B. REFORM OF THE JUDICIARY

The fundamental objectives of the judicial reform are **to create conditions for the quick and efficient sanctioning of corrupt practices and to preclude any possibilities for corruption in the judicial system.** These objectives directly correspond to the degree of independence and stability of the judiciary, and to the level of professionalism and the public confidence in it. These goals determine **the priorities of the reform**: improving the legal basis of the reform in terms of substantive and procedural laws (legislative reform *stricto sensu*), education and training of judges, public prosecutors and investigators, and reform of the court administration. The need for judicial reform and its priorities are shared by the *Judicial Reform Initiative* which brings together eight NGOs (one of them being the Center for the Study of Democracy) and representatives of governmental and international institutions, following the model of *Coalition 2000*. The consensus-based document - **Program for Judicial Reform** - which was drafted and endorsed at a Policy Forum in May, 2000 identifies the areas of action and lists specific proposals within the framework of the priorities identified.

An important development in this field over the past year has been the growing recognition, at the highest level of government, that judicial reform is actually needed. Thus far, the government has been reluctant to agree that the term „reform" should apply to the judiciary. Following the developments within the judiciary and under pressure by civil society, including the professional associations of magistrates, the executive branch now recognizes the inefficiency of the existing court administration, the difficulties with the administration of justice and the problems with the training and recruitment of magistrates and court staff. As a result, in October, 2000 a *Draft Law to Amend and Supplement the Law on the Judiciary* was prepared on the initiative of the Ministry of Justice and a number of NGOs. The proposed amendments to the Law on the Judiciary, which is the organic act of the Bulgarian judicial branch, provide that competitions should become the main method of recruiting magistrates, offer a new approach to the training of magistrates, introduce a status of magistrates by analogy with the status enjoyed by civil servants, and suggest measures for the capacity-building of the Supreme Judicial Council and its better co-ordination with the Ministry of Justice.

B.1. Legal Basis of Judicial Reform

B.1.1. Criminal Law and Procedure

Criminal substantive and procedural legislation directly bears on corruption. This legislation has been developing, though on a rather piece-meal basis, in **introducing criminal sanctions corresponding to modern forms of crime, including corruption, and to ensure a speedier and more efficient administration of justice.**

- In the year 2000, **the *Criminal Code* was amended on two occasions**. **The first set of amendments** (in effect from March 21st, 2000) **enhanced the criminal measures in areas often marked by corrupt actions.** They affected drug trafficking by incriminating two new aggravated offences - enticing or forcing someone to take drugs. The sanctions were increased and the forms of crime were expanded relative to the theft of motor vehicles and smuggling and on the other hand the imprisonment previously imposed for libel and slander was replaced with fine and those crimes will now be prosecuted on a complaint of the victim. **The second set of amendments** to the Criminal Code (in effect from June 27th, 2000) **increased the sanctions for bribery.** Aggravated crimes were introduced, as well as criminal liability for the officials. Two completely new offences were incriminated - promising and offering bribes. The act of the official who has asked for or has accepted bribery is criminalized. A scope, in cases of active bribery of foreign officials and outside the carrying out of an international commercial activity has been broaden. Incriminated ware also an act of promising and offering of a bribery to the foreign officials. The provision on what is known as „loyalty check" (provocation to bribery) was substantially improved.

With the latest amendments to the Criminal Code, the main forms of corrupt behavior have been covered to a fuller extent. Nevertheless, the results of the combat against the heaviest forms of corruption are far from satisfactory. Corruption-related crimes are difficult to prove, so **the criminal-law measures will have to be reinforced.** These measures should not only punish those guilty of corruption but also prevent the corrupt practices through their deterring and educational effects and promote an overall public intolerance to corruption. **In order to improve the legislative rules on bribes** (often perceived as a synonym to corruption), **the following steps should be undertaken:** 1. The criminal liability for bribery should be differentiated in view of the perpetrator: the list of people who could be the possible perpetrators of bribe-related crimes has been extended by the Criminal Law Convention on Corruption of the Council of Europe, which is signed but not yet ratified by the Republic of Bulgaria. For instance, aggravated passive bribery offences could be included in the Criminal Code when the wrongdoer works in the judiciary. Along the same lines, the bribery of municipal servants should be incriminated. 2. „Trade in influence" should be incriminated, of course after the indispensable legislative rules have been introduced on lobbying; 3. The list of perpetrators of passive bribery should be extended; 4. The „loyalty check" should be decriminalized if it is intended to expose corrupt public officials.

One important issue to be resolved with the possible future amendments to corruption-related criminal rules is **the immunity from criminal prosecution.** Such immunity is currently enjoyed by Members of Parliament and by magistrates.

In the long run, **a new Criminal Code should actually be drafted on the basis of a comprehensive new policy** of criminal prosecution and an approved strategy of combating the modern forms of crime.

- **The amendments to the *Code of Criminal Procedure*** (in effect from January 1st, 2000) **had to transform the trial phase into a central stage of criminal procedure**, at the expense of the pre-trial

proceedings which are not public by definition and, hence, are deemed to be more beneficial to corrupt practices. The judicial control has been enhanced of the various „measures for non-absconding" and, generally, of any measure that interferes with individual rights. Plea bargaining has been introduced which enables the prosecution and the defense to negotiate the penalty. This is a flexible instrument that would speed up the process of criminal prosecution and would prevent the corrupt practices in the relations between defendants and magistrates.

The latest amendments to the Code of Criminal Procedure have been in force for a relatively short period but have evoked fairly contradictory comments among the magistrates. Public prosecutors have reservations about the efficiency of the new solutions and have even criticized some of them, *viz*. the scope of police proceedings, the fact that the procedural measures undertaken by investigators are not admitted as evidence in court, the reduced powers of the prosecution, and the judicial control over the right of the prosecutor to discontinue the criminal proceedings or to suspend the execution of the penalty of imprisonment. Opinions are voiced that, instead of accelerating the criminal proceedings, the amendments to the Code of Criminal Procedure slow down the movement of cases and that corruption has now changed house and moved to the court. The judges, on the other hand, insist that judicial control of all steps undertaken at the pre-trial stage should be kept as a crucial characteristic of modern adversarial criminal proceedings and that public trials best protect the interests of citizens. Apparently, a comprehensive analysis should be made to find out why some of the controversial provisions have not worked well enough. An objective survey is also needed of the case-law as this is the best instrument to gauge the appropriateness of a given solution.

In parallel, a long-term concept should be elaborated which should serve as a basis for an entirely **new Code of Criminal Procedure. All conditions should be put in place to ensure the openness and transparency of criminal proceedings, the rapid and non-expensive prosecution and penalizing of petty offences, and to accelerate the procedure in the event of serious crime, with the concept of „serious crime" encompassing all forms of corruption.** The structure of the future new Code of Criminal Procedure should be accurately weighted so as to cover the use of special surveillance means, unify the modern terminology and change the evidence rules, while emphasizing on the guarantees against arbitrariness in the process of gathering evidence.

B.1.2. Civil and Administrative Law and Procedure

- The development of civil and administrative legislation, though not always directly affecting corruption, could also deter or contribute to it. The numerous amendments to the existing laws and the many new laws are not always consistent with each other and yield **contradictory results in terms of law enforcement**. This **could facilitate corruption**, especially when private interests are interwoven with powers vested in a public authority.

As far as property law is concerned, attention should be given to the *Law on the Cadastre and the Property Registry* adopted in the year 2000 (to come

in force on January 1st, 2001). This instrument is expected to be a major step in the transition from the „owner-based" to an „estate-based" system of real estate registration. This will certainly provide genuine guarantees for all real estate transactions - an area currently marked by significant instances of fraud and abuse.

In the year 2000, the *Commercial Code* was amended but the amendments are not in force yet. One of the provisions **expected to improve the quality of the administration of justice and to have a distinct anti-corruption effect** is the new Section 613b. It enables appeals before the Supreme Court of Cassation against all rulings delivered in the course of or putting an end to insolvency proceedings and also prevents local level versions of insolvency case-law and the dispute resolution based on local interests and conjuncture, rather than on law. Thus, the Supreme Court of Cassation would be able to exercise its Constitutional power, *viz*. to exert the final control for the correct enforcement of the existing legislation.

An expert group with the Center for the Study of Democracy developed a *Draft Law on Electronic Documents and on the Electronic Signature,* which was presented to the National Assembly in October, 2000. Its passing would enhance the speed and the certainty of online transactions and of electronic data exchange in general. Its implementation in the relations between public administration, on the one hand, and citizens, organizations and merchants, on the other hand, would not only accelerate the provision of administrative services but would make the whole process much more transparent and reduce to a minimum the possibilities to solicit or offer bribes.

The *Law on Consumer Protection and on the Rules of Trade* (in effect from July 3rd, 1999) was the first piece of legislation to set out rules in this specific area. The initial stages of its enforcement are marked by some difficulties that should be quickly solved. The Law provides for the so-called „class actions" but the Code of Civil Procedure contains no provisions on such actions. This major gap has to be bridged by introducing the necessary legislative amendments.

- The *Code of Civil Procedure* was amended in 1999. The new provisions guarantee the impartiality of the court, reduce the opportunities to postpone the hearings, introduce summary proceedings, and limit the insolvency proceedings to two court instances. These amendments, however, have not brought about any tangible improvement of court proceedings. **Further amendments will be needed along these lines in order to eradicate any chances of protracting the procedure on purpose or abusing procedural rights, as all this generates corruption.**
- The execution of judgments is the part of civil procedure, which concludes the process of civil litigation but has been least reformed. The clumsy and inefficient, frequently corrupted, execution proceedings negate all efforts to improve the administration of justice. **Legislative amendments are required in order to minimize the possibilities for endless delays in the enforcement proceedings** and supply creditors with better guarantees.
- **The administrative procedure** in the country is governed by several regulations: the *Law on Administrative Proceedings*, the *Law on the*

Supreme Administrative Court, some provisions of the *Code of Tax Procedure*, the *Law on Regional and Urban Planning*, the *Law on Administrative Offences and Penalties*; in some instances references are made to the *Code of Civil Procedure* which thus becomes applicable to administrative disputes. All these legislative instruments were passed in a different era, when the social and economic conditions were quite dissimilar. As a result, the rules are inconsistent and, moreover, serious contradictions are frequently encountered. The lack of a lucid framework of administrative procedure is equal impediment to citizens, the administrative authorities and the courts. **A *Code of Administrative Procedure* should be adopted** in order to bring the various administrative proceedings under the same roof and make them coherent. Such a code should solve a number of problems: it should set out the legal criteria for administrative acts that would not be subject to judicial control; the equality of the parties to administrative disputes should be promoted, especially with respect to the collection of evidence; legal guarantees should be provided for the enforcement of court judgments by the administrative authorities (*e.g.* by elaborating a more efficient system of fines and other sanctions).

B.2. Reforming the Organization of the Judiciary. Training of Magistrates

Legislative amendments alone could not ensure the success of the judicial reform. In order to consolidate the independence of the judiciary, its organization should be modified, the operation of the courts, the public prosecution offices and the investigation services should be modernized, the recruitment of magistrates should be refined, the professional training of judges, public prosecutors and investigators should be improved. In addition, the court staff should be better trained and sufficient financial resources should be made available.

The composition of the judiciary and its organization are in the hands of **the Supreme Judicial Council**. This body **needs a fundamental institutional strengthening and a strategy to help it solve the following extremely important problems** (also relevant to the fight against corruption):

- developing and adoption of transparent criteria for the recruitment of judges, public prosecutors, for their promotion and for the imposition of administrative/disciplinary sanctions on them;
- developing a system of control over and standards for the professional conduct of magistrates, while also improving the procedure for lifting, where necessary, the immunity from criminal prosecution;
- setting up a specialized structure in charge of investigating the allegations of corruption in all units of the judicial system.

On April 27th, 2000, a *Law Amending and Supplementing the Law on the Judiciary* was passed. In a sense, it departed from the goals of the reform as the members of the Supreme Judicial Council were stripped of their right to bring a motion for disciplinary proceedings. At present, this power is given, in a rather mitigated form, to those who are SJC members by operation of law: the President of the Supreme Court of Cassation, in respect of judges working at the Supreme Court of Cassation and the courts of appeal; the President of the Supreme Administrative Court, in respect of judges working at that Court, and the Prosecutor General, in

respect of all public prosecutors and investigators. With the adoption of the amendments, the then pending disciplinary proceedings against magistrates were discontinued.

The Law on the Judiciary must be amended in order to create the *sine qua non* for achieving the important objectives of the reform.

- Throughout the process of judicial reform, **the administrative staff of the judicial system** has been unduly neglected. This staff **is still organized in accordance with old-fashioned rules**, **the officials' work in a way and in an environment that incites to corruption** in the contacts between staff and citizens. No instruments of secondary legislation exist on the work of the administrative staff employed at courts, prosecution offices or investigation services. Numerous registers are kept, most of them manually, the working conditions are primitive, citizens and barristers could hardly get the information they need and all this is conducive to bribery. The existing *Ordinance No. 28 of 1995 laying down the Functions of Servants in Auxiliary Units and Secretariats of County, District, Military and Appellate Courts* does not take account of the need to modernize and optimize the court administration and its work. The Ministry of Justice has drafted some amendments to that Ordinance but has not adopted them yet.
- At present, efforts are also devoted to **automating the administrative functions in the judicial system**. The work under way should result in, *inter alia*, developing a single compatible product for the administrative processing of papers received by all the units of the judicial system; implementing a single software application for statistical data gathered at all levels of the system; linking the information systems of the different courts in a single network and connecting that network to other institutions in order to enable the exchange and use of information (for instance, between the mortgage registration services, the tax authorities and the Cadastre office).
- As far as the training of magistrates is concerned, **the Magistrate Training Centre** (MTC) set up in April, 1999 as a non-governmental entity **is already operational and functions quite well**. The forthcoming amendments to the Law on the Judiciary should tackle the status of the training offered there and the commitments of the Ministry of Justice *vis-a-vis* MTC. Steps should be undertaken also to cover the training and retraining of court administrative staff.

The development of the judicial reform should match to the fullest possible extent the general need for new legal regulation and organizational changes, in line with the new social and economic environment in the country, and should be aimed at achieving both legal stability and confidence in the judicial system.