

## JUDICIAL REFORM IN BULGARIA – DOMESTIC AND FOREIGN CHALLENGES

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A quick review of the development of criminal investigation in Bulgaria reveals that before World War II this country had a typical European system of criminal proceedings – the prosecution offices were at the courts and there were investigating judges typical for such continental system. After the 1944 communist takeover changes have been gradually introduced in the structure of the administration of justice as well. Thus, in the period after 1944 the prosecution office was a separate institution governed by the Law on the Prosecution Office, while the investigators worked in principle with the Ministry of Interior, only a few of them working with the prosecution office. In 1979 a uniform investigation structure was established with the Ministry of Interior. Bulgarian investigators have always been jurists, with higher education in law. The Bulgarian model resembled very much the Soviet one.

After the democratic changes with the purpose of discharging any party influence, the constitutional legislators decided to establish an independent judiciary, comprising the investigation service and the prosecution office. At the time when the decision was made most of the people working in the judicial system were very satisfied with it. Even the depolitization of the courts started with signature campaign initiated by the youngest judges at the Sofia District Court, aimed at ensuring independence of the court.

There are people who believe that the current structure of the judicial system has been created with malicious intent and deliberately by the Grand National Assembly, so that an inoperational judiciary should be established, which would not be able to prosecute the crimes of the former communist regime. This is an opinion shared by many people, but a substantial part of my colleagues, me included, do not agree with it – on the contrary, we believe the motives of the constitutional legislators were noble and intended to create exactly a system of investigation and administration of justice which would not yield to political influence. It is not by chance that the Law on the Judiciary forbids judges, prosecutors and investigators to be members of any party.

Along with the democratic changes in the country, the crime rates also increased. The criminologists know that in an authoritarian state the crime rates are far lower, while in a democracy there is an initial increase of conventional crime. With the process of privatization and development of market economy an increase of economic crime is also observed. We are self-critical enough to be aware of and to admit aloud that the Bulgarian judicial system did not prove sufficiently adequate to the challenges of growing crime.

At the same time reforms have been continuously made in the country – one reform on top of another. The criminal laws were repeatedly amended (the Criminal Code and the Criminal Procedure Code), on the one hand – in order to comply with the European Convention on Human Rights and Fundamental

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Freedoms, and on the other hand – in view of the need to speed up the investigation and enhance its performance.

In 2000 a new step was taken. Police investigation was introduced, because the investigation offices were so overwhelmed with cases that their work grinded to a halt. The police started to investigate and for a few years now we have had the chance to assess their results. What we see is that on the one hand the police, being a militarized structure, operate faster. On the other hand, however, the evidence collected by the police are quite often collected in violation of the procedural law and when such a case is put to trial the court reads out non-guilty verdicts due to invalid evidence. The idea of transfer of the prosecution office to the executive is the subject of public discussion namely in view of the problems of criminal justice. The reason is that at present the political class, the people in power, bear no responsibility – they may not be held liable for failure to handle the problems of crime, because the judicial system is outside of the political system. On the one hand, this is true, on the other hand, however, this is a very good excuse for the government, when they fail to handle this problem of society and make excuses at the expense of the independent judicial system.

At present Bulgaria is on the eve of elections, some of the parties will include the reform in criminal investigation in their programs and the idea of transferring the prosecution office to the executive will be launched as well.

In December 2004 the Bulgarian Judges Association conducted a survey of some 1,000 judges on their opinion about the place of the prosecution office. About 85% of those polled believed the prosecution office should not be within the judiciary, but more than half of those 85% believed it should not be in the executive either, and that it should rather be some independent structure. In this sense the view of the Bulgarian judges is closest to the Slovenian model. The major consideration against placing the prosecution office within the executive is that in such a way a misbalance of powers may occur.

Of course, it is up to the constitutional legislators to decide whether to carry out reforms or not. In 2003 the Constitutional Court issued a decision proclaiming that the transfer of individual components of the judicial system is a change in the form of government and that could only be done by a Grand National Assembly. On the one hand, this is an obstacle to radical reforms; on the other hand, it is another good excuse for the politicians to say they are powerless to handle the problems of criminal prosecution in Bulgaria.

The other major problem before the judiciary in Bulgaria is the counteraction to corruption. Corruption exists in every state; there is corruption in Bulgaria as well. Corruption is everywhere. The point is whether the levels of corruption are so high as to allow corruption to govern the state. It is most frightening to have corruption in the judicial system, because this is the system designated to combat crime and corruption in particular.

The principle of competing for a job in the judicial system was introduced as an anti-corruption measure. Throughout 1993 – 1994 a massive outflow of judges, prosecutors and investigators was observed. Most of them preferred to become attorneys-at-law, since this profession was more attractive in financial terms. In this period the judicial system was literally bled dry. At that time competitions were not even discussed, because there were no applicants. Later on, however,

the newly formed law schools started to produce more and more jurists, the Bar was overfilled and the reverse process began – there were many who wanted to work in the judicial system. In 2003 competitions were introduced for all applicants for positions in the judiciary. This legislative decision was welcomed by the magistrates because there is no better mechanism than the competition, even when there are objections against some particular competitions, and that is the first step to staffing the system with good professionals.

Regretfully, in 2004 the legislators took a step back and the competitions remained only applicable to junior judges, junior prosecutors and junior investigators. This allowed the Supreme Judicial Council and the bodies entitled to proposing appointments to select people without clear criteria and without preliminary verification of their professional qualifications. The members of the judiciary including the Judges Association responded with indignation to that, but so far there are no results.

In view of countering corruption, the Supreme Judicial Council, which comprises investigators, prosecutors, judges, as well as university professors and several attorneys-at-law, established an anti-corruption commission intended to handle investigation of cases of corruption in the judicial system. This was intended to mean administrative and not criminal investigation. The commission has no powers to instigate preliminary proceedings or to indict magistrates. The commission started to work quite seriously in connection with a rather scandalous case, involving accusations of corruption. However, what followed was that upon proposal by the prosecution office (the Prosecutor General and his representatives in the council) amendments were introduced to the Internal Rules of the Supreme Judicial Council and the powers of the commission to counteract corruption were seriously restricted. This means that within the Bulgarian judicial system there are problems at organizational level, at legislative level as well as at the level of the administrative body of the judicial system.

I cannot help but express my concern about how Bulgaria will become a part of the European area of freedom, security and justice and how Bulgaria will send its representative to Eurojust; a representative who will be a prosecutor and who will have the power to bind the national prosecution office with the decisions of Eurojust. I hope that after the elections the newly elected members of parliament would be able to implement a radical reform, because the requirements of the European Commission to Bulgaria are rather strict, including the requirement for yet another set of amendments to the Criminal Procedure Code.

The Bulgarian Minister of Justice promised in public that the draft of the new Criminal Procedure Code will be presented to the parliament by the end of May 2005, with the idea to be enacted by the end of the year.<sup>61</sup> However, Bulgarian judges are not familiar with the ideas of the new Code. So far it has not been discussed with the professional guilds in the way other amendments were discussed, and therefore we cannot offer a particular opinion. The only concern that we could share is that in the long run the fast changes could end in new problems.

Finally, each state has its own unique system. The point is not where exactly the investigation and the prosecution should be placed, who will have the power

<sup>61</sup> The new Criminal Procedure Code was adopted on October 14, 2005 (promulgated in State Gazette No. 86 of October 28, 2005) and enters into force on April 29, 2006.

to investigate and what the competent bodies should be. The important thing is that the fight against crime should be efficient. Or, as a Bulgarian proverb says, "It's not important whether a cat is black or white, what is important is the cat to catch the mice".