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2.6.- ASSESSMENT OF PROGRESS, RECOMMENDATIONS AND COCLUSIONS IN THE REPORTING PERIOD

During the reporting period as a result of the Twinning Project team in-depth, comprehensive and high-quality work the respective documents were elaborated within schedule.

Working area No 1 of this project (improvement of Magistrates' Legal Status) finalized: Components 1, 2 (General principles and Mechanisms for the Realization of Magistrates' Disciplinary Liability), 3 (mechanisms for the selection, appointment, promotion and demotion of Magistrates), 4 (Criteria and Mechanisms for evaluation of Magistrates' performance) and 5 (Final Phase and presentation of the road map for achieving new legal status of magistrates) were all finished in the previous and reported quarter.

The main Project outputs for the fifth Quarter are:

- Beginning of the process for the **fourth Constitutional amendment** and elaboration of a report by this project team of experts (20 October 2006). Decision of the SJC (25 October 2006) to accept this report and send it to the Legal Issues Committee and to Ad-Hoc Committee on Amendments to the Constitution at 40th National Assembly
- **Report on the draft of the new Judicial System Act** presented to the SJC on 3 October 2006. No decision was made by the SJC.
- **Component 3** (criteria and mechanisms for the selection, appointment, promotion and demotion of magistrates) was completed and a **National Seminar** on this subject took place on 25, 26 and 27 September 2006.
- **Component 6:** strengthening the capacity of the Supreme Judicial Council (working area No 2 of the Project) finished. A **Seminar** on "*The New*



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Evaluation and Supervision Department in the SJC, its role as inspectorate unit and the institutional position of the SJC took place on 25, 26 and 27 October.

- The organization of the **National Conference**: “*The New Magistrates’ Legal Status in the Republic of Bulgaria: Achievements and Challenges*”, 9, 10 and 11 October 2006.
- **Project Web-Site** updated.

As a result of the activities implemented so far on the basis of the framework document (activity 1.2) and the conclusions of the seminar (activity 1.3) - both approved by the SJC on 30 November 2005- we produced recommendations and proposals¹ in the areas covered by this project related to:

- The Constitutional reform
- The amendments to the Judicial System Act
- Legislation concerning the Independence of Judges, Prosecutors and Investigators
- Legislation concerning the Rights and Obligations of Judges, Prosecutors and investigators
- Legislation concerning the Disciplinary Liability of Judges, Prosecutors and Investigators
- Legislation related to the criteria and mechanisms for the selection, appointment, promotion and downgrading of magistrates
- Legislation concerning the Magistrates’ Administrative Situation.
- Legislation concerning evaluation
- Amend the existing *Regulation concerning the Operation of the SJC and its Administration* in view of setting up a new Evaluation and Supervision Department
- Proposal to the Ministry of Justice for a minor reform in the JSA allowing judges, prosecutors and investigators to be appointed in the said new Evaluation and Supervision Department and introducing the right of evaluated magistrates to appeal against SJC decisions concerning evaluation. It was suggested to the SJC to communicate this recommendation to the Ministry of Justice.
- Provisions ensuring funding for the new Evaluation and Supervision Department of the SJC.
- Amendment to Article 77, Chapter 6, Section 5, of the *Regulation concerning*

¹ Detailed information of the activities, the results, all the recommendations produced by this Twinning Project and the regular assessments can be found at: <http://www.vss.justice.bg/bg/enter.html>



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the Operation of the SJC and its Administration.

The project development, its outcomes and the response to them can be summarized as follows:

SUMMARY OF THIS PROJECT ASSESMENT (November 2006):

A.- PROPOSALS AND RECOMMENDATIONS ACCEPTED

1. Magistrates must cooperate with the SJC (legal basis for eventual responsibility):

In Article 30, new paragraph 7 “Judges, prosecutors and investigators have the duty to support the Commission for proposals and appraisal in order to implement the powers of the SJC”

2. No direct appointments to enter the system, but only competitions.
3. Training at the National Institute of Justice as a pre-appointment requirement (achievement in danger according to the new provisions in article 241.2 and 243 of the new draft JSA).
4. Principle of publicity of centralized promotions/ direct application to the SJC, limiting the role of the administrative heads in this aspect:

Article 127b was amended as follows:

“Article 127b. (1). The unoccupied positions in the judiciary bodies and the term for applying for them shall be announced in one national daily newspaper and in the Internet site of the Supreme Judicial Council.

(2) The introducer of a proposal for appointment of an applicant from the judiciary bodies shall enclose a list of the applicants from the judiciary bodies with the enclosures, as referred to Article 30a, Paragraph 6. Judges, prosecutors or investigators can apply for appointment, promotion and replacement through the persons under art. 30 or directly before SJC.

(3) A competition shall be held also with an initial appointment to a position in the judiciary bodies when there is no applicant, proposed by the judiciary bodies, until the competition is announced.

(4) The competition shall be held centralized, but not more than tree times a year.”

5. Article 129.4 (third Constitutional amendment): the possibility for dismissal of the Chairperson of the Supreme Court of Cassation, the Supreme Administrative Court, and the Prosecutor General by the National Assembly shall be repealed:

This provision was declared unconstitutional by the Constitutional Court of Bulgaria Judgement No 7 of 13 September 2006

6. New regulation on evaluation and new regulation on competition of Magistrates:

On 15 June 2006 the SJC approved the Ordinance for appraisal of Magistrates and on 28 June 2006 approved the Ordinance for rules and provisions for competitions for magistrates.

*However we formally proposed to the SJC (letter to the SJC dated 21st June 2006) to **wait for the transposition of the Action Plan in the primary legislation**, in*



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order to take into account and be in accordance with the measures implementing the European Commission recommendations made in its Comprehensive Monitoring Report of 16 May 2006

Consequently, main principles that inspired this project recommendations and the principles reflected in the Action Plan could not be included in these new ordinances, such as:

- *The new JSA should **reconsider the generalized principle of competitions and limit them only to the entry into the system and not for promotions.***
- *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 JSA the creation of a **new Evaluation and Supervision Department.***
- *In parallel, foresee legal provisions in the new JSA **to limit the role of Administrative Heads:** Competence for evaluation, selection, appointment, promotion or downgrading should be exclusively given to the SJC. The role of 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 Spanish Twinning in SJC*

B.- PROPOSALS AND RECOMMENDATIONS NOT ACCEPTED

B.1.- SEPARATION OF POWERS BETWEEN THE EXECUTIVE (MINISTER OF JUSTICE) AND THE SUPREME JUDICIAL COUNCIL

The Minister of Justice should not preside the plenary sessions of the SJC (Article 130.5 Constitution should be repealed)

The SCJ must have its own Chairperson (independent from the executive and the legislative), its own representation, its own leadership ², and a single leadership

² There are several possible formulas for selection of the SJC Chairperson. In our report dated 28 November 2005, in order to ensure the involvement of the National Assembly as the highest democratic institution, we proposed the following constitutional wording:

The Supreme Judicial Council is the self-government institution of the Judiciary in charge of ensuring its independence. Its competences and status shall be established by law.

The meetings of the Supreme Judicial Council shall be chaired by its Chairperson who shall organize its sittings.

The SJC Chairperson shall be appointed by the National Assembly among three candidates proposed by the 3/5 of the members of the SJC at the first meeting of the SJC. This inaugural session of the SJC will be chaired by its most senior Member. The Vice president of the SJC will be elected by a plenary session of its Members by a majority of three fifths.



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The Minister of Justice should be removed from the SJC (Article 130a of the Constitution should be repealed), should have no initiative or powers to make proposals falling within the SJC competence. The very fact of making proposals by the Minister of Justice already constitutes an interference by the Executive into the affairs of the Judiciary

The SJC should have a broad constitutional definition as the institution representing the judiciary and in charge of its governance and should not be defined with a system of limited or *numerus clausus* powers.

The SJC is not a body of the judiciary but the institution in charge of the judiciary self-governance

The annual report to the National Assembly (Article 84.16 Constitution) shall:

- a) be presented to the National Assembly by the SJC Chairperson (now non-existing)
- b) refer to the situation, functioning and activities of the SJC itself and also of the Courts, Prosecution and Investigation Offices
- c) not refer to the annual reports of the Supreme Court of Cassation, the Supreme Administrative Court, and the Prosecutor General

The Inspection of all the bodies of the Judiciary:

- a) should be out of the Ministry of Justice and be placed in the SJC with a new Evaluation and Supervision Department;
- b) should not be a body elected by the National Assembly, a political body, but a professional one;
- c) should not inspect the SJC (the SJC is not a body of the judiciary, but the institution in charge of the judiciary self-governance)

B.2.- INDEPENDENCE AND STRENGTHENING OF THE SUPREME JUDICIAL COUNCIL

The SJC should hold and reinforce its powers to plan, budget, monitor and provide the administration of justice with proper economic resources³

The Chairperson of the SJC will represent the Supreme Judicial Council and the Judiciary and convene and preside the plenary sessions. In the event of voting, he or she will have the casting vote.

³ Regarding the judiciary budget, in our report (28-09-2006) on the draft new Judicial System Act we concluded the following:

1. *The competencies vested in the MOJ under the new Act are exorbitant with regard to the ones held by the SJC.*
2. *The powers of the MOJ extend to almost all areas of budgetary activity related to the administration of justice which is highly detrimental to the SJC powers.*
3. *The implementation of the budget includes provisions which reinforce the MOJ powers.*
4. *The JSA contains obvious contradictions, repetitions and legal loopholes with regard to the allocation of powers.*
5. *The intervention of an Advisory Council comprising representatives of different institutions in order to prepare the Budget does not have any precedent in other EU Member States and must be considered a lack of confidence in the SJC. This involvement simply extends and adds further complexities to the process, which is already complex, and we do not find that its contribution leads to any improvement.*



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The SJC must be a permanent constitutional institution or at least have a permanent Commission comprising some of its members (rotating)

The SJC must assume the leading role in magistrates' career development and the role of the administrative heads must be limited

The SJC must have an Evaluation and Supervision (Inspection) Department to guarantee an independent and uniform mechanism of evaluation and inspection, not linked to the executive, the legislative or to regional, local or individual criteria ⁴

6. The Parliament is faced with examining the Judiciary Budget from three perspectives: two from the Executive and one from the Judiciary, wherefore the weight of the Judiciary (SJC) in the Judiciary Budget is minimized.

7. The independence of magistrates and independence of governance are not equivalent concepts. There are several valid models which uphold the separation of powers but vest the drafting and execution of the budget either to the executive or the judiciary, without undermining the independence of magistrates. The historical evolution of the organization of the State which the Republic of Bulgaria is currently undergoing makes it advisable that the SJC itself should hold and reinforce its powers to plan, budget, monitor and provide the administration of Justice."

⁴ Regarding this new department in the SJC we made our first recommendations in our report on 28 November 2005. The same recommendations were made by the 4th Peer Review expert Mr. Björnberg, were included in the EC Monitoring Report may 2006 and in the Action Plan June 2006. We presented our final proposals on 5 June 2006:

Article a) (please include the appropriate number)

1.- The Evaluation and Supervision Department is a technical body which provides support to the Supreme Judicial Council in the discharge of those functions which are vested in this Department by the Constitution and the Judiciary Act, under the direct supervision of its Secretary General.

2.- The Department acts pursuant to the principles of transparency, objectiveness and full compliance with statutes and regulations applying the procedures approved by the Supreme Judicial Council.

3.- The Department consists in Judges, Prosecutors and Investigators as well as additional administrative staff.

4.- The Department is divided into three different sections: Judges, Prosecutors and Investigators.

Article b) (please include the appropriate number)

1.- The Chairmanship of the Department will be held by a Judge with at least twelve years of seniority in the legal profession.

2.- Experts working in the Department will be selected among Judges, Prosecutors and Investigators with the required experience and legal seniority for the performance of their duties which will not be less than twelve years.

3.- Appointment of Judges, Prosecutors and Investigators of the Department will be made at the Plenary Session following a proposal by the Judicial Administration Commission after the corresponding public examination contest has been held for those candidates which meet the requirements to be part of this body.

4.- The number of Judges, Prosecutors and Investigators appointed to each Section of the Department will be determined by the Plenary Session in the Classification of Work Positions of the Council.

In the exercise of their functions, Judges, Prosecutors and Investigators will only act with regard to Judiciary Bodies which have an equal or lower rank than the Judiciary body in which they held office prior to being appointed to the Supreme Judicial Council.

Article c) (include the corresponding number)

In evaluation matters, the Department will submit a report to the Proposals and Evaluation Committee in the cases of appointment, promotion, transfer and removal of Judges, Prosecutors and Investigators pursuant to the evaluation procedures approved by the Plenary Session.

Article d) (include the corresponding number)

In supervision matters, the Department will:



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The SJC Anti-corruption Commission should be reinforced and protected from undue influence

The SJC should be entitled to develop regulations on magistrates' legal status (statutory powers). In this sense, one of the major drawbacks we have pointed out on several occasions is the lack of any express statutory powers of the SJC to draft regulations and secondary legislation regarding magistrates' legal status. The current absence of SJC powers to pass legal instruments on this matter is considered to be a key barrier to its real governance of the judiciary.

B.3.- MAGISTRATES' PROFESSIONAL INDEPENDENCE AND ACCOUNTABILITY

Career development: Independence *ad extra*: no intervention of the legislative and executive in any stage of the process of selection, appointment, promotion and demotion of magistrates

Career development: Independence *ad intra*: The role of 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 of magistrates

Under the existing Bulgarian Constitution magistrates may not be subjected to civil or criminal liability, save for cases where they have committed an intentional publicly actionable criminal offence.

However, no provision is made for cases of damage caused by professional actions of judges, prosecutors and investigators as a result of malice or gross negligence

There is no provision concerning the financial liability of the State for damage caused to property or rights in the administration of justice in cases of:

- a) the EU principle of State liability for breaches of EC law by its public institutions (including judiciary)
- b) damage incurred due to:
 1. judicial errors,
 2. abnormal functioning of the administration of justice, or
 3. malice or gross negligence on the part of magistrates (notwithstanding the right to recover from them by means of the corresponding declaratory suit before the competent Court)

Article 132 paragraph 2 of the Constitution establishes a procedural prerequisite for prosecuting, which is too rigid from the point of view of the citizens' right to obtain effective protection from judges and courts in the exercise of their rights and legitimate interests.

- *Submit a report to the Proposals and Evaluation Committee on the adequate performance of their duties by Judges, Prosecutors and Investigators pursuant to the evaluation procedures approved by the Plenary Session;*
- *Handle complaints and claims;*
- *Submit a report to the Proposals and Evaluation Committee when it must issue a report on the judicial organization;*
- *Submit a report to the Anti-Corruption Commission providing it with as many data, background and circumstances are considered necessary for the performance of the Commission's duties*
- *Perform any other functions entrusted to it by the Council in this area.*

Article e) (include the corresponding number)

In disciplinary matters, the Department will provide the Council with any particulars, background and circumstances obtained when it is aware that a breach of duty may have been taken place by a Judge, Prosecutor or Investigator so that the Council may decide whether the appropriate disciplinary proceedings should be initiated.



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In case of its elimination, at the same time, it is absolutely necessary to include some kind of a guarantee to protect magistrates from arbitrary, groundless or illegal actions aimed at influencing their independence.

A comprehensive regulation on the principle of independence is needed, with special reference to the legal remedies (guarantees against illegal influence) and the role of the SJC to protect magistrates when their independence is encroached upon or threatened

Regarding Article 132 paragraph 3 of the Constitution, the existing regulation recognizes the immunity of judges, prosecutors and investigators from detention (to be lifted following a Supreme Judicial Council decision) except for a grave crime. This kind of provision affords a type of protection or guarantee generally accepted in the EU. Consequently its elimination is considered a negative decision.

On the other hand, apart from keeping paragraph 3, a new exception to the immunity from detention may be included to also cover flagrant crimes.

Regarding magistrates' disciplinary liability it is necessary to improve the legal and institutional framework in key aspects such as:

- to abrogate the Ministry of Justice powers in the SJC and to initiate disciplinary proceedings against magistrates,
- to limit the sanctioning powers of administrative heads,
- to keep the jurisdictional monopoly of the Supreme Administrative Court to review sanctions imposed on magistrates and have decisions for dismissal reviewed at two instances,
- to finish with the current open classification of disciplinary violations in view of ensuring legal certainty,
- to establish gradation of sanctions and redefine and group them as very serious, major and minor offences,
- to establish gradation of the sanctions attached to them or at least authorise the SJC to undertake this task,
- to clarify the disciplinary proceedings, introducing a simple procedure for minor violations which seems more suitable from the point of view of procedural economy and proportionality, or
- to reinforce the SJC capacity in this respect

IMPROVEMENT OF THE MAGISTRATES LEGAL STATUS

Adoption in the JSA or by the SJC of the recommendations concerning the following:

- a) The Independence of Judges, Prosecutors and Investigators
 1. Section i. Independence inside the judicial system
 - A) judges
 - 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 (definition)



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5. Section v. Legal effects
6. Section vi Recusal
7. Section vii Request for the disqualification of a judge or prosecutor
8. Section iv Procedure

b) 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) The Magistrates' Administrative Situations.

CHAPTER I: Administrative status, holidays and time-off

- a. Section I ADMINISTRATIVE STATUS
- b. Section II HOLIDAYS
- c. Section III TIME OFF
- d) Evaluation of Magistrates (by the SJC with the assistance of a new Evaluation and Supervision Unit and with no outstanding role of the Administrative Heads. The Evaluation and Supervision Unit in the SJC was a requirement set in the EC Monitoring Report –May 2006- and in the Action Plan approved by the Council of Ministers of the Republic of Bulgaria in June 2006)

As for magistrates presiding district units: amend Article 127 JSA to replace the word “*person*” with the words “*judges, prosecutors or investigators*”, to avoid appointment of persons who were not previously judges, prosecutors or investigators. No other way in but competition.

The same for Administrative Heads: amend Article 125 b) JSA to replace the word “*person*” with the words “*judges, prosecutors or investigators*”, to avoid appointment in the main positions or administrative heads of persons who were not previously judges, prosecutors or investigators

Promotion of magistrates: no professionals out of the Judiciary and special guarantees for administrative heads

The Draft JSA should reconsider the generalized principle of competitions and limit them to the entry into the system.

Regarding promotions etc.: a real merit based career path should be developed, hence the importance of objective and uniform assessment (attestation) criteria and a unit in SJC to oversee implementation.

C.- TO SUM UP

1. The acceptance of this Project recommendations regarding the third constitutional reform (new item 16 in article 84, new paragraph 4 in article 129 and new article 130a)



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was non-existent and regarding the amendment in the Judicial System Act (No. 39/12.05.2006) was imperceptible.

2. Although it has been said that this reform in the main legislation introduced no fundamental changes, it really established critical and very substantial reforms
3. The reform in the primary legislation were for the most part against and in the opposite direction to the recommendations made by this Twinning Project. These recommendations are based on some key and very fundamental principles:
 - Clear division of powers (Minister-Ministry of Justice # Supreme Judicial Council) set in the *Accession Partnership Agreement with Bulgaria 2003* and emphasised in the last monitoring reports
 - Principle of independence of the SJC (including budgetary independence)
 - Strengthening the SJC
 - Principle of independence of Judges, Prosecutors and Investigators (independence *ad extra* and *ad intra* –limitation of the role of Administrative Heads-)
 - Full accountability of magistrates as a correlative consequence of their independence
 - Improvement of magistrates' legal status
4. All the recommendations and proposals produced by this Project team of experts intended to fill with real content the mentioned principles and to offer a comprehensive approach on the needs of the judicial reform in Bulgaria to dissipate the concerns referred in the last monitoring reports and to set a solid legal and institutional framework.
5. The drafting of a secondary legislation cannot be properly done if its pillars, that is, the main legislation (Constitution and Judicial System Act), does not recognise the proper principles, structure and requirements.
6. Our recommendations were based on the understanding that in areas where no “standards” are in place, the best practices we could think of should be referred to.
7. Separation of powers and independence are not absolute principles anywhere in the world. They are only principles that have diverse grades (scales) or stronger or weaker content. The aim should be, in the framework of the so called “*checks and balances*”, to clearly design and offer to the society the most solid principles of the judicial system and the highest possible level of efficiency, accountability and professionalism. This will no doubt be crucial to reinforce the rule of law and strengthen the essential role that judiciary has in its effective and real implementation.
8. Judicial independence is not a privilege of the judiciary or of its governing institution to be used in their own interest. It is in the interest of the Rule of Law and those seeking and expecting justice.
9. The acceptance of our proposals among Bulgarian magistrates is very high. The National Conference organized by this Twinning Project finalized with a final declaration,



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following a proposal of the participants, addressed to the attention of the National Assembly, the Council of Ministers, the Minister of European Affairs, the Minister of Justice and the Bulgarian Press Agency with reads:

“... Responsible Bulgarian institutions must pay due attention to all twinning project proposals in the forthcoming constitutional and legislative process, affecting the Bulgarian Judiciary.

The process should actively involve the professional associations of judges, prosecutors, and investigators in a transparent way, allowing them to monitor its progress ...”

10. Although it was set in the Action Plan June 2006, this project did not received any communication whatsoever regarding the Action Plan implementation and, therefore, to our regret, we had to report the lack of any co-operation whatsoever between this project in the SJC and the MoJ, not even mere communication.
11. In the independent ECOTEC SECTORIAL INTERIN EVALUATION REPORT, 31 July 2006, when referring to this Twining Project in the Supreme Judicial Council, it concludes:

“... The generally good implementation of assistance to the Supreme Judicial Council is undermined by the lack of formal response from the Ministry of Justice on the proposals for amendment of the main legislation...

The activities funded by Phare are in general relevant to the objectives of the programme. However, the relevance of the assistance to the Supreme Judicial Council has been undermined by the latest amendment of the Constitution..

RELEVANCE: ... Strengthening of the SJC aims to provide a secondary legislative base to the SJC and thus contribute to the establishment of independent, transparent and strong judicial power, which has been a key concern of the EC. However, the project is affected by the uncertainties associated with the currently ongoing amendment of the legislative framework on judiciary. The latest amendment of the Constitution of March 2006 provided for a transfer of responsibilities from the SJC to the MoJ that has undermined the relevance of the assistance in the field of budget management. Relevance is barely satisfactory.

EFFICIENCY: ... Strengthening of the SJC is progressing to plan. The established working groups have ensured satisfactory involvement of representatives of the magistrates and the SJC. Draft proposals and recommendations are largely discussed with the parties concerned and the MoJ is kept informed about the project development through its involvement in the Steering Committee. However, this has not facilitated provision of formal feedback by the MoJ on the proposed amendments of the main legislation. This has undermined efficiency which is rated as barely satisfactory



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IMPACT: ... The uncertainties associated with the amended legislative framework of judiciary to a great extent threaten the effective use of the deliverables under Strengthening of the SJC. The extent of the immediate impact will depend on the provisions of the main legislation which may enhance, or on the contrary, constrain enforcement of the measures currently provided in the proposed regulations. As it is currently uncertain whether the proposed amendment of the legislative framework will be implemented and the role of the SJC in the management of the judiciary is currently weak, substantial intermediate impact on improving the magistrates' status and global impact on strengthening the judiciary cannot be expected in the short-term. More disturbing is that the latest amendment of the Constitution and the project recommendations seem to be in contradiction with one another. Overall impact is rated as unsatisfactory

SUSTAINABILITY: ... Sustainability of the assistance to the SJC (Strengthening of the SJC) largely depends on the legislative changes affecting the judiciary. In general it can be expected that the internal regulations of the SJC will be sustained albeit with further revisions. Sustainability of the assistance for strengthening the capacity of the SJC could be undermined by possible restructuring and loss of staff following the transfer of responsibilities from the SJC to the MoJ. Overall sustainability is expected to be barely satisfactory...

12. The fourth amendment in the Constitution of Bulgaria generates, to the understanding of this project team of experts, serious concerns regarding Article 84.16; Article 130 new paragraphs 6, 7 and 8 in relation with 130 a; new Article 132 a).

Our report was presented to the SJC. On 25th October 2006 the SJC decided:

*“1.- ACCEPT the Report on the draft law for the Fourth Amendment to the Constitution of Bulgaria, prepared by the team of experts in the Twining Project BG-04-IB-JH-04 and
2. Report on the draft law for the Fourth Amendment to the Constitution of Bulgaria, prepared by the team of experts in the Twining Project BG-04-IB-JH-04, to send to the Legal Issues Committee and to Ad-Hoc Committee on Amendments to the Constitution at 40th National Assembly.”*

In this report it is highlighted that :

“the draft is not a positive reflection of the aims and expectations set out in the last monitoring reports, as the constitutional definition of the SJC role remains unclear, its position of a “leading body” is further weakened, almost nothing new is introduced, gaps are not filled and ambiguities are not clearly removed, all of this as if indicating a kind of distrust in the SJC which governs the Judicial Power”

... “the analysis of the new paragraphs 6, 7 and 8 of Article 130, Article 130 a) and the new Article 132a) lead to the conclusion that not only the



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ambiguities have not been removed but also that the following new areas of concerns have been introduced: a) No broad constitutional definition of the SJC but a system of limited “numerus clausus” powers and competences. b) The SJC as an institution deprived of initiative; the powers of the Minister of Justice under Article 130 a). c) The SJC is not defined as a permanent constitutional institution; e) The new Inspectorate -Article 132a)-; weakening of the SJC and disregard for the Action Plan 2006 and EC recommendations to create an Evaluation and Supervision Department in the SJC”

.... “regarding the judiciary independence and magistrates’ liability the draft Constitutional Amendments may not be assessed as the well structured and comprehensive reform this moment requires. We consider it can be made a better use of this opportunity in order to improve the regulation of magistrates’ individual liability and of the State at constitutional level”

... We cannot see how new article 132 a) will help protect and ensure: a) The aim of strengthening the SJC own capacity, set in Accession Partnership Agreement with Bulgaria 2003 and emphasised in the last monitoring reports, b) The commitment of the Action Plan approved by the Council of Ministers and the EC recommendations to create in (not with) the SJC a new Evaluation (performance appraisal) and Supervision (inspection) Department, c) The principle of independence and EU standards on this aspect, clearly identified in the European Charter on the Statute for Judges (“in respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers”