

JUDICIAL REFORM CONTINUES WITH THE REFORMS OF CRIMINAL PROCEEDINGS

*Anton Stankov*⁶⁸

Some people are still questioning the need for judicial reform. Why does the word “reform” sound so unnerving? And for me, it does – almost as much as “war” does. Indeed, the reform of the Bulgarian judiciary was at times so aggravated as to resemble hostilities.

But there are two factors that necessitate the reform and I will expressly repeat them because we, as law practitioners, sometimes forget we are not the only ones with expertise or the only ones doing any work. There are people judging our work as well.

Judicial reform is needed first of all for the sake of the ordinary Bulgarian citizen. It is common knowledge that popular dissatisfaction with the work of the judiciary is growing. And it has nothing to do with media manipulations; it is provoked rather by our own actions. We need to be self-critical.

The British are also conducting a criminal justice reform at the moment. They seem to have some attitudes similar to ours – from the perspective of the separate institutions things seem to be perfectly alright as each of them claims to do their job in the most appropriate way. When this shifting of responsibility upon the other parties involved in criminal justice is done repeatedly, it means that the system as a whole does not work satisfactorily. And it runs counter society’s needs. But our colleagues in the UK, however similar their attitude, employed their traditions, their culture and mentality which are older and quite different from ours. They engaged in intensive negotiations between the involved institutions for eighteen months, arrived at some mutually acceptable decisions and now a commonly approved reform is underway.

The second factor that necessitates the Bulgarian judicial reform is that we are pressed for time. We do not have eighteen months at our hands to arrive at a consensus. Bulgaria is determined to enter the EU on 1 January 2007. Bulgaria, not the Bulgarian government or the Bulgarian parliament, was undertaking to sign the Accession Treaty on 25 April. I don’t know of a person, a party or a politician who would publicly and openly stand in opposition to our country’s EU membership.

So we are obliged to pay heed to what EU experts have repeatedly told us through the Commission’s regular reports since year 2000. They have been saying that the judicial system has problems and they have named them time and again. These statements, however, have been formulated due to the information we ourselves have given to EU officials and experts. So their calls for reform are modeled after our own views.

⁶⁸ Mr. Anton Stankov is a graduate of the Law Faculty of Sofia University *St. Kliment Ohridski*. He started his professional career as an intern at Sofia City Court, after which he was consecutively appointed as junior judge at the Shoumen District Court and as judge at the Shoumen Regional Court, Sofia Regional Court and Sofia City Court. In the period 2001 – 2005 Mr. Stankov was Minister of Justice of Bulgaria, after which he returned to his previous position as judge at Sofia City Court.

Currently the drives for reform, especially in criminal justice, are at their strongest since year 2000. Several successful amendments have been made in the Criminal Procedure Code so far, concerning coercive measures, trial phase activities, etc. But the changes sought in the pre-trial phase of the criminal process were not achieved.

I must remind you why they failed. They failed because of deliberate and coordinated efforts to obstruct the reform we proposed. I will refer to several Constitutional Court rulings following inquiries made by certain magistrates. Of course, everyone in a democracy is entitled to seeking and practicing their rights. Yet this may be done for the satisfaction of limited institutional, or even sometimes private, interests. The Constitutional Court rulings on the amendments to the Law on the Judiciary and on proposed structural changes of the judiciary all slowed down judicial reform. But we have not given up. We will persist in our endeavor to achieve a major goal – the adoption of a new Criminal Procedure Code.

Why should there be an entirely new Criminal Procedure Code? It is true that we have heard some positive feedback from legal experts on the good points of the current Code. Several parts of the Criminal Procedure Code comply with EU standards in full. Yet, there is a fundamental recommendation that it fails to comply with – the removal of the overlap between the powers of prosecutors and investigators that leads to competition between them. The latest amendments to the Criminal Procedure Code we tried to push were made in September last year. The discussions over it could have been over by now, had parliament exerted the political will to effect these reforms. Since amendments to the Criminal Procedure Code need to be fundamental, it had to be written anew in very short terms. I am quite at ease now that we will manage before our EU entry deadline and I am quite certain that the solutions the new Criminal Procedure Code will offer will be in full compliance with EU requirements.

Amendments to the Criminal Procedure Code are made within the framework of the current constitutional model. I do not exclude the possibility, however, that the next parliament may engage in a structural reform of the judiciary contrary to Constitutional Court decisions. This is of course a strictly personal forecast. If this happens, the Draft Criminal Procedure Code could very speedily be edited and put for deliberations since in basic terms it is already prepared. The Draft Criminal Procedure Code will officially be completed on 15 May. So this is not the right time to discuss it outside the working group that is deliberating it, even with organizations such as the Judges Association, the Association of Prosecutors and the Chamber of Investigators. When the ideas in this draft become a draft law officially approved by the Council of Ministers, you will be able to speak and discuss it at large. Neither the announcement, nor the adoption of the new Criminal Procedure Code will put an end to the debates.⁶⁹

I would like to assure you that the attitude of our EU partners towards us is very positive and supportive. We are obviously in the run-off to our EU membership. What we have started off will be finished by the next parliament. We have planned it this way – the Strategy for Judicial Reform is scheduled to conclude by the end of 2005.

⁶⁹ See note 61 on page 146.