiciary (LJ) in close cooperation with the NA and the experts from the Twinning project with Spain, including regular consultations with the EC concerning the Draft Law on the LJ.*
- *The Draft Law on the LJ should include criteria for evaluation of the work quality of magistrates, and eventually envisage establishment of new commissions within the Supreme Judicial Council (SJC) in this respect.*
- *The Draft Law should reconsider the generalized principle of competitions and limit them to the entry into the system. For promotions etc. a real merit based career path should be developed, hence the importance of objective and harmonized assessment (attestation) criteria and a unit in SJC to oversee implementation.*
- *Provide in the new LJ the creation of a new Evaluation and Supervision Department*
- *In parallel, foresee legal provisions in the new JSA to limit the role of the Administrative Heads: Competence for evaluation, selection, appointment, promotion or demotion 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 with no outstanding role in the career development. Consult with SP Twinning in SJC ...”*



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The documents, reports, conclusions and proposals herewith enclosed, as those previously sent by this Twinning Project, refer to some of the measures set out in the “Action Plan”.

The suggestions made by this Twinning Project attempted to offer a comprehensive and precise analysis of the matters involved and at the same time, to present, at the outcome of joint, in depth work with the Bulgarian experts, proposals for legal amendments required at different levels, in order to comply with the aims and benchmarks fixed in the Twinning Contract.

All Twinning Project recommendations are based on the principles, priorities and objectives specified in the “*Accession Partnership Agreement for Bulgaria 2003*” and on the following principles:

- Clear division of powers (Minister-Ministry of Justice # Supreme Judicial Council) with no ambiguities
- Principle of independence of the SJC (budgetary independence included)
- Strengthening the SJC
- Principle of individual independence of Judges, Prosecutors and Investigators (independence ad extra and ad intra –limiting the role of the Administrative Heads) and its guarantees
- Full accountability of magistrates as a corollary to their independence
- Improvement of the magistrates' legal status.

Until now, we have not received any information about the legal amendments intended to implement the above measures and guiding principles stipulated by the “Action Plan”, but we hope that the proposals and recommendations we previously submitted and we are now submitting to your attention can be useful in the current reform process.



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Regarding the secondary legislation, the Project suggested to SJC to develop six ordinances concerning, namely: the Independence of Judges, Prosecutors and Investigators; the Rights and Obligations of Judges, Prosecutors and Investigators; the Disciplinary Liability of Judges, Prosecutors and Investigators; the Magistrates' Administrative Status; the Evaluation of Magistrates; and the Selection, Appointment, Promotion and Demotion of Magistrates.

The SJC has been focusing in the last weeks on two ordinances, i.e. on the selection and evaluation of Magistrates based on the primary legislation currently in force.

Since the Action Plan highlights some key changes in the primary legislation that have not been made, the approval of these ordinances now will prove not ensure conformity with measures and principles under the "Action Plan".

Therefore, this Twinning Project recommends, before the finalisation of new ordinances, to wait for the transposition of the Action Plan in the primary legislation, in order to take into account and be in accordance with those *measures for implementation of the European Commission recommendations, identified in its Comprehensive Monitoring Report of 16 May 2006.*

Sincerely yours,

Manuel Mazuelos Fernández-Figueroa