

SUPREME COURT OF CASSATION OF THE REPUBLIC OF BULGARIA

OPINION

Subject: Bill amending the Judicial System Act, drawn up by the Ministry of Justice and sent for opinion in accordance with a consultation procedure under Article 32 of the Rules of Procedure of the Council of Ministers and Its Administration.

A letter was received from the Minister of Justice, inviting the SCC to submit an opinion on the bill amending the JSA.

The proposed Act amending the JSA contains amendments in two directions:

- abolition of “career bonuses” for members of the Supreme Judicial Council, the Chief Inspector and inspectors from the SJC Inspectorate, administrative heads and their deputies; abolition of the financial compensations for the members of the SJC, the Chief Inspector and the inspectors from the SJC Inspectorate;

- closure of specialized criminal courts and specialized prosecutor’s offices.

I. Regarding the proposed changes in the first direction, the SCC has so far expressed a position, including by referring to the Constitutional Court of the Republic of Bulgaria twice with requests to declare unconstitutional provisions of the JSA, which introduce “career bonuses” for the members of the SJC, the Chief Inspector and the inspectors from the SJC Inspectorate¹. These requests set out in detail the considerations of the judges of the Supreme Court of Cassation, from which there is no reason to deviate. Given the outcome of the constitutional cases on them², we find the bill in this part timely and we express a positive opinion on it.

II. The second direction of the bill concerns the closure of the specialized criminal courts and the specialized prosecutor’s offices.

The Constitution of the Republic of Bulgaria, in Article 119, paragraph 2 thereof, allows the establishment of specialized courts by law and on this basis with the Act amending the JSA in 2011 a specialized criminal court, a specialized criminal court of appeal, a specialized prosecutor’s office and a specialized prosecutor’s office of appeal were established with jurisdiction in criminal cases involving serious organized crime. Subsequently, their jurisdiction was expanded to include cases of so-called “corruption crimes” in relation to persons holding high public positions and cases for crimes against the republic. The latest expansion of their jurisdiction was related to the inclusion of cases within the competence of the European Public Prosecutor’s Office.

1. The Ministry of Justice has substantiated its proposal to close these structures by analyzing and evaluating the results of their activities during their 10-year existence. The SCC finds that it should not express an opinion on this part of the reasons for the bill. That is because the Supreme Court of Cassation is the highest court in criminal and civil cases and its inherent function in relation to the criminal college is to exercise cassation review over the

¹ Constitutional case no. 10/2020 and Constitutional case no. 15/2020 were instituted at the request of the SCC Plenum to declare unconstitutional the provisions of Article 28 and Article 50 of the JSA, in their parts, which provide for the reinstatement of the members of the SJC, respectively the Chief Inspector and the inspectors from the SJC Inspectorate to a position one degree higher than the one held before their election or to an equal position in the judiciary.

² By Ruling no. 2 of 15 October 2020 in Constitutional case no. 10/2020 the request of the SCC Plenum was rejected due to a legislative change in the challenged texts of the JSA, and by Decision no. 6 of 11 May 2021 in Constitutional case no. 15/2020, only those parts of the provisions of Article 28, paragraph 1, sentence one and of Article 50, paragraph 2 of the JSA were declared unconstitutional that provide for the reinstatement of members of the SJC, of the Chief Inspector and the inspectors from the SJC Inspectorate to another position, equal in rank to the position held in the judiciary.

acts under Article 346 of the CPC, including those issued by the specialized criminal court of appeal. The SCC has objectified its assessment of the substantive and procedural legality, as well as the fairness of the reviewed judicial acts issued by the specialized judicial structures within the framework of such review. In this respect, the analysis of the activity of the specialized criminal court and the specialized criminal court in has practically been carried out and continues to be carried out continuously through the instance control.

As for the presented analysis of the effectiveness of these structures, the SCC does not have the competence of the bodies authorized by the JSA to carry out inspections of the organization of the administrative activity of the courts, prosecutor's offices and investigative bodies – SJC Inspectorate under Article 54, paragraph 1, item 1 of the JSA and the respective colleges of the SJC, which on the grounds of Article 30, paragraph 5, item 10 of the JSA have the power to assign to the Inspectorate of the Supreme Judicial Council the performance of inspections that are outside the annual programme for its activity.

Along with the above, the SCC considers that it should not express its position regarding the need for the existence of these specialized structures, as this would mean inadmissible encroachment into the exclusive competence of the legislator, which through its legislative decisions organizes the implementation of state penal policy.

2. However, the second direction of the bill includes an amendment by the transitional and final provisions of texts of the Criminal Procedure Code, which directly concern criminal justice and require precision of the new versions. In this regard, we find it necessary to pay attention to some of the proposed solutions and identified shortcomings.

- First of all, it is noteworthy that the proposed new version of Article 35, paragraph 2 of the CPC provides that the district court as a court of first instance should have jurisdiction over all documentary crimes under Article 310, Article 311 and Article 313 of the Criminal Code, regardless by the perpetrator. From the reading of the reasons for the bill it can be concluded that this is due to the transfer of the jurisdiction of the specialized criminal court to the general courts, but the fact is not taken into account that according to Article 411a, paragraph 1, item 4 of the CPC, the jurisdiction of these crimes was determined in view of the perpetrator, who should be one of the subjects outlined in “a” to “k” of Article 411a, paragraph 1, item 4 of the CPC.

We find that the transfer of jurisdiction over these crimes entirely to the district courts is unjustified, and whether their commission by some of the persons under the proposed new version of Article 35, paragraph 3 of the CPC determines the consideration of cases by the Sofia City Court, requires additional reasons to the bill. Otherwise, we will face a mechanical transfer of jurisdiction from one body of the judiciary to another – from the Specialized Criminal Court to the Sofia City Court, which by its nature threatens to turn the Sofia City Court into a new “specialized court”, albeit in the system of general courts.

- In connection with the above, we propose to consider the need to include such a wide range of officials in the special competence of the Sofia City Court, which would consider all types of crimes committed by these persons, regardless of their complexity. Such a decision, as already mentioned, outlines the transformation of the Sofia City Court into a new specialized body of the judiciary.

- With regard to the amendments to Article 35 of the Criminal Procedure Code, we should also note that when transferring the jurisdiction of the specialized criminal court to the general courts, it was omitted to specify which court would hear cases within the jurisdiction of the European Public Prosecutor's Office. In our opinion, it is advisable for these cases to be within the jurisdiction of the Sofia City Court. This will take into account the fact that in these cases, in addition to national European delegated prosecutors, in certain

hypotheses there will be European prosecutors or European delegated prosecutors from the Member States involved in the case according to the jurisdiction assigned to them by the Permanent Chamber and the determination of local jurisdiction in the capital will ensure facilitated organization for hearing the specific case. The same applies to the appellate and cassation instances in these cases.

- Last but not least, we consider the proposed repeal of Article 194, paragraph 1, item 2a of the CPC not protected by the reasons to the bill. Unlike Article 411a, paragraph 1, item 4 of the CPC, which assigns jurisdiction in the cases of the crimes referred to in this text, committed by the special subjects listed in “a” to “k” of this text of the CPC, the provision of Article 194, paragraph 1, item 2a does not envisage jurisdiction of specialized structures of the bodies of the pre-trial proceedings. Assigning the investigation of the crimes referred to in this provision to investigators does not lead to the “creation” of new specialized structures, but would only increase its quality in view of the higher competence of these investigative bodies. The complexity of the crimes regulated in the discussed text determines the need to preserve this provision.

In addition to the above, the additional limitation of the competence of investigators does not contribute to ensuring an even distribution of the workload of investigative bodies.

In view of the above, we express our general support for the proposed bill, taking into account the comments and suggestions made.