

Executive Summary

Brief Overview of the Results

The 2006 Judicial Reform Index (JRI) for Bulgaria demonstrates meaningful progress in a number of areas, while indicating that much work remains for Bulgaria as it seeks to strengthen its judiciary. Of the 30 factors analyzed in the assessment, the correlations determined for seven factors improved from 2004 to 2006, while none of the other factors suffered a decline. The factors that were rated positive in 2004 continued to be positive in the current assessment, and were joined by three other factors upgraded to positive in 2006, bringing to ten the number of factors receiving the highest grade. Eighteen factors received neutral correlations in this report, including four that had received negative grades in 2004. Only two factors continue to carry negative ratings, the most significant of which is Factor 20 relating to the independence of judicial decision-making and the confidence that legal professionals and the general public have in the integrity of the judicial system. The correlations for a total of 16 factors were below positive in both 2004 and 2006 and were not upgraded in the current assessment. These conclusions indicate there is still much work to be done, although the analyses of some of these factors reveal encouraging signs of progress and awareness of the need for improvement. Quite often, the initiation of a pilot project or the laying of a foundation for a particular reform is a cause for optimism; at the same time, the fact that the reform is still not fully in place and operational after 15 years under a democratic constitution is an offsetting source of concern.

As of the March 2006 assessment team's visit, the Bulgarian judicial system was undergoing rapid change in a number of areas, including training, evaluation criteria, administrative control, automation, and the amendment of all procedural codes. Some of these changes were driven by preparations for the European Union (EU) accession, which is anticipated in January 2007, while others were motivated independently by advocates of reform, modernization, and reorganization. As a general matter, the flurry of new laws and other changes had not yet translated into significant improvements in most of these areas, but the overall direction of movement was positive.

Positive Aspects Identified in the 2006 Bulgaria JRI

- An encouraging development over the past two years has been the emergence of the **National Institute of Justice (NIJ)** and specifically its **initial training program for junior judges**. The quality of its curriculum, faculty and interactive methodology is reflected in the virtually unanimous praise of its recent graduates by persons interviewed. While there are features of the judicial preparation and appointment process that continue to draw criticism, the NIJ's initial six-month training program is certainly a bright spot in the judicial picture. The NIJ's continuing legal education activities are still fairly limited, however, and it will be a particular challenge to ensure that all sitting judges are adequately trained in both the EU law and the major domestic procedural codes now under revision.
- Many judges are beginning to appreciate the value of **media awareness and public education**, and have instituted measures in their courts to improve the flow of information to society. Steps taken include employment of media attachés in selected courts to serve as liaisons to media representatives, assistance with media access to and understanding of court proceedings, and initiation of several court websites with general and scheduling information, as well as selected case decisions.
- **Judicial salaries and benefits have risen** in recent years to the point where they appear sufficient to attract and retain qualified persons to the judiciary, improve the prestige of the profession, and negate one of the excuses sometimes proffered for judicial corruption.
- Two areas that have consistently received positive responses and correlations are **constitutional review of legislation** and **administrative review of both individual and normative acts of governmental entities**. The Constitutional Court is highly respected for its competence,

efficiency, and independence. The Supreme Administrative Court (SAC) continues to earn compliments for its strength, automation, and transparency.

- Acting through the Supreme Judicial Council (SJC), the judiciary still appears to have the **power to propose and implement its own budget**. Recent amendments to the Bulgarian Constitution gave the Ministry of Justice (MOJ) certain drafting authority with respect to the judicial system budget and control over the physical assets of the judiciary. While these changes have provoked some concern and their interpretation and application will be watched closely, it would seem that the SJC has retained the most important powers in this administrative area.

Major Concerns Identified in the 2006 Bulgaria JRI

- The Bulgarian judiciary continues to suffer from a **strong public perception that decisions are often based on improper influences**, whether through bribery, personal or family connections, intervention by higher ranking judges or other means. The validity of this perception is by no means clear, but vigorous measures need to be taken to reverse it before there is additional erosion of public confidence in the legal system. A controversial organic feature of the judiciary is the fact that prosecutors and investigators, as fellow magistrates, are members of the SJC and its commission and thus act on appointments, evaluation, promotion and discipline of judges. This role and other circumstances suggest an **unhealthy institutional influence especially by the prosecution** over the careers and thus potentially over the decisions of individual judges.
- A number of the concerns noted in this JRI assessment flow from **apparent deficiencies in the strategic planning, vision, and direction of the judicial system**. The SJC and the MOJ have historically shared responsibilities over different aspects of the system, with periodic shifts between these entities and occasional confusion over roles. In the interests of judicial independence, overall responsibility should rest with the SJC. Its members all have other full-time, important responsibilities, however, and its administrative staff is busily engaged with day-to-day assignments and obligations. Consideration should be given to a restructuring of the SJC to improve its capabilities in this vital area.
- **Case delays** are the source of significant and recurring complaints about the judicial system. There is no shortage of apparent causes for these delays, including the three-instance process of trial, appeal and cassation review, shortage of courtrooms to permit hearings to take place, excessive caseloads at various courts and levels of the judiciary, difficulties assuring the appearances of parties and witnesses at court proceedings, and highly formalized procedures at all stages of the legal process. On the bright side, these complaints have prompted calls for reforms in a variety of areas that may yet produce tangible results.
- Many new judges receive **direct appointments** to the bench each year without going through a competition, having the benefit of the NIJ's initial training program, or obtaining proper orientation and mentoring. As a separate but related concern, **the standards and procedures for evaluation and promotion** of judges were in a state of flux at the time of the assessment team's visit. The SJC had passed a temporary rule a year before, but its actual and consistent implementation was the subject of some complaints and it was about to be superseded by a new regulation with presumably new criteria and procedures.
- While the SJC approved a **code of ethics for judges** developed by the Bulgarian Judges Association, the document is a very short and general set of broad statements and **does not constitute the clear and comprehensive guidance** needed to regulate behavior adequately. The new code appears to lack wide acceptance among judges, and little or no effort has been made to educate sitting judges on its terms and application or to inform the public of its existence and provisions. Its effectiveness as a legal basis for disciplinary sanctions remains uncertain.

Other Concerns Identified in the 2006 Bulgaria JRI

- A long-standing concern has been the **absence of objective and transparent criteria for assignment of cases** among judges within a court. Too often, it has been a matter within the prerogative of the court chairperson, with the potential for improper or inequitable outcomes. An encouraging step has been the adoption of an MOJ court administration regulation mandating random case assignment, but its force has been weakened by inconsistent application among courts and frequent, nontransparent overrides by court chairpersons.
- **Enforcement of court decisions is still a difficult and time-consuming** proposition, as procedures remain cumbersome and debtor-friendly. Collection of monetary judgments against governmental units is especially slow and uncertain. Changes to the Civil Procedure Code were under discussion at the time of this report that would improve the process significantly. Another encouraging sign was a law passed in 2005, not yet implemented at the time of the on-site visit, providing for the creation of private enforcement agents to supplement the present efforts of public bailiffs in this area.
- **Public access to court decisions**, especially in first-instance courts, **and case records** continues to be a troubling issue in Bulgaria. Although files relating to highly personal matters, juvenile cases, national security, or business confidentiality should generally deserve protection, present restrictions go well beyond those categories. Exceptions are sometimes granted, but not pursuant to uniform, state-wide standards. Access to court records should improve as the courts are **moving toward greater automation**, but there is still a long way to go. Computers are widely available and legal databases are operational, but the installation and application of case management software have been very slow and erratic.
- While the number of **judicial disciplinary proceedings** increased considerably from 2004 to 2005, they remain well below the numbers typically experienced in other democratic societies. There are various possible explanations, but an obvious concern is that court chairpersons in their proposals and even the SJC in its decisions may be too protective of their professional colleagues. The result, in any case, is a lack of public confidence in the objectivity and effectiveness of the disciplinary process.