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## Anti-Corruption Reforms in the Judiciary

### *Judicial Anti-Corruption Program published*

In the first week of October 2003, the Center for the Study of Democracy published the *Judicial Anti-Corruption Program* (JACP), a policy paper developed with the support of the United Nations Development Programme. The JACP is the first document of its kind detailing a comprehensive agenda for reducing corruption within the judiciary and enhancing its efficiency in penalizing administrative and political corruption. The Program deals with the most significant constitutional, legislative and institutional aspects of anti-corruption measures in the judiciary and combines gap analysis with extensive policy recommendations.

The development of the JACP involved more than 30 eminent Bulgarian legal professionals, including magistrates, and resulted from the combined efforts of influential non-governmental organizations, representatives of state institutions, and experts. This approach reflects CSD's long standing capacity to bring together various reform constituencies and allows the *Program* to draw on most of the suggestions provided by government agencies, NGOs, professional associations and media. The analysis and the proposals made are supported by the survey *Corruption and Anti-Corruption: the Magistrates' Viewpoint* carried out by *Coalition 2000 and Vitosha Research*. The survey, carried out among 454 magistrates from the whole country in the period April-May, 2003, using the methodology of the *Coalition 2000* Corruption Monitoring System, was the first ever survey on corruption issues conducted among magistrates.

### Assessment of the spread of corruption within the three groups of magistrates (%)

	Spread of corruption 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: Corruption Monitoring System (CMS) of Coalition 2000

### ***Current challenges to judicial reform***

Judicial reform, and its anti-corruption dimension in particular, is among the key current priorities for Bulgaria identified both by the international community and by domestic stakeholders. Although it is accelerating, especially driven by Bulgaria's EU accession prospects, reform of the judiciary has still a long way to go and faces significant challenges. The government's Judicial Reform Strategy, adopted in 2001, outlined most of key policies but did not provide any specific anti-corruption measures. Only after the EU accession process made that urgent, did the Parliament adopt some of the Strategy provisions, related to constitutional amendments concerning some governance aspects of the judiciary (related to magistrates' immunity, term of office for senior magistrates, irremovability, etc.). Although the Strategy provides adequate basis for reform, the ineptness of the government's advocacy efforts and resistance from senior magistrates and politicians are impeding the reform momentum.

### ***Advocating anti-corruption reform priorities***

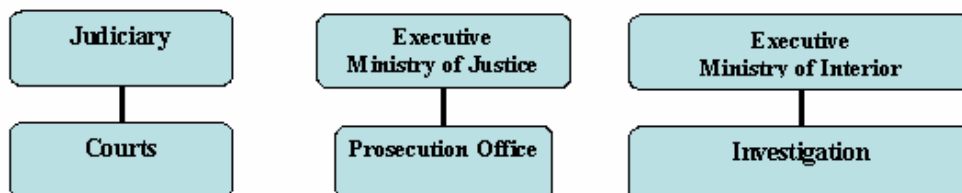
In this context, CSD's JACP is filling a significant vacuum furnishing both Bulgarian politicians and agents for reform and the concerned foreign partners with a coherent set of measures in this area. The legislative and institutional changes suggested by the Program are indispensable for any meaningful anti-corruption reform of the judiciary.

Two options of amending the Constitution with regard to the judiciary are suggested for discussion that entail essential structural changes (a ruling of the Constitutional Court has clarified that such steps could only be made by a Grand National Assembly).

#### ***First option***



#### ***Second option***



Some of the other specific reform proposal of JACP include:

1. As a measure to overcome the self-recruiting practice among senior magistrates, the JACP proposes that **magistrates of senior positions** (the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General) **be elected by the National Assembly** for a term of office exceeding four years. While this would require changing the Constitution, the adoption of such a measure would introduce additional checks and balances among the various branches of power. In its absence, a set of “judicial nomenklatura” perpetuates itself at the helm of the judiciary hiding behind claims of independence.
2. Major changes are also needed to make the Bulgarian prosecution an accountable and efficient institution. Among these, the Program highlights the necessity for a reasonable **decentralization of the public prosecution**. Added to inadequate transparency and accountability in its operation, the current overly hierarchical structure is conducive to various kinds of abuse. In addition, it is proposed that enhanced accountability of the Prosecution includes regular and ad hoc **reporting by the Prosecutor General to the Supreme Judicial Council (SJC)**.
3. One of the key anti-corruption measures put forward by the JACP is the establishment of the office of the public official - outside the prosecution - who should be endowed with prosecutorial functions by the law (similar to independent counsel in the US). Such officials should be elected by the National Assembly **to investigate corruption within the judiciary** and they should enjoy the immunity of magistrates. This would overcome of the frequent stalemate at the Supreme Judicial Council when it comes to decisions to investigate magistrates.
4. Even though formally outside the structure of the judiciary, the Constitutional Court has a considerable influence in the process of judicial reform. In recent years, it has been seen as politically very biased thus making it a key factor in the success of future reforms. The current quota based method of selecting its members is at odds with the provision for a qualified parliamentary majority required to amend the Constitution. Against this background, the JACP propose that the **members of the Constitutional Court be elected solely by the National Assembly** by the same qualified majority which is required to pass the Constitution (the involvement of the Judiciary and of the President would be preserved as they would be able to nominate some members of the Constitutional Court). A solution along these lines would help boost the independence of the Court and serve as a guarantee against future partisanship.
5. The **governance of the system of judicial institutions** is among the key areas of concern for the Program. One of the reasons behind the delayed judicial reform has been the inability of successive governments to engage the Supreme Judicial Council –charged with recruiting magistrates and providing for the organization of the system – in working out an **adequate separation of authority between the Supreme Judicial Council and the Ministry of Justice**. In recent years, this has become the source of escalating tension between the executive and the judiciary which further undermines the prospects of reform.

The Judicial Anti-Corruption Program provides a plethora of other specific measures for reforming civil, administrative and criminal law and procedure. The Program proposes wide ranging reform of the **registration of legal entities** in Bulgaria. To meet the needs of modern turnover, the registration system should be centralized, kept in an electronic form and enable the making of entries and the provision of information by way of electronic real-time telecommunication. Thus, in order to

overcome the corruption potential of the current manual registration, JACP proposes making registration an administrative, rather than a judicial procedure, and the establishment of a Central Register of Legal Entities as a public institution (a state agency) attached to a central executive authority.

JACP also proposes a **fundamental rethinking of the current three instances** civil law procedure. It is a source of considerable procrastination in the administration of justice thus providing a corruption potential. The Program suggest that it be scrapped and replaced by a regular two-instance procedure with the possibility of an extraordinary review by the Supreme Court of Cassation.

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The full text of the Program is available in Bulgarian and English on the CSD web site ([www.csd.bg](http://www.csd.bg)).