

D. INTERNATIONAL COOPERATION ON ANTI-CORRUPTION REFORMS IN THE JUDICIARY

In recent years the role of the judiciary in the system of democratic institutions has been receiving increased attention. The assessment of the development in the national justice systems has become a key criteria for the success of reforms in the transition countries. In this context, the growing international interest in the process of judicial reform in Bulgaria, as well as the high expectations for dealing with the problems in the judiciary in the context of EU accession, are well founded.

The slow pace of reform has mostly prompted critical assessments by international institutions, foreign governments and Bulgarian NGOs. The drawn-out administration of justice and human rights violations (evident in the many cases brought against Bulgaria in the European Court of Human Rights, although those violations were allegedly committed in the period of 1993-1998), low public trust in the judiciary, the spread of corruption, and the impunity of offenders, particularly among magistrates, are most often quoted as problematic issues. Thus in recent years all international institutions and major foreign partners highlighted the importance of an accelerated judicial reform for the success of both integration efforts and overall reforms in the country.

There exists "a general perception that the judiciary had achieved insufficient results in the combat of crime, especially as concerns organized crime and corruption, including corruption in the judiciary itself."

Reform of the Judicial System in Bulgaria, Conclusions adopted by the Venice Commission at its 55th plenary session (Venice, 13-14 June 2003) "Deficiencies in the administration of justice represent the country's most outstanding democracy-related problem."

USAID/Bulgaria Graduation Strategy 2003-2008, p.49

The link between judicial reform and integration is acknowledged in the Judicial Reform Strategy adopted by the government October 2001: "The strategy's main purpose is the development of European standards in justice, by defining the political and legislative priorities of the reform of the judiciary, that will contribute to the process of preparation of the Republic of Bulgaria in order to join the European Union. The strategy complies with the requirements and commitments that Bulgaria has accepted in the National Program for the Adoption of the Acquis and with the priorities of the Accession Partnership."

D.1. Political Implications

The interest of foreign partners in the outcome of the reforms—in particular those in the judicial power—is a key factor for their success and is undoubtedly beneficial to political developments in Bulgaria. Arguably, the current focus on the judiciary—specifically in the field of anti-corruption—and the need for constitutional changes would not have materialized in 2003 without such interest from abroad (it is indicative that the changes in the Constitution came to be dubbed “the Ferheugen amendment”). Communicating this concern appropriately will determine the extent to which the Bulgarian public will come to realize that it is not inspired primarily by a quest for certain advantages (say, in the process of negotiations) but rather aims at creating long-term trust by Bulgaria’s international partners.

One of the best practices exemplifying this is the cooperation between Bulgaria and Spain. In 2003 the Spanish model of transition from an authoritarian state to democracy was a matter of a number of exchanges between the two countries. By means of a project with the Bulgarian Supreme Judicial Council (SJC) and several visits by senior Spanish magistrates and government officials the Bulgarian institutions came to better understand the political consensus that has been underpinning the Spanish transition and which was manifested in a State Pact on the Judicial Reform. Its four main elements—independence and efficiency of the judiciary, legislative amendments, organizational reforms, and reform in the administration and infrastructure of the judiciary—are particularly relevant to the current status of reforms in Bulgaria.

The key impact of the involvement of foreign partners and institutions in judicial reform in Bulgaria is the **encouragement of political consensus on the reform priorities**. In the context of extreme partisanship by political parties—which nonetheless have no meaningful policy differences in this area—Bulgaria’s international integration commitments facilitate the adoption of consensual policies.

Still, foreign influence on anti-corruption reforms could bear a number of **risks**.

First, concern of international institutions often suffers from **short-termism**. This gives rise to unrealistic expectations for quick fixes which in turn could encourage the adoption of superficial measures. It does not encourage accountability and could lead to ad hoc measures which, although needed, could only be effective in a broader context of developments.

Second, the so called conditionalities posed by international institutions—aimed at linking integration progress (i.e., to the EU) or the availability of loans (i.e., from the World Bank) to effective judicial reforms—**commit mainly the executive and do not produce direct consequences for the judicial power**. The positive effect of external influence could be further diminished in the context of a rift between the government and the magistrates, the controversy surrounding the proposals for a change in the status of some of the branches of the judiciary, and the discussions of the new role of the court administration. This approach does not contribute to enhancing the accountability of magistrates to society nor to increased transparency in their work. As a result, the understanding among magistrates of the significance of EU membership is at a lower level than in the executive.

Third, there is risk of **shifting priorities**. A probable reason is that political attention has limited capacity, but this could still be detrimental to the sustainability of reforms. For example, the 1995 EU Madrid Summit made public administration reform a priority although the judiciary was even less advanced in its reforms. During the last couple of years attention has shifted to the role of magistrates in Bulgaria while reforms in the administration could hardly be said to have been completed.

Being aware of these risks would enhance the effectiveness of assistance provided by international institutions. Making the judiciary more involved in a three-way cooperation process with foreign partners and the government would diminish fears that reforms are somehow aimed at undermining judicial independence.

It is also crucial that foreign encouragement of specific reforms makes sense from the point of view of the logic of integration, as there is a tendency to lump together various policies or to follow the political debate in the country. In 2003, for example, the European Commission conditioned negotiations progress to certain judicial reforms about which most political parties have already reached a consensus. The constitutional amendments of September 2003 (concerning immunity, the mandate of governing magistrates, and irreplaceability), while important to a more accountable judiciary, are hardly directly relevant to an “ability to take on the obligations of membership.” Further—probably partly due to recent problems with crime in the country—the criminal law aspects of reform are being prioritized at the expense of concerns over judicial capacity to evenly and effectively apply the rules of the single market.

A key factor for the effectiveness of foreign involvement in judicial reforms in Bulgaria is the coordination of messages from abroad. In this respect, a best practice could be found in the approach of the EU, USAID and the World Bank. These institutions have, by and large, harmonized their approaches and WB assistance, while provided in crucial integration areas, does not overlap with EU and USAID support, with USAID reflecting WB conditionalities in its assistance programs thus helping Bulgaria comply. The preparation of the \$150m Programmatic Adjustment Loan for Bulgaria (PAL 2) targets the improvement of public sector governance, including judiciary reform and eradicating corruption. In order to receive the loan, the government of Bulgaria is supposed to meet a previously-negotiated set of conditions concerning these reforms. The policy dialogue on negotiating and fulfilling these conditions is, in its own right, a learning process for the Bulgarian side.

D.2. Donor Assistance

The relation between the policy messages of foreign partners and international organizations and the concrete financial and technical assistance they provide is of key importance to the overall impact. On the surface, the fact that technical assistance is delivered for objectives that are also conditions to be met before integration might seem contradictory. In fact, both policy implications and funding are conducive to the accomplishment of reforms. With regard to this aspect, multilateral institutions like the EU and the World Bank differ substantially from bilateral aid agencies.

- With **multilateral institutions** a state's particular needs may not be met at the appropriate time since both the political agenda and assistance programs depend on a long and complex coordination process. The degree of financial and technical assistance they deliver is considerably greater; this is why such assistance results in mostly long-term effects.
- **Bilateral aid agencies** are much more flexible in terms of both the forms of aid provision and the particular programs and projects. These differences strike a critical note with the judiciary due to its status and institutional structure. In order for the assistance to achieve its full effect, donor institutions must coordinate their priorities and approaches, not allowing the common measure of competition between them to interfere. This is all the more essential given that the executive and the judiciary are not always capable of leading this process.

The Magistrate Training Center (MTC), initially a non-governmental entity established with the support of the US Agency for International Development (USAID), is an example of good practice for judicial reform support. Aided by the European Commission and USAID, in 2003 the MTC has been under conversion into a public entity under the SJC, namely the future National Institute of Justice (NIJ). The establishment of the NIJ is to be finalized in early 2004.

Donor institutions also diverge importantly in terms of where they place the judicial system in their programmatic framework. In the EU Commission's Justice and Home Affairs agenda, for instance, judicial reform issues and the

TABLE 26 PROJECTS WITH INTERNATIONAL GRANT OR INVESTMENT AID EITHER CURRENT OR LAUNCHED IN 2003¹⁵

Ministry/Agency	Number of projects	Total amount(€) ¹⁶
Ministry of Justice	6	12,130,000
Ministry of Justice, with the participation of the Supreme Judicial Council	5	24,710,000
Ministry of Justice, with the participation of the Supreme Administrative Court	2	1,080,000
Ministry of Justice, with the participation of other agencies	3	460,000
NGOs	35	1,593,000
The Public Prosecutor's Office	3	6,340,000
Inter-agency	1	1,200,000
<i>Total</i>	<i>55</i>	<i>47,513,000¹⁷</i>

¹⁵ Source: Information of the Judicial Reform Working Group with the Donor Coordination Mechanism

¹⁶ These are round figures. There is no information available about the funding of some projects.

¹⁷ The budget of the judiciary in 2003 was about €73 million.

operation of executive law-enforcement bodies converge. This combination derives from the logic of enlargement negotiations, which, as noted above, involve mainly the government and the administration. For USAID, the judiciary is a priority of its own, while the goals their support pursues are achieved in one of several manners—directly (through the Supreme Judicial Council or pilot courts), through the executive, or involving non-state actors.

A positive development in this respect is the creation of a **Donor Assistance Co-ordination Mechanism with the Council of Ministers**. It brings together state institutions and the international donor community and certain non-governmental organizations have been invited to take part, as well. Judicial reform is among the areas the mechanism will cover. Bearing in mind that of the 16 members of the relevant working group in 2003, only two were magistrates, it is advisable to involve a greater number of judiciary representatives in the future.

The form in which international support is provided is predetermined by the institutional and structural peculiarities of the judicial system. One of the frequently used options is the so called “pilot courts”, where a particular procedure is introduced, and training is conducted or some other type of technical or financial support is provided. Pilots model successful practices, thus promoting their adoption by their counterparts in judicial units. As a method of work it is suitable for a non-hierarchical structure, for it achieves visible results in short periods. These results have a relatively permanent effect due to the low turnover in the judiciary. The only drawback of the approach is that it only targets individual courts, failing to address the shortcomings of the whole system.

There are some positive developments including the growing level of sectoral specialization of the various aid agencies, and the effort to target pilot projects (e.g., USAID) at courts of varying size and workload so as to cover the broadest possible range of issues:

- Bilateral agencies such as USAID, the governments of Spain, the Netherlands and UK, and others focus on training of both magistrates and court administrations, on monitoring, and on pilot projects at individual courts (e.g., introducing new software and automatic file management systems).
- Multilateral institutions like the EU, the World Bank and the UNDP underpin structural reform, regulatory reform and general capacity-building measures. It should be stressed that a multitude of their projects are funded and/or implemented by individual member countries (such as Germany and Norway).

The EU is the largest contributor to Bulgarian reforms, including judicial reform, through the programs administered by the European Commission. In 2003 a total of 11 judiciary-related projects were implemented under EU’s enlargement instrument, PHARE. All of them had a public institution as the main executor and coordinator (the Ministry of Justice in most cases). The Supreme Judicial Council has not independently executed any PHARE project so far, but two projects are in the pipeline.

Seven of the PHARE projects were so-called “twinning” projects, with five of those containing an investment component¹⁸.

Title of the Project	Type of Support
BG-0103.04 <i>Streamlining of Bankruptcy Proceedings</i>	Twinning project
BG-0103.03 <i>System for Career Development and Professional Qualification of Magistrates and Clerical Staff in the Judiciary</i>	Technical assistance
PHARE Horizontal Programme <i>Reinforcement of the Rule of Law</i>	Technical assistance
PHARE 2002 <i>Implementation of the Strategy for Reform of the Judiciary in Bulgaria</i>	Twinning project and investment component
PHARE 2002 <i>Improvement of Administrative Justice in View of the Fight against Corruption</i>	Twinning project
PHARE 2003 <i>Reform of the Civil and Penal Procedures</i>	Twinning project
PHARE 2003 <i>Support of the Implementation of the Strategy for Reform of the Judiciary through Introduction of Information Technologies</i>	Grant aid, investment component
BG 02/IB-FI-02 <i>Developing a National Cooperation and Information Exchange Network for Protection of Intellectual and Industrial Property Rights</i>	Grant aid, investment component
BG/2000/IB/JH/01 <i>Strengthening the Public Prosecutor's Office</i>	Twinning project and investment component
BG/2002/IB/JH/04 <i>Strengthening the institutional capacity of the Public Prosecutor's Office for fighting organized and economic crime and corruption</i>	Twinning project and investment component
<i>Strengthening the interagency cooperation between Public Prosecutor's Office and the Ministry of Interior in fighting organized crime and corruption</i>	Twinning project and investment component

¹⁸Source: Information of the Judicial Reform Working Group with the Donor Coordination Mechanism

Twinning projects are a popular form of providing technical assistance to candidate countries. Many of those targeting justice and home affairs include executive bodies as participants. Twinning projects require direct contacts between the respective Bulgarian agency and a member state government institution and are thus more appropriate at the level of state administration rather than in the judiciary. The portion of twinning projects is large due to the fact that the Ministry of Justice is usually the key partner in PHARE projects. Yet ways must be found to make EU support directly available to the judicial system (particularly to the SJC, whose role in international cooperation and EU integration needs to be strengthened).

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The success of judicial reform in Bulgaria is strongly contingent on the commitment of international partners. Their interest should continue to contribute to a broader consensus between policy makers and the separate branches of government.

The efficiency of such international support could be enhanced if the following two courses of action are taken: assistance should be provided in **priority areas defined** as such on the basis of a broad political consensus; and **an independent technical and institutional capacity should be built within the judiciary itself**. Judicial independence—a characteristic paramount to its role in society—should be strengthened through the necessary institutional resources, including those for the absorption of donor support. Insufficient as transparency and accountability are in internationally assisted projects in public institutions, effective judicial reform is unthinkable without these. A stronger involvement of the judiciary in the integration process would directly translate into the enhanced capacity for utilizing international technical and financial support.