Judicial Independence in Bulgaria

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Executive Summary

Bulgaria has made important progress towards the creation of an independent judiciary, especially in the development of formal arrangements separating the judiciary from the other branches and giving it considerable administrative autonomy.

However, this formal consolidation of judicial independence has been seriously curtailed in its implementation. In particular, the continued involvement of the Ministry of Justice in administrative and supervisory matters, the executive's co-optation of the judicial budget, and the continued mixing of core judicial and non-judicial functions in the Supreme Judicial Council, limit judges' real independence.

More generally, these problems are symptomatic of the political branches' weakly held commitment to judges' independence. The executive and legislature demonstrate a persistent reluctance to concede the existence of a truly independent judicial branch.

The principal areas of concern identified in the Report are the following:

Executive Involvement in Court Administration

The Ministry of Justice continues to exercise extensive administrative powers, although in theory the Supreme Judicial Council should act as the administrator for the judiciary. In addition, the Ministry has extensive supervisory powers, which allow its Inspectorate to make intrusive investigations into the work of courts and individual judges.

Co-optation of the Judiciary's Budget

Although the Supreme Judicial Council formally drafts the judiciary's budget, in practice the executive prepares, and Parliament passes, a parallel budget, effectively excluding the courts from the process. Resource allocations are also controlled by the executive to some degree.

Ineffective Supreme Judicial Council

There are serious shortcomings in the Council's organisation. In particular, the Council's mixed composition – including numerous appointees of Parliament, the

Minister of Justice, and representatives of other magistrates – and its mandate to represent the whole magistracy (including judges, prosecutors and investigators) make it an ineffective representative of judges and their independence. The Council has too small a staff and meets too infrequently to be an effective administrator.

Weak Political Commitment to Judicial Independence

These particular problems are symptomatic of a political culture in which respect for independence in judges' decision-making processes is still not well developed. The actions of the political branches reflect widespread mistrust of or lack of confidence in the judiciary. Reportedly, some political actors still engage in practices such as "telephone justice". Courts' jurisdiction over some administrative acts have been curtailed in ways which – though technically within the law – inevitably have a punitive cast and affect judges' willingness to adjudicate based on the facts and law alone. The statutory composition of the Supreme Judicial Council, which represents and administers the judiciary, has been altered with changes of Government.

In addition to these general issues, the following issues of particular concern are discussed in the body of the Report:

Mixed Judicial and Non-Judicial Roles in the Magistracy

The formal guarantees of separation and independence provided in the Constitution refer to the judicial power as a whole – that is, to the magistracy – and not to the judiciary *per se* or to judges. As the magistracy includes prosecutorial and investigative functions outside the core judicial function, the formal separation of powers is blurred and the independence of judges is compromised. In addition, the conflation of three separate authorities in a single magistracy with a single formal administrative organ invites unnecessary involvement of the executive with the judiciary in a manner that limits judicial independence.

Poor Working Conditions

Courts suffer from chronic under-investment, and working conditions are unsatisfactory, especially concerning office space and equipment. While the situation is not uniformly bad throughout the country, in general courts and judges are overburdened. Court presidents are in a particularly vulnerable position in relation to the Supreme Judicial Council and the Ministry of Justice, which exercise control over needed resources.

Pensions

Salaries are generally satisfactory; however, pensions are quite low, which, when combined with discretionary rules on retirement, may endanger judges' decisional independence.

Judicial Career

There are very few clear or objective procedures to guide the Supreme Judicial Council in making personnel decisions. Particular problems of note include the provisions that judges are not tenured (and thus irremovable) until they have served three years in a position, that promotions are largely discretionary, and that in the absence of a mandatory retirement age older judges effectively serve at the pleasure of their court president and the Council.

Case Assignment

Case management lacks transparent and neutral standards for assignment.

Enforcement

Although judicial decisions are generally respected, there have been individual cases when high officials had to be fined for failing to fulfil obligations arising from court decisions. In addition, the enforcement of civil and commercial judgements poses significant problems.

Corruption

There is a widespread public perception that the courts are affected by corruption. Even absent conclusive documentation, such perceptions can negatively affect judicial independence. Concerns about corruption recently led to a proposal to limit magistrates' constitutional immunity. The proposal failed in the Parliament; however, it appears the issue may be revisited in the next Parliament.

I. Introduction

Bulgaria has made important progress towards the creation of an independent judiciary, especially in the development of formal arrangements separating the judiciary from the other branches. The Constitution and major legislative acts provide explicit protections, and the judiciary has been given considerable administrative autonomy.

However, this formal consolidation of judicial independence has been seriously curtailed in its implementation. In particular, the continued involvement of the Ministry of Justice in administrative and supervisory matters, the executive's co-optation of the judicial budget, and the continued mixing of core judicial and non-judicial functions in the Supreme Judicial Council, the body responsible for representing and administering the judiciary, limit judges' real independence.

More generally, these problems are symptomatic of the political branches' weakly held commitment to judges' independence. The executive and legislature demonstrate a persistent tendency to intervene in the organisation and work of the judiciary both for short-term political gain and out of a reluctance to concede the existence of a truly independent judicial branch.

A. Areas of Persistent Political Branch Involvement in Core Judicial Affairs

The real progress achieved in reform efforts to date has been limited and even undermined by significant and continued involvement of the executive in areas essential to the maintenance of an independent judiciary, in particular in administration, budgetary matters, and the organisation of the Supreme Judicial Council.

The Ministry of Justice continues to exercise extensive administrative powers, although in theory the Supreme Judicial Council should act as the administrator for the judiciary. The Council's powers are defined, but the Ministry's are not, allowing it in effect to operate without clear limits. In addition, the Ministry has extensive supervisory powers, which allow its Inspectorate to make intrusive investigations into the operations of courts and the actions of individual judges.

The Supreme Judicial Council formally has exclusive authority to prepare the judiciary's budget, but in practice the executive prepares a parallel budget which forms the basis of the budget passed by Parliament, and the judiciary is effectively excluded from the process. Because the Ministry of Justice continues to control building and infrastructure

budgets, many of the resource needs of courts can only be met with its approval; in general the executive's budgetary control also augments its administrative authority.

The Supreme Judicial Council's own operations and composition reflect the continued influence of the political branches. The Supreme Judicial Council is supposed to represent and administer the judicial power, but it is composed of not only judges, but also prosecutors and investigators. The majority of its members are either appointed by Parliament or represent non-judicial functions, despite the fact that this body is formally responsible for the independence of the core judiciary, and actually exercises considerable discretionary authority over judges' career paths. The Council has too small a staff and meets too infrequently to be an effective administrator, leaving the door open for continued executive involvement in administration and supervision.

The judicial branch includes judges, prosecutors and investigators – commonly referred to as the magistracy.[1] The inclusion of three separate organs within the magistracy is a source of tension among them and can create conflicts of interest. For example, the Supreme Judicial Council, with its mixed composition, is supposed to represent and administer all three branches of the magistracy. Political actors, State institutions and society as a whole tend to treat the different bodies as equally responsible for, *inter alia*, the "fight against crime," without differentiating between their particular competencies, a situation especially problematic for the courts with their special guarantees of independence. Moreover, the different bodies have on occasion publicly criticised each other, thus adding to the pressure on the judiciary from the executive and the public at large.[2]

B. Weak Political Commitment to Judicial Independence

The above problems are symptomatic of a political culture in which respect for the independence of judges' decision-making processes is still not well developed. The actions of the political branches suggest a posture of mistrust of or lack of confidence in the judiciary. Reportedly, political actors still routinely engage in practices such as "telephone justice" and other forms of direct and improper intervention, though such practices are difficult to document.

Issues fundamental to the independence of the judiciary have been the subject of continuing political controversy. Consecutive political majorities have attempted – with varying

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1 CONST. REP. BULGARIA, Art. 117

(1).

2 The Chief Public Prosecutor's office, for example, which wishes to regain competencies in the area of pre-trial detention, has accused courts of being lenient with respect to "proven" criminals.

success – to create their own majorities within the judicial branch. On two occasions (1991 and 1998), the composition of the Supreme Judicial Council has been altered by act of Parliament prior to the expiry of its members terms – formally a legal move, but one which seriously undermines the principles of independence which motivated the creation of the Council in the first place. These interventions by the legislature suggest that, in important ways, judicial reform has been subordinated to *ad hoc* political goals instead of consolidating judicial independence.[3]

Thus, concerns about corruption – reportedly endemic in the judiciary as well as in other branches – have brought (unsuccessful) calls in Parliament for judges' immunity to be revoked or curtailed, and courts' jurisdiction over some administrative acts (relating to privatisation and licensing of banks and insurance companies) has been curtailed in ways which – though technically within the law – inevitably have a punitive cast and affect judges' willingness to adjudicate based on the facts and law alone. In one recent instance, in 2000, Parliament adopted an interpretative law stripping the courts of competence in a case pending before the Supreme Administrative Court concerning the deportation of certain individuals on national security grounds, ordering that the proceedings be discontinued and past court judgements on the issue declared null and void. (The Constitutional Court repealed the final part of the interpretative law, holding that the legislature had acted as a judicial organ in breach of the constitutional principles of the rule of law, the separation of powers and independence of the judiciary.)[4] Parliament has also limited judges' right to appeal disciplinary rulings against them.[5]

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[3] One commentator has noted: "[O]ne of the prerequisites of an independent court-system is the system being self-governing. It should have the requisite resources, managerial skills and necessary self-esteem to be self-governed. What are the obstacles for the realisation of this presently? First, the periodic influx of politics into the judicial system through the replacement of the Supreme Judicial Council which is not left to complete its term of office. In my opinion, this is a serious concern. The development of skills for self-government within the judiciary is a long and progressive process – it is related to building self-esteem and assurance that it can be self-governed. The periodic replacement of the supreme administrative body totally destroys the development of such skills. It destroys internal relations within the professional community, because it sends a clear signal that it is not keeping with the idea of an impartial and independent court... In my opinion, a serious responsibility for the system lies with the Constitutional Court, which a number of times has allowed for this frontal attack on the independence of the judiciary."

Statement of participant, OSI roundtable, 6 April 2001. *Explanatory Note: OSI held roundtable meetings in a number of candidate countries to invite critique of country reports in draft form. Experts present included representatives of the government, the Commission Delegations, Roma representatives, and civil society organisations. References to this meeting should not be understood as endorsement of any particular point of view by any one participant.*

[4] Judgement of 29 May 2001, State Gazette, No. 51/2001.

[5] See Section V.D.2.

The media generally regard the judicial system as insufficiently open or transparent. Certain media outlets do consistently voice support for judicial independence and protect individual representatives of the judiciary from being unduly discredited; others, however, promote or tolerate public attacks on magistrates, including distorted presentation of the circumstances of individual cases. Such attacks seem occasionally to be aligned with the stances of political actors outside the judiciary, giving the attacks a semi-official quality, although there is no clear evidence of any collusive practice between the media and other branches.

Public opinion polls suggest that popular confidence in the judiciary is low; polls reflect concerns about the considerable backlog of pending cases, the slow pace of proceedings, the poor quality of court decisions, deficiencies in the execution of court judgements, and corruption. Broad segments of the public have yet to voice substantial support for an independent judiciary, or to appreciate the connection between independence and effectiveness.

C. The Judiciary and the Accession Process

The Commission's 2000 Regular Report notes that "significant further efforts and resources are needed if the judicial system is to become a strong, independent, effective and professional system able to guarantee a full respect for the rule of law."[6] The Regular Report specifically criticised the insufficient funding of judicial institutions, poor facilities and working conditions, cumbersome caseload management systems, non-transparent selection procedures, and the lack of training (especially training funded by the State).[7]

Following publication of the 2000 Regular Report, the executive has begun to take the issue of judicial reform more seriously. At the Prime Minister's request, a meeting with the Supreme Judicial Council on 29 November 2000 discussed the problems in the judicial system identified by the Commission and measures to address them. The meeting resolved to establish an informal commission including representatives of both the executive and the judiciary, to act on the European Commission's findings.

Although the judiciary is not directly involved in the EU accession negotiation process, in response to the Regular Report 2000 the Supreme Judicial Council adopted a Programme for the Development of the Judicial System in Bulgaria for the period 2001–2004. In

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6 European Commission, *2000 Regular Report on Bulgaria's Progress Towards Accession*, 8 November 2000 (hereafter *2000 Regular Report*), Section 2.

7 *2000 Regular Report*, Section 2.

addition, on the initiative of the President of the Supreme Court of Cassation regional meetings of magistrates are being held, in which the chief government negotiator with the EU also takes part, to debate the conclusions and recommendations in the Regular Report.

D. Organisation of the Judicial System

Prior to the Second World War, Bulgaria had a continental-style civil law system. With the introduction of the communist system, the civil law tradition's deference to the executive was greatly expanded, and legal institutions were viewed as instruments of unitary state-party control. The role of the prosecutor was expanded, and extra-legal interference with judicial decision making – so-called "telephone justice" – was common. The legacy of the communist re-organisation of the judiciary continues to have a profound impact.

Following the collapse of the Communist regime and the promulgation of the 1991 Constitution, the adoption of the Judicial System Act[8] put in place a legislative framework for making structural changes in the judicial system, a process which continued until 1998. 1998 amendments to the Code of Criminal Procedure and the Code of Civil Procedure established the existing four-level court structure containing three separate instances.

The current system includes 112 district courts (courts of first instance), 28 regional courts (of both first and second instance), five courts of appeal (which operate as courts of second instance with respect to the regional courts' judgements only), five regional military courts, one military court of appeal, a Supreme Court of Cassation and a Supreme Administrative Court.[9] Additional specialised courts may be established by law,[10] but the establishment of extraordinary courts is not allowed.[11]

At present there are 664 district court judges, 494 regional court judges (and 79 "junior judges"[12] serving at the regional courts), 27 judges at the military courts, and

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8 Judicial System Act, State Gazette No. 59/22.07, 1994 with twelve supervening amendments.

9 In the absence of a separate system of administrative courts, the Supreme Administrative Court operates as court of cassation in the area of administrative jurisdiction carried out by "ordinary" courts and exercises original jurisdiction assigned to it by the Supreme Administrative Court Act.

10 CONST. REP. BULGARIA, Art. 119(2).

11 CONST. REP. BULGARIA, Art. 119(3).

12 See Section V.A.

91 judges at the courts of appeal. There are 64 judges in the Supreme Court of Cassation and 54 in the Supreme Administrative Court.[13]

The number of judges has been increasing continuously, but still has not kept pace with the considerable extension of the courts' competencies and powers resulting from, among other things, the adoption of new economic and property legislation conferring new competencies upon the courts.

The Constitution unites judges, prosecutors, and investigators in a tri-partite body called "the judicial branch,"[14] also commonly referred to as the magistracy. Constitutional and legal provisions related to the institutional independence of the judicial branch and the independence of individual magistrates are applied to each of these bodies on an equal basis.[15] A Supreme Judicial Council administers the magistracy.[16]

Military courts have jurisdiction over a broad range of crimes and persons, including crimes committed by officers of the Ministry of Internal Affairs or civil servants of the Ministry of Internal Affairs or the Ministry of Defence in the course of their duties, as well as military personnel and military crimes.[17] Military court judges enjoy the full status of magistrates. They are appointed, promoted, demoted, reassigned and dismissed pursuant to a decision of the Supreme Judicial Council.[18] After being appointed as judges they are admitted to regular military service and an officer's rank is conferred on them.[19] In addition to the general grounds for imposing disciplinary punishments,

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13 In addition, there are also 208 execution judges and 97 registry judges. While the status of both categories is prescribed by the Judicial System Act, execution judges and registry judges are appointed by the Minister of Justice, and not by the Supreme Judicial Council. They must fulfill the general requirements for appointment to judicial office but do not enjoy the status of magistrates with regard to tenure, promotion, accountability and immunity from prosecution

14 CONST. REP. BULGARIA, Chap. VI.

15 This report is concerned with the independence of judges, even when discussing the "magistracy" as a whole. Generally, it should be clear from the context that a given rule discussed in connection with judges also applies to other magistrates. Where it is not, or where it is relevant to consider the position of the whole magistracy, reference is made to magistrates or to the other two organs by name. The term "the judiciary" is generally used with reference to the corps of judges, but without excluding the possibility that the issue under discussion may also affect magistrates in general.

16 The Supreme Judicial Council is discussed at length in Section II.B.

17 Judicial System Act, Art. 66, para. 1; Code of Criminal Procedure, Art. 388.

18 Judicial System Act, Art, 124, para. 1.

19 Judicial System Act, Art. 124, para. 2.

military judges are also responsible pursuant to the specific laws, regulations and procedures established with respect to servicemen.[20]

There is also a separate Constitutional Court, which principally rules on challenges to the constitutionality of laws and the acts of the State President, and provides binding interpretations of the Constitution.[21] The Constitutional Court is not a part of the regular judicial system. It is established under a separate chapter of the Constitution[22] and by its own ruling "is outside the three branches listed in Article 8 of the Constitution."[23]

[20] Judicial System Act, Art. 168, para. 2.

[21] CONST. REP. BULGARIA, Art. 150.

[22] CONST. REP. BULGARIA, Chapter 8.

[23] Judgement of the Constitutional Court of 21 December 1993.

II. Constitutional and Legal Foundations of Judicial Independence

Formal guarantees of the separation of the various branches and the independence of the judiciary are undercut by the conflation of the three separate authorities – judges exercising core judicial functions, prosecutors, and investigators – in a single magistracy, inevitably allowing and inviting unnecessary involvement of the executive with the judiciary in a manner which limits judicial independence. In particular, the structure and composition of the Supreme Judicial Council, responsible for representing and administering the magistracy, is susceptible to this weakening of the barriers between the branches.

A. Separation of Powers and Guarantees of Independence

The judicial branch as a whole is constitutionally separate from and independent of the other branches. The Constitution proclaims the principle of separation of powers by stating that "the power of the state shall be divided between a legislative, an executive and a judicial branch."[24] The judicial system is statutorily identified as the state authority administering justice,[25] suggesting an exclusive competence, and its rulings cannot be revoked or abolished by the other branches.[26] The judicial branch is also declared to be independent, and "in the performance of their functions, all judges, prosecutors and investigators shall be subservient only to the law."[27] The Constitution further provides that the judicial branch shall have an independent budget.[28]

However, the separation and independence provided in the Constitution refers to the judicial power as a whole – that is, to the magistracy – and not to the judiciary *per se* or to judges. As the magistracy includes prosecutorial and investigative functions outside the core judicial function, the formal separation of powers and discrete independence of judges and their branch is unnecessarily blurred.

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24 CONST. REP. BULGARIA, Art. 8.

25 Judicial System Act, Art. 1(1).

26 Judgement of 14 January 1999, State Gazette, No. 6, 22 January 1999.

27 CONST. REP. BULGARIA, Art. 117, para. 2.

28 CONST. REP. BULGARIA, Art. 117, para. 3.

B. Representation of the Judiciary – the Supreme Judicial Council

Important representative functions (as well as broad powers over judicial administration and judges' career paths[29]) are vested in the Supreme Judicial Council. However, there are serious shortcomings in the Council's organisation; in particular, the Council's mixed composition – including numerous appointees of Parliament, the Minister of Justice, and representatives of other magistrates – and its mandate to represent the whole magistracy make it a less effective representative of judges and their independence.

The Supreme Judicial Council's members, duties, and competencies are regulated by the Judicial System Act, in accordance with the Constitution.[30] The Council is not, formally speaking, the constitutional representative of the magistracy, although in practice it does perform this function through its contacts with the executive and legislature. In addition, it has a broad range of administrative responsibilities,[31] which tend to also require it to engage in representation of the courts and magistrates it administers. It is also empowered to receive and review annual information from the three sections of the magistracy.[32]

Composition: The Supreme Judicial Council consists of 25 members, eleven of which are elected by Parliament and another eleven by the three bodies of the judicial branch.[33] The elected members of the Supreme Judicial Council serve single five-year terms and are not eligible for immediate re-election.[34] Sitting on the Council *ex officio* are the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court and the Chief Public Prosecutor. In addition, the Minister of Justice serves as the chair, though without voting rights.[35] (In the absence of the Minister, the Presidents of the two Supreme Courts and the Chief Public Prosecutor take turns chairing meetings of the Council.)

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29 See Sections III. and V.

30 CONST. REP. BULGARIA, Art. 133, providing for the regulation in law of the Supreme Judicial Council and the magistracy.

31 See Sections III. and V.

32 Judicial System Act, Art. 27.

33 CONST. REP. BULGARIA, Art. 130(3). The corps of judges elects six, public prosecutors three and investigators two members of the Council. In practice, the parliamentary quota may and normally does include active members of the magistracy.

34 CONST. REP. BULGARIA, Art. 130(4). See Constitutional Court judgement of 19 October 1999, State Gazette, No. 95, 2 November 1999.

35 CONST. REP. BULGARIA, Art. 130(5).

While magistrates (and judges in particular) predominate in the composition of the Council, the parliamentary appointees have on occasion been regarded as representatives of the political majority in Parliament and the executive, rather than as neutral representatives. Individual members appointed by Parliament have rejected the suggestion that they are influenced by the manner of their appointment,[36] and there is no clear evidence to suggest that Council members vote along party lines or in accordance with the wishes of those who appointed them; rather, voting seems to be defined by personal or professional allegiances among members. Still, the legislature's two interventions altering the rules governing the Council's composition – and thereby also removing the individuals then sitting on the Council[37] – have seriously weakened the Council's ability to be an independent actor capable of defending judicial independence. Altering the rules by which Parliament elects members of the Council[38] – by requiring, for example, a qualified majority – could lessen the risk of legislative control of the body representing and administering the judiciary. Certainly, in the absence of clear procedures to govern the work of the Council, the opportunities for political interference are greater.

In addition, the involvement of the Minister of Justice in a double capacity as member of the Government and chair of the meetings of the Supreme Judicial Council may be seen as compromising the separation of powers and the independence of the judiciary. Moreover, since November 1998 the Minister of Justice has been authorised to initiate proposals before the Supreme Judicial Council and "to draw judges' attention to failures to observe the rules of handling cases and duly inform the Supreme Judicial Council."[39]

This arrangement is apparently meant to create a sort of "communications conduit" between the different branches, and the Constitutional Court has upheld the constitutionality of the Minister of Justice's extended competencies (with the exception of the competence to make proposals to the effect of lifting magistrates' immunity and suspend them).[40] The judgement held that the involvement of the Minister as a non-voting member of the Council does not violate the principle of separation of powers, and further that

36 Information from conversations with Supreme Judicial Council members.

37 See Section II.B.

38 Any such alteration should properly only take effect after the scheduled termination of current Council members' terms.

39 Judicial System Act, Arts. 30(2), 171(2), and 172. The Minister is not authorised to inform the Council of failures concerning Supreme Court judges.

40 Judgement of 14 January 1999, State Gazette, No. 6, 22 January 1999.

that principle does not require the branches to avoid co-ordination of their actions.[41] Clearly, the Court's ruling does not move the Council towards less executive involvement or greater independent capacity.

Representation of Non-Judges: The Supreme Judicial Council represents all three kinds of magistrates, not only judges. Although in certain matters, the representatives of the three parts of the magistracy have separate competencies (such as in certain disciplinary matters[42]), for most matters the Council is a single corporate body; as a result, judges are represented and administered by a body composed of or appointed by non-judges.

It was the intention of the Constitution's drafters to break decisively with the communist legacy of a subordinated judiciary; this ambition apparently underlies the placement of the Prosecution and the Investigation Services within the judicial branch under a single Supreme Judicial Council competent to appoint and dismiss all magistrates. However, in practice this arrangement does not place the judiciary in a superior or equal position, but rather perpetuates problematic linkages between the executive and judges which can threaten judges' independence.

C. Rules on Incompatibility

In general, judges are barred from improper relationships with other State entities or with private parties, in a manner which encourages their independence and impartiality. However, the safeguards unnecessarily allow the possibility of significant intermittent contact with the political branches over the course of a judge's career, in a manner that could jeopardise judicial independence.

The office of magistrate is incompatible with any other public office, which includes Member of Parliament, minister, deputy minister, mayor or municipal counsellor or any elected or appointed office in state, municipal and business organs.[43] Magistrates taking up such positions must therefore relinquish or suspend their judicial office.[44]

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41 Judgement of 14 January 1999, State Gazette, No. 6, 22 January 1999. It is noteworthy in this respect that by a judgement of the Constitutional Court of 3 April 1992 a provision of the then Supreme Judicial Council Act empowering the Minister of Justice to make proposals with respect of judges from district, regional and courts of appeal was repealed as being contrary to the principle of separation of powers. In a later judgement (of 3 October 1995) the Constitutional Court repealed a provision of the Judicial System Act stipulating that the administration of the Supreme Judicial Council is carried out by the Ministry of Justice.

42 See Section V.D.2.

43 Judicial System Act, Art. 132, paras. 1 and 3.

44 Law on the Election of Members of Parliament, Art. 52.

The ban on engaging in political activity is interpreted as meaning that magistrates cannot be members of political parties or any other movements and coalitions with political aims while exercising their judicial functions.[45]

Upon completing their service in another public office or the Inspectorate of the Ministry of Justice, however, magistrates may be reinstated in their previous positions, and the time spent in public office is counted as legal experience in calculating eligibility for judicial office.[46] It is therefore permissible for a magistrate to move between the magistracy and the executive or legislature and back, which unnecessarily weakens the important distinction between the branches, to the detriment of judges' independence. More concretely, judges who have the opportunity to move into political or civil service positions at the discretion of a political official have incentives to rule in a manner which increases their chances of being selected for such assignments.

As a general rule, however, active judges cannot be appointed to positions in the executive, although judges are allowed to participate in certain specified bodies. For example, the President of the Supreme Court of Cassation may appoint some judges from the Court to serve on a non-permanent commission established to address access to former secret service documents. As members of this commission, the judges are paid a salary equal to the national minimum over and above their judicial salaries.[47] Magistrates also sit as members of electoral commissions. Only judges from the Supreme Administrative Court are prohibited from serving on the Central Electoral Commission.[48] As long as such appointments are limited to specified commissions and there are rules in place to ensure that these judges recuse themselves from any case relating to their commission work, they do not necessarily pose a threat to judicial independence. It would be preferable, as well, to limit the discretion the executive or senior judges exercise in selecting commission members, and to bar judges from receiving additional compensation, so that appointments cannot be used as a reward; appointing *ex officio* members can reduce this risk somewhat.

Judges are generally prohibited from engaging in most outside economic activity, including practicing law as advocates, or conducting activities pertaining to the legal profession.[49]

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45 Judicial System Act, Art. 132, para. 1. See also Law on the Election of Members of Parliament, Art. 52.

46 Judicial System Act, Art. 132, para. 2, and Art. 36, para. 6, Art. 36a, para. 5, Art. 36b, para. 5, Art. 36c, para. 5 (concerning the Inspectorate of the Ministry of Justice). See Section V.A. concerning appointment to judicial office.

47 Law on the Disclosure of the Documents of the Former Secret Services, Art. 4g.

48 Law on the Election of Members of Parliament, Art. 10, para. 2. The rationale for this ban is the fact that an appeal against the decisions of this commission lies before the Supreme Administrative Court.

49 Judicial System Act, Art. 132, para. 1(5).

Judges are banned from engaging in any commercial or other economic or profit-making activities; this includes membership in managerial or supervisory boards of commercial companies or co-operatives.[50] Scientific or teaching activities, and the exercise of authorial rights, constitute the only exceptions to the overall ban.

Disclosure: The members of the two Supreme Courts are obliged to make a public disclosure concerning their income and assets.[51] Lower judges have no such obligation. Moreover, the Supreme Court judges are only required to make a declaration, but there are no provisions for any legal consequences based upon their declarations. Given the widespread concerns about corruption in the judiciary, a requirement that judges disclose their assets would strengthen public confidence in the integrity of the judiciary, which in turn bolsters arguments for judges' independence.

D. Judges' Associations

Judges are free to form and join organisations that protect their independence and professional interests and assist their professional qualifications.[52] The Union of Bulgarian Judges was founded in March 1997, and is gradually earning the confidence of the judicial community. The main objectives of the Union include consolidating judges into a common entity to protect their professional, intellectual, social and material interests, and conducting activities aimed at increasing the professional and social prestige of courts.[53] The Magistrates Training Centre was set up following an initiative by the Union. The Union has adopted a Code of Ethical Conduct of Judges, but it has no binding force.

In accordance with the principle of separation of powers, professional organisations representing judges or other magistrates cannot associate with trade union organisations representing other branches.[54]

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50 Judicial System Act, Art. 132, para. 1(4).

51 Public Register Act.

52 Judicial Systems Act, Art. 12(2).

53 Statute of the Union of Bulgarian Judges.

54 Judicial Systems Act, Art. 12.

III. Administration of the Court System and Judicial Independence

The judiciary is supposed to be autonomous in its administration, and the Supreme Judicial Council is vested with extensive powers. At the same time, the Ministry of Justice retains important administrative and supervisory powers, and the relationships between the two, as well as the obligations placed on courts, are not clearly defined, creating room for non-transparent and arbitrary administrative decisions.

A. Role of the Supreme Judicial Council

By law, the judicial branch is autonomous.[55] The Supreme Judicial Council, as an organ of the judicial branch,[56] administers the operations of the court system, and possesses decision-making competencies encompassing every aspect of the operation of courts.[57]

The Supreme Judicial Council exercises administrative and supervisory control over the performance and efficiency of the judiciary. It determines the number, seat, and geographic jurisdiction of courts, on the proposal of the Minister of Justice; determines the number of magistrates in each court, prosecutor's office, or investigating office; appoints, promotes, demotes, assigns and dismisses magistrates;[58] decides on their remuneration; decides on motions to lift magistrates' immunity; rules on disciplinary actions against magistrates; draws up the courts' budget and disburses allocated funds;[59] and requests and reviews information from magistrates.[60] In addition, the Council proposes to the State President candidates for Presidents of the two Supreme Courts, and may recommend their dismissal.[61]

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55 Judicial System Act, Art. 1.

56 The Constitutional Court has clearly defined the Supreme Judicial Council as an organ of the judicial branch. At the same time, the Court held that the Council is not itself a judicial body but a high administrative organ carrying out the management of the bodies within the judicial branch. Judgement of the Constitutional Court, 15 September 1994, State Gazette, No. 78/1994.

57 CONST. REP. BULGARIA, Art. 133, providing for the regulation in law of the Supreme Judicial Council and the magistracy.

58 See Section V.

59 See Section IV.

60 Judicial System Act, Art. 27.

61 Judicial System Act, Art. 27.

The Supreme Judicial Council determines numbers of judges and court staff. The Ministry of Justice exercises control over court space, facilities and maintenance through a Court Houses Fund.

The Supreme Judicial Council holds meetings every week; it must be convened at least every three months by the Minister or upon the request of at least one-fifth of its members at least once every three months.[62] However, the Council cannot sit per-manently,[63] and this is considered one of the principal sources of inefficiency in the Council's operations, since its occasional meetings are insufficient to address its varied functions with regard to the daily control of the judicial system's operations.

Day-to-day operations are overseen by court presidents. At present, court presidents carry out much of the work normally done by court registrars. A new position of secretary general is being introduced in some courts (and already exists at the Supreme Courts), to deal with some of these functions. Presidents of district, regional and appellate courts are obliged to submit to the Council an annual report on their courts' activities and the activities of lower courts under their jurisdiction.[64] Encouraging independent professional management can counter the frequent argument that courts are incapable of managing themselves, as well as reducing the administrative burden on court presidents and limiting the scope of their commercial and institutional contacts outside the court, which administration often entails.

B. Involvement of the Ministry of Justice

Alongside the leading role of the Supreme Judicial Council, the Ministry of Justice retains significant areas of administrative and supervisory responsibility. In part because the Council has a small staff and meets only occasionally, the Ministry, with its larger staff and resources, is in practice much more involved than might appear from its formal legal position.

As noted elsewhere in this Report,[65] the Ministry of Justice, as part of the executive, exercises a far more important role in the development of the judiciary's budget than formal analysis of the constitutional and legal provisions would suggest. In addition,

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62 There has been one occasion so far in which upon the minister's refusal to call a meeting the Council was convened upon the request of a group of its members.

63 Judgement of the Constitutional Court of 30 September 1994.

64 Judicial System Act, Art. 56.1.2, 63.1.2, and 79.1.2.

65 See Section IV.A.

the Ministry administers the courts building fund for the construction of new court facilities, which forms a separate part of the judicial branch's budget. In practice, requests for materiel go through the Ministry.

The Ministry of Justice issues regulations relating to court administration and certain personnel matters. For example, the functions of court personnel are determined by ministerial regulations.[66]

In addition to these extensive administrative responsibilities, the Ministry of Justice also has supervisory and information-gathering competencies which inevitably involve it in the routine administration of the courts. Although the Inspectorate of the Ministry has no direct decision-making competence over the judicial branch, it examines the organisation of administrative activities of district, regional, and appellate courts.[67] Its inspectors[68] carry out regular inspections of courts and judges' decisions in order to track civil and criminal cases and ensure that ministerial standards regulating the progression of cases through the courts have been met.[69] The Inspectorate submits to the Supreme Judicial Council information on its findings and assessments;[70] however, the Council is evidently not required to use the report for any particular purpose.

The Ministry of Justice also prepares an annual report on the activities of the courts (except for the Supreme Courts) which considers issues such as court caseloads, the progress of cases, and enforcement of judgements. The legal basis for drawing up this report is not clear, as it is not provided for in the Judicial System Act. The Ministry also holds annual meetings of presidents of district, regional and appellate courts to discuss the report. The Ministry also retains important functions with respect to the organisation of court records, which further involves it in supervisory activities in the courts.

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66 Judicial System Act, Art. 188.

67 Judicial System Act, Chapter 3. The Inspectorate cannot monitor the two Supreme Courts. Judicial System Act, Art. 35(2).

68 Inspectors are appointed by the Minister of Justice after the Supreme Judicial Council has expressed its opinion on the nominee. Inspectors must meet the qualifications for a position in the court of appeal, and they receive a salary equal to that of an appellate court president. Inspectors are often former judges, and may return to the bench after leaving the Inspectorate; they are generally thought of as akin to judges in their function. For example, inspectors have even been able to review the merits of court judgements, and it has been proposed that Supreme Court judges be commissioned as temporary inspectors while retaining their status as judges. At present, however, the Inspectorate is considered understaffed.

69 Judicial System Act, Art. 35.2.

70 Judicial System Act, Art. 35(1.3 and 1.6).

Presidents of district, regional and appellate courts are obliged to submit information on the manner cases are processed by judges to the Ministry of Justice every six months.[71]

C. Unclear Division of Authority

There is neither a clear demarcation between the functions of the Supreme Judicial Council and the Ministry of Justice, nor of the areas in which they are supposed to co-operate; the competencies of the Supreme Judicial Council are clearly established, but those of the Ministry are not. Separation of power arguments do not explain when the Ministry is required to allocate its considerable resources to courts and court presidents, and the terms on which those resources are to be made available have not been established. The effect has been that court presidents often have no guidance concerning where to turn for material support. The Ministry's administrative role is even more prominent because the Supreme Judicial Council only meets periodically, allowing the Ministry greater scope of action.

[71] See Arts. 56.1.3, 63.1.2 and 79.1.3 of the Judicial System Act.

IV. Financial Autonomy and Level of Funding

As one court president has noted, "[a] really independent judiciary is one that is self-governed, and sufficient funding is an indispensable condition to achieve this."[72] Judges and the courts do not have meaningful input into their own budgets, which are formally prepared by the Supreme Judicial Council, but in practice are prepared by the executive. Formal institutional arrangements cannot guarantee independence in the absence of meaningful financial autonomy.

A. Budgeting Process

In theory, the Supreme Judicial Council drafts the budget for the whole judiciary.[73] However, the executive is legally allowed to prepare a parallel budget that in practice forms the real basis for Parliament's deliberations.

The Constitutional Court has held that since the judicial branch is constitutionally guaranteed an independent budget,[74] the executive may not be involved in its preparation but is obliged to incorporate the judicial branch budget *in toto* into the annual State budget proposal it submits to Parliament. [75] Accordingly, the annual State budget law contains a separate budget line for the judicial branch.

At the initial stage of preparation of each year's budget the Ministry of Finance proposes a general framework for budget planning including possible growth, and on this basis the Supreme Judicial Council makes its projections. It is only at this stage that some form of dialogue between the two branches takes place.

When drafting the judicial branch's budget the Supreme Judicial Council may collect initial figures from the three constituent bodies of the magistracy, it is not the practice, however, for each court to submit a request, and instead the previous year's figures serve as a basis for preparing the draft. As a result, individual courts' own estimates of

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72 OSI roundtable, Sofia, 6 April 2001.

73 The Constitutional Court has its own budget. Constitutional Court Act, Art. 3.

74 CONST. REP. BULGARIA, Art. 117(3).

75 Judgement of 16 December 1993, State Gazette, No. 1., 4 January 1994. See also Organisation of the State Budget Act, Art. 20(2); Judicial System Act, Art. 196(3) (allowing the Government to raise objections and make proposals, but not allowing it to make changes in the judicial budget).

their needs differ sharply from the amounts actually disbursed to them through the budget process.[76]

Despite the clear constitutional provisions concerning the autonomy of the judicial budget, in practice the executive prepares its own parallel budget for the judiciary and submits it to Parliament along with the Supreme Judicial Council's budget.[77] Representatives of the Government are normally admitted to the meetings of the relevant parliamentary committees and are given the opportunity to defend their version.[78] Parliament has generally adopted the Government version in recent years.

The result is that the judiciary (and the magistracy as a whole) is almost completely isolated from the budget process, and in effect has no influence over its actual budget. There is no evidence that the Government or Parliament have made adequate funding for the judiciary conditional on some standard of productivity. At the same time, it seems clear that the executive's priorities in developing its budget version are different from those of the Supreme Judicial Council and are formulated in terms of productivity estimates, and in this sense the judiciary's own sense of its material needs may be discounted.

Apportionment of the budgeted funds – which are not specified in sub-lines – is still the responsibility of the Council. Until 1999 it was the practice to include sub-lines in the judicial branch budget for the Supreme Judicial Council, the two Supreme Courts, the rest of the courts in general, the Chief Prosecutor's office and the National Investigation Service. In the last three Annual Budget Acts, however, the budget line for the judiciary is not sub-lined, and the Supreme Judicial Council therefore determines the respective appropriations and distributes them among the different bodies of the judicial branch.[79]

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76 When preparing its version, the Supreme Judicial Council may collect some initial figures from the different organs but it is solely competent to assemble them and draw up the final draft. No specific methodology in this respect is in place. Requests from each particular court are not normally collected at the stage of drawing up the budget draft and only during the fiscal year such requests may be heard.

77 The executive ostensibly does this in accordance with its right to make objections or proposals.

78 Members of the Supreme Judicial Council may also attend hearings of the committee on budgetary matters and intervene.

79 Organisation of the State Budget Act, Art. 23; Annual Budget Act for the Year 2001, Art. 2(7). There is a case currently pending before the Constitutional Court in which the constitutionality of the 2001 Annual Budget Act's failure to specify funding for the Supreme Judicial Council in particular is challenged. In 1995, the Court voided a budget provision that failed to specify the Council's funding. Two other sections of the same provision are also challenged. The first determines the amount of the subsidy appropriated to the judicial branch at 90 percent of the amount approved providing that the remaining ten percent are to be granted only on the condition that the established budget deficit is not exceeded. The second stipulates that any surplus revenues arising from the judicial branch's activities will be transferred to the account of the State budget.

(It is not possible to transfer funds from the judicial budget to other budgetary lines during the fiscal year, but any surplus revenues are transferred to the State budget.) The competition for limited resources exacerbates tension among the three components of the magistracy.

The 2000 budget contained no significant increase over 1999, despite the expansion of the courts' pre-trial detention supervision functions; the budget for 2001 marks an increase of roughly 14 percent over 2000. Approximately 0.9 percent of the total appropriations for 2001 go to the judiciary.

In this year's apportionment, the Supreme Judicial Council itself received 3.396 percent of the judiciary's portion of the budget, the Supreme Court of Cassation 5.501 percent, the Supreme Administrative Court 2.764 percent, all other courts 47.516 percent, the prosecutor's offices 23.218 percent, and the investigator's offices 9.867 percent,[80] with the distribution envisaging a budget deficit as compared with the subsidy from the state budget.[81]

B. Work Conditions

Work conditions in the courts suffer from chronic under-investment. Between 70 and 80 percent of the budget allocation for the judicial branch goes to salaries for judges and staff, leaving only a relatively small amount for infrastructure and equipment. In addition, the expansion of courts' jurisdiction and functions over the past decade has intensified the workload of courts. While the situation is not uniformly bad throughout the country, in general courts and judges are overburdened, and the material conditions in which judges work are unsatisfactory, especially as regards shortages of office space, court rooms and equipment.[82] Court presidents are in a particularly vulnerable position in relation to the Supreme Judicial Council and the Ministry of Justice, which exercise control over needed resources.

There are no norms for allocation of office space or equipment, and in their absence it is more difficult to argue for better work conditions and modernisation of courts.

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80 Decision of the Supreme Judicial Council of 7 March 2001.

81 In a cover letter of 13 April 2001 with which the distribution has been submitted to the Ministry of Finance, the Supreme Judicial Council points out the shortage of funding and states that it does not accept, as being inadequate, the amount allotted to the judicial branch by the Annual Budget Act.

82 Normally three judges share an office in the Sofia district and city (regional) courts. Sometimes judges even have to queue up for courtrooms.

Information technology has been introduced in some courts, but not as part of a nation-wide system. Indeed, it is largely due to the initiative of individual court presidents and to foreign assistance programs that some courts are better equipped than others. The judicial system as a whole still relies on donor assistance in setting up a uniform information system.[83]

Systems for court administration and organisation of court records, archives and statistics are extremely outdated. Methods for improvement through the introduction of a new information system have been discussed by the Supreme Judicial Council, but without any concrete outcome or agreement with the Ministry of Justice on proposed legislative changes.

Training of magistrates is formally organised by the Ministry of Justice, but the State does not fund or organise significant training, which is currently carried out by the Magistrates Training Centre, an NGO funded almost exclusively by foreign States. The European Commission recommends that "the training centre will need to become a public training institution in the medium term with adequate financial and human resources." In that event, its continued operation under the supervision of the Ministry of Justice could constitute an interference with the independence of the judiciary, as it would give the executive an unnecessarily intrusive opportunity to intervene in judges' professional development.

C. Compensation

Salaries for judges are generally satisfactory, and do not pose any significant risk to judicial independence. However, discretionary rules on the provision of housing may make judges vulnerable to influence from local governments, and the disproportionately low pensions judges receive, when combined with discretionary rules on retirement, may also endanger their decisional independence.

Remuneration of members of the judiciary normally exceeds that of other public sector employees. The level of judicial salaries has increased the attractiveness of judicial posts, especially in light of the poor economic situation in the country as a whole, which has reduced the profitability of legal work in the private sector.

[83] A project aimed at setting up a uniform software program for the whole court system, supported by USAID, is currently in progress.

At the same time some judges maintain that their salaries are only slightly higher than those for the public administration, since rules on incompatibility[84] prohibit outside earnings for magistrates. In contrast to magistrates, public sector employees are allowed to earn additional income from, for example, participation in boards of state-owned companies.

The monthly remuneration for the lowest judicial position is fixed at double the minimum salary for employment in the public sector pursuant to data supplied by the National Institute of Statistics – currently about 470 BGL (c. € 243). A district court judge receives approximately 550 DEM (c. € 281), a regional court judge approximately 700 DEM (c. € 358), (roughly equal to the salary of a deputy minister), and Supreme Court judges about 1,000 DEM (c. € 511) per month. The Presidents of the two Supreme Courts each receive a monthly remuneration amounting to 90 percent of that received by the President of the Constitutional Court.[85]

Apart from salary, judges receive a yearly clothing allowance amounting to two average monthly salaries of an employee in the public sector, and life insurance. Judges may participate in national social security and health insurance schemes, but must pay 20 percent of the contribution themselves, whereas civil servants' contributions are paid out of the State budget. (Recently considered amendments to the Judicial System Act would have conferred on magistrates the same status as civil servants, but the proposals were not introduced into Parliament.)

In addition, under the Judicial System Act, a housing fund for the judiciary is supposed to be set up, although it is moribund for lack of resources. Instead, judges rely on local governments to supply housing, although such assistance is entirely discretionary. Usually it is the court president's duty to contact local authorities for housing allotments for judges. This reliance may affect judges' and court president's decisional independence.

A judge's compensation may not be reduced except for disciplinary reasons (either a direct reduction or as the result of demotion), on the decision of the Supreme Judicial Council.

Upon retirement, judges who have served in the judiciary for at least ten years are entitled to receive a one-time payment equal to twenty months' salary, in addition to their pension. However since pensions are very low at present,[86] it is impossible for

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84 See Section II.C.

85 Judicial System Act, Art. 139(1). In the Constitutional Court Act remuneration is determined in correlation with the remuneration of the State President and the Speaker of Parliament.

86 The maximum cannot exceed 160–170 BGL.

judges to maintain their standard of living after retirement on the income from their pensions alone which, combined with discretionary rules on retirement, may endanger older judges' decisional independence.[87]

[87] See Section V.B.2.

V. Judicial Office

The principal decisions affecting a judge's career path – such as selection, promotion, assignment, and dismissal – are made by the Supreme Judicial Council.[88] There are very few clear or objective procedures to guide the Council, which acts with broad discretion. Particular problems of note include the provision that judges are not tenured (and thus are irremovable) until they have served three years in a position, that promotions are largely discretionary, and that in the absence of a mandatory retirement age older judges effectively serve at the pleasure of their court president and the Council.

A. The Selection Process

Almost all judges and other magistrates[89] are selected by the Supreme Judicial Council[90] with considerable input from court presidents and the Ministry of Justice in a highly discretionary process. Apart from some minimal threshold requirements, there are no firmly established methods or criteria for selection of candidates for judicial office.[91]

There are no clearly defined national criteria or competitive examinations. Certain basic requirements for appointment to judicial office are regulated in the Judicial System Act;[92] in addition to citizenship and legal education, candidates must have "passed the required post-graduate training"[93] and have the "required moral and professional qualities."[94] Candidates must also have a requisite number of years of general legal

88 CONST. REP. BULGARIA, Art. 129(1); Judicial System Act, Art. 27(1), Section 4.

89 Except the Presidents of the two Supreme Courts and the Chief Public Prosecutor. See Section V.A.1.

90 CONST. REP. BULGARIA, Art. 129, para. 1.

91 The Commission's *2000 Regular Report* notes that "[j]udges are appointed to a particular court by the Supreme Judicial Council upon suggestion of the President of that Court. The criteria applied for their selection (except the purely formal criteria of University education and completion of a legal traineeship) are not always transparent and there is no national competition for recruitment." *2000 Regular Report*, Section 2.

92 Judicial System Act, Art. 126.

93 That is, a one-year practice at a regional court followed by a theoretical and practical exam. The trainees, or judicial candidates, receive a qualification certificate after taking the examination.

94 Judicial System Act, Arts. 126(2) and (4).

experience: two years for district court, five years for regional court, eight years for courts of appeal, and twelve years for either of the Supreme Courts.[95]

In practice, selection of candidates for consideration by the Supreme Judicial Council is initiated by the court presidents at the local level, at their discretion and for the immediate needs of their courts. There is no law regulating the selection procedure, and different presidents adopt different practices for identifying candidates: some regional courts hold competitions for junior judges' positions, while others prefer personal interviews or an assessment based on documents only.

The Supreme Judicial Council makes no preliminary selection prior to considering candidates, who must be approved by majority vote in a secret ballot. The Council has no grounds upon which to judge the professional qualities of candidates for appointment besides the proposals for appointment and the assessment of the candidate made by the official submitting the proposal.

In some cases, junior judges are appointed by the Supreme Judicial Council at regional courts only for a term of two years which may be prolonged for another six months. They cannot sit alone as judges and may only sit in panel. After having served at least one year, junior judges may be commissioned to a district court to perform judicial duties.[96] Junior judgeship is generally perceived as a "first step" to a regular judicial career. However, during this period, the junior judge – who is adjudicating cases – does not have tenure or irremovability.

The Supreme Judicial Council and the Ministry of Justice have recognised the problems inherent in the current structure, and have initiated a discussion concerning introduction of a system for more accurate selection. A recently suggested amendment to the Judicial System Act would have introduced some form of competitive selection or a commission to review candidates prior to their approval by the Council, but the amendment – apparently the source of considerable disagreement between the Council and the Ministry – was not put before Parliament.

In the absence of a new legislative initiative, on 11 April 2001 the Supreme Judicial Council adopted a decision "in pursuance of the recommendations of the European

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[95] The required legal experience may be acquired by serving as a judge, prosecutor, investigator, lawyer, junior judge, legal expert in the Ministry of Justice, or in a variety of other legally related positions. Judicial System Act, Art. 127(5). For courts of Appeal or the Supreme Courts, as an additional requirement, three or five years, respectively of the candidate's legal experience must have been as a magistrate. Judicial System Act, Art. 127(6).

[96] Judicial System Act, Arts. 147–148.

Commission," according to which appointment of junior judges and district courts judges is to be preceded by an examination of the candidates proposed by the presidents of regional courts. The examination is to be conducted by a commission composed of judges from the two Supreme Courts.

1. Court Presidents

Only the Presidents of the two Supreme Courts and the Chief Public Prosecutor are appointed and dismissed by the State President on a motion from the Supreme Judicial Council; moreover, the State President cannot refuse to appoint nominees whose candidacy is re-submitted by the Supreme Judicial Council.[97]

Court presidents are appointed by the Supreme Judicial Council.[98] There are no additional requirements for their appointment, which is not considered a matter of regular promotion and takes place upon the proposal of the officials authorised to make it – that is, the presidents of higher courts and the Ministry of Justice.

B. Tenure, Retirement, Transfer and Removal

1. Tenure

Once tenured, judges are not removable from office without specific cause as specified in the Constitution and law. However, judges do not acquire tenure until they have completed their third year in office.[99] There is no formal review, and judges simply continue in office and acquire tenured irremovability if they are not removed by the Supreme Judicial Council, which acts, or does not act, at its discretion. The formal purpose of this rule is to ensure that new judges indeed have the qualities necessary for proper adjudication, but as a consequence, for the first three years they serve, judges have strong and immediate incentives not to rule in a manner that might displease the Council.

As an alternative to such a long period without tenure, increased training of judicial candidates or trainees could be introduced.

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97 CONST. REP. BULGARIA, Art. 129, para. 2.

98 Judicial System Act, Art. 30.

99 CONST. REP. BULGARIA, Art. 129(3); Judicial System Act, Art. 129.

2. Retirement

In the absence of a mandatory retiring age especially established for judges or other magistrates, the generally established statutory retirement age[100] is supposed to serve as a neutral limit on judges' tenure and thus a guarantee for judicial independence. In practice, retirement is not mandatory and judges serve past that age. However, the president of the judge's court or the Minister of Justice may propose to the Supreme Judicial Council – for any reason or no reason at all – that the judge be dismissed at any time after reaching retirement age. The Council has discretion in the matter.

The Council's practice to date has been to provide the judge concerned with an opportunity to make a presentation; it has tended to reject proposals for dismissal based on subjective reasons rather than on serious considerations, such as the merits of the respective judge and the availability of a suitable replacement in the respective region.[101] Nonetheless, the discretionary nature of the process introduces unnecessary threats to older judges' decisional independence, which a clear retirement date would eliminate.

3. Transfer

There are no provisions governing permanent, non-disciplinary transfer of judges. Transfer to another jurisdiction for up to three years, referred to as reassignment, may be imposed by the Supreme Judicial Council as a disciplinary action.[102] Short-term transfer within a given jurisdiction for up to three months within any given year is possible in cases in which a position is vacant or a judge is prevented from carrying out his or her duties and has to be substituted.[103] The decision is taken by the president of the respective court;[104] there are no explicit provisions requiring the judge's consent or laying out consequences for refusal. In the absence of clearer procedures or a requirement for the judge's consent, such short-term transfers – while often very useful for ensuring the efficient administration of justice – afford superior judges the opportunity unduly to interfere with lower judges' decisional independence.

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100 Fixed at 60 years and six months for men and 55 years and six months for women at present and to be gradually increased to 63 years for men and 60 years for women.

101 The amendments to the Judicial System Act introduced in February 2001 contained also a proposal seeking to deprive the Supreme Judicial Council of the possibility to make any assessment in this respect and limit its competence to verifying the legal conditions for retirement.

102 Judicial System Act, Art. 27(4) and Art. 169, para. 1.5.

103 Judicial System Act, Art. 130.

104 Judicial System Act, Art. 55(1), 62(1), 78(1), 83(1) and 94(1).

4. Removal

After judges acquire tenure, they cannot be removed from office, except "upon retirement, resignation, upon the enforcement of a prison sentence for a deliberate crime, or upon lasting actual disability to perform their functions over more than one year[,]"[105] or for an absence of professional merits for the performance of judicial duties, or as a disciplinary measure, as set forth below (See Section V.D).[106] In addition, judges may be removed if they have been serving in place of a judge temporarily or unlawfully removed from duty who then returns or is reinstated.[107]

C. Evaluation and Promotion

In general, judges are progressively promoted in rank[108] and salary. Judges who demonstrate high professional qualification and exemplary performance of their duties are eligible for promotion within their current position[109] after at least three years in the post.[110] Promotion is not automatic, however, and there are no clear criteria for evaluating eligible judges.

The Supreme Judicial Council decides upon promotions, upon a proposal made by the respective court president or the Minister of Justice at either one's discretion.[111] A judge may also address the Supreme Judicial Council directly and request promotion.[112] The Supreme Judicial Council examines information concerning the judge's performance, which may include the rate of reversal, and which is provided by the president of the court or the Inspectorate of the Ministry.

There are no special procedures governing promotion to higher posts (as opposed to promotion in place), such as court president, or a seat on a higher court. Appointment

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105 CONST. REP. BULGARIA, Art. 129 (3).

106 Judicial System Act, Art. 169(2) bars removal of tenured judges on disciplinary grounds.

107 Judicial System Act, Art. 131.

108 Ranks normally follow the structure of the court system. See Judicial System Act, Art. 143.

109 That is to say, a so-called promotion in place, as opposed to a promotion to a higher position, such as court president, or to a higher court.

110 Judicial System Act, Art. 142.

111 Judicial System Act, Art. 30, paras. 1 and 2.

112 In one particular case the Supreme Judicial Council appointed a commission to examine the relations between the respective judge and court president as to the existence of special reasons for the president's refusal to make a proposal.

to these positions is treated as a selection decided by the respective court's president or the Minister of Justice at their discretion (subject to the minimum requirement of a certain number of years of legal experience). This high level of discretion in promotions of all kinds increases the possibility for superior judges and the Ministry to exercise influence over the judges seeking career advancement.

D. Discipline

In general, disciplinary measures work to ensure judges' impartiality, and do not appear to threaten their independence through improper or discretionary application. However, a proposed law would limit judges' right to appeal adverse disciplinary rulings. Also, a recent draft constitutional amendment would have lifted judges' immunity from prosecution; although the proposal failed, it suggests a less than firm consensus on fundamental commitments to judicial independence.

1. Liability

Judges are exempt from civil liability for acts and omissions in the exercise of their judicial functions unless they constitute a criminal offence.[113] Judges also enjoy the same degree of constitutional immunity as Members of Parliament,[114] which means that they cannot be held liable for their opinions or decisions[115] or be detained or prosecuted except for grave crimes.[116]

The Supreme Judicial Council can lift a judge's immunity from proscecution,[117] as well as from pre-trial detention for grave crimes.[118] The Chief Public Prosecutor must provide reasons before the Supreme Judicial Council to substantiate a request to lift a magistrate's immunity from prosecution or detention. (No such authorisation is required when a member of the judiciary is detained in the course of committing a grave harm, but the Supreme Judicial Council, or, in between its meetings, the Minister of Justice, must be notified forthwith.) The Council must decide on lifting immunity or suspending

[113] Judicial System Act, Art. 135.

[114] CONST. REP. BULGARIA, Art. 132(1).

[115] CONST. REP. BULGARIA, Art. 69.

[116] CONST. REP. BULGARIA, Art. 70. A crime is considered grave if punishable with imprisonment for more than five years. Criminal Code, Art. 93(7).

[117] Judicial System Act, Art. 134(1).

[118] Judicial System Act, Art. 134(2).

a magistrate within five days, by a two-thirds vote of all its members in a secret ballot, and after having considered oral or written explanations from the magistrate concerned.[119]

In February 2001, a proposal was made to limit magistrates' constitutional immunity, based on concerns about corruption. A draft amendment to the Constitution was introduced into Parliament, but failed on the first ballot. However, the issue remains to be resolved by the next Parliament, and has also been raised in the Commission's 2000 Regular Report, which noted that "judges' immunity needs to be clarified, notably as regards minor offences, for which they apparently cannot be charged, and offences not related to their work, where the Supreme Judicial Council determines whether or not judicial immunity should be lifted."[120]

2. Disciplinary Procedures

Judges are disciplinarily liable for breaches and omissions in the performance of their official duties, for undue delay, for acts that diminish the reputation of the judicial branch, and for failure to deliver judgements in the manner prescribed by law.[121] (An additional ground added in 1998 – violation of one's oath – was thrown out by the Constitutional Court as not comporting with the requirement that offences have clear and actual substance.)[122]

Various court presidents may initiate disciplinary proceedings against judges[123] beneath them: the President of the Supreme Court of Cassation against judges of that court and the courts of appeal; the President of the Supreme Administrative Court against judges of that court; the president of a court of appeal against judges of lower regional courts; and the president of a regional court against judges of lower district courts. In addition, since May 2000 the Minister of Justice may initiate proceedings against any magistrate.[124]

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119 Figures show that over the last two and a half years, i.e. during the tenure of the present Supreme Judicial Council, only two proposals for stripping members of the judiciary of their immunity have been made.

120 *2000 Regular Report*, Section 2.

121 Judicial System Act, Art. 168.

122 Judgement of 14 January 1999.

123 Since May 2000, judges, prosecutors and investigators have separate hierarchies for initiating disciplinary proceedings against their members. Between November 1998 and May 2000, any member of the Supreme Judicial Council had been competent to initiate disciplinary proceedings against any magistrate; the provision was altered when a judge on the Council announced her intention to bring proceedings against a prosecutor in the Chief Prosecutor's Office.

124 Judicial System Act, Art. 171(1), (2).

Magistrates' conduct and professional performance are supervised by the Supreme Judicial Council. Disciplinary proceedings are held before a five-member disciplinary panel selected by lot from among the Council's members. The proposal for imposing a disciplinary proceeding is served to the magistrate concerned who may present a written reply within two weeks, attend the hearing of the panel and be represented by a lawyer. Written and oral evidence may be collected and heard.

The disciplinary punishments provided are: warning; reduction in salary equivalent to the minimum national salary for a period of two months; non-promotion in rank or in office for between one and three years; demotion either in rank or in office for six months to three years; reassignment to a different judicial region for three years; and dismissal from office.[125] The disciplinary panel may itself impose some of the disciplinary punishments – warning, salary reduction and non-promotion, or make a proposal for reassignment, demotion and dismissal to the Council. Decisions of the disciplinary panel and of the Council in disciplinary proceedings may be appealed to the Supreme Administrative Court.[126]

The current disciplinary procedure has been criticised by members of the judiciary, especially the three-year reassignment that is sometimes imposed with the intent of forcing the magistrate to resign (because a tenured magistrate cannot be dismissed). At the same time, some judges maintain the Supreme Judicial Council does not possess adequate resources to handle such factually and legally complex proceedings. It is not clear which procedural rules are to be followed when collecting and evaluating evidence, for example, and cases are often hastily decided on the basis of inadequate research into the circumstances. Problems of a procedural character are the main reason disciplinary decisions of the Council are repealed by the Supreme Administrative Court.[127]

In 2001, the Supreme Judicial Council adopted a decision in support of a Government draft law proposing elimination of judges' right to appeal decisions imposing disciplinary sanctions against them; this could marginally reduce judges' security from improperly imposed disciplinary measures.

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125 Judicial System Act, Art. 169. Dismissal as a form of disciplinary punishment may not be imposed on tenured judges.

126 Constitutional Court judgement of 14 January 1999.

127 Between 20 and 30 percent of appealed disciplinary cases have been repealed.

VI. Intra-Judicial Relations

A. Relations with Superior Courts

Judges of inferior instances generally possess sufficient independence in relation to superior judges when deciding cases.

The Constitution provides for "supreme judicial oversight" to be exercised by the Supreme Court of Cassation as to the precise and uniform application of the law by all courts[128] and by the Supreme Administrative Court in the sphere of administrative justice.[129] Both Supreme Courts, apart from being the highest judicial instances in their respective jurisdictions, have the competence to deliver interpretative judgements which are binding on the judiciary and the executive.[130] The Ministry of Justice is entitled to make proposals for interpretative ruling.[131]

Appellate instances may proceed with a full re-examination of the case after having heard new evidence and may deliver a new judgement on the merits; subsequently, a cassation appeal is limited to points of law and breaches of procedural rules. When an appealed judgement has been reversed by the Supreme Court of Cassation and the case remitted to the lower court, the Supreme Court of Cassation's instructions on the interpretation and application of substantive law are binding upon that court.[132]

There is no system of appointed supervisors or mentors from superior courts. Consultations with superior court judges in specific cases, where they occur, are carried out informally on the basis of personal relations and not on the basis of any administrative or teaching relationship. Such consultations can constitute improper interference with lower judges' decisional independence given higher court presidents' role in promotions to their courts and in temporary transfers.

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128 CONST. REP. BULGARIA, Art. 124.

129 CONST. REP. BULGARIA, Art. 125.

130 Judicial System Act, Art. 86, para. 2, and Art. 97, para. 2.

131 Judicial System Act, Arts. 86 and 97.

132 Code of Civil Procedure, Art. 218(h); Code of Criminal Procedure, Art. 358, para. 1(2).

B. Case Management and Relations with Court Presidents

Judges are to a certain extent dependent on the court presidents. Case management in particular lacks transparent and neutral standards for assignment.

Cases are assigned to individual judges by the court presidents or by the heads of specialised civil or criminal sections, where those exist.[133] There are no specific, binding rules as to case distribution, and court presidents exercise discretion, often based on considerations connected with the complexity of the case and the capacity of the particular judge. (This apparently is one of the reasons why random distribution has not been introduced, although judges are familiar with the concept and its introduction is being considered by the Supreme Judicial Council.) Cases assigned to a particular judge can be revoked and reassigned to another judge if there are grounds for challenging a judge's impartiality or when it becomes impossible for a judge to perform his or her functions, such as for reasons of health or prolonged absence.

In addition to case assignment, court presidents may inform the Inspectorate of the Ministry of Justice as to the progress of cases dealt with by individual judges and to assess judges' performance in considering promotions or initiating disciplinary proceedings.

[133] Judicial System Act, Arts. 56, para. 1(4); 63, para. 1; and 79, para. 1.

VII. Enforcement and Corruption

A. Enforcement of Judgements

Although judicial decisions are generally respected by the Government and particular government agencies, there have been individual cases of non-compliance; for example, the Supreme Administrative Court has had to resort to imposing statutory fines on high officials – including regional governors and even cabinet ministers – following their failure to fulfil obligations arising from court decisions.

More broadly, the enforcement of judgements poses significant problems, especially with regard to civil and commercial disputes. Court bailiffs are appointed, and dismissed by the Ministry.[134] The 1999 annual report of the Ministry of Justice found a 12 percent increase in the number of judgements subject to execution and at the same time an approximately 12 percent decrease in the number of judgements that have been executed. Timely enforcement affects public confidence in the court system.

B. Corruption

There is a widespread public perception that the courts, along with customs offices, the tax administration and the police, are affected by corruption.[135] The Commission's 2000 Regular Report similarly notes that "according to several surveys... customs, the police and the judiciary are considered to be the most corrupt professions in Bulgaria." At the same time, there are few demonstrated cases of corruption, and some judges maintain that the judiciary is wrongly identified as a locus for corruption, but is made a scapegoat by the executive and legislature for difficult economic and social situations.

As noted above,[136] concerns about corruption recently led to a proposal to limit magistrates' constitutional immunity. The proposal failed in the Parliament in February 2001; however, it appears the issue may be revisited in the next Parliament.

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[134] Judicial System Act, Arts. 149(2) and 152.

[135] Coalition 2000, Corruption Assessment Report 2000. (Coalition 2000 is an initiative of Bulgarian non-governmental organisations).

[136] See Section V.D.1.