

Opinion of the Management Board of the Association of Prosecutors in Bulgaria in connection with the 2021 Rule of Law Report

The Association of Prosecutors in Bulgaria /[APB](#)/ is a non-political association established more than 25 years ago, whose activities are carried out for the public benefit. The membership of the prosecutors in our professional association does not derive from a legal obligation, but is an act of freely expressed will. Currently, 316 magistrates are members of the association. During its existence, the APB has established itself as one of the largest professional organizations, whose active work has as a priority the unification of prosecutors from all over the country, protection of their professional interests and social rights, as well as the independence of the judiciary. The APB has an [Official agreement](#) on cooperation with the Prosecutor's Office of the Republic of Bulgaria /PRB/. The association is actively present in the public arena with opinions on magistrates' significant issues. The APB is also a collective member of the [International Association of Prosecutors /IAP/](#).

The Rule of law is a guiding principle that sets the direction of the activities of our professional association. We share the view that the protection of the professional interests of the Bulgarian magistrates is inherently related to the protection of their independence in the performance of their official duties. In this context, the functional connection between the principle of the Rule of law and the activity of the Association of Prosecutors in Bulgaria is manifested. Over the years, we have consistently and categorically defended not only the autonomy of prosecutors in the management and supervision of the criminal proceedings assigned to them, but we have also publicly defended our colleagues when their professional honor and dignity have been violated. For this reason, we also react against the attempts to discredit the Prosecutor's Office of the Republic of Bulgaria. We believe that the deliberate damage to the image and authority of the Prosecutor's Office as an institution has a negative impact on the prestige of every Bulgarian prosecutor. In the last year, we have opposed several attempts to compromise the independence of Bulgarian prosecutors, undertaken by entities outside the judiciary in pursuit of their personal goals.

The Rule of law is a fundamental principle with EU priority and multilateral manifestations of its application. Apart from the daily and routine operation of the justice system, aimed directly at the administration of justice, the principle of the Rule of law finds its application in the fight against corruption, creating guarantees for freedom of speech and building a balanced mechanism of interaction and control between the legislature, executive authority and the judiciary, without, however, violating their autonomy. As a professional organization of the Bulgarian prosecutors we believe that the Rule of law in the Republic of Bulgaria should be guaranteed and maintained through all possible legal means.

As a follow-up to the first Rule of Law report for 2020, namely that a proposal for reform of the Inspectorate of the Supreme Judicial Council has been submitted, we believe that a progress in this direction can be reported. By an order of the Minister of Justice, a working group, headed by the Deputy Minister of Justice, was created. Representatives of the Association of Prosecutors in Bulgaria also participate in this group. The working group is tasked with preparing proposals for legislative changes concerning the work of the Inspectorate and especially the manner and procedure for electing its members. The Inspectorate is currently continuing its work at the end of its term of office and in accordance with the principle of continuity. The first working session was held on February 2, 2021 and some specific proposals for legislative changes to be submitted to the National Assembly were discussed.

As a professional magistrate's organization, we appreciate the explicit abolition of the obligation of magistrates to declare their affiliation to a professional organization, introduced by the new provision of Art.195a para 2 of the Judiciary System Act. In 2016, three magistrate organizations, including the Association of Prosecutors in Bulgaria, publicly announced that this obligation violates the constitutional right of magistrates to associate.¹

We give an extremely positive assessment of the work of the prosecution and the judiciary during the Covid-19 virus pandemic. Despite the difficult situation, citizens' access to justice was guaranteed. Taking into account the anti-epidemic

¹ <http://www.ecocrime.bg/home/2013-08-06-19-54-12/622-obrashtenie-na-ssb-apb-i-bsa-kam-narodnite-predstaviteli>

measures introduced, the prosecutors, investigators, judges and employees performed their duties with responsibility and self-denial.

All of the above gives us confidence to state that in its daily activities the judiciary permanently and relentlessly demonstrates its responsible attitude to the various forms of manifestation of the Rule of law principle.

Despite these positives, we would like to draw your attention to several national issues that raise concerns in the professional community about the way the independence of the prosecution is interpreted in the public sphere. These issues have the potential to directly infringe the Rule of law.

In her speech on the state of the Union in 2020, the President of the European Commission, Ms. Ursula von der Leyen, explicitly emphasized the crucial importance of the established European Rule of Law Mechanism, as a guarantee to prevent the emergence of new or deepening existing problems in this area. In this context, and given the criteria outlined in the report for the independence of the judiciary, ensured, inter alia, by strengthening the structure of the Supreme Judicial Council /SJC/, as well as the high priority role of the Prosecutor's Office of the Republic of Bulgaria in the fight against crime and corruption, we would like to draw your attention to the attempts of persons outside the Prosecutor's Office to involve us in political struggles in order to damage the authority of the institution. These attempts directly violate the Rule of law as a guiding principle.

Over the last four years, many important and significant reforms have taken place within the judiciary. Among the most important and decisive changes was the transformation of the SJC into a Plenum, and a Judges' College and a Prosecutors' College. This change was due to the expressed disagreement by some judges prosecutors to participate in resolving issues related to judges' career development, promotion, disciplinary and labor issues. Discussions of these changes took place under the leitmotif "Prosecutors appoint judges".

In 2017, historic reforms were made in the structure and functioning of the Prosecutor's Office of the Republic of Bulgaria. The principle of centralization was abandoned (prosecutors were subordinated to higher prosecutors, and all- to the Prosecutor General) as the introduced changes (commented in detail in the

European Commission report on the Rule of Law in 2020) create only subordination of the administrative heads to the Prosecutor General.

On July 23, 2020, the Constitutional Court of the Republic of Bulgaria adopted an interpretative decision № 11 on constitutional case № 15/2019.² The Constitutional Court made an obligatory interpretation of Art. 126, para 2 of the Constitution on the following issue: “Are the cases when a prosecutor carries out inspections, investigations and other procedural actions on signals against the Prosecutor General included in the supervision of legality and methodological guidance on the activity of all prosecutors, carried out by the Prosecutor General under Art. 126, para. 2 of the Constitution, in view of the generally accepted legal principle “no one can judge himself” as an element of the Rule of law?”. This decision outlined the limits of the prosecutors' independence from the Prosecutor General. According to the court's decision, this power is limited in respect of the prosecutor's activity by the free formation of an inner conviction based on the correct application of the law. We should draw your attention to the fact that this interpretation is in harmony with a fundamental principle for the Bulgarian criminal process for making a decision on inner conviction, limited only by law- Art. 14 of the Criminal Procedure Code³, as well as with the legitimate authority of each higher-ranking prosecutor to give obligatory written instructions “without prejudice to the inner conviction of the prosecutor”⁴. The Constitutional Court has defined methodological guidance as a power with the “lowest intensity“. The Prosecutor General is authorized only to issue generally binding instructions to prosecutors on the rules, methods and actions by which the effective and efficient functioning of the prosecution service is ensured. Despite the absolutely obligatory nature of the interpretation of the powers of the Prosecutor General in the public space, allegations continue to be superimposed, suggesting that these

² <http://www.constcourt.bg/bg/Acts/GetHtmlContent/c362dbb8-f9c3-4342-8658-9446a05ed8b4>

³ *Art. 14, Para 1 of the Criminal Procedure Code: The court, the prosecutor and investigative bodies shall make their decisions by inner conviction, which shall be based on the objective, comprehensive and complete investigation of all circumstances relevant to the case, taking the law as guidance.*

⁴ *Art. 143, Para 5 of the Judiciary System Akt: In the event of revoking a prosecutor's act may be issued only written and reasoned instructions on the implementation of the law without influencing the inner conviction of the prosecutor.*

constitutionally established powers enable the Prosecutor General to indirectly influence the inner conviction of each prosecutor. The latter, in turn, thwarted the possibility of creating adequate guarantees of objectivity and independence in cases where the Prosecutor General is under investigation. This misinterpretation of the decision of the Constitutional Court found public expression in the media and on television.⁵

A draft of legislative changes was submitted to the National Assembly and was later adopted, which created the figure of a special prosecutor, whose duties are to check and investigate the Prosecutor General. The need to create this figure was justified by a representative of the initiators of the bill with the insolvent and unsubstantiated allegation of the notorious influence of the Prosecutor General in relation to the prosecutors. We believe that ignoring the binding nature of the cited constitutional decision and the public dissemination of misleading allegations of illusory right of the supervising prosecutor to decide the case in his/hers sole discretion, undermines the independence of the prosecution and impedes the full application of the Rule of law.

The manifestation of the Rule of law principle, which is supreme for the European Union, is further limited by the attempts to destabilize the Prosecutor's office by using illegitimate means to influence the activity of the Supreme Judicial Council as the governing body of the judiciary. The independence of the council is one of the strongest guarantees for the independence of the entire judiciary. At the legislative level, sufficient mechanisms have been established to ensure both objectivity in the formation of the council and independence in decision-making process. There are also legislative guarantees and mechanisms that prevent the ability of prosecutors (including the Prosecutor General) to influence the career development of judges. However, in the autumn of 2020, just before the election of a member of the Prosecutors' College of the SJC, the Bulgarian Judges Association- one of the three professional organizations of judges, publicly issued

⁵ *After the third minute:*

<https://nova.bg/news/view/2021/02/02/314048/%D0%BF%D0%B0%D1%82%D0%B0%D1%80%D0%B8%D0%BD%D1%81%D0%BA%D0%B8-live-%D0%BF%D1%80%D0%BE%D0%B4%D1%8A%D0%BB%D0%B6%D0%B0%D0%B2%D0%B0-%D0%BB%D0%B8-%D0%B2%D0%BE%D0%B9%D0%BD%D0%B0%D1%82%D0%B0-%D0%BC%D0%B5%D0%B6%D0%B4%D1%83-%D0%B8%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%86%D0%B8%D0%B8%D1%82%D0%B5/>

an official declaration suggesting to the citizens of Bulgaria that the activity of the Prosecutor's Office of the Republic of Bulgaria is carried out in violation of the fundamental principle of the Rule of law. The activity of the Bulgarian Judges Association in this direction continued with the Decision of 19.09.2020 of the General Assembly of the association for referral to the SJC with a declaration for "assessment of publicly known facts about the activity of the Prosecutor General", as well as with the almost simultaneous appeal of Judge Emil Dechev- Member of the Board of the Bulgarian Judges Association, to the Bulgarian prosecutors to boycott the forthcoming on 26.09.2020 election for a member of the Prosecutors' College of the SJC. Judge Dechev's thesis was that with this boycott the prosecutors would demonstrate to the Bulgarian society that they are not "led by fear"⁶. The Association of Prosecutors in Bulgaria assesses these suggestions as an attempt to deliberately instill a negative impression on the activities of the representatives of the public prosecution and deliberately underestimate the results achieved by the Prosecutor's Office in the difficult fight against crime and corruption. In this sense, our professional organization has publicly expressed its categorical disagreement with these successive manipulations of public opinion and attempts to defame the prosecution.⁷

The deliberately created tension continued during the election day- in an attempt to cause a negative impact on those who covered the election, as well as on prosecutors who voted with a paper ballot, representatives of an association that is connected with the defendant Tsvetan Vassilev, who is a fugitive from the Bulgarian justice, organized a protest in front of the Court House in Sofia, where the ballot voting took place⁸. Despite the attempts to provoke a scandal the elections held on September 26, 2020, ended on the same day with high turnout. The candidate Mr. Evgeni Ivanov was elected a member of the Prosecutors' College of the SJC by a significant majority of eligible to vote Bulgarian prosecutors.⁹

⁶ <https://www.legalworld.bg/vnusheniia-manipulacii-i-politika-%E2%80%93-esenciata-na-edno-otvoreno-pismo-na-sydiata-emil-dechev>

⁷ <http://www.ecocrime.bg/home/2013-08-06-19-54-12/713-obrashtenie-na-upravitelniya-savet-na-apb>

⁸ <https://www.mediapool.bg/prokurorite-glasuvat-za-chlen-na-vss-na-fona-na-protest-news312467.html>

⁹ <https://legalworld.bg/prokurorite-davat-svoia-vot-za-svoj-predstavitel-vyv-vss>

These cases are not isolated, but are part of a series of events, whose chronological development and focus on the prosecution leads us to only one conclusion- the Prosecutor's Office of the Republic of Bulgaria is under unprecedented pressure from external actors. This pressure cannot be identified as a democratic public control of the institution's activities.

On June 26, 2020, we expressed our unequivocal support¹⁰ regarding our colleague Mr. Angel Kunev- Deputy Administrative Head of the Specialized Prosecutor's Office, who is a supervising prosecutor in several cases of high public interest related to organized crime. It was established that he had been illegally traced and photographed, after which the photos were spread on the Internet by an accused hiding in Dubai. We reported this as an act of direct threat against a working prosecutor.

On July 10, 2020, the APB reacted to the consecutive attempts to involve the Prosecutor's Office of the Republic of Bulgaria in political confrontation.¹¹ We also strongly opposed the attempts to define Bulgarian prosecutors as "criminals"¹².

The need to counteract the ongoing gross encroachments on the independence and reputation of Bulgarian prosecutors provoked the Prosecutors' College of the Supreme Judicial Council to turn to the Prosecutor's Office with an appeal to organize a national meeting of all prosecutors on the topic: "Upholding the independence of the Bulgarian prosecution in order to prevent the risk of a serious breach of the rule of law under Article 7 of the Treaty on European Union".¹³ At the same meeting, attempts to violate the autonomy and independence of the Prosecutor's Office of the Republic of Bulgaria were condemned. The representative of the Association of Prosecutors in Bulgaria said: "We are not afraid of changes and reforms when they are result of serious analysis, professional and public debate, taking into account the real needs of the people. It is the Prosecutor's Office that is the most flexible and reformed part of the judiciary in our recent history. However, we do not accept the prosecutors, investigators and

¹⁰ <http://www.ecocrime.bg/home/2013-08-06-19-54-12/708-v-podkrepa-na-kolega>

¹¹ <http://www.ecocrime.bg/home/2013-08-06-19-54-12/709-pozitziya-na-upravitelniya-savet-na-apb>

¹² <http://www.ecocrime.bg/home/2013-08-06-19-54-12/710-stanovishte-na-us-na-apb-sreshtu-vavlichaneto-na-prb-v-politicheski-edinoborstva>

¹³ <https://www.facebook.com/Novini.bg/videos/624755238181718>

court employees to be used to "clean" the hands of politicians and to redeem their "sins" against the Bulgarian state, society and citizens."¹⁴

We consider it necessary to point out once again that the place of the Prosecutor's Office of the Republic of Bulgaria in the judiciary is unalterable. This is one of the most serious guarantees for establishing and defending the principle of the Rule of law. Only the independent prosecutor, who makes decisions on the basis of inner conviction, can perform his/ her official duties without worries of external interference. The realization of the ideas for removing the prosecution from the judiciary and its situation in the executive branch would lead to disastrous consequences for the Bulgarian society.

As a professional association of prosecutors, we express our deep concern about the ongoing attempts to interfere in the work and independence of magistrates, which creates preconditions for undermining the prestige and authority of the entire judiciary and thus threatens the rule of law in Bulgaria.

We believe that with joint efforts we will create a solid foundation for a modern and independent judiciary.

Management Board
of the Association of Prosecutors in Bulgaria

АСОЦИАЦИЯ НА
ПРОКУРОРИТЕ
В БЪЛГАРИЯ

¹⁴ <http://www.ecocrime.bg/home/2013-08-06-19-31-47/712-asotziatziyata-na-prokurorite-v-balgariya-beshe-predstavena-na-provedenoto-na-24-08-2020-g-natzionalno-saveshtanie-na-prokuraturata-na-republika-balgariya>