Contract Enforcement and Judicial Systems
in Central and Eastern Europe
Warsaw, Poland, June 2005

Bulgaria

1. What have been your country's (or territories) 2-4 most successful achievements in the area of judicial reform in recent years, and what were the main factors contributing to that success?

1. National Reform Strategy for the Bulgarian Judicial System

On 1 October a National Reform Strategy for the Bulgarian Judicial System was adopted by the Government and in March 2002 an Action Plan for its implementation was approved. In 2003 they were both updated. The Judicial Reform Strategy and the Action Plan cover a 5 year period and are broken down into uniform sub-objectives that each consist of a number of short-term (2003), mid-term (2004) and long-term (2006) priorities. The implementation of the sub-objectives and actions commenced in the beginning of 2002 and a large number of the short-term as well as some of the mid-term sub-objectives have already been fulfilled.

2. Amendments and Supplements to the Constitution of the Republic of Bulgaria

2.1. First Amendment of the Constitution of the Republic of Bulgaria (prom SG No. 85/2003)**,** related to improvement of the structure, the powers and the responsibilities of the judiciary, including immunity and irremovability of magistrates and limited terms of office of the leading positions. More details are provided in Part 2 of this Questionnaire.

2.2. Second Amendment of the Constitution of the Republic of Bulgaria On 18 February 2005 the National Assembly adopted Law on Amendments and Supplements to the **Constitution of the Republic of Bulgaria** (prom. SG No. 18/25.02.2005).

The amendments cover the following aspects:

a. Participation in the integration and granting of powers

Main issue of the EU accession is the granting of sovereign rights to the European Union, which exercises them through its organs. First among them are the legislative powers. As granting of constitutional powers is performed with the Accession Treaty, which in its legal nature is an international legal instrument, this issue was regulated with a supplement to art. 85, para 1 of the Constitution, by adding new point nine.

b. Majority for ratification of the Accession Treaty

Taking into account the importance of the international treaty, in art. 85, para 1, p. 9, it is envisaged that the law on its ratification should be adopted by a qualified majority of "*not less than two thirds of the votes of all Parliament Members"* – art. 85, new para 2. Such a majority implies a high degree of public consent and reflects the significance of the accession act at constitutional level. At the same time this provision excludes the possibility to adopt such an act if the required consensus is not apparent.

c. Constitutional land regime

Pursuant to the commitments which the Republic of Bulgaria undertakes - to ensure free movement of capitals between EU Member-States the total prohibition for acquiring land owner's rights under art. 22, para 1 of the Constitution was rescinded.

*d. Surrender of Bulgarian citizens to a foreign stat***e**

By virtue of the EU law and the commitment for legal assistance in penal matters undertaken by the Republic of Bulgaria, Bulgaria should provide for the opportunity to surrender of Bulgarian citizens to the judicial or equivalent authorities of the other Member-States in relation to proceedings in criminal matters. This necessitated the revocation of the absolute prohibition of art. 25, para 4 of the Constitution of the Republic of Bulgaria, thus admitting such a surrender *when it is envisaged in an international treaty that has entered into force for Bulgaria.*

e. Right to participation in elections for European Parliament and local authorities

With the EU accession the Republic of Bulgaria should ensure at constitutional level the right of the citizens of the other Member-States to vote and stand for candidates in municipal elections and elections to the European Parliament. Along with this, it should be explicitly provided also for the right of the Bulgarian citizens in their capacity of European citizens to take part in elections to the European Parliament. This necessitated the inclusion in art. 42 of the Constitution of new para 2: "*The elections for members of the European Parliament and the participation of citizens of the European Union in elections for bodies of local self-government shall be regulated by a law*".

f. Relations between the Council of Ministers and the National Assembly

The Bulgaria's accession to the European Union implies a huge responsibility of the Council of Ministers concerning the drafting and adoption of the EU acts by its bodies. The Council of Ministers represents the Republic of Bulgaria in the EU bodies requiring Government representation, hence the need to regulate at constitutional level the necessity of the Council of Ministers to *inform* the National Assembly about all issues concerning the obligations stemming from our EU membership. This commitment relates also to the obligation for preliminary information on the drafting and adoption of EC legal acts. The Council of Ministers *accounts* for its activity to the National Assembly and bears political responsibility for its acts. In this sense are also the new provisions of art. 105, para 3 and 4 of the Constitution.

3. National Institute of Justice

The training is a substantial element in the process of selection, appointment and development of the career of the magistrates. The Strategy for Reform of the pays also a special attention to the necessity for institutionalization of the training of magistrates. As a result, with the amendments of the Law on Judiciary from August 2002, obligatory training of magistrates was introduced and must be carried out by the National Institute of Justice (NIJ). With the amendments of the Law on Judiciary in 2003 the existing Magistrates Training Center was officially transformed in public structure – the National Institute of Justice (NIJ), a legal person to the Supreme Judicial Council (SJC). Thus, a national system and institution for magistrates and court officers training has been set up. According to the Law on Judiciary, the NIJ is financed by the budget of the judiciary, international and other programs and projects, by grants and private funds.

The NIJ training programs are approved by the Board of managers, comprising 4 representatives of the SJC and three representatives of the Ministry of Justice (Art. 35e (3) of the Law on Judiciary). Presently, the training topics include judicial cooperation on criminal and civil matters, the EU law, human rights etc. The trainers are magistrates mostly from the Supreme courts and Appellate courts, academics and other legal experts. The junior judges, prosecutors and investigators obligatory training program has started since the beginning of

2005. Four court officers' handbooks have been elaborated: handbook for new appointed court officers, on the summon mechanism, for court officers in criminal and civil record keeping office.

4. **Unified Information System for Counteraction to Crime (UISCC):**

The creation of UISCC was provided for with a Law on Amendment of the Law on Judiciary in 2002. The aim is the establishment and maintenance of standards for informational interaction and data exchange between the automated informational systems of the law enforcement bodies; regulated unified usage of the information, concerning the fight with crime; generalized information for the penal proceedings and enforcement of sentences; increase of the number of resolved cases and improvement of the crime prevention through informational support to the penal proceedings. The methodological management of the UISCC is carried out by an Inter-institutional Council, which is already established. As a result the following priorities, concerning the IT were achieved, in connection both with the Bulgarian accession to the EU:

- The creation of an unified "Bulgarian Judiciary IT Strategy";
- Creation of standards, procedures and principles for the implementation of the IT projects, that meet the international and EU requirements;
- Sustainability of the results achieved;
- Development and training of part of the IT personnel in the Ministries involved as well as in the Judiciary;
- Clear picture of the current state of play. Assessment of the concrete possibilities for improvement, development and finalization of some of the projects;
- Thorough analysis of the reasons for the positive and the negative results achieved in the respective projects.

The system will become operational by the end of 2005.

2. What major problems do you currently face with regard to:

JUDICIAL INDEPENDENCE

The independence of the judiciary of the Republic of Bulgaria and the activity of the judicial bodies determined by the Constitution (court, prosecutor's office, investigation) is secured mainly in two directions:

First direction is the establishment under the Constitution of a separate judicial power, independent from the legislative and the executive powers.

Second direction of securing independence of the judiciary is the setting up of the **Supreme Judicial Council** as a body to administrate the judiciary. With its activity the Supreme Judicial Council guarantees such independence, including through approval of rules of ethics for the conduct of the magistrates, the election of their administrative leaders, the drafting of the budget of the judicial system.

The Supreme Judicial Council (SJC) establishes the composition of the judicial system and puts into practice the organization and the strategic guidance of this system. By virtue of its prerogatives prescribed by Article 27 of the Law on Judiciary, the SJC is the body, which appoints, promotes, transfers and dismisses the judges, the public prosecutors and the investigators; it is the body which presents the draft budget of the judicial system to the Council of Ministers and control its implementation, it approves the professional ethics rules

adopted by the respective professional organizations of magistrates, appoints and dismisses the administrative managers and their deputies within the bodies of the judicial system. In relation to the National Reform Strategy for the Bulgarian Judicial System, the SJC successfully implements its commitments under the Strategy and the Action plan for the implementation of the National Reform Strategy for the Bulgarian Judicial System, the Strategy for the counteraction to corruption within the judicial system (the Anticorruption Strategy) and a program for its implementation as well as under the Law on Judiciary.

The first substantial prerequisite for implementation of the reform of the judiciary to further enhance the independence of the judicial activity were the amendments to the Constitution related to improvement of the structure, the powers and the responsibilities of the judiciary, including immunity and irremovability of magistrates and limited terms of office of the leading positions. That is the essence of the completely new provisions of art. 132, with four paragraphs and the respective harmonizing amendments to art. 131 of the Constitution (amend. SG No. 85/2003).

JUDICIAL EFFICIENCY

It should be mentioned that the efficiency of the work of the courts, of the prosecutor's office and of the investigation service is a combination of different criteria such as:

- Lawfulness of the judicial acts in the application of the procedural and substantial law that has an impact on their affirmation when implementing supervision by a higher instance and on the quality of the acts;
- Speed of the administration of justice that finds expression in conclusion of the cases in the time-limits specified by the law;
- Establishment of a uniform case-law in implementation of the procedural and substantial law.

On 26. 01. 2005 the Supreme Judicial Council approved Temporary Rules on the Procedure for Appraising the Work Performance of Judges, Public Prosecutors and Investigators, which include qualitative and quantitative criteria for evaluation of their activities and workload in accordance with the new provisions of the Law on the Judiciary. The Rules were prepared by a working group, composed by representatives of three permanent committees of the Supreme Judicial Council.

Pursuant to Article 15 of the Rules, the indicators for a comprehensive assessment for appraising the work performance of judges for the reporting period of the respective year include the following criteria for evaluation of the workload:

1. Duration of judicial procedures – covers the time period from the initiation of the judicial proceeding until the announcement of the court's decision.

1.1. preparation for the consideration of the case on behalf of the reporting judge - includes the time from the receipt of the dossier until the first hearing under the case

1.2. number of pending cases:

a/ less than six months

b/ from six months up to one year

c/ in excess of one year

2. Complexity and difficulty of the cases considered

Article 16 of the Rules provides for the indicators for a comprehensive assessment for appraising the work performance of public prosecutors for the reporting period of the respective year and includes the following criteria for evaluation of their workload:

1. Constituting and processing the dossiers:

1.1. total number of dossiers assigned;

1.2. subject-matter, including indictments produced, proposals for out-of-court plea bargaining, proposals for administrative sanctions;

1.3. investigation dossiers under special surveillance;

2. complexity and difficulty of completed dossiers;

In article 17 of the Rules, among the indicators for a comprehensive assessment for appraising the work performance of investigators for the reporting period of the respective year, there are the following criteria for evaluation of their workload mentioned:

1. Timeliness of the investigation of the cases

1.1. Number of cases during the reporting period:

1.1.1. Total number of unfinished cases at the beginning of the reporting period:

a/ in excess of nine months;

b/ within the delay prescribed in Article 222, paragraphs 1 and 3 of the Penal Procedure Code;

1.1.2. Number of cases assigned for investigation

2. Number of cases in processing

3. Volume of work in view of the completed cases:

3.1. Completed indictments, injunctions with opinions for abandonment or halting of the penal procedure:

a/ against a known perpetrator;

b/ against an unknown perpetrator;

3.2. Cases remaining in processing at the end of the reporting period

a/ in excess of two months;

b/ in excess of four months;

c/ in excess of six months;

d/ in excess of nine months;

3.4. Number of cases returned for additional investigation:

a/ by the courts of law;

b/ by the prosecutor's office;

c/ upheld objections against public prosecutors' injunctions

4. Complexity and difficulty of the cases investigated;

JUDICIAL ACCOUNTABILITY

Until the amendments to the Constitution in 2003 regarding magistrates' immunity, they enjoyed the same immunity as Parliament Members. Their immunity consisted of two main parts - the first one was penal irresponsibility for their official activities what allows them to fulfill their official duties and take decisions and the second one - immunity against detention and prosecution unless there is a consent by a competent authority.

The first amendment to the Constitution introduced functional immunity for judges, prosecutors and investigators. The functional immunity of the magistrates has two main elements:

a) civil and penal irresponsibility for their official actions and for the acts adjudicated by them, unless the offence committed by them is deliberate crime of general nature.

Magistrates don't bear responsibility when they form and express their inner persuasion. This irresponsibility covers only civil and penal and not other types of responsibility (administrative, administrative-penal and disciplinary). The irresponsibility is withdrawn if while performing his/her judicial functions the magistrate has committed an act that is a deliberate crime of general nature. So the substantive legal aspect of the immunity means that the magistrate is enjoying civil and criminal irresponsibility if the act committed by him/her is

connected with the decision on cases and files when implementing judicial power and yet, if his conduct is not a deliberate crime of general nature

b) the functional immunity of the magistrates according to the new provision of art.132 of the Constitution has also a procedural legal aspect. This aspect concerns only the hypothesis when the magistrate is criminally responsible. The limited immunity is valid only in strictly specified cases - when the crime is committed while implementing judicial powers and at present there is no prohibition to initiate pre-trial proceedings immediately if there are enough data. During the investigation, in the case where sufficient evidences are collected for bringing charges against a magistrate, there is a requirement for obtaining permit from the SJC. In all the other cases however, the criminal responsibility of the magistrates is applied on an equal footing - as for all other citizens. The immunity under art.132 para 2 of the Constitution has the largest scope because it is not allowed to detain magistrates. It is envisaged that magistrates cannot be detained unless a serious crime is committed and there is SJC's permit for that effect. Permission for detention is not required in case of a serious crime in flagrant delict.

The Law on the Judiciary regulates the procedure of examination of disciplinary cases. The Supreme Judicial Council nominates three of its members who collect evidence and submit to the Supreme Judicial Council a report on the disciplinary cases initiated against a judge, a prosecutor or an investigator, as well as against administrative head or his deputy (art.33 of the Law on the Judiciary). The persons concerned can appeal the SJC's decision on the respective case before a five member panel of the Supreme Administrative Court.

There are special structures in the Supreme Cassation Prosecution Office engaged in staff assessment in connection both with their progress in the hierarchy and with penal and disciplinary responsibility when committing a crime and violation of their duties. When there are findings of violation of the duties the competent bodies respectively - the Chief Prosecutor and the administrative heads make proposals to the Supreme Judicial Council for demotion of the prosecutors concerned and as a final measure- dismissal of the prosecutor.

With the recent amendments to the Law on Judiciary (2004) proposals for disciplinary sanctions can be made by the Minister of Justice and by one fifth of the all members of the Supreme Judicial Council.

The **Anticorruption Commission** at the Supreme Judicial Council (ACC) is a structure, which formulates and applies in practice activities and measures aiming at preventing and counteracting corruption behavior within the judicial system. As a result of the activity of this Commission, the Supreme Judicial Council drafted and approved the Strategy to combat corruption within the judicial system (the Anticorruption Strategy) and a program for its implementation.

The Anticorruption Strategy envisages anticorruption measures aimed at both the magistrates' actions and the actions of the administrations and administrative personnel within the judiciary. Within the framework of its short-term, medium-term and long-term priorities, the Strategy envisages activities for further strengthening of the Supreme Judicial Council's capacity to implement its functions related to the governance of the judicial system, including the putting in place of control mechanisms for the application of the introduced criteria and rules for objectivity and impartiality during the appointment, work performance assessment, promotion and demotion of magistrates in position and rank, anticorruption measures for the strengthening of the status of magistrates, introduction of mechanisms ensuring transparency and predictability in the actions of the judicial bodies and of control mechanisms designed to counteract the corruption behavior of magistrates and administrative employees within the bodies of the judicial system. In addition, the Strategy envisages the introduction of measures for control over document administration and processing in the bodies of the judicial system, as well as applying disciplinary responsibility of court officials. A special section is devoted to the activities aimed at popularization and better public awareness of the efforts and the actions of the judiciary system to prevent corruption behavior.

The program for implementation of the anticorruption strategy in the judicial system envisages specific organizational measures for the fulfillment of the tasks under the strategy within a two-year period that ends in 2005.

It is important to point out that the progress of the activities envisaged in these two program documents is proceeding in compliance with the target dates set up by them.

In pursuance of the anticorruption measures set up by the Strategy for strengthening of the status of magistrates, Ethical Codes for the professional organizations of magistrates were adopted: Professional Ethics Rules of Judges in Bulgaria, Ethical Code of Public Prosecutors in Bulgaria and Moral Code of the Investigator. Jointly with the Commission for Coordination of Anticorruption Activity of the Council of Ministers and the National Institute of Justice, the foundations of the so-called "Anticorruption Academy" were laid down. Under its auspices, two anticorruption training sessions have already been held for newly appointed administrative heads in the judicial system and their deputies. Acting on proposal of the ACC under the Supreme Judicial Council, the compulsory contents of the curricula of the National Institute of Justice already include regular teaching of anticorruption techniques and practices for magistrates and court officials.

In fulfillment of the priorities of the Strategy for counteraction to corruption within the judicial system, the first survey among the public was carried out with respect to the presence of corruption practices in the bodies of the judicial system according to a questionnaire compiled in advance by the ACC and approved by the Supreme Judicial Council. By virtue of a decision of the SJC, the survey campaign was first carried out at district level. Additionally, on the SJC's web-site, an e-mail address was displayed for the reception of signals about the presence of corruption activity in the judicial system.

Since its creation in the beginning of 2004 until the present moment, the ACC has considered nearly 100 complaints and signals coming from citizens. Some of these complaints have been referred to the anticorruption commission also by virtue of the cooperation agreement signed with the Commission for Coordination of Anticorruption Activity under the Council of Ministers. With the objective to optimize the processing of signals and complaints, joint regulations on the procedure of their examination have been drawn up and approved on behalf of the Commission for the counteraction to corruption in the judicial system (the ACC), the Commission for Coordination of Anticorruption Activity under the Council of Ministers and by the Inspectorate of the Ministry of Justice as referred to in Article 35 of the Law on the Judiciary.

In conclusion, it may be stated that the above-mentioned activities and implemented measures witness not only the active role and the substantial contribution of the SJC in the process of the judicial reform in Bulgaria, but also the effective introduction of European standards in the work of the judicial system.

3. **What is your top priority in the coming year for improving the judicial system? How do you plan to address this priority?**

The priorities of the Republic of Bulgaria for improving the judicial system are as follows

- Activities relevant to the implementation of the Reform of the Judiciary as a guarantee for its irreversibility;
- Refinement the structure of the Judiciary through the establishment of specialised administrative courts, restructuring of commercial justice, specifying the powers and the place of investigation;
- Adoption by the Parliament of a new procedural legislation with a view to enhance the quality, promptness and effectiveness of judicial proceedings – the

Penal Procedure Code, the Civil Procedure Code and the Administrative Procedure Code. (The draft **new Administrative Procedure Code** was submitted to the Parliament on 20 January 2005; the draft **new Penal Procedure Code** was approved by the Council of Ministers on 12 May 2005.; the draft new **Civil Procedure Code** should be elaborated by the end of 2005)

- To continue with the harmonisation of Bulgarian legislation with the *Acquis Communautaire* and its adjustment in conformity with the best EU standards and practices.