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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

BULGARIA

2017 AMENDMENTS (*)

TO THE JUDICIAL SYSTEM ACT

AND

CRIMINAL PROCEDURE CODE
(Extracts)

(*) Unofficial translation

Unofficial Translation**JUDICIAL SYSTEM ACT
AMENDMENTS PROMULGATED IN SG 63/2017 (04.08.2017) AND SG 65/2017
(11.08.2017)****AMENDMENTS PUBLISHED IN SG 65/2017**

Article 28 (Amended, SG No. 1/2011, effective 4.01.2011, SG No. 62/2016, effective 9.08.2016, supplemented SG 65/2017) (1) Upon the expiry of the term of office or the early termination of the credentials pursuant to Item 1 of Article 130 (8) of the Constitution of the Republic of Bulgaria, an elective member of the Supreme Judicial Council who has submitted the necessary request to the respective Chamber of the Supreme Judicial Council within 14 days of the expiry of the term of office or the early termination of the credentials shall be reinstated to the position of judge, prosecutor or investigating magistrate held prior to the election or to a position of an equal degree in the bodies of the judicial system, and the time spent as a member of the Supreme Judicial Council shall count as service record under Article 164 (1) to (7).

(2) Within one month from the reinstatement to the position under Paragraph (1), the members of the Supreme Judicial Council whose term of office has expired or whose mandate has been terminated early shall receive an evaluation of the performance thereof according to a methodology adopted by the Plenum of the Supreme Judicial Council. The said evaluation shall become part of the appraisal in a magistrate capacity for the period before the entry into office as a member of the Supreme Judicial Council.

Article 50 (Amended, SG No. 1/2011, effective 4.01.2011, declared unconstitutional with Judgment No. 10 by the Constitutional Court of the Republic of Bulgaria, in its part regarding the words "judge, prosecutor or investigating magistrate", SG No. 93/2011, amended, SG No. 62/2016, effective 9.08.2016; supplemented SG 65/2017) (1) Upon expiry of the term of office or upon early termination of the credentials pursuant to Item 1 of Article 48 (1), the Inspector General and the inspectors who have submitted the necessary request to the respective Chamber of the Supreme Judicial Council within 14 days of the expiry of the term of office or the early termination of the credentials shall be reinstated to the position held prior to the election or to a position of an equal degree in the relevant bodies of the judicial system.

(2) Within one month from the reinstatement to the position under Paragraph (1), the Inspector General and the inspectors whose term of office has expired or whose credentials have been terminated early shall receive an evaluation of the performance thereof from the respective chamber of the Supreme Judicial Council according to a methodology adopted by the Plenum of the Supreme Judicial Council and the Inspectorate with the Supreme Judicial Council. The said evaluation shall become part of the appraisal in a magistrate capacity before the entry into office as Inspector General and inspector.

Section III

Incompatibility

Article 195 (Supplemented SG 25/2009, effective 03/04/2009 r.; supplemented SG 33/ 2009; amended and supplemented SG 1/2011 , effective 04.01.2011; amended SG 17/ 2013; amended SG 52 /2013, effective 14/06/2013; supplemented 70/ 2013, effective 09/08/2013 r.; amended 19/ 2014, effective 05/03/2014; supplemented SG 28/ 2016 ; amended 39/2016, effective 26/05/2016; amended 62/2016, effective 09/08/2016; amended and supplemented, SG 65/2017)

(1) A judge, prosecutor or an investigating magistrate, while in office, may not:

1. be a member of the Parliament, a mayor or municipal councillor;

2. (amended, SG No. 17/2013, SG No. 19/2014, effective 5.03.2014) occupy a position in State bodies, in municipal bodies or in institutions of the European Union;

3. (supplemented, SG No. 1/2011, effective 4.01.2011; amended and supplemented SG 65/2017) carry on business activity in whatever capacity, including personally, through an affiliated person and/or through an appointed and/or hidden representative (proxy) or to be a partner, manager or member of supervisory boards, management boards or boards of directors or of control bodies of commercial corporations, cooperatives or non-profit legal entities that carry on business, with the exception of the professional associations of which they are members;

4. (supplemented, SG No. 25/2009, effective 3.04.2009, SG No. 33/2009, amended, SG No. 1/2011, effective 4.01.2011, SG No. 39/2016, effective 26.05.2016; supplemented SG 65/2017) be remunerated for activity under a contract or under another legal relationship with a State, municipal or public organisation, commercial corporation, cooperative, non-profit legal entity, a natural person or sole trader and to practice a liberal profession or another remunerated professional activity.

5. (abrogated SG 65/2017)

6. be a member of political parties or coalitions, of organisations pursuing political purposes, carry out political activity, as well as be a member of any organisations or carry out any activities interfering with his or her independence;

7. be a member of a trade union organisation outside the Judiciary system.

(2) (New SG 65/2017) A judge, a prosecutor or an investigating magistrate, while in office, may receive remuneration for:

1. teaching, research or exercising intellectual property rights ;
2. participation in European or international programmes or projects;
3. participation in the drafting of statutory instruments assigned by the National Assembly, the Supreme Judicial Council or by the executive authorities.

(3) (New, SG No. 1/2011, effective 4.01.2011, amended, SG No. 19/2014, effective 5.03.2014, renumbered from Paragraph 2, amended SG 65/2017) Judges, prosecutors and investigating magistrates may not be members of electoral commissions for parliamentary elections, elections of members of the European Parliament in respect of Republic of Bulgaria, elections of President and Vice President of the Republic, and

elections of municipal councilors and mayors.

(4) (Renumbered from Paragraph 2, amended and supplemented, SG No. 1/2011, effective 4.01.2011, supplemented, SG No. 52/2013, effective 14.06.2013, SG No. 70/2013, effective 9.08.2013, SG No. 28/2016, amended, SG No. 62/2016, effective 9.08.2016; renumbered from paragraph 3 SG 65/2017) Upon termination of the position, the persons under Item 1 of Paragraph (1), the judges of the Constitutional Court, the ministers or deputy ministers, the chairperson or deputy chairperson of the State Agency for National Security, the members of the National Special Intelligence Means Control Bureau, who have submitted a request to the respective chamber of the Supreme Judicial Council within 14 days from the date of their release, shall be reinstated to the position occupied before the election or to a position of an equal degree in the judicial authorities, and the time spent in the respective position shall count as service record under Article 164 (1) to (7).

Article 195a has not been amended in 2017, but a new provision cited below refers back to - paragraph 7 from the Final Provisions of the law amending the Judicial System Act promulgated in SG 65/2017

Article 195a (New, SG No. 62/2016, effective 9.08.2016) (1) Within one month from the entry into office, each judge, prosecutor and investigating magistrate, the members of the Supreme Judicial Council, the Inspector General and the inspectors of the Inspectorate with the Supreme Judicial Council shall submit to the respective chamber of the Supreme Judicial Council a declaration on all activities thereof and memberships of organisations, including secret and/or informal organisations and societies, non-profit legal entities and in civil-law companies or associations in a standard form endorsed by the Supreme Judicial Council. Upon a change, a declaration shall be submitted for adjustment of the circumstances declared within one month from the occurrence of the change.

(2) The chambers of the Supreme Judicial Council shall keep a central public register of the declarations under Paragraph (1).

Final provisions of the Law amending and supplementing the Judicial System Act (SG 65 from 11.08.2017)

§ 7 Within 30 days of the entry into force of this law, all judges, prosecutors and investigating magistrates, members of the Supreme Judicial Council, the Inspector General and the inspectors from the Inspectorate of the Supreme Judicial Council file with the relevant Chamber of the Supreme Judicial Council declaration under Section 195a § 1, sentence one.

Article 217 (Amended SG 65/2017)

(1) Judges, prosecutors and investigating magistrates may freely form and be members of organisations for the protection of their professional interests. These organisations may not be members of federations and confederations of trade union organisations of factory and office workers.

(2) These organisations obtain the quality of legal persons after their registration according to the rules foreseen for the registration of non-profit associations. Only judges, prosecutors and investigating magistrates can be founding members and members of such organisations.

(3) A Partnership Council is created with the Supreme Judicial Council. The Partnership Council is composed of 3 elected members of the Supreme Judicial Council, appointed by the Plenum, of representatives of each of the organisations under paragraph

1 whose total number of members corresponds to not less than 5 per cents of all judges, prosecutors or investigating magistrates, as well as of representatives of judges, prosecutors and investigating magistrates who are not members of such organisations;

(4) The Partnership Council holds discussions on all issues related to the professional interests of judges, prosecutors and investigating magistrates;

(5) The organisation and the activities of the Partnership Council are governed by a by-law adopted by the Plenum of the Supreme Judicial Council.

Suspension from office (Judicial System Act) and relevant provisions from the Code of Criminal Procedure

Article 230

(1) (Amended, SG No. 28/2016, supplemented, SG No. 62/2016, effective 9.08.2016) If a judge, a prosecutor or an investigating magistrate is charged with intentional publicly prosecutable criminal offence, In the cases under Article 132 of the Constitution of the Republic of Bulgaria, where a judge, prosecutor or investigating magistrate is constituted as an accused party, the respective chamber of the Supreme Judicial Council shall suspend the said magistrate from office until the close of the criminal proceedings. The period of the suspension from office in pre-trial proceedings may not exceed the period under Article 234 (8) of the Criminal Procedure Code. For the period of suspension from office, the judge, prosecutor and investigating magistrate shall be paid remuneration amounting to the minimum wage.

(2) (Amended, SG No. 28/2016, SG No. 62/2016, effective 9.08.2016) The motion for suspension from office under Paragraph (1) shall be entered by the Prosecutor General and shall be reasoned.

(3) (Supplemented, SG No. 28/2016, amended, SG No. 62/2016, effective 9.08.2016) Upon the expiry of the period under Article 234 (8) of the Criminal Procedure Code and upon a stay of the criminal proceedings, the suspended judge, prosecutor or investigating magistrate may approach the respective chamber of the Supreme Judicial Council with a request to adopt a decision reinstating the said magistrate to the position occupied. A refusal to adopt such a decision shall be appealable before the Supreme Administrative Court according to the procedure established by the Administrative Procedure Code.

(4) In cases where detention in custody has been ordered for a judge, prosecutor or investigating magistrate as a precautionary measure to secure the appearance thereof, the said magistrate shall be considered suspended from office as from the date when the judicial instrument imposing such measure became enforceable.

CODE OF CRIMINAL PROCEDURE (EXTRACTS)

Article 234 § 8 of the Code of Criminal Procedure
(...)

(8) (Amended, SG No. 32/2010, effective 28.05.2010, SG No. 71/2013) Measures of procedural coercion taken in respect to the accused party, as well as the measure securing the civil claim, where grounds for the imposition of the latter no longer exist, shall be revoked by the prosecutor after expiry of more than eighteen months of constitution of the accused party in cases of serious crimes, and after expiry of more than eight months in all other cases. These time limits do not include the periods when the criminal proceedings were stayed by the prosecutor on the grounds of Article 25.

Article 25

Criminal proceedings shall be suspended, where:

1. After committing the criminal offence, the accused party has fallen into a state of short-term mental derangement, which excludes his/her capacity to be liable, or where he/she suffers from another severe ailment, which hinders proceedings to be conducted;

2. Trying the case in the absence of the trial defendant would impede discovering the objective truth;

3. The perpetrator is an individual enjoying immunity.

4. (New SG No. 63/2017, effective 06.11.2017) the court has made a request for a preliminary ruling to the Court of the European Union;

5. (New SG No. 63/2017, effective 06.11.2017) for the same act, which constitutes an offence, there are completed administrative-penal proceedings;

(2) (New SG No. 63/2017, effective 06.11.2017) The criminal proceedings could be suspended, if there is a pending request for international legal assistance.

Article 358b (New, SG No. 1/2011, effective 4.01.2011 ; supplemented SG 65/2017)

(1) (supplemented SG 65/2017) Judicial officers may freely establish and be members of organisations which defend their professional interests.

(2) The organisations under Paragraph (1) may not be affiliated to federations and confederations of trade union organisations of factory and office workers.

AMENDMENTS PUBLISHED IN SG 63/2017

Article 64

(1) (Amended, SG No. 33/2009, amended and supplemented SG81/2009: amended and supplemented SG 63/2017, effective 06.11.2017) The instruments of the courts, with the exception of the instruments in criminal cases convicting the accused to a certain punishment, shall be immediately published on the website of the respective court while respecting the requirements of the Personal Data Protection Act and the Classified Information Protection Act.

(2) (New SG 63/2017, effective 06.11.2017) Judgments on the basis of which convictions enter into force are published on the website of the respective court after receiving notification from the prosecutor that steps have been taken to implement the judgments.

(2) (New, SG No. 81/2011, renumbered paragraph 3 SG 63/2017, effective 06.11.2017) The instruments referred to in Paragraph (1) shall be published in a way not making it possible to identify the natural persons mentioned in such instruments.

(3) (Renumbered from Paragraph 2, SG No. 81/2011, renumbered paragraph 3 SG 63/2017, effective 06.11.2017) The instruments in cases affecting the civil or health status of persons shall be published without their reasoning.