

DECOMMUNIZATION IN BULGARIA

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INTRODUCTION

Efforts to initiate a decommunization program in Bulgaria gained momentum after the election victory of the Union of Democratic Forces in October 1991.¹ Nevertheless, until recently, attempts to purge former Communists from public life were only minimal, at least in comparison to the "lustration"² efforts in the former Czechoslovakia or the former German Democratic Republic. In part, this was due to the absence of a legislative basis for such efforts. Although the Bulgarian National Assembly (or parliament) had drafted several lustration bills and included lustration provisions in other bills, the two lustration provisions that were ultimately passed were immediately submitted by President Zhelyu Zhelev, who is opposed to such legislation, to the Constitutional Court for review. In both cases, the Court ruled that the lustration provisions were unconstitutional. In December 1992, however, the parliament passed a new law on lustration that was upheld by the Constitutional Court on February 19, 1993.

This newsletter discusses the various draft lustration provisions and laws that have been considered by the Bulgarian National Assembly, as well as the Constitutional Court's decisions relating to these laws. It is based, in part, on information gathered during a mission by Helsinki Watch to Bulgaria in November 1992 and June 1993. Helsinki Watch has also relied on reports prepared by the Bulgarian Helsinki Committee.

Although the decommunization process in Bulgaria intensified during the early months of 1993, the fluid political situation in the country makes it difficult to know how the decommunization process will continue in the future. In May, a group of legislators introduced a bill that would suspend the effects of the recently adopted lustration legislation. That bill is currently pending before parliament. Regardless of the ultimate results of the legislative debates on lustration and decommunization, Helsinki Watch is very troubled by lustration efforts in the Bulgarian scientific and academic communities. Furthermore, Helsinki Watch is concerned by the potential for violations of the right to free expression and due process that are inherent in such legislation.

BACKGROUND

On October 13, 1991, the Union of Democratic Forces won 110 seats to 106 for the Bulgarian Socialist Party (BSP) in the parliamentary elections, and thereby became the first government without socialist

¹ **The Union of Democratic Forces (UDF) is a coalition of anti-communist parties and movements. The first non-communist government of Bulgaria was that of Dimitar Popov, elected in December 1990. Popov's government included UDF and BSP representatives, as well as independent experts. After the UDF electoral victory in October 1991, Filip Dimitrov formed the first government comprised exclusively of UDF members.**

² **The term lustration, derived from Latin, literally means "sacrificial purifications."**

members to be elected in Bulgaria since World War II. Following the UDF's electoral victory, many of its members intensified their calls for purging the government, as well as many other social, educational, and economic institutions of former communists.

The UDF, which had been the umbrella organization for all major opposition factions in Bulgaria following the events of 1989, had split in July 1991. The precipitating event was disagreement over the passage of a new constitution. However, the divisions between the members who today make up the UDF, and those members who ultimately left the UDF, also include disagreement over the speed and extent of any decommunization program.

Certain elements of the UDF (known as the "Dark Blue") associated with former Prime Minister Filip Dimitrov, strongly favored a rigorous decommunization program, as well as a rapid transition to the free market. The "Light Blue" faction within the UDF (who left the party) favored a less radical approach to decommunization. Those members of the UDF (the "Dark Blue") who, in coalition with the Turkish Movement for Rights and Freedoms, controlled the parliament after the elections of October 1991 were significantly more anti-communist and were advocates for a thorough decommunization plan.

President Zhelev, who ran on the UDF ticket and was elected directly with 54 percent of the vote, has since split with the UDF and, in general, opposes lustration laws.

The government of Prime Minister Dimitrov resigned on October 28, 1992, after losing a vote of confidence in parliament. Neither the UDF nor the BSP was able to form a new government. The Movement for Rights and Freedoms³ then nominated independent economist Lyuben Berov for Prime Minister. On December 30, Berov was able to form a government primarily with the support of members of the BSP, as well as with some twenty-three UDF members who broke ranks with their party leadership.⁴ It is still unclear what effect these political developments will have on the process of decommunization in Bulgaria.

³ **The Movement for Rights and Freedoms (MRF) is a political party whose members are largely made up of the Turkish minority in Bulgaria. The Bulgarian constitution prohibits political parties based on ethnicity, race, or religion. The MRF's statute, program and registration documents "reveal a strict formal compliance with law, using only generally accepted human rights terminology." However, in fact, over 98 percent of the MRF electorate are members of the Muslim (Turkish, Gypsy, and Pomaks, i.e. the Bulgarian-speaking Muslims) minorities. Dimitrina Petrova and Krassimir Kanev, "Bulgaria Between the Red and the Blue: Two Years of `Permanent Revolution'", *New Politics*, (Summer 1992), pp 88 - 102, p. 88.**

⁴ **Twenty-three UDF members of parliament publicly announced that they had voted for Berov. Because the vote was secret, it is impossible to know whether additional UDF members also supported Berov's candidacy.**

DRAFT LUSTRATION LAWS

During 1992, several lustration bills were drafted by UDF deputies and submitted to the parliament for consideration. A bill for "Overcoming the Consequences of Communist Rule" (see attached as Appendix A) was introduced by UDF deputies Verzhiniya Velcheva, Vassil Gotsev and Alexander Pramatarski on February 10, 1992.

The proposed bill would ban from public office for five years certain categories of persons who had held leadership positions between September 9, 1944, and January 1, 1990. These positions included, among others, members of the Politburo of the Central Committee of the Bulgarian Communist Party; chairs and deputy chairs of the State Council and of the National Assembly (parliament); prime ministers and vice-premiers; first secretaries and secretaries of district and regional committees of the BCP; chairs of the Central Council of the Bulgarian Trade Unions; and first secretaries and secretaries of the Central Committee of the Dimitrov's Communist Youth League (DCYL).

The bill provided for the establishment of a special parliamentary and public commission which would be elected by parliament to determine which persons should be banned from other, specified positions. These positions include, among others, members and alternate members of the Central Committee of the BCP; heads and deputy heads of departments and divisions of state security; chairs, deputy chairs and members of the Supreme Court; chief prosecutors, deputy chief prosecutors and prosecutors in the Chief Prosecutor's Office; chairs of the Bulgarian Red Cross, the Bulgarian Hunters and Anglers Union, the Committee of the Bulgarian Women's Movement, and the Bulgarian Olympic Committee.

Shortly thereafter, on February 14, 1992, the "Law on Decommunization in the Sphere of Government" (see attached as Appendix B) was introduced by Sasho Stoyanov, Alexander Karadimov and another 20 UDF deputies. This bill, known as the "hard" bill, would expand the list of those categories of banned individuals to include lower level Communist Party officials such as "secretaries of local Communist Party organizations, employees who were members of the 'nomenclature' of the Central or District Committees of the BCP, lecturers at the Academy of the BCP, and associates of the former State Security."⁵

The bill provides for a screening committee to determine which individuals are to be banned. Although the screening committee's decision is subject to judicial review, there is no requirement that the screening committee be guided by due process considerations.

Helsinki Watch criticized these bills in a letter to President Zhelev in June 1992, stating

Our concern with the draft decommunization laws in Bulgaria stems from the fact that they proceed from a concept of collective guilt, providing that people are to be punished not for specific acts but for belonging to specific groups. We are also concerned that the burden of proof is put on the individual in question who is assumed guilty unless he or she is able to prove his or her innocence. Moreover, the laws do not provide fair and adequate means by

⁵ "Human Rights in Bulgaria After the October 1991 Elections," Bulgarian Helsinki Committee, (October 13, 1992), p. 8.

which to evaluate a person's culpability or to consider the extenuating circumstances that might explain his or her past associations and/or actions.

Two other lustration bills were submitted to the parliament for consideration during 1992. The "Public Servants Act" would also ban certain categories of persons similar to those listed above from holding public office. Finally, the "Law on Democratization" was introduced by deputy Tosho Pejkov on September 9, 1992. The Bulgarian Helsinki Committee reports that

This bill envisages restrictions on appointments to high "state, public or cultural positions (appointed or elected) or involvement in any type of private activity (including nonprofit organizations) for several categories of people: a) paid secretaries of the former BCP above the municipal level, b) delegates to all BCP congresses and conferences, and c) party secretaries of the basic Communist Party organizations in the army, police, State Security, judiciary, diplomatic corps, banks, scientific institutes, and schools of higher education.

Many of the people coming under these headings would be included in a preliminary list and published in the official government journal, "Official Gazette." After publication, the parliament would elect a commission to examine complaints from any person regarding names either included in or excluded from, the listing. After the commission completed its work, a final version of the list of banned names would be published in the "Official Gazette." No further court or other appeal procedure is envisaged.⁶

None of the four bills discussed above have reached a vote in the National Assembly. After the Constitutional Court ruled, in July 1992, that two lustration provisions were unconstitutional (see discussion below), there was some reluctance to submit further laws to constitutional scrutiny.

THE BANKING AND PENSION LAWS

In addition to the draft lustration legislation discussed above, the National Assembly included lustration provisions in several substantive pieces of legislation. Two such laws, the Transitional and Concluding Provisions of the Law for Banks and Credit ("Banking Law") and the Amendments to the Pension Law ("Pension Law") were adopted by the National Assembly during 1992. On March 4, 1992, the National Assembly adopted the Transitional and Concluding Provisions of the Law for Banks and Credit which provides, in Article 9,

No persons can be elected to executive positions or hired on the basis of Article 7, if in the last fifteen years they have been elected in the central, regional, county, city, or municipal governing bodies of the Bulgarian Communist Party, the Comsomol, the Fatherland Front, the Union of Active Participants in the Struggle against Fascism and Capitalism, the Bulgarian Trade Unions, and the Bulgarian Agrarian Union, or who have been appointed to a full-time executive position in the Central Committee of the Bulgarian Communist Party, as well as

⁶ *Ibid.*, p. 9.

employees, paid and unpaid collaborators of the State Security. This limitation will be in power for five years.⁷

Forty-nine members of the National Assembly submitted a petition to Bulgaria's Constitutional Court challenging the law on the basis of Article 6(2) of the constitution which states that

⁷ **Transitional and Concluding Provisions of the Law for Banks and Credit, Article 9, *Official Gazette*, (Issue 25, 1992).**

All citizens shall be equal before the law. There shall be no privileges or restrictions of rights on the grounds of . . . opinion, political affiliation . . .⁸

The petition also challenged the Banking Law as a violation of international human rights documents which are considered part of Bulgaria's domestic legislation.⁹

Similarly, on June 12, 1992, the National Assembly added a "lustration" provision to the "Amendments to the Pension Law." Article 10(a) states:

Under this law, the period during which a person has worked at a paid managerial post in the organs and party organizations of the Bulgarian Communist Party, the Fatherland Front, the Dimitrov Young Communist League and the Union of Active Fighters against Fascism and Capitalism is not considered years of employment [for purposes of determination of retirement benefits].¹⁰

The constitutionality of Article 10(a) of the Pension Law was immediately challenged before the Constitutional Court on the initiative of President Zhelev.

The Constitutional Court's Decisions

The lustration provisions of both the Banking Law and the Pension Law were considered by the Constitutional Court during July 1992. In Decision Number 8 of July 27, the Constitutional Court held that Article 9 of the Banking Law was unconstitutional. The court based its decision on the equal protection provisions of the Bulgarian Constitution (Article 6), as well as on Article 48(3) of the Constitution which guarantees each citizen the right "to choose his occupation and place of work." What is more, the court also held that Article 9 violated

The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Labor Organization Convention No. 111 concerning discrimination in the field of labor and the professions, as well as the

⁸ Bulgarian Constitution, Article 6(2).

⁹ See the Bulgarian Constitution, Article 5(4), which states: "Any international instruments which have been ratified by the constitutionally established procedure, promulgated and come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise."

¹⁰ Amendments to the Pension Law, Article 10(a), *Official Gazette*, (Issue 52, 1992).

Vienna Convention on the Right of Contracts, which have been ratified by the constitutionally-established procedure, promulgated and come into force and are considered part of the domestic legislation of the country and hence supersede any domestic legislation stipulating otherwise.¹¹

¹¹ For the court's full opinion, see Appendix C.

Similarly, on July 29, the Constitutional Court issued its decision regarding the constitutionality of Article 10(a) of the Pension Law. In Decision Number 11, the court held that Article 10 was unconstitutional in that it violated the constitutionally guaranteed right to social security.¹² The court concluded that the provision

[D]eals with persons who were incorporated in pension security. By the force of Article 10(a) of the Pensions Act, these persons will be denied, completely or partially, of the years of employment needed for retirement. What we have here is a restricted or completely violated right to social security, which is incorporated in Article 51 (1) of the Constitution. This is one of the basic rights of the citizens of the Republic of Bulgaria and neither its revocation nor restriction is stipulated by the Constitution . . .

THE PANEV LAW

After the Constitutional Court struck down the Banking and Pension Laws' lustration provisions, the drafters of other lustration bills temporarily delayed further attempts to introduce lustration legislation. However, on December 9, 1992, the Law for Temporary Introduction of Additional Requirements for Members of the Executive Bodies of the Scientific Organizations and the Higher Certifying Commission (referred to as the "Panev Law" after its drafter), which had passed on first reading in mid-July, was adopted by the National Assembly. (See attached as Appendix D).

Article 3 of the Law states, among other things, that only those individuals may hold positions in the executive bodies of scientific organizations and the Higher Certifying Commission who can show that they:

- 1) have not been members or candidate members of the Political Bureau or the Secretariat, or of the Central Committee of the former Bulgarian Communist Party (BCP);
- 2) have not been secretaries or members of regional, city, community, county or district committees of the BCP;
- 3) did not hold positions before November 10, 1989 which were directly accountable to either the Political Bureau or the Secretariat of the Central Committee of the BCP . . . ;
- 4) have not been on the staff or voluntary collaborators of the State Security or the Security and Guard Departments;

¹² **The Constitution of the Republic of Bulgaria, Article 51(1) states that: "Citizens shall have the right to social security and welfare aid."**

- 5) have not compromised themselves through participation and involvement in the "revival process";¹³
- 6) have not been on the teaching and research staff of the Academy for Social Sciences and Social Management and its branches . . . ;
- 7) have not taught History of the Communist Party of the Soviet Union, History of the Bulgarian Communist Party, Marxist-Leninist Philosophy, Political Economy, Scientific Communism or Party Building;
- 8) have not been political officers or deputy commanding political officers and have not held positions in the political headquarters of the Armed Forces;
- 9) have not been secretaries or members of party committees of the Bulgarian Communist Party in the higher schools and academies, have not been secretaries of the Party organizations of the Bulgarian Communist Party in the faculties, scientific institutes and other scientific organizations, have not been members of personnel commissions under the party committees of the higher schools, academies or other scientific organizations.

The Law requires all persons working in the executive bodies of scientific organizations and the Higher Certifying Commission to provide written statements regarding their prior employment and party activities. The refusal to provide such a statement is regarded as an "admission that the person does not meet the requirements for membership" in these organizations.

Helsinki Watch protested this law when it passed the first reading of the National Assembly in July 1992. In a letter to President Zhelyu Zhelev on August 28, Helsinki Watch criticized the draft law, stating:

Helsinki Watch is troubled by the broad language of the new law that imposes a penalty (denial of employment) for past activities that, in many cases, were neither criminal nor violative of fundamental human rights or the rule of law. The law embodies a presumption of guilt merely because an individual held a political or professional position associated with a now-discredited organization, without any attempt to show that the person acted in a criminal, repressive or corrupt manner. Furthermore, this law violates the fundamental rights of the individual to freedom of association and expression guaranteed in Bulgaria's constitution and in international human rights documents to which Bulgaria is a signatory.

Although President Zhelev had consistently opposed lustration measures, he failed to use his authority to return the Panev Law to the parliament for reconsideration. Zhelev signed the bill into law, thereby preventing the possibility that the law would have been amended upon reconsideration. Instead, Zhelev joined a petition challenging the law before the Constitutional Court, an option that would have been available after reconsideration by the National Assembly. Many, including representatives of the Bulgarian Helsinki

¹³ The "revival process" occurred in Bulgaria between 1984 and 1989. During this time, ethnic Turks and Roma (Gypsies) were imprisoned, forcibly resettled, forced to adopt Bulgarian names, and restricted in many other ways, in an effort to forcibly assimilate them.

Committee, hold Zhelev partially responsible for the growing tension in scientific circles that has occurred as a result of the implementation of the Panev Law.

The Constitutional Court's Decision

The Panev Law was challenged by 102 members of the National Assembly. Their petition to the Constitutional Court was also joined by President Zhelev. The members of parliament argued that the law violated the constitutional right to equal protection (Article 6(2)), to hold opinions without persecution or interference (Article 38), to freely choose an occupation and place of work (Article 48(3)), to academic autonomy for higher educational establishments (Article 53(4)), and to have labor guaranteed and protected by law.

On February 19, 1993, the Constitutional Court issued a six to five decision¹⁴ holding that the Panev Law does not violate the Bulgarian Constitution. The Court's decision is void of legal reasoning and analysis; instead, it makes a series of conclusions that are not supported by the wording of the law itself. The court concluded that the law does nothing more than introduce additional professional requirements for members of the elected boards of scientific organizations. The court stated:

It is a groundless claim that the requirements are aimed at the political opinion and political affiliations of these persons. . . . The law is disinterested in past and present political opinion and political affiliation; it takes into consideration only the professionalism of those who will participate in the realization of the national policy in science administration and development. That is why the criterion for membership in administrative boards is the scientific commitment of the person, but not the activities, which has served political and ideological party purposes.¹⁵

The court's rationale is, however, refuted by the very language of the law, which makes no attempt to establish professional qualifications or to measure scientific commitment. Instead, the law prohibits anyone from holding positions in executive bodies who have held certain positions, taught certain courses, or "compromised themselves through participation and involvement in the `revival process.'"

By defining the provisions of the law as merely "additional requirements", the court avoids the constitutional issues. The court concludes that the Panev Law violates neither the Bulgarian Constitution nor

¹⁴ **The Constitutional Court's ruling is, technically, a non-decision, although its effect is to uphold the Panev Law. For the Court to have held the Panev Law unconstitutional, seven justices would have had to vote against the law. (There are twelve justices on the Constitutional Court. One justice was absent for the decision in this case.)**

¹⁵ **See Appendix E for the full text of the court's decision.**

international human rights documents because these do not restrict the state's right to impose additional professional requirements. For example, the court states:

With the introduction of additional requirements to the members of the administrative boards in the scientific organization and the High Certifying Commission, the civil rights protected by the listed international agreements are not violated. As far as these requirements might be considered as a restriction on the basis of professionalism, this kind of restriction is admissible.

The court also rejected the argument that the law interferes with academic autonomy, stating:

The law only requires that the members of administrative boards should be scientists with high professional qualities, who have not deviated from scientific work by being engaged in organizational or ideological party work. The law is also applicable to persons from the scientific communities who have combined party activity and administrative functions while taking part in scientific councils, commissions in the administration of scientific organizations and their branches.

The court has created a fiction in its reading of the law. The law does not set future professional standards, but establishes a penalty for prior membership and/or activities. To the extent that it deals with the holding of certain positions within the Communist Party and other organizations, it is a violation of the right to free association and expression that are guaranteed in the Bulgarian Constitution and international documents. To the extent that the law deals with prior behavior of individuals, it imposes a penalty that is retroactive in nature. With the possible exception of some conduct that might be included within the extremely vague phrase "participation and involvement in the "revival process," it is clear that none of the conduct covered by the Panev Law was prohibited by Bulgarian or international law.

Finally, to the extent that the court views certain conduct or the holding of certain positions as indicative of a lack of professional competence, each individual covered by the law should be presumed innocent and should have the opportunity to present evidence of that innocence to an independent body. The law, however, provides no such procedural protections.

The Constitutional Court's decision came as a surprise to many who have been monitoring the lustration process in Bulgaria. The court's own decision in the Banking Law case seems to be in direct conflict with its ruling on the Panev Law. However, Plamen Bogoev, Legal Adviser to President Zhelev, told Helsinki Watch in November 1992 that he would not be surprised if the court issued a conflicting decision in ruling on the Panev Law. Mr. Bogoev stated, "The Bulgarian Constitutional Court is very young, and even though it is a meaningful institution, one must expect anything. I have no doubt that it could take a different position on the Panev Law if there is sufficient political pressure from political circles."¹⁶

Members of the legal community, as well as human rights activists, were shocked by the court's decision, both because of its conclusions and its reasoning. Most of those interviewed by Helsinki Watch considered the law and the court's decision to be motivated by political considerations, and to have little to do

¹⁶ Helsinki Watch interview, Sofia, November 24, 1992.

with efforts to improve the professional qualifications of those in elected positions within academia. Dr. Krassimira Sredkova, Deputy Dean of the Law Faculty of Sofia University, told Helsinki Watch:

I am sorry to have to call a decision by the Constitutional Court stupid, but it is so. The court's decision is more ridiculous than the law itself, because it bases its decision on wording that is not in the law. The [Panev] Law mentions no word regarding professionalism.

Similarly, Boris K. Rolev, professor in the Geography Institute of the Academy of Sciences, stated: I don't deny that there were people who became scientists because of their Communist Party membership, and I agree that there should be strict scientific criteria for members of Scientific Councils, but the law does not provide these standards. . . . The Panev Law is similar to a law in 1945 that kicked out qualified persons with bourgeois backgrounds. In both instances, it is a case of collective guilt without any evaluation of professional qualities.

Professor Volga Todorova, a professor in the Philosophy Department, agreed:

The Constitutional Court's argument that the Panev Law only deals with professional standards is totally absurd. It starts from the assumption that all those covered by the law were unprofessional. The very assumption is based on political considerations. Of course, there are non-professionals among them, as there are among other categories of people. One cannot make such a sweeping generalizations.

IMPLEMENTATION OF THE PANEV LAW

The implementation of the Panev Law has increasingly affected the atmosphere in Bulgaria's institutions of higher education. Allegedly intended to improve the professional standards of those in elected positions within the universities, instead its results have been arbitrary and without consideration for the true professional qualifications of the individuals affected.

The Panev Law has had a direct impact on the ability of academic bodies to determine by means of secret elections who their leaders will be. Certain categories of individuals who are enumerated in the law cannot be considered for these elected positions. The students, lecturers, and full and assistant professors who make up the electing bodies of the universities are most likely to know whether their colleagues or former professors were abusive, corrupt or used their position in an improper manner. Dr. Sredkova stated:

Twenty-five percent of the General Assembly of the University, which elects the rector and the academic council, is made up of students; thirty percent is made up of assistant professors. The General Assembly is the natural place where people can decide who will lead them for the next four years. The elections are secret and the General Assembly has no reason to fear voting against those they view as compromised.

Many of those interviewed by Helsinki Watch also pointed out that those considered most abusive and compromised by their political pasts had, in fact, already been voted out of the governing bodies of the university prior to the Panev Law. To take away the power of the electing bodies to choose those colleagues which they consider best able to govern the university is a direct interference by the government in the academic autonomy of the university.

The law has created chaos and confusion in the governing bodies of the university. Several faculties initially refused to implement the Panev Law. However, most of these faculties ultimately called new elections for the governing boards out of fear that their institutes might be detrimentally affected during the current process of restructuring academic institutions. Only one department, the History Department at Sofia University, has not called a new election of the dean or faculty council. Other faculties have not been able to elect faculty councils with the prescribed minimum number of members because there were not enough members who could, or would, sign a declaration under the law. In such cases, members outside the respective faculty were required to sit on the faculty board to establish a legal governing body. As one professor stated, "It is questionable whether any of the recently elected faculty councils were elected in compliance with regulations regarding higher education."

The Panev Law has also created severe tensions among colleagues within the university faculties. Reports estimate that the Law has already "led to the removal of several thousand formerly communist-affiliated academic staff from managerial positions."¹⁷ Dr. Todorova told Helsinki Watch that:

The law's effect was to formalize to a maximum extent relations among colleagues - to make them rivals and in competition, instead of allowing them to continue to cooperate with each other.

Similarly, Dr. Sredkova told Helsinki Watch:

During the last three years, the communication between faculty members has been very good. It has not been influenced by political developments as it was prior to November 1989. After the 1990 elections, we were very free to choose our leaders within the university, and we appreciate what it means to be free to choose. Before, the Communist Party told us who could hold leading positions, now someone else tells us. In both cases, it is an interference with academic freedom.

Many other faculty members spoke of their fear that academic freedom remains in jeopardy in Bulgaria. Professor Nikolai Ghenchev, the former rector of Sofia University, told Helsinki Watch:

The Panev Law is within the tradition of Bulgarian science. Such efforts have occurred several times in this century. The Communist Party threw out the best lecturers for political reasons and took away the autonomy of the university. The Panev Law repeats the same mistakes.

Similarly, Professor Lambo Kjachukov, Deputy Minister in the Ministry of Education and Science, stated:

The same conflicts that existed in the 1950s are arising again. The academic community is still politicized. Bulgarian intellectuals have never been independent and separate from

¹⁷ Kjell Engelbrekt, "Bulgaria's Communists: Coming or Going?" *RFE/RL Research Report*, Vol. 2, No. 21, May 21, 1993, p. 40.

political developments, and there is no chance of them becoming so given recent developments. . . . Some accept that science is political and shifts as the political system shifts. Repeatedly, the scientific elite have been changed through non-scientific criteria. The Panev Law is just one more example of this.

The law is most detrimental in that it denies individuals the right to a fair and individual evaluation of their professional qualifications and moral integrity. Dr. Todorova stated:

The categories of the law do not allow for a review of the factors that caused certain individuals to take certain party positions, or teach certain courses in the university. It also ignores the important and positive role that some Communist Party members played in the democratization process. Although most members of the Philosophy Department were in the Communist Party, it has always had a reputation as a free-thinking faculty and was a place of democratic attitudes prior to November 1989. Some of the members of the faculty were among the bravest - they dared to oppose the Communist Party, and now they suffer because of the law. The main impact of the law has been to treat all individuals as collectively guilty.

Although the Constitutional Court argued that the Panev Law only deals with professional standards, in fact, the law establishes categories of people that are defined as unprofessional without any effort to evaluate their qualifications. Inherent in the law is the presumption that all who, for example, taught Marxism-Leninism were unprofessional. The Court makes the assumption that anyone who combined advocacy work for the Communist Party of Bulgaria with his or her scientific work could not have been a good scientist. Such persons have, therefore, forfeited the right to be elected to the executive bodies and High Certifying Commission of scientific departments.

All of those interviewed by Helsinki Watch agreed that strict scientific criteria should be applied for members of the scientific and faculty councils. However, most agreed that the law does not in any way provide for improved standards. To the contrary, the law arbitrarily eliminates from consideration many who are top scientists in their fields, as well as some who may have devoted their professional lives to communist party politics at the expense of their scientific work. Because the law does not achieve its stated goal and, as worded, could not possibly achieve that goal, it must be seen as targeting political opponents.

* * *

Although there have been recent initiatives in the Bulgarian National Assembly to introduce amendments to the Panev Law or to pass a law that would significantly reduce the impact of the law, these initiatives have made little progress. Helsinki Watch is troubled by the large number of individuals who have already suffered because of the law.

The Panev Law, as worded and as implemented, violates the Bulgarian Constitution, as well as international human rights agreements. As discussed above, the law applies a notion of collective guilt, punishing individuals for having been associated with the Communist Party, or some aspect of the regime. Furthermore, the law violates an individual's right to free association and to hold political opinions without government interference.

Helsinki Watch is also concerned that, instead of breaking with the long tradition in Bulgaria of politicizing higher education, the law continues to penalize scholars for their perceived political allegiances. The Panev Law does great harm to the notions of academic freedom and to efforts to build independent and depoliticized institutions of higher education in Bulgaria.

PROSECUTION OF PAST ABUSES

Shortly after his ouster from power in late 1989, former president Todor Zhivkov was placed under house arrest and charged with corruption and abuse of power for having given cash, apartments and other privileges to his closest colleagues and family members. The trial began on February 25, 1991, but was repeatedly delayed because of Zhivkov's ill health. After over eighteen months, however, Zhivkov was convicted on September 4, 1992, and sentenced to seven years' imprisonment for having misappropriated approximately \$24 million. His conviction is currently being appealed. Milko Balev, Zhivkov's right-hand man and a member of the Politburo, was a co-defendant in the trial. He was convicted and sentenced to two years' imprisonment.

In addition to having been convicted on corruption charges, Zhivkov and several other former officials currently face criminal charges for their involvement in giving aid to communist governments. On July 22, 1992, Zhivkov was indicted for having used public funds to provide communist governments such as Cuba, the People's Democratic Republic of Yemen, Nicaragua, Mozambique and Afghanistan with military and economic assistance that contributed to the economic disaster in Bulgaria. Ivan Tatarchev, Prosecutor General of Bulgaria, estimates that credits were given to these countries in the amount of 264 million dollars and 56 million rubles. In addition, 63 million dollars, 50,000 Deutschmarks, and 120,000 tons of crude oil were given in aid or forgiven credits.¹⁸ Similar charges have also been brought against former prime ministers Grisha Filipov, Georgi Atanasov, and Andrei Lukanov, as well as two former secretaries of the Bulgarian Communist Party, Emil Khristov and Stoyan Milchaylov.

Upon a request from the Chief Prosecutor's Office, the National Assembly stripped Andrei Lukanov, former prime minister and member of parliament for the BSP, of his parliamentary immunity on July 7, 1992. Two days later, on July 9, he was arrested and charged with having misappropriated state funds. As discussed above, Lukanov is being prosecuted for decisions by the Council of Ministers under the government of Georgi Atanasov, of which Lukanov was acting Vice-Chairman, to grant aid to certain socialist countries.

Lawyers for Lukanov, as well as for the other defendants in the case, argue that the conduct for which they are charged resulted in no personal gain for the defendants and, therefore, did not violate Bulgarian law. They also insisted that "the Government unlawfully singled out Lukanov and several others for what were ostensibly collective policy decisions taken by a former government."¹⁹ The Government, however, denies such charges and asserts that there is evidence to show that each defendant charged has individual criminal guilt.

¹⁸ "Prosecutor to Arrest, Try Former BCP Leaders," FBIS-EEU-92-127, July 1, 1992, p. 10.

¹⁹ U.S. State Department Country Report on Bulgaria, (1992), p. 731.

Helsinki Watch wrote a letter to the Chief Prosecutor of Bulgaria on August 14, 1992 expressing concern about the prosecution of Lukanov. Helsinki Watch stated:

Helsinki Watch is concerned that the Penal Code may never have been intended to prohibit what appear to be routine government decisions regarding the distribution of aid and that the language of the code may not give Bulgarian citizens sufficient notice of the conduct being prohibited. Helsinki Watch urges you to take every measure to ensure that the prosecution of former government officials is not motivated by political considerations and to prosecute officials only for acts that were clearly prohibited at the time they were committed.

The Bulgarian Helsinki Committee also expressed concern that some of the charges against former Communists are politically motivated:

The expressed wish to punish former government officials for their participation in violations of human rights is a positive development. But there are serious reasons to believe that in some cases nothing more than political motives lay behind the charges.²⁰

With regard to the specific charges against Lukanov, the Bulgarian Helsinki Committee stated:

These charges include "abuse" of public funds for Third World countries during Communist rule. No evidence was shown that Mr. Lukanov took some personal advantage or that he acted outside of the mandate given to him within the framework of a national governmental institution. [His] deprivation of immunity followed a procedure that violated the generally accepted democratic parliamentary practice because the accusations had not been considered seriously in the parliament or in some parliamentary committee. His arrest took place without showing any evidence that he is going to escape from justice or to commit some crime.²¹

On December 30, 1992, Lukanov was released from prison after the National Assembly voted, on December 29, to rescind the Government's authority to arrest him. Lukanov is currently awaiting trial.

Many observers criticized the prosecutor general's office for having focused on economic abuses while ignoring grave human rights abuses committed by Zhivkov and his colleagues during communist rule. Some observers speculated that prosecutors may have concentrated on the less controversial economic charges first, as opposed to such crimes as the brutal assimilation campaign against Bulgaria's minorities, because of the political climate in Bulgaria. "In 1990 and 1991 - when the criminal investigation was under way - there was still widespread popular support for Zhivkov's anti-Turkish policies . . . Moreover, the time was probably not ripe for a trial that would have included a political evaluation of the Zhivkov era. As long as a BSP-dominated

²⁰ **Human Rights in Bulgaria After the October 1991 Elections, p. 12.**

²¹ *Ibid.*

government remained in power, former communist officials could deny the prosecution access to vital documentation."²²

²² Kjell Engelbrekt and Duncan M. Perry, "The Conviction of Bulgaria's Former Leader," *REF/RL Research Report*, (Vol. 1, No. 42, October 23, 1992), p. 7.

After the electoral victory of the UDF in October 1991, however, the political climate became more conducive to prosecution of Zhivkov and his associates for more serious human rights abuses committed during communist rule. At the current time, observers estimate that the number of officials under investigation for past abuses is between 50 and 60.²³

Zhivkov faces charges related to his involvement in the assimilation campaign of Bulgaria's ethnic and religious minorities during the mid-1980s. In June, Zhivkov was charged with having incited racial hatred and having violated the Convention on the Elimination of All Forms of Racial Discrimination for having initiated the sometimes brutal campaign to "Bulgarianize" Turks, Pomaks and Gypsies. Petar Mladenov, ex-President and former Minister of Foreign Affairs, is also charged with crimes related to the assimilation campaign. This trial has not yet begun.

In June, Zhivkov was also indicted for having set up two labor camps (Levech and Skravena camps) where 147 people died during 1959-62 due to brutal mistreatment. Former Minister of the Interior Mircho Spasov and four senior camp officials - Petar Gogov, Nikola Gazdov, and Tsvyatko Goranov - together with Yuliyana Razhgeva of Skravena camp - have already been indicted for murder for their treatment of inmates in these camps.²⁴ The trial began on June 8.

In addition to the cases discussed above, efforts are underway to prosecute those who were involved in the cover-up of the Chernobyl nuclear accident. On December 12, 1992, former Deputy Premier Grigor Stoichkoc and former Deputy Health Minister Lyubomir Shindarov were convicted of criminal negligence related to the cover up of the effects of the Chernobyl accident.

One of the main accusations of the prosecution concerned their explicit recommendation to cover up the accident entirely, instead of informing the public and providing detailed guidance about how to minimize radiation exposure. The court accepted that this had exacerbated Bulgaria's problems in connection with Chernobyl, in terms of damage to both the public's health and the economy. The court found it particularly offensive that the two former ministers had disregarded public safety while at the same time requesting that special precautions be taken to protect the top political elite from the effects of radiation.²⁵

Stoichkoc and Shindarov were sentenced to three and two years in prison, respectively. Others are expected to be indicted in this case.

²³ *Ibid.*, p.9. Also, Helsinki Watch interview with United States Ambassador to Bulgaria Kenneth Hill, June 1992, Sofia.

²⁴ RFE/RL Vol. 1, No. 28, July 10, 1992, p. 7.

²⁵ "Bulgaria's Communist Legacy: Settling Old Scores," p. 9.

HELSINKI WATCH POLICIES

Helsinki Watch recognizes and applauds the desire of the Bulgarian people to build democratic institutions. Helsinki Watch supports efforts to ensure that all those holding positions of influence and power in government carry out their duties in a manner that is compatible with the development of democracy and the establishment of the rule of law. At the same time, we believe that the means pursued to achieve these ends should themselves reflect respect for individual rights.

Human Rights Watch has adopted a formal policy statement on the issue of eligibility for public office of those associated with abusive regimes.²⁶ Pursuant to that policy, Helsinki Watch urges the Bulgarian government to:

- (1) base judgments as to eligibility for public office on the individual qualifications of applicants;
- (2) refrain from basing judgments on eligibility solely on past or present associations. In the case of affiliations with organizations considered to be acting or to have acted in a criminal, corrupt or repressive manner, governments should require clear and convincing evidence that the individual knowingly and actively furthered or is furthering those practices of the organization;
- (3) bear the burden of proving that the individual knowingly and actively furthered or is furthering the criminal, corrupt or repressive aims or practices of an association;
- (4) establish the opportunity for an individual facing such charges to know the evidence against him or her and to obtain a fair hearing on such charges before an impartial tribunal; and the right to appeal the determination of that tribunal to the regularly constituted courts.

Helsinki Watch also recognizes the importance of prosecuting past abuses and is aware of the difficult task that confronts the prosecutor's office in investigating these crimes. Helsinki Watch considers that accountability for gross abuses should remain a goal of a government that seeks to promote respect for human rights. In pursuing that goal, Human Rights Watch has adopted a formal policy statement on accountability for past abuses²⁷ which states in part:

- (1) that the most important means of establishing accountability is for the government itself to make known all that can be reliably established about gross abuses of human rights; their nature and extent; the identities of the victims; the identities of those responsible for devising the policies and practices that resulted in gross abuses; the identities of those who carries out gross abuses; the identities of those who knowingly aided and abetted those who carried out gross abuses;

²⁶ Human Rights Watch, "Eligibility for Public Office of those Associated with Abusive Regimes," HRW Policy Paper, 1991.

²⁷ Human Rights Watch, "Accountability for Past Abuses," HRW Policy Paper, 1989.

- (2) that the duty to investigate, prosecute and punish those responsible for gross abuses is proportionate to the extent and severity of the abuses and the degree of responsibility for such abuses. Accordingly, though we advocate criminal prosecution and punishment for those who have the highest degree of responsibility for the most severe abuses of human rights, we recognize that accountability may be achieved by public disclosure and condemnation in cases of lesser responsibility and/or less severe abuses. The determination of who should be prosecuted will have to be made according to the circumstances of each situation. In making such determinations, we believe it is essential that there should be no granting of impunity either because of the identity of those responsible for gross abuses of human rights or because of the identity of the victims;
- (3) that the means employed by a government in making known what can be reliably established about gross abuses, and in investigating, prosecuting and punishing those responsible, should at all times conform to internationally recognized principles of due process of law.

CONCLUSIONS

Helsinki Watch is greatly concerned that the Constitutional Court's decision upholding the Panev Law will encourage increased efforts to purge former members of the Bulgarian Communist Party from important positions in academia. Already, large numbers of academic staff have been detrimentally affected by the Law. As discussed above, Helsinki Watch considers laws based on the concept of collective guilt a violation of the right to freedom of association and expression, as well as the right to hold political opinions without interference by the government. Helsinki Watch urges the Bulgarian government to reject such laws. Helsinki Watch calls on the government and the parliament to use their good offices to repeal the Panev Law, or to amend it to address the concerns outlined above. Finally, Helsinki Watch urges that due process concerns and the notion of individual guilt be the guiding principles for any future lustration legislation.

APPENDIX A

DRAFT LAW FOR OVERCOMING THE CONSEQUENCES OF COMMUNIST RULE IN STATE AND MUNICIPAL ADMINISTRATION THE JUDICIARY, AND THE STATE AND MUNICIPAL ENTERPRISES AND INSTITUTIONS²⁸

Art. 1. This law defines the conditions and procedures for appointments to leading positions in the state and municipal administration, the judiciary, and state and municipal enterprises and institutions.

Art. 2. The "leading positions" as understood here comprise:

1. The Council of Ministers - for the state and municipal administration and state and municipal enterprises and institutions.
2. The Higher Court Council - for the judiciary.

Art. 3. In the state and municipal administration, the judiciary, and state and municipal enterprises and institutions, leading positions cannot be held by persons who, at any time between September 9, 1944 and January 1, 1990, occupied one of the following positions:

1. Member or alternate member of the Politburo of the Central Committee of the Bulgarian Communist Party (BCP);
2. Secretary of the Central Committee of the BCP;
3. Chair or deputy chair of the State Council;
4. Prime minister or vice-premier;
5. Chair or deputy chair of the National Assembly (parliament);
6. Secretary of the Bulgarian Agricultural National Union;
7. Member of the Control and Inspection Commission of the BCP;
8. Employed (paid) secretary or member of the State Council;
9. Department executive or deputy department executive of the Central Committee of the BCP, or equivalent positions;

²⁸ **Unofficial translation.**

10. Minister or equivalent positions;
11. First secretary or secretary of district and regional committees of the BCP;
12. Employed member of the "Permanent Presence" of BANU;
13. Chair, deputy chair or secretary of the National Council of the Fatherland Front;
14. Chair of the Central Council of the Bulgarian Trade Unions;
15. Chair of the Central Committee of the Fighters Against Fascism and Capitalism;
16. First secretary or secretary of the Central Committee of the Dimitrov's Communist Youth League (DCYL);
17. Senior secretary of the Council of Ministers;
18. Chair of committees which did not have the status of ministries, and equivalent positions.

Art. 4. (1) Persons who, at any time between September 9, 1944 and January 1, 1990, occupied one of the positions enumerated in this article, thereby holding leading positions in the state and municipal administration, the judiciary, or state and municipal enterprises and institutions, must be reviewed by a commission specified in (3):

1. Member or alternate member of the Central Committee of the BCP;
2. Head or deputy head of departments and divisions of state security;
3. Chair, deputy chair or member of the Supreme Court;
4. Chief prosecutor, deputy chief prosecutor or prosecutor in the Chief Prosecutor's Office;
5. Chief arbiter or deputy chief arbiter in the Supreme State Court of Arbitration;
6. Chair of Executive Committees of Regional and District People's Councils;
7. Department executive, instructor or party organizer of the Central Committee of the BCP, commissioner of the Central Committee of the BCP or the Council of Ministers, secretary of District and Local Committees of the BCP, deputy executive of departments and sectors of Regional and District Committees of the BCP, or equivalent positions;
8. General director of state industrial organizations or equivalent positions;
9. Chair of the Bulgarian Red Cross, the Bulgarian Hunters and Anglers Union, the Committee of the Bulgarian Women's Movement, the Bulgarian Olympic Committee, the Science and Technology Unions, the Committee of Bulgarian-Soviet Friendship and other similar organizations;

10. Chair of the Bulgarian Writers' Union, the Bulgarian Architects' Union, the Union of Bulgarian Actors, the Bulgarian Journalists' Union, the Bulgarian Artists' Union, the Union of Science Researchers in Bulgaria, the Bulgarian Teachers' Union and other similar organizations;

11. Department executive of the "Permanent Presence" of the BANU;

12. Chair, deputy chair or chief secretary of the Bulgarian Academy of Science;

13. First secretary of district and regional committees of the DCYL;

14. Rector of universities and other higher education institutions;

15. Member of the Control and Inspection Commission of the DCYL;

16. Chief secretary of ministries and committees attached to the Council of Ministers;

17. Officer or collaborator of State Security, KGB and other intelligence services of the former socialist countries.

(2) The review must estimate the personal participation of those having held the positions enumerated in (1) with regard to violations of human rights and participation in making decisions resulting in damage to state property;

(3) Reviews must be done by a Parliamentary and Public Commission;

(4) The review of persons presently occupying leading positions in the state and municipal administration, the judiciary, or state and municipal enterprises and institutions must be carried out within six months of the enactment of this law.

Art. 5. (1) The Parliamentary and Public Commission shall be elected by the National Assembly and consist of 25 members.

(2) ten members of the Commission must be elected from among the deputies.

(3) ten members of the Commission must be members of the Bulgarian Socialist Party, as heir to the BCP.

(4) Persons under Art. 3 and Art. 4 (1) of this law may not be elected to the Parliamentary and Public Commission.

(5) The Commission will make decisions by a majority of more than half of its members.

(6) Before making a decision, the Parliamentary and Public Commission shall invite the persons enumerated under Art. 4 (1).

(7) All citizens, state and municipal bodies, political parties and organizations may supply the Commission with any sort of evidence about any actions or lack of actions of persons under Art. 4 (1) which resulted in violations of human rights or damages to state property.

Final provisions:

1. (1) Within a month of the enactment of this law, all persons holding leading positions in the state and municipal administration, the judiciary or state and municipal enterprises and institutions must sign a declaration that they did not occupy the positions mentioned in Art.3 and Art.4 (1).

(2) Labor relations with persons who refuse to sign such a declaration will be terminated under the general provisions of the labor code.

(3) Declarations must be signed before application to a leading position.

2. When there is sufficient evidence giving reason to believe that persons occupying a leading position exercised functions mentioned in Art.4 (1) point 17, the evidence shall be passed to the Parliamentary and Public Commission, which has the right to request further evidence from the Ministry of the Interior in order to carry out the review under Art.4 (2).

APPENDIX B

DRAFT LAW FOR DECOMMUNIZATION IN THE SPHERE OF GOVERNMENT²⁹

Art. 1. (1) This Law sets up additional preconditions for citizens occupying leading posts in the spheres of:

1. The Executive Power;
2. Legal entities with more than 30 percent equity of the State and the Municipalities;
3. Organizations financed from the Budget;
4. Foundations with State participation.

(2) The requirements of this Law shall include all positions in Bulgarian Television, Bulgarian Radio, the Bulgarian Telegraph Agency, Government and Local Administration, except for those directly elected by the nation.

Art. 2. To occupy positions listed in Art. 1, citizens must meet the following requirements:

1. They must not have been an employee of, on the payroll of or a voluntary collaborator with the State Security Service or the Division for Security and Safekeeping during the period from September 9, 1944 until June 10, 1990.
2. They must not have been secretary or any other high-ranking functionary of the primary party organization of the Bulgarian Communist Party (BCP); member of town (municipal, regional) committee or any other high-ranking functionary of the Fatherland Front (OF); member of a town (municipal, regional, organizational) committee or any other high-ranking functionary of the Dimitrov's Communist Youth Union (DKMS); member of the district leadership or any other high-ranking functionary of the Bulgarian Agrarian National Union (BZNS).
3. They must not have occupied any office included in the lists of nomenclature of the Central Committee of the BCP or the District Committees of BCP.
4. They must not have been awarded for taking part in the "revival process."
5. They must not have been a lecturer, graduate or specialist of the Higher Party School of the BCP and AONSU, the higher party schools of the Central Committee of the Communist Party of the Soviet Union (CPSS) or the higher schools of the KGB in the USSR.
6. They must not have been an officer in the political bodies of the Bulgarian National Army.

²⁹ Unofficial translation.

Art. 3. (1) Any citizen currently occupying, or a candidate to occupy, a position listed in Art. 1 must present to the authority responsible for the appointment or selection a written declaration stating that he qualifies for it by meeting the requirements of Art. 2, as well as a certificate prepared by the Ministry of the Interior concerning the requirements set out in Art. 2, Item 1 and Item 2.

(2) Applications for certificates pursuant to Art. 2, Item 1 must be submitted to the Ministry of the Interior by the citizen and should be received personally unless otherwise specified by this Law.

(3) Applications for certificates pursuant to Art. 2, Item 1 may be filed by the body responsible for the appointment or selection of the citizen currently occupying or a candidate for a position listed in Art. 1. In this case the certificate must be given also to the relevant body, and the latter should within 3 days make the interested citizen familiar with its contents.

Art. 4. (1) Should any documentation necessary for the issuing of a certificate as per Art. 3, Par.1., last proposition, be out of the jurisdiction of the Ministry of the Interior, its holder is bound, if requested by the Ministry of the Interior, to present it to the Ministry of the Interior within 7 days, together with all relevant information.

(2) For the independent commission established pursuant to Art. 5. of this Law, and for the courts of law controlling its actions, the dossiers of the citizens in the Ministry of the Interior should not be considered to be secrets of the State.

Art. 5. (1) An independent Commission should be appointed with the task of examining the compliance with the requirements of Art. 2. This Commission shall include: a President, a Vice President and thirteen Members.

(2) The President, the Vice President and six members of the Commission shall be appointed by the National Assembly; five members shall be appointed by the Minister of the Interior; and two each by the Minister of Justice and the Minister of Defense.

(3) The Commission shall hold its sessions permanently, and its activity shall be guaranteed by the Ministry of the Interior.

Art. 6. (1) The Commission may be approached with objections by:

1. Citizens who have been given certificates that they do not meet the requirements of Art. 2, Item 1.

2. Citizens claiming that the contents of the written declaration as per Art. 3, Par. 1., signed by a person currently occupying or a candidate to occupy a position as per Art. 1., is false.

3. The formal body responsible for the selection or appointment, if the accuracy of the written declaration as per Art. 3., Par. 1. has been challenged.

(2) In the cases specified in the previous Paragraph, the Commission shall have the right to request all necessary information and documentation from any government bodies and political

organizations. These are bound to deliver it, should the Commission so request, as well as to ensure the Commission's access to all available archives within seven days.

(3) Before the commencement of its sessions, the Commission shall make the citizens concerned acquainted with the entire information and documentation referring to them. During the sessions, the citizens shall be given the opportunity to express their opinion on all of the items.

Art. 7. (1) The protective rules of the Labor Code shall not apply when citizens not meeting the requirements of this Law are dismissed.

(2) In such cases, no compensations, etc. specified in the normative acts shall be paid.

Art. 8. (1) Citizens occupying positions listed in Art. 1 at the date of the endorsement of this Law must present written declarations as per Art. 3, Par. 1 within seven days. Candidates for such offices must present their declarations together with the other required documents.

(2) Citizens occupying posts listed in Art. 1, who do not present their written declarations within seven days, or for whom it becomes evident that they do not meet the additional requirements specified in Art. 2, shall be relieved of their duties by the bodies responsible for appointment or selection within the period of one month.

Art. 9. (1) Citizens occupying such positions at the date that this Law becomes valid must submit applications to the Ministry of the Interior for certificates on compliance with the requirements set out in Art. 2, Item 1, and Item 4 within seven days. For those appointed after the endorsement of this Law, the seven-day term starts from the date of the appointment.

(2) The Ministry of the Interior shall issue certificates as per Art. 2, Item 1 and Item 4 within three months, and shall notify the responsible authorities. Citizens who have been given certificates shall present them to the responsible bodies within one week after the date of their issue.

Art. 10. (1) Should the certificate not be presented within the specified period, and should it be evident that the concerned citizen does not meet the requirements specified in Art. 2, Item 1 and Item 4, the responsible body shall dismiss him/her without notice within 15 days and inform the Prosecution in the case that there are grounds for penal prosecution.

(2) This procedure shall not be carried out if within the term of 15 days the concerned citizen has submitted his objections to the institutions specified in this Law and has presented a document in evidence of this to the responsible bodies.

(3) When certificates have been issued by the Ministry of the Interior at the request of bodies responsible for appointment or selection, the period for submission of applications to the Commission shall run from the date of making the concerned citizen acquainted with the certificate.

(4) The Commission is bound to deliver its decision to the responsible bodies or to the concerned person within 10 days after pronouncing it.

Art. 11. (1) The citizens have the right to appeal the Commission's decisions in accordance with the legal procedures.

(2) The citizens are bound within 1 week after the enactment of the final decision of the highest instance to make it known to their higher body. The procedure specified in Art. 10, Par. 1 shall be followed if, according to court decision, the respective citizen does not meet the requirements of Art. 2.

Art. 12. (1) Leaders appointing or not dismissing citizens who do not qualify under the requirements of Art. 2, after having been informed of them, shall be subject to the procedure described in Articles 7, 8 and 10 of this Law.

ADMINISTRATIVE AND PENAL PROVISIONS

Par. 1. (1) Persons preventing the Commission as per this Law from gaining access to archives and documents necessary to prove some circumstances as per Art. 2, or concealing facts and evidence connected with these circumstances, or issuing documents with false content, shall be sentenced from 3 to 10 years imprisonment and 500 to 5000 leva penalty.

(2) Persons approaching the Commission as per this Law without insufficient ground to do so, shall pay from 500 to 3000 leva penalty.

TRANSITIONAL AND CONCLUSIVE PROVISIONS

Par. 1. Leading positions as per Art. 1 of this Law are the positions specified in Decree 56 and the Law on Commerce.

Par. 2. In the context of Art. 2, Item 1 of this Law, those persons should be included who have been registered in the lists of the State Security Service as candidates for secret collaborators or secret collaborations, hosts of secret or conspiracy lodgings, trusted persons, persons who have consciously made operative contacts, and persons who have known that they have been in contact with members of the State Security forces, have consciously and voluntarily delivered information to these members by secret contacts, or have fulfilled tasks assigned by them; and who have not been forced by threats and intimidation to do so.

par. 3. (1) Publishers of periodicals and leaders of private firms, stock companies and cooperatives have the right to make use of this Law to request that their employees, workers and partners meet the requirements of Art. 2, and the right to apply the clauses of Art. 7, Art. 8 and Art. 10.

(2) Presidents and leaders of political parties, public organizations, movements and unions may, on the basis of this Law, make applications to the Ministry of the Interior for issuing certificates evidencing the circumstances as per Art. 2 for each member of the their organizations.

Par. 4. This Law becomes valid from the date of its publishing in Darzhaven Vestnic (Government Journal).

MOTIVES

Decommunization of the country is a major aspect of the transition from a totalitarian system to democracy. The coalescence of the BCP and its satellite organizations with the Government was one of the

principal foundations of the totalitarian system after September 9, 1944. All governmental and economic activities were controlled by the communist party and its agent, the State Security Service. The cutting of these links and the elimination of the communist nomenclature and its agents from the sphere of government is the purpose of this Law. It shall result in no repressive action, but merely impose some additional preconditions for the occupation of leading positions in the administration. It does not violate the right to work and the other human rights guaranteed by international conventions, but aims to establish some restrictions on persons who participated in the process that led to a national catastrophe, preventing them from occupying leading posts. The law does not punish these persons for their activities but only prevents them from continuing these activities. In this way, the introduction of this Law is an act of justice.

* * *

TO THE PRESIDENT
OF THE 36TH NATIONAL ASSEMBLY
MR. STEFAN SAVOV

Mr. President,

On the basis of Art. 87, Par. 1 of the Constitution of the Republic of Bulgaria, we introduce in the National Assembly the Bill on Decommunization in the Sphere of Government for discussion.

DEPUTIES: (s)

Sofia, 14.2.1992

.....

APPENDIX C

Constitutional Court Decision Number 8³⁰

July 27, 1992

Constitutional Case No. 7, 1992

The Constitutional Court, with Chairman Asen Manov, and Members Mladen Danailov, Tsanko Hadgistoychev, Stanislav Dimitrov, Neno Nenovsky, Nickolay Pavlov, Theodore Chilev, Milena Zhabinska, Lyuben Cornezov, Pencho Penev, and Alexander Arabadjiev; and with the participation of Snezhana Petrova as a record keeper, met in a closed-door session on July 21, 1992 to try Constitutional Case #7 of 1992. The case was presented by Judge Nickolay Pavlov.

Legal proceedings were instituted at the demand of 49 Members of the 36th National Assembly, to establish the unconstitutionality of Article 9 of the Transitional and Concluding Provisions of the Law for Banks and Credit (LBC) (see State Newspaper, issue 25, 1992). Article 9 says: "No persons can be elected to executive positions or hired on the basis of Article 7, if in the last 15 years they have been elected in the central, regional, county, city or municipal governing bodies of the Bulgarian Communist Party, the Comsomol, the Fatherland Front, the Union of Active Participants in the Struggle against Fascism and Capitalism, the Bulgarian Trade Unions, or the Bulgarian Agrarian Union, or who have been appointed to a full-time executive position in the Central Committee of the Bulgarian Communist Party, as well as employees, paid or unpaid collaborators of the State Security. This limitation will be in power for five years."

The claim is that Article 9 of the Transitional and Concluding Provisions of the LBC is in contradiction with Article 6, paragraph 2 of the Constitution and the international provisions and agreements constitutionally ratified by Bulgaria as parts of international human rights documents, in particular: Article 2, paragraph 2 and Article 25 of the International Covenant of Civil and Political Rights of 1966, as well as Convention No. 111 of 1958.

In its decisions from April 21, 1992 and May 19, 1992 the Constitutional Court defined the Bulgarian Socialist Party, the Fatherland Union, the Bulgarian Democratic Youth, the Bulgarian Antifascist Union, the Confederation of Independent Trade Unions,³¹ the Labor Confederation "Podkrepa," the National Assembly, the Minister of the Interior and the chairman of the Bulgarian National Bank as litigants in this case.

In its decision of June 2, 1992 the Constitutional Court acknowledged the demand [of the Members of Parliament] as lawful, based on Article 19, paragraph 1 of the Law on the Constitutional Court.

The Constitutional Court, having discussed the parties' arguments and reasons, decided:

³⁰ **Unofficial translation.**

³¹ **The above organizations are the unofficial heirs to the Bulgarian Communist Party, the Fatherland Front, the Comsomol, the Union of Active Participants in the Struggle against Fascism and the Bulgarian Trade Unions [translator's note].**

According to Article 5 of the Constitution, the International Covenant of Civil and Political Rights, the International Covenant of Economic, Social and Cultural Rights, Convention No. 111 concerning discrimination in the field of labor and the professions, as well as the Vienna Convention on the Right of Contracts (State Newspaper, issue 87, 1987), which have been ratified by the constitutionally-established procedure, promulgated and come into force and are considered part of the domestic legislation of the country and hence supersede any domestic legislation stipulating otherwise.

On the other hand, the provisions of article 6, paragraph 2 of the Constitution can bear no limitations, as they state that "all citizens shall be equal before the law. There shall be no privileges or restrictions of rights on the grounds of race, nationality, ethnicity, sex, origin, religion, education, opinion, political affiliation, personal and social status, or property status are allowed." Also, Article 48 of the Constitution maintains the principle that "every citizen freely elects their profession and workplace."

The provisions of Article 9 of the Transitional and Concluding Provisions of the LBC, speak of limiting the right to occupy an executive position in the executive bodies of banks, which in the sense of Article 1 of Convention No. 111 is discrimination in the accessibility of a specific profession. The text also contradicts Article 2, Paragraph 2 and Article 6, Paragraph 1 of the International Covenant of Economic, Social and Cultural Rights, and Articles 2 and 25 of the International Covenant of Civil and Political Rights.

From all of the above, it follows that the provisions of Article 9 of the LBC are in contradiction both with Article 6, Paragraph 2 of the Constitution and the aforementioned international acts. The last are considered as part of domestic law and have priority over those provisions of the domestic legislation which contradict them. And if this is so, it follows from the immediate action of the constitutional provisions and from the priority of the international acts in our domestic legislation that Article 9 of the Transitional and Concluding Provisions of the LBC has been passed in violation of Article 6, paragraph 2 of the Constitution and the aforementioned international acts.

This is why, pursuant to Article 149, Paragraph 1, sections 2 and 4 of the Constitution, the Constitutional Court

RULES:

The Court declares Article 9 of the Transitional and Concluding Provisions of the Law on Banks and Credit unconstitutional and contradictory to the international conventions to which Bulgaria is a party.

The decision is final.

Judges Asen Manov, Tsanko Hadgistoychev, Stanislav Dimitrov and Nickolay Pavlov signed the decision with dissenting opinions, which have been applied to the case.

Chairman: Asen Manov

RULING No. 11 of July 29, 1992³²

on Constitutional Case No. 18, 1992

On July 17, 1992 the Constitutional Court, including Asen Manov as Chairman, Members Mladen Danailov, Tsanko Hadgistoychev, Stanislav Dimitrov, Neno Nenovsky, Theodore Chilev, Milena Zhabinska, Lyuben Cornezov, Pencho Penev and Alexander Arabadjiev, and secretary Slavka Rizova, considered behind closed doors Constitutional Case No. 18, 1992, presented by Justice Alexander Arabadjiev.

The case proceeded pursuant to Article 149, paragraph 1, item 2 of the Constitution of the Republic of Bulgaria.

Proceedings were instituted on the initiative of the President of the Republic, to establish the unconstitutionality of Article 10(a) of the newly-adopted Act of Amendment to the Pensions Act (SG, No. 52, 1992).

In a ruling of July 2, 1992 the case was accepted for consideration. The ruling on its permissibility specified the component of the law challenged as unconstitutional: Article 6 of the Act of Amendment to the Pensions Act, which created a new Article 10(a) of the Pensions Act.

The same ruling establishes as interested parties in the case the National Assembly, the Council of Ministers, the Ministry of Labor and Social Welfare, the Podkrepa Confederation of Labor, the Confederation of Independent Trade Unions of Bulgaria (CITU), the Bulgarian Socialist Party (BSP), the Fatherland Union (FU), the Bulgarian Democratic Youth (BDY) and the Bulgarian Antifascist Union (BAU). In response to the opportunity given them, the following have filed opinions in the case: the Council of Ministers, the Ministry of Labor and Social Welfare, CITU, BSP, the Fatherland Union, BDY and BAU.

In its ruling, the Constitutional Court took the following into consideration:

Through Article 6 of the Act of Amendment to the Pensions Act, passed by the 36th National Assembly on June 12, 1992 (SG, No. 52, 1992), a new Article 10(a) of the Pensions Act was created with the following content: "under this law, the period during which a person has worked at a paid managerial post in the organs and party organizations of the Bulgarian Communist Party, the Fatherland Front, the Dimitrov Youth Communist League and the Union of Active Fighters against Fascism and Capitalism is not considered years of employment."

The ruling is part of a considerably broader amendment to the Pensions Act with which it is not *a priori* connected systematically. The bill on the amendment to the Pensions Act was presented by the Council of Ministers, while the initiative for the creation of the new Article 10(a) came from a Member of the National Assembly. The speeches made by a number of members of parliament at the presentation of and deliberation on this motion, and the bill itself, contain considerations which help to clarify the new Article.

³² **Unofficial translation.**

It is evident that the intent [of the new Article 10(a)] is to deny the period spent in employment at the aforementioned organizations as years of employment in calculating retirement benefits. However, the exact circle of persons for whom this is valid is not clear. It is evident from the deliberations that the legislator [the individual who introduced the initiative for the creation of the new Article 10(a)] was not interested in this problem, and insofar as it had any significance for him, he estimated in quantitative measures which have no significance whatsoever in a matter of individual rights. In a legal-technical sense, the exact designation of the circle of persons affected was delegated to the Council of Ministers (Cf. and Article 57 of the law).

In any case, the intention of the legislator was to deny a definite category of people legal recognition of years of employment, thereby denying them certain social security rights issued on the basis of length of employment. It is known that the right to pension as a social security right (the right to social security having been established by Article 51, paragraph 1 of the Constitution) depends on and is determined by the total number of years of employment, i.e., the time which a given person has spent as a worker or employee with obligatory social security. The legislator did not deny that those who once held managerial posts in the aforementioned organizations were engaged under legal labor relations. His initiative was based, however, on the premise that this work was performed to the detriment of the state and society. Another reason cited [for the initiative] is the intent to justly distribute the burdens of the present economic and social situation, created because of those who held the aforementioned posts.

No answer, however, has been given to the question of the legal grounds upon which individuals are to be denied the right to pension security based on years of employment. The legislator has used an abstract category which, although permissible in the drafting of a law, is not sufficient justification for the denial of concrete rights to concrete individuals or for the limitation of the extent of those rights. It is illegal to justify [a denial of rights] on the basis of a societal assessment of a past regime and the political organizations that embodied it. The Constitutional Court, notwithstanding, shares at least part of this assessment, not the least because of the values and basic principles embedded in the Constitution (Cf. paragraph 2 and 5 of the preamble, Article 1, paragraph 3, Article 4, paragraph 1, Article 11, paragraphs 1 and 2).

By adopting the rulings of Article 10, the legislator has declared that he is guided by some of these Constitutional values; however, he has not succeeded in upholding these values to the end. The principle of justice, for example, will arguably have been violated if states and relations of privilege or material wealth created under a non-democratic government and in favor of the functionaries of such a government continue to be regenerated, as well as if society continues to spend funds on securing rights acquired in a non-democratic manner. In both cases the injustice is clear, whether it affects individuals alone or when different individuals whose "contribution" towards one or another state of society is different are considered together as a group. It is evident, so much so that it is not necessary for the Constitutional Court to give specific grounds for it, that the social, political or moral evaluation of one phenomenon or social formation is not and cannot be connected with legal consequences for concrete individuals, and even less so regarding an unlimited number of unspecified individuals.

If the legislator has considered it permissible and aimed at sanctioning a certain moral choice -- for example, the choice of working within the structures of the aforementioned organizations -- it is still not definite that this implies a certain responsibility, or that all responsible are reviewed, or that this and this choice alone can be morally reprimanded and translated into some kind of legal responsibility. The impossibility of giving definite answers to these and similar questions makes the approach arbitrary, leaving doubts as to the justice and legality thereof.

In this sense the assessment of constitutionality can and should be made from the point of view of the intent of the legal ruling under review. This in turn should be examined using interpretative methods and compared to the appropriate constitutional ruling, without dwelling on hypotheses which it is not evident that the legislator took into consideration -- or which were taken into consideration but not reflected in the wording of the law. That is why, if the legislator intended to reverse an injustice or to prevent the continuous application of a privilege, as is claimed by the Ministry of Labor and Social Welfare, he could and should have done precisely that: to exclude the possibility of the amount of the pension depending on "priority in amount of wages" and to erase this inadmissible contradiction.

If social security is not automatically a function of legal labor relations, but is also based on other social characteristics (a point of view shared by the Ministry of Labor and Social Welfare and the Council of Ministers), in the opinion of the Constitutional Court it cannot be accepted that this originally correct view, reflecting rulings of the current law, can be used to justify the negation of work performed as grounds for pension security. According to the current law, pensions are primarily labor and not social in character; therefore, the existence of other non-labor correctives, features or grounds for receiving pension does not erase its connection to labor. However, the text of the newly-created Art. 10(a) of the Pensions Act contains the expression "the period during which the person has worked."

The above is also fully valid in the interpretation of the argument that the individuals under review have paid their social security. As expressed in the claim of the President of the Republic, this may not be the case, either because the pension payments were not subtracted from the individuals' wages, or because after a certain date the budget authorities of the organizations employing them did not transfer security payments to State Social Security to cover their employees. However, both conditions refer not only to the persons specified above, and therefore cannot in themselves alone provide argumentation for the legislative measures [proposed in Article 10(a)].

There is one uncontested point: Article 10(a) of the Pensions Act deals with persons who were incorporated in pension security. By the force of Art. 10(a), these persons will be denied, completely or partially, the years of employment needed for retirement. What we have here is a restricted or completely violated right to social security, which is incorporated in Art. 51, para. 1 of the Constitution. This is one of the basic rights of the citizens of the Republic of Bulgaria and neither its revocation nor restriction is stipulated by the Constitution or grounded from the point of view of other [laws] established and protected by Constitutional values. According to the manner in which the Constitutional Court reads the Constitution -- an understanding permanently imbedded in the rulings of this court -- nothing is equal to the value of human rights. Naturally, like a number of others, the Bulgarian Constitution recognizes the occasion for provisional restriction of some rights. This is not appropriate in this situation, however.

There are no grounds for restricting or revoking the right to social security (Art. 51, para. 1 of the Constitution), for creating inequalities or for justifying unequal treatment in violation of Constitutional principles (Art. 6, para. 2 of the Constitution), without the assurance that this would achieve social justice. As has already been noted, if the aim is to eradicate socially unwarranted and legally inadmissible privileges, this can and should be achieved within the framework of the Constitution. The substance of Art. 10(a) of the Pensions Act runs counter to the Constitution, and it must be declared unconstitutional. The end result it aspires to can be achieved without encroaching upon basic constitutional principles and basic rights of citizens.

Therefore, the Constitutional Court finds that the claim for establishing the unconstitutionality of this ruling [Article 10(a)] should be accepted, in view of the two contradictions to the Constitution it states: namely, the infringement of the right to social security, on the one hand, and on the other, violation of the principle of

equality through the creation of a situation of unequal treatment of a certain category of citizens based on a concrete characteristic attributed to them. When society has reasons to give a negative assessment of a certain period of time, political regime or political organization, it does not have the right to subsequently violate basic rights or constitutional principles.

The Constitutional Court rules on the unconstitutionality of Art. 10(a) of the Pensions Act in view of the above considerations, in spite of the arguments presented regarding the compatibility of Article 10(a) with the international instruments to which Bulgaria is a party (namely, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), pursuant to the powers given the Constitutional Court by Art. 149, para. 1 of the Constitution.

For these reasons and pursuant to Art. 149, para. 1, item 2 of the Constitution, the Constitutional Court

RULES:

Declares unconstitutional the ruling of Article 6 of the Act of Amendment to the Pensions Act, whereby a new Art. 10(a) is created in the Pensions Act.

This decision is final.

Justice Tsanko Hadgistoychev and Stanislav Dimitrov signed the ruling with a dissent which is appended to the case.

Chairman: Asen Manov.

APPENDIX D

L A W

FOR TEMPORARY INTRODUCTION OF SOME ADDITIONAL REQUIREMENTS FOR THE MEMBERS OF THE EXECUTIVE BODIES OF THE SCIENTIFIC ORGANIZATIONS AND THE HIGHER CERTIFYING COMMISSION³³

Chapter One: General Principles

Art. 1. This Law determines additional requirements for the members of the executive bodies of the scientific organizations and the Higher Certifying Commission.

Art. 2. (1) The decrees of this Law refer to:

1. the members of the academic, faculty and scientific councils, the heads of the higher schools and faculties and their deputies;
2. the members of the scientific councils, the heads of the academies and their independent units, and their deputies;
3. the members of the scientific councils and the heads and their deputies in any scientific organizations other than those mentioned above which have the right to announce competitions and elect scientific or teaching staff;
4. heads of Chairs;
5. heads of Sections or their corresponding basic structural units in scientific institutions.

(2) The decrees of this Law refer to the members of the Higher Certifying Commission and its specialized scientific councils as well.

Chapter Two: Requirements towards the Members of the Executive Bodies of Scientific Organizations and of the Higher Certifying Commission

Art. 3. Members of the academic, faculty and scientific councils and of the executive bodies (heads and their deputies) of the higher schools, including and superior to Chair, members of scientific councils and the executive bodies (heads and their deputies) of scientific institutions and organizations, including and superior to the position of Head of Section or the corresponding basic structural unit, and members of the staff of the Higher Certifying Commission and its specialized councils, shall be limited to those persons who can show that they:

1. have not been members or candidate members of the Political Bureau, the Secretariat or the Central Committee of the former Bulgarian Communist Party;

³³ **Unofficial translation.**

2. have not been secretaries or members of regional, city, community, county or district committees of the Bulgarian Communist Party;
3. did not hold positions before November 10, 1989 which were directly accountable to the Political Bureau or the Secretariat of the Central Committee of the Bulgarian Communist Party and are defined in Section I and II of the "Nomenclature of the staff accountable to the Central Committee of the Bulgarian Communist Party" (no. 1045 of July 19, 1978, approved by the Political Bureau of the Central Committee of the Bulgarian Communist Party in proceedings No. 280 of July 11, 1978);
4. have not been on the staff of or voluntary collaborators with the State Security or the Security and Guard Department;
5. have not compromised themselves through participation and involvement in the "revival process";
6. have not been on the teaching and research staff of, graduate from, or specialize in the Academy of Social Sciences and Social Management and its branches, the Higher Party School for leadership staff of the Bulgarian Communist Party, the Institute for History of the Bulgarian Communist Party, the Institute for Social Management or the schools of the KGB or State Security;
7. have not taught History of the Communist Party of the Soviet Union, History of the Bulgarian Communist Party, Marxist-Leninist Philosophy, Scientific Communism or Party Building.
8. have not been political officers or deputy commanding political officers and did not hold positions in the political headquarters of the Armed Forces.
9. have not been secretaries or members of party committees of the Bulgarian Communist Party in the higher schools and academies; secretaries of the party organizations of the Bulgarian Communist Party in the faculties, scientific institutes and other scientific organizations; or members of Personnel Commissions under the party committees of the higher schools, academies or other scientific organizations.

Art. 4. (1) The facts pertaining to Art. 3 shall be confirmed in a written declaration.

(2) Refusal to submit a written declaration shall be considered an admission that the person does not meet the requirements for membership in the executive bodies of organizations listed under Art. 3.

Art. 5. (1) Openings of competitions and elections to scientific and teaching staff, as well as openings of procedures for the defense of theses, shall be suspended until the requirements of Art. 3 and 4 have been met by the members of the corresponding academic, faculty and scientific councils.

(2) Openings of procedures for the defense of theses shall be suspended until the requirements under Art. 3 and 4 have been met by the members of the corresponding specialized scientific councils under the Higher Certifying Commission.

Chapter Three: Administrative-Criminal Decrees

Art. 6. The submission of the statements required in Art. 4, Paragraph 1 with false contents shall be punished according to the Criminal Code.

Art. 7. The heads of scientific organizations shall be fined from 8 to 12 regular monthly salaries if they neglect the dictates of one of the Transitory Decrees of this Law. The penalty shall be drawn up by the executive bodies of the Ministry of Education and Science, and the punitive measures shall be issued by the Minister of Education and Science or by a person authorized by him. The decrees of the Law for Administrative Offenses and Penalties shall be applied to these acts as well as to the drawing up and issue of penal decrees and to the appeals against them.

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1. The heads of all the organizations specified in Art. 2, Paragraph 1 shall hold elections for new executive bodies and for new academic, faculty and scientific councils in accordance with Art. 3, the Law for Academic Autonomy of Higher Schools and the Law for the Bulgarian Academy of Science within 4 (four) months of the effective date of this Law.

2. Within the time limit in the preceding paragraph, the Higher Certifying Commission shall nominate and appoint new specialized scientific councils in accordance with the requirements of Art. 3.

3. (1) The members of the Presidium and of the scientific councils of the Higher Certifying Commission shall be dismissed the day this Law comes into effect.

(2) Within one month of the effective date of this Law, the Prime Minister shall appoint a new staff of the Presidium and of the scientific commissions of the Higher Certifying Commission, according to Art. 33, Paragraph 2 of the Law for Scientific Degrees and Academic Ranks and in accordance with the requirements of Art. 3 of this Law.

Final Decree

4. The requirements of Art. 3 of this Law are to be applied for a period of 5 years from the day the Law comes into effect.

5. The execution of the Law is assigned to the Council of Ministers.

The Law was adopted by the 36th National Assembly on December 9, 1992 and was sealed with the state seal.

President of the National Assembly

Alexander Yordanov

APPENDIX E

Decision #1

February 11, 1993, on Constitutional Case #32 from 1993³⁴

Members of the Constitutional Court Assen Manov (Chair), Mladen Danailov, Milcho Kostov, Tzanko Hadjistoichev, Stanislav Dimitrov, Neno Nenovski, Teodor Chipev, Milena Jabinska, Luben Kornezov, Pencho Penev, and Aleksander Arabadjiev, with the participation of recording secretary Stoika Delova, considered in a closed session on February 2, 1993, constitutional case #32/1993, reported by judge Milena Jabinska.

The legal proceedings are based on the grounds of art. 149 (1), p. 2 of the Bulgarian Constitution. They were initiated at the request of the President of Bulgaria for assertion of the unconstitutionality of the Law for Temporary Introduction of Some Additional Requirements for the Members of the Boards of the Scientific Organizations and the Higher Certifying Commission (Official Gazette, #104 from 1992).

Constitutional case #33/1993, initiated at the request of 102 Members of Parliament from the 36th National Assembly, for the assertion of the unconstitutionality of the same Law, has been attached to the procedure for a joint consideration and resolution, by a decision of January 7, 1993.

By a decision of January 12, 1993, the requests were accepted for consideration. The same decision constituted as parties to the case: the National Assembly; the Council of Ministers; the Ministry of Education, Science and Culture; the Bulgarian Academy of Science; St. Kliment Ohridski University of Sofia; the Council of Rectors; the Union of Scientists in Bulgaria; and the Higher Certifying Commission. In pursuance of the opportunity which they were given, opinions on the requests have been expressed by the Chair of the National Assembly; the Council of Ministers; the Ministry of Education, Science and Culture; the Bulgarian Academy of Science; St. Kliment Ohridski University of Sofia; the Council of Rectors; the Union of Scientists in Bulgaria; and the Higher Certifying Commission. The following were accepted into evidence: the draft for first hearing, together with the motives of the introducers; the bill for second hearing; the opinion of the Legislative Commission, the Commission on Education and Science and the Human Rights Commission; written proposals of Members of Parliament concerning the bill; the protocols of the first and second hearings from the sessions of the Legislative Commission; the shorthand reports of first and second hearings from the plenary session of the National Assembly; and the nomenclature list of the Central Committee of the Bulgarian Communist Party of July 11, 1978.

In order to make a decision on the requests, the Constitutional Court took into consideration the following:

Equality of all citizens before the law is a basic principle of every democratic society. In art. 6 (2) of the Constitution, equality of all citizens before the law is stated as a constituting principle of civil society and the state. It was claimed that the Law for Introduction of Temporary Additional Requirements for the Members

³⁴ **Unofficial translation.**

of the Boards of the Scientific Organizations and the Higher Certifying Commission contradicts this principle and the constitutional provisions which specify it in terms of concrete rights and freedoms: namely art. 4 (2), art. 16, 38, art. 48 (3) and art. 56. This is a groundless claim.

None of the additional requirements introduced by the Law defines any of the social criteria in Art. 6 (2) as grounds for nonadmission to the boards of scientific organizations and the Higher Certifying Commission. It is a groundless claim that the requirements are aimed at the political opinion and political affiliations of these persons. Political opinions, as well as political affiliations, are irrelevant to the case. The Law is disinterested in past and present political opinions and political affiliations; it takes into consideration only the professionalism of those who participate in the realization of the national policy in science administration and development. That is why the criterion for a membership in administrative boards is the scientific commitment of the person, but not the activities which has served political or ideological party purposes.

Art. 6 (2) details the social criteria for non-restriction of rights and non-granting of privileges. Imposition of restrictions on the grounds of these criteria is a violation of the principle of equality of all citizens before the law. Professionalism is not among these criteria, and it is quite possible that professional skills are required for holding a certain position: restrictions are imposed where these skills are absent.

In this respect, the claim that the Law contradicts provisions of international agreements which impose equality and preclude all kinds of discrimination based on social criteria is unfounded. There is no violation of arts. 1, 2, 7 and 18 of the Universal Declaration of Human Rights; arts. 9 and 14 of the European Convention for Protection of Human Rights and Basic Freedoms; art. 2, art. 25-A, and art. 26 of the International Covenant of Civil and Political Rights; or art. 2 p. 2 of the International Covenant of Economic, Social and Cultural Rights. The rights protected by these international agreements are not violated by the introduction of additional requirements for the members of the administrative boards in the scientific organizations and the High Certifying Commission. To the extent that these requirements might be considered restrictions on the basis of professionalism, this kind of restriction is admissible, according to art. 4 of the International Covenant on Economic, Social and Cultural Rights, and art. 1, p. 2 of Convention #111 / 1958, on labor and professional discrimination. The creation of differences based on requirements for professionalism corresponds to the international instruments to which Bulgaria is a party, and does not violate the equality of the citizens before the law.

The claim that the Law contradicts arts. 16, 38 and 48 (3) of the Constitution is unfounded. The right to labor is guaranteed under the law, and all citizens are able to freely choose their profession and place of work. The additional requirements do not restrict the right to labor of the scientists. Their right of creative contribution and realization under equal conditions for acquiring a scientific degree, according to the principles of liberty, equality and justice, is not restricted. The chance of a scientist to become director or member of an administrative board is not a right, a choice of profession, or a choice of place of work.

The opportunity of citizens to become members of administrative boards is not treated as a right; it is not guaranteed and protected by the Constitution and Bulgarian laws. For this reason the Law for Temporary Introduction of Some Additional Requirements for the Members of the Boards of the Scientific Organizations and the Higher Certifying Commission does not violate art. 4, (2) and art. 56 of the international instruments, which Bulgaria has [signed] and which have entered into force.

The claim that the Law contradicts the provisions of art. 53, (4) of the Constitution is unfounded. According to this provision the Institutions for higher education have academic autonomy. Neither the educational process and the scientific performance, nor other related activities in the Institutions for higher education, are violated by the introduction of some additional requirements to the members of the administrative boards of the scientific organizations. Their autonomy to set the organizational structure and organs of self-administration is not violated. The Law only requires that the members of administrative boards be scientists with high professional qualities who have not deviated from scientific work, by involvement in organizational or ideological party work. The Law is also applicable to persons from the scientific communities who have combined party activity and administrative functions, while taking part in scientific councils or commissions in the administration of scientific organizations or their branches. Moreover, the combination of party and administrative power is denounced by the democratic principles of science administration. This is one of the main points of the Law, which does not contradict the Constitution.

On the basis of the above considerations, and on the grounds of art. 149 (1), p. 2 of the Constitution, the Constitutional Court:

DECIDED:

To reject the requests of the President of the Republic and 102 Members of Parliament of the 36th National Assembly for assertion the unconstitutionality of the Law for Temporary Introduction of Some Additional Requirements to the Members of the Board of Scientific Organizations and the Higher Certifying Commission.

The judges Neno Nenovski, Milena Jabinska, Luben Kornezov, Pencho Penev, and Aleksander Arabadjiev signed the decision with dissenting opinion (attached).

Chair: Assen Manov

* * *

This report is based largely on information gathered during Helsinki Watch missions to Bulgaria in June, October and November 1992, as well as June 1993. The missions were conducted by Jonathan Fanton,

Chair of Helsinki Watch, and by Holly Cartner, Counsel to Helsinki Watch. The report was written by Holly Cartner and edited by Lois Whitman.

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