

Minister of Justice Miglena Tacheva: "We count on our European partners' support in reforming the judiciary"

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A special "Progress Watch" interview with Minister of Justice Miglena Tacheva, December 2008. The full text in the original is available on Europe.bg's Bulgarian-language section.

Are you satisfied with the accomplishments in the field of justice and home affairs since July 2008 when the EC announced its country progress report?

After the publishing of the report in 2008 the government adopted a Schedule of urgent measures and actions for eliminating the causes of criticism. In addition we have an Action Plan for the progress indicators in the field of judicial reform, prepared in accordance with the European Commission report from June 2007.

In my opinion the implementation of the measures, included in the Action Plan and the Schedule is successful. The government reports on the progress in the Schedule on a monthly basis: two reports were sent to the EC on the implementation of the measures for the periods July – September and one for October. The report for November is completed and ready to be sent to the EC as well.

The legislative commitments in the Schedule of urgent measures are almost completely fulfilled by the MJ. The law for prevention and disclosing of conflict of interests, prepared by the ministry, was adopted by the parliament, along with the draft, amending the Code of Penal Procedure. The amendments to the law on the special investigation means and the CPP have passed second reading in the plenary. Law for amendment of the of the Penal Code was developed and agreed between the ministries, and sent to the Council of Ministers for inclusion in its December agenda. The amendments to the Law for the judiciary are now ready and it was sent for inter-ministerial agreement with the stakeholders and organizations on 17 November 2008. The parliament is in the course of discussing the draft law amending the Law for political parties. During my meeting with the French minister of Justice Mrs. Rachida Dati in September we agreed the sending of an expert in Bulgaria to assist the creation of new norms of control and publicity of financing the political parties. The French expert's suggestions were sent directly to the parliament and were implied in the draft act, discussed by the MPs. Meanwhile we sent the draft amendments to the Law for political parties to the Venetian Commission at the Council of Europe for opinion and received its conclusions in early December.

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The Ministry of Justice continues its work on the development of a new Strategy for Judicial Reform and the efforts are targeted at changes in the Constitution and the Law for the judiciary; judicial execution, the commercial register, information technologies in the judiciary and the access to justice. We envisage a public presentation of the Strategy in the first months of 2009.

The Consultative Council on the penal policy with the minister of justice is ready with a draft Concept for penal policy. As agreed with the German Ministry of Justice in the framework of the new Cooperation agreement, in the period 9 – 12 December 2008 a penal law and penal proceedings expert from Germany visited Sofia to assist the work on the preparation of the penal policy concept of the Republic of Bulgaria and a new Penal Code.

The Ministry of Justice has also developed a Concept for new Law on the normative acts. Its adoption is expected in mid-2009. One of the main ideas in this concept and of the new law is to normatively regulate the impact assessment of new legislation. This will ensure stability and predictability of the normative basis, increase the quality of the normative acts and warrantee their compliance with superior normative acts. Another important component of this concept is the enhanced transparency and publicity in the discussion and preparation of new legislation.

Would you give some examples of tasks that the Ministry of Justice is planning to accomplish?

The Ministry of Justice has several significant tasks to accomplish, such as the development of a Concept for a new Penal Code and establishing criteria for workload of the judges. Another important step will be to analyze the opportunity for categorizing the courts, which will be discussed together with the SJC during the visit of members of the European Commission for the Efficiency of Justice in January 2009. The categorization criteria will be the workload of the courts and the complexity of their proceedings in order to redistribute the necessary human and financial resource.

A public MJ council of legal non-government organizations, purposefully created at my initiative, helps us exercise greater civic control over the implementation of the reforms in the judiciary and the transparency of the decisions. We have active interaction with the attorneys' office. The Supreme Lawyers Council works for consolidating the procedural discipline of the lawyers and for limiting delays in the cases where the reason originates from the lawyers.

Are the forecasts that a safety clause could be activated against Bulgaria in the field of justice and home affairs justified?

The EC points out explicitly in its July report that the support and cooperation with the Bulgarian party are of major importance and therefore does not suggest the use of the safety clauses, envisaged in the Accession Treaty as an option. On 18 November I met with Jonathan Faull, Director General of the DG Justice, Freedom and Security of the EC, with whom we discussed the essential implementation of the measures in the course of the judicial reform. We have not commented on the option of imposing a

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safety clause in the field of justice and home affairs. Mr. Fall shared fully the understanding that the adequate institutional framework, provided with the relevant human and material resources, should lead to the achievement of actual tangible results in the combat with corruption and organized crime. The last expert mission of the EC, held December 1 to 3, was about the technical updating of Bulgaria's progress since the month of July. The EC experts explained that the pending EC report due end-January – beginning of February next year will be interim and of technical character and the progress evaluation will come with the July report. The experts expressed positive opinions of the work of the SJC Inspectorate and the joint investigation teams. In my opinion at this stage we have no reasons to expect a safety clause against Bulgaria.

Do you think that certain member states are more expressed in their criticism of Bulgaria than the European Commission?

The conclusion of the Council on general matters and foreign relations on the functioning of the Cooperation Mechanism and assessment, adopted on 16 September emphasize the desire for partnership of the member states in the implementation of the reforms in Bulgaria. This is a very positive sign for us because it forms a part of the idea, implied in the mechanism. It shows involvement in the efforts and European solidarity and will help the more successful implementation of the complex and demanding reforms that the Bulgarian government has undertaken.

The cooperation with the member states and the partner institutions in the European Union in the field of justice undergoes intense development. We already have established effective communication with Germany, France, Great Britain, the Netherlands and Slovakia that facilitate our interaction with OLAF, the development of the new penal policy concept, the reform in the penitentiary system and the joint teams for investigation of the transnational organized crime. Furthermore we had a series of visits of European justice ministers to Sofia: of Slovakia (July), Germany (August) and France (September). Within the framework of the JHA Council sessions I had meetings with the ambassadors of the member states and justice ministers in September and November. At these meetings we discussed the ways of assisting the Bulgarian institutions in overcoming their weaknesses in the legislation and practice and the cooperation for better implementation of the *acquis communautaire* and training of magistrates and lawyers in the practice of the Court of the European Communities in Luxemburg.

On 25 October 2008 we signed an Accession Agreement for Bulgaria to the Academy of European Law in Trier. Thus civil servants, prosecutors and judges will participate in the trainings organized by the Academy in various aspects of European law.

We will use every opportunity to broaden our cooperation with the member states and the European institutions. I believe that the engagement of our European partners in this process is of extreme importance. We can rely on their support for its effective accomplishment so that the safety clause is not used.

Is the European public opinion more biased to the Bulgarian judicial system towards the end

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How is the situation in Bulgaria at the beginning of the second year of membership compared with the moment of the country's accession to the EU and why?

The monitoring and evaluation mechanism is useful for Bulgaria and considered an open and direct dialogue with the European Commission. This dialogue requires maximum mobilization and coordination of the effort of all responsible institutions for the implementation of the measures that are expected to overcome the problems in the combat with crime and corruption. The approach to the successful communication with the EC should be continuous and timely information of our European partners of the measure we undertake. I do not think that the public opinion in the member states is prejudiced or that was the case back in January 2007.

On 18 November you said: "Bulgaria still experiences problems with the quality of the investigation, which should be solved within short deadlines". How and when will this happen?

I honestly hope that the adoption of the three draft laws – amending the CPP, LJS and LSIM – by the parliament will improve the work in this field. Of course, this is not only a matter of legislation but also of will and desire to implement it on behalf of the investigating bodies and the executive authorities. The common efforts of all institutions for disclosing and penalizing crime in Bulgaria are of extreme importance for overcoming the criticism, but are the most significant for us as citizens of the European family. It is essential that we feel confident not only in the quality of our laws, but also in their good implementation.

What will be the future of the investigation in Bulgaria?

With the existence of Article 128 of the Constitution of the Republic of Bulgaria, stating that the investigation belongs with the judiciary system, the answer is simple. It is an actual problem that the Bulgarian state needs to solve, so that it adheres to the position is acquired in 2003 when, with the closing of Chapter "Justice and Home Affairs" a commitment was made to reduce the investigation. This should not be forgotten. Therefore the draft amendments to the law propose closing down the district investigation services and designate territorial investigation units, which will continue working on the pre-judicial proceedings, assigned to them by the CPP. The position of a junior investigator must be eliminated. In this connection the SJC should reappoint as judges, prosecutors or investigators in the territorial units without competition those investigators who have given their written consent within the set deadlines. The National Investigation Service will be preserved as an authority working on international cases, in the international legal cooperation, as well as on crimes committed by MoI officers, officers of SANS or magistrates. The investigators' capacity will be fully used in effecting the changes, so that they feel relaxed about their future.

Is the use of information technologies in the judiciary system spreading?

Since 26 June 2008 Bulgaria is a partner in the project "Network of Judicial Registers"

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(NJR) that started at the beginning of 2006 and currently involves 14 EU member states. They have developed protected electronic communications between their respective judicial registers and at the moment half of them actively exchange information in its framework. Bulgaria is already technically connected to the project partners and only a couple of days ago Sofia hosted a plenary session of the project. Germany is Bulgaria's senior partner. During the conference we received a very positive assessment from the German party of having joined the actual data exchange in the short period after Bulgaria's official joining the project.