

derlies the measures to promote the peaceful out-of-court resolution of disputes prior to or in the course of court proceedings, listed in *Recommendation No. R (86) 12 of the Committee of Ministers of the Council of Europe to Member States Concerning Measures to Prevent and Reduce the Excessive Workload in the Courts of 16 September 1986*. The Recommendation is based on the understanding that *to improve the administration of justice, it is necessary to limit the number of non-judicial tasks falling on the shoulders of judges, and also to reduce any workload of the courts*. An Annex to the recommendation provides an indicative list of non-judicial tasks from which judges could be relieved, depending on domestic peculiarities and features. These include a number of issues of family and commercial law and, *inter alia*, the keeping of commercial and land registers.

To promote the methods of out-of-court dispute resolution that are more easily accessible, efforts should be made to raise the public awareness thereof, and to include more detailed rules on them both in the legislation in force and **in the Constitution**.

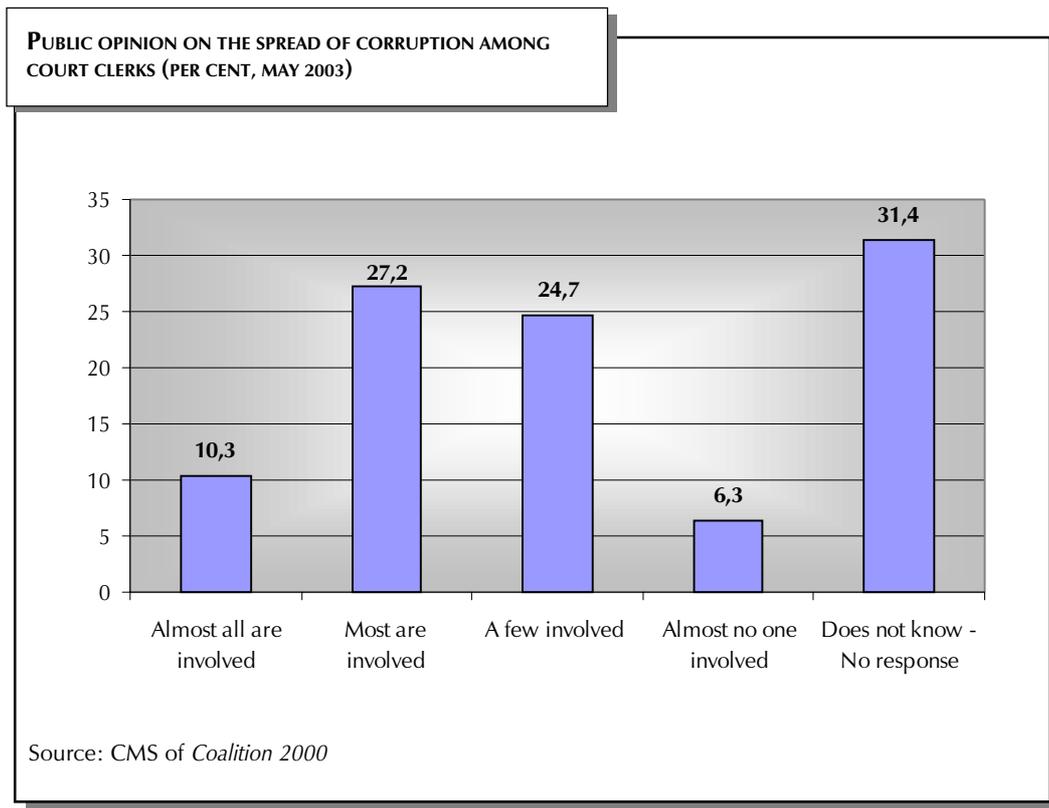
II. REFORM IN THE ADMINISTRATION OF JUDICIAL BODIES

1. General

Good organization of the work of magistrates, generally referred to as „administration of judicial bodies“, is crucial for the successful suppression of corruption and for ensuring the efficient operation of the Judiciary. The concept covers the administration of the following bodies: Supreme Judicial Council, Supreme Court of Cassation, Supreme Administrative Court, Prosecutor General, Supreme Prosecution Office of Cassation, Supreme Administrative Prosecution Office, National Investigation Service, and all the courts, prosecution offices and investigation services.

The term is used to denote the system of structures intended to support the work of magistrates and to stay in contact with citizens seeking the intervention of the Judiciary, as well as with other institutions that interact with the Judiciary.

The organization and the work of the administration of judicial bodies, hereinafter referred to as „court administration“, are linked to the management of the Judiciary and to the mechanisms guaranteeing its independence and self-governance. On the one hand, the per-



sisting problems in the administration 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 the corrupt practices involving court clerks bear directly upon the quality of work of judicial bodies and affect adversely the public opinion about the judicial branch of power. There is a very impressive discrepancy between the opinions of the population and the views of magistrates when it comes to the spread of corruption among the employees working in the administration of judicial bodies whom the legislation refers to as „court clerks“.

Although growing attention has been attached in recent years to the need to reform court administration, the efforts made so far have materialized primarily in the drafting of strategic and programmatic documents. Even today, court administration remains founded on obsolete organizational

principles, clerks operate in unsuitable, frequently primitive, conditions of work, no unified standards or practices exist, and the system is generally far 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.

SPREAD OF CORRUPTION AMONG COURT CLERKS AT THE BRANCH WHERE RESPONDENT MAGISTRATES WORK

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

Source: CMS of Coalition 2000

Corruption-generating problems in the organization and operation of court administration

The current organization of work of court administration, the extremely poor setting in which the bodies of the Judiciary, and their administrations, operate, the scarce budget of the Judiciary and, hence, the low pay of court clerks, produce an environment conducive to corrupt acts. The latter, in turn, could result in delaying or obstructing investigation and court proceedings, including the investigation and prosecution of corruption offences. Irrespective of the prevailing opinion of magistrates about a low degree of corruption among court clerks in general, most magistrates are able to identify the specific objectives of corrupt acts, and only 7.7 per cent believe that no corruption exists in that group.

The following could be identified as major problems relating to the organization and work of court administration:

- **case management** procedures and **insufficient control** of document management within 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, access to information, the security of document circulation, the progress of court cases) are typically **opaque, awkward and subjective**. Under those conditions, myriad unpredictable local administrative practices emerge

CORRUPT PRACTICES (E.G. OFFERING BRIBES, TRAFFIC IN INFLUENCE, ETC.) ARE EXERTED ON COURT CLERKS FOR THE FOLLOWING PURPOSES:

<i>Court clerks</i>	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 corrupt acts take place	7.7
Does not know / No response	16.5

Source: CMS of Coalition 2000

which frustrate even more 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 clerks most of whom are not well trained and lack motivation.

No clear rules exist on the access to documents and records in

courts, investigation services and prosecution offices, on the issuance of documents and the delivery of copies by the court, on how the files should be accessed and used, or who should be held liable for the disappearance or destruction of individual documents or parts of files.

- **summonsing** procedures

The incorrect, inaccurate or late serving of writs of summons and the errors possibly contained therein can turn into major factors contributing to dawdling the cases and manipulating the process.

No remedy is available against the inaccurate serving of summonses - for example, a writ of summons may be served on and accepted by a neighbor to the party to a case; thereafter the neighbor in question might fail, for purely objective reasons, to deliver the writ to the party summoned; as a result that party would fail to appear in court and crucial time limits would lapse but the court would accept that the party was duly summoned.

- **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. Objective criteria, such as qualification, experience and workload, are not used often enough to decide on the assignment of cases and files. This paves, directly or indirectly, the way for corrupt practices. Not only citizens, but magistrates as well are typically convinced that if a specific outcome is sought for a case, that case would be assigned to specific chambers or judge-rapporteurs - for instance, the practice exists for the presidents of courts to assign cases involving well-known personalities or large companies to magistrates „trusted“ by the respective president so that they would decide in line with the „instructions“ received.

On the other hand, the assignment of cases is not always reasonable, justified or adequate in terms of the number of cases assigned or the complexity of the matter. Inappropriate assignment, however, may result in some judges being overworked while others are unduly relieved. More often than not, more work is assigned to those magistrates who work more, better and more expeditiously, rather than to those lawyers who have poorer qualification or are slower.

- imperfect **mechanisms of recruitment, career development and disciplining** of court clerks

No objective criteria or adequate procedures exist for the recruitment, special training and professional qualification of court clerks. In addition, court administration, which is a body of court clerks, is too much absorbed by its own problems and established practices. Court clerks tend to behave unfriendly to customers who are normally perceived as a nuisance.

As long as court clerks do not avail of any special status, they are subject to the rules of the *Labor Code*, including those on disciplinary sanctions and the mechanisms of disciplining. The inefficiency of those provisions greatly inhibits the disciplining of court clerks. Given that clerks are normally to be disciplined by the head of the body of the Judiciary where they work, and he or she is extremely busy, *inter alia* with a number of strange tasks, there is clearly no working mechanism that makes it possible to discipline court clerks. In that situation, those rule of the Code of Ethics of Court Clerks which provide that disciplinary sanctions should be imposed for any violation of the Code are not but a dead letter.

- **impeded access** to the work of the court administration

The practice is established that all contacts with court administrative services should be in person, by way of visiting the court building. Mailing is unsafe and entails substantial risks, especially where the papers sent by post involve compliance with statutory time limits. The working hours of the different administrations fail to match the needs of the visitors. No obligation exists to provide information by phone or on the Internet.

- the inefficient work of **company registration divisions** in courts

These are the most overloaded divisions in district courts and their inefficient work organization, which is due to the non-automated processing and use of information, offers a fertile ground for corrupt practices to flourish. The primitive conditions of keeping and maintaining company registers, the clumsy system of providing information from those registers, the lack of any linkage among the different company registration divisions, etc., obstruct the work of both judges and court clerks, and also of anyone who has to contact magistrates or court administration.

2. The objective of reforms. The need to build up a novel, modern structure and organization of work for the administration of judicial bodies on the basis of new principles

The reform of court administration is intended to put in place, via the corresponding legislative and organizational changes, an efficient mechanism of administration that should improve the work and reduce to a minimum the possibilities for corruption in this area. That could be achieved by building up a new, modern structure, organization and management of court administration based on new principles. For that purpose, it is necessary to devise **an entirely new concept for organizing the work of court administration and to provide it with the required legislative framework and technical equipment.**

First of all, serious discussions should be held with representatives of the Judiciary and of court clerks and, due account being taken of the problems court administration faces at present, the required specific changes in the operation of court clerks should be identified.

The main aspects and principles of reform could be depicted as follows:

- clear and unified rules whose application should bring in transparent and uniform practices;
- simplified procedures ensuring the necessary swiftness and integrity of relationships and curbing the possibilities of citizens, parties to the cases, other bodies of the Judiciary or other institutions with which the Judiciary interacts to impact on the outcome of proceedings by use of corrupt means;
- automating and providing the necessary technical equipment to ensure work with and the exchange of information, *inter alia* by introducing a Unified Case Number Classifier (*i.e.* affixing a code to each case that should facilitate the search for and the tracing of any instituted proceedings);
- exercising administrative supervision and empowering efficient civic control over the work of court administration.

3. Proposed reforms

3.1. Proposed improvements in the legal framework

In order to successfully modernize the operation of court administration and to fasten it to corruption-free pillars, the following amendments should be made to the legislative framework:

- the **fundamental general principles** of the operation of court administration should be refined, as should be the **status of court clerks**. This should happen by improving and elaborating on the provisions of Chapter Fifteen, *Law on the Judiciary*;
- on the basis of an agreed and unified conceptual and legislative framework, all **instruments of secondary legislation and the internal regulations on the work of court administration**, prescribed by s. 188 *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 thereto, the recruitment criteria, the specific rights and duties of court clerks, as well as the aspects of continuous training and professional improvement;
- requirements should be introduced, in line with the new conceptual and legislative framework, towards the **categories and number of court clerks** 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 introduced on **access to the information** handled by court clerks (who should be entitled to have access, parameters of official secrecy, procedures);
- a system of **random assignment of cases** should be introduced. Assignment could be based on the sequential number of a case or

made in an alphabetical order or follow another pattern established in advance (even by virtue of internal regulations);

- **time standards** should be introduced for the management of each category of cases;
- amendments should be made to the two procedural laws (*Code of Civil Procedure* and *Code of Criminal Procedure*) with respect to the **servicing of court papers** (summonses or others);

Even a more radical change in civil procedure could be contemplated, namely **to require a preliminary exchange of papers between the parties**. This should be coupled with a pre-hearing conference to help sort out many of the issues relating to the development of the procedure and to its framework, in law and in fact, so as to speed up and improve the administration of justice in civil cases (see below for details, Civil Law and Procedure, 3.4.3). Another idea has also been advanced for a public debate, namely that **structures outside the court** might serve court papers under strictly negotiated contractual terms and conditions (a method that turned out to be successful in the United Kingdom and in France). The court would thus be relieved of the enormous technical work currently incumbent on it, while contractors would be motivated and interested in performing well and on time.

- the fulfilment of some tasks and their transfer to bodies outside the courts should be given due consideration, *e.g.* the incorporation of legal entities. Should that happen, many judges and court clerks would be freed from piles of work that is purely technical (see below for details, Civil Law and Procedure, 3.2).

3.2. Organizational changes needed to further reform in the administration of judicial bodies

3.2.1. Financial resources, equipment and facilities for administrative work

- It is necessary to provide court administration with **sufficient funding, equipment and facilities**, within the budget of the entire Judiciary, in order to overcome the existing disparities in that respect 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 furthered by an equitable allocation of resources among the branches of the Judiciary, while *inter alia* striking a fair balance between Sofia and the countryside, between central and local bodies.
- To modernize court administration, **more funds** should be earmarked in the budget of the Judiciary for the work of that administration in general, and for case management, in particular.
- **The conditions of work should be improved** through the optimum use and management of the Court Houses Fund which should be relied on to expand and improve the existing buildings of the Judiciary and the equipment at the work places of court clerks.

- **Competitions** should become the standard practice of appointing court clerks, as envisaged in s. 188a *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 Clerks*.
- A mechanism should be devised for the **recruitment of new court staff** trained in specialized schools, while appointed clerks should be involved in **continuous training**.
- **New mechanisms of management and control** of court clerks should be elaborated.

3.2.2. Changing the work with and the provision of information. Automating administrative work

To ensure a speedier and more transparent processing and provision of information, so as to enhance the work of court administration and reduce to a minimum the chances for corrupt practices, the following measures should be implemented:

- transferring any case-related information and operations from paper to electronic medium and storing all cases in electronic form, provided that **all courts use the same software product**;
- **connecting the information systems** of the different courts into a common network and linking the latter to the information networks of other institutions to ensure the exchange and use of information, on the model of the Unified Information System for Combating Crime that must become operational as soon as possible;
- further to the above steps, introducing new **statistical report** forms on the work of courts, and providing those forms to the institutions concerned, *i.e.* the Supreme Judicial Council, the Ministry of Justice, etc.;
- introducing a new mechanism to search for and retrieve **case-related information** from the files by devoting several work stations solely to this activity that should be carried out through a software program; that would enable the other members of court staff to work at ease and concentrate on the cases themselves and on the orderly processing of court papers;
- court services should **provide, in electronic form, any public information** to outside agencies and institutions, as well as to private individuals (notaries, law firms, etc.), in return for a fee and under strict information security arrangements embedded in the software used.

3.2.3. Changing the structures of and the corresponding positions in the administration of judicial bodies

In order to upgrade court administration and ensure its smooth operation, the adoption of legal rules should be speeded up, as should be the

introduction of some new positions and the review of the functions associated with certain existing jobs:

- setting up **administrative services** with certain bodies of the Judiciary identified by law; those services will have to assist the respective bodies in their operation;
- introducing the position of **court administrators**, as required by the *Law on the Judiciary*, in the courts and in public prosecution offices. Those officials should plan, organize and manage court clerks, be in charge of managing the administrative operations of the court, implement programmatic decisions relative to long-term planning, budget policy, finance and automation, and ordering equipment supplies. For the fulfilment of those duties, court administrators should be provided *inter alia* with the right to organize tendering procedures and to enter into contracts for the upkeep and repair of court houses, purchase tangible assets for the respective court or prosecution office, after prior approval by its head official, organize contests and identify persons suitable to become court clerks, relocate already appointed clerks to other places, define the specific obligations of every court clerk at his or her workplace and monitor their performance, make proposals to discipline clerks, monitor court security arrangements and good order in the court house, etc.;
- promoting the role of **court police** who should maintain order and security in the court houses and assist with court execution and enforcement, the serving of court papers, the forcible bringing in of witnesses, etc. These functions are to be fulfilled now by the **specialized security unit** envisaged in s. 36e of the *Law on the Judiciary* but, due to poor funding, that unit would hardly be able to meet in the near future the expectations it faces;
- reconsidering the functions of and the requirements towards **court registration clerks**, depending on the features of the information system to be implemented. Those clerks should load and control any case-related information into the system and facilitate the exchange of and access to the information sought. Likewise, new types of court registers and new methods of keeping them should be devised, in line with the would-be automated system;
- introducing the position of **court statisticians** who are expected to improve substantially the quality and accuracy of the information provided and to free the court secretaries and registration clerks from functions that are inconsistent with their positions;
- improving the performance of **court secretaries** in recording and keeping the records of court hearings by way of software products.

The above steps, if undertaken, should considerably improve the work of various clerks and of the administration of judicial bodies as a whole, and would allow the heads of different bodies within the Judiciary to rid themselves of countless atypical functions they are bound to perform now. The clear distinction between the responsibilities of different officials would contribute to a speedier, more transparent and efficient ministrations of justice.