



BULGARIAN JUDGES ASSOCIATION
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Fellow Prosecutors and Investigators,

In recent days, together we have observed with growing concern a series of destructive events that have dealt yet another blow to public trust in the Prosecution Service. However, blame for this outcome — an intolerably heavy burden to bear by all honest justice professionals — cannot be shifted onto the bitterly disappointed citizens who have taken to the streets to demand transparent governance of the judiciary, and more specifically of the Prosecution Service, court independence and professional autonomy of prosecutors from senior magistrates, the Prime Minister and behind-the-scenes centres of power on a quest to further expand their influence and strengthen their grip on society through the criminal misuse of public funds. We have a duty not to turn a blind eye to the obvious facts that are staring us in the eye. For many years, citizens have stood witness to:

- the suicides of prosecutors (the supreme prosecutors Nikolay Dzhambazov and Vasil Mikov) and the suspected involvement of the then Prosecutor-General whose actions were believed to have compounded the desperation that pushed the two prosecutors to taking their lives and which were never investigated;
- the murder of a supreme prosecutor Nikolay Kolev and his family's allegations that the act was instigated by the Prosecutor-General (see Case *Kolevi v Bulgaria* on the record of the European Court of Human Rights), which were likewise never investigated;
- the suspected involvement of a Prosecutor-General in the assassination of a lawyer (Nadezhda Georgieva), which prompted the refusal of a British court to place its trust in its Bulgarian counterpart due to the absence of adequate factual and statutory guarantees for its independence from the Prosecutor-General (in the case concerning the handover of the Bulgarian citizen Kalaydzhieva to Bulgaria for prosecution for an alleged criminal offence committed in Bulgaria);
- the refusal of the Prosecution Service, despite ample information into the public domain, to investigate the case of a Sofia prosecutor seeking support

from a former and future Prime Minister in order to be promoted as Head of the Appellate Prosecution Service and further information from the same source that the leader of the ruling party is familiar with a number of prosecutors and follows closely their career development;

– the admission, in the form of tacit consent, of the Prime Minister concerning his leading role in the appointment of a Prosecutor-General and the subsequent attempts to convince the public that the nomination was the result of a genuine selection process and the appointment procedure was lawfully conducted by the Supreme Judicial Council — developments that can solely be described as crude attempt to disguise the true nature of the election procedure by an ever thinning veil of purported lawfulness;

– the lack of reaction on the part of the only institution competent to bring charges in respect of committed crimes when strong suspicions arose that the strings of the Supreme Judicial Council were being pulled by the Minister of Internal Affairs, including in the selection and appointment of his family friend (Vladimira Yaneva) as President of the largest provincial court in Bulgaria, and the subsequent lack of reaction concerning the unlawful instructions given by the family friend of the Minister of Internal Affairs, already appointed as President of the Sofia City Court, on how applications for the use of wiretapping were to be drawn up in order to circumvent the restrictive requirements for their use laid down by law;

– the lack of reaction in the wake of multiple public displays of contempt for the presumption of innocence on the part of senior representatives of the executive branch of government and prosecutors during arrests broadcast to the public that were not only unwarranted in terms of the interests of justice but also clearly aimed to humiliate and degrade the individuals detained;

– the lack of reaction and the failure to investigate suspected corruption brought to light by investigative journalists, and not by the prosecution service, in a case that involved purportedly ‘penurious’ relatives of justices of the Supreme Administrative Court being granted the right to use municipal properties on the Black Sea coast free of charge and the links between the implicated magistrates and the Primorsko Municipal Council;

– the lack of reaction after the disclosed exchange of text messages between a member of the Supreme Judicial Council and the Prime Minister, which provided incontrovertible evidence to the general public of the solid grip of the Prime Minister over the body responsible for the appointment, dismissal, discipline and career development of judges, prosecutors and investigators;

– the lack of effective reaction to the publicly announced (post factum and not by the Prosecution Service) information about the meeting between a former Prosecutor-General and a media owner and businessman, at the office of a member of the governing board of a political party and businessman who had arranged the meeting, at a time when the companies of the businessman ‘invited’ to the meeting were being raided by the Prosecution Service. Although the media owner filed a complaint, alleging intolerable pressure, abuse of power and influence peddling (in the case which gained notoriety as TZUM Gate), an investigation was never conducted;

– the lack of reaction in the wake of the statement made by the current Prosecutor-General on national TV that in the last five years the random case allocation system in courts did not function (*‘It is as if Bulgaria was completely lawless in the last five years. No justice at all’*).

– inadequate, in terms of basic professional standards to be applied in corruption investigations, reaction of the Prosecution Service to the information disclosed by a judge that a case in which a significant amount of money was at stake and which has been randomly allocated to him, was ‘seized’ and reassigned to another judge by the court President;

– the lack of reaction in the wake of the admission of the former presidents of the Sofia Regional Court and the Sofia Appellate Court that a media mogul and businessman has a decisive role and strong influence on the preselection of the nominees for appointment as presidents of some of the major courts in Bulgaria;

– the lack of any reaction, from the point of view of professional ethics, over the fact that two members of the Prosecutorial Chamber of the Supreme Judicial Council who voted for the appointment of Ivan Geshev as Prosecutor-General subsequently became his deputies. Corruption in high office may have many faces and one of these is ‘rewarding’ those who practice it with a promotion after the fact.

Citizens could not but take notice that rank and file prosecutors failed to react in any way when obituaries of a former member of the Supreme Judicial Council (Kamen Sitnilsky) elected by the prosecutors, were published while he was still alive.

Likewise, the lack of response on the part of the Prosecution Service when by a final judgment the Supreme Court of Cassation held that an investigator,

subsequently promoted as Head of the Investigation Service (Petyo Petrov) had actively instigated the commission of a crime by a magistrate. We have no doubts that being true professionals you know that the instigation of a crime is a serious breach of the right to a fair trial under the Article 6 of the ECHR and that it runs contrary to the core judicial function of justice administration. Furthermore, being true professionals you are equally well aware that ‘the public interest in fighting corruption does not and may not justify gathering evidence through inciting a party to commit a crime’ and that the task of investigative bodies is to ‘prevent and investigate crime and not to incite it (see Judgment of the ECtHR of 23 October 2014 in case *Furcht v. Germany*).’ The lack of any professional reaction or an ethical appraisal of the conduct of Mr. Petrov can only be viewed by citizens in the context of the failure of the Prosecution Service to take any action and investigate the public allegations of his current interference in the work of and influence on law enforcement bodies and individual prosecutors in a case involving the extortion of a businessman and the wholly unlawful raid and usurpation of his business undertaking and property (the so-called ‘Eight Dwarfs’ case).

The lack of a reaction that would have sent a strong signal to society that the Prosecution Service stands firmly apart from this blatant instance of lawlessness and abuse of institutional power has returned as a boomerang, bringing further institutional devastation and ruin in its wake. This lack of institutional reaction paves the way for the promotion of prosecutors pandering to vested interests — poor professionals with little or no understanding of the law — which they make up for by resorting to force and fear, magistrates who fall short of the integrity standards and sound ethical judgment required to differentiate between respect for the presumption of innocence of each citizen who stands accused of committing a crime in pending criminal proceedings — a self-evident cornerstone of rule of law — and the transparency of public governance.

The above list of shameful acts and omissions, instances of application of a double standard and gross violation of constitutionally guaranteed rights and principles that cause the Prosecution Service to lose its legitimacy as protector of lawfulness is non-exhaustive. We recall these events from the last twenty years in order to clearly demonstrate that society is unlikely to have turned a blind eye, remaining a disinterested bystander. On the contrary, these developments have compounded, forming multiple layers of public memory and a permanently negative perception and deep public mistrust and intolerance to

the processes of anti-constitutional empowerment of the Prosecution Service. The card you played when voicing dissent with the separation of the Supreme Judicial Council into two professional chambers, alleging that this act represented a threat that would ultimately lead to the place of the prosecution service being shifted from the judiciary to the executive branch of government, thereby making the institution directly answerable to the government, has been accomplished without amending the Constitution.

It is highly disconcerting that the Prosecution Service has been equipped with tools for violence (the powers granted to the Protection Bureau to use firearms on direct orders from the Prosecutor-General), such powers being traditionally reserved for the executive branch of government because it is subject to democratic parliamentary scrutiny. This is tantamount to establishing a paramilitary unit, which poses a direct threat to civil peace and the rule of law because it has not been paired with an adequate deterrent mechanism. Violence perpetrated during the storming and search conducted on the premises of the office of Bulgaria's President are wholly deplorable and intolerable in a democracy purporting to be governed by the principle of rule of law. We know that true professionals, such as yourselves, do not need convincing that the investigation of the alleged crimes is objectively possible without breaching the sovereignty of the presidential institution in blatant breach of the Constitution.

Dear Colleagues, by electing to support the separation of the Supreme Judicial Council into two professional chambers judges did not abandon you to the arbitrary governance of administrative managers appointed in keeping with the 'You chose him yourself' principle, as some of you occasionally assert. This was the only way to lay the foundation of and clear the way for the strengthening of civil society and taking the first steps toward the emancipation of courts from power centres outside the judiciary that rely on force and, equally, emancipation of the Prosecution Service from its political engineers and defining the mechanisms for responsibility for its image and actions — both essential ingredients of the rule of law. We will never turn into spineless and disinterested observers of the sorry state of the institution in which the majority of honest and ethical prosecutors and investigators make enormous efforts to fulfil their professional duties in the cases investigated and supervised. Albeit necessary, this is however not sufficient to protect public interest, defend your professional dignity and reputation and ensure that responsibility is acknowledged for the shattered trust in the institution. We realise the extraordinarily vulnerable position of rank and file prosecutors and investigators

who face a difficult dilemma — to remain loyal to strict internal hierarchies or apply the law. We therefore remind you that there are always ways to resist and foster change. We remember how during the term of Prosecutor-General Nikola Filchev an alternative prosecutors association was established. We remember the attempts of ordinary prosecutors to put forth alternative nominations in the procedure for the election of the previous Supreme Judicial Council. We are convinced that the professional community has retained sufficient strength, will and competence to demand and bring about change in the management of the institution. From our own long standing experience of defending court independence we know that in a discredited State, in which indications of power being taken over by the mafia from within are becoming increasingly visible, civil society is the only authentic source of empowerment and support. Do not allow anyone to pit you against citizens!

Do not allow anyone to discourage you with party-political slogans that politicise the judiciary, casting reform as a strictly party-political matter. Not only because of the cynicism of the Establishment's attempts to argue that this is the case, behaving as if the entire history of human civilisation had passed it by, but — much more importantly — because the host of questions pertaining to the structure and content of judicial institutions is a matter of policy exclusively within the remit of competence of public authority, which is responsible and should be held accountable for its decisions. We, both judges and prosecutors, are actors and not subjects of the reform, and therefore have a duty to stand firmly, each with his/her professional background and achievements, in support of an authentic and meaningful judicial reform in order to prevent its goals and tasks from being thwarted yet again. We are convinced that the boundaries of legitimacy of judicial activism in the Judgment in *Case Lopez Lone and Others versus the Republic of Honduras* of the Interamerican Court of Human Rights are fully applicable to prosecutors in their fight to uphold the law and defend their professional legitimacy: 'At times of constitutional crises, social upheaval and radical social transformations, the active role of judges is essential for safeguarding democratic order. At times of grave democratic crises, the norms that ordinarily restrict the right of judges to participate in politics are not applicable to their actions in defense of the democratic order.' The words of Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales, from a speech to the Commonwealth of Magistrates' and Judges' Association of 2015, also resonate: 'Strong judicial leadership and engagement is needed: Judges cannot expect others to do all that is necessary to protect the position of the

judiciary and the justice system. a proactive stance led by the judiciary is required.’

Dear Colleagues, we call on you to publicly express your indignation at the long-standing abuse of the Prosecution Service! We further call on you to take the lead in protection of your professional dignity and clearly and unambiguously voice a clear position on the values, methods and competence of the current administrative management of the institution! We believe that in addition to our support, you will also earn the respect and support of other legal professions and students in their senior year at law faculties who are looking up to you, seeking confirmation that the law is the greatest human achievement and the sole instrument for peace and justice.

14 July 2020

Managing Board of the
Bulgarian Judges Association