

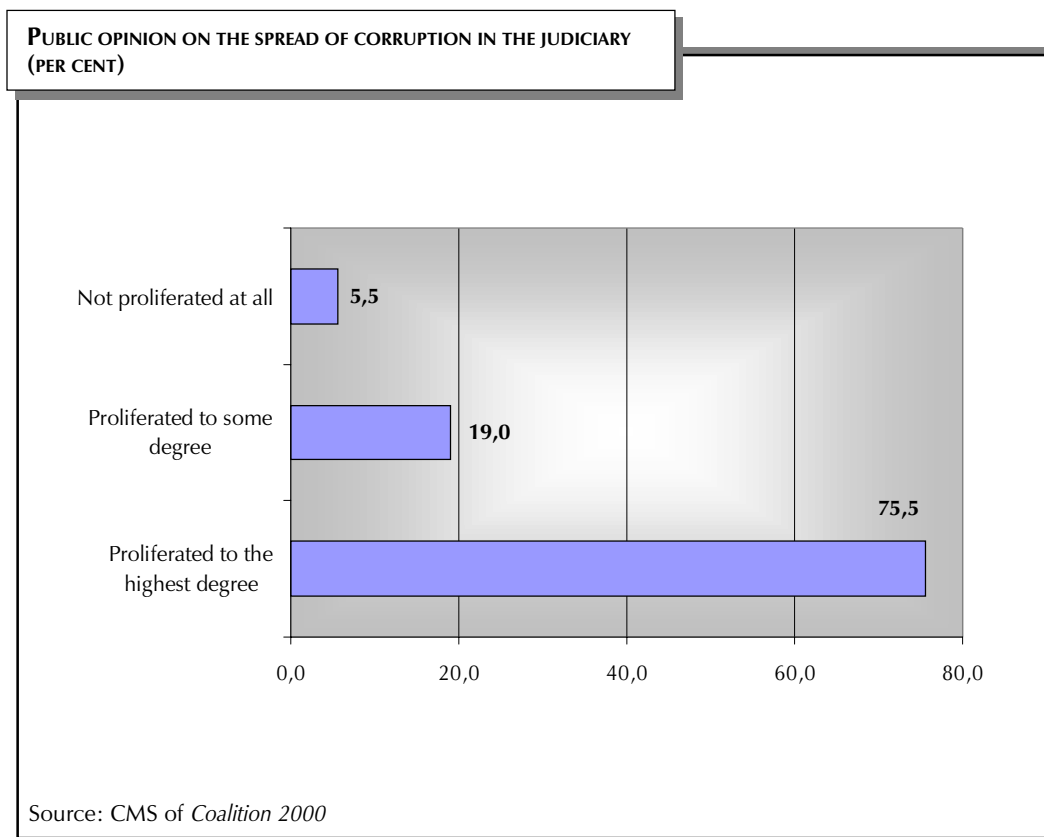
# CONCLUSION

## Opening the Judiciary towards the public

Due to the specific nature of its work, the Judiciary has a peculiar, relatively autonomous status in the structure of social relations, although its development naturally depends on law-making by the political class. The Judiciary is therefore more resistant to changes and relatively remote from what might be a burning public issue at a given time. In established democracies, the third power guarantees legal stability and confidence in state institutions, it is a symbol of national continuity and traditions. The Judiciary in transition societies, however, is faced with different expectations. The extraordinary dynamics of democratic reforms make the civil society place too much of a hope on the institutions called upon to uphold citizens' rights and the legitimacy of the state based on the rule of law. Those attitudes partly derive from the overall disillusionment of the majority of Bulgarians with the performance of the post-communist state. In those circumstances, the Judiciary is often perceived as an *ultima ratio* - the instance of last resort which is expected to fix all imperfections and the unfair decisions made by other bodies endowed with state power. It is therefore understandable that when the social defects of transition persist, or even intensify, the public finally feels betrayed in its hope that institutionalized law will take its side. This somehow explains why magistrates and the general public differ so much in their assessments of the spread of corruption within the Judiciary.

The data from public opinion polls suggest that there is a high level of corruption in the Judiciary. On the contrary, every other magistrate is confident that public perceptions of the spread of corruption are unfounded.

Unlike the population and businessmen, magistrates derive their information primarily from personal experience and observation. The media are



**HOW OFTEN DO CITIZENS WITH WHOM YOU ARE IN CONTACT WHEN FULFILLING YOUR PROFESSIONAL DUTIES - (PER CENT)**

	Normally	Sometimes	Seldom	Never	Does not know/ No response
- have excessive expectations of magistrates and their work?	56.2	28.0	8.1	2.6	5.1
- fail to know their rights?	52.4	31.5	11.9	2.0	2.2
- show discontent with the work of magistrates?	34.6	47.1	14.1	2.0	2.2
- prefer to engage in corrupt acts rather than uphold their rights lawfully?	15.4	34.6	26.9	8.8	14.3
- think they can achieve whatever they want by offering money or gifts?	12.6	30.4	32.2	15.2	9.7
Behave rudely or impolitely with court clerks or magistrates?	9.5	37.4	42.7	6.8	3.5

Source: CMS of Coalition 2000

not particularly important for magistrates. Their assessments of and ideas about corruption and its spread in the Judiciary are mostly formed on the basis of information exchanged via informal communication channels (contacts with acquaintances and colleagues), and of the mismatch between the personal income and the standard of living of some magistrates.

The majority of magistrates think that **citizens normally entertain excessive expectations of the work of the members of the Judiciary**. At the same

time, magistrates are of the view that many citizens with whom they come into contact **fail to know their own rights, merely fuss about the work of magistrates** and are inclined to resort to various corrupt practices in order to settle the disputable issues „informally“.

The above findings do not undermine the importance of those reasons for the drastic decline of public confidence in the Judiciary that are inherent in the system. The prevailing public perceptions of slowness, inefficiency and bias, of widespread corruption in the system called upon to resist crime, are well-founded. The discrepancy between the opinion of the public and that of magistrates on the level of corruption in the Judiciary reconfirms the existence of a **serious problem in the communication** between the Judiciary and the civil society.

This is further proven by the inability of magistrates or the individual branches of the Judiciary **to respond adequately to critical assessments of their work**. According to the results of the survey conducted by *Vitoshka Research Agency* only a few of them (25.1 per cent) think they should inform the public about any shortcomings in the operation of the system they have come across. Moreover, as public pressure grows, some branches of the Judiciary perceive as hostile even the well-meaning opinions and recommendations voiced by the civil society, foreign governments and international organizations. That reaction in turn enhances public suspicion that members of the Judiciary use their immunity as a shield, that they are uncontrollable and unapproachable.

An increasing number of magistrates and experts become aware of the urgent need to change the style of communication between the Judiciary and the public. Moreover, the first steps have been made to open some units of the Judiciary towards the problems, the questions and the criticism

featuring its work. New practices are being developed which first of all demonstrate the aspiration of the Judiciary, or of some of its structures and representatives, to enter into a public dialogue to discuss the issues of justice in a transitional environment. The following examples could be given:

- **press officers**

Over the past two or three years, some bodies of the Judiciary have started opening themselves to the society and explaining the nature of their work to the community. As a result press officers were appointed for that purpose at some courts<sup>15</sup>. That was expressly envisaged by the amendments to the *Law on the Judiciary* made in 2002 and the staff positions should be provided for by the Supreme Judicial Council.

In 2002, press officers were appointed at the appellate, district and regional courts in Bourgas, the appellate, district and regional courts in Veliko Tarnovo, the appellate, district and regional courts in Plovdiv, Sofia Regional Court, at Sofia District Court, Sofia Court of Appeal, and the Supreme Administrative Court. The officers provide information about the development of cases (scheduled hearings, progress, key points, judgments or verdicts) which are of interest to the public.

- **access to information about the work of the Judiciary**

The opening of the Judiciary towards the public must include the provision of access to information about the operation of the Judiciary. A guideline in that respect is *Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe on Measures Facilitating the Access to Justice*. A major principle underlying the Recommendation is for member states to undertake all necessary steps to inform the public on the means open to an individual to assert his rights before courts easily, speedily and inexpensively. As regards information for the public, it is recommended to give special attention to and undertake the following measures:

1. Appropriate measures should be taken to inform the public of the location and the competence of courts, and the way in which proceedings are commenced or defended before those courts.

2. General information should be available from the court, or a competent body or service on the following items:

- procedural requirements, provided that this information does not involve giving legal advice concerning the substance of the case;
- the way in which, and the time within which a decision can be challenged, the rules of procedure and any required documents to this effect;
- methods by which a decision might be enforced and, if possible, the costs, involved.

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<sup>15</sup> The process of involving press officers to facilitate the communication between the public and the Judiciary was initially assisted in the framework of a project implemented by the Legal Initiative for Training and Development (PIOR) and supported by the Open Society Foundation (COLPI Fund, Judicial Reform), and the American Bar Association, Central and Eurasian Law Initiative, in partnership with the Association of Judges in Bulgaria.

3. States should take measures to ensure that all procedural documents are in a simple form and that the language used is comprehensible to the public and any judicial decision is comprehensible to the parties.

A suitable step towards opening the system is for the individual courts to develop web sites. Such sites already exist for the Supreme Administrative Court, Plovdiv Court of Appeal, Plovdiv District Court, the Palace of Justice in Varna, Varna Regional Court, the Palace of Justice in Shoumen, the Palace of Justice in Gabrovo. The Supreme Judicial Council has also launched a web site recently.

- The web site of the Supreme Administrative Court is an impressive achievement and citizens and attorneys equally believe that it is very useful. It provides information on current and forthcoming events, as well as on every pending case, its progress, the possible instructions to the parties, the judgments, etc.

*The following clusters of up-to-date information are available on the web-site of the Supreme Administrative Court:*

- legislative framework of administrative justice;
- jurisdiction of SAC at first instance and on cassation, in private proceedings, to reverse effective judgments, etc.;
- answers to key questions about the operation of the court, plus information about the European Court of Human rights;
- current information on the cases brought before and decided by SAC.

- Varna District Court has the useful practice of providing on-line access to its information and even loads on the web its annual reports to the public. Steps in this direction have been also undertaken by other courts.

*Public initiatives at Varna District Court*

- public report: Varna District Court reports on its work during the previous year and informs how its operations might benefit the citizens;
- web-site with separate headings and instructions on how to ask questions and receive answers;
- an information system that keeps track of and provides statistics on „fast-track“ criminal proceedings, and involves Varna Regional Directorate of Interior, the Regional Court, the Regional Prosecution Office, and the District Court;
- the Open Doors initiative aims at providing basic legal knowledge to adults and younger people between 15 and 19 years of age. It is an out-of-class form of learning by doing where training, case studies and simulation proceedings help the participants to address specific legal topics and issues (violence at home and among the children, deprivation of parental rights, drugs and drugs cases, etc.).

*Blagoevgrad District Court and Blagoevgrad Regional Court*

- work with document-processing software enabling the quick access to data about the progress of cases;
- have provided the journalists reporting on their activities, with an electronic manual with basic information about the organization of those two courts.

The document-processing software and the manual have been developed by the Judicial Strengthening Program which is financed by the United States Agency for International Development.

Nonetheless, further steps are required **to improve the communication between the Judiciary and the public. The following could be specified *inter alia*:**

- introducing the practice of Varna District Court, *viz.* to provide reports to the community, at all district courts in the country;
- widely promoting the „Open Doors“ initiative of Varna District Court in the different structures of the Judiciary;
- carrying out awareness campaigns to explain the functions, the objectives, the powers and duties of the various branches of the Judiciary;
- publicizing the work of the Supreme Administrative Court both through its web site and by publicly announcing the cases heard by that court;
- publicizing the work of appointed court press officers and accelerating the appointment of such officials in all district towns;
- drafting manuals and leaflets with practical information;
- regularly organizing joint seminars for magistrates and media representatives;
- organizing an awareness campaign with respect to the *Law on Personal Data Protection*;
- providing access to the essential CV details of magistrates, and to the public register of their property.

When putting in place the indispensable measures for opening the Judiciary towards the society, special attention should be attached to the **implementation of modern technology**, for example:

- initiating projects to facilitate receipt on the Internet of information about the cases and their progress, and of other information contained therein. (It might be helpful to make judges and prosecutors regularly answer questions addressed to them via the Internet);
- introducing automated document-processing systems that should provide a quick and secure processing of the cases and give timely and easy access of citizens to the information they need;

- ensuring the use of and access to the registers kept in the judicial system;
- including the Supreme Court of Cassation and Sofia City Court, which understandably attract a lot of public attention and interest, in the public information projects.