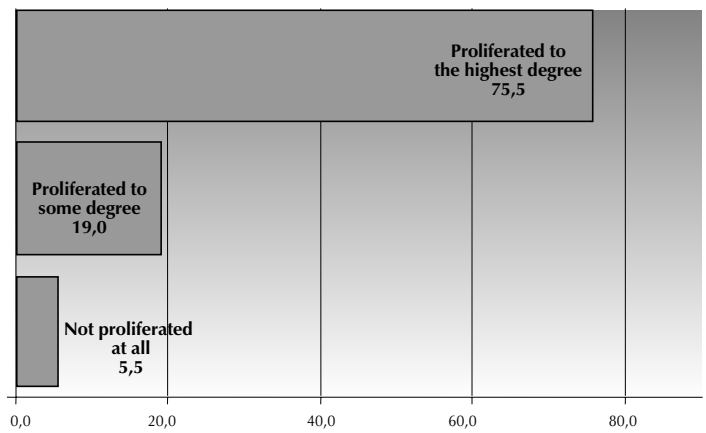
B. THE ANTI-CORRUPTION DIMENSIONS OF JUDICIAL REFORM

Because of its specific functions and peculiar place within the system of state power, the judiciary is given a paramount role in promoting the rule of law, protecting fundamental rights, and efficiently suppressing corruption—a major problem of the transition period that is still to be resolved. The key branches of the judiciary are called upon to investigate, prosecute and impose penalties for crimes of corruption. Any failure to fulfill, or fulfill on time, those functions therefore perturbs public confidence in the judiciary. Even worse, the existence of corruption with the judiciary brings harm to society and the state as it distorts the very nature of the judicial system and prevents it from exercising the functions vested in it by the *Constitution* and by the laws, namely to uphold the rights and the lawful interests of citizens, legal entities and the State.

Public opinion polls in 2003 suggest that, just like in previous years, there is a high level of corruption in the judiciary. Contrary to the polls, every other magistrate is confident that public perceptions of the spread of corruption are unfounded.

Moreover, a disturbing trend has been perceived within the judiciary in that the bodies of the system deny responsibility and blame each other for the spread of corruption, thus revealing the existence of serious flaws in the understanding of the place and role of the different branches, and in their mutual relations.

CHART 14 **PUBLIC OPINION ON THE SPREAD OF CORRUPTION IN THE JUDICIARY** (%)



Source: Corruption Monitoring System (CMS) of *Coalition 2000*

The trend to impute corruption to a branch of the judiciary other than one's own is also visible from magistrates' perceptions of the stages of criminal and civil proceedings. One out of four **judges** states that corruption is most widespread at the stage of preliminary proceedings, and one out of five judges believes the same about police investigation. Quite the contrary, **prosecutors and investigators** identify the court stage as the key segment of criminal proceedings where corruption transaction abound.

TABLE 7 ASSESSMENT OF THE LEVEL OF CORRUPTION WITHIN THE THREE GROUPS OF MAGISTRATES (%)

	Corruption proliferated among: (*relative share of responses "Most or all magistrates are involved"*)		
Magistrate	**Judges**	**Prosecutors**	**Investigators**
1. Judge	2.8	17.4	19.0
2. Prosecutor	11.9	7.9	10.3
3. Investigator	20.8	28.2	4.7

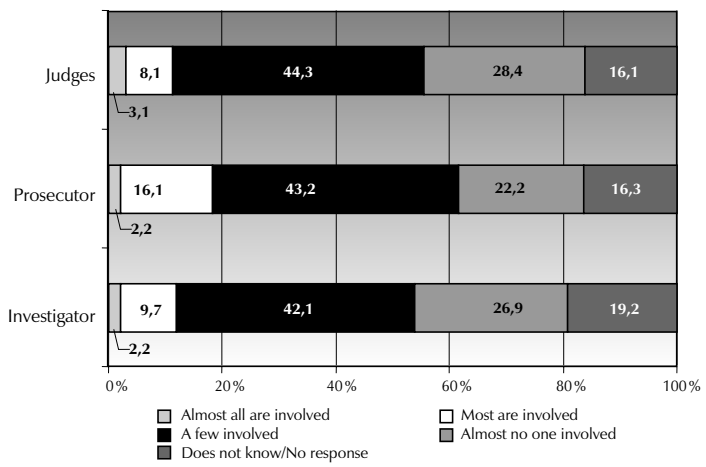
Source: CMS of *Coalition 2000*

The lack of specific statistical data makes it impossible to map out the real picture of the number of cases where magistrates have been investigated, prosecuted or punished for corrupt crimes. Nonetheless, given the constitutional principle of full immunity that existed until recently and the extremely rare requests and decisions to lift the immunity of particular magistrates, it seems justified to conclude that there has been almost no instance of detecting and prosecuting corruption offenses perpetrated by members of the judiciary.[4]

Any evaluation of the state of affairs in the judiciary, the level of corruption therein and the contribution of that branch to the fight against corruption in 2003, must take account of some essential factors of domestic and international politics that bear directly on judicial reform.

Firstly, one must consider the consensus reached by all political forces represented in Parliament on the **priorities of judicial reform**, as manifested in the *Declaration on the Guidelines to Reform the Bulgarian Judicial System* signed by those forces on April 2, 2003. Despite the incomplete inventory of issues addressed there, the declaration is a good point of departure in the search of genuine, wider consensus on the way to attaining the stated objectives of judicial reform.

CHART 15 SPREAD OF CORRUPTION WITHIN DIFFERENT GROUPS OF MAGISTRATES (%)



Source: CMS of *Coalition 2000*

Secondly, one must consider the **amendments to Chapter Six of the *Constitution,*** enacted on September 24, 2003, which represented the first steps in breaking through the obviously malfunctioning framework and removing the obstacles to serious legislative change with respect to

[4] The Report on the Activity of the Supreme Judicial Council in the period December 16, 1998-December 16, 2003 states that during its five-year term of office, the Supreme Judicial Council has decided to lifting the immunity of seven magistrates, of which six are investigators at District Investigation Services and one is a military investigator, and has rejected the requests for lifting immunity in four cases concerning one judge, one prosecutor and two investigators.

the judiciary erected by the Constitutional Court. Despite the unanimous passage of those amendments, however, their significance should not be overstated. Parliament confined its debate on the Constitution solely to the requirements imposed from abroad in the context of Bulgaria's EU accession negotiations. It therefore failed to pave the way for large-scale modifications that would be feasible in the context of Judgment No. 3 of the Constitutional Court of April 10, 2003 (Constitutional Case No. 22 of 2002), such as introducing mechanisms that ensure the accountability of the branches and bodies of the judiciary, particularly the prosecutor general, or putting in place "independent counsel", an official outside the system of the public prosecution and vested by law with the investigation of corruption inside the judiciary. Some of the possible and required changes that already enjoy public and political support, though they are not directly connected with the judiciary, can substantially relieve the work of that branch of power, improve the protection of human rights and restrict the channels whereby corruption is infused into the judicial bodies and into other state institutions. Those changes include *inter alia* the enactment of constitutional rules on an ombudsperson (including provisions on his or her election by a qualified majority and on his or her right to refer issues to the Constitutional Court), the establishment of alternative dispute-resolution techniques, and the imposition of stricter duties on attorneys to comply with professional ethics and discipline.

Thirdly, one must take into account **the closure of Chapter 24, Justice and Home Affairs, of Bulgaria's pre-accession negotiations** with the European Commission on October 29, 2003. The closure of that chapter by no means signifies that judicial reform has come to an end, nor that the issue of corruption has finally been settled. Further progress in reforming the judiciary will greatly predetermine Bulgaria's successful accession to NATO and the European Union and its future membership of those organizations. The European criteria for a well-functioning judicial system remain stringent and imply specific requirements subject to regular compliance reports to the European Commission. If the problems under Chapter 24 fail to be resolved within the time limits agreed, negotiations in this area may therefore be resumed under the existing safeguard clause. According to the agreement reached under Chapter 24, reforms are still needed in the areas of:

- improving access to justice;
- drawing a clear divide between the tasks and responsibilities of the Supreme Judicial Council (SJC) and the Ministry of Justice;
- bringing the budget of the judiciary in accordance with European standards;
- creating an objective and transparent case-assignment procedure;
- introducing uniform statistics for all branches and bodies of the judiciary;
- reorganizing the system of investigation, etc.

Irrespective of the discrepant evaluations of the result attained, each of the above factors will be important to the future development and scope of

judicial reforms. The analysis of the long-standing practice of piecemeal reforms and the lack of satisfactory results made it clear in 2003 that a **comprehensive consensus-based approach** is needed which touches upon all future constitutional, legislative, organizational and institutional reforms. Achieving such a consensus on as many key issues of judicial reform as possible is a must for legal certainty and institutional stability, and for public trust in the judicial bodies. It is also a *sine qua non* if we are to bring to an end the typical transitional process of replacing the independent, professional decisions and steps of magistrates with acts inspired by politics or corruption, and to do away with inter-institutional conflicts, including those between the separate branches of the judiciary. Future consensus-based amendments to the Constitution should provide a framework for the separation of and balance between the powers where **the Constitutional Court acts primarily as a guardian of the constitutional consensus**, and should leave a much narrower space for interpretation, sometimes doubtful and partial, of the constitutional norms or for interpretation that may compromise the supremacy of the legislative power.

Building future judicial reforms on the basis of consensus would improve the situation in the country, and the judiciary in particular, in terms of limiting corruption.

B.1. The Organization of the Judiciary: Constitutional, Legislative and Institutional Aspects

A comprehensive approach to the organization of the judiciary is a prerequisite for attaining a functioning, solid, independent and corruption-free judicial power, as well as for an efficient fight against corruption in society. Relevant legal and institutional solutions are needed for the fundamental elements of the organization of the judiciary, *viz*. the **principles** upon which it is based and operates**, its management and structure, and the relations between its branches**. The general aspects of the structure, principles and functions of the judiciary which define its place under the separation of powers must be **governed by the *Constitution***, while the details should be fixed in the **legislation adopted on the basis of the respective constitutional arrangements**. At the same time, issues such as introducing time and quality standards, achieving the required transparent and open performance of the judiciary, adopting effective anti-corruption measures in general, and in the branches of the judiciary in particular, improving the criteria for recruiting professionals and regularly evaluating their performance, improving the efficiency of disciplinary proceedings against magistrates, etc., could be resolved even within the current constitutional framework, and specific steps have been undertaken to that effect.

B.1.1. Fundamental Principles Underlying the Organization and Operation of the Judiciary

The principles that govern the organization and operation of the judiciary have been prominently on the agenda of the debates on judicial reform in recent years. Specific proposals and recommendations, especially those suggesting:

- to rethink the issue of independence and irremovability,
- to limit the immunity of magistrates,

- to introduce terms of office for magistrates in managerial positions,

can be found in the basic papers produced by a number of influential international organizations and institutions, and by some national civic organizations and initiatives.[5]

The amendments to the constitutional rules on the judiciary enacted in 2003 have produced the following changes:

First, the **immunity** of magistrates has been narrowed down to **functional immunity**, i.e., magistrates shall be immune from criminal or civil liability only for actions undertaken in their official capacity (as opposed to liability ensuing from their private endeavors and actions outside the context of their direct activities). Immunity also extends to the orders and judgments of magistrates, unless the act in question represents an intentional offense prosecuted on indictment. In the latter case magistrates can only be prosecuted with the authorization of the Supreme Judicial Council. Judges, prosecutors and investigators may be arrested only for serious offenses, and only after the Supreme Judicial Council has so authorized. No authorization is required if the magistrate is caught at the scene of a serious crime. Authorization to lift the immunity of a magistrate may be sought by the prosecutor general or by at least one fifth of the members of the Supreme Judicial Council, provided that the request is reasonable.

Second, the changes in the principle of **irremovability** of magistrates concern the time that has to lapse before a magistrate becomes irremovable, the procedure applicable to the acquisition of that status, and the grounds for early dismissal of magistrates who are otherwise irremovable. The status of irremovability shall be acquired with the completion of five years of work as a judge, prosecutor or investigator, and with evaluation of past performance. The grounds to dismiss irremovable magistrates, including the presidents of the Supreme Court of Cassation and the Supreme Administrative Court, and the prosecutor general, now include *inter alia* "serious breach of, or systematic failure to, fulfill official duties, as well as any act that undermines the reputation of the judiciary".

Third, **terms of office** have become a principle applicable to the magistrates holding managerial positions at the bodies of the judiciary (save for the president of the Supreme Court of Cassation, the president of the Supreme Administrative Court, and the prosecutor general for whom the

[5] For instance: The annual regular reports of the European Commission; the Evaluation Report (2002) adopted by the Group of State Against Corruption (GRECO) within the framework of the first evaluation round of GRECO; the Evaluation Report of the Working Group On Bribery in International Business Transactions at the Organization of Economic Cooperation and Development (OECD) adopted in February 2003 within phase two of the monitoring process of the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Revised Recommendation of the Council on Combating Bribery in International Business Transactions (1997); the reports of the EU Accession Monitoring Program of the Open Society Institute–Budapest on the capacity of the judiciary in accession countries; research by the Country Assistance Strategy of the World Bank, especially with respect to legal and judicial reforms and the suppression of corruption; the Judicial Reform Index developed by the Central and Eurasian Law Initiative of the American Bar Association (ABA-CEELI); and previous Corruption Assessment Reports by *Coalition 2000*.

status quo has been maintained). The term of office is five years, and may be renewed. The amendments to the *Law on the Judiciary* currently in the pipeline suggest that the nomination of candidates for such positions (by the immediate superiors or by one fifth of SJC members) and their appointment should take place by March 31, 2004. Regular replacement of the heads of judicial bodies would circumscribe the possibilities of improper personal relations or enduring corruption transactions.

Because these partial amendments were passed before certain other indispensable reforms in the judiciary, the following problems may be envisaged in the course of their implementation:

- The reform of magistrates' immunity has left almost intact the powers of the prosecutor general, as the proposal to introduce independent counsel (a public official endowed by law with prosecutorial functions to seek the lifting of a magistrate's immunity or, where appropriate, to institute preliminary proceedings and guide the investigation) was dropped. The new possibility for one fifth of SJC members to authorize the arrest of a magistrate caught on the scene of a serious crime, or to authorize the prosecution of a magistrate, is not a sufficient corrective to the monopoly the prosecutor general has on the prosecutorial function and on investigation. The realization of the criminal liability of magistrates therefore remains almost entirely dependent on the subjective view of the prosecutor general, as long as the unified and centralized structure of public prosecution is preserved.

- In addition, the new ground to dismiss irremovable magistrates ("serious breach of, or systematic failure to fulfill official duties, as well as any act that undermines the reputation of the judiciary") is worded in a fairly general fashion and can hardly be implemented in practice. In particular it is not clear who, and based on what criteria, would make the judgment of whether the conduct of a magistrate has undermined the reputation of the judiciary or does not play by the "rules".

- Likewise, one should think of the possible risks of improper pressure and instability when the modified principles are applied against the backdrop of other major lingering problems of the judiciary, e.g., the overgrown independence of the judiciary that borders on a total lack of control, the distorted balance of powers, the lack of guarantees to prevent self-insulation of the system or its improper involvement in political or corporate interests, the persistent lack of accountability of the prosecutor general and the centralized hierarchical structure of the system of prosecution, the problems surrounding the composition of the SJC and the required adjustment of its functions, etc. For example, unless the limited immunity of magistrates is accompanied by thorough guarantees and well-thought-out procedures and mechanisms, it could actually produce opposite effects, e.g., unfounded persecution, pressure, defamation, frustration of justice and investigation, etc. It is therefore worth analyzing the opinion of magistrates as most of them (49.3%) believe that a move to functional immunity would not in itself reduce corruption in the judiciary, compared to 37.2% in support of the idea and 13.4% without an opinion on the matter.[6]

[6] Source: CMS of *Coalition 2000*.

- Even in their most current form, the above organizational principles reproduce the current structural problems of the judiciary. Those principles are applicable to all three branches (courts, public prosecution, and investigation) and no account is taken of the different professional circumstances of judges, prosecutors and investigators which derive from their different functions, powers and hierarchical dependence, from the different transparency, recruitment policy, appointment and career promotion arrangements in the three branches. As a result, it is still necessary to create a legal possibility to apply the major principles in a differentiated manner within the current structure of the judiciary, especially given that structural changes may take place in the future.

- As a matter of fact, the implementation of the terms of office will be in the hands of the new Supreme Judicial Council, elected in December 2003, that is formed under the existing quota-based scheme. That procedure, particularly the election of the parliamentary quota by a simple majority, largely predetermines the replacement of one politically-shaded team of SJC members with another, and, hence, the key role of the ruling majority or coalition in the appointments of the heads of courts, prosecution offices and investigation services as well as in the making of other important decisions concerning the judiciary. Another risk that should be taken into account lies in the possibility members of the SJC, elected by the judicial quota but representing different branches of the judiciary, to defend positions that are predetermined by the institution they represent, sometimes even opposing each other. All this would additionally hamper the formation of a uniform and impartial position by the SJC members.

To attain the principal objectives of judicial reform—accountability, swiftness, and efficiency—and to suppress corruption more successfully, further constitutional and statutory amendments are needed that preserve the independence of the judiciary, while allowing for a better balance between the branches of power, wider transparency and responsibility across the judicial system, and ampler room for civil control. These could be summarized as follows:

First, the constitutional principle of **independence** of the judiciary should be kept. Nonetheless, it should not be an end in itself or amount to irresponsibility. It should rather serve as a precondition for the full-fledged fulfillment of the tasks of the judiciary, to ensure lawfulness and fairness, to uphold the laws and protect legal rights. In other words, lucid mechanisms of mutual control (checks and balances) of the three powers should be introduced. The lack of such mechanisms in the existing system, including its constitutional framework, is one of the reasons why independence is sometimes perceived as untouchability. Therefore, the purpose of the proposed options (i.e., to change the management and the structure of the judiciary, of the public prosecution and investigation, to make their powers more specific, and to redefine their fundamental organizational principles) is to prevent the threats of concentrating too much power in the same hands and the risk of abuse, while ensuring a balance of powers that essentially respects the principle of independence.

Second, the independence of the judiciary should be more closely linked to the **principle of separation of powers** and the ensuing relationships

among those powers. In that context, it is suggested that an amendment to the *Constitution* be considered that would provide that **the president of the Supreme Court of Cassation, the president of the Supreme Administrative Court and the prosecutor general shall be elected by the National Assembly** for a term of office of at least five years, and with a qualified majority in order to avoid politicizing the election. The National Assembly should have the power to decide on the early removal of those individuals from office and on lifting their immunity, though solely on conditions, and under a procedure strictly defined in the *Constitution*. The National Assembly could thus play a vital part in ensuring the checks and balances among the three powers, without interfering with the independence of the judiciary.

Third, the **status and structure of public prosecution** is an issue essential to the independence of the judiciary in the context of the separation of powers.

TABLE 8 **"DOES THE EXISTING UNIFIED AND CENTRALIZED STRUCTURE OF PUBLIC PROSECUTION IMPACT THE LEVEL OF CORRUPTION WITHIN THE PROSECUTION?" (ACCORDING TO MAGISTRATES) (%)**

Agree	20.5
Somewhat agree	24.7
Somewhat disagree	27.1
Disagree	20.3
Does not know/No response	7.5

Source: CMS of *Coalition 2000*

TABLE 9 **"DOES THE EXISTING UNIFIED AND CENTRALIZED STRUCTURE OF PUBLIC PROSECUTION IMPACT THE LEVEL OF CORRUPTION WITHIN THE PROSECUTION?" (BY CATEGORY OF MAGISTRATES) (%)**

	Agree	Somewhat agree	Somewhat disagree	Disagree	Does not know/ No response
Judge	26.3	29.1	27.4	8.4	8.9
Prosecutor	5.6	10.3	30.2	50.0	4.0
Investigator	26.2	31.5	24.2	9.4	8.7

Source: CMS of *Coalition 2000*

While magistrates have diametrically opposing views on whether the existing uniform and centralized structure of public prosecution is conducive to corruption, the opinion that specific measures are needed to ensure the **decentralization, transparency and accountability** of that system seems to be gaining ground. Moreover, such measures are actually feasible within the current constitutional framework and could be pursued by amending and supplementing the *Law on the Judiciary*. Possible measures include:

- changing the hierarchical model on which the system of prosecution is based;

- providing better guarantees for the independence of prosecutors of any superior prosecutor or of the administrative head of the prosecution system when deciding on specific files and cases. This can be achieved by introducing a requirement for written instructions, and by recognizing the right of prosecutors to object against the instructions given by superior prosecutors or to step out of the case in the event of disagreement with the instructions received;

- prescribing serious sanctions to root out the unlawful practice of giving oral instructions;

- introducing (i.e., in the *Constitution*) the principle of **regular** and ***ad hoc*** **reporting** by the **prosecutor general** to the SJC or to the National Assembly, respectively (depending on whether the proposal for the prosecutor general to be elected by Parliament is approved).

Fourth, the adjustments to be sought through constitutional amendments also comprise the possible appointment of a **public official entrusted by law with prosecutorial functions**, or of a team of such officials, outside the hierarchical system of public prosecution in its current form. Such officials should be elected by the National Assembly to fulfill specific functions (e.g., to investigate instances of inside corruption in the judiciary) or *ad hoc*, and should enjoy the immunity of magistrates. Their powers should extend to investigating, pressing charges and maintaining the indictment in cases expressly envisaged in the *Constitution*.

Fifth, with regard to **immunity**, the future constitutional solution should be based on a general review of the immunity provided to a wider spectrum of individuals (members of Parliament, members of the Constitutional Court, and individuals in senior positions in the executive).

Sixth, the *Constitution* should lay down the general parameters, the content of and the correctives to irremovability, and these should be specified in the legislation by defining clear criteria and rules, along with specific conditions for obtaining or losing the status of irremovability. It is proposed that irremovability should only benefit magistrates who work effectively in the authorities of the judiciary (in other words, it should not apply where those individuals occupy elected positions such as members of Parliament or mayors, or if they are on leave).

Seventh, it is worthwhile to consider the proposal to introduce a **special procedure for an early removal from office** that should be developed on substantive grounds defined in the *Constitution*.

Eighth, special attention should be given to the hierarchical relations inside the different systems: superior magistrates should control and monitor magistrates at lower levels only by way of providing general methodological guidance and without any interference in the resolution of cases, let alone unlawful pressure from top to bottom.

B.1.2. Managing the Judiciary

To effectively combat corruption, the management of the judiciary should be professional and resistant to corruption. Likewise, the functions and the powers of the Supreme Judicial Council, as a body of the judiciary, and of the Ministry of Justice (MoJ), as an executive authority, must be distinguished and redefined, while putting in place a reliable framework of interaction between these two players.

The **powers of the SJC** should focus on the **general strategic management and organization of the judiciary**'s staffing policy (including recruitment, evaluation, acquisition and loss of the status of irremovability by magistrates, and budgeting for the judiciary, especially in the context of staffing policy). Any extension beyond that remit may well entail a duplication in the functions of the SJC and the Ministry of Justice and may ultimately make one of the two institutions redundant.

As for the suppression of corruption, it is particularly pertinent for the SJC to receive and exercise to the fullest extent the power to introduce standards on how the work performed by the branches of the judiciary would be reported and uniform statistical reporting forms to be used by all bodies and branches of the system, as well as to summarize statistical data. This would put an end to the provision of discrepant information by courts, prosecution offices and investigation services, and would foster an objective assessment of the level of corruption and of the genuine effect of anti-corruption efforts. Moreover, in view of Bulgaria's future accession to the European Union, as of 2004 the country should provide the European Commission with **regular information** on criminal proceedings, charges pressed, and convictions in respect to **organized crime, corruption, drugs, trafficking in persons, and tax and financial offenses**.

Enhancing the independence of the judiciary would also mean confining **the managerial powers of the executive** (i.e., the Ministry of Justice) ***vis-a-vis* the judiciary** to providing the organization and the facilities indispensable for the effective operation of judicial bodies (management and maintenance of buildings; provision of equipment and materials; provision of security staff and facilities, as well as assisting with the additional training of magistrates and staff; checking on the progress of cases or any unjustified delays; unwarranted remittals and the like, while refraining from any interference with the merits of the cases, etc.).

On the other hand, it should not be forgotten that **the budget of the judiciary** is a major cause for friction between the judiciary and the executive and this will persist, unless European standards in that respect are applied (the budget should amount to 4% of GDP, while in 2003 it was less than 1% in Bulgaria). Besides increased allocations from the national budget, **additional funding** must be ensured for judicial reforms. It is within the powers of the SJC to encourage a broader involvement in international and European projects and the active utilization of EU pre-accession funds.

Further measures to help the SJC exercise its powers

- Put in place a well-developed system of **rules and regulations** on the operation and management of the judiciary, including anti-corruption norms.
- Improve the **internal rules** on the proceedings of the SJC, including its decision-making procedures.

- Develop an information system to ensure co-ordination and control, by introducing **uniform judicial statistics**.
- Detail the SJC's powers to **discipline** magistrates, and ensure the full-fledged exercise of those powers.
- Promote the **openness and transparency** of the SJC's work by implementing and refining the existing media strategy.
- Establish **dialogue and co-operation** with the executive and the legislature, especially in view of resolving the problems of the judiciary.

The prevailing number of magistrates (61.2%) recognize the need for reforms in the SJC that would make it more efficient in combating corruption in the judiciary. Some of the indispensable changes that have been identified concern the way in which the SJC is composed, including the abolition of the parliamentary quota, the promotion of wider transparency and openness in the work of the SJC, the extension of its powers and capacity in disciplinary proceedings, the implementation of a system of control and coordination, etc.

The possible changes in the **status of the SJC, its powers and formation** (number of members, election and term of office, eligibility criteria) must be effected through the Constitution and should be carefully linked to possible future changes in the structure of the judiciary. Along these lines, it is worth noting and examining in depth the suggestion **that SJC members be elected solely by the bodies of the judiciary** and those bodies nominate a member of the judiciary as president of the SJC. The latter should be elected by the National Assembly and report thereto regularly or *ad hoc*.

TABLE 10 **"WHAT ARE THE REFORMS NEEDED BY THE SUPREME JUDICIAL COUNCIL?"**

	Yes (%)
Changing the manner of forming the SJC	60.8
Promoting a more transparent and open operation of the SJC	54.0
Extending the SJC's powers/enhancing its capacity in disciplinary proceedings against magistrates	37.4
Strengthening the SJC's administrative and managerial capacity	19.1
Building up a control and coordination information system	48.2
Other	4.3
Does not know/no response	0.0

Source: CMS of *Coalition 2000*

That structure matches the proposal to have the president of the Supreme Court of Cassation, the president of the Supreme Administrative Court, and the prosecutor general elected by the National Assembly. This would indeed deprive the assembly from having a say in the composition of the SJC but the parliament would still have its role in operating the mutual checks and balances among the three powers.

It is suggested that, should the parliamentary quota persist, the elections should be by a **qualified majority.**

B.1.3. Anti-Corruption Measures Designed to Promote the Status of Magistrates

The status of magistrates largely conditions their conduct in the process of combating corruption, both in their capacity as representatives of the bodies in charge of investigating and prosecuting corruption crimes, and in their possible capacity to be corruption offenders. The previous measures to promote the status of magistrates have failed to take account of the different functions and powers of judges, prosecutors and investigators. There has even been no debate about any differentiated legislative solutions, and these would be essential if the investigation and/or the prosecution were to move from the judiciary to the executive.

In spite of the difficulties inherent in the uniform status of judges, prosecutors and investigators under the current constitutional framework of the judiciary, a vast number of magistrates share the need for **comprehensive measures to promote the status of magistrates** so as to reduce the possibilities for any form of corruption, e.g., introducing stricter criteria for the recruitment and appointment of magistrates, improving the devices used to monitor their performance and the procedures of disciplining magistrates, by providing summary procedures for some cases, adjusting the relevant powers of the SJC, refining access to the profession of magistrates, and making competitions for such access dependent on clear criteria that preclude any improper acts.

TABLE 11 MEASURES TO BE UNDERTAKEN TO CURB CORRUPTION WITHIN THE JUDICIARY (ACCORDING TO MAGISTRATES)

	Agree (%)
Increasing the salaries of magistrates/court staff members	69.4
Introducing more stringent criteria for the selection of magistrates	68.7
Making changes in the structure of the judiciary and providing wider opportunities for accountability, monitoring and disciplining	35.0
Introducing regular evaluations of professional performance and linking magistrates' career development with the result of such evaluations	32.8
Introducing an efficient system to improve the professional qualification of magistrates	33.9
Encouraging magistrates to report to the public on any deficiencies in judicial work they have come across	25.1
Other	4.4
Does not know/No response	0.7

Source: CMS of *Coalition 2000*

In addition to the above findings, attention should be paid to the following aspects:

- *Selection and appointment criteria applicable to magistrates*

The staffing policy in the judiciary needs to be seriously reformed – as regards both the initial election of magistrates and their promotion in the same position or hierarchically, while ensuring a more balanced representation of both genders within the community of magistrates. The current widespread approach where the presidents of the respective courts or prosecution offices make a sole proposal (i.e., submit a single nomination) more often than not results in subjectivity, lobby pressures and other forms of improper influence.

The **principle of competition** should be the only one utilized when a magistrate is to take a position at a higher instance or to be moved to another job or another town. The first step to that effect was the first centralized competition for junior judges held at the end of 2002 on the grounds of the Interim Regulations issued by the SJC. *Ordinance No. 1 Laying Down the Conditions and Procedure for Carrying out Competitions for Magistrates*, adopted by the SJC (in effect as of April 23, 2003, amended on December 3, 2003), provides that every applicant for a magistrate's position should sit for a written and oral exam; these requirements should be abided by consistently and objectively. As regards the competitions for becoming a member of the judiciary and the evaluations of magistrates before they become irremovable or are promoted in rank or in position, it is essential for the SJC to organize and monitor the rigorous and corruption-free implementation of the new rules. Otherwise they would be pointless and only serve as a shell for reform.

Applicants for the judiciary should undergo a careful scrutiny for, among other things, their mental fitness and character so that different forms of dependence or negative factors (suggestibility, instability, etc.) could be disqualifying. The existence of any kinship or other connections or interests should also be taken into consideration where it is likely to generate a conflict of interests or any privilege.

- *Mechanisms to control the performance of magistrates*

Since the efficient administration of justice depends to the utmost extent on the competence and professionalism of magistrates, their performance should be monitored. The review of court acts by higher powers is not sufficient to achieve a lasting improvement of the system of justice or to ensure the integrity and professionalism of magistrates.

It is necessary to expand the rules on **evaluation** that were introduced by the 2002 amendments to the *Law on the Judiciary* and reconfirmed by the new wording of §129(3) of the *Constitution*. To that effect, a permanent body should be set up with the SJC (an Evaluation Commission) that would assess the work of magistrates regularly (every other year), upon the expiry of the term for obtaining guaranteed tenure, and upon any proposed promotion in rank or in salary or in position. The composition of that commission (number of members, which professional groups they should belong to, etc.), and the mechanism for its formation that would guarantee its independence, must be given a solid legislative basis.

All of the decisions concerning the professional career of magistrates, including their evaluation, should rely on the objective criteria listed in the *Law on the Judiciary*. *Recommendation No. R(1994)12 of the Committee of Ministers to the Member States of the Council of Europe on the independence, efficiency and role of judges of October 13, 1994* suggests the same approach. The *Law on the Judiciary* should include the **following indicators** to be used as **evaluation criteria** for the magistrates:

– Competence. This should cover elements such as quality of performance, number of cases closed, and promptness.

– Honesty and integrity.

– Experience, based on the length of professional service and on qualifications.

– Willingness to improve one's professional knowledge and skills by way of additional specialized training.

It is necessary to bring the **rules on professional ethics**, which have been or are to be adopted by the professional organizations of magistrates and approved by the SJC, closer to the requirements for professionalism and to the definition of offenses and the statutory mechanisms for monitoring and disciplining. This is a must for the enforcement of the novel provision of the *Law on the Judiciary* (§ 168(1)(3)) under which magistrates shall be disciplined for their breach of the moral rules embedded in the applicable Ethics Code. According to the polls among magistrates, 46.7% of them think that the adoption of and compliance with ethics codes would lessen corruption in the judiciary.[7]

• *Education and training of magistrates*

The lack of a serious reform of legal education and the deficient efforts to improve the professional skills of judges, prosecutors and investigators form a major reason for the insufficient capacity of the judiciary to perform its basic functions, in particular, to suppress corruption. The quality of education largely defines whether the young people appointed or to be appointed in the judicial bodies now, would successfully implement the expected judicial reforms and add more professionalism and moral integrity to the fight against corruption. The training of practicing magistrates grows in importance along with the need to ensure the future enforcement of European Union law. Therefore, material improvements should be made of university education, and of the initial training (including the practical training) before new magistrates take office, as well as of on-the-job training which should take place on a continuous basis throughout magistrates' professional lives.

First, as regards **higher education**, it is necessary to upgrade the link between theory and practice in the process of teaching by involving eminent magistrates; the seminars should rather serve to equip the students with practical knowledge and skills by way of methods such as moot court exercises and the drafting of warrants, indictments, criminal and civil judgments, and rulings. The apprenticeship periods in the course of university studies should become more efficient and there should be closer links between law schools and the institutions where apprentices are placed.

Second, as regards the **practical training of apprentice-lawyers**, an altered duration of apprenticeship will hardly be successful on its own[8]. As a matter of fact, apprenticeships should be given a completely new basis by

[7] CMS of *Coalition 2000*.

[8] The amendments to the *Law on the Judiciary* made in 2002 and furthered by the amendments of July 2003 shortened the time of compulsory apprenticeship from one year to three months, which would hardly enhance the knowledge or the skills of future magistrates.

amending the legal rules that govern the procedure and conditions for becoming a qualified lawyer. These should be coupled with the introduction of **additional, practice-oriented training** for future judges, prosecutors, investigators, notaries, bailiffs, real estate registration judges or members of other professions.

Third, to meet the need to **continuously improve the professional qualifications** of practicing judges, prosecutors and investigators, account should be taken of the prevailingly poor level of professional knowledge and practical skills, the excessive workload of magistrates which lessens their opportunities to engage in self-education, and the incessant changes in the legislation which generate many problems in the administration of justice and often entail inconsistent case-law. In combination with other negative factors, these circumstances only make corruption thrive. To rectify that situation, major reliance is placed on the newly-established National Institute of Justice (NIJ) with the Supreme Judicial Council which has emerged from the non-governmental organization known as the Magistrates Training Centre. The NIJ shall be developed based on the MTC and its attainments, curricula and training materials, body of lecturers, officials and assets.

On October 1, 2003, the SJC approved the *Rules of Organization and Procedure of the National Institute of Justice*. A Board of the Institute has been elected as well. The NIJ shall provide compulsory training to:

- All newly-appointed judges and prosecutors immediately after they take office in the judiciary (six months of initial training).

- The judges, prosecutors, and investigators when they take an office in a body of the judiciary (10 days of initial training).

- Judges, prosecutors, investigators, bailiffs, real estate registration judges, court staff, inspectors and other officials of the Ministry of Justice, on a regular basis (continuous training).

Performance at the National Institute of Justice shall be relevant to the professional evaluation of magistrates and to the promotion in rank of court staff.

The SJC has already adopted and approved the initial training curriculum for judges.

The future curricula of the NIJ should also mandatorily include **training to enforce anti-corruption legislation, to learn and comply with ethical norms and rules, including conflict-of-interest and anti-corruption provisions**. In more general terms, training should contribute to instilling and upholding in the behavior of magistrates values and principles such as impartiality, independence, intolerance to corruption in general and to any of its forms within the judiciary.

B.1.4. Possible Options for Restructuring the Judiciary

The structure of the judiciary usually engenders opposing opinions and evaluations. Some argue that the *status quo* should be preserved at any rate. Others offer restructuring proposals, some of which require serious constitutional amendments that could only be enacted by a Great National Assembly (Judgment of the Constitutional Court No. 3 of April 10, 2003, delivered in constitutional case No. 22 of 2002). If the Constitutional Court changes its view and the political will is there, some of the proposed structural changes, however, may be enacted by the Ordinary National Assembly.

Regardless of the fact that structural changes cannot in themselves resolve all of the problems the judiciary faces, and even less so the problem of corruption, the introduction of such changes or the failure to make them would largely predetermine the choices to be made with respect to the management, functions and organizational principles of the judiciary.

In parallel to the proposed anti-corruption measures in the judiciary that would be pertinent if its current structure is preserved and slightly adjusted, **two alternative options** for fundamental structural modification are also on the table. If either of those options, or some of their elements, materialize, the basic organizational principles of the judiciary will be preserved in full with respect to the branches that will remain in the judicial system, and should be modified to the extent necessary to serve the branches that will move to the executive. When the structural changes take place, the managing and administrative functions of the judiciary should be clearly distinguished.

- **Under the first option**, the constitutional model of the judiciary would comprise the authorities that administer justice, i.e., the courts, plus the prosecution offices. While that scenario implies retaining the public prosecution within the judiciary, it is mandatory to implement the **principle of regular and *ad hoc* reports by the prosecutor general to the SJC.** In addition, in the context of the proposals to decentralize the system of public prosecution and to appoint public officials entrusted by law with prosecutorial functions outside the system of the Supreme Prosecution Office of Cassation, the Supreme Administrative Prosecution Office, the appellate, district and regional prosecution offices, it is recommended that one consider whether prosecutors from the system of public prosecution could work in the specialized authorities carrying out investigations at or outside the MoI (e.g., the National Service for Combating Organized Crime, the Financial Intelligence Agency, the Customs Agency, etc.). This issue should be addressed in more detail in relevant acts of parliament.

- **Under the second option**, the constitutional model of the judiciary would only comprise those authorities that administer justice: the courts. As far as the **prosecutorial authorities** are concerned, it is proposed that the legislation should provide for the following organizational and institutional changes (after the *Constitution* has been amended accordingly):

– A **National Prosecution Office** should be set up within the Ministry of Justice[9]. In the framework of that office, a **Managing and Administrative Board, or a High Council for Prosecutors** (more or less similar to the Supreme Judicial Council) should be created to include the prosecutor general as the head of the Prosecution Office, three prosecutors elected by the community of prosecutors and having terms of office equal to the term of office of the prosecutor general, and the minister of justice (by operation of law). To avoid the risk that the executive might dominate the Prosecution Office and its governing body, the prosecutor general should be nominated by the minister of justice and elected by the National Assembly for a specific term of office (longer than four years), and the National Assembly should again have the power to remove him or her from office under conditions strictly listed in the *Constitution*.

– The prosecutor general should report to the National Assembly regularly (annually) and *ad hoc*. That structure, where public prosecution would be a separate institution with the executive but the prosecutor general would be elected by and accountable to the legislature, is expected to result in a more balanced separation of powers and a refined mechanism of checks and balances.

– If this proposal is approved and implemented, the new office should be an umbrella for all prosecution bodies existing at present plus the prosecutors working at specialized authorities that conduct investigations inside or outside the Ministry of Interior for example, the National Service for Combating Organized Crime, the Financial Intelligence Agency, customs authorities, etc.

– The Managing and Administrative Board (High Council for Prosecutors) should handle the staffing of, and provide methodological guidance to, the prosecution offices and to prosecutors working outside the prosecution system. Public prosecutors should be autonomous, enjoy functional immunity and obey the laws when performing their basic functions. This would be necessary to avoid any risk of intervention by the Ministry of Justice or by any other authority when prosecutors fulfill their duties.

To ensure adequate **investigation**, both options suggest that the National Investigation Service (NIS) should be kept in place, while becoming a specialized service in the framework of Ministry of Interior deigned as follows:

– The head of the NIS should be appointed by the minister of interior for a term of office exceeding that of the government.

– The leadership of NIS should take the form of a collective governing body composed of the head of the NIS, a deputy minister of the MoI, and three investigators elected by the community of investigators in the country. All investigators should be directly subordinate to that body.

[9] Public prosecution is connected with the structure of the executive not only in established democracies like **Austria**, **Belgium**, **Denmark** or **Spain** but also in many new democratic countries, such as **Poland**, and the **Czech Republic**.

– Investigators should exercise their functions in the structure of the NIS directly, or at the corresponding district services of the MoI, or within the specialized structures that conduct investigations outside the system of the MoI (again, such as the National Service for Combating Organized Crime, the Financial Intelligence Agency, customs authorities, etc.), under conditions laid down by the leadership of the NIS.

– In the context of the day-to-day work of investigators, their autonomy from the structures of the MoI and from any other authorities to which they are attached should be guaranteed, as should be their leading role in the investigation conducted by such authorities.

The idea behind the changes proposed above is to ensure the immediate link that is required between the police authorities that detect crime and the investigative authorities—a link that is sadly missing in the current structure of the judiciary. Making the police and the investigative authorities part of the same institutional mechanism would enable the formation of joint teams and promote interaction throughout the process of investigation. The police would thus be responsible for the final result (a successful completion of investigation), whereas the investigative authorities, as a major unit of the MoI, would be involved more actively in the fight against and the prevention of crime, and their knowledge and experience would be of immediate assistance to police inspectors. This is even more important given the essential changes that will be made following the recent closure of negotiations on Chapter 24, Justice and Home Affairs. Such reforms should include the restructuring of the investigation system (until 2005), the development of a strong network of **police inspectors** who should gradually assume competence in investigating criminal offenses, and the imposition of limits to the powers of investigators. Ensuring **efficiency and transparency at the pre-trial stage, eliminating the duplication of functions between police inspectors and investigators or the duplication of investigations for some types of offenses, and improving the deficient qualifications and skills of most police inspectors** are key requirements to judicial reform in light of Bulgaria's anticipated membership in the European Union.[10]

In the future, one may consider abolishing the investigation and entrusting all operational activities to the police. In that scenario some police officers could be vested with carrying out urgent investigative steps that would produce acceptable legal effects.

This being said, any change in the investigative function and in the underlying structure should be made in the context of thoughtful reform of criminal proceedings. At the same time, it will be necessary to take due account of the need to strictly distinguish between and regulate the powers, duties and responsibilities of the authorities involved in that process, and to root their relations in sound and unambiguous legislation. The resistance that large groups of magistrates offer to any idea about changing the structure of investigation should not be overlooked, either.

[10] As of the beginning of 2003, the MoI has been working to that end. For example, new appointment requirements have been introduced, including a competition, a law degree (compulsory), and an exam.

B.1.5. Internal Anti-Corruption Monitoring Mechanisms within the Bodies of the Judiciary

The importance of in-house anti-corruption monitoring in the judiciary cannot be questioned. This is also true of the entities whose operation is linked to that of the courts, investigation services and prosecution offices, such as the Bar and the Ministry of Interior, as corruption transactions there could "export" corruption to the judiciary or fuel "chain" corruption that is hard to detect.

TABLE 12 FACTORS BENEFICIAL TO THE PROLIFERATION OF CORRUPTION IN THE JUDICIARY (%)

Low salaries of magistrates/court staff members	55.3
Moral crisis during the period of transition	43.2
Imperfect legislation	36.1
Lack of efficient internal monitoring mechanism and sanctions	35.7
Interweaving between the official duties of magistrates and their private interests	31.1
Aspirations of quick wealth gain	25.1
Political connections and dependence of magistrates/court staff	16.1
Sense of untouchability/immunity	15.0
Other	2.6
Does not know/No response	4.2

Source: CMS of *Coalition 2000*

TABLE 13 "WOULD THE FOLLOWING MEASURES CONTRIBUTE TO LIMITING CORRUPTION IN THE JUDICIARY?" (%)

	Agree	Disagree	Does not know/ No response
Setting up a specialized unit within Supreme Prosecution Office of Cassation to inquire into alleged corruption	49.6	39.6	10.8
Setting up such units to inquire into alleged corruption in the courts	48.7	41.0	10.4
Setting up such units to inquire into alleged corruption in the investigation	46.0	42.7	11.2
Setting up such units to inquire into alleged corruption in the bodies of the MoI	48.0	40.5	11.5

Source: CMS of *Coalition 2000*

It is noteworthy that magistrates identify the **lack of an efficient internal monitoring machinery and sanctions** as the fourth most important factor that favors the infusion of corruption into the judiciary.

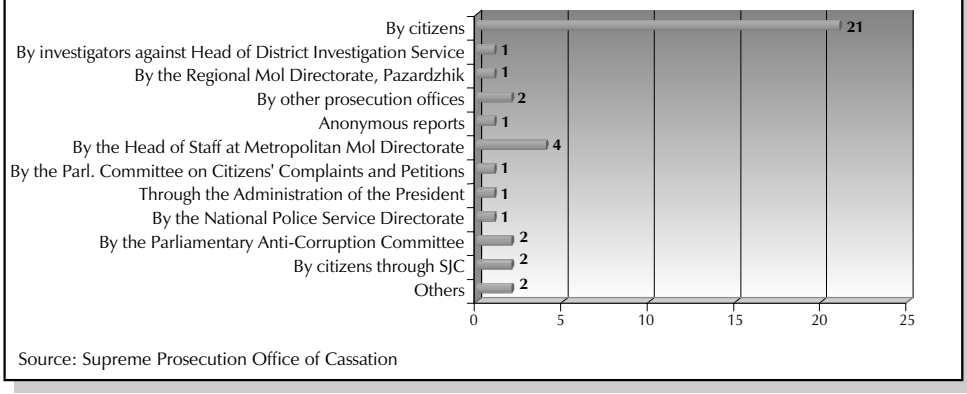
Most magistrates believe that setting up **specialized units** at the Supreme Prosecution Office of Cassation, the courts, the investigation service, and the Ministry of Interior that are tasked with inquiries into reported inside corruption, and the promotion of such units would help limit corruption in the judiciary.

According to the Supreme Prosecution Office of Cassation, its Complaints Unit is open to any information about corruption transactions allegedly involving magistrates or senior public officials.

The majority of the 39 reports received until September 2003 were checked by the Inspectorate Unit at the Administrative Department, while two of them have been assigned to the Investigation Department.

To resist **inside corruption**, at the end of November 2003 a permanent three-

CHART 16 INFORMATION ON CORRUPTION TRANSACTIONS ALLEGEDLY INVOLVING MAGISTRATES FILED WITH THE SUPREME PROSECUTION OFFICE OF CASSATION, JANUARY-SEPTEMBER 2003



Source: Supreme Prosecution Office of Cassation

member panel was set up at the SJC. It should prevent and combat the corruption transactions of judges, prosecutors, investigators and the staff at all the bodies of the judiciary. The mission of the panel is to receive, verify, and analyze any reports on corruption among magistrates and court staff, and to interact with other state agencies and NGOs in response to corruption. At the same time, the existing interim rules on the panel's procedure, structure and organization invite mixed perceptions: the panel has no defined term of office; it is composed of practicing magistrates who are not members of the SJC; it is not given any powers to react to findings of corruption; and the specific mechanisms of its interaction with other anti-corruption units in the bodies of the judiciary remain obscure.

To curb inside corruption in the judiciary and to resist the diverse forms of "chain" corruption, it is recommended:

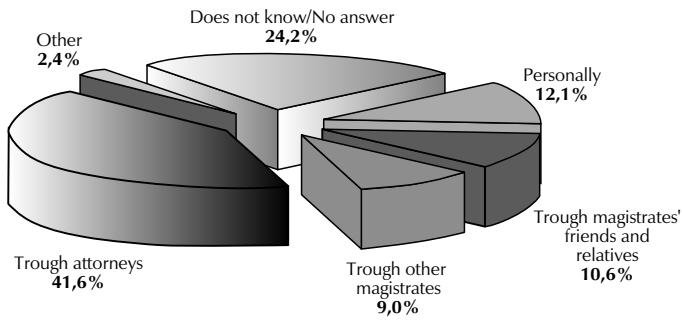
- To further promote the existing **specialized units** and put in place new such units within the basic structures of the judiciary. These units should closely interact among themselves and with any other competent bodies, including the relevant services of the MoI (the National Service for Combating Organized Crime, the National Police Service Directorate, the Operational and Technical Tracing Directorate, the Operational Information Directorate, and the National Security Service Directorate), the Anti-Corruption Coordination Commission with the Government, the Anti-Corruption Standing Parliamentary Committee, the SJC, the Court of Auditors, the Customs Agency, the General Tax Directorate, the Financial Intelligence Agency, the Privatization Agency, the Post-Privatization Control Agency, and the State Financial Control Agency.

- **To improve the accountability** of the judiciary and to report on the number of prevented, detected or prosecuted corruption crimes involving magistrates.

- To compile on a compulsory basis **statistics on the corrupt offenses involving magistrates**.

The debate on the anti-corruption dimensions of judicial reform has revealed growing fears that some **members of the Bar** at times facilitate the proliferation of corruption transactions in the judicial system and in the public administration by acting as **intermediaries** or by deriving unlawful benefits under the false pretext that bribes are solicited.

CHART 17 METHODS USED BY INTERESTED PARTIES TO IMPLEMENT CORRUPTION TRANSACTIONS



Source: CMS of *Coalition 2000*

The actual gravity of this problem is not confined to the unlawful and morally unacceptable behavior of some attorneys but lies in its effects as it prompts a real growth of corruption among magistrates and civil servants, the fundamental symbols of statehood and of the public opinion about statehood. To cut off those negative phenomena, decisive legislative amendments are required (introducing stricter criteria for access to the legal profession, expanding the scope of statutory duties of attorneys who should comply with **a number of ethical rules** in order to uphold the trust and the respect needed by the profession, and refining the **disciplinary proceedings** for failure to fulfill statutory duties or to observe the ethics code). In addition, specific guarantees would be necessary to secure the observance of professional ethics and discipline by attorneys, **and that obligation should be proclaimed in the *Constitution***. Stricter control must be exercised by the competent internal bodies of the Bar and responsibility should be attached to improper behavior, *inter alia* in the form of disqualification of attorneys on account of clearly impertinent procedural steps or abuse of procedural rights (e.g., procrastinating cases because of pretended illnesses; this could be countered through a requirement that the ailments of any party to the proceedings or its counsel must be confirmed by "trusted" doctors assisting the respective court).

B.1.6. Opening the Judiciary to the Public

The general public seems to cherish an enduring perception that the various segments of the judiciary are entrapped by sluggishness, inefficiency, partiality and widespread corruption transactions. In turn, most magistrates think that **citizens normally have excessive expectations of the performance of the members of the judiciary**, and many of them fail to know their rights or are inclined to resort to various corruption transactions in order to settle disputable issues "informally".

The discrepancy between the opinion of the public and that of magistrates on the level of corruption in the judiciary confirms the existence of a **serious communication problem** between the judiciary and civil society.

This is proven by the inability of magistrates or the separate branches of the judiciary **to respond adequately to critical assessments of their performance**. According to the results of a survey conducted by Vitosha Research, very few of them (25.1 %) think they should inform the public about the shortcomings in the operation of the system they have come across. Moreover, as public pressure grows, some branches of the judiciary perceive as hostility even the well-meaning opinions and recommendations

TABLE 14 "HOW OFTEN DO CITIZENS WITH WHOM YOU ARE IN CONTACT WHEN FULFILLING YOUR PROFESSIONAL DUTIES— (%)

	Normally	Sometimes	Seldom	Never	Does not know/ No response
—have excessive expectations of magistrates and their performance?"	56.2	28.0	8.1	2.6	5.1
—fail to know their rights?"	52.4	31.5	11.9	2.0	2.2
—show discontent with the work of magistrates?"	34.6	47.1	14.1	2.0	2.2
—prefer to engage in corruption acts rather than uphold their rights lawfully?"	15.4	34.6	26.9	8.8	14.3
—think they can achieve whatever they want by offering money or gifts?"	12.6	30.4	32.2	15.2	9.7
—behave rudely or impolitely towards court staff or magistrates?"	9.5	37.4	42.7	6.8	3.5

Source: CMS of *Coalition 2000*

voiced by the civil society, by foreign governments or international organizations. Such reactions enhance in turn the public suspicion that members of the judiciary use their immunity as a shield, that they are uncontrollable and untouchable.

An increasing number of magistrates and experts have become aware of the urgent need to change the style of communication between the judiciary and the public. Moreover, the first steps have been made to make some branches of the system more responsive to the problems, questions and criticisms regarding their operation. New practices are being developed which demonstrate the nascent aspiration of the judiciary to open the system while relying on the media and to launch a public dialogue to address the issues of justice in a transitional environment.

- *Press offices at the bodies of the judiciary*

Press offices established at some courts[11] provide information to the community on cases that are of interest to the public (scheduled hearings, progress, key points, judgments or verdicts).

The *Uniform Media Strategy of the Judiciary* approved by SJC on June 25, 2003 prescribes in detail the rights and the obligations of an official to be appointed at SJC, *viz*. the **Public Relations Officer**, and of the press officers (also referred to as "public relation officers") to be appointed at the supreme, appellate and district courts and prosecution offices, at the National Investigation Service and the district investigation services and, if possible, at Sofia City Court and some larger regional courts which are known for their vast workload. The Strategy outlines the basic rules for communication with the media and with other institutions. The attainment of its objectives would positively contribute to opening the Judiciary towards society and, in the end of the day, to improving its own performance and the public perception thereof.

- *Access to information about the operation of the judiciary*

Increasing the judiciary's transparency must imply the provision of access to information about the operation of the judiciary. Such a guideline is

[11] Press offices have been created and already function at the Supreme Administrative Court, the appellate, district and regional courts in Bourgas, Varna, Veliko Turnovo and Plovdiv, and the appellate, district, city and regional courts in Sofia.

Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe on measures facilitating access to justice. A major principle underlying the recommendation is that member states should "take all necessary steps to inform the public on the means open to an individual to assert his [or her] rights before courts and to make judicial proceedings…simple, speedy and inexpensive".

Relevant steps to that end are the Websites developed by individual courts and by the SJC, and a number of other initiatives designed to make the administration of justice more transparent, for example, the project implemented at Varna District Court to release court proceedings of immediate interest to the public directly on the Internet.

As better communication between the branches of the judiciary and the public would require further steps, special attention should be attached to the use and implementation of **modern technology.** New methods of communication could include:

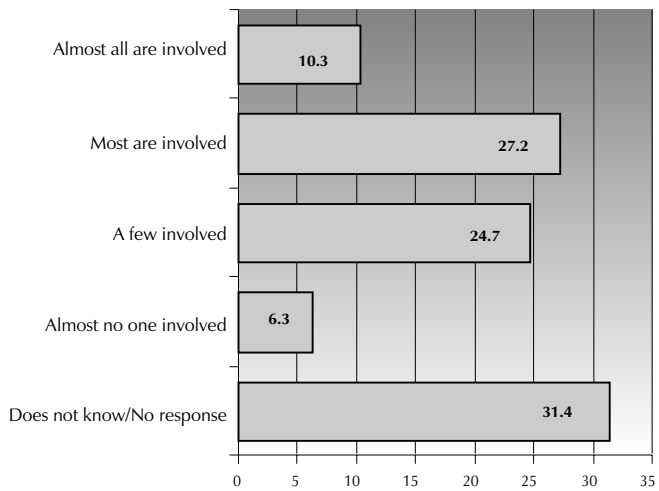
- launching projects to facilitate receipt from the Internet of information about the cases and their progress, and any other useful information, while relying on the successful practices and the experience gained[12];
- providing an implementing statutory framework on the use of electronic documents and electronic signatures in the judiciary, so as to foster efficiency, promptness, security and transparency;
- introducing the practice of judges and prosecutors regularly answering questions addressed to them on the Internet;
- developing and using electronic information systems at the Supreme Court of Cassation and Sofia City Court, and in as many courts across the country as possible.

B.2. The Administration of Judicial Bodies

The organization and operation of the administration of judicial bodies (i.e., the administration of the Supreme Judicial Council, the Supreme Court of Cassation, the Supreme Administrative Court, the prosecutor general, the Supreme Prosecution Office of Cassation, the Supreme Administrative Prosecution Office, the National Investigation Service, and all the courts, prosecution offices and investigation services), briefly referred to as "**court administration**", are linked to the management of the judiciary and to the arrangements that ensure its independence and self-governance. On the one hand, the persisting problems in the governance of the judiciary and corruption in its branches largely precondition the shortcomings of court administration. On the other hand, the malfunction of court administration and corruption transactions involving court staff form a straightforward obstacle to high-quality performance of judicial bodies and adversely affect public opinion about the judicial branch of power. There is a very wide discrepancy

[12] For example, the websites of the Supreme Administrative Court and Varna District Court, the possibilities for quick electronic reference to case progress information as they exist at Blagoevgrad District Court and Blagoevgrad Regional Court, etc.

CHART 18 PUBLIC OPINION ON THE SPREAD OF CORRUPTION AMONG COURT STAFF (%, MAY 2003)



Source: CMS of *Coalition 2000*

TABLE 15 SPREAD OF CORRUPTION AMONG COURT STAFF IN THE BRANCH WHERE RESPONDENT MAGISTRATES WORK (%)

Almost all court staff members are involved in corruption	0.2
Most court staff members are involved in corruption	2.2
A few court staff members are involved in corruption	18.7
Almost no court staff members are involved in corruption	32.4
No court staff members at all are involved in corruption	30.0
Does not know/no response	16.5

Source: CMS of *Coalition 2000*

between the views of the population and those of magistrates when it comes to the level of corruption among the employees working in the administration of judicial bodies, whom the legislation refers to as "court staff".

B.2.1. Organization and Operation of Court Administration: The State of Affairs

Although growing attention has been given in recent years to the need to reform court administration, efforts so far have mainly been confined to drafting strategic and programmatic documents. Even today, court administration is based on obsolete organizational principles, staff members work in unsuitable, frequently primitive conditions, no unified standards or practices exist, and the system is generally a far cry from modern management technologies. There are no uniform and detailed rules of secondary legislation regulating the operation of administrations in the courts, prosecution offices or investigation services. All of these factors create a corruption-friendly environment, which, in turn, could result in delaying or obstructing investigation and court proceedings, including the investigation and prosecution of corruption-related crime.

The following specific major problems in the organization and operation of court staff have been identified:

- *Document processing in the branches of the judiciary*

Case management procedures (most generally those relative to the filing and receipt of papers with and from the court, and the prosecution office, access to information, security of document circulation, and inter-institutional transfer of court files) are typically **opaque, awkward, and**

TABLE 16 **CORRUPTION TRANSACTIONS (E.G., OFFERING BRIBES OR TRAFFIC IN INFLUENCE) ARE EXERTED ON COURT STAFF FOR THE FOLLOWING PURPOSES:**

	Yes (%)
To carry out/to refrain from carrying out specific steps in processing court papers and documents	55.9
To knowingly violate the rules on serving summonses and other court papers	53.7
Other	3.1
No corruption acts take place	7.7
Does not know/No response	16.5

Source: CMS of *Coalition 2000*

subjective. Under those conditions, myriad unpredictable local administrative practices emerge which additionally frustrate the efficient administration of justice and sow the seeds of distrust of the judiciary. Such practices eat up much of the time and efforts of judges and of the insufficient number of court staff members, most of whom are not well-trained and lack motivation.

No clear rules exist regarding access to documents and records in courts, investigation services and prosecution offices, on the issuance of documents and the delivery of certified copies by the court, on how case files should be accessed and used, and on who should be held liable for the disappearance or destruction of individual documents or parts of files.

Automated case management system

USAID has donated to the SJC a modern document registration system which reports on the progress of judicial proceedings and enables many different searches and the electronic submission of cases to higher instances. The SJC has already decided to implement that system in all courts. Meanwhile, it operates successfully at the District and Regional Court in Blagoevgrad, and at Smolyan Regional Court. The document registration system of the Supreme Administrative Court and Varna District Court is based on similar principles. The automated document registration system also covers the progress of enforcement proceedings. It will be accessible on the Internet, so citizens and attorneys will be able to find information about the cases at any time, including any scheduled hearings and the indispensable forms to be filled out.

- *The mechanism of summoning*

The incorrect, inaccurate, or late serving of writs of summons, and the errors possibly contained therein, as well as the absence of any remedy against inaccurately served summonses may become major factors for delaying the cases and manipulating the development of judicial procedures.

- *The assignment of cases to individual judges and court chambers*

The assignment of cases to individual judges or to different court chambers is not always well-founded, adequate and objective. This paves the way for

corruption transactions and affects the performance of court staff. Not only the citizens, but magistrates and staff members alike are typically convinced that if a specific outcome is sought in a case, the file would be assigned to specific chambers or judge-rapporteurs.

Impartial automated case-assignment system

On October 6, 2003, Division Three of the Supreme Administrative Court launched—on an experimental basis—a new system of assigning cases to judge-rapporteurs and court chambers. When administrative proceedings are instituted, the judge-rapporteur or the chamber in charge are identified by an automated system which forms part of the Court's document registration system. After the results of that experiment are analyzed, it will be decided on whether to apply the same approach in the other divisions of SAC. Such measures are needed in view of the requirement of the European Union to fully implement an impartial automated case-assignment system by 2007.

- *The imperfect mechanisms of recruiting, promoting and disciplining court staff*

Beyond the lack of objective criteria or adequate procedures for recruitment and career development, no efficient machinery exists in practice to discipline court staff, even in the event of corrupt behavior or breach of the moral rules enshrined in the Ethics Code of Court Clerks.

B.2.2. The Need to Build up a Modern Structure and Organization of Court Administration

A set of legislative and organizational changes is indispensable in order to efficiently modernize the operation of court administration and place it on solid corruption-free ground.

- *Improving the legislative framework*

  – The **fundamental general principles** of the operation of court administration should be refined, as should be the **status of court staff members**. This should happen by improving and elaborating on the provisions of Chapter Fifteen of the *Law on the Judiciary*.

  – The **instruments of secondary legislation and the internal regulations on the work of court administration**, required under §.188 of the *Law on the Judiciary*, should be drafted; these should govern in detail and with precision the structure and the organization of court administration, the requirements to, the recruitment criteria for, and the specific rights and duties of staff members, as well as their continuous training and professional improvement.

  – Requirements should be introduced as to the **categories and number of court staff members** needed in all groups of judicial bodies, and detailed **job descriptions** should be prepared for them.

– The importance of **ethical rules** should be reiterated, and compliance therewith must be ensured through appropriate controls and sanctions.

– Thorough rules should be devised on **access to information** handled by court staff (regarding employees entitled to have access, the parameters of official secrecy, and procedures).

• *Funding, logistics, and human resources for court administration*

– The overall budget of the judiciary should provide for **sufficient funding, equipment and facilities** for the court administration, while rectifying the existing disparities between the judiciary and the other branches of power, on the one hand, and among the separate branches and bodies inside the judiciary, on the other hand. This should be promoted by an equitable allocation of resources among the branches of the judiciary; for example, by striking a fair balance between the bodies in Sofia and those in the countryside.

– **More funds** should be earmarked in the budget of the judiciary for the work of its administration in general, and for case management in particular.

– **The conditions of work should be improved** through the rational use and management of the Court Houses Fund which should be relied upon to expand and improve the existing buildings of the judiciary and the equipment at the work places of staff members.

– **Competitions** should become the standard practice of appointing court staff, as envisaged in §. 188a of the *Law on the Judiciary* and in the *Rules on the Organization of Court Administration, on the Functions of Services at Regional, District, Military and Appellate Courts, and on the Status of Court Staff*.

– A mechanism should be devised for the **recruitment of new staff** members trained at specialized schools, while involving appointed personnel in **continuous training**.

– **New mechanisms of managing and controlling** court staff should be elaborated.

• *Automating administrative work*

To ensure the speedier and more transparent processing and provision of information which would enhance the performance of court administration and reduce to a minimum the chances for corruption transactions, the following measures should be implemented:

– Transfer any case-related information and operations from paper to electronic medium and store all of the files in electronic form based on **a uniform software product implemented in all courts**.

– Introduce a new approach to the search and retrieval of **case-related information** by devoting several work stations solely to this activity, which should be conducted with a software program; other staff members would thus be able to work at ease and to concentrate on the cases themselves and the orderly processing of court papers.

– Court services should **provide any public information** to outside agencies and institutions or to private individuals (notaries, law firms, etc.) **in electronic form**, in return for fees and under strict information security arrangements embedded in the software used.

• *Changing the structures and the corresponding positions*

In order to modernize court administration and ensure its smooth operation, implementation of the relevant provisions of the *Law on the Judiciary* and of the *Rules on the Organization of Court Administration, on the Functions of Services at Regional, District, Military and Appellate Courts, and on the Status of Court Staff* should be expedited. Similarly, a number of new positions should be introduced (court administrators, administrative registrars, court statisticians, judicial police, etc.), while the functions attached to some of the existing positions (such as court registration clerks, and court secretaries) should be revisited.

The above steps should considerably improve the performance of individual employees and of the court administration as a whole, and would allow the heads of different bodies within the judiciary to rid themselves of countless irrelevant functions they are bound to perform now. The clear distinction between the responsibilities of different staff members would contribute to a speedier, more transparent and efficient administration of justice.

• *Education and training of court staff*

The professional training and the integrity of court staff members are of the essence given their responsibility in ensuring the high-quality overall operation of the judiciary. It is therefore necessary to continue to refine, within the framework of the National Institute of Justice, the practice launched by the Magistrates Training Centre of drafting and implementing advanced training programs for court staff members. The programs cover, among other things, the ethical and anti-corruption aspects of their work. Additionally, on the basis of programs developed and agreed upon at the national level, the training of court staff should be decentralized by court district and the responsibility for training the staff in each district should be entrusted to the corresponding head of the judicial body or to a magistrate appointed there. The cooperation for training of court staff members that has been established—including training of trainers between the National Association of Court Clerks and the United States Agency for International Development—provides an appropriate basis for decentralized training initiatives. Until the end of 2003, more than 700 court staff members and 40 court staff members trainers have been trained. An all-year curriculum for training of members of court administration, including newly-appointed court staff, has been approved to be implemented on a regional level for 2004.

In the long run, it is pertinent to consider the introduction of compulsory training upon any initial appointment to a given position, and this should gradually transform into **specialized training** as a requirement to start working in the court administration. Likewise, continuous training should be offered on a standard basis to enable staff members to regularly upgrade their skills.