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COUNCIL OF
THE EUROPEAN UNION

Brussels, 7 May 2002

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**NOTE**

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| From : | the General Secretariat |
| To : | the Collective Evaluation Working Party |
| No. prev. doc. : | 10873/1/00 EVAL 45 ELARG 117 REV 1 |
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**A. The Judicial System**

Several governments have initiated a reform process to reinforce the judiciary's independence and authority. Over the years, progress has been made especially in the development of formal arrangements separating the judiciary from the other branches and giving it considerable administrative autonomy[1]. However, the situation today still needs to be improved.

[1] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)


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A global change was introduced in 1994 with the new Judicial System Act. This Act established the competence of the Supreme Judicial Council (SJC) and -after the re-establishment in 1997 the Supreme Court of Cassation[1] and the Supreme Administrative Court[2]- the three-instance court procedure. The former government considered that the reform of the judiciary had finished and that the system only needed certain modernisation.

However, on 1 October 2001, the new government adopted the *Judicial Reform Strategy*[3] with which it aims to contribute to the preparation for EU Membership by tackling all major problems of the judicial system. Essentially, the Strategy focuses to achieve independence of the judiciary, supremacy of law, the protection of citizens' and social rights and equal access to justice and EU standards in justice and international judicial co-operation.

The Strategy is designed for a 5-year period and includes three stages of priorities: short-, medium- and long-term. It consists of the following parts[4]:

- ♦ Strengthening the law enforcement capacity of the judiciary;
- ♦ Improving the administrative activity of the judiciary;
- ♦ Strengthening the capacity of the Supreme Judicial Council (SJC) to implement its functions, in particular in budgeting and managing disciplinary proceedings;
- ♦ Improvement of the co-ordination and co-operation between the SJC and the Ministry of Justice as regards management of the judiciary;
- ♦ Transformation of the Magistrate Training Centre into a public institution;
- ♦ Improvement of the judicial enforcement system in order to ensure effective and fast protection of the rights of both natural and legal persons;
- ♦ Registration offices;
- ♦ Introduction of alternative settlement techniques;
- ♦ Ensuring equal opportunities for access to justice (improving the legal aid provision);

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[1] The Supreme Cassation Court carries out supreme judicial control for the strict and identical implementation of the laws by all courts.
[2] The Supreme Administrative Court carries out supreme judicial control for the strict and identical implementation of the laws by the administrative jurisdiction and rules disputes on the conformity with the law of secondary legislation. The Court has continued to function and there has been an increase in the number of cases it examined. Administrative acts of central and local government can be contested before the court. It has taken several decisions on important matters and the executive has complied with these. However, the role of the court needs to be further developed.
[3] The Supreme Judicial Council was consulted during the preparation of the Strategy
[4] 11/03/02 - accession negotiations with Bulgaria, chapter 24/information provided by Bulgaria


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- Judicial budgeting (adapting the budget in accordance with the needs of the judiciary);
- Improving the infrastructure and security measures in the judiciary;
- Improvement of the public image of the judiciary;
- Legislative amendments.

A working group has been set up to draft amendments to the Judicial System Act, which will create the legal framework for part 1 of the Strategy. For implementation of the strategy, an action plan was planned to be adopted by the Council of Ministers in March 2002. Input for this plan should have come from a Conference on judicial reform -planned to take place in February 2002.

Both the Minister of Justice and his team within the Ministry are reported to be very committed to the reform process. However, not all members of the government or even of Parliament are committed to the same level[1].

So far, there is still no clear information on when or how the Strategy will be implemented or what the available budget is. Moreover, the Strategy does not mention a number of important issues, such as the position of the investigators (within or outside the judiciary), the high criminal immunity of magistrates or the division of tasks and responsibilities between the Ministry of Justice and the Supreme Judicial Council. More information is also needed on issues such as upgrading the status of magistrates, the reduction of the duration of court proceedings, the adequate enforcement of judgements and strengthening judicial control over decisions of the executive branch[2].

**Shortcomings of the judicial system in practice[3]**

The formal consolidation of judicial independence which was aimed for during recent years has been seriously curtailed in its implementation. The continued involvement of the Ministry of Justice in administrative and supervisory matters, the executive's co-optation of the judicial budget and the continued mixing of core judicial and non-judicial functions in the Supreme Judicial Council limit judges' real independence[4].

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[1] (viz. Independence and appointment: adoption of budget)
[2] The EU in its latest Common Position has asked Bulgaria to provide further and detailed information on these issues.
[3] Answers from the Member States to the questionnaire (Feb. 2002), Commission Regular Report on Bulgaria 2001
[4] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)


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The Member States[1] state that the main problems are the lack of a qualified and professionally functioning judicial system capable to guarantee full respect for the rule of law, the unclear split of roles and responsibilities between the Supreme Judicial Council (SJC) and the Ministry of Justice[2], the apparent submissiveness of the judiciary to the administrative power, an unclear split of roles and responsabilities and lack of co-ordination between the prosecutor's office, the *sledovateli*[3] and the police in the field of investigations and finally the far-reaching constitutional safeguard of immunity for magistrates. Moreover, an analysis of the processes in the judiciary since 1990 has brought the Member States to the following conclusions, including with regard to the current Judicial Reform initiative:

- parts of the legislative changes that are taking place are characterized by a lack of clear approach and goals, as well as by ungrounded, often conjectural decisions;
- what lacks is a clear programme -so far- for a reform of the judiciary, encompassing all major prerequisites, requirements, guidelines and a strategy for implementing it -legislative, organizational, material and technical tools for its realization;
- there is inadequate action of the different branches of the judiciary with respect to the sharply increasing organized crime and in relation to the developing civil turnover of goods under the established market economy rules;
- the difference between registered, discovered and punished crime is on a constant increase;
- investigation services are blocked by a great number of pending pre-trial proceedings;
- the total number of initiated and pending cases in the courts is on a constant increase;
- the organization of work with relation to case initiation and case movement is poor;
- there is untimely scheduling of cases and delay in the preparation court acts;
- proceedings on vigorous execution of court decisions are ineffective;
- the public image of the judiciary is unsatisfactory;
- the level of selection and training of personnel in the judiciary is unsatisfactory;
- there is a lack of financial resources and of a unified information system.

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[1] Answers from the Member States to the questionnaire (February 2002)
[2] which contributes to the poor functioning of the judicial system
[3] criminal investigator

The Regular Report 2001 subscribes some of the afore-mentioned deficiencies, as it concludes that "whilst there have been developments in some areas ... further efforts are needed for the judicial system to become strong, independent, effective and professional and able to guarantee full respect for the rule of law as well as effective participation in the internal market." It further states that "as in 2000, there is insufficient attention to how laws will be implemented, which results in delays between adoption and actual implementation. After new laws enter into force, more attention needs to be paid to monitoring implementation and enforcement, in particular in the court system."

**B. Independence, appointment and remuneration**

Independence and appointment[1]

According to the Constitution and the Judicial System Act, independence of the judiciary is fully guaranteed and the Supreme Judicial Council is the highest body representing and governing the judicial system. It is composed of 25 members who are elected for a 5-year term:

- 3 *ex-officio* members: the Presidents of the Supreme Court of Cassation, of the Supreme Administrative Court and the Prosecutor General;
- 11 members elected by the organs of the judiciary (6 judges, 3 prosecutors and 2 investigators)
- 11 members elected by the Parliament.

It has the following powers:

- To make proposals to the President of the Republic regarding the appointment and dismissal of the chairmen of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General;
- To determine the number, judicial areas and location of the regional, district, military and appeal courts based on proposals made by the Minister of Justice;
- To determine the number of judges, prosecutors and investigators in all courts, prosecutor's offices and investigation services;
- To appoint, promote, move and dismiss magistrates;
- To determine the remuneration of magistrates;

[1] Answers from the Member States to the questionnaire (February 2002)

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- To rule on lifting of immunity and temporary dismissal of magistrates, in cases stipulated by law, on requests made by the General Prosecutor;
- To rule on decisions on disciplinary cases against magistrates[1];
- To submit to the Council of Ministers a draft budget for the judiciary and monitor its implementation;
- To request and review on -an annual basis- information from the courts, prosecutor's offices and investigative services.

**Shortcomings in practice**[2]

The generalised opinion among citizens and foreign observers is that the Courts are not yet free of an important influence of the Government and the Ministry[3]. Although the old practice of telephone instructions from the executive to the judiciary may no longer exist, there remain some indirect but very important channels for the executive to interfere into the work of the judicial system. The issues are mainly related to the unclear split of responsibilities between the Supreme Judicial Council (SJC) and the Ministry of Justice and the Government as a whole. Although in theory the SJC should act as the administrator for the judiciary, the Ministry of Justice continues to exercise extensive administrative powers. In addition, the Ministry has extensive supervisory powers, allowing its Inspectorate to make intrusive investigations into the work of courts and individual judges, of the prosecution offices and investigation services[4].

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[1] Disciplinary proceedings against magistrates are initiated by the SJC based on proposals by the persons listed in Article 171 of the Judicial System Act (?). These proposals are heard by a panel of 5 members of the SJC chosen by lot.
[2] Answers from the Member States to the questionnaire (Feb. 2002), Commission Regular Report on Bulgaria 2001, Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)
[3] This could, according to the MS, "be considered as a direct heritage of the not so distant totalitarian past of the country."
[4] The Inspectorate is responsible for the organisation of the administrative work of the courts, prosecutors' offices and investigative services, for the organisation related to the filing and progress of trial, prosecutorial and investigative cases and for the organisation related to the filing and progress of the executive and the registration cases. After carrying out the examination, the Inspectorate provides information on the findings and assessment of the organisation related to filing and progress of prosecutorial and investigative cases to the Supreme Judicial Council.


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In Bulgaria, the judiciary comprises judges, prosecutors as well as investigators. The term 'magistrates' comprises all three professions. The Commission considers the fact that criminal investigators with the functions they exercise in Bulgaria (some of which are exercised by police elsewhere) are members of the judiciary 'unusual'[1]. As the magistracy includes prosecutorial and investigative functions outside the core judicial function, the formal separation of powers is blurred and the independence of the judiciary is compromised[2].

Another issue is the unclear system for the elaboration, adoption and distribution of the judiciary's budget. Although the SJC formally drafts the budget, in practice the executive prepares, and the Parliament passes a parallel budget, effectively excluding the courts from the process. During the adoption of the judiciary-budget for 2002, the Ministry of Finance suggested and the Parliament adopted the judiciary budget significantly lower than the one proposed by the SJC[3]. The judiciary budget was not sufficient for its functioning over the last years.

With regard to appointment, the role of the Minister of Justice is to chair the meetings of the SJC, but he is not a member and does not have a voting right. However, he can suggest magistrates for appointment and promotion. The Council's mixed composition and its mandate to respresent the entire magistracy make it an ineffective representative of judges and their independence. Further, both the Member States and the Commission find that the criteria for recruitment, appointment, and promotion of magistrates lack transparency. Eventhough in April 2001 the SJC announced its intention to introduce selection panels for the appointment of judges and prosecutors to regional courts, this has not yet been put into practice. However, local initiatives in several major courts to recruit junior judges by competition continue.

The Reform Strategy does foresee the introduction of selection criteria for the appointment of administrative(!) staff as well as an increase of transparancy in the work of the SJC.

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[1] Commission Regular Report 2001
[2] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)
[3] According to the Member States, it was 80% lower than the one proposed by the SJC. According to the Commission Regular Report 2001 the figure was 30%.


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With regard to internal control, the Member States name the SJC as an example of the *lack* of such a mechanism. The Constitution and the Judicial System Act give magistrates immunity from prosecution from all but serious crimes that carry over 5 years of imprisonment. Both requests to the SJC to lift immunity and its lifting in practice are rare. These provisions not only make it difficult to know the potential scale of corruption or criminal activity within the judiciary but also hamper, to a very large extent, efforts to combat corruption.

First of all, the SJC first of all suffers from a serious deficit of capabilities for the performance of its functions, as it does not have the necessary (secretarial) personnel[1]. It also meets too infrequently to be an effective administrator. Secondly, there are very few clear or objective procedures to guide the SJC in making personnel decisions. The SJC has neither developed a system for reporting and investigating disciplinary matters, nor are there any kind of clear instructions and guidelines for the behaviour of the servants. Written standards for the behaviour of the investigators do not exist either. In addition, the SJC does not have experts to deal with disciplinary actions in the judicial system. Finally, certain members of the SJC were divested of the ability to make proposals for opening disciplinary procedures. As a result, inappropriate behaviour of those working in the judicial system often remains unpunished. Consequently, the effectiveness of the judicial system suffers as a whole.

With regard to case assignment, the law stipulates that the Court President distributes cases among judges in the respective court. In the Supreme Administrative Court, a system exists that allows for electronic distribution of cases among judges. However, due to the lack of IT equipment and systems, this is not the case in all courts[2]. In the big courts, judges are specialised in criminal, civil/commercial and administrative chambers and tend to consider only the cases of their competence. So far, no other transparent or neutral criteria have been introduced for case assignment within the judiciary.

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[1] Answers from the Member States to the questionnaire (February 2002), Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)
[2] However, common software is reportedly in the process of developing and should serve the entire courts system, allowing electronic distribution of cases.

*Code of Ethics*

In December 2000, the Prime Minister - in his capacity of Minister of State Administration-approved a Code of Ethics for Civil Servants. It offers guidance on ethical conduct in relations with the public on duty and in public and private life. However, according to the Member States this conduct is not obligatory as it does not provide adequate sanctions in the event of non-compliance[1]. The Minister recently recognized the need to amend this Code.

The professional Association of Judges has adopted a Code of Ethics for Judges. No such code exists for prosecutors and investigators, but the Program for the implementation of the Reform Strategy envisages the elaboration by the SJC of a common Code of Ethics for all magistrates (third quarter of 2002). After adoption of this Code by the SJC in co-ordination with the Ministry of Justice, the Judicial System Act will be amended accordingly to guarantee practical implementation[2].

*Confidence of the public*

According to the Member States, the general perception of the judiciary from the point of view of man-in-the street "is not very positive, to say the least". The Reform Strategy has pointed out a set of problems to be solved in order to improve the public image of the judiciary.

Remuneration

In 2002-2001, the average payment in the judiciary was 267 BGN[3]. The average salary of a magistrate was 789 BGN, and that of the executive and registration judge 569 BGN.

According to the Member States, judges and administrative court staff do not receive remuneration which corresponds to their responsibilities nor are they protected against illegal pressure from other powers/organised crime. Moreover, they are not always motivated to serve as part of a system entrusted with resolving claims.

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[1] Answers from the Member States to the questionnaire (February 2002)
[2] Information submitted by the Bulgarian Ambassador the Spanish Ambassador in Sophia (10 April 2002)
[3] +/- 130 Euro


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Also, pensions are quite low and rules on retirement are discretionary. These two facts combined may endanger judges' decisional independence[1], i.e. as the OSI puts it "in the absence of a mandatory retirement age older judges effectively serve at the pleasure of their court president and the Council."

**C. Resources and Training[2]**

Numbers:

| | |
|---|---|
| -judges | 1.550 |
| -prosecutors | 1.000 |
| -investigators | 940 |
| -bailiffs | 300 |
| -executive[3] & registration judges[4] | 301 |
| -total administrative staff | 6.298[5] |

The number of judges is definitely considered insufficient, especially having in mind their heavy workload (511 cases per judge in 2001). The main problems are the insufficient administrative capacity of the judicial system, the poor administrative support in the court (lack of court assistants and qualified administrative personnel, overburdened courts/judges), the insufficiency of information technologies/a unified system and financial resources. The level of selection and training of personnel in the judiciary is also unsatisfactory.

Apart from the poor management by the SJC of the judiciary budget, the administrative capacity of the entire judicial structure -courts, prosecution, investigators- is very poor. Huge delays are built up between a finished case leaving the prosecutor's office and the administrative processing of the case. Even on the level of a prosecutors' office attached to an appeal court, it may take the administration up to 4 months just to type a hand-written report. In regional courts, these delays may even be longer.

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[1] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)
[2] Answers from the Member States to the questionnaire (February 2002)
[3] 'bailiff'
[4] Figure within the judiciary (not magistrate) entitled to keep/make registrations in the real estate property register
[5] Information submitted by the Bulgarian Ambassador the Spanish Ambassador in Sophia (10 April 2002)


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The poor administrative support forces magistrates to spend huge amounts of time on purely administrative and clerical matters, reducing time available for handling cases. International organisations[1] state that 20% of a judge' time is spent for these matters. According to EU experts, a public prosecutor easily spents up to 50% of his time to matters such as typing. The lack of administrative capacity is a major factor in the problems of the judiciary to implement legislation in general, and in the field of economic crime in particular.

Several judges (mainly from the Supreme Courts) argue that the reintroduction in 1997 of the three-instance procedure for all civil and criminal cases was not clever as it delays the entry into force of the court decision and unnecessarily prolongs the court procedure.

Moreover[2], inter-agency co-operation is weak and complicated. For example, an unusually large proportion of cases is sent back by courts to the public prosecutor, because the courts consider the investigation to be incomplete. Although return of cases to the public prosecution also occurs in EU Member States, the high level of this in Bulgaria suggests a structural weakness. The conditions for return are not transparent and there is no system for appeal against such a decision.

[3]Regarding court backlogs, it is customary in the judicial system for one civil case to reach a final decision after 5-8 or even 10 years. There are complaints that especially on civil cases, court hearings are scheduled only twice a year, due to the judges overload and the inadequate court conditions. The lagging behind of labour disputes for dismissals that are in court for 3 to 4 years has, in recent years, become a practice.

<u>Training</u>

The Ministry of Justice Inspectorate is responsible for the on-the-spot training of judges. At present, no kind of permanent or systematic system for such training has been established or is working, a serious consequence of which is that a large group of the judiciary does not have access to any training whatsoever. Training of the courts' administrative staff and of prosecutors and investigators is extremely insufficient and incidental, eventhough the professional development of these groups would be vital for the improvement of the efficiency of judicial institutions.

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[1] SIGMA, World Bank
[2] Commission Regular Report 2001
[3] Answers from the Member States to the questionnaire (February 2002)

Judges are trained, but mainly on the basis of programs financed by donors or through TAIEX. The existing training does not follow any kind of national strategy and there are no public institutions for the training of judges, except for the Centre for Magistrate Training -a NGO financed by foreign donors such as USAID- where newly appointed judges now attend initial training. The Centre also gives some general courses in human rights[1], EC Law and EU institutions. A pilot programme for training public prosecutors was started in April 2001. Several specialised courses have been organised for magistrates on international co-operation in criminal matters, extradition and insolvency proceedings[2]. Courses on international law, market economy and training on EU enlargement are planned for 2002[3].

According to the Member States, the need for training in all three of the judiciary branches is enormous. Also, the financing of the Centre will continue only until 2002. A consensus has emerged since 2000 between the SJC and the Ministry of Justice on the need to establish a national public institute for judiciary training which is envisaged under one of the Phare 2002 projects. It should provide initial and further training to magistrates and the courts' administrative staff on various subjects.

At present, a twinning Phare program is being carried out to strengthen the independence of the Judiciary and the capacity of the Ministry of Justice.

*Equipment of the courts[4], prosecution and investigation services*

The conditions in the majority of all three remain very poor. About 80% of the budget for the judiciary goes on salaries for judges and staff, and much of what remains goes on day-to-day running costs of the judiciary. Courts suffer from chronic under-investment, and working conditions are unsatisfactory, especially concerning office space and equipment. Procedures for funding the management of court, prosecution and investigation service premises are complicated and untransparant. Court presidents are in a particularly vulnerable position in relation to the SJC and the Ministry of Justice which exercise control over needed resources.

[1] mainly under the auspices of the French Ecole Nationale de la Magistrature
[2] Commission Regular Report 2001
[3] Information submitted by the Bulgarian Ambassador the Spanish Ambassador in Sophia (10 April 2002)
[4] Answers from the Member States to the questionnaire (February 2002), Commission Regular Report 2001, Open Society Institute

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In most courts, the administration works with old methods, mainly through manual document processing. As a whole, the case registers are maintained manually. The complicated and slow procedures for acceptance and registering, including the registration of the cases in several books with references to one another, are customary in most courts. The manually kept registers create extreme difficulties for the staff and for people interested in obtaining information from these registers including for the supervisors – to trace the conclusion of the cases. Moreover, there is a risk that incorrect information may be given by mistake or that information is lost. In some courts, computer registration of the cases has been introduced but these are local initiatives. Consequently, the systems are different in the various courts and their software (as a whole) is not compatible.

According to Bulgaria[1], the Reform Strategy envisages an introduction of modern information technologies in the judiciary's work by implementing the following measures in short-, medium-, and long-term perspectives:

Short-term:

-Development of standards of information exchange between the different units of the judiciary

-Elaboration of an integrated program for the development of a compatible automated system tracing the court records, prosecution files and investigations

-Provision of computer tecnologies to the courts

-Introduction of an efficient national-level management system

Medium-term:

-Unification of the software product used by courts for the public registers

-Creation of a uniform system for data collection and statistics as a judiciary management tool

-Introduction of a general IT management system

Long-term:

-Standardisation of all judicial information systems into a unit of the global criminal information system incorporating them into the information system of Bulgaria

-Creation of a judicial information network interlacing courts, the prosecution offices and the investigation services

[1] Information submitted by the Bulgarian Ambassador the Spanish Ambassador in Sophia (10 April 2002)


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-Full computerisation of the judicial system

## D. Criminal Law and Procedure, Conventions

*Criminal Law and Procedure*[1]

Criminal Law does not pose specific problems, but the procedures do.

In 2000, major amendments to the Criminal Procedure Code entered into force. With this, the requirements of the European Convention on Human Rights as regards the measures of detention within the preliminary investigation phase of the criminal procedure were introduced to a large extent. According to the Regular Report 2001, pre-trial detention has somewhat improved. There has been a trend towards shorter preliminary proceedings, which means few defendants are detained for more than 6 months[2]. However, Bulgarian law on these fields still need further improvement, and according to the Member States the main shortcomings are mostly caused by incorrect enforcement of existing laws. More information is needed (and awaited[3]) on the implementation of the amendments regarding pre-trial detention and judicial control by the prosecuting authorities.

In April 2001, the Parliament adopted new amendments to the Criminal Procedure Code in order to speed procedures up. However, professionals complain that the changes have not reached the primary goal and the Member States deem that criminal procedures, as they are extremely complicated and inefficient, urgently need amendments. Making them more efficient is part of an on-going Phare project.

*The courts' handling of criminal cases*[4]

The resolution of a criminal case usually takes from 3 up to 5-8 years. There are reports about criminally prosecuted people that have stayed in prison for more than 10 years without a sentence.

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[1] Answers from the Member States to the questionnaire (February 2002)
[2] Commission Regular Report 2001
[3] 11/03/02 (doc 7037/02, limite, elarg 60 accession negotiations with Bulgaria, chapter 24)
[4] Answers from the Member States to the questionnaire (February 2002)

*Effective access for the citizens to justice including the right to defence*[1]

The guarantees for access to justice are insufficient. Although the basic principles of Rule of Law and Human Rights are theoretically respected by law, the slowness of court proceedings in many cases still hampers their implementation. The Member States call the slow adjourning of some cases (especially labour disputes) of such a nature "that it is practically a denial of justice".

In practice, the principle of access to justice is ensured. However, concerns have been raised that over a third of criminal case defendants do not have access to a lawyer during trial before a court of first instance. Moreover, there is a public perception that too may decisions affecting citizens' rights are made by the administration in an arbitrary manner, that the public does not understand the *rationale* behind many decisions and that the citizen does not know where to turn to or recourse within the bureaucracy. The judicial system is seen as too slow with too many procedures that delay the hearing of cases. In the end, citizens view the delayed access to a proper remedy for their violated rights as an absence of access to justice. The problem is compounded by citizens' perception that - in case of a violation of their rights- judges have to be paid-off in order to obtain justice.

Further, concern exists about access to free legal aid. According to the Code of Criminal Procedure, participation of a professional lawyer to defend the accused is not compulsory. Statistics collected by Transparency International show that over a third of criminal defendants do not have access to a layer during trial before a court of first instance. In addition, courts have budgetary difficulties in paying fees to defenders who are officially appointed by a judge.

As to amendments made to the Criminal Code and Criminal Code of Procedure to align with the *acquis* (i.e. protection of victims of crime, racism and xenophobia, trafficking in human beings, sexual exploitation of children), in general, Bulgarian legislation has achieved the average standard of the EU member States[2].

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[1] Answers from the Member States to the questionnaire (February 2002)
[2] Answers from the Member States to the questionnaire (February 2002)

*European Judicial Network/exchange of magistrates*

Regional judicial co-operation networks are being set up for the purpose of gradual integration into the European Judicial Network (EJN). At present, Bulgaria benefits from the following functions of the EJN:

-active intermediation to help establish the most convenient form of direct contacts between the local judicial authorities and other competent authorities in the relevant state;

-provision of up-to-date basic information.

In 2001, Bavaria started a program to foster the exchange of magistrates. Continuation of this program has been confirmed.

*Trafficking in human beings and sexual exploitation of children*

In April 2001, Bulgaria ratified the UN Convention against trans-national organised crime including the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, and the Protocol against smuggling of migrants by land, sea and air. Amendments to the Criminal Code as regards incriminating cyber crimes, and trafficking of human beings as separate crimes (criminalising the illegal transfer of people across the border) were planned to be submitted to the Council of Ministers by the end of March 2002 (updated info desirable).

In April 2000, the Parliament adopted amendments to the Criminal Code incriminating the sexual exploitation of children. However, information is needed on the implementation of the 1997 Joint Action concerning combatting trafficking in human beings and sexual exploitation of children.

As regards administrative capacity, in May 2001, the Ministry of Interior established a Human Trafficking Task Force, comprising representatives from different ministries and the judiciary. It started to prepare a Memorandum of Co-operation, which should lead to a common action framework against trafficking[1].

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[1] Commission Regular Report 2001 on Bulgaria


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*Racism and Xenophobia*

The basis for implementing the 1996 Joint Action on Racism and Xenophobia is Article 6 (2) of the Constitution. The Criminal Code[1] contains provisions for punishment of the offences mentioned in the Joint Action.

*Witness protection*

An amendment has been drafted to the Code of Criminal Procedure regulating witness protection[2]. (more info needed on its adoption, content etc).

*Extradition and Mutual Assistance in criminal matters*[3]

Bulgaria has ratified the European Convention on Extradition and its two Additional Protocols and the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol. It has signed but not ratified the Second Additional Protocol to this Convention.

The Convention on the Transfer of Sentenced Persons (1983) has been ratified but its Additional Protocol has not yet been signed.

The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, the European Convention on the International Validity of Criminal Judgements or the European Convention on the Transfer of Proceedings in Criminal Matters remain to be signed. For the two latter, Bulgaria had scheduled amendments to the Criminal Code and Code of Procedure for the end of 2001. Once adopted, these would enable Bulgaria to accede to the two Conventions as well as to the European Convention on the Enforcement of Foreign Criminal Sentences and the Convention on Simplified Extradition Procedures. More updated information on the state of play is desirable.

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[1] Articles 53, 108, 162, 164, 165 and 320
[2] Information submitted by the Bulgarian Ambassador the Spanish Ambassador in Sophia (10 April 2002)
[3] Council of Europe Website: Main Framework Conventions (Status on 19/03/02)

Bulgaria[1] has stated that it will continue to amend the Criminal Procedure Code to further harmonise its legislation with the latest developments in the *acquis* in the area to extradition and assistance in criminal matters. Draft amendments have already been submitted to the Council of Ministers for consideration. Some new forms of crime were criminalised through amendments to the Criminal Code in respectively 1999 and 2000, facilitating co-operation with judicial authorities in other states with regard to the *non bis in idem* principle.

In March 2001, Bulgaria adopted a law withdrawing its reservation to Article 12 of the European Convention on Extradition. This reservation allowed Bulgaria to retain its right to request evidence of crime from the country claiming extradition, which hampered speedy examination of the requests. Bulgaria permanently applies Art. 16 of this Convention (99% of the executions of requests are accompanied with provisional arrests). In practice, receiving requests is done in electronic format. Bulgaria prefers to use the INTERPOL channel for sending requests as it works 24 hours a day and communication goes faster. Simplified extradition is not yet regulated, but projects for it exist.

Bulgarian legislation defines the authorities responsible for judicial co-operation in criminal matters, extradition and transfer and their powers. These are the central authorities in accordance with the relevant Conventions/Agreements and the competent judicial authorities. Except if agreed differently on a bilateral basis, the Ministry of Justice is the central authority dealing with requests for legal assistance. In some cases the Office of the General Prosecutor is appointed as the central authority. The two never act as central authorities at the same time.

In order to specialise Bulgarian experts working in the field of international co-operation, an International Legal Co-operation and Human Rights Department has been set up within the Ministry of Justice[2]. The Department works only in the field of international co-operation by preparing documents for the conclusion of international bilateral agreements and Bulgaria's accession to multilateral international conventions. Training of the Departments' staff is provided by national and international training programmes. However, more information is needed (and awaited) on this training, the sufficiency of the Department's staff and its equipment.

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[1] Information submitted by the Bulgarian Ambassador the Spanish Ambassador in Sophia (10 April 2002)
[2] 11/03/02 (doc 7037/02, limite, elarg 60 accession negotiations with Bulgaria, chapter 24)

*Practical experience*

One of the practical problems is the need to speed up the communication transmission, and the not proper documentation provided by the requesting countries causes additional delay in the processing of extradition requests[1]. According to the 2001 Regular Report, judges and practitioners still face major difficulties in extradition cases. Bulgaria's existing reservation on Art. 23 of the Extradition Convention, which requires a request to be submitted to the court with a translation into one of the official Council of Europe languages, causes delays and loss of procedural time. Bulgaria has set the end of 2002 as the deadline for withdrawing this reservation. This should speed up the implementation of requests considerably.

The Report further states that the capacity to deal with international legal cases, and in particular extradition matters, needs to be reinforced in order to deal rapidly with incoming requests. The Directorate responsible for this in the Ministry of Justice needs to be strengthened. The appropriate level of co-operation as regards mutual recognition and enforcement of judicial decisions, and direct court-to-court dealings in cross-border situations also needs to be ensured.

*Bilateral agreements*

Judicial co-operation between the competent Bulgarian bodies and the judicial authorities of other states is implemented on the basis of bilateral agreements for legal assistance in criminal matters, extradition, and transfer of convicted persons. 27 such agreements have been concluded, including with Member States.

*Judicial co-operation in the framework of Schengen*

Bulgaria is the only country in the region having established the relevant national contact point with the prosecution office in anticipation of a future Schengen membership. The national contact point is working well and complies with the relevant standards.

As to alignment with Schengen legislation, Bulgaria has ratified the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and has made a declaration under Article 8.2 which states that Bulgaria will comply with chapter I of the Protocol only in respect of offences which constitute a crime under its (criminal) law.

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[1] It is not entirely clear which source provides this information, given the words 'by the requesting countries', this remark seems to come from Bulgaria rather than from the Member States.

The *ne bis in idem* principle is fully incorporated in the Criminal Code (Articles 4, 7). In order to align with the provisions on the transfer of enforcement of criminal judgements, Bulgaria intends to accede -by the end of 2003- to the Additional Protocol to the Convention on Transfer of Convicted Persons.

Contacts between judicial authorities have not yet been developed, mostly because of the magistrates' limited knowledge of foreign languages and because of the unsatisfactory level of computer equipment in the courts, prosecution offices and investigation services. Bulgaria states that it is in an ongoing process of improving this situation, and that magistrates dealing with this assistance need specialised training, especially in foreign languages, computer equipment and appropriate software as well as lists of contact points within the competent judicial bodies in the Member States in order to establish direct contacts.

Bulgaria has set 2003 as a deadline for changing the law with a view of future sending of documents by post (Art. 52). Regarding Articles 54-58, the Criminal Code of Procedure provides under a legal assistance treaty with another country that its authorities shall not start criminal prosecution if this is already started by another country's body or if there is an effective conviction passed by another country's court for the same offence against the same person. In the case such a treaty exists, verdicts delivered by another country's court shall also be carried out. Without such treaty, the protective custody and the sustained conviction abroad will be deducted or, when they are heterogeneous, the sustained conviction abroad will be taken into consideration by the Bulgarian court in determining the punishment for an offence subject to the jurisdiction of the Bulgarian justice authorities.

Further, Bulgarian legislation will need to be changed in a way that introduces the speedy extradition procedure under Article 66 of the Schengen Convention. The end of 2002 has been set as a deadline for this.

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*Drugs*

In this area[1], some progress has been noted as regards approximation of legislation through the adoption of several legal instruments to make the 1999 narcotic drugs and precursors control act operational. However, legislation is not yet fully harmonised with the *acquis*. Bulgaria has not yet signed[2] the 1995 Agreement on illicit traffic by sea, implementing Article 17 of the UN Convention against illicit traffic in narcotic drugs and psychotropic substances, but intends to do so before the end of 2002.

Amendments to the Criminal Code imposing more serious sanctions for participation in a criminal group set up for the purpose of illegal trafficking in drugs were to be submitted to the Council of Ministers by the end of March 2002.

*Terrorism*

Bulgaria has ratified the 1977 European Convention for Suppression of Terrorism. In December 2001, it withdrew its reservation to Article 13 §1. Information is needed on Bulgaria's state of play with regard to the International Convention against Hostage (New York, 1979), the Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1991), the European Convention on the Control of Private Fire Arms Acquisition and Detain (Strasbourg, 1978), the International Convention for the Suppression of Terrorist Bombings (New York, 1998) and the International Convention for the Suppression of the Financing of Terrorism (New York, 1999). Information on the co-operation between all bodies involved in the fight against terrorism, especially on the role of the Security Council, has already been requested.

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[1] Commission Regular Report on Bulgaria 2001
[2] Council of Europe Website: Main Framework Conventions (Status on 19/03/02)


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## E. Civil Law and Procedure, Conventions

*The Code of Civil Procedure*[1]

One of the substantive amendments to the Civil Code of Procedure was introduced in 1996, when the system of notaries was excluded from the judiciary. The Law on notaries and notary activity was adopted, which regulates their activity in a similar way to lawyers' activities. The position of bailiff[2] was also introduced. Generally there are no big complaints about these amendments. However, in professional circles some believe that the new system of notaries is far from perfect[3].

In 2000, serious amendments were introduced to the Commercial Law concerning company law and bankruptcy proceedings. The company law amendments introduced the requirements of the relevant EU First, Second and the Twelfth Directives. Provisions were introduced regarding the transparency of commercial companies, the validity of company management actions towards third parities, the invalidity of companies and requirements for the capital of the companies. Regarding bankruptcy proceedings, the changes were meant to improve the procedure and introduced also the three-instance procedure. However, many professionals claim that the changes were not very efficient[4].

The Ministry of Justice[5] has elaborated a Draft Law amending the Civil Procedure Code which envisages *inter alia* the rationalisation of the summoning procedures, the functioning of appeal courts as "cassation" instances in labour disputes and the speeding up and higher efficiency of proceedings for issuing executive orders and collateral proceedings.

*Length of court proceedings, procedural delays, the quality of decisions and efficiency of their enforcement*

The reintroduction of the three-instance procedure for all civil and criminal cases delays the entry into force of the court decision and unnecessarily prolongs the court procedure. For a civil dispute the case usually is prolonged at least 3 years. More information is needed on the quality of decisions. As regards execution of judgements, there is a serious problem, especially for the civil and commercial cases.

[1] Answers from the Member States to the questionnaire (February 2002)
[2] registration judge; this figure is within the judiciary but not a magistrate and entitled to keep and make registration in the real estate property register
[3] Answers from the Member States to the questionnaire (February 2002)
[4] Answers from the Member States to the questionnaire (February 2002)
[5] Information submitted by the Bulgarian Ambassador the Spanish Ambassador in Sophia (10 April 2002)


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The reputation of court bailiffs, who are appointed and dismissed by the Ministry, is not very good.

*Alternative methods of dispute solving*

Today, alternative dispute resolution mechanisms are almost absent. The only mechanism that exists is the arbitration court within the Bulgarian Chamber of Commerce. The Reform Strategy envisages new measures to tackle this problem[1].

*Conventions/bilateral agreements*

Bulgaria has not yet signed[2] the European Convention on the Adoption of Children, the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children nor the European Convention on the Exercise of Children's Rights.

Bulgaria has acceded to the Hague Conference on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters, on Taking the evidence Abroad in Civil or Commercial Matters, on International Access to Justice, the 1961 Convention abolishing the requirement of legalisation for Foreign Public Documents and has signed the 1993 Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. Bulgaria has not signed the 1980 Hague Convention on the Civil Aspects of International Child Abduction nor the 1954 Convention on Civil Procedure.

*Practical experience*[3]

The Ministry of Justice is the central authority for civil matters. Yet, there is no direct contact between the Bulgarian judges and their colleagues in EU countries as regards mutual legal assistance in civil matters (for collection of evidence, etc.).

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[1] Chapter VII (Introduction of alternative settlement for disputes)
[2] Council of Europe Website: Main Framework Conventions (Status on 19/03/02)
[3] Answers from the Member States to the questionnaire (February 2002)

**F. Data Protection**

Bulgaria has signed but not ratified the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The Convention was foreseen to be ratified by the end of March 2002[1] following the entry into force of the Personal Data Protection Act[2]. The Ministry of Interior Act and the Criminal Code need to be amended in order to fully implement this Act[3]. Further, subsidiary legislation such as an Action Plan concerning the implementation of the personal data protection legislation and the terms of the citizen's rights of access to police information and the adoption of a Classified Information Protection Act will have to be drafted. According to Bulgaria, the adoption of all the necessary legislation will be finalised by 31 December 2002. However, it is not clear when the said Personal Data Protection Act will enter into force. More information on this is awaited.

The same goes for the establishment of a Data Protection Commission, which according to Bulgaria will take place by the end of September 2002. The necessary subsidiary regulations on the designation of the single point of communication with this Commission and additional guarantees for the security of information systems were foreseen be adopted by 31 March 2002.

Concerning the right to privacy, concerns have been expressed by human rights organisations at the high number of permits grated for wiretapping and the need to ensure proper judicial controls on the issuing of these[4].

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[1] on 18/04/02, this was not yet the case
[2] which was adopted in December 2001
[3] 11/03/02 - accession negotiations with Bulgaria, chapter 24/information provided by Bulgaria
[4] Commission Regular Report 2001

ANNEX

**Sources**:

- Answers from the Member States to the Questionnaire (February 2002)
- 11/03/02 (doc 7037/02, limite, elarg 60 accession negotiations with Bulgaria, chapter 24)
- European Commission Regular Report 2001 on Bulgaria
- Information submitted by the Bulgarian Ambassador the Spanish Ambassador in Sophia (10 April 2002)
- Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)
- The Council of Europe Website, Main Framework Conventions
- Hague Conference on Private International Law Website

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