

## PROBLEMS OF INVESTIGATION IN BULGARIA

*Mihail Genov*<sup>66</sup>

When putting forward the issue of one-sided reform in the investigation, the question should better be put forward as follows: Isn't it better to wait for France and Italy to abandon the figure of the investigating judge, so that a common model could be followed? The reason such a structure exists in these countries is the conclusion made more than two centuries ago that the police are not able to handle the complexity of all cases, i.e. the police may solve many cases, but not all.

In Central Europe, for example in Germany and Italy, there are investigating prosecutors, who also take on the most difficult cases. This does not mean that the police are unreliable. The prosecutor in the countries which recently introduced reforms is rather a supervising prosecutor, i.e. a prosecutor who provides guidelines, but does not have the skills to personally conduct investigation actions on a high professional level.

What is the Bulgarian investigator? This figure fills in a certain niche as it combines three capacities.

In the **first** place, he is a detective, unlike the Spanish, the Dutch, the Belgian, the Swiss and the French investigating judge. He can work on the spot, elaborate records of inspections on site, and interrogate witnesses – activities that the magistrates in the said countries do not perform.

**Second**, he is an accuser. The investigator is the first magistrate to bring up indictments. It is incorrect to believe the prosecutor is the first to bring up indictments in Bulgaria. The prosecutor reviews the materials of the investigator and presents the bill of indictment, which is indeed a form of duplication and waste of energy. The first legal qualification, however, is made by the Bulgarian investigator.

**Third**, the Bulgarian investigator has access to materials and is familiar with the special intelligence means, i.e. he has a competence which is unthinkable for an investigating judge or an American attorney. He has sufficient professional skills and sufficient powers to handle the case assigned to him, i.e. to find out the truth about the case. This is particularly important because all three instances and all three levels of the prosecution may become absolutely unnecessary, if they do not have at their disposal the objective truth, revealed due to the professionalism of the investigator.

In all the talk about reform, there is no trace of self-criticism, criticism or discomfort about the imperfections of performance. The findings that there are problems in criminal justice are actually true. However, they are the result of many factors, the main being the institutional ones.

**First**, this is the squandering of resources. All systems have investigating magistrates (judges). In Germany, for example, there is such a magistrate who

<sup>66</sup> Mr. Mihail Genov is investigator at the National Investigation Service. He graduated from the Law Faculty of Sofia University *St. Kliment Ohridski* and has worked as investigator at the District Investigation Service of Vratsa, the General Investigation Directorate and the National Investigation Service. Mr. Genov is member of the Chamber of Investigators in Bulgaria.

monitors the preliminary proceedings. The Bulgarian model has borrowed a lot from the German practice. Our judges, however, have to issue detention warrants first and then hear the case upon its merits. This should not be done by one and the same judge, but in a small town with one judge such an absurd problem can occur quite easily.

**Second**, the amateur-judges, because they are amateurs, have no idea of investigation, have never conducted any investigation and will never gain experience, are hindering the investigation. It would be much better if there is an investigating judge who, if without experience initially, in a year, two or three would become an extraordinary good “professional” and would be able to understand all 15 measures that restrict the rights of citizens and whether there are sufficient reasons to apply them or not. The investigators need an investigating judge and the lack of such judge is hindering the investigation.

In the city of Sofia there are two detention buildings. This results in squandering of resources, e.g. gas, human effort, etc., to take the arrested persons to the courtroom. Why not have in these two places two judges on duty so the detained person can be brought from one corridor to the other and the issue resolved quickly? Such practice exists, for example, at the American-Mexican border. There the person detained may even remain in the cell and the judge makes the interrogation via video conference connection.

The lack of double subordination of the police comes next. All civilized countries with a two-tier investigation procedure (the police and some more specialized body), apply the principle of double subordination of the police. The police is subordinate to its own head as well as to the respective magistrates. This principle is not applied in Bulgaria. A question arises: for whom do the police work? It turns out that the police work basically for themselves, and the investigator has no idea whether its performance is good or not, and has no access to whatever the police work on.

On the other hand, there are three hypotheses of huge practical value, where the lack of such double subordination prevents seeking liability from persons against whom strong evidence has been collected.

The first hypothesis concerns an indicted person who wants lenience. He shall be tried in court, but he is willing to tell about other participants. This information does not need legalization; this is not information from a police informer. The indicted person signs the information asserting that he is telling the truth and is willing to cooperate for verification, e.g. in what office and on which computer fake invoices have been printed, where the drugs storehouse is, where the print shop for counterfeit banknotes is, etc. There is no mechanism by which the Bulgarian investigator could oblige the police to provide certain information. He may ask for such information and the police will decide whether to respond to the request or not. Sometimes the response to a request for information is delayed for six months.

In the second hypothesis there is a prisoner who wants reduction of his sentence. Again, there is no mechanism by which his recollections could become evidence, i.e. the magistrates cannot obligate the police.

The third case is immunity, which is wide-spread in America, i.e. an offender who is willing to tell about more serious crimes in return for guarantee that the prosecution would not indict him. Of course, he is taking a serious risk. In Bulgaria, due to this peculiarity a lot of data is lost.

During a meeting with French magistrates, when asked what hindered most their work, all Bulgarian representatives unanimously pointed out the lack of evidential force of the materials from the preliminary proceedings. Thus, after the interrogation of a witness by the appropriate body, no decisions can be taken on the grounds of his testimony. He is called for a second time, sometimes for a third time, and even more. This is a problem which substantially delays the process, and there is a saying that deferred justice is actually waiver of justice.

Then come the three instances (including appeal and cassation) which, however, are quite different from the American concept for these methods of appeal. The American appeal is hard to access, while cassation is almost inaccessible. This ensures stability of the acts of the court. In Bulgaria four years may pass before an act of the court comes into force. This creates tension in society.

In Bulgaria there is no *ad hoc* indictor, *ad hoc* investigating body, or *ad hoc* judge. For example, a judge who has worked for 30 – 35 years wants to take on cases in a court district with staff deficit. Why not allow this judge, who is an established professional, to pass judgment in some form as a first instance? This could also be very serious waste of human resources, because a junior judge would need 10 years to attain such qualification.

There are no institutional mechanisms to guarantee the responsibility of magistrates for sloppy performance. There are magistrates who work negligently and superficially. For example, there are prosecutors who do not read the materials on the case, who would write a ruling not taking into consideration the relevant volume and page of the court files etc. Should there be inspections at the end of the year, the magistrates would be more devoted to their profession and, if they don't have the calling, they would develop one in order to stay. The institute of inspection is familiar in Germany. This is a verification of the correctness of the court acts for the purpose of attestation of the respective magistrate, rather than for the purpose of appeal and questioning the force and effect of the act.

The lack of internal hierarchy and teamwork in the bodies of investigation falls within the same group of factors. In the American system there are instances where attorneys ( i.e. prosecutors) work in teams of three. In Bulgaria a young investigator is as independent and equal as an investigator with 15 years length of service.

What is indeed a young magistrate? He has a diploma, he has passed through competitions and he is entitled to be what? Just a beginner. Experience in this profession is gained slowly and, if that person works in a team with a more experienced magistrate, he would be supported, trained and supervised against corruption, he would master easily the know-how of this profession. The lack of teams and the lack of inspections generally hinder the work of magistrates.

In conclusion, when efficiency is the target, figures verified through the experience of another system for a long period of time should be used. We

must not experiment with something new and unfamiliar, but take something operational in another country, and with considerable results. No gaps and vacuum should be produced in the legal provisions, although that may not be the decisive reason and could even be the third or fourth reason in order, but could block the optimal results that might have been achieved.