

### III. EDUCATION, TRAINING AND CAREER DEVELOPMENT OF MAGISTRATES AND COURT CLERKS

The training and career development of magistrates should be an unquestioned priority of judicial reform. Even the most perfect legislation would be lifeless unless it is enforced by competent and uncorrupted individuals of impeccable integrity. Laws are binding on each and every citizen of a state but the bodies of the Judiciary have a key part to play once the laws are violated. Similarly crucial are the professional qualification and the integrity of court clerks, as is the responsibility they have in ensuring a high-quality performance of the whole judicial branch of power.

#### 1. Education and training of magistrates

##### 1.1. *The status quo and the problems*

The standards of efficient performance and high professionalism and integrity dictate not only that judges, prosecutors and investigators have law degrees: they must also undergo initial training, *i.e.* one provided before they have taken office, and on-the-job training, which should take place on a continuous basis throughout their professional lives.

As regards law degrees, ten law schools at different higher education institutions across the country now offer law degrees and issue diplomas whereby the qualification of a *lawyer* is recognized. A **unified state standard** for university law degrees has been introduced which is laid down in the *Ordinance on Unified State Requirements for Obtaining University Degree in Law and the Professional Qualification of Lawyer* (published, SG, issue 31 of 12 April 1996; amended, SG, issue 96 of 24 November 2000; issue 59 of 3 July 2001; issue 117 of 17 December 2002, in effect as of 17 December 2002). Although education at all those law schools has been formally brought into line with unified requirements, its results have not yet improved materially.

Law students are given training in all branches of law and no specialized practical training exists. The training of lawyer-apprentices is also far from being satisfactory. As regards practical training and the future choice of profession by law graduates, reliance is placed on the compulsory post-graduate apprenticeship. There is a virtually unanimous opinion, though, that the apprenticeship is formalistic, inefficient and fails to hit its expected targets, and even more so after it was substantially shortened some time ago. Tutor judges are overworked and unable to spare enough time for the practical training of lawyer-apprentices who are scattered unevenly across the district (second-tier) courts in the country. Apprentices, in turn, are not sufficiently interested in their practical training. The test they have to pass to prove their theoretical background and practical skills and to qualify to practice as lawyers is equally formalistic and futile. The amendments to the *Law on the Judiciary* made in 2002 and furthered by the amendments of July 2003 reduced the duration of compulsory apprenticeship from one year to three months and that could hardly better the knowledge or the skills of future magistrates.

The need to improve the training and to permit regular improvements of the qualification of magistrates was identified a long time ago and has been mentioned in a number of documents and papers, including the *Government Strategy for Reform of the Judiciary in Bulgaria*. Nonetheless, the

current situation is characterized by the following black spots:

- poor professional knowledge and practical skills;
- insufficient funding earmarked for training in the budgets of both the Ministry of Justice and the Judiciary;
- magistrates are overloaded, so they have lesser opportunities to engage in self-education or in organized training events;
- there is no system linking the training undergone with the right to career development, or the attained degree of qualification with professional promotion.

### 1.2. Proposed reforms

With respect to **higher education**: in order for law students to have the opportunity to choose a specific profession already at university, it is required:

- to use adequately all available optional and elective courses, as they allow for some specialization of education;
- to emphasize the link between theory and practice in the process of teaching, by involving eminent magistrates; seminars should not merely replicate the lectures but serve to give practical knowledge and skills to the students, *inter alia*, by way of moot court exercises, drafting warrants, indictments, verdicts, judgments in civil cases, rulings, etc.;
- to make the apprenticeship periods in the course of university studies more efficient and to improve the link between law schools and the institutions where apprentices are placed;
- to refine the form and the procedure of the final exam, which is the last stage of education;
- to develop a working system of post-graduate specialization, open to practicing magistrates, at the universities.

As regards the **practical training of apprentice-lawyers**, a change in the duration of apprenticeship would hardly be successful *per se*. Two options are suggested to resolve that problem. In the **first scenario**, apprenticeship should be given a completely new basis, especially in relation to future magistrates. In order to ensure a fully-fledged apprenticeship, it is advisable to make the following amendments to the legal rules that lay down the procedure and the conditions for becoming a qualified lawyer:

- the number of apprentice-lawyers at district courts should be limited and all apprentices should be seconded evenly throughout the country;
- a system should be introduced for paying tutor judges;
- the exam whereby graduates become qualified lawyers should be revised, while emphasizing on its practical aspects.

The **second scenario** is to abolish apprenticeship completely but enhance

instead the practical orientation of university studies so that graduates could become qualified to practice any legal profession already when they obtain their diplomas. It is proposed to introduce at the law schools **additional, practice-based, training** for future judges, prosecutors, investigators, notaries, bailiffs, real estate registration judges, and other professions, and the exam for obtaining qualification to practice should form part of the final exams. It is conceivable to introduce additional selection criteria (scores during the studies, specific exams passed, etc.) in order to provide for additional specialized training for future magistrates within the frame of the basic university curriculum. If legislative rules, criteria and guarantees are introduced to that effect, education obtained at law schools would be linked with the right of access to the profession and with the right to career development thereafter.

In order for the Judiciary to be able to fulfil their mandate to promote the rule of law and to successfully resist corruption, attention should be given to the need to **improve continuously the professional qualification** of judges, prosecutors and investigators working within the Judiciary, as the very dynamic changes in the legal framework entail myriad problems in terms of law enforcement and often result in discrepant case-law. It is necessary to extend the number of individuals who should undergo compulsory training at the future National Institute of Justice (NIJ)<sup>6</sup> by introducing **compulsory training upon every first appointment to the position of a president and/or vice president of a regional or district court, regional or district prosecutor or director of a district investigation service**, as well as on every reappointment from a lower to a higher court and whenever a magistrate changes the subject matter dealt with.

The following steps should be undertaken for that purpose:

- linking the future appointments of magistrates and their career development with the results of education and training;
- developing modern forms of continuous training (e.g. distance learning and other forms based on new information technology); these should cover *inter alia* the enforcement of newly-enacted provisions and, in the immediate future, European Community law;
- providing for an opportunity that specialized public benefit non-profit entities could also provide continuous training courses in future, with the approval of the Supreme Judicial Council.

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<sup>6</sup> The amendments to the *Law on the Judiciary* of 2002 provided that a National Institute of Justice (NIJ) should be set up with the Ministry of Justice. As those amendments were declared anti-constitutional by the Constitutional Court (see Judgement of the Constitutional Court No. 13 of 16 December 2002), the law was amended again in July 2003 and now provides that the future Institute should be set up with the Supreme Judicial Council. In view of those amendments, the *Rules of Organisation and Procedure of the National Institute of Justice* are in preparation. Further to the relevant decision passed by SJC, NIJ shall be developed on the basis of the existing Magistrates Training Center with its attainments, curricula and training materials, body of lecturers, officials and assets. NIJ shall offer compulsory training courses for all junior judges and prosecutors immediately after they have been appointed in the Judiciary.

In any case, account should be taken of the fact, that there is no other organization successfully engaged in the training of practicing magistrates yet but the Magistrates Training Center (MTC) which was set up as a non-profit organization in April 1999. With MTC, training was for the first time placed on a systematic basis and involved the joint efforts of the Ministry of Justice, various NGOs (e.g. the Union of Bulgarian Judges and the Legal Interaction Alliance which were co-founders of MTC, the Union of Bulgarian Jurists, the Legal Initiative for Training and Development (PIOR), the Association of Prosecutors, the Association of Court Clerks, the American Bar Association /Central and Eurasian Law Initiative, etc.) and some foreign donor entities (the involvement of the United States Agency for International Development deserves to be singled out) dealing with the problems of training.

The further development of the curricula prepared by MTC during its four-year existence and their implementation in the initial and continuous training of court candidates and magistrates after NIJ starts its operations should take place on the basis of continuity and stability of the training offered, thus enabling members of the Judiciary to maintain and upgrade their professional knowledge.

*The curricula currently existing at the Magistrates Training Center extend to the following areas:*

- initial training of all newly-appointed judges immediately after they take office;
- compulsory training of newly-appointed magistrates during the first three years of their working experience; this includes courses in the administration of the relevant court activities, drafting court acts, keeping contacts with other bodies of the Judiciary and with institutions related to the Judiciary, professional ethics, etc.;
- continuous training of magistrates at different levels in topical legal and professional issues, law of the European Union, the European Convention on Human Rights, language proficiency and computer skills, etc.

*In addition, the following new curricula are being drafted and are to be implemented soon:*

- initial training of all newly-appointed junior prosecutors immediately after they take office;
- compulsory training of newly-appointed prosecutors;
- training in the event of moving from one instance to another and from one branch of the Judiciary to another;
- training in administration and planning (for the heads of bodies in the judicial system);
- training of bailiffs and real estate registration judges.

The future curricula of MTC/NIJ should also mandatorily include **training in the enforcement of anti-corruption legislation.**

The development of the requirement to undergo professional training, the provision of legislative rules to that effect and the linking of hierarchical promotion to the fulfilment of that requirement (e.g. taking into

consideration the results of the training exercise when evaluating the professional performance of magistrates) would capacitate magistrates to enrich continuously their knowledge of the law and to develop a sense of professional self-confidence, independence and responsibility, so as to match the rigorous expectations the public has of the system of justice. That should also contribute to deploying uniform and efficient practices in the administration of justice.

In more general terms, training should help to uphold in the behavior of magistrates values and principles such as **impartiality, independence, intolerance to corruption in general and to any of its forms within the Judiciary.**

## 2. Education and training of court clerks

So far, the activities of the Magistrates Training Center have focused primarily on the training of judges. The development and implementation are forthcoming, with the support of the Judicial Strengthening Project of the USAID, of training programs intended to improve the qualification of court clerks, in line with s. 188b *Law on the Judiciary*. Therefore, once the *Rules of Organization and Procedure of the National Institute of Justice* are approved, the following priority measures should be undertaken at national level to kick off the training of court clerks:

- using the results of the existing survey of training needs with respect to court administration;
- identifying the target groups (magistrates and court clerks) and subgroups;
- selection and training of trainers;
- drafting curricula and training materials;
- developing manuals for each position in the court administration;
- including a compulsory course in court administration in the initial training curriculum of MTC/NIJ (such courses already exist for judges);
- introducing specialized training in professional ethics and conduct.

Besides, on the basis of programs developed and agreed on at national level, the training of magistrates should be decentralized by court district and the responsibility for training court clerks in each district should be entrusted to the corresponding head of judicial body or to a magistrate appointed thereby.

In the longer run, the improvement of the knowledge and the professional qualification of those working in court administration and of future appointees would require that efforts be made to introduce and provide:

- compulsory training upon any initial appointment as court administrator, to be gradually replaced by **specialized training** as a requirement to start working in the court administration<sup>7</sup>;

<sup>7</sup> Established European legal systems generally require administrative officials for the judicial system to be trained in advance at specialized schools or institutes, and courts recruit their clerks from among the graduates of such specialized institutions.

- continuous training to improve the qualification on a regular basis;
- training in ethics and anti-corruption.

For the general purpose of training magistrates and court clerks, it is necessary and especially important to provide **sufficient funding** to the Judiciary and to the Ministry of Justice for training initiatives. Since 2000, no funds have been earmarked for that purpose.

While training should be generally intended to advance professional qualification, special attention should be attached to its components that are designed to ensure **knowledge of and compliance with ethical norms and rules, including those aimed to ensure corruption-free behavior**. The survey by *Vitoshka Research* referred to earlier has shown that 46.7 per cent of magistrates believe the adoption of ethics codes would result in reducing the level of corruption in the Judiciary.

Ethics codes represent a *sui generis* guidelines for legal professionals and for court clerks working in a specific branch of the Judiciary and instruct them how to respond to unforeseen situations or to circumstances barely addressed by the legislation in force, and how to cope with issues of conflict in their day-to-day practice or with the „grey areas“ in a rapidly changing environment. Those codes mainly inspire motivation and make it possible to discipline the members of the respective profession. The criteria and the responsibility for failure to abide by the ethics codes are essentially moral. **Strong and reputable professional organizations of magistrates and of court clerks** are therefore needed which should have sophisticated internal mechanisms to respond adequately and efficiently to any instance of unethical behavior by their members. This is also a *sine qua non* for the enforcement of the new rule in the *Law on the Judiciary* (s. 168, subs 1(3)) which provides that failure to abide by the moral rules enshrined in ethics codes shall form a ground to discipline defaulting magistrates and court clerks.