

ACTIVITY 5.1 NATIONAL SEMINAR

SUMMARY REPORT

A seminar was held on June 7-8, 2006 at the National Institute of Justice of Bulgaria with the participation of the Spanish experts Mr. Francisco Jose Sospedra, Mr. Jose Maria Calero and Ms. M. Luisa Martin Morales, the Bulgarian experts Ms. Diana Garbatova and Ms. Mila Gheorghieva, who acted as moderators, and a group of thirty magistrates from the Republic of Bulgaria.

A purpose of the seminar was to introduce draft secondary legislation in relation to the status, the disciplinary liability of magistrates and the general principles of the judiciary. The seminar also attempted to gauge the magistrates' opinion of the proposed regulation.

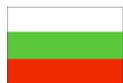
The proposed secondary legislation was vested in the form of an ordinance, which is subject to the approval of Bulgarian authorities in accordance with the established procedure, primary legislation and their competencies, fulfilling at the same time the objectives of the Twinning Contract and ensuring compliance of Bulgarian legislation with minimum European standards in relation to the independence of the judiciary and the separation of powers which are guiding principles across the EU.

These Ordinances were, as follows:

- Ordinance I, Independence and Impartiality of Judges, Prosecutors and Investigators,
- Ordinance II, Rights and Obligations of Judges, Prosecutors and Investigators,
- Ordinance III, Disciplinary Liability of Judges, Prosecutors and Investigators,
- Ordinance IV, Administrative Status of Magistrates.

First of all we must mention that all participants in the national seminar were highly appreciative of the work done by the Spanish and Bulgarian experts on said Ordinances, and **agreed that they should be adopted by the Bulgarian authorities and promulgated in the State Gazette, as the proposals constituted a true advancement in implementing and guaranteeing judicial independence and also reinforced the SJC as a governing body of the judiciary.**

It must also be mentioned that **participants in the seminar shared their concern over the latest amendments to JSA**, which retract from the above



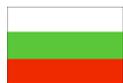
principles of separation of powers and judicial independence, weakening the position of magistrates and enhancing the role of the Minister of Justice.

We shall now present a detailed assessment of each ordinance, in line with seminar conclusions.

ORDINANCE I CONCERNING THE INDEPENDENCE AND IMPARTIALITY OF JUDGES, PROSECUTORS AND INVESTIGATORS

1. Art. 3, which prohibits the issuance of general or specific instructions to a judge - by his/her administrative heads, or by SJC - to courts or judges, except for the interpretative judgements of the Supreme Court of Cassation and the Supreme Administrative Court (insofar they might qualify as instructions), has to be improved by inserting a more specific reference to “instructions, which are capable of affecting a judge’s inner conviction”. Thus, the article will not apply to instructions issued by administrative heads in relation to the good operation of courts. The rule will, therefore, constitute a guarantee for the jurisdictional function of magistrates.
2. Participants agreed that indeed Art. 8 of the Ordinance established a favourable mechanism, guaranteeing judicial independence against illegal influences. In the envisaged situations enlarging guarantees in the seizure of publications through which illegal influence has been exerted should be made possible; however, the use of this type of seizure should respect the freedom of expression. In addition, a possible reaction against illegal influence could be the onset of criminal proceedings, in which the above measures could be applied.
3. Regarding the preliminary control of disqualifications, provided for in Art. 19 of the Ordinance, all participants in the seminar became involved in an interesting debate. New mechanisms have been proposed to avoid delays. For example, sending the statement in which disqualification is notified straight to a higher-standing court, or sending to only one member of such court, e.g. the Chairperson. A special ad hoc court panel should also be set up, in order to resolve disqualifications in the highest courts to which there are not any superior ones.

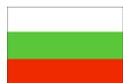
ORDNANCE II CONCERNING THE RIGHTS AND OBLIGATIONS OF JUDGES, PROSECUTORS AND INVESTIGATORS



1. Arts. 5 and 6 regulating adequate working conditions, remuneration, tenure and retirement for Magistrates were positively received. Representative expenses should also be added to that count, in order to allow for adequate interinstitutional contacts of the Magistrates.
2. In relation to immunity under Art. 12, a second paragraph was proposed, in order to notify SJC of the application of special investigation measures. Notification, however, must be made to a smaller group of people, such as a specific Committee or the Chairperson of the SJC (a figure that will also have to be introduced, as it does not exist at present). The rationale for the above rule is to avoid a situation where the notification process might damage the investigation.
3. As regards the right of association provided for in Art. 8 of Ordinance II, and the limitations established in Art. 29, a proposal was made at the outcome of a vivid discussion to prohibit magistrates from participating in associations, religious organisations, etc. in which the members might hold duties undermining judicial independence, when they would conflict with the duties of Magistrates in their official capacity.
4. A more specific wording of Art. 32, para 2 has been proposed, in order to avoid affecting Magistrates working in very small communities, having their relatives there.
5. It was mentioned that obligations referred to in Art. 22, paras 3 and 4 in relation to prosecutors should also apply to judges.

ORDINANCE III CONCERNING THE DISCIPLINARY LIABILITY OF JUDGES, PROSECUTORS AND INVESTIGATORS

1. Due to current amendments to JSA concerning the new disciplinary functions attributed to administrative heads and the Minister of Justice, it seems necessary to classify infringements into serious, medium and minor, in order to ensure respect for the principles of proportionality and security.
2. An additional adjective to qualify delay in Art. 8, para 6 of the Ordinance was proposed, delay thus having to be relevant, considerable and grave.
3. The wording of Art. 9, para 4 of the Ordinance was reviewed, due to a slight distortion because of translation. The following wording was therefore proposed “correction by lower-standing courts or judges, except in cases provided for by law”.



4. It has been proposed that the functions under Art. 23, littera b) of the Ordinance attributed to the Minister of Justice regarding the initiation of proceedings be repealed.
5. A proposal was made to include in Art. 32.2 of Ordinance III a two-instance procedure, in order to appeal the judgement of SJC in the matter of disciplinary proceedings first - before a panel composed of three magistrates and then, its judgment - before a panel of five magistrates.

ORDINANCE IV CONCERNING THE ADMINISTRATIVE STATUS OF MAGISTRATES

1. Many comments were made with regard to the voluntary temporary suspension of active duty. The maximum and minimum period to be fixed in this hypothesis were discussed.
2. Particular attention was paid not only to new control arrangements in relation to holidays, but also to possible compensation in the event where judges, prosecutors and investigators may not have enjoyed their annual holiday leave. It was proposed, after a lengthy discussion, that compensation be obtained at the end of the year following the one in which the right arose.
3. Art. 12 of the Ordinance, concerning time off for studies, was carefully discussed. All participants in the seminar, however, conceded that arrangements had to be made for attendance to public, and not to private, courses.

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Mr. Jose Maria Calero
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