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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**BULGARIA**

**DRAFT LAW ON AMENDMENTS AND SUPPLEMENTS TO  
THE CONSTITUTION OF THE REPUBLIC OF BULGARIA  
AND  
EXPLANATION OF MOTIVES**

Translation from Bulgarian:

**DRAFT!**

**LAW ON AMENDMENTS AND SUPPLEMENTS TO  
THE CONSTITUTION OF THE REPUBLIC OF BULGARIA**

(PROM. SG 56/1991, AMEND. AND SUP. SG 85/2003, AMEND. AND SUP. SG 18/2005, SG 27/31 MAR 2006, SG 78/26 SEP 2006 — CONSTITUTIONAL COURT JUDGMENT NO 7/2006, SG 12/6 FEB 2007, AMEND. AND SUP. SG 100/2015)

**§1.** A new first sentence is created in art. 23: 'Education, science, culture and the preservation of cultural and historical heritage shall be strategic national priorities.' The previous first sentence and the previous second sentence shall become second sentence and third sentence respectively.

**§2.** The following amendments are made to art. 64:

1. In paragraph 2 the words 'or after the expiry' are deleted.
2. Paragraph 3 is amended as follows:

'(3) Elections for a new National Assembly shall be held not earlier than two months and not later than one month before the expiry of the mandate of the incumbent National Assembly'

3. Paragraph 4 is created:

'(4) Upon taking office by the newly elected National Assembly, the powers of the previous one shall be terminated.'

**§ 3.** Paragraph 1 of art. 65 is amended as follows:

'(1) Eligible for election for the National Assembly shall be any Bulgarian citizen, who is above the age of 21, is not under a judicial interdiction, and is not serving a prison sentence.'

**§ 4.** In the first sentence of art. 84, item 16, the words ‘the Supreme Judicial Council’ are replaced by ‘the respective council’ **§ 5.** A new art. 91b is created:

‘Art. 91b. (1) The National Assembly shall elect independent regulatory and controlling bodies subject to at least the following requirements: a reasonable period for submission of proposals, for debate and hearing of the candidates and providing for an opportunity for representatives of the public to present opinions and monitor the process, as well as limitation of the number of consecutive mandates.

(2) It may be provided for in a law that decisions on election shall be taken by a qualified majority.’

**§ 6.** Art. 99 is amended as follows:

1. Paragraph 5 is amended as follows:

‘(5) If agreement is not reached on the formation of a government, the President, after consultation with the parliamentary groups and upon a proposal by the caretaker Prime Minister, shall appoint a caretaker government. The caretaker Prime Minister shall be appointed amongst the President of the National Assembly, the President of the Constitutional Court or the Governor of the Bulgarian National Bank. In case the President fails to the appoint Council of Ministers proposed by the appointed caretaker prime minister within 7 days, the caretaker government shall be elected by the National Assembly. The President shall schedule elections for a new National Assembly within two months after the appointment of the caretaker government. In this case, the National Assembly shall not hold sessions within one month before the elections.’

2. Paragraph 7 is revoked.

**§ 7.** The word ‘only’ in art. 110 is deleted.

**§ 8.** Art. 126 is amended as follows:

‘Art. 126. (1) The structure of the prosecution offices shall correspond to that of the courts that hear criminal cases.

(2) The Prosecutor General shall be the administrative head of the Supreme Prosecution Office.’

**§ 9.** Art. 127 is amended as follows:

1. Item 5 is amended as follows:

'5. in the cases established by the law, by participating in civil and administrative cases for the protection of the rights and legal interests of minors and juveniles and for the protection of a significant public interest of persons in need of protection.'

2. Item 6 is revoked.

**§ 10.** Articles 129—130c are amended as follows:

'Art. 129. (1) Judges shall be appointed, promoted, demoted, transferred and released from office by the Supreme Judicial Council.

(2) The Chairperson of the Supreme Court of Cassation and the Chairperson of the Supreme Administrative Court shall be appointed and released from office by the Supreme Judicial Council for a term of five years with the right to be re-appointed for a second mandate only once.

(3) Having completed a five year term of office and after appraisal by decision of the Supreme Judicial Council the judges shall become irremovable. They shall be released from office only upon:

1. completion of 65 years of age;
2. resignation;
3. entry into force of res judicata judgment for a sanction of deprivation of liberty for an intentionally committed criminal offence;
4. permanent de facto inability to perform their duties for more than a year;
5. serious infringement or systematic neglect of their official duties, as well as actions damaging the prestige of the judiciary.

(4) In cases of removal from office under paragraph 3, items 2 and 4, the acquired irremovably shall be restored upon subsequent appointment to office.

(5) The chairpersons of the courts shall be appointed to the administrative position for a term of five years with the right to be re-appointed for a second mandate only once.

Art. 130. (1) The Supreme Judicial Council shall consist of 15 members and shall include the chairperson of the Supreme Court of Cassation and the chairperson of the Supreme Administrative Court as its ex officio members, eight members shall be elected directly by the judges from the various levels of the courts, and five members shall be elected by the National Assembly with a majority of two-thirds of its members.

(2) Eligible for election to the Supreme Judicial Council besides its ex officio members shall be practising lawyers of high professional and moral integrity with at least 15 years of professional experience. The National Assembly may not elect as members persons who hold the position of judge, prosecutor or investigating magistrate at the time of election. Representatives of the public and professional organizations may present opinions on applicants and monitor the process.

(4) The elected members of the Supreme Judicial Council shall serve terms of four years. They shall not be eligible for immediate re-election.

(5) The mandate of an elected member of the Supreme Judicial Council shall expire on any of the following grounds:

1. resignation;
2. entry into force of a final judicial act for a committed crime;
3. permanent de facto inability to perform his/her duties for more than one year;
4. disciplinary removal from office or deprivation of the right to carry out legal profession or activity.

(6) In case of termination of the mandate of an elected member of the Supreme Judicial Council, a new member from the same quota shall be elected, who shall hold the office until the expiry of the mandate.

Art. 130a. (1) The Supreme Judicial Council shall:

1. appoint, promote, relocate and release from office the judges;
2. appoint and release from office the chairperson of the Supreme Court of Cassation and the chairperson of the Supreme Administrative Court;
3. appoint and release from office the chairpersons of the courts;
4. make periodic appraisals of judges and chairpersons of courts and shall decide on matters related to granting and restoration of irremovability;
5. impose disciplinary sanctions of demotion and release from office on the judges and chairpersons of courts;
6. resolve matters related to the organization of the operation of the courts;
7. adopt the draft budget of the judiciary;
8. adopt a decision to terminate the mandate of an elected member of the Supreme Judicial Council under the grounds in art. 130, paragraph 5;
9. organize the professional training of judges;
10. exercise other powers as defined by law.

(2) The Supreme Judicial Council shall be chaired by the Chairperson of the Supreme Court of Cassation, and in his absence by the Chairperson of the Supreme Administrative Court. The Minister of Justice and the Inspector General may attend the meetings without having the right to vote.

Art. 130b (1) The Prosecutor General shall be appointed and released from office by the Prosecutor's Council for a term of five years with the right to be re-appointed for a second mandate only once.

(2) No fewer than three of the members of the Prosecutor's Council, as well as the Minister of Justice, may make proposals for candidacies for the position of Prosecutor General.

(3) For a committed general crime, the Prosecutor General shall be investigated and the charge shall be maintained before the court by a special prosecutor who has held the position of a judge of the Supreme Court of Cassation from the criminal division or has the rank of a judge of the Supreme Court of Cassation from the criminal divisions of the appellate or district courts until the appointment. The procedure shall be established by a law.

Art. 130c (1) Prosecutors and investigating magistrates shall be appointed, promoted, demoted, relocated and released from office by the Prosecutor's Council.

(2) The Prosecutor's Council shall consist of 10 members and shall include the Prosecutor General as its ex officio member, two members shall be elected directly by the prosecutors, one shall be elected directly by the investigating magistrates and six members shall be elected by the National Assembly with a majority of two-thirds of its members.

(3) Eligible for election to the Prosecutor's Council besides its ex officio members shall be practising lawyers of high professional and moral integrity with at least fifteen years of professional experience. The National Assembly may not elect as members persons who hold the position of prosecutor or investigating magistrate at the time of election. Representatives of the public and professional organizations may present opinions on applicants and monitor the process.

(4) The elected members of the Supreme Judicial Council shall serve terms of four years. They shall not be eligible for immediate re-election. Their mandate shall be terminated on the grounds envisaged under art. 130, paragraph 5.

(5) The Prosecutor's Council shall:

1. appoint, promote, relocate and release from office the prosecutors and investigating magistrates;

2. appoint and release from office the Prosecutor General;

3. appoint and release from office the administrative heads of prosecution offices;

4. adopt rules for general methodological guidance on the activities of the prosecution offices;

5. carry out periodic appraisals of prosecutors and investigating magistrates and administrative heads of prosecution offices and shall decide on matters related to granting and restoration of irremovability;

6. impose disciplinary sanctions for demotion and release from office on the prosecutors and investigating magistrates and administrative heads of prosecution offices;

7. deal with matters related to the organization of the operation of the prosecution offices;

8. adopt the draft budget of the prosecution offices;

9. adopt a decision to terminate the mandate of an elected member of the Prosecutor's Council under the grounds of art. 130, paragraph 5;

10. organize the professional training of prosecutors and investigating magistrates;

11. exercise other powers as defined by law.

(6) The meetings of the Prosecutor's Council shall be chaired by the Prosecutor General. The Minister of Justice and the Inspector General may attend the meetings without having the right to vote.

(7) The administrative managers of the prosecution offices shall be appointed to the administrative position for a term of five years with the right to be re-appointed for a second mandate only once.

(8) Having completed a five year term of office and after an appraisal by decision of the Prosecutor's Council the prosecutors and investigating magistrates shall become irremovable. They shall be released from office only pursuant to art. 129,

paragraph 3.'

**§ 11.** New art. 131 is created:

'Art. 131. The Minister of Justice shall:

1. be entitled to propose a candidate for a Prosecutor General in an open election procedure;
2. be entitled to make proposals for the appointment, promotion, demotion, relocation and release from office of prosecutors and investigating magistrates;
3. be entitled to make proposals for releasing from office of judges;
4. propose a draft budget for the judiciary, which shall include a budget for the court system and a budget for the prosecution system, and shall submit them to the Supreme Judicial Council and the Prosecutor's Council respectively;
5. manage the immovable property of the judiciary, in agreement with the Supreme Judicial Council and the Prosecutor's Council.'

**§ 12.** Art. 132a is amended as follows:

1. Paragraphs 1—3 are amended as follows:

'Art. 132a. (1) An Inspectorate of the judiciary shall be established, which shall consist of a Inspector General and ten inspectors.

(2) The Inspector General and the inspectors shall be elected by the National Assembly by a majority of two-thirds of its Members for a term of five years with the right to be re-elected for a second mandate only once.

(3) The Inspector General and the inspectors shall be independent in the performance of their duties and shall obey only the law. After the completion of their mandate, the Inspector General and the inspectors may not hold positions in the bodies of the judiciary. They acquire the right to a pension and may retire according to the procedure established by law.'

2. Paragraph 4 is revoked.
3. Paragraph 6 is amended as follows:

'(6) The Inspectorate of the judiciary shall:

1. inspect the operation of the judicial authorities without affecting the independence of judges, jurors, prosecutors and investigating magistrates in the performance of their duties;
2. carry out checks on the integrity and the conflicts of interest of judges, prosecutors and investigating magistrates, their property declarations, as well as for ascertaining any actions damaging the prestige of the judiciary and such violating the independence of judges, prosecutors and investigating magistrates;
3. carry out inspections based on reports of violations of the law and the rules of judicial procedure, including violations of the right to consider and resolve cases within

a reasonable time;

4. make motivated proposals to the relevant council for the imposition of disciplinary sanctions on judges, prosecutors or investigating magistrates in the event of establishing of systematic or gross violations of the law and of rules of judicial procedure on their part, including their demotion and releasing from office, as well as temporary suspension from office in cases of criminal prosecution initiated against them;

5. inform the Supreme Judicial Council, the Prosecutor's Council and the Minister of Justice about its activities.'

**§ 13.** In art. 147, paragraph 1 after the words 'National Assembly' the words 'by a majority of two thirds of its members' are added.

**§ 14.** Art. 150 is amended and supplemented as follows:

1. In paragraph 1 after the words 'the Supreme Court of Cassation' the comma is deleted and the conjunction 'and' is inserted and after the words 'the Supreme Administrative Court' a full stop is inserted and the words 'and the Prosecutor General' are deleted.

2. Paragraphs 5, 6 and 7 are created:

'(5) The Prosecutor General may submit to the Constitutional Court a request to establish the unconstitutionality of a law that violates the rights and freedoms of citizens.

(6) Any court may submit to the Constitutional Court a request to establish the unconstitutionality of a law applicable to a specific case. In such case, the court shall suspend the proceedings until the ruling of the Constitutional Court.

(7) Citizens and legal entities may submit to the Constitutional Court a request to establish the unconstitutionality of a law under the conditions and procedure envisaged by a law and by the rules of the Constitutional Court.'

**§15.** A comma is inserted after the word 'capital' in the title of chapter ten and the expression 'national holiday' is added.

**§16.** Art. 170 is created:

'Art. 170. (1) The national holiday of the Republic of Bulgaria shall be May 24 – the Day of the Bulgarian language, education and culture, and of the Cyrillic alphabet.

(2) Other public holidays shall be provided for by law.'



**Transitional provision**

**§17.** Within three months of the entry into force of this law, the election of the Supreme Judicial Council, Prosecutor's Council and Prosecutor General shall be held.

**Sofia, 28 July 2023**

**MOVERS: ...**

## MOTIVES

### TO

## THE LAW ON AMENDMENTS AND SUPPLEMENTS TO THE CONSTITUTION OF THE REPUBLIC OF BULGARIA

### 1. Affirmation and strengthening of Bulgarian statehood

The principles of good governance imply that state institutions have a high degree of legitimacy and trust on the part of citizens. Strengthening the national constitutional and cultural identity is a prerequisite for preserving the legitimacy of national institutions in the context of the deepening process of European integration. As a true social contract of the nation, the Constitution contains a charter of values that have an integrating effect in a pluralistic society.

The proposed amendments of art. 23 focus on strengthening of education, science and culture and on the preservation of cultural and historical heritage as strategic national priorities.

In order to strengthen Bulgarian statehood and identity, it is proposed that the national holiday of the Republic of Bulgaria be on 24 May – the Day of the Bulgarian language, education and culture, and of the Cyrillic alphabet.

### 2. Strengthening of the independence of the court through structural reform of the Supreme Judicial Council

The draft law contains a proposal for a structural reform of the Supreme Judicial Council (SJC) aimed at ensuring of independent and fair justice as the SJC remains an administrative and personnel body for judges only. It is proposed:

- Reduction of *the parliamentary quota* in the SJC to one third of the composition (5 members) of a 15-member body. Eight members shall be elected directly by the judges, representing the different levels of the judicial system (district, district, appellate, supreme), and the presidents of the Supreme Court of Cassation (SCC) and the Supreme Administrative Court (SAC) shall be ex officio members. The SJC shall be chaired by the President of the Supreme Court of Cassation, and in his absence by the President of the Supreme Administrative Court. Limits the possibility for acting judges, prosecutors and investigators to be elected as members of the body from the parliamentary quota.
- The term of office of the chairpersons shall be reduced to 5 years with the right to only one re-appointment.
- In order to strengthen judicial independence, it is accepted that the presidents of the Supreme Court of Cassation and Supreme Administrative Court shall be appointed and dismissed directly by the Supreme Judicial Council without the involvement of the President or the Republic.

The proposed amendments (in art. 129, art. 130 and art. 130a of the Constitution) are aimed at strengthening of the independence of judges, who are given the opportunity for real self-governance in a reconstructed Supreme Judicial Council, while respecting the public interest. This way, standards for the independent administration of the judiciary established by the Venice Commission of the Council of Europe (Opinion No 855/2016; Opinion No 816/2015; Research No 403/2006) and in the jurisprudence of the Court of Justice of the EU are fulfilled (Commission v. Poland). In order to limit direct political influence, the members of the SJC, elected from the parliamentary quota, should not be active politicians (members of the National Assembly), but should essentially be a civil/public quota (representatives of the legal academia, prominent practicing lawyers, representatives of professional legal or human rights organizations).

### **3. Reform of the prosecution office, guaranteeing its accountability to the public**

The draft law envisages the following changes to the structure of the prosecution office:

- The Prosecutor General shall be appointed by the Prosecutor's Council on the initiative of the Minister of Justice or three members of the Prosecutor's Council.
- Reducing of the mandate of the Prosecutor General to 5 years.
- Introduction of an element of decentralization of the structure of the prosecution office by amendments in art. 126 of the Constitution.
- The Prosecutor's Council exercises the main career and disciplinary powers in relation to the prosecutors in a composition of 10 members — 2 of the members elected directly by the prosecutors; 1 of the members elected directly by the investigators; 6 of the members elected by the National Assembly (representatives of various legal professions and organizations), the Inspector General and the Minister of Justice may participate in the meetings without the right to vote. The possibility for acting prosecutors and investigators to be elected as members of the body from the parliamentary quota is eliminated.
- A special mechanism for the investigation of the Prosecutor General is established - for a committed general crime, the Prosecutor General shall be investigated and the charge shall be maintained before the court by a special prosecutor who holds the position of a judge in a criminal panel at the supreme or appellate level until the moment of appointment; the appointment procedure shall be determined by a law.
- Limiting of the functions of the prosecution office only to functions within the framework of the criminal process – revoking *the general supervision of legality* regarding acts and actions of state authorities.

The draft law creates guarantees that the prosecution office will be an institution protecting the public interest, publicly accountable and responsible, and not a repressive tool against business and political opponents. The establishment of an independent Prosecutor's Council, dominated by the representatives of the parliamentary (public) quota, is a guarantee against the concentration of power in the institution of the chief prosecutor, incl. and regarding career and disciplinary powers vis-à-vis prosecutors.

Real responsibility and accountability mechanisms for the Prosecutor General are being introduced — by reducing the term of office to 5 years, through the appointment procedure by the Prosecutor's Council on the initiative of three members of the Prosecutor's Council and the Minister of Justice after a public hearing.

A procedure for an independent investigation of the Prosecutor General is also introduced in line with the European Court of Human Rights judgment of 2009 *Kolevi v. Bulgaria*.

Focusing the prosecution only on functions in the criminal process should limit the scope for arbitrary exercise of power and increase the effectiveness of the state prosecution.

The proposed changes correspond to the standards and recommendations of the Venice Commission (*Study No 494/2008; Opinion No 855/2016; Opinion No 968/2019*), as well as the jurisprudence of the European Court of Human Rights (case *Kolevi v. Bulgaria*).

#### **4. With regard to the determination of the composition of the caretaker government**

Currently, the institution of the caretaker government is provided for in the Constitution as an exception to the parliamentary model of government, as it is appointed by a decree of the president and does not bear joint political responsibility to the parliament. The constitutional logic of this institute is for a short period of time in a situation of parliamentary crisis to ensure continuity in the exercise of the functions of the executive power while at the same time removing political tension and leading to calming of the political situation.

The caretaker government is subject to parliamentary control through questions and queries of the members of the National Assembly. The practice of exercising of the functions of caretaker governments shows that they exercise all the powers of the Council of Ministers under Chapter Five of the Constitution, albeit for a limited period of time. Consecutive parliamentary crises in 2021—2023 led to the appointment of several caretaker governments in a row, raising the question of more guarantees for the continuity of the work of the parliament.

It is proposed to adopt one of the models that operate in other European countries, in which there is a format of appointing of an independent caretaker government with a constitutionally determined prime minister occupying the highest public office in an independent state body, so as not to allow full discretion of the President of the Republic in appointment procedure (e.g. in Greece the president of the Supreme Court, the president of the Supreme Administrative Court or the president of the Court of Audit are appointed as caretaker prime ministers). It is proposed that the caretaker prime minister be appointed from among the President of the National Assembly, the President of the Constitutional Court or the Governor of the Bulgarian National Bank. The Council of Ministers shall be appointed by the President on the proposal of the Prime Minister. The President shall schedule elections for a new National Assembly within two months after the appointment of the caretaker government.

It is proposed to limit to one month the period in which the Parliament is not sitting in case of early elections. Introduces the rule that the president sets the date for the early elections and that the Parliament does not sit in the one-month period before the election date.

## **5. Additional guarantees for citizens' rights**

As a result of more than 30 years of free movement and permanent settlement abroad of a large number of Bulgarian citizens, the norms prohibiting the election and/or holding of senior government positions by persons who, in addition to Bulgarian, have other citizenships should also be amended. With the proposed amendment in art. 65 overcomes this discriminatory ban on hundreds of thousands of Bulgarian citizens who are citizens of other countries from being elected as members of the National Assembly, ministers and prime ministers. We believe that the education acquired in prestigious foreign universities, as well as the experience gained in the real sector in different countries of the world, would only benefit our society.

All Bulgarian citizens, regardless of whether they have another citizenship, have equal rights. We believe that limiting of the passive right to vote violates this principle and is discriminatory for those who have other citizenships. In addition, nowadays the Bulgarian communities abroad make up nearly 1/3 of all Bulgarian citizens. A large part of them have obtained the citizenship of the country in which they live. We believe that these Bulgarian citizens, in addition to having the right to vote, which is guaranteed by the Constitution, also have the right to be elected. In this regard, we propose amendments to revoke these provisions. The Bulgarian community abroad must be represented in the political life of the country.

The draft law proposes the introduction of new institutes for the protection of the constitutional rights and freedoms of citizens:

- The draft law introduces a direct individual constitutional complaint, ensuring civil control over the activities of the Parliament, so that the adopted laws do not violate the constitutional rights of citizens;
- Creation of the possibility for lower instance courts to refer directly to the Constitutional Court on the constitutionality of a law applicable to a specific case - a form of specific constitutional review that complements the possibility of an individual constitutional complaint, as well as strengthens the independence of each court;
- The specific grounds for admissibility will be envisaged in a special law.

The Bulgarian constitutional model should provide for the possibility of adequate protection of the constitutional rights and freedoms of the citizens from the unconstitutional acts of the National Assembly. The Bulgarian model of constitutional justice, although built on the basis of the European centralized model, is an exception to it, insofar as it does not provide for the possibility for citizens to directly appeal before the Constitutional Court, nor does it allow lower instance courts to directly appeal before it in view of establishing of the unconstitutionality of an applicable law relevant to pending legal proceedings. In the second hypothesis, the situation is paradoxical, because any court (judge) in a specific case may turn to the Court of Justice of the EU

with a request for a preliminary ruling in relation to the interpretation and application of European law, but may not turn directly to the national constitutional jurisdiction.

In order to guarantee full protection of the rights and freedoms of citizens, both the individual constitutional complaint and the possibility of lower instance courts to refer directly to the Constitutional Court should be regulated (amendment of art. 150 of the Constitution).

Regarding the *individual constitutional complaint*, adequate filters should be provided by the law and the rules of the Constitutional Court to ensure that the Constitutional Court will consider truly significant issues and no unreasonable delay due to court overload will be allowed. This reform should be accompanied by organizational, personnel and resource strengthening of the Constitutional Court as an administration. Such filters may be:

- *Subject* — the appeals shall be admissible, when the *constitutional rights and freedoms of citizens are violated by a law*;
- *Lack of established case law* — The Constitutional Court has not issued a decision on the relevant provisions of the law at the initiative of other entities.

## **6. Transparent election of independent regulatory and supervisory bodies**

The draft law proposes the constitutionalization of the main stages of the procedure for electing members of independent regulatory and control bodies. The procedure shall be carried out in compliance with at least the following requirements: public nomination and hearing of candidates, clear criteria for electability of candidates, provision of opportunity for representatives of the public and professional organizations to give opinions and monitor the process, limitation of the number of consecutive mandates.

This approach will ensure transparency and legitimacy of the process of nomination and election of members, which will limit the politicization of the process and increase trust in the authorities.

**Sofia, 28 July 2023**

**MOVERS:**