The Reform in Criminal Justice in Bulgaria – the Hard to Find Balance of Authority and Responsibility

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The Bulgarian Constitution regulates to a large extent the structure of the institutions with authority in respect of criminal justice, establishing three separate institutions with certain powers in the process of investigation, raising charges and presenting them in court. These are the police, the investigation service and the prosecution office. The Bulgarian judicial system has the unique peculiarity where the investigation, the prosecution, and the courts are subordinate to one managing body, the Supreme Judicial Council. This structure, according to the Bulgarian Constitution and the legislation, analyzed below, was established in the early 1990s (in 1991) with the idea to attain in this way independent and unbiased administration of justice, thus setting an absolute wall between the bodies responsible for the administration of justice and the other, politically colored, bodies of state power – the executive branch and the parliament.

The result was the establishment of several autonomous bureaucracies, which are to a great extent self-governing, and that is one of the major problems that need to be solved. There are many and different views as to what extent the autonomous nature of these different bureaucracies forms the basis of the problems and the need of reform, but all presentations on this subject inevitably consider this issue.

Throughout the years many changes have been made to the Criminal Procedure Code, which to a large extent were led by the desire to guarantee the basic rights of suspects and defendants through providing enhanced competitiveness to the trial, changing the earlier tradition to set the burden of the criminal trial on the preliminary proceedings.

Other elements of the changes involved restriction of the authority of the prosecution in undertaking measures restricting fundamental rights. Some of these changes were made in consequence of decisions of the European Court of Human Rights. A number of procedural requirements deadlines and judicial control were introduced to achieve higher efficiency of the criminal proceedings.

The paradox is that in some of the cases the obtained results were quite the opposite, which again raises the question of where the problems are now and why the reform of the criminal proceedings is such an important issue, from the point of view both of the accession to the European Union and of the domestic political agenda.

The major complaints and comments of the observers are that the system works reasonably well concerning conventional crime, but fails in the face of more complex crime (organized crime, financial crime), i.e. the type of crime where serious interests have been affected. There is serious resistance by

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the investigated and defendants and, according to the general observations, the success of the system in investigating and prosecuting such crime is not particularly visible.

Some of the remarks made refer to the lack of good coordination between the institutions – the police force, the Ministry of Finance, in the cases where it has authority in respect of the investigation, the investigation service and above all – the prosecution office. The rather extended duration of proceedings is another item of criticism when concerning the system, especially levelled at more complicated cases. Corruption is also one of the factors quite frequently mentioned as a serious problem of the system. In a sense, this is an integral aspect of the lack of possibility to handle in particular such serious and severe crimes.

The system presented a set of paradoxes.

In the first place, as mentioned before, the Constitution and the legislation provided for the Bulgarian criminal justice system and the structure of the institutions therein to be completely independent of the political powers. Under such circumstances one could expect and there were expectations for higher impartiality and better depolitization. The paradox is that in reality the system is highly politicized.

There were expectations for bureaucratic automation of work, for bureaucratic anonymity. Instead, we have extreme publicity and continuous disputes, conflicts and exchange of accusations between the institutions in public. The established situation could never be particularly favorable for effective work.

The second paradox is that the politicians keep saying how concerned they are about the fight against crime and how important it is to make this fight efficient. At the same time the undertaken reforms are targeted mostly at restricting the authority of the leading institution in the criminal proceedings – the prosecution office. The most recent example of that is where by special legislation, governing the forfeiture of criminal assets, typical functions of the prosecutor were granted to a special committee, elected in a complicated manner by the parliament, which in the opinion of most professionals has no particular chances of successful functioning.

The last paradox – a system intended to be autonomous and completely separated from the executive and legislative branches, a self-governing system created as such particularly in order to be independent, appears to have serious problems with its dependence on private and other interests, including political ones. Corruption is again a part of this problem. Here comes the question – what was the parliament doing all this time with the reform?

Another paradox is that in Bulgaria the system is being continuously reformed, while it continuously reiterates the same feeling of lack of efficiency and effectiveness. The parliament is enacting legislation which reforms something most of the time. The main line of implementation of the reform by the parliament is, as mentioned earlier, to restrict the powers of the prosecution and to attempt to make management decisions through rules of procedure. Ever shorter terms for completion of the investigation are introduced together with more restrictive requirements about “when” and “how” to conduct

investigations. This approach to the reform reflects clearly the feeling of the political powers – the parliament and the executive – that they do not have sufficient control over the efficiency and the work of the institutions empowered to conduct criminal proceedings. Due to the lack of authority to manage this process through staff-related decisions or directly, they are trying to manage it through rules of criminal procedure. However, it is not very surprising that such management through the criminal procedure has quite the opposite effect. It hinders to the extreme the process of investigation and creates many procedural and additional barriers, of which naturally the other party in the proceedings is trying to make the maximum to its own benefit. As a result, in complicated cases efficiency is even lower, particularly because of efforts to manage the proceedings through the Criminal Procedure Code.

The other problem is, as mentioned earlier, the paradox of the politicized system. The system is seemingly depoliticized, but at the same time it is quite clear that it maintains political relationships with various political subjects involved. The problem is that these political relationships are illegal, they are not public, all political arrangements and agreements within the system and the political influences occur under the surface rather than on the grounds of official authorization, and therefore they preclude the chance political responsibility to be sought. Thus, politics becomes to a great extent a portion of the mode of operation of the system, but it never leads to what usually is the mechanism of control in politics, namely – political responsibility through democratic process.

These problems focus mostly on the structure and organization of the institutions related to the preliminary proceedings. These are also the hottest debates in respect of what the reforms should be in order to improve the performance of the preliminary proceedings. It is not particularly surprising that the representatives of the institutions related to the criminal procedure are not willing to seek solutions to the problem in the very organization of these institutions, but instead they seek such solutions in the Criminal Procedure Code. However, it is obvious and getting even clearer that such isolation of the investigation service and the prosecution office from the political process, the lack of powers of the executive or the legislative branches formally consolidated in the legislation, and the respective lack of opportunities to seek political responsibility, are serious problems. The failure to seek solution in this aspect comes to a certain extent as a result of the experts' attitudes. The experts in this case are lawyers and lawyers are by nature suspicious of politics as something devoid of principles, not quite clean and finally in serious contradiction to the basic rules of work of the legal profession, which are adherence to the law and the facts in this specific case.

This position, however, fails to take into account one serious fact, namely, the great opportunities to carry out policy in the field of criminal proceedings. The Center for the Study of Democracy published quite recently a survey, according to which some 700,000 crimes occur per year in Bulgaria. The number of persons sentenced is about 30,000 per year. This huge variance between committed and penalized crime is actually the large field for policy making in penal proceedings. There it would be possible for the government to put forward various priorities, to seek various possibilities to overcome the problem of crime in one way or another. However, Bulgarian governments have been deprived in principle of this possibility due to the fact that they have absolutely no formal control over the implementation of criminal policy. Criminal policy in Bulgaria has been

entrusted entirely to the authority of the autonomous bureaucracies, which do not have and do not bear political responsibility.

It is not very surprising that under the circumstances these bureaucracies react in a standard way: they report formal criteria, such as number of cases, and their accountability before society always amounts to increase in the number of proceedings. This increase, however, is in the area of conventional crime, where it is easier to investigate and prosecute. As a result, the circle is closed – thus conventional crime becomes the cross point where the efforts and resources for combating crime are concentrated, while where the public discontent and claims to the system are most expressed – in respect of organized, financial and economic crime, there is no particular concentration of resources and efforts. This continuously leads to divergence between the public understanding of what should be happening in the criminal proceedings and what the institutions of criminal proceedings present and do.

There are ideas, which are part of the above mentioned discussion, to change the *status quo*. These ideas point in several directions. Some of them are right, others – to a certain extent. Under no circumstances one could assert that there is only one possible solution or that the structural changes in the bodies of preliminary proceedings alone would bring about some result. There must be a set of measures that should inevitably include simplification of preliminary proceedings, cutting of the endless number of hindering procedural rules and concentration of the defense of the rights of the accused and the defendant in the court phase of the trial. Thus, more efficient performance in the preliminary proceedings will be achieved.

Second, it is necessary to introduce political control and to provide possibilities for the political authorities to define priorities in the implementation of the criminal justice policy. Here again the decision is very hard to make, because the risk of overpoliticizing and granting too much power to the politicians is substantial and some colleagues from various countries have warned us against taking such a risk. Anyway, the current state of affairs, where the executive and the legislative branches have absolutely no formal authority in respect of implementation of the criminal justice policy, is obviously unproductive.

Last, but not least, the joint management of the courts along with the investigation and the prosecution needs to be abolished. One of the paradoxes being a result from the establishment of a single governance body for the three units of the judiciary was the undermined independence of the court. At present one of the trial parties, namely the prosecution to the trial, exerts excessive influence over the careers of judges. The other element which contributes to the undermining of the independence of the court is the fact that these units have a common budget. In the event of assessment of the legitimacy of the actions of the other units of the judiciary – the investigation and the prosecution, and where such an assessment is linked to certain budgeting consequences, adjudication of damages, this is also another factor with negative effect on the assessment of the court and its independence in respect of the other parties.

In Bulgaria we are facing a rather complicated problem, with no clear answers. Nonetheless, there are several particular steps that need to be taken: simplification of the preliminary proceedings and introduction of mechanisms

for political control and respectively political responsibility, which is non-existent at present in respect of the bodies of preliminary proceedings.

In conclusion, the Bulgarian experience could also be useful in a certain sense in view of the comparative survey of the criminal law systems, namely – the complete isolation of the investigation service and the prosecution office from the political process does not aways lead to independent and unbiased justice.