

JUDICIAL REFORM: CONSENSUS INSTEAD OF POLITICAL RHETORIC

Ognian Shentov²⁴

The judicial reform in Bulgaria has entered an especially crucial stage. It is obvious that the time of perfunctory measures and empty political rhetoric has passed. The parliament must adopt key amendments to the Constitution, the procedural and the statutory laws which should make possible the settling of all problems that the Bulgarian judiciary is still facing.

In Bulgaria it was the non-governmental sector that initiated the debate on the necessary structural and organizational reforms of the judiciary during the transition period. More than six years ago, the Center for the Study of Democracy established the Judicial Reform Initiative (JRI), which brought together professional associations, NGOs, public institutions' representatives, and experts. Back then the dominant opinion was that judicial reform had been accomplished and the authorities considered the idea almost heretic. Within the JRI, however, we developed a comprehensive Program for Judicial Reform. Continuing this public-private effort we later produced the Judicial Anti-Corruption Program. In recent years the Center for the Study of Democracy has repeatedly and consistently promoted its ideas for multidimensional changes that would both meet public expectations and comply with EU requirements for a judiciary that works swiftly and effectively.

Today judicial reform has been made a priority by the main political parties in Bulgaria. Moreover, it is being regarded as a yardstick by which Bulgaria's preparedness to join the EU is to be measured.

Several positive changes have already been made. The first cycle of amendments to the Constitution adopted in September 2003 modified some provisions of critical importance for the judiciary, such as the irremovability and immunity of magistrates and the length of service of the administrative heads of judicial bodies. The second stage of constitutional reform did not go beyond some mandatory amendments related to Bulgaria's pending EU membership and left out any organizational or structural problems of the judiciary.

Regrettably, the vital level of consensus both between political parties and among magistrates about the major course of judicial reform and the model of judiciary that would best suit Bulgaria has not been achieved yet. Consensus is missing with regard to such a basic issue as the place of the investigation and the prosecution within the national system of institutions and as to their internal organization. Effective mechanisms for interaction and information exchange between the separate units of the judiciary and between the whole judicial system and the other institutions involved in counteracting crime have yet to be introduced.

There are still some skeptical views concerning the judicial reform underway. They are most often grounded in the circumstance that there is no *acquis*

²⁴ Mr. Ognian Shentov holds an MA degree in International Relations and a PhD in Political Science. He has written a number of publications on the issues of transition to democracy, democratic changes and stability in Eastern Europe. Mr. Shentov is Chairman of the Board and Founding Member of the Center for the Study of Democracy.

communautaire in this field. Such view, however, disregards not only the internal need for reform in Bulgaria, but also the EU recommendations for following the best EU practices, as well as measuring against a number of objective indicators such as: the length of the various proceedings, statistics on the speed and efficiency of criminal proceedings, the number of cases remitted by prosecution offices and courts, the number of sentenced individuals as a proportion of the indictments, and last but not least, the commitments of Bulgaria to the EU under the negotiation chapter *Justice and Home Affairs* and the risk that a safeguard clause may be enforced in case Bulgaria fails to fulfill these commitments.