

THE REFORM DEMANDS QUALITY LEGISLATION AND QUALITY STAFF

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Bulgaria is not more dangerous than other European countries and should anything happen to a foreign national in Bulgaria, he or she shall obtain justice following a preliminary investigation.

What gives me grounds to think so? It is the figures. In a recent TV broadcast the Deputy Minister of Foreign Affairs said that currently about 2 million Bulgarian nationals live abroad and there are some 500 Bulgarian nationals in foreign prisons. But if some re-calculations are made, it would be established that Bulgaria is actually not exporting crime. Even if there were not 2 million, but 1.5 million Bulgarian nationals abroad, that means there are some 33 prisoners per 100,000 persons. These prisoners have been placed where they are not by Bulgarian jurisprudence, but by a foreign jurisprudence. In Bulgaria at present there are about 9,000 prisoners (i.e. sentenced persons, not arrested) considering the population of nearly 8 million. I don't have data for all European countries, but according to Spanish colleagues in Spain there are some 50,000 prisoners and a population of less than 50 million. If a re-calculation is made it will confirm again that Bulgaria does not compare so badly.

The famous writer Anatole France said, "I am not afraid of bad laws, when I am going to be tried by good judges". If this is true, and I believe it is, the opposite is also true – good laws may not be applied by bad people. This means that the reform should aim in the first place and above all at selecting decent staff. This task is not too hard, because in the system of investigation, regardless of its placement, work some 1,000 persons. If the government manages to select 1,000 reputable, well-trained, loyal and hard-working citizens, and keep up that level, things would not look so bad in the investigation.

I cannot accept, although I would have to, arguments such as – our friends said this should be done so, the European Union wants this to be done so, NATO said this should be done so: that means it is true. This kind of talk reminds me of the near past, because I have been working as investigator since 1982, when some questions – why do we do so in Bulgaria – received the answer: because they do so in the Soviet Union, which means it is true. The reform should aim, on the one hand, to produce legislation of good quality, and on the other hand, to produce and appoint persons of good quality who shall apply the legislation, and in the case of judges – shall administer justice as well. The main parameters, which should be subject to research and analysis before proceeding with a reform, are the following:

- The number of criminally responsible persons (mostly male, because crimes in Bulgaria, regretfully, are committed mostly by men);
- Committed and registered crimes per 100,000 criminally responsible persons;

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- Persons involved in combating crime and punishing (investigators, judges, prosecutors, police officers, officials of the Ministry of Finance involved in preliminary investigation, auxiliary staff, etc.);
- Funds spent for detection and punishment of each crime as a portion of the gross domestic product, and the period of time from the registration of a crime to its punishment.

When these parameters are correctly calculated and compared to similar parameters in comparable countries, e.g. from the European Union, only then it would be possible to assess whether the Bulgarian system operates better or worse and only then it would be possible to identify the weaknesses. Otherwise the finding that Bulgarian pre-trial proceedings are slow could be true, but it is not supported and proven by any figures.

The other thesis is that there is no pressure on behalf of the European Union, but we are rather running after the chariot of the stronger one, which is quite a tiring exercise. At the same time, that running does not necessarily mean moving in the right direction, because the stronger may also get in the wrong direction. Of course, Bulgarian people want to have better counteraction to crime, better administration of justice, better law enforcement, and the people deserve it, because after all it is the people who pay the salaries of investigators, judges and prosecutors.

And yet, it had to be explained to the Bulgarian people that in Bulgaria there is growth in the rates of certain types of crimes. The number of rapes in this country is approximately the same as in 1989, and even lower, because the population is getting older. The number of murders is approximately the same, for nearly 20 years there are 300 murders per year (except for traffic accidents, where the situation is tragic) and of these 300, 320 or 330 murders some 30, 40 up to 50 are contract killings. About 1,200 persons die every year in traffic accidents. If we manage to reduce the number of the mafia murders by 10% per year, that would mean 3 persons saved, whether alleged or real mobsters. If we manage to reduce by 10% the traffic accidents with fatal outcome, that would be 100 – 120 persons. This merely comes to prove once again that where statistics is used it may present a true picture only if the figures have been properly selected.

Therefore, I would like to appeal to the politicians (I respect them very much and I do not share the opinion of Larochefoucauld, who said that politics is food for pigs) before proceeding with any reform, to make efforts and to collect, read and analyze the statistical data. This would not take much time or money.

For example, there is horrendous growth in tax crimes. Before 1989 there were no tax crimes, merely because there was no private property. I cannot accept the thesis, shared by Greek colleagues, that before 1989 in Greece there was not a single Bulgarian in prison, while there are 100 now, i.e. a 100-fold increase. Every year some 200,000 Bulgarian nationals visit and work in the Republic of Greece. Bulgaria cannot export Nobel laureates only.

As for corruption, it has been mentioned as early as at the time of the historian Procopius, in his book *The Secret History*. There he describes the time of Justinian, who was allegedly a great legislator. In the overt history he praises him, but

in the secret history he says – we are fed up with corruption. So the theme of corruption was present even at that time.

There are four weak points, four critical points, where an investigator comes across corruption. The **first** point is the immediate work of the investigator on the subject of investigation. It is related to contact with people, some of whom are interested in exerting corruption pressure. There are two dependencies here: cases of corruption are in straight proportion to the number of persons exerting corruption pressure, i.e. they are willing to give money or something else, and somehow in inverse proportion to the number of investigators not willing to accept the bribe. Even if there are 5 million persons willing to offer a bribe to investigators, if there is not a single investigator willing to take it, there would be no corruption case. There would be corruption pressure, but no corruption case. Therefore, the selection of staff is most important. It is a known fact that competitions are a good thing, but a competition may not offer an answer whether a person is reputable when taking a job. A person may be a brilliant lawyer, but then he may become a brilliant practitioner in corruption, and that would be horrible. For the time being, I have no answer to this question. A good jurist, a good expert in law, may not always be a reputable person. There should be some additional control, additional accountability. Personally, I am ready to take a lie-detector test every year.

The **second** point of corruption pressure is relevant to cases of construction works in our system (e.g. construction of buildings). This refers to a small number of people, mostly in managerial positions. This activity should be taken out of the judicial system, but the Constitutional Court decided otherwise. Let other institutions deal with the construction of buildings, repairs of buildings, etc. This would not enhance the independence of the judiciary in any way. I am not referring to any similarities to what is happening in the Court of Justice in Sofia at present, but it would be far better if the refurbishment of the Court of Justice was done by a body outside the system. The same applies to the buildings of the investigation, of the prosecution, etc. To say the least, the people would not be in doubt whether there has been any tender or not and whether there has been corruption or not, etc.

The **third** type of corruption occurs at and in connection with the appointment of magistrates. I am an ardent supporter of the competitions and since I was on the examination boards, I should say that the competition for investigators did not attract so many persons as that for judges. More people want to work in the court, unlike the years before 1989, when no one wanted to take a job as a judge. Eight persons competed for one position of junior investigator, and they were very well trained lawyers. It is another matter whether those who received high grades would later on become good judges because excellence in law does not suffice for being a good judge.

The **fourth** point is the point of interaction between the investigator and the persons, who generally have no interest in the process. These are experts, translators and interpreters, etc., who are paid in the very course of the investigation. Regretfully, there are cases where investigators share money with persons to whom they pay. But there is a cure for that as well – probably guilds of experts should be established, with members who are not just anybody, but highly qualified and with the required knowledge. They shall be selected, nominated and controlled by the managing bodies of these guilds. At present,

however, the investigators are paying BGN 4,000 for 400 international bills of lading (CMR), which is approximately BGN 10 per page, while the text of these bills of lading is the same. These are the four weak points of the investigation.

In conclusion, the investigators do not influence the professional careers of the judges in the Supreme Judicial Council. The Supreme Judicial Council has 25 members, where two of them have been elected from the quota of the investigators. The opposite is quite true, namely the judges may affect the professional career of the investigators, because there are many more judges in the Supreme Judicial Council. The judges are eight, six elected and two by right. In reality there is no way the two investigators could influence that much the careers of the judges. The opposite is quite true, but the investigators do not fear that because it is assumed that the members of the Supreme Judicial Council are the best. Meanwhile, in spite of all, within the Supreme Judicial Council, which comprises both investigators and prosecutors, some problems occurring between the guilds are solved as well. A prosecutor is familiar with the work of the judge, a judge is familiar with the work of the prosecutor, a prosecutor is familiar with the work of an investigator and an investigator is familiar with the work of the prosecutor, therefore such control could be exercised. For example, the performance of a judge on civil cases would not improve if the investigation and the prosecution are not in the same system, and the data indicates that 2/3 of the total number of cases are civil cases.

I absolutely disagree that the executive cannot influence the counteraction of crime. At least 90% of all investigations are conducted in the system of the Ministry of Interior. The Ministry of Interior possesses all the special intelligence means and the resources for their use. And the Ministry of the Interior is in the executive.