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## THE DECISIONS OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF BULGARIA ON THE ELECTION AND DISMISSAL OF HEADS OF STATE INSTITUTIONS – CONSTITUTIONAL REGULATION AND CASE-LAW OF THE CONSTITUTIONAL COURT

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***Abstract:** According to article 84, item 8 of the Constitution of the Republic of Bulgaria of 1991, the National Assembly elects and dismisses the heads of the Bulgarian National Bank and of other institutions designated by law. The Constitution lists the following institutions (except for the Council of Ministers and the bodies of Parliament itself), heads or members of which are appointed by parliamentary decisions: Bulgarian National Bank, National Audit Office, Ombudsman, eleven of the members of the Supreme Judicial council, all of the members of the Inspectorate to the Supreme Judicial council and four of the judges in the Constitutional court. The author of this paper examines the constitutional regulation of the “personnel” decisions of the National Assembly and the case-law of the Constitutional court on challenged acts of Parliament in the matter, and suggests improvements of the constitutional framework.*

***Keywords:** National Assembly, Constitutional court, heads of state institutions, parliamentary decisions*

***JEL Codes:** D72, D73*

### INTRODUCTION

According to Article 84, item 8 of the current Constitution of the Republic of Bulgaria (CRB) of 1991, the National Assembly (NA) elects and dismisses the heads of the Bulgarian National Bank and of other institutions designated by law. The Constitution lists the following bodies (except for the Council of Ministers and the bodies of the National Assembly itself), heads or members of which are appointed and dismissed by parliamentary decisions: Bulgarian National Bank, the National Audit Office; the Ombudsman; eleven of the members of the Supreme Judicial Council (SJC) and the entire staff of its Inspectorate (also 11 people – chief inspector and ten inspectors), as well as four (one third) of the judges in the Constitutional Court. This paper presents the constitutional framework of the "personnel" decisions of the National Assembly (without examining their legal regulation), the case-law of the Constitutional Court on challenged parliamentary acts in the matter, and suggests improvements to the regulatory framework.

### EXPOSITION

#### **Constitutional provisions on the matter which bodies are elected (in whole or partly) by the National Assembly**

Article 84 of the Constitution includes among the main competences of the National Assembly, some of its constitutive powers. In the above-mentioned provision, it is firstly stated that the National Assembly (typical for a parliamentary republic) appoints and dismisses the Prime Minister and based on his proposal - the Council of Ministers. The Parliament also makes changes in the government (both structural and personal) at the proposal of the Prime Minister. However, this issue is not the subject of the current report; other studies are dedicated to it.

**The current publication only analyzes the competence of the National Assembly under Article 84, item 8, namely to appoint and dismiss the heads of the Bulgarian National Bank and other institutions specified by law.**

In addition to the leadership of the Bulgarian National Bank (governor and deputy governors), the Constitution provides that the personnel of several other bodies is elected by the Parliament. In fact, the number of these institutions is much larger, but the Constitution regulates only the most important authorities, whose establishment and activities are crucial for the existence of the State. The following institutions are provided for in the Constitution, where the entire leadership or part of it is elected and dismissed by Parliament (in the order of their regulation in the Constitution):

- According to Article 91, Para. 1 of the Constitution, the National Assembly elects the National Audit Office (NAO), which carries out control over the implementation of the budget. Its status, the requirements for its members, the rules for their election and dismissal are regulated by the Law on the Audit Office.

- Starting from 2006, a new body with human rights protection functions was introduced in the Constitution. According to Article 91a, the Ombudsman is elected by the National Assembly and advocates for the rights and freedoms of citizens.

- The supreme administrative and personnel body of the Judiciary in our country is the Supreme Judicial Council. The method of forming its personnel composition is specified in Article 130, para.3 of the Constitution - eleven of the members of the SJC are elected by the National Assembly with a two-thirds majority of the Members of Parliament and eleven – by magistrates.

- In 2007, an Inspectorate was established within the Supreme Judicial Council (with the new article 132a of the Constitution), consisting of a chief inspector and ten inspectors. The chief inspector is elected by the National Assembly with a two-thirds majority for a term of five years, and the 10 inspectors are elected by Parliament with the same majority, but for a term of four years.

- According to Article 147 of the Constitution, the Constitutional Court consists of 12 judges, one third of whom are elected by the National Assembly, one third are appointed by the President, and one third are elected at a general meeting of the judges in the Supreme Court of Cassation and the Supreme Administrative Court<sup>3</sup>.

- The transitional and final provisions of the Constitution establish that, until a new legislative framework is established for the Bulgarian National Television, the Bulgarian National Radio and the Bulgarian Telegraph Agency, the National Assembly shall exercise the powers that the Grand National Assembly had with respect to these national institutions. These powers included the election and dismissal of their leadership.

In the procedures before the National Assembly for election and dismissal a simple majority is most often applied, except for the election of members of the Supreme Judicial Council and its Inspectorate. The rules for nomination, selection, the requirements for the candidates, etc. are subject to legislative regulation. With the most recent amendments to the Constitution, a new provision was adopted, according to which the National Assembly “shall observe the principles of openness, transparency, publicity and justification when selecting members of bodies that are fully or partially elected by it, in order to guarantee their independence. Election decisions are adopted by a two-thirds majority of all members of Parliament, when this is provided for by law”. This text was declared unconstitutional and invalid by Decision No. 13 of 26.07.2024 of the Constitutional court (constitutional case No. 1 of 2024). The Court stated that the formation of the main constitutional bodies follows an order established solely at the constitutional level. The new provision created, according to the Court, “a significant risk to legal certainty as a dimension of the rule of law, since no legislature could bind any subsequent legislature to its legislative decisions”.

**Case-law of the Constitutional court of Bulgaria regarding the election and dismissal of heads of state institutions designated by law**

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<sup>3</sup> Qualified majority is not required for the election of constitutional judges (although there were such proposals).

The Constitutional Court has been approached numerous times with requests to declare unconstitutional decisions of the National Assembly on the election and/or dismissal of heads or members of various state institutions. In the following section, the Court's acts on such disputes will be presented chronologically.

2.1. **In the year of its establishment** (in 1991), the Constitutional Court was referred to a challenge to a decision of the National Assembly of November 6, 1991 to dismiss the Chairman of the Bulgarian National Television (BNT). The Court ruled with **Decision No. 3 of December 30, 1991** (const.case No. 17 of 1991), rejecting the request. In its reasoning the majority of judges assume that the assessment of constitutionality what the Court makes under Art. 149, para. 1, item 2 of the Constitution should be made solely on whether constitutional provisions have been violated – not other regulatory acts introducing additional requirements and procedures. Since the Temporary Statute of the Bulgarian Television and the Bulgarian Radio are not rules with constitutional force, it is irrelevant to the case and the Court should not discuss whether they have been violated. In this particular case, no constitutional requirement has been violated and, accordingly, from the point of view of constitutionality, the decision of the National Assembly is perfect.

2.2. By **Decision No. 15 of 28 September 1993** (const.case No. 17 of 1993) the Constitutional Court dismissed the request of a group of Members of Parliament seeking a declaration of unconstitutionality of the decision of the National Assembly of 30 July 1993, by which Ivo Indzhev was removed from the position of Director General of the Bulgarian Telegraph Agency (BTA) and Stefan Gospodinov was appointed to the same position. In its reasoning, the Court noted that the contested decision was adopted on the basis of Article 86 (1) and § 6 of the Transitional and Final Provisions of the Constitution. The judges held that the National Assembly had not exceeded the scope of its powers as delineated by the CRB. “Within the constitutional powers of the National Assembly is the authority to make personnel changes in the leadership of a national institution. In some cases the Constitution directly designates the institution., in others they are determined by law. Since laws are adopted by the National Assembly, .. it must also take account of the principle of separation of powers, established by the Constitution as a fundamental principle (Article 8), as well as of other constitutional principles.” It is not necessary for the National Assembly first to adopt a law granting itself a specific competence and only thereafter to exercise it, when the constitutional provision directly establishes that power. Therefore, the decision by which the National Assembly changed the head of BTA is in conformity with the Constitution. In addition, the view of the applicants that the dismissal of the Director General of BTA on the grounds that he “systematically and openly expresses in various mass media his negative attitude toward state institutions...” contravenes Article 39 (1) and Article 40 (1) of the CRB, is not based on the meaning of these provisions and fails to take into account the content of the protected rights.

2.3. By **Decision No. 13 of 8 November 1994** (const.case No. 13 of 1994) the Constitutional Court (upon requests by the Prosecutor General, a group of Members of Parliament and the President) declared unconstitutional the decision of the National Assembly of 16 September 1994 on the election of members of the Supreme Judicial Council (SJC) and on the dismissal of its previously elected members. This was the first case in which a personnel decision of the National Assembly was declared unconstitutional. The Court held firstly that the challenged parliamentary decision had broader content than that indicated in its title - it was not only a decision on the election of SJC members (as titled), but primarily a decision on the dismissal of the members elected prior to the adoption of the Judiciary Act from the quota of the National Assembly. By virtue of the contested decision, all members elected in 1992 were dismissed, although under Article 130 (4) of the Constitution they were appointed for five years which had not expired. The contested decision of the National Assembly relied on Article 16 (1) and (4) and § 11 of the newly adopted Judiciary Act. The first provision introduced a new requirement for members of the SJC—to have 5 years of specialized legal experience. This

provision however has no retroactive effect and cannot serve as a ground for terminating the mandate of the elected members of the SJC. The fact that the Constitutional Court, in a previous case, had found this provision constitutional, does not confer it retroactive effect. Moreover, when adopting the contested decision, the NA did not even consider whether the dismissed SJC members met or did not meet the new eligibility requirement, nor whether incompatibility existed. The act of the National Assembly was based mainly on § 11 of the Judiciary Act, pursuant to which SJC members are to be elected within one month of the entry into force of the new law. Although not explicitly stated, the provision envisaged termination of the activity of the existing SJC. However, by Decision No. 8 of 15 September 1994 (const.case No. 9 of 1994), § 11 of the Judiciary Act was already declared unconstitutional. The Court held that the SJC is a permanently functioning supreme body within the system of the judiciary, that the constitutional five-year term of office of its elected members is a guarantee of the independence of the SJC and a prerequisite for impartiality, and that it is impermissible for such a mandatory term of office to be infringed by a transitional provision. The National Assembly's argument that the contested parliamentary decision should prevail because it was adopted before the Constitutional Court's act on the previous case entered into force, was declared unfounded. The unconstitutionality of § 11 of the Judiciary Act does not arise from the Court's decision, but from the inconsistency of the provision with the Constitution, which the Court merely establishes by its act. The unconstitutionality of § 11 of the Judiciary Act also gives rise to the unconstitutionality of the subsequent decision of the National Assembly. Furthermore, the challenged parliamentary decision was adopted on 16 September 1994 - the day after the decision on const.case No. 9 of 1994 was officially promulgated. Such disregard for an act of the Constitutional Court is impermissible "both from a constitutional and from a socio-political perspective."

2.4. By **Decision No. 14 of 23 October 1997** (const.case No. 11 of 1997) the Constitutional Court dismissed a request by a group of Members of Parliament seeking a declaration of unconstitutionality of the decision of the National Assembly of 11 July 1997 to dismiss Milen Valkov as Director General of the Bulgarian Telegraph Agency (BTA) and to elect Panayot Denev as Director General of BTA. The Court held that there was no violation of the right to defense and that the fact that the dismissal and the election were carried out by a single decision and a single vote did not contravene the Constitution.

2.5. By **Decision No. 17 of 6 November 1997** (const.case No. 10 of 1997) the Constitutional Court found unconstitutional the decision of the National Assembly of 10 July 1997 concerning changes in the management of Bulgarian National Radio (BNR) and Bulgarian National Television (BNT). Unlike the previous cases, in which the Radio and Television Act had not yet been adopted, in this case the Act had already entered into force. Accordingly, the Constitutional Court held that from the date of the entry into force of the Radio and Television Act, the powers of the National Assembly under § 6 of the Transitional and Final Provisions of the CRB were definitively terminated. No subsequent circumstances could revive the effect of § 6 or restore the powers of the NA thereunder. Since, by the contested decision, the National Assembly exercised powers it no longer had, its act was unconstitutional. Moreover, within the meaning of the Constitution, parliamentary decisions must conform to the laws adopted by it. Such laws may be adopted, amended, supplemented, or repealed only in the manner established by the Constitution, and not through a decision of the National Assembly that contradicts a law it has adopted. Fundamental constitutional principles inherent in a state governed by the rule of law were violated.

2.6. By **Decision No. 15 of 19 December 2013** (const.case No. 19 of 2013), the Constitutional Court ruled on a request by a group of Members of Parliament seeking a declaration of unconstitutionality of the decision of the NA of 4 July 2013 on the early termination of the term of office of the Governor of the National Health Insurance Fund, on the basis of Article 19, para. 4, item 3 of the Health Insurance Act. This time, the Constitutional Court dismissed the request due to the failure to obtain the required majority. The arguments of the different groups of judges are set out separately in the reasoning of the decision (with some of

them considering the request inadmissible on the grounds of lack of jurisdiction of the Constitutional Court).

2.7. By **Decision No. 5 of 22 June 2023** (const. case No. 5 of 2023), the Constitutional Court declared unconstitutional the decision of the National Assembly of 20 January 2023 dismissing the Chair of the National Audit Office. The Court held that, together with constitutional principles and values, the grounds for termination provided for by law form the framework within which the freedom of the National Assembly to terminate the powers of the Chair of the NAO must be exercised. According to the Court, “the concept of limited discretion of anyone to whom the sovereign has entrusted the exercise of state power ... does not contradict democracy or the principle of the rule of law in a democratic society under the supremacy of law.” The Rule of law principle determines and directly affects the exercise of public authority by all state bodies, including with regard to the decisions the Parliament adopts. The assessment of whether the contested act of the National Assembly complies with the Rule of law principle cannot be limited solely to its conformity with the Constitution, but must encompass a comparison with the entire legal framework. Binding Parliament to the statutory grounds for termination of the office of the Chair of the National Audit Office guarantees the substantive aspect of the mandate as an element of the rule of law. Any act terminating powers outside the statutory grounds is equivalent to arbitrariness in the exercise of power. In the case, the Constitutional Court found that the reasoning of the decision of the National Assembly does not contain any of the statutory grounds for termination, so there was no valid legal ground for dismissing the Chair of the NAO, which constitutes a violation of the principle of the rule of law.

2.8. By **Decision No. 12 of 9 July 2024** (const.cases Nos. 3 and 4 of 2024), the Constitutional Court declared unconstitutional two decisions of the National Assembly for the election of judges to the Constitutional Court itself, adopted on 19 January 2024 - with regard to Desislava Atanasova, in the part “in place of Grozdan Nikolov Iliev for a term of 9 years,” and with regard to Borislav Belazelkov, in the part “in place of Anastas Vasilev Anastasov for a term of 9 years.” The Court held that, by determining the duration of the term of office of the constitutional judges elected on 19 January 2024, the contested decisions violated principles and mandatory constitutional provisions establishing the procedure for the constitution and renewal of the constitutional jurisdiction, as provided for in Article 147 (1) and Article 147 (2), sent.3 of the Constitution.

2.9. By **Decision No. 15 of 24 September 2024** (const. case No. 18 of 2024) the Constitutional Court declared unconstitutional the decision of the National Assembly of 17 April 2024 on the early termination of the term of office of the Governor of the National Health Insurance Fund Stanimir Mihaylov, due to a submitted resignation which, at the time of the vote, had been withdrawn. Mr. Mihaylov’s letter withdrawing his resignation was submitted after the opening of the debates on the adoption of the contested decision, but before the actual vote. In these circumstances, Parliament was required to take into account the latest expressed will of the person concerned. Until the commencement of the vote, a submitted resignation may be withdrawn, as it has not yet produced legal effects and the legal fact of termination of powers has not occurred. The Court held that, by the contested decision, the National Assembly ruled on a non-existent subject - a withdrawn declaration of will that no longer existed in the legal order. By adopting a decision to dismiss on the basis of a withdrawn resignation, the National Assembly acted without legal grounds and thus violated the principle of the rule of law proclaimed in Article 4 (1) CRB.

2.10. By **Admissibility Ruling No. 5 of 16 September 2025** (const. case No. 10 of 2025) the Constitutional Court admitted for consideration on the merits the request of a group of Members of Parliament seeking a declaration of unconstitutionality of the decision to elect the Deputy Chair of the National Audit Office Silvia Kadreva, adopted by the National Assembly on 16 May 2025, and rejected the request for a finding of incompatibility with respect to Dimitar Glavchev while holding the public office of Chair of the NAO. No decision on the merits has yet

been rendered in the case. The request with which the Court was seized, insofar as it sought a finding of incompatibility of Dimitar Glavchev while holding the public office of Chair of the NAO (in connection with his holding the office of Minister of Foreign Affairs in a caretaker government) was rejected as inadmissible, because the Court lacks competence to establish such an incompatibility. The Constitutional Court has competence to establish incompatibility with respect to Members of Parliament and constitutional judges. The competence to establish incompatibility of a person holding the public office of Chair of the National Audit Office has been conferred by the legislator on the Commission for Counteracting Corruption. By its decision of 17 March 2025, the mentioned Commission, after a review of a signal alleging incompatibility of Dimitar Glavchev as Chair of the NAO due to his holding the office of Minister of Foreign Affairs in a government in which he was Prime Minister (appointed pursuant to Article 99, para. 5 CRB), did not establish the alleged incompatibility. Acts of the Commission for Counteracting Corruption are not subject to constitutional review by the Constitutional Court.

2.11. Pending before the Constitutional Court is also **Constitutional case No. 9 of 2025** (admitted for consideration on the merits on 16 September 2025), initiated upon a request by a group of Members of Parliament seeking a declaration of unconstitutionality of the decision of the National Assembly of 9 May 2025 electing Borislav Bozhinov as Chair of the Commission for Personal Data Protection.

### **3. Other decisions of the Constitutional Court relevant to the election, dismissal and term of office of bodies elected wholly or partially by the National Assembly:**

**3.1.** With regard to the concept of “term of office,” the Constitutional Court has adopted a fundamental decision clarifying the meaning of this constitutional category - **Decision No. 13 of 15 October 2010** (const. case No. 12/2010). According to the decision, “term-based office is a fundamental principle governing the constitution and functioning of bodies of public authority, consistent with the separation of powers and the rule of law. The constitutional concept of a term of office denotes a defined period of time during which a body of public authority exercises powers provided for in the Constitution or by law. The legal regime governing the term of office of bodies of public authority is determined by constitutional and statutory norms. The early termination of a term of office established by the Constitution may be effected solely on the grounds provided for therein. Where the Constitution does not provide such grounds - on the grounds provided for by law. Amendments to the grounds for early termination of a term of office are permissible. Such amendments may be carried out by the procedure for amending the Constitution with respect to constitutionally established terms of office, and by the procedure for amending the law with respect to terms of office established by statute. The amendment must guarantee the independence of the body in the exercise of its constitutionally established powers. The early termination of the term of office of a collegiate body constitutes grounds for terminating the individual terms of office of its members. The legal consequences related to the early termination of a term of office are regulated by the amending law.” In other words, arbitrary termination of terms of office must not be allowed.

**3.2.** The Constitutional court was also addressed with the issue of the activity of the Inspectorate to the Supreme Judicial Council (ISJC) after the expiration of the term of office of its members. By **Decision No. 12 of 27 September 2022** (const.case No. 7 of 2022) the Court held that, upon the expiry of the term for which they were elected, the Chief Inspector and the Inspectors of the ISJC continue to perform their functions until new ones are elected by the National Assembly. According to the Court, it is constitutionally impermissible for the activity of the ISJC to be automatically suspended for an indefinite period due to the expiry of the term of office of its members and the failure of the National Assembly to elect a new composition of the Inspectorate ensuring its functioning in compliance with constitutional requirements. The discretionary power of Parliament is limited; the contrary undermines the democratic order under the supremacy of law, which is constitutionally established by the will of the sovereign as an

element of the fundamental structure of the CRB. Regrettably, 3 years later the members of the ISJC have not been “renewed”.

**3.3.** As a result of the inaction of the National Assembly, the election of two judges from the parliamentary quota to the Constitutional Court itself was also delayed. Upon a request by the President, the Court ruled on the term of office of future members elected at a later time than the constitutionally required renewal. By **Decision No. 1 of 11 January 2024** (const. case No. 17 of 2023) the Court held that a constitutional judge elected or appointed after the renewal provided for in Article 147 (2), sentence 3 of the Constitution, exercises powers only for the remaining part of the term, calculated from the constitutionally due moment for the renewal of the Court’s composition. Notwithstanding this, the National Assembly elected D. Atanasova and B. Belazelkov on 19 January 2024 for a period of nine years (one day before the entry into force of the Constitutional Court Act), which gave rise to the above-mentioned case concerning their election<sup>4</sup>.

## CONCLUSION

The competence of the National Assembly to elect and dismiss heads of state institutions, as well as members of collective bodies of state power specified in the Constitution, is not typical for parliaments and is more appropriate for an administrative authority. Therefore, this competence of the NA should be exercised in a balanced manner, respecting the rights of the persons concerned, in particular the right to defense, the right to opinion, political pluralism and the rights of the opposition. First and foremost, however, when exercising its constitutional powers, the National Assembly should comply with the imperative constitutional provisions and the applicable legal framework. Unfortunately, in the last few years, there have been signs of parliamentary voluntarism, unfounded and arbitrary amendments of the requirements for high State positions, as well as corruption of the procedures for election. It is particularly important in a true parliamentary democracy to balance the opposing interests in parliament in a way to ensure responsible, competent and sustainable governance in each of the state-regulated spheres. Therefore, changes should be discussed regarding the required majorities for election (it is evident how the required 2/3 majority for the election of members of the Supreme Judicial Council and the Inspectorate to it led to an unimagined situation – the inspectors started a 3<sup>rd</sup> mandate, inadmissible according to the CRB), as well as to specify (even by limiting) the scope of this constitutional authority.

Let me end my paper with the reasoning of three of the constitutional judges (Boris Velchev, Dimitar Tokushev and Stefka Stoeva) on constitutional case No. 19/2013 – "It cannot be argued that every early termination of a mandate is necessarily an expression of political arbitrariness. This is a constitutionally established power of the National Assembly and it is completely normal for it to be exercised in a state governed by the rule of law, as long as it is carried out in compliance with the Constitution and the laws, and not just in their formal observance. A practice in which a majority legislatively creates artificial grounds for early termination of a mandate, solely to ensure compliance of a political decision with the law, cannot be a part of the basis of a State governed by law. Therefore, the freedom of the National Assembly

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<sup>4</sup> Here could also be presented two other decisions of the Constitutional Court related to the term of office of members of the Supreme Judicial Council and of the Constitutional court elected at the place of another member whose term was terminated early. According to **Decision No. 16 of 19 October 1999** (const.case No. 10/1999) the terms of office of all elected members of the SJC must expire simultaneously. If the term of any member is terminated early, the newly elected member completes the term of the previous SJC member and may not be immediately re-elected to the composition of the next SJC, as this would violate the constitutional prohibition against serving continuously for more than five years. According to **Decision No. 8 of 21 September 2000** (const. case No. 9 of 2000) in the event of early termination of the term of office of a judge of the Constitutional Court due to the judge’s death, another judge from the same quota shall be elected/appointed in his/her place for a term lasting until the end of the deceased judge’s term”.

to prematurely terminate the mandate of a body under Article 84, item 8 of the Constitution must be limited first and foremost by the principles of the Constitution, and only then by the law.”

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