



BULGARIAN JUDGES ASSOCIATION

Member of the International Association of Judges (IAJ-UIM)
Member of the Magistrats européens pour la démocratie et les libertés (MEDEL)
1000 Sofia, 7 Pirotska Str., fl. 5, ph. +359879686841
www.judgesbg.org
office@judgesbg.org

ADDRESS

from the Bulgarian Judges Association

Respectful members of the Supreme Judicial Council,

On September 19, 2020 the General Assembly of the Bulgarian Judges Association (BJA) was carried out and it took a decision to turn to each one of you with the request to evaluate publicly known facts about the activities of the Prosecutor General (PG) and based on this evaluation to consider the initiation of a procedure in accordance with art. 175, para 5 in connection with art. 173 from the Judicial System Act (JSA).

It is not the first time that the BJA addresses issues related to the functioning of the prosecution and in particular – the legitimacy of the procedures for elections on the highest positions in the judiciary. During the election procedure of the previous Prosecutor General our organization raised serious concerns about the conformity of the procedure with the Constitution and turned to the President of the Republic with a request to make use of his rights according to the Constitution.¹ During the course of the election procedure for the current Prosecutor General we presented in an open letter arguments why the President of the Republic should reject signing the decree for the appointment of the candidate elected by the plenary of the SJC.² We have pointed out that the whole procedure, the presentation of the professional biography of the candidate and the hearing, did not create the conviction that he complies with the requirements of art. 170, para1, p. 5 from

¹ Position of the MB of the BJA on the occasion of the election of a PG of the Republic of Bulgaria , January 3, 2013 г. -

http://judgesbg.org/oldsite/images/Pozicia_glaven_prokuror_271212.pdf

² Statement of the MB of the BJA to the President of the Republic of Bulgaria, November 6, 2019 -

<http://judgesbg.org/2019/11/07/%d0%be%d1%82%d0%bd%d0%be%d1%81%d0%bd%d0%be-%d0%b8%d0%b7%d0%b1%d0%be%d1%80%d0%b0-%d0%bd%d0%b0-%d0%b3%d0%bb%d0%b0%d0%b2%d0%b5%d0%bd-%d0%bf%d1%80%d0%be%d0%ba%d1%83%d1%80%d0%be%d1%80/>

the JSA, namely adherence to and enforcement of high ethical standards which presuppose respect of the opponent and to the fundamental human rights. The election procedure was not able to establish the conviction that the only candidate elected possesses the necessary professional competence which goes beyond the required skills to work on cases and is needed for defining the goals of the criminal policy of the country. It was also not convincing that he has the skills for setting clear and fair criteria for performance evaluation of the prosecutors and their career advancement based on the results of their work and the skills to affirm fair trial, protect individual rights and change the institutional culture by bringing a spirit of professional independence, lack of fear and support for every prosecutor to increase his own qualification and to self-improve while serving the public's interest. We were concerned back then because of the fact that during an interview for the Bulgarian National Television aired on July 23, 2019 (before the election) the candidate for Prosecutor General already was qualifying people who disagreed with his nomination as "right extremists", "Bolsheviks", who have achieved "the results of Mensheviks". We have said that such a wording is inconsistent with the requirements of art. 170, para 5, p. 3 from the JSA which says that the Prosecutor General has to be characterized with an exceptional independence. We have also pointed out that the comprehension of the amount of resources and power, including a repressive one calls that the Prosecutor General has such public behavior that doesn't leave any trace of doubt for aggressiveness and bias. The PG shouldn't demonstrate personal attitude, self-promotion or behave in a discriminatory way towards citizens or groups from the society.

Unfortunately, today we have to say that all our concerns related to the election of Ivan Geshev for Prosecutor General have been justified. As a result of his public behavior and statements, as well as a series of actions related to concrete criminal proceedings, we are witnessing now a deepening of the crises in the rule of law.

As a professional organization of judges, we are obliged to take positions on issues related to the status of the Prosecutor General and the role of the prosecution in a democratic society, because both the prosecution offices and the courts have a common administrative body – the plenary of the SJC. The latter, among its other rights, elects the Presidents of the two Supreme Courts. In democratic societies judges have the duty to react each time when key questions related to the rule of law are concerned. The institutional crisis with the Prosecutor General is such a question. In its statement related to the judicial reform in Poland from 14.12.2017 the European Network of Judicial

Councils (ENCJ) clarifies: „... like any citizen a judge should be permitted to express such concerns when democracy and fundamental freedoms are in peril, subject to the constraints linked to a judge’s function. A judge’s reserve may yield to the duty to speak out“. Now we are facing a similar threat of the very foundations of the rule of law which calls for your reaction, because there is a mechanism to counter react to this threat and it is part of your rights guaranteed by the Constitution. One of the main functions of the SJC is to protect the independence of the judiciary, including, through disciplinary powers, therefore the SJC needs to convince the people that the law applies to all and that the supreme administrative positions within the judiciary are free of any doubt for corruption and abuse of power.

We waited for some time hoping on a reaction from your side, but now we have to remind you about some of the facts which need to become subject to discussion at the SJC regarding the decision to initiate the procedure under art. 175, para 3 from the JSA against the Prosecutor General.

1. According to art. 6 from the JSA „*Judges, prosecutors and investigating magistrates shall be politically neutral when they act.*“. In his numerous public appearances the PG Ivan Geshev has violated this main principle for the work of all magistrates. He allowed himself inadmissible public statements where he was giving political evaluations for some representatives of political opposition and for public processes from the near past (like the privatization which was carried out some decades ago).
2. Back in February we have signaled the SJC about audio recordings disseminated by the prosecution which were obtained through special intelligence tools. In deviation from the Criminal Code and the Law on Special Intelligence Tools these recordings were revealing conversations with the participation of the President of the Republic. Some time has passed, but it does not lessen the relevance of the questions:
 - is the prestige of the judicial power ruined through creating the appearance that the prosecution is turning into a political power centre not depending on any democratic procedures for accountability;
 - can the PG allow himself a behavior uncommitted to the rule of law and the lawful functioning of the state, including through the erosion of the principles of the division of powers and the independence of the court?All this creates circumstances for having reasonable doubt that a crime has been committed by a prosecutor (unregulated dissemination of audio

recordings collected through the use of special intelligence tools which does not serve the needs of a criminal procedure; and these are recordings of conversations of the President of the Republic). The worrisome situation required that you discuss and share with the Bulgarian people your understanding about the decent (in accordance with the ethical and professional rules) and lawful behavior of the PG in his relation to other state institutions – the government (in particular the Prime minister) and the President. The SJC did not react to our signal. We believe that now it is absolutely necessary that you carry out this discussion which will create the so much needed standards for managing the judicial system. Furthermore, it will provide the possibility to perform a checkup about the existence of enough data for the initiation of a procedure under art. 173 JSA – discussing the issue whether the PG has performed a grave disciplinary breach according to art. 129, para 3, p. 5 from the Constitution and consequently exercise your rights under art. 175, para 5 from the JSA.

3. In an address to the prosecutors in the country made on July 14, 2020 we turned the attention to the worrisome fact that the prosecution now possesses a force tool (the right of the Bureau for protection to use weapons on the ground of a direct order from the PG). This is a prerogative of the executive power, because it can be controlled by the National Assembly. Under the auspices of the PG was created a paramilitary formation and this already threatens the civic freedom and the rule of law, because there is no adequate control mechanism. We are of the opinion that the demonstration of force actions like the forced entry in the Presidency of the Republic of Bulgaria coupled with a search, are absolutely inadmissible in a country governed by the rule of law. There is no doubt that an investigation of the alleged crimes is allowable and objectively possible without anti-constitutional injury of the presidential institution. The role of the Prosecutor General who solely possesses the right to give orders to the people from the Bureau for protection to participate in such actions, needs to be determined through a checkup carried out by the SJC and we insist on that.

4. In interviews and other public appearances the PG violates the presumption of innocence at the very beginning of the pretrial proceedings, by publicly announcing the names of the people he believes are the perpetrators. Even more, he encourages the supervising prosecutors to also publicly disclose materials related to the investigation. Such behavior endangers and discredits the independence and impartiality of the judiciary thus, calling for discussion at the SJC.

In a statement made on July 10, 2020, the Supreme Bar Council expressed its worries that the dissemination of selected by the prosecution evidence on pending pretrial proceedings, violates gravely the presumption of innocence and intentionally draws the media attention on concrete cases. By doing so, it creates the impression that the final decision on the case depends not on the court, but on the public opinion. The SJC did not answer these concerns which demands now that you perform a full checkup on the severity of the damage on the image of the judiciary and publicly discuss the compatibility of the behavior of the PG with the requirements of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. The Directive as well as the Constitution of the Republic of Bulgaria oblige the country to guarantee that public bodies cannot disclose information to the media through which accused can be presented as guilty. Furthermore, it should not be allowed that the burden of proof is shifted from the prosecution to the defense, because this violates the presumption of innocence.

5. In the context of the already listed reasons of concern, you should also provide an answer to the question whether the PG has impaired the prestige of the judiciary when in a public interview related to the used at that time (March 2020) centralized electronic system for random case assignment, he said that *“it contained corona viruses and that in fact in the last five years, there has been no justice in Bulgaria”*.

6. In a series of public appearances the Prosecutor General allowed for the victims of crimes to be divided in such who were “honored” with his attention and the information about him meeting with them was disseminated by the press office of the prosecution and, all others. The institution of the PG is by definition a guarantee for lawful, equal and humane treatment of everybody whose rights and legal interests have been infringed. Dividing people in trouble could create the false idea in society that effective criminal prosecution does not depend on the application of law, which provides equal protection to all put in equal circumstances, but rather on an act of condescension from the PG connected to his concrete personal preferences, interests, political conjuncture or speculation with populist attitudes. A separate issue remains that, beside the fact that this does not correspond to the rule of law, such a behavior – conversations from the crime scene with the media, declarations and prognoses for the development of the criminal proceeding coming from the institution which is on the top of the prosecutorial hierarchy, discredit the very idea for an objective and impartial justice, for professional standards during

the investigation and for the protection of human dignity from the state power.

There are higher standards for the behavior of judges, prosecutors and investigators when at work and outside. Article 170, para 5, p. 1 from the JSA introduces for the Presidents of the two Supreme Courts and the PG special requirements for adhering and enforcement of high ethical standards and strong independence. The relevant for the Bulgarian magistrates ethical rules from the Code of Ethics adopted with a decision of the SJC, are stemming from the so called Bangalore principles – the broadly accepted ethical rules adopted by all countries members of the UN which are also applicable to other magistrate professions. The rules of professional behavior require that all magistrates have to support society's trust, to avoid any actions which might derogate the dignity of their profession and to minimize the risk of conflict of interests or any other activity which could harm their reputation and independence. Their behavior should not only be strictly in accordance with the criteria for impartiality and independence, but should also prevent from conflict of interests and doubts about their integrity and decency. Every day the magistrates are exercising powers which influence significantly the destiny of the citizens. Society would not accept giving this power in the hands of people with questionable integrity, competence or doubtful personal standards. Therefore, magistrates' behavior at work and outside their work activities should be in complete conformity with the trust of the society and its expectations.

According to the Constitution and the JSA, the PG possesses exceptional rights in the field of criminal investigations and the supervision of legality and this puts him on the top of the hierarchy within the judicial power. According to art. 126, para 2 from the Constitution and art. 46, para 5 from the Criminal Procedure Code, the PG exercises supervision as to legality and methodological guidance regarding the work of all prosecutors. The system of the Bulgarian prosecution is centralized. All administrative heads within the prosecution are subordinate to the Prosecutor General and respond to him (art. 136, para 4 JSA). The PG has the right to issue mandatory ordinances related to the work of every prosecutor, including the work on concrete cases (art. 139 and art. 143 JSA). The Prosecutor General has the right to present at the SJC suggestions for promotion or disciplining of prosecutors (art. 38 and 312 JSA). To these rights correspond the increased requirements as to the ethical standards for the PG, because he could influence the activities of all prosecutors, determine the overall image of the prosecution and play also an important role in the election of the Presidents of the Supreme Courts. The

content of the ethical standards which the PG should consider, inevitably needs to take into account the current public context and the impact over the public's opinion of the rest of the unresolved problems and crises in the legitimacy of the judicial system and in particular – of the prosecution. The unresolved problems and such about which the SJC is keeping silent, are influencing the overall level of mistrust Bulgarian citizens have towards the capability of the judicial power to ensure the rule of law. It will be enough to remind that more than 10 years after the decision of the ECHR on the *Kolevi vs Bulgaria* case³, an institutional and procedural mechanism creating effective guarantees for impartiality and objectivity of an eventual criminal proceeding against the Prosecutor General (when there is enough information for a committed crime), is missing.

We do not want to assume that the SJC is not acting according to its constitutional task to be the only institutional corrective to the PG and by doing so, to turn into a separate factor for arbitrariness and undermining of the rule of law. Therefore, we are suggesting that you perform a complex and thorough check of the above mentioned facts and after that, publicly discuss and provide an answer to the society whether the grounds described in art. 129, para 3, p. 5 from the Constitution are in place and, accordingly, exercise your rights under art. 175, para 5 JSA.

29.09.2020

Managing Board

Bulgarian Judges Association

³ [https://hudoc.echr.coe.int/eng#%22appno%22:\[%221108/02%22\]}](https://hudoc.echr.coe.int/eng#%22appno%22:[%221108/02%22]})