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Judical Capacity in Bulgaria

MONITORING THE EU ACCESSION PROCESS: JUDICIAL CAPACITY

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A. INTRODUCTION

Following the elections in June 2001, reform of the judiciary – including strengthening its independence and improving its performance – emerged for the first time as a central political concern. The new Government adopted several documents targeting deficiencies in the current system and in July 2002 Parliament approved amendments to the Judicial System Act as a first step in implementing reform.

It is now widely acknowledged that the many serious problems confronting the judiciary – such as lack of clear operational standards, opaque selection and promotion, and ineffective performance evaluation – require a comprehensive and committed solution. The envisaged reforms and the legislative amendments address a broad range of outstanding problems and provide a good basis for an overall reform effort. It is now essential that they be implemented in full and in a manner fully consistent with the principles of judicial independence and judicial capacity, if they are to improve the performance and independence of the judiciary.

Certain amendments, however – such as the amendments granting the Ministry of Justice an important role in the promotion procedure – would actually further jeopardise the position and professionalism of the judiciary, and should be reconsidered. Beyond that, the amendments fail to address a key issue: the need to reform the Supreme Judicial Council, the body that jointly governs judges, prosecutors and investigators, and in so doing unnecessarily limits judges' independence and their ability to improve the judiciary's professional capacity.

B. CURRENT DEVELOPMENTS AFFECTING JUDICIAL INDEPENDENCE AND CAPACITY

The Government has outlined a broad-ranging strategy to address the admitted need for comprehensive reform of the judiciary, and in July 2002 Parliament approved amendments to the Judicial System Act to enact the strategy. The amendments address a broad range of outstanding problems, but on many important issues they leave the actual standards to be developed by secondary legislation. Only if the legislative amendments are implemented in full and in a manner consistent with the principles of judicial independence and judicial capacity will they contribute to meaningful and much needed reform. In particular the increased involvement of the Ministry of Justice in promotion procedures should be reconsidered.

1. The Reform Proposals – Amendments to the Judicial System Act

In October 2001 the Government published a *Strategy Paper on the Reform of the Bulgarian Judicial System*,[1] outlining its priorities for reform of the judiciary as well as the prosecutorial and investigative services. The *Strategy Paper* was drafted in cooperation with the Supreme Judicial Council and in discussion with representatives of the judicial system. The high priority the new Government attached to judicial reform was clearly the result of the increased attention given the issue by the European Union.[2]

The *Strategy Paper* outlines a number of serious shortcomings in the functioning of the judiciary: inefficient court administration and case management; substantial delays in hearings and in delivering judgements; poor enforcement; lack of a clear distinction between the powers of the Supreme Judicial Council and the Ministry of Justice; a poor level of selection and training of the judges; lack of sufficient financial resources; and lack of a uniform information system that would allow tracking of individual cases from start to completion.

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[1] Strategy Paper on the Reform of the Bulgarian Judicial System, Council of Ministers Decision no. 672 of 1 October 2001, *at* <http://www.mjeli.government.bg/strategiaus.htm> (in English) (hereafter, "Strategy Paper"), (accessed 25 September 2002).

[2] In its introductory part the Strategy Paper recognised the EU accession process and the political criteria of stability of institutions guaranteeing rule of law as a major impetus for the judicial reform, stating that "joining the EU requires the finalisation of the reform of the judiciary." *See* Strategy Paper, Preamble.

The *Strategy Paper* and a subsequent document, the *Implementation Program*,[3] outlined steps to be taken to counter those deficiencies; these would:

- introduce competitive selection of judges based on "uniform criteria for selection and appointment[;]"
- introduce standard evaluation of judges' performance prior to granting life tenure;
- introduce a system of workload monitoring and performance evaluation, and clear performance standards for promotion;
- adopt a Code of Ethics and improved disciplinary procedure;
- introduce continuing training for judges and support personnel and create a comprehensive training institution;
- improve case management and introduce a uniform information system;
- increase the Supreme Judicial Council's administrative capacity;
- streamline cooperation between the Ministry of Justice and the Supreme Judicial Council;
- introduce alternative dispute resolution mechanisms;
- improve access to justice; and
- introduce measures to improve the public image of the judiciary.

To give effect to the bulk of these proposals, Parliament approved a set of draft amendments to the Judicial System Act in July 2002.[4] The new amendments address issues of court management, initial appointment and subsequent promotion of judges, training and training infrastructure, performance evaluation, the relations between the Judicial Council and the Ministry of Justice, judicial ethics, and discipline; they also create a court security office, and introduce some anti-corruption measures.

In some important aspects the amendments to the Judicial System Act are only a first step laying down the ground rules for future regulation, which the Supreme Judicial Council will enact. This is the case with respect to the initial appointment of judges and performance evaluation, for example, for which the actual standards and procedures will be adopted only later in secondary regulations. This means that the

[3] Program on Implementing the Strategy Paper, *at* <http://www.mjeli.government.bg/program.htm.>, (accessed 25 September 2002).

[4] Judicial System Act, State Gazette, No. 59, 22 July 1994, last amended State Gazette no 74, 30 July 2002.

success of reform will depend, to a significant degree, on the actions of a constitutional body that itself is in need of reform in order to ensure the judiciary's independence and to increase its institutional and adjudicative capacity.

There are also certain problems with the amendments as adopted. For example, the amended Judicial System Act includes a procedure for promotion of judges that gives the Ministry of Justice powers over the process,[5] a step that unnecessarily introduces a threat to judicial independence.

Still, the impetus towards comprehensive reform is correct, because the problems identified in the *Strategy Paper* and partly addressed by the amendments to the Judicial System Act are serious. The reform proposals, particularly the amendments to the Act, need to be implemented fully and with a serious commitment to the principles of judicial independence and enhanced judicial capacity if they are to succeed in addressing those problems. The legislative amendments should also be followed by constitutional amendments addressing the current set-up of the Supreme Judicial Council.

C. PROFESSIONAL COMPETENCE OF JUDGES

The recent amendments to the Judicial System Act have improved the regulatory framework for selection and promotion; however, the amendments still must be effectively implemented in secondary legislation and actual practices. The selection process still lacks transparency and clarity, leaving undue discretion to decision-makers and undermining the credibility of the system; it is crucial that implementing regulations address these shortcomings if reform is to succeed. Likewise, the amendments lay the groundwork for improved performance evaluation and public complaint systems, but require comprehensive secondary implementing legislation to be truly effective; in addition, the increased role given to the Ministry in discipline ought to be examined. The training system requires long-term commitment, including stable funding sources and careful implementation of the proposed organisational transformation, building upon existing experience.

1. Selection and Promotion

Despite recent changes, the system for selection, appointment and promotion is still unsatisfactory; the process of identifying and nominating candidates lacks clear

[5] *See* Section D.1., "Governance and Administration of the Judicial Branch".

selection criteria and transparency and decision-making is unduly discretionary, which in turn undermines the credibility of the system.

While the amendments create the basis for the improvement of the selection and promotion system by introducing more open competition, this change is limited to the lowest level. At other levels the amendments reinforce the existing powers of court presidents; they also increase the influence the Ministry of Justice exercises over the promotion of judges, which unnecessarily puts judges' independence at risk. The amendments' real effectiveness will to a large extent depend on secondary regulations adopted by the Supreme Judicial Council, their proper implementation and the actual practices established.

The process of identifying, selecting and nominating candidates for judgeships is largely left to the discretion of court presidents. Candidates are identified and nominated by court presidents, and appointed by the Supreme Judicial Council.[6] Court presidents submit their proposal for appointment to the Supreme Judicial Council together with a statement describing the professional experience of that person. There are very few formal requirements: Bulgarian citizenship, a law degree, a clean criminal record, and a certain number of years of professional experience; candidates should also have "the required moral and professional qualities."[7]

It is not clear how court presidents identify eligible candidates or how their moral and professional qualities are assessed, but apparently personal contacts and preferences account for the major part of the decision-making process.[8] The procedure does not provide for input from relevant professional organisations of lawyers and judges. Given the limited information that the Council receives, it is largely bound by the nomination forwarded by the court president, who therefore exercises considerable influence over the process. The judiciary follows the career model, and promotion to a

[6] Judicial System Act, Art. 30.

[7] Judicial System Act, Art. 126 (4).

[8] If candidates address the Supreme Judicial Council directly, their request is referred to the president of the respective court for an opinion. As a practical result such candidates are not appointed.

higher-level court is treated as a new appointment, with the same potential for court presidents to influence the process.[9]

In recent years, on their own initiative, some courts have launched open competitions for initial appointment as a junior judge.[10] In the Sofia City Court, the first to adopt such a system, an examination committee appointed by the court president conducts a public competition consisting of written and oral examinations. On the written examination applicants analyse hypothetical cases addressing both civil and criminal law; applicants whose papers receive the best grades are invited for an interview with the committee. The interviews focus on legal issues, and ethical issues are barely raised.[11] The examination committee then submits a prioritised list of candidates to the court president, which he or she follows in nominating junior judges.[12]

Such open competitions are certainly a positive step, although as yet they are not administered in many courts. At present seven of the 27 regional courts have followed suit, running open competitions for junior judge vacancies.[13] The presidents of the respective courts decide the content and evaluation of such exams on an *ad hoc* basis, though they generally follow the model of the Sofia City Court. In such exams only the applicants' knowledge of the law is tested; there are no procedures for evaluating candidates' personal or ethical qualities. Even when an open competition is held, moreover, the Supreme Judicial Council does not receive information on the competition itself, but only on the person nominated for appointment. Finally, open

[9] Although there is no formal legal basis for the practice, the Supreme Judicial Council has normally required that proposals for promotion include statistical information as to the overall number of cases heard by the judge, the time within which judgements were delivered and the percentage of judgements overturned on appeal. This information is collected by the administrative personnel of the court from the case files. Because different types of cases require different amounts of work, and because judges are often specialised and hear only certain type of cases, a merely quantitative comparison of case statistics is not necessarily a good indication of performance.

[10] A junior judge is appointed to the regional court, where he or she sits in a panel of three judges. Junior judges participate in hearings and write judgements and generally exercise the full rights of a judge; however, as junior judges are just out of law school, they are considered trainees. After two years on the regional court, a junior judge is normally appointed to a district judgeship, where he or she sits and acts alone. This effectively extends the time before tenure is granted to five years.

[11] Candidates' professional records do not play a role, as all candidates have just completed law school.

[12] Interview with Dragomir Yordanov, Director of the Magistrates Training Centre, July 2002.

[13] Regional courts in Blagoevgrad, Burgas, Gabrovo, Plovdiv, Smolyan, Stara Zagora and Sofia run open competitions. Interview with Ignat Kolchev, President of the Smolyan District Court, July 2002.

competitions are only run for junior judges, who will be appointed to a regular judicial position in a district court just two years later without a competition.[14]

The amendments to the Judicial System Act require open competitions for the appointment of junior judges. For other judicial positions, court presidents are obliged to run an open competition only if there are no candidates for the vacancies among acting judges, junior judges, prosecutors and investigators.[15] The conditions and procedures for such competitions have not been outlined by the amendments, however; this responsibility has been delegated to the Supreme Judicial Council.[16]

The legislative amendments have also changed the procedure for promotion after the initial appointment. Appointment is still decided by the Supreme Judicial Council upon a proposal introduced by the relevant court president. Before submitting such a proposal however, the president must appoint a committee to evaluate the candidate.[17] Considering the method of composing the evaluation committee, there is little reason to suppose it will introduce any greater rigour or consistency into the promotion process. The amendments have adopted some general guidelines[18] as to the criteria on which the evaluation should be based, but have delegated the adoption of detailed procedures and criteria to the Council.[19]

In addition, the draft amendments unnecessarily increase the power of the Ministry of Justice to influence the promotion procedure. Any proposal for promotion to a higher court must to be submitted by that court's president to the Minister, who then submits it with an opinion within seven days to the Supreme Judicial Council;[20] the Minister may also directly nominate a judge to the Council for promotion on his own initiative.[21] The amendments also explicitly grant the Ministry the power to keep and maintain judges' personnel files, which may have an effect on promotion considerations;[22] until now, the Ministry has kept such files, though without an explicit legislative authorisation. These provisions, confirming and even expanding the Ministry's authority, will not contribute to either judges' adjudicative independence or their autonomous capacity to manage their affairs with efficiency.

[14] The Blagoevgrad Regional Court runs open competitions for every judicial vacancy, advertising them nation-wide.

[15] Judicial System Act, Art. 127a (1).

[16] Judicial System Act, Art. 127a (2).

[17] Judicial System Act, Art. 142 (4).

[18] *See also* Section C.2., "Evaluating and Regulating Performance".

[19] Judicial System Act, Art. 129 (4).

[20] Judicial System Act, Art. 30 (1).

[21] Judicial System Act, Art. 30 (6).

[22] Judicial System Act, Art. 35g.

2. Evaluating and Regulating Performance

The recent amendments to the Judicial System Act have laid the groundwork for improved performance evaluation and public complaint systems, which have been fragmented and ineffective. Comprehensive, periodic assessments based on clear qualitative and quantitative criteria, coupled with an effective public complaint system and greater public access to court documents, would assist judges in their professional development. It is essential that the amended Act be effectively implemented in secondary legislation and actual practices. In addition, the Act's provisions confirming and reinforcing the Ministry of Justice's role in discipline – though in part a response to the judiciary's failure effectively to police its own behaviour – raises concerns about the potential for executive interference with judges' independence and professional development.

At present, judicial performance is only monitored through an informal system of peer review – that is, mostly through appeal of judgements to higher courts. Court presidents may, in the course of their judicial duties, examine judgements of a lower court on appeal, or have informal discussions with other judges about the performance of their colleagues. Such informally-gathered information can be used by court presidents in the process of nominating judges for vacancies on higher courts.[23] However, such mechanisms do not efficiently communicate to judges how they might improve their performance, and are open to discretionary abuse.

The amendments to the Judicial System Act create the foundation for a proper evaluation system. The amendments require evaluation of judges before the end of their initial three years in office – that is, before they receive life tenure. An evaluation is also required when a judge is nominated for promotion to a higher court, while a judge may request an evaluation for the purpose of securing promotion in rank.

The amended Act provides that evaluation shall take into consideration the following factors: the court president's reference or recommendation, the overall number and complexity of cases heard, the extent to which timetables were observed, the quality of the judge's decisions, as well as the judge's motivation, discipline and observance of ethical rules.[24] A detailed procedure for the evaluation of judges is to be adopted by the Supreme Judicial Council.[25] Obviously, any such procedure needs to ensure that the salutary general provisions outlined in the amended Act are comprehensively implemented in a manner in keeping with their spirit, which seeks to ensure that

[23] *See* Section C.1., "Selection and Promotion".

[24] Judicial System Act, Art. 129 (3).

[25] Judicial System Act, Art. 129 (4).

judges have objective information in order to improve their own professionalism and properly evaluate that of other judges.

The existing discipline and complaint mechanisms do not function properly. Complaints may be addressed to the relevant court president or the Ministry of Justice, as either may initiate disciplinary procedures with a motion to the Supreme Judicial Council. Unless the Council finds the motion manifestly unfounded it appoints from among its members a disciplinary panel. The panel carries out an initial investigation, takes a statement from the judge under investigation and holds a hearing open to judges, prosecutors and investigators, but not to the public; the decision of the panel[26] is subject to judicial review.

A major deficiency of the system is the lack of public access to disciplinary proceedings and the resulting limited access to information arising from such proceedings. Even when judges are disciplined for breach of professional duties, such information does not become public. Publicity would increase the preventative effect and contribute to increased public trust in the system.

Public access to court files and judicial opinions is likewise limited; case files are available only to the parties and their legal representatives.[27] There is no systematic publication of judgements of the Supreme Court of Cassation or the Supreme Administrative Court, although judgements of the Supreme Administrative Court are generally available.[28] Judgements of trial and appeal courts are not published at all. This limits the possibilities for the public, including legal professionals, to have an impact on the quality of adjudication through public debate and critical commentary.

The amended Judicial System Act introduces certain changes that should improve the effectiveness of the complaint and discipline procedures. The amendments oblige judges to adopt ethical rules that would then be approved by the Supreme Judicial

[26] Judges can be disciplined for "breach of their professional duties" and for delays in performing their duties. Judicial System Act, Art. 168 (1). A judge can be reprimanded, reduced in rank or salary for a certain period of time, barred from promotion for a certain period of time, or transferred to another court. Judicial System Act, Art. 169 (1). As the majority of complaints relate to improper delays, a separate complaint mechanism has been introduced in civil cases. Parties to a dispute may lodge a complaint with a higher court concerning substantial delays in a lower court proceeding; the higher court may rule that the procedure below should be expedited. Civil Procedure Code, Art. 217 (a).

[27] Ministry of Justice Regulation no. 28 of 20 March 1995, Art. 33 (1).

[28] The Supreme Administrative Court has established a web page, and most of its judgements are also available through different private providers. The Supreme Court of Cassation publishes a Bulletin containing some of its judgements, but the selection published is clearly subjective.

Council;[29] breach of these rules would then constitute separate grounds on which a judge could be disciplined.[30] Several changes improve public access to information about the judiciary, which will encourage honest application of the rules. The amendments oblige the Supreme Judicial Council to publish all its decisions, including those related to disciplinary proceedings;[31] they also oblige judges to file annual declarations of their assets as an anti-corruption measure.

At the same time, as noted above, the amended Judicial Systems Act confirms certain powers of the Ministry of Justice related to discipline, which in turn raises serious concerns about judicial independence even as it highlights the clear need for more effective autonomous procedures.

The Ministry of Justice only acquired the power to submit a motion for disciplinary proceedings in 1998, in an attempt to overcome the reluctance of court presidents to discipline judges from their courts and to make better use of the findings of the Inspectorate office within the Ministry.[32] The Inspectorate has the power to investigate courts' case management and general administration, on the basis of which it drafts general reports. If the Inspectorate receives a specific complaint, it may examine the relevant case files and report on its findings of fact, but it does not express an opinion as to whether there was a breach of duty.[33] Since 1998, however, the Ministry has been able to make use of these findings to submit motions. The amended Act now expressly provides for the Ministry of Justice to report the findings of its Inspectorate concerning breaches of duty by individual judges to the Supreme Judicial Council,[34] which then may decide to open a formal disciplinary procedure.

Clearly, it is not desirable that the Ministry of Justice, as a branch of the executive, has such considerable powers both to propose disciplinary proceedings and to conduct what inevitably is the principal investigation. Restoration and confirmation of the executive's power to involve itself in judicial disciplining generally runs counter to the principle of judicial independence and does not encourage the growth of a professionalised judiciary. To the greatest degree possible, such responsibility should vest in truly independent bodies or internal bodies on which judges themselves have

[29] Judicial System Act, Art. 27 (1)(13).

[30] Judicial System Act, Art. 168 (1)(3).

[31] Judicial System Act, Art. 27 (1)(15).

[32] The constitutionality of this provision has been challenged, but the Constitutional Court ruled that, as the Minister of Justice only has the power to address the Council and has no decision-making powers, there is no violation of the independence of the judiciary. Constitutional Court Judgement no.1, case no. 34/98, 14 January 1999.

[33] Judicial System Act, Art. 35.

[34] Judicial System Act, Art. 35b (2).

considerable representation; the investigative powers of the Inspectorate, likewise, would be better vested in an independent body. The most logical candidate is the Supreme Judicial Council, which already has by law, and should have in practice, full autonomy in pursuing disciplinary proceedings.

Of course, once judges are given the means and the political support to operate such systems, they must demonstrate a sincere and sustained willingness to police themselves, or to cooperate with those independent bodies responsible for policing them, if resort to political control over judges' performance is to be avoided. To the extent that the judiciary failed to discipline its own membership in the period prior to 1998, some measure of residual political control may be appropriate until a comprehensive system of internal or independent discipline can be established that better ensures accountability.

3. Training for a Professional Judiciary

The further professionalisation of the judiciary requires a commitment to long-term, continuing training that has been lacking; this should include, in particular, stable, dedicated funding and clarification of the newly proposed training institution's legal status. In the process, the existing potential for judicial training should not be wasted, as already-established institutions have proven capable of organising and conducting relatively good training programmes.

In 1998, the Ministry of Justice and two professional organisations of judges and lawyers[35] created the Magistrates Training Centre as a non-governmental organisation to meet the needs of the judiciary for initial and continuing training. The Centre's articles of incorporation envision that in the long run the Centre would be converted into a public institution for judicial training.[36] The Centre has carried out a number of training events and developed a considerable corps of trainers, mostly judges. Since 1999 all newly-appointed judges attend an initial training programme at the Centre, consisting of nine training events over a total of 43 days.[37] Because of good cooperation from court presidents, in practice every newly appointed judge in recent years has successfully completed this initial training programme. The Centre also provides continuing training. However, the Government does not provide any funding for the

[35] The Association of Judges and the Alliance for Legal Interaction.

[36] Articles of Association of the Magistrates Training Centre (unpublished).

[37] This training program was laid down in a document approved by the Centre's board, "The Initial Training Program of the Magistrates Training Centre".

Centre, which is funded by a large number of foreign donors.[38] This financing is neither secure nor stable, and does not contribute to the long-term sustainability of judicial training.

The amendments to the Judicial System Act provide for the creation of a National Institute of Justice.[39] This Institute would be a separate legal entity, with four board members appointed by the Supreme Judicial Council and three by the Minister of Justice. The new Institute is to begin operations in 2003.

The amendments to the Judicial System Act also require every candidate selected for a junior judgeship to undergo initial training;[40] only after completing one year of training at the National Institute of Justice may they be appointed junior judges by the Supreme Judicial Council.[41] Individuals exceptionally appointed directly through open competitions to serve as full judges will not be required to attend this one-year training programme, but will instead attend a separate programme approved by the Council.[42]

However, even under the amended Act there is no obligation for continuing training of judges, although the National Institute of Justice will offer such training as well as training for court administrative staff. As it is not clear whether the new Institute will have sufficient funding from the Government, the amendments leave open the possibility for judicial training provided by other organisations approved by the Minister of Justice.[43] Apparently the existing Magistrates Training Centre will continue to provide such services while the Institute is being established.

It is not clear, however, how the experience accumulated by the Magistrates Training Centre is to be integrated into the new National Institute of Justice. It would be counterproductive to lose the potential of the Centre, as it is unlikely that the Government will be able to provide full funding for judicial training in the near future, and will remain dependent on foreign aid. This argues strongly for the full integration of the fundraising capabilities, good donor relations and substantive experience established by the existing Centre.

[38] Interview with Dragomir Yordanov, Director of the Magistrates Training Centre, July 2002.

[39] Judicial System Act, Art. 35e.

[40] Judicial System Act, Art. 35j (1) and (2).

[41] Judicial System Act, Art. 35j (4).

[42] Judicial System Act, Art. 35j (6).

[43] Judicial System Act, Art. 35e (6).

D. INSTITUTIONAL CAPACITY OF THE JUDICIAL BRANCH

The conflicting interests of the various groups represented in the Supreme Judicial Council and its weak administrative capacity limit its ability to support competent and efficient court operations, while at the same time the Ministry of Justice continues to exercise considerable power in practice. The legislative amendments have clarified the division of authority between the Council and the Ministry of Justice in certain respects. Many issues, however, have been left subject to joint decision-making and some amendments actually – and unnecessarily – increase the powers of the Ministry. Courts have little input into the budget process, further limiting their ability to improve their professional capacity. Court presidents have substantial managerial powers and responsibilities, but do not receive proper training. The recent introduction of court administrators is a welcome step, but will require implementing regulations that clearly delineate responsibilities of court presidents and court administrators. These new posts should be filled by individuals with relevant education and skills.

1. Governance and Administration of the Judicial Branch

The weak administrative capacity and conflicting interests of the various groups represented in the Supreme Judicial Council, the body governing the judiciary, limit its ability to support competent and efficient court operations. At the same time the Ministry of Justice continues to wield considerable power in practice, which creates risks for the judiciary's independence and limits its ability to develop truly effective, autonomous professional governance.

The Supreme Judicial Council has considerable governance powers over the judicial system, including the prosecutorial and investigative services.[44] The Council has authority over the appointment,[45] promotion, and dismissal of judges and over judicial immunity and discipline. It also has responsibility for a broad range of administrative determinations, such as fixing the number of judges and support personnel in each court and setting judges' remuneration. It also prepares the draft budget of the judicial system and allocates funding within the budget voted out of Parliament. The Council's consent is required before the Ministry of Justice may fix the seats and the territorial jurisdiction of the courts.

[44] Prosecutors and investigators have the same status as judges, Judicial System Act, Art. 10, 133–135.

[45] Only two judges – the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court – are appointed by the State President, but even these are proposed by the Council. *See* Section C.1., "Selection and Promotion".

Considering the considerable formal powers the Supreme Judicial Council exercises over judges' professional careers, it is essential that the Council be sufficiently insulated from improper political and institutional pressures. Yet its composition limits the Council's effectiveness and even creates serious risks for judges' independence and their professionalism.

The Supreme Judicial Council's membership includes representatives of judges, prosecutors, and investigators, elected out of their own ranks, as well a number of members elected by Parliament.[46] The conflicting interests of judges, prosecutors and investigators – and the bodies that elect them to the Council – have often limited the ability of the Council to provide consistent management; instead, different management rationales – arising from the different role investigators, prosecutors and judges play – have led to conflicting policies being imposed on the justice system.

For example, as the Government is held politically responsible for successfully tackling crime, it has had a clear interest in establishing some control over investigation and prosecution in order to carry out consistent policies to combat crime. This had led three Governments – in 1992, 1996 and 1998 – to pass legislation replacing the Supreme Judicial Council before its constitutionally mandated five-year term had expired. Such direct political intervention inevitably creates disincentives for Council members to take principled positions at odds with the interests of the Government in power, even if those interests might be detrimental to the professional development of the judiciary.

Within the Supreme Judicial Council itself there are structural relationships that likewise jeopardise the judiciary's independence and professional autonomy. As the mixed-composition Council prepares a draft budget for the courts, the prosecution, and the investigative service and has considerable powers to redistribute funds, the differing interests of prosecutors, judges and investigators have led to factional voting on the Council. Over the years a clear pattern has been established, with judges and prosecutors opposing each other on the Council, and investigators changing sides depending on the political context. In addition, the fact that prosecutors who are party to the judicial proceedings also decide on issues of appointment, promotion and disciplining of judges through their representatives on the Council raises concerns about threats to the independence of the judiciary.

[46] The Supreme Judicial Council consists of twenty-five members. Parliament appoints eleven of the members, and the bodies comprising the judicial branch elect another eleven: judges elect six members, prosecutors three members, and investigators two members. The Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, and the Prosecutor General, are members *ex officio*. Judicial System Act, Art. 16 (2).

Beyond the effects created by these conflicts of interest, the administrative capacity of the Supreme Judicial Council is insufficient to handle its many formal responsibilities.[47] In practice, the Council relies on the Ministry of Justice, which has a far larger staff, for administrative support. The Ministry collects and processes statistical information on the performance of the judiciary and provides it to the Council, and its Inspectorate is empowered to monitor judges' performance.[48] The Ministry also monitors implementation of the judiciary's budget allocation, has administrative authority for court buildings,[49] and retains some standard-setting powers with respect to court and case management.

Even the changes created by the amended Judicial System Act leave this system of dependence largely in place. For example, prior to the amendments the Minister had the power to adopt regulations on the administration of the courts;[50] this power is now exercised jointly,[51] but the Council's continued administrative reliance on the Ministry suggests that it is not likely to have a truly equal role. The Ministry and Council will also exercise joint control over regulations governing the activities of the National Institute of Justice[52] and the activities of lay judges.[53] The new amendments also authorise the Ministry to keep the personnel files of judges, and proposals for promotion will have to be submitted to the Supreme Judicial Council through the Minister.[54] In all, despite a lack of significant legal powers, the Ministry in fact remains in a position to influence the administration of the judiciary in a manner that contradicts the principle of judicial independence established in the Constitution.[55]

Proposals to increase the Ministry's powers – especially as long as the Council remains effectively handicapped – should be discouraged;[56] rather, alternatives that increase the autonomous administrative capability of the Council should be considered, and the Council's division of authority clarified so that judges, prosecutors, and investigators are separately administered.

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47 As of July 2002 the Supreme Judicial Council had 14 staff members.

48 *See* Section C.2., "Evaluating and Regulating Performance".

49 Judicial System Act, Art. 36a.

50 Judicial System Act, Art. 188.

51 Judicial System Act, Art. 188 (1) and (3).

52 Judicial System Act, Art. 35e (7).

53 Judicial System Act, Art. 51.

54 *See* Section C.1., "Selection and Promotion".

55 Const. Rep. Bulgaria, Art. 117 (2).

56 *See also* Section B.1., "The Reform Proposals".

Budget Process: The Supreme Judicial Council and the courts have little practical input in the budgeting process, despite a constitutional provision guaranteeing judicial independence in financial matters.[57]

The judicial system has an autonomous budget, which is drafted by the Supreme Judicial Council and submitted together with a financial report on the previous year to Parliament for a vote;[58] the Council of Ministers may make reasoned objections to the draft budget proposal of the Supreme Judicial Council.[59] In practice, however, the Council of Ministers introduces its own parallel budget proposal for the judicial system, which Parliament then enacts. In practical terms the fact that the Supreme Judicial Council submits its budget has little value; its budget proposals are generally reduced dramatically,[60] which in turn limits the resources available to the courts to develop their professional capacity.

Many local courts also lack expertise in developing their budget proposals. In the absence of professional accountants, court presidents prepare budget proposals with the assistance of untrained administrative staff. Without special training, court presidents and support staff are not able either to prepare a long-term financial strategy or to correctly distribute allocated funds. A large percentage of courts' budgets go for salaries and benefits;[61] as courts have to finance the work of expert witnesses, *ex officio* lawyers and lay judges from their own budgets, often they have to overspend or cut other expenses to be able to proceed with hearings. As a result, often there is a shortage of funding by the end of a financial year.[62] Such financial conditions as a result make any long term budgeting and planning impossible, and therefore handicap efforts to develop the courts' capacity.

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[57] Const. Rep. Bulgaria, Art. 117 (3).

[58] Judicial System Act, Art. 196 (2).

[59] Judicial System Act, Art. 196 (3).

[60] The Cabinet decreased the 2002 budget proposal of the Supreme Judicial Council from 208 million Lev (€107,195,538) to 106 million Lev (€54,627,039). After members of the Council lobbied the Prime Minister at a meeting, he increased the budget by 15 million Lev (€7,730,902), to a total of 122 million Lev (€62,878,010). Both budgets were submitted to Parliament, which voted for the Government version.

[61] For example, roughly 75 to 80 percent of the budget of the Smolyan District Court goes for salaries and benefits. Interview with Ignat Kolchev, President of the Smolyan District Court, July 2002.

[62] Thus, the Smolyan District Court has 109 Lev (€50) per month per judge for expert witnesses and lawyers for the year 2002. As this amount is sufficient roughly for one fee, the court is required to cut from other expenses to be able to proceed with hearings. Interview with Ignat Kolchev, President of the Smolyan District Court, July 2002.

2. Court Administrative Capacity

Court presidents have substantial administrative powers and responsibilities, but do not receive proper training. The recent introduction of court administrators may improve court management, provided that implementing regulations transfer meaningful and clearly delineated powers to these new administrators in a manner that follows the spirit of the legislative reform, and that these new positions are filled by individuals with relevant education and skills.

Court presidents have overall responsibility for the policy, procedures, and long-term development strategy of their respective courts. Court presidents are responsible for managing and representing their courts, for collecting statistical information, and for submitting regular reports to the Council on their courts' activities. Court presidents propose judges for appointment, and appoint and dismiss administrative staff. They distribute work among the judges and oversee the work of the administrative staff. They draft and administer the court budget, and convene and chair their courts' general meeting.[63] However, despite their considerable managerial responsibilities, most court presidents are ill-prepared.

The system of selection for court presidents does not ensure that individuals with managerial qualifications are placed in charge of courts. The Supreme Judicial Council appoints court presidents, but there are no criteria for their selection.[64] The amendments to the Judicial System Act increase the input of each court's general meeting in the appointment of the court president; they also limit each term in office to five years. Each general meeting elects a judge as its appointee, and the president of the responsible higher court is obliged to submit that candidate to the Supreme Judicial Council. However, the Council is not bound by the vote of the general meeting, but may also consider proposals made separately by the president of the higher court or the Minister of Justice.[65] In addition, all proposals (including that of the general meeting) must be submitted via the Minister of Justice, who in submitting it to the Supreme Judicial Council may attach a separate opinion.

In general, more experienced judges have been appointed as court presidents. However, there have been significant exceptions, and because of the dominant role played by court presidents in the process of selection and nomination, personal politics has also played a substantial role. The opening up of the nomination process is certainly a positive step, as is the requirement that every five years court presidents face re-election

[63] Judicial System Act, Art. 30, 56, 63, 79, 100.

[64] Judicial System Act, Art. 30.(1).

[65] Judicial System Act, Art. 30 (4) and (6).

or re-appointment. The increased role of the Ministry of Justice, however, raises concerns about the independence of the judiciary.

However they are selected and appointed, court presidents need proper managerial skills; at present, they are not trained for managerial work either upon assuming their responsibilities or on a continuing basis. Managerial training for court presidents should be an immediate priority.[66]

The introduction of court administrators and open competition for vacancies on the courts' staff[67] should improve the local management of the courts. Amendments to the Judicial System Act relieve court presidents of a number of responsibilities related to court and personnel management and pass them over to court administrators. The amendments still leave the ultimate responsibility with the court presidents, and provide that court administrators will "plan, organise and oversee the work of the court staff" and will be responsible for "the management of the administrative activities in the court," and for "the long-term planning, budget policy, finances, automation and equipment."[68] These new posts provide a clear opportunity to improve court management; however, implementing regulations should clearly delineate responsibilities of court presidents and court administrators, and these new positions should filled by individuals with relevant education and skills.

The courts suffer from a number of infrastructure problems, many related to insufficient funding. Courts have been under-funded for years and as a result, work conditions are in need of considerable improvements, including increased funding for hiring and training legal and technical court staff, as well as for professional court buildings and office equipment. Although the Government increased the budget of the justice system for 2002 by about 20 percent compared to the 2001 budget, this still does not overcome years of under-funding.

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[66] The Magistrates Training Centre does not offer managerial training for court presidents, although it is developing a special module for newly appointed presidents that will include judicial administration, personal management, budgeting, and media relations. Interview with Dragomir Yordanov, Director of the Magistrates Training Centre, July 2002. Meanwhile, during the last two years the project sponsored by the United States Agency for International Development (USAID) offered training courses that allowed a certain number of court presidents to acquire basic managerial skills. Although a positive initiative, this pilot project involved only a very limited number of court presidents (approximately one in 15 of the total number of court presidents) and does not contribute to a permanent, State-sponsored solution to the need for training.

[67] Judicial System Act, Art. 188c.

[68] Judicial System Act, Art. 188c.

In addition, the often-indistinct division of responsibilities between the Council and the Ministry and low administrative capacity of the Council[69] contributes to concrete regulatory deficiencies. For example, the judiciary lacks clear caseload or case management standards, even though caseload is in turn the basis for determining the number of judges and court staff and the distribution of allocated funds, technology and equipment, and facilities. The resulting irrationality in resource allocation tends to make courts inefficient and lowers incentives to improve operating procedures.

The system of case management in particular lacks proper standards or support for judges in handling technical matters related to timely disposition of cases. An initiative supported by USAID has been developing a fully computerised case file management system, which is run at present as a pilot project in several courts;[70] these projects should be continued and expanded. Increased funding is also necessary to meet increased court caseloads; anecdotal evidence suggests that court delays are a serious problem, which is concealed by the lack of a uniform case tracking and information system that would allow courts to track cases from start to finish.

E. RECOMMENDATIONS

1. To the Bulgarian Government and Legislature

- Follow through on the new commitment to comprehensive judicial reform by ensuring that regulations implementing the recent amendments to the Judicial System Act are fully consistent with the principles of judicial independence and enhanced judicial capacity.
- Consider reforming the Supreme Judicial Council or creating a new constitutional-level governing institution responsible for judges and courts only, and provide it with sufficient resources and support staff to ensure professional governance and management of the judicial branch.
- Consistent with the principles of judicial independence and accountability, reconsider the proposed amendments increasing the Ministry of Justice's administrative authority over courts.

[69] *See* Section D.1., "Governance and Administration of the Judicial Branch".

[70] Interview with Ignat Kolchev, President of the Smolyan District Court, July 2002.

- Take further steps to clarify judicial selection criteria and to make the selection and promotion process more transparent so that it ensures meritorious selection and promotion of judges and minimises possibilities for bias.
- Through implementing legislation, create a rational and comprehensive system of performance evaluation and public complaint to support judges' professional development.
- Ensure that the new judicial training system is backed by a commitment to long-term, continuing training. Clarify the new National Institute of Justice's legal status. Ensure that it makes full use of the existing resources and experience of the Magistrates Training Centre and has stable and sufficient financial resources to support continuing training.
- In new regulations, clearly delineate the responsibilities of court presidents and court administrators. Ensure that persons appointed as court administrators possess relevant education and skills. Prioritise managerial training for court presidents.
- Continue and expand pilot projects and reforms aimed at improving case management.
- Increase funding to improve working conditions for legal and support staff, including office space and equipment.

2. To the European Union

- Continue to emphasise the importance of judicial reform so that efforts to improve the judiciary's independence and capacity remain on the reform agenda both during the present accession period and during Bulgaria's continuing membership.
- Encourage the Government and Parliament to seriously consider constitutional reform of the Supreme Judicial Council so that the Council or its successor can fairly represent and defend society's legitimate interests in an independent judiciary, without unnecessary conflicts of interests.
- Encourage the Government and Parliament to reconsider any expanded role for the Ministry of Justice in administering the judiciary.
- Continue support for judicial training programmes for judges while encouraging the establishment of a financially stable permanent institution that also provides continuing training.
- Emphasise the need to enhance the level of professionalism in court management and in the selection and training of court personnel.