



At its meeting in Santiago de Chile on 12th November 2017 the European Association of Judges considered certain provisions contained in the Bulgarian Bill amending the Judiciary Act which was introduced in the Bulgarian legislature on 4 July 2017 and passed on 27 July 2017, the provisions of which came into force on 15 August 2017. The amendments in question include the introduction of changes to the Judiciary Act which are damaging to the independence of the judiciary in Bulgaria.

First, the legislative amendments which came into force on 15 August 2017 now require any holder of judicial office in Bulgaria to declare the judicial officeholder's membership of any type of organisation or association, including in particular membership of any professional association of judges. As the President of the European Association of Judges emphasised in his letter of 21st June 2017 to the President of the National Assembly of the Republic of Bulgaria, the right of judges and prosecutors to join and participate in a professional association of judges and prosecutors is internationally recognised¹ as being a right inherent to the independence of the judiciary. It is an important support for the independence of any judiciary that its members are free to form, and participate in, a professional association without restrictions, express or implied. The requirement now imposed on judges and prosecutors in Bulgaria to declare to the Bulgarian Supreme Council of the Judiciary, the body exercising power over their appointment and promotion, their membership of any professional association of judges and prosecutors constitutes a serious implied restriction on that right. It is a restriction which cannot have any objective justification, since membership of a professional association of judges and prosecutors can never be seen as an external interest which might require a judge to withdraw from deciding the litigation before the court or which would otherwise conflict with the impartiality of the judge in the particular case. The only evident purpose of the State's requiring judges to declare their membership of their professional association is to inhibit and deter its judiciary from participation in a professional association. That such is the purpose of the requirement on judges to disclose their membership of a professional association, is emphasised by the fact that the media and some politicians in Bulgaria have repeatedly attacked the existence of professional associations of judges in Bulgaria and in particular the Bulgarian Judges Association. The government of the Republic of Bulgaria has offered no criticism of such attacks, which is in dereliction of its duty to defend the institution of the judiciary against public attacks.

Secondly, in its terms as most recently amended on 27th October 2017, article 230 of the Judiciary Act now provides that the Supreme Judicial Council must suspend from office any judge who is accused of any crime "related to" the office of the judge. Further, the Supreme Judicial Council may immediately suspend from office any judge who is accused by the public prosecutor of any criminal offence of whatever nature, irrespective of its gravity or the penalty which might be imposed in the event of conviction. In deciding that the judge in question should be suspended, the Supreme Judicial Council is not able to examine whether the circumstances are sufficiently serious that suspension sought by the criminal prosecutor is proportionate and necessary in the interests of the administration of justice. No provision is made enabling a judge who has been suspended from

¹ See, for example, CCM/Recommendation 2012/12 Of the Council of Europe, art 25; and similar recommendations of the United Nations.

office to challenge the merits of the decision of the Supreme Judicial Council before any court; and, in contrast to the legal position of any other public servant suspended from office by reason of a criminal accusation, a judge suspended from office is prohibited from seeking any review by the Supreme Judicial Council of its decision unless at least eighteen months have elapsed. The power held by a prosecutor to initiate criminal proceedings which entail the suspension of office of a judge is capable of undermining the independence of the judiciary unless the legislative regime provides ample safeguards against unjustified suspension. Among other things such safeguards must require that any decision to suspend a judge should be proportionate and necessary. The European Association of Judges considers that, judged by international standards, the Bulgarian provisions in question lack sufficient safeguards for the protection of judicial independence in Bulgaria.

The European Association of Judges therefore calls on the government and the legislature of the Republic of Bulgaria –

- (1) Forthwith to take steps to remove from its legislative or regulatory provisions any requirement that judges and prosecutors declare to the Supreme Judicial Council, or any other body, whether judges and prosecutors are members of a professional association; and
- (2) Forthwith to take similar steps to ensure (a) that in the event of the initiation of any criminal charge against a judicial office holder, no suspension from office shall take place without the proportionality of the suspension having been duly considered; (b) that provision is made for any decision suspending from office the person concerned to be appealed to a court; and (c) that the suspension be open for review by the suspending authority at any time.