

Dear Colleagues and Guests,

Twelve years after Bulgaria's accession to the European Union, Brussels has unprecedentedly declared our judiciary independent. This historical triumph of the rule of law was proclaimed in the latest Report of the European Commission on Bulgaria's progress under the Co-operation and Verification Mechanism published several days ago. Yet, dear colleagues, instead of succumbing to the urge to wave the flag of our proclaimed independence, I felt like the husband who had just caught his wife *in flagrante*, her only indignant response to a silent reproach being whether the husband was going to believe his own dirty mind or her word that she had always been faithful to him. We can only indulge in idle speculation as to the reasons for the Commission's approach to the matter at hand. However, it seems to me that Bulgaria will not move even one step closer to good old Europe, if the bridges between us are not solidly grounded in values but have their clay feet in a quagmire of illusions.

This is so because to proclaim the Bulgarian judiciary independent would mean that:

1. Courts are an independent arbiter, and not a body tasked with fighting corruption, meaning that they are not bound by the policy that informs and guides the effort of law enforcement to prosecute criminal offences at the pretrial phase;
2. It is the court, and not the prosecution service, that delivers final judgments on whether a crime has been committed or not;
3. It is the sworn duty of each judge to discover the truth, regardless of the actions or omissions of litigants.
4. In seeking the truth in each case, courts are that independent arbiter, which must reassure each party in the proceedings that judges are not influenced by any externality in adjudicating the dispute pending before them;
5. It is neither the role nor the place of courts to agree with the prosecution. To do so, would mean that courts merely follow official government policy in criminal matters, which would constitute a flagrant breach of fundamental principles of the criminal trial;
6. Investigating magistrates scrupulously apply the highest professional standards in their work, eschewing stratagems, such as twisting and misinterpreting facts in the hope that courts will turn a blind eye;
7. The prosecution service does not carry out retaliation jobs on demand.
8. It is not possible for business rivals to settle their scores using the 'services' of the prosecution, which obligingly launches criminal investigations that it will soon abandon for lack of a committed criminal offence;

9. Each institution responsible for the implementation of government policy in criminal matters does its job well, instead of dreaming up bizarre solutions in an attempt to make up for deficiencies in the main pillars of said policy;

10. No alternative government agencies are established, which — by reason by their intransigent purpose and doubtful efficiency and legitimacy — rapidly assume the features and take on a role better suited to the repressive State apparatus;

11. Politicians are not in a rush to promote those in dependent positions (and thus easily swayed) to the highest judicial offices to shield themselves from prosecution and ensure that their rivals and opponents no longer enjoy the same protection.

Ladies and Gentlemen, as a representative of the highest court in Bulgaria, I beg to differ.

The Bulgarian judiciary is a quagmire of dependencies —

and the signs are there for all to see:

1. Those found guilty of high misdemeanour at the Sofia City Court not only escaped punishment but have been fully pardoned and reinstated — one after the other;

2. The President of the Supreme Court of Cassation (SCC) was nearly impeached for freely expressing his views on the enacted amendments to the Constitution, which effectively transformed the judiciary into a minefield;

3. The member of the Supreme Judicial Council who relayed the proceedings of the Council directly to the Prime Minister via text messages continues to serve — tirelessly and with utter impunity — as a judicial officer.

4. The Prosecutor-General persecutes those who criticise him while shielding his friends in power from prosecution, without anyone daring take the first step to putting in place a mechanism that would ensure he can be held to account for his actions.

5. The bolts of the wheel covers of a National Guard office car used by the President of the Supreme Court, known for his critical stance of the covert machinations of the pact between the executive and legislative branches of government and the judiciary, suddenly came loose without human intervention.

6. The same thorny court President was greeted by young people wearing masks and holding slaughtered lambs' heads covered in blood in their hands in front the building where a meeting of the Supreme Judicial Council was to take place shortly in order to discuss an act of abuse of power by the Prosecutor-General while the police stood idly by.

7. Magistrates, including the President of the Supreme Court, and their families are subjected to gruesome media attacks and institutional terror, which turns their lives upside down.

8. The President of the Court of Appeal, implicated by a fellow magistrate in an act of high misdemeanour conducted with the express intent of doing the bidding of oligarchs and those in power, evades not only punishment but even receives commendations from all inspection bodies called upon to conduct a proper investigation. The judge who shone a torch on the offence is not a hero, but a defendant in a criminal case.

9. The National Revenue Agency (NRA) terrorizes those critical of senior-ranking public office holders, peevishly insisting that dissenters comply with requirements that are diametrically opposed and plainly incompatible.

10. The Commission for Anti-Corruption and Confiscation of Unlawfully Gained Property summons the President of the Supreme Court, ostensibly for an interview, opening the gates widely for the practice to be used against other court presidents, despite the fact that the Commission is party to disputes pending for adjudication before the courts in question.

The list is long and I can carry on *ad libitum*. But you will probably recall that one year ago the Minister of Justice publicly stated that the judiciary needed silence.

And a silence fell over the judiciary ... that even Brussels has obviously heard.

My own lone voice is all I have been hearing of late and when I am gone there will be no one left to spoil the idyll. A thick silence is lurking around every corner of the newly-elected Supreme Judicial Council. It is a matter of public knowledge that the inevitable clashes between the different branches of government are the bulwark that guards us against

autocracy toward which we are confidently marching.

I have said it before, but let me repeat, that in Bulgaria we are up against a system that has recruited enormous human and material resources to build a well-oiled machine that is all too adept at exploiting public institutions, the media, the economy, the political system and, naturally, the judiciary. Its actions are never discussed in public but remain hidden. Its mistakes are never placed under scrutiny but concealed and swept under the carpet. Its opponents are viciously persecuted and its secrets are jealously guarded and can never be revealed.

Brussels has already clearly told us that there is no one to save us from drowning but ourselves. Let us therefore not forget that responsibility is the ultimate mark that most decisively distinguishes those who succeed from those who fail. I believe that as magistrates we rely on sufficient constitutional safeguards to fight without fear and without being silent when the rule of law is at peril and its collapse in countries like ours is so visible. And so, while listening to the sound of silence lately, I often recall an extraordinarily perceptive thought attributed to Winston Churchill who reportedly once said that those who chose democracy over bread enjoy 300 varieties of bread today, while those who chose bread over democracy, have neither democracy nor bread. The choice is yours.