

November 6, 2019

THE MAJORITY OF MAGISTRATES SUPPORTS CONSTITUTIONAL AMENDMENTS

In the summer of 2019, on behalf of the Bulgarian Institute for Legal Initiatives, Global Metrics Ltd. carried out a survey titled *Attitudes of Magistrates towards the Establishment of a Mechanism for Prosecuting and Disciplining of the Prosecutor General, the President of the SCC and the President of the SAC*. 612 magistrates from all around the country took part in the survey.

The main purpose of the survey was to test the attitudes of judges and prosecutors about a topic, which is one of the corner stones of the Bulgarian judicial reform. Since the decision of the ECHR on the so-called “Kolevi” case, Bulgaria fails to establish an effective accountability mechanism for the Prosecutor General, thus the country has been criticized on numerous occasions by the EU institutions monitoring the execution of judgements of the ECHR and in some of the [CVM reports](#). On June 14, 2019, the Minister of Justice announced a draft law for changes and amendments in the Criminal Procedure Code (incorporating amendments in the Judicial System Act), introducing such a mechanism for the so-called “three big” in the Bulgarian judiciary.

The survey therefore explores three main issues:

- 1. Where should such changes be provided and if they should be relevant to the Prosecutor General as well as to the Presidents of the two Supreme courts?**
- 2. Who can prosecute and indict the Prosecutor General?**
- 3. Is there a necessity for changes in the Constitution, more precisely in art. 126, para. 2, which arranges some specific functions of the Prosecutor General?**

The responses of the magistrates clearly show how divided the professional society is. With regard to the placement of the amendments in question, most of the judges consider either the Constitution (43.2%) or the Judicial System Act (42%) as the appropriate piece of legislation for that purpose. The prosecutors on the other hand are in support of changes only in the Judicial System Act (36.4%) and only 16.4% favour amendment of the Constitution. About 25.5% of the prosecutors believe that such mechanism is not needed at all in comparison to only 4.5% of the judges.

Related to this question is also the one about the need for such mechanism for the Presidents of the two Supreme courts in Bulgaria. **As it is obvious from the graphic (See Fig. 1) that both prosecutors (49.1%) and judges (54.5%) consider the currently existing legal options as satisfactory for the purposes of temporary removal from office and prosecuting of the two justices.** It is to be noticed though, that 41.8% of the prosecutors believe that there is a need for a new mechanism for the Presidents of the two Supreme Courts.

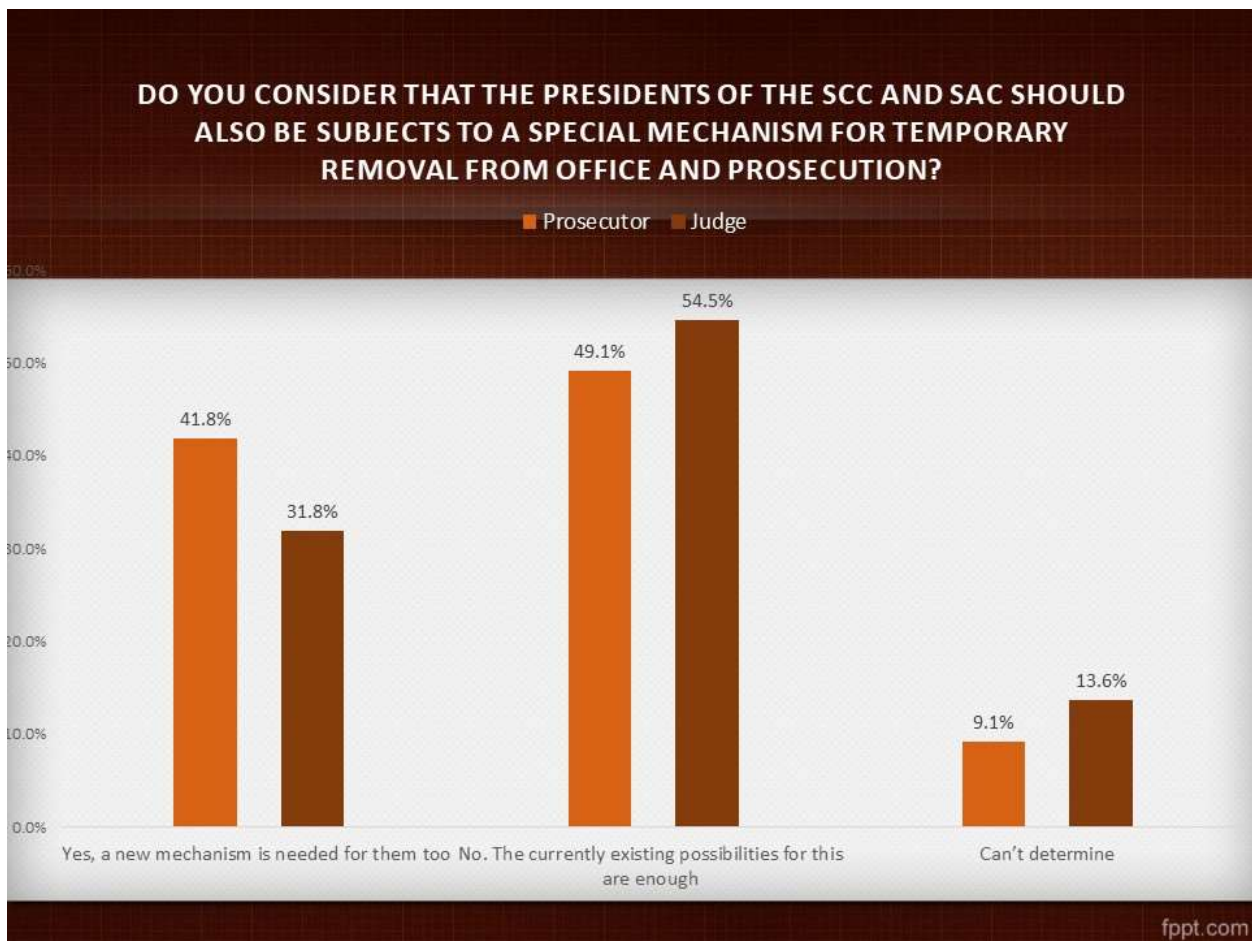


Figure 1

Another interesting outcome from the survey is the answer to the question about who can prosecute and indict the Prosecutor General. Looking at the graphic (See Fig. 2) there is no clear preference and judges and prosecutors are united in their insecurity as to which institution could be best appropriate to do this. However, a Commission comprised of prosecutors from the Supreme Prosecution Office of Cassation seems like the option most appealing to the prosecutors as 40% of them support it. This is also the only answer which presents a collective type of body charged with such specific and sensitive task. It can be presupposed that the magistrates might be willing to avoid a single person to be vested with such broad powers.

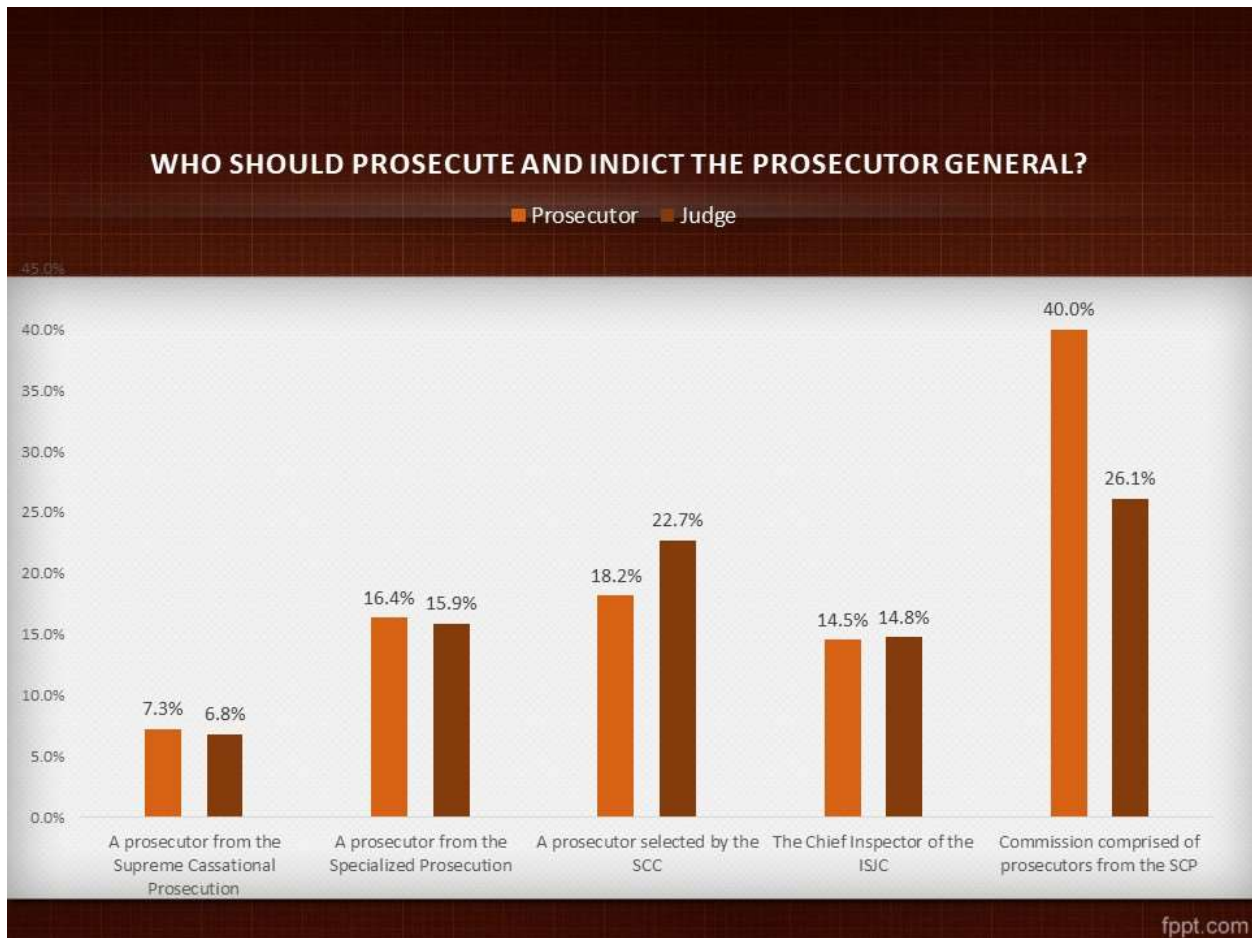


Figure 2

The survey puts an accent on the Constitution by asking about the need to change art. 126, para. 2 according to which: “[t]he Prosecutor General shall oversee the legality and provide methodological guidance to all other prosecutors.” Again, the answers show the division between judges and prosecutors, however, it is to be interpreted that both consider such changes necessary – 67% of the judges and 54.5% of the prosecutors are in favour (See Fig. 3), while 40% of the prosecutors do not support such changes:

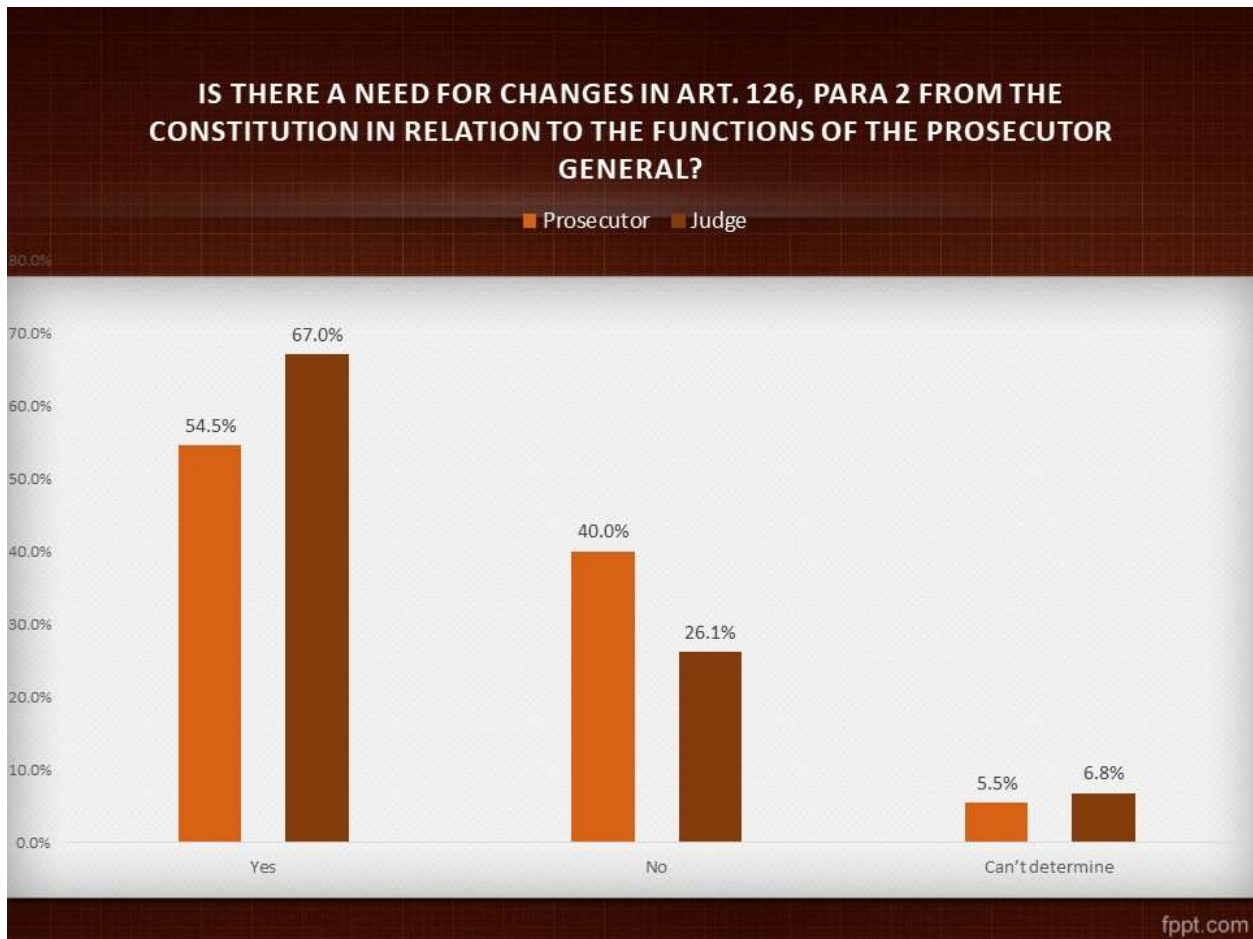


Figure 3

The survey shows that the need for a broader discussion among the magistrates on this sensitive topic is high. Such discussion was not carried out, and this is obvious from the hesitant answers to some of the questions and the differences in the answers of judges and prosecutors. The draft law presented by the Minister of Justice earlier this year was controversial and needed additional explanation and clarification. The answer to the question about changes in the Constitution provides room for interpretation but clearly shows that the need for reconsidering the position and functions of the Prosecutor General is ripe.

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