JUDICIAL REFORM INITIATIVE

PROGRAM FOR JUDICIAL REFORM IN BULGARIA

Sofia 2000

Table of Contents

Introduction

This program has been drafted by eminent Bulgarian lawyers within the framework of the *Judicial Reform Initiative (JRI)*. The latter benefits from the combined efforts of influential non-governmental organizations, representatives of State authorities and experts who offer their expertise in order to ensure further successful development of judicial reform in the Republic of Bulgaria. The initiative was launched in March 1999 as a joint endeavour of the Legal Interaction Alliance; the European Network of Women in Police -Bulgaria; the Chamber of Investigators in Bulgaria; the Legal Initiative for Training and Development (PIOR); the Association of Judges in Bulgaria; the Union of Bulgarian Jurists; the Modern Criminal Justice Foundation; the Center for the Study of Democracy; acting also as a Secretariat of the Initiative, and representatives of the Legislature, the Executive and the Judiciary.

The first draft of this Program was presented for discussion to the principal stakeholders of the JRI on a number of occasions, *inter alia* at a workshop on July 1, 1999 hosted by the Center for the Study of Democracy. Since July, the Draft program has been open for discussion and suggestions from the major stakeholders in the reform process such as the Ministry of Justice (MJ); the Supreme Judicial Council (SJC); associations and guilds of the legal profession; concerned non-governmental organizations; representatives of the media; independent legal experts and the Bulgarian citizenry. The amended and revized Program incorporates the comments, suggestions and notes provided and is representative for the state of the Bulgarian judiciary and the legislation as to May 2000.

The judicial reform envisaged by the 1991 Constitution should comprise a consistent set of structural and functional changes that should result in a new organization of the Judiciary.

With the adoption of the Law on the Judiciary, the legislative framework was put in place in order to proceed to structural changes in the judicial system. Courts of appeal, the Supreme Court of Cassation and the Supreme Administrative Court were set up.

In addition, in 1998 important amendments were enacted to the Code of Criminal Procedure and the Code of Civil Procedure. By virtue of these amendments, three-instance proceedings were introduced, namely: first-instance, appeal-on-the-merits[1] and cassation proceedings. Likewise, the Law on the Supreme Administrative Court was passed which currently governs the functioning of this particular institution. In 1999, the procedural laws were further amended so as to ensure speed and better efficiency in the administration of justice.

In a broader prospective, the concept of "judicial reform" is understood to comprise the legislative framework described above, plus the following key aspects:

- warranting the independence of the judiciary;

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[1] The term "appeal-on-the-merits" was chosen as describing the nature of this specific Bulgarian procedure on appeal at second instance. Under the previously existing two-instance system of appeals the second instance would only review a judgement and either uphold or reverse it without hearing the case on the merits. See below, 3.1.2.

- improving the professional knowledge and skills of magistrates;
- substantially modernizing the organization of work;
- opening the Judiciary towards the society; this includes the formulation and implementation of an adequate media policy;
- introducing amendments to the legislation in force (both substantive and procedural) in view of the further development of the legal foundation of the reform.

The Supreme Judicial Council (SJC), as an institution determining the composition and carrying out the organization of the judicial system, must have the capacity to fulfil its mandate. For that purpose, the SJC would need fundamental institutional strengthening. This would involve allocation of additional budgetary resources to enable the SJC to expand its administrative staff in order to afford appropriate professional support in finance, planning, statistics and personnel matters. It would also require technical assistance in designing a strategic plan to address the needs of the judicial branch, including the areas outlined below. Moreover, in order to improve the functioning of the system as a whole, greater co-ordination would be needed between the SJC and MJ, particularly with reference to the inspectorate function.

The strengthening of the SJC is suggested in order to:

- develop its administrative capacity in budgetary matters and formalize its supervisory and planning functions by expanding its support so as to include professionals in these areas;
- develop transparent criteria for appointing, promoting and applying disciplinary measures in respect of judges, prosecutors and investigators;
- obtain expert staff to determine adequate physical needs for each of the courts and other offices (encompassing buildings and computers), and seek sufficient budgetary funds to meet these needs;
- develop a regularized disciplinary system and standards of conduct for all magistrates, including an improved process of lifting criminal immunity where needed;
- to establish a structure with a decision of the SJC to handle corruption investigations on an on-going basis for all units of the Judiciary;

The overall objective of the judicial reform is to match as fully as possible the societal needs for a novel regulatory framework corresponding to the new social and economic processes in the country. Thus, legal stability and confidence in the Judiciary could be achieved and the system could turn into a modern European judicial system. In order to achieve this goal, both legislative amendments and organizational changes are required.

In a number of workshops, interactive discussions and consultations, and on the basis of consensus among the stakeholders of JRI, the following main priorities of judicial reform have been identified:

- Training of magistrates;
- Reform of court administration.

Likewise, the main areas have been defined where the legal foundation of the reform should be improved in its substantive as well as procedural aspects.

The structure of this program is based on the priorities agreed upon and follows the main areas where the legal basis for achieving these priorities needs improvement.

1. Status of Magistrates: Independence and Liability

1.1. Governing Principles

The Constitution of 1991 and the Law on the Judiciary proclaimed the principles of independence, autonomy and de-politicising of the Judiciary. The independence of the Judiciary is a major democratic achievement. It should not be regarded as a privilege of the magistrates working in the Judiciary but as a guarantee for establishing order and the rule of law in the State and for a fully-fledged protection of citizens' rights. The rule of law is unthinkable without an independent and stable Judiciary.

In order for the Judiciary to be genuinely independent, the following elements are considered essential:

- accurate selection of magistrates: they should possess good professional qualities and high moral integrity;
- modern organization of work;
- adequate funding.

Typically, every judicial system is conservative and closed. Unlike the Legislature or the Executive, changes in the Judiciary only become noticeable after a longer period of law enforcement. The civil law systems - the Bulgarian one being one of them - are familiar with the notion of "career magistrates". In other words, professional promotion is linked to the length of service within the system.

On the one hand, the dynamic social and legislative changes have had a tangible effect on the functioning of the judicial system. Many young people, lacking the required knowledge of life or professional experience, were absorbed in the magistrate profession. Even the experienced magistrates encounter difficulties in applying a constantly changing and at times inconsistent legislation. There is no system for professional training of magistrates.

On the other hand, the huge financial interests and the lack of efficient supervision of the work of magistrates are conducive to corruptive practices. Hence, if magistrates do not possess moral integrity, their irremovability results in impunity.

The judicial system does not enjoy public confidence. Besides the objective reasons for the current state of affairs, this low reputation could be largely attributed to the system's closed character and lack of media policy. The general public is totally unaware of the specificity of judicial activities, of the problems in the administration of justice and of the ongoing reform efforts.

1.2. Identified Priorities

The reform in the administration of justice is mainly aimed at establishing a strong, professional and independent Judiciary.

The administration of justice should:

- be based on clear rules;
- be well organized;
- ensure rapid and efficient resolution of civil disputes and efficiently functioning criminal justice system.

The work of the Judiciary should be organized at a level matching the social need to have the rule of law deeply rooted in practice.

The legislative reform required for the development of the Judiciary is a priority for both the Government and the Parliament. Numerous proposals for legislative amendments are on the Government's political agenda, "Bulgaria 2001". Some of those amendments have been enacted already, others are still discussed in Parliament or are being drafted by the Ministry of Justice.

The reform could not take place on the basis of legislative amendments alone. In order for the magistrates to enjoy their well-deserved place in society, they should demonstrate legal competence, personal integrity and responsibility. However, their development as professionals requires that criteria be set for their selection and that conditions be created for the improvement of their knowledge and skills.

1.3. Suggested Measures

In order to achieve the objectives listed above, the following priority measures should be considered:

1.3.1. Improving the Access to the Magistrate Profession

Sections 27 and 30 of the Law on the Judiciary provide that judges, public prosecutors and investigators shall be appointed, promoted, demoted and removed from office by the Supreme Judicial Council on a proposal from competent administrative superiors. However, the Supreme Judicial Council is actually unable to judge on the professional qualities of all newly-appointed and promoted magistrates. Thus it relies mainly on the assessment made by the proposing officials. Due to the lack of candidates for some units in the judicial system, sometimes the persons appointed meet only the formal requirements for a given position.

A more accurate selection of magistrates (especially on their first appointment in the system) could be ensured through the following measures:

- introducing a minimum score required upon completion of the legal studies (for example not lower than "B", *i.e.* "good");
- introducing requirements for an adequate legal experience (excluding the training as a court candidates);
- widely publicising all vacancies in the system;
- introducing contests to fill the vacancies (on the basis of documents and through examination);

- ensuring a minimum standard of living for the members of the Judiciary in less popular regions (*e.g.* housing, transport facilities, etc.);

In addition, before a magistrate becomes irremovable or before any promotion in position or rank takes place an accurate assessment of his or her work on the basis of clearly defined and written criteria should be made by his direct superior, by a representative of the higher instance and by the Inspectorate at the Ministry of Justice.

1.3.2. Education and Training of Magistrates

1.3.2.1. Education at Faculties of Law

The requirement that all magistrates should have a law degree obtained at a higher education institution is an important achievement of the Bulgarian State. This tradition dates back to the end of last century and is indicative of the particular importance the society attaches to the high professional qualifications of the persons vested with the administration of justice.

At present, ten faculties at different higher education institutions in the country offer higher education in law and issue diplomas for the qualification of a "lawyer". There is a ***State standard*** for legal education. The standard is laid down in the Ordinance on Single State Requirements for Obtaining Higher Education in Law in the Speciality of "Law" and the Professional Qualification of "Lawyer".

The law faculties currently existing in Bulgaria do not offer specialized training for magistrates. Students are trained to work in all areas of law enforcement. In order for them to be able to specify the profile of their future occupation yet during their studies, the following measures are suggested:

- making full use of the possibilities offered by all optional and elective subjects in order to ensure specialization;
- developing the link between theory and practice in the process of teaching, especially by involving outstanding practising magistrates in that process;
- improving the efficiency of the internship schemes during the studies and the link between the law faculties and the authorities hosting trainee students;
- putting in place a working system for post-graduate specialization at higher schools which should be accessible to practising magistrates;
- improving the form of the final exams which constitute the final stage of education.

- developing joint curricula between the MTC and Institutions of Higher Education.

1.3.2.2. Training of Court Candidates[2]

The practical training during the studies is basically confined to, and the professional orientation of law graduates depends on, the compulsory one-year period of practical internship after graduation. However, the unanimous opinion is that the internship is rather formal, inefficient and fails to achieve its intended objectives. The patron judges are overloaded and lack the time necessary for the practical training of court candidates who, in turn, are unevenly seconded to the various district courts. The interns themselves are not sufficiently interested in the internship. The theoretical and practical exam held at the end of that one-year period is both formal and useless. One of the proposals under discussion is the training of court canditates to be obligatory only for those intending to work in the judicial system.

In order to increase the value of the practical internship, the following amendments to Ordinance No. 30 on the Preparation and Procedure for Attesting Court Candidates and Interns at the Bar are suggested:

- designing special programs for the training and examination of court candidates which should be oriented towards working in the Judiciary;
- limiting the number of court candidates at the district courts and their seconding to courts throughout the country;
- introducing a system of emoluments for the patron judges;
- revising the exam on the basis of which the qualification of a lawyer is recognised by laying a stronger emphasis on its practical aspects.

1.3.2.3. Continuous Training of Magistrates

The efficient work of judges, public prosecutors and investigators necessitates initial training upon taking office and continuous training throughout the period of service. Over the past several years, training for magistrates has been offered in a rather sporadic and uncoordinated fashion by the Ministry of Justice and by a number of NGOs (*e.g.* the Legal Initiative for Training and Development (PIOR), the American Bar Association (ABA-CEELI), etc.). Though the topics discussed at such training sessions are generally interesting for the participants, the events themselves are not accessible to all magistrates.

As regards the training of magistrates, the following main problems could be identified:

- insufficient funding earmarked for training in the budget of the Ministry of Justice and the budget of the Judiciary;
- the extreme workload of the magistrates which reduces their ability for self-education and participation in organized training;
- the lack of a system bridging the level of attained qualification with promotion.

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[2] "Court candidate" is the official Bulgarian term used to designate a law graduate during the compulsory one-year internship after graduation. The terms "court candidate" and "intern" are used interchangeably.

In April 1999 an NGO was formed, namely the Magistrate Training Center. Its governing body is composed of senior magistrates, representatives of the Ministry of Justice, the Association of Judges in Bulgaria, the Legal Interaction Alliance.

Curricula were drafted for the first academic year of the Center (October 1999 – July 2000). Throughout that period, only two forms of training are being used, *viz*. seminars for newly-appointed judges and conferences on selected recent legislative amendments (*e.g.* amendments to the Code of Civil Procedure, the Code of Criminal Procedure, the Code of Administrative Procedure, Commercial law, etc.) and other topics like Court administration, Professional ethics, etc.

The curricula for the next 3 years is in the process of preparing.

The drafting of permanent curricula in the following areas is also forthcoming:

- initial training of all newly-appointed judges before they take office or immediately after that;

- compulsory training of the newly-appointed judges during the first three years of their service, including *inter alia*:

  – courses on the administration of the corresponding judicial activity;
  – drafting of court judgements and rulings;
  – relations with the other bodies of the judicial system and with institutions connected thereto;
  – professional ethics, etc.

- continuous training of the judges at different levels in the following areas:
  – current legal and professional problems;
  – EC law;
  – language and computer training;
  – psychology, sociology, public relations, etc.

- training upon the transition of judges from one instance to another and from one unit to another within the judicial system;

- training of the chairs of different units in the judicial system in administration and planning;

- training of bailiffs and of judges in charge of court registration;

- training of police officers in criminal law, administrative law and procedure, and in the fields of police ethics, crime prevention, combating corruption, juvenile delinquency, drug trafficking, illegal traffic of people, etc.

The next steps for improving the quality of the administration of justice should consist in:

- developing a system that links the professional promotion of magistrates to the corresponding qualification obtained during the training process;

- laying down rules on the compulsory character of, and general access to, training during the first three years of service (by amending the Law on the Judiciary).

The professional training of judges is one of the indisputable priorities in the judicial reform. Even the most flawless legislation is of no avail, unless it is enforced by people enjoying high moral integrity and professional competence. Legislation is equally binding on all nationals of a State but whenever a legislative instrument is infringed, the judicial system steps in as a key actor.

If the Judiciary is to fulfil the tasks in the process of establishing the rule of law, many efforts should be made to **raise the professional qualification of the judges, the public prosecutors and the investigators working within the system**. The incessant amendments to the legislation give rise to numerous problems in the process of law enforcement and often result in inconsistent case-law.

Amending the legislation in force is indeed within the competence of the Legislature and of the Executive. Magistrates, however, are the most active promoters of their own professional improvement. Lawyers' NGOs play a decisive part in this respect.

As regards the setting up of a permanently operational and well organized system of continuous training for judges, public prosecutors and investigators, much reliance is placed on the newly-formed Magistrate Training Center. Funding has been ensured for the initial period of its activities. The training offered by MTC should be governed by the following objectives:

- assisting the magistrates to become familiar with their profession, to develop their professional skills and obey a code of ethics matching the requirements of the profession;
- allowing continuous access to further legal knowledge for all magistrates;
- encouraging the self-esteem, the sense of independence and responsibility of magistrates, in line with the expectations of the general public;
- promoting the establishment of consistent and efficient practices in the administration of justice.

In the medium run, it is particularly important for MTC to be stabilized as a permanently operating institution giving opportunities for continuous professional training for all magistrates in the country. For this purpose it is also important that the budget of the Judiciary, concerning the training of the magistrates, should be increased substantially.

In the long run, the idea could be considered about transforming MTC into an entity operating under public law and funded mainly by the State.

1.3.3. Liability of Magistrates

1.3.3.1. Disciplinary Liability

The disciplinary liability of magistrates and the grounds for lifting their criminal immunity are governed by the Law on the Judiciary. The 1998 amendments to that law empowered the Minister of Justice, in parallel to the corresponding heads of units within the Judiciary, to institute disciplinary proceedings against all magistrates.

Thus, a legislative possibility exists to engage the disciplinary liability of any magistrate but only a meticulously prepared measures and thoroughness could transmit this possibility into practice. In that respect, the Supreme Judicial Council and the Inspectorate at the Ministry of Justice have a vital role to play.

1.3.3.2. Role of Professional Guilds

The existing professional guilds are particularly important in raising the level of integrity and responsibility. These are the Association of Judges in Bulgaria, the Association of Public Prosecutors and the Chamber of Investigators. The Association of Judges in Bulgaria is one of the MTC founders and has been the most active player so far. After its formation in 1997, it organized a number of conferences followed by the adoption, in July 1998, of a Code of Ethics for Judges.

Professional guilds have a special role in inspiring a feeling of belonging to a certain profession, fellowship and solidarity, and in ensuring compliance with certain rules of conduct accepted on a voluntary basis.

In order to raise the reputation of the Judiciary, it is essential to create among the magistrates an atmosphere of intolerance to any conduct damaging the reputation of the profession.

To firmly establish their role, the professional guilds should:

- advertize their work, both among the lawyers and among the general public;
- organize events with the participation of magistrates from the whole country;
- keep in constant touch with their colleagues throughout the country and voice their opinion on topical debatable issues;
- participate in the drafting of curricula for the Magistrate Training Center and keep track of the results of training;
- set up local structures to pursue the objectives laid down in their instruments of incorporation (by-laws);
- adopt moral rules of conduct (where these are not in existence yet) and to set up internal check-up and control mechanism;
- defend the professional interests of their members, including cases where disciplinary liability proceedings have been instituted.

It is naive to assume that these targets could be achieved within a short period of time. Given the workload of the magistrates, the lack of sufficient funding, the scepticism and want of confidence among all members of the Judiciary, coupled with the existing difficulties in communication, it would certainly take years befor the proffesional guilds are well-established as prestigious partners of the Supreme Judicial Council and the Ministry of Justice.

As to the distant future, it could be envisaged that the violation of the moral rules enshrined in the Codes of Ethics and taught at MTC could become a ground to engage the disciplinary liability of the magistrate concerned.

1.3.4. Opening the Judiciary towards the Society

All public opinion polls in the past years have invariably revealed the deplorably low rating of the Judiciary. This public assessment results not only from the occasional lack of professionalism and integrity among the magistrates but also from the lacking public awareness of the way the system operates. As a rule, the judicial system deals with the pathology of social relations, with the deviations from what is deemed normal social

behaviour. Due to its inherent functions and to the usual outcome of its activities, the Judiciary seldom enjoys public approval. This is equally valid for Bulgaria and for societies with long-standing democratic traditions and well-rooted values.

At the same time, the system itself is very obstinate in demonstrating its closed character. In turn, the closed character is sometimes reinforced by incompetent media coverage.

In order to ensure transparency of the judicial activities and open the system towards the society, the following measures should be undertaken:

- setting up a work group composed of magistrates, journalists, representatives of professional guilds and organizations, the Supreme Judicial Council and the Ministry of Justice which should draft media policy concept for the bodies of the Judiciary;
- carrying out a series of joint training events for journalists and magistrates (the Legal Initiative for Training and Development - PIOR - could impart useful experience in that respect);
- designing action plans and mechanisms for mutual acquaintance and communication between magistrates and the media;
- training of spokespersons (for the various professional guilds, courts, public prosecution offices and investigation services) who should clarify topical issues in a language understandable to the public;
- setting up press services at the larger courts;
- organizing training events for court reporters by involving both journalists and magistrates as lecturers;
- introducing a system of accreditation for some court instances as a bar to irresponsible or slanderous statements by the media;
- popularizing the results of the pilot projects implemented by the Legal Initiative for Training and Development (Varna Regional Court and Appellate Public Prosecution Office in Plovdiv);
- setting up a public media council composed of magistrates, attorneys, representatives of the Ministry of Justice to present to the public various aspects of the judicial reform.

2. Court Administration

2.1. Governing Principles

The professional competence of magistrates is an essential, though insufficient, prerequisite for the efficient operation of the Judiciary. Equally important is the good organization of their work, generally denoted as "court administration".

Court administration is currently based on hopelessly obsolete principles. There are no coherent rules of secondary legislation on the work of the investigation services, the public prosecution offices and the courts. Numerous registries are kept - mainly by hand - causing great difficulties to citizens and attorneys alike when they make inquiries. The administrative

staff within the system work in a primitive environment and no one takes care of their preliminary or continuous training.

At the same time the magistrates, especially those in managerial positions, are burdened with many time-consuming administrative and financial duties which prevent them from focusing on their main functions, *i.e.* the administration of justice.

The latest amendments to the Law on the Judiciary (1998) granted the district investigation services the status of legal persons. Unlike the courts, which have accumulated long experience as independent structures with their own staff, budget and organization, the investigations services encounter enormous difficulties in terms of organization and administration.

The court administration has been unduly neglected in the context of the overall judicial reform. The existing Ordinance No. 28 of 1995[3] fails to reflect the need for modernization and streamlining of court administration. Currently, the Ministry of Justice is conducting work on the improvement of a regulatory framework.

2.2. Identified Priorities

The court system faces the problem of building up a principle vision of its self-government.

In following the objectives of the reform process, it is imperative to pursue:

- improvement of the professional qualification of the administrative staff;
- modernization of working environment and the conditions of work.

2.3. Measures

In order to build up a modern management structure for court administration, the following measures are deemed necessary:

2.3.1. Conceptual Framework for a Fundamentally New Organization of Work

A work group should be set up, composed of representatives of the courts, the public prosecution offices and the investigation services (magistrates and administrative staff), which should develop, under the guidance of the Minister of Justice, a common view on the principles of organization of work within the Judiciary.

The following fundamental **principles** are suggested:

- building up a fundamentally new structure of court administration while implementing an automated information system;
- bringing the types of court registries and books, and the manner of keeping them, in line with that structure;

[3] Ordinance on the functions of servants in ancillary departments and offices of regional, district, military and appelate courts

- determining the numbers and categories of administrative staff, depending on the new structure as well as introduction of detailed job descriptions;

- providing for new mechanisms to manage and control the administrative staff;

- drafting curricula and designing mechanisms for the training of administrative staff.

- building up administrative offices at larger courts which should be in charge of the upkeep of court buildings, finance and the budget, the auxiliary personnel and long-term assets.

2.3.2. Legislative Framework and Organizational Changes in the Work of the Judiciary

2.3.2.1. Amendments to Existing Legislation

- regulatory framework should be developed with legislative acts, like the Law on Civil Servants and respective changes in other acts (such as the Law on the Ministry of Internal Affairs, the Law on the Bar) in view of creating the necessary assisting units;

- on the basis of the approved coherent conceptual framework, instruments of secondary legislation should be drafted to regulate the work of the investigation services, the public prosecution offices, and the courts;

- on the basis of coherent principles of organization of work a new court statistics program should be developed which should use consistent terminology and approaches;

2.3.2.2. Organizational Changes

Along with the amendments to the regulatory framework, the following organizational changes might also be made in order to ensure a proper and easier access of citizens and attorneys to the judicial institutions, combined with a fully-fledged respect for their rights:

- setting up a new mechanism to answer inquiries from citizens and attorneys by designating work places intended solely for that purpose and linked to the implemented automation system. That would also ensure the needed quietness for the other employees so that they could perform their official duties;

- providing publicly accessible information in an electronic form by the units of the Judiciary to outside services and institutions, as well as to attorneys and notaries public; this should be done in return for a fee, while duly protecting the product of information;

- the office of "court administrator" should be introduced; at larger courts that employee could take over some functions currently fulfilled by the president of the court, *e.g.* drafting the budget, organizing tenders and entering into contracts, upkeep of the court buildings, selection and control of the

employees. It is recommended that the court administrator should have a degree in law or economics.

2.3.3. Automating of Administrative Functions within the Judiciary

It is well known that the various units of the Judiciary are automated to different degrees. Even in courts at the same level different software solutions are used. The situation is worst at the investigation services where almost no computerization has taken place.

Here again, a work group should be formed under the leadership of the Supreme Judicial Council and the Ministry of Justice that should bring together magistrates and software experts and come up with a concept for a uniform information system of the Judiciary. Here are some of the fundamental measures that should underlie that concept:

- developing a uniform and compatible software to process the papers received at the various units of the system; the software should be adjustable to the specific conditions prevailing in each unit, including transferring the activities and the available information from paper to electronic media and keeping them in an electronic form;

- developing a uniform information system for criminal cases with a strictly regulated access of various users to the different levels of information. The system should network:
  - the police,
  - the investigation services,
  - the public prosecution offices,
  - the courts, and
  - the Directorate-General "Central Prison Administration";

- implementing a uniform software for the retrieval of statistical data at all levels of the system.

- linking the information systems of the different courts with each other and with the systems of other institutions to ensure the exchange and use of information (*e.g.* the registration services could be linked to the tax authorities and the cadastre services; the system of the Supreme Administrative Court could be linked to the Council of Ministers, etc.);

- securing access to the Internet to obtain information on any issues relating to the administration of justice (EC law, case-law of the European Court of Human Rights and the European Court of Justice, etc.).

The automation of activities in the Judiciary should be based on a **step-by-step** approach. The process should start with computerizing certain activities and gradually result in linking the various units of the judicial system in a nation-wide network.

In this respect, the following **priorities** have been identified:

Firstly (in the shortest term), a survey and analysis should be made of the state of affairs at the courts and other units of the Judiciary, in particular by specifying the positive experience gained and the "good practices" in different courts.

Second (medium term), software should be developed to automate the administration of justice in civil and criminal cases.

As regards administration of justice in civil cases in October 1999 an Expert Council was set up with the SJC with the task of designing a Uniform Operational Program for the Courts in Civil and Administrative Cases. The implementation should be accelerated of an uniform information system linking all units in charge of criminal investigation. The National Statistical Institute is responsible for this task but the system should be developed jointly by MoJ, the Ministry of Interior and SJC.

Third (long term), a uniform information system of Judiciary should be put in place.

2.3.4. Status and Training of Administrative Staff

The want of qualified administrative staff deteriorates the quality of the administration of justice and the public assessment of the work of the Judiciary. Any improvement of the work of that staff would certainly benefit the operation of the whole system.

2.3.4.1. Status of Administrative Staff

The administrative employees at the units of the Judiciary do not enjoy the status of civil servants within the meaning of the Law on Civil Servants. In view of the specific nature of their work, and their responsibility for the overall quality of the administration of justice, the status of these employees should be regulated by future amendments to the Law on the Judiciary or in a separate act.

The functions and the duties of administrative employees and the requirements towards their professional qualifications should be specified in an instrument of secondary legislation which, while duly conforming to the applicable primary laws, should take account of the specificity of their work.

2.3.4.2. Training of Administrative Staff

Given the lack of both initial and continuous training for administrative staff, that has been referred to, the following steps should be taken:

- the Ministry of Justice, jointly with the Ministry of Education and Science, should develop a curriculum for the training of administrative staff (to be taught at the specialized secondary schools);
- upon filling vacancies, preference should be given to applicants who have successfully undergone specialized training;
- the Ministry of Justice, jointly with the Magistrate Training Center, should draft curricula and offer continuous training to the persons already employed in the Judiciary;
- the training should end with an exam and the result therefrom should be linked to remuneration and promotion.

The reorganization of work in the Judiciary and its gradual automation form the second important priority in the judicial reform. Its successful realisation mainly depends on the efforts of the people working in the system and their close cooperation with the Ministry of Justice and SJC.

Besides, we should not forget that the training of magistrates has started already, while the reform of court administration is still to be discussed. Its implementation would need at least five years and during that period the measures suggested in 2.3. above could be implemented.

3. Improving the Legal Basis of the Reform

3.1. Governing Principals

Over the past ten years, numerous reforms have been implemented in the Judiciary and in the whole Bulgarian society. The social and political changes are mirrored by regular legislative amendments. The operation of the Judiciary is affected not only by the legislative instruments directly targeted at the administration of justice but also by any other legislative amendments which the bodies of the Judiciary must enforce. The imperfections of the existing legislation are most clearly detected in the process of law enforcement.

A comprehensive review of the existing legislation is needed in order to track and repeal all obsolete or contraversial legal provisions. On the basis of that review, a modern and harmonious legal framework is to be approved which should be increasingly compatible with EC law, while paying due respect to the Bulgarian legal tradition.

3.1.1. Substantive Laws

Substantive laws are aimed at providing an overall regulatory framework for social relations. Not only are they applied by the bodies administering justice but they are binding on all natural persons and entities subject to a given jurisdiction. Bringing the legislation in line with the requirements of the new social and economic relations and with European standards does not form part of the judicial reform *per se*: it rather constitutes an essential element of the entire legal reform in the country.

However, if a piece of legislation is infringed the resulting disputes are resolved in court. Thus the activities of the courts bring into focus all drawbacks and contradictions inherent in the legislation in force. The quality of substantive laws affects indirectly the quality of the administration of justice, thereby shaping the public confidence in the system. Having taken this perspective, JRI suggests certain legislative amendments to the existing substantive laws.

3.1.2. Procedural Laws

Procedural laws lay down the rules on how the system of administration of justice actually operates. Before the recent amendments to these laws prompted by the Constitutional requirement to introduce three-instance proceedings, the judicial reform existed on paper alone. The genuine reform only started after the passing of the procedural rules on three-instance proceedings (1998). The dynamics of social relations and the logic of the reform itself, however, require that the administration of justice be further reformed in future.

The political changes in 1989 propelled a radical legal reform in the field of **criminal procedure**. The Code of Criminal Procedure was among the first instruments amended as early as the beginning of 1990. Later on, numerous new amendments were made in order to better guarantee respect for human rights. Taken as a whole, however, the amendments during that period were sporadic and often contradictory. There was no coherent view on the general lines along which the reform of criminal procedure should be carried out, nor was there any lasting philosophy to underpin the system of criminal procedure in the years ahead.

The fundamental amendments to the Code of Penal Procedure, in force since January 1, 2000 are an important step towards harmonizing Bulgarian criminal procedure legislation in line with the European standarts. With the 1998 amendments to the Code of Civil Procedure, the adversarial principle in **civil procedure** was reinforced and an articulate emphasis was laid on the role of the court as an impartial arbiter. The very core of second-instance proceedings was modified: from mere review and reversal of the first instance judgements the proceedings at second instance turned into examination on the merits. The parties to all civil disputes thus have better opportunities to invoke any necessary evidence. As the courts of second instance already decide each case on the merits, rather then remit it for re-examination by the first instance, the cases can be finalized more quickly.

The Supreme Court of Cassation is the only instance of cassation. It pronounces on the legal aspects of the cases alone, *i.e.* it only verifies the lawfulness of the judgement from a substantive and procedural point of view, and does not deal with points of fact.

Despite the fundamental changes in the field of civil procedure, if maximum speed and efficiency in civil cases are to be achieved further improvements of civil procedure are needed and alternative methods of dispute resolution should be used.

The existing Constitution also laid down the grounds to reform the **administrative procedure**. The Supreme Administrative Court (originally set up in 1912 and closed down in 1948) was restored and a Law on the Supreme Administrative Court was passed.

3.2. Identified Priorities

In order for the Judiciary to establish itself as the "third power" in a State governed by the rule of law and to uphold legal certainty and stability in the society, further decisive amendments to the substantive and procedural laws are needed. These amendments should be introduced in a coordinated manner, while paying tribute to the legal traditions existing in the country, to the needs of the contemporary society and to the process of approximation of Bulgarian legislation to EC law.

- The principles of equality of the parties to civil relations should be affirmed and certainty should be guaranteed in these relations;
- The amendments to the legislation should be based on respect for human rights and fundamental freedoms in the field of criminal law and criminal procedure;
- It is imperative to create conditions for providing efficient legal aid to the citizens;
- Within the legal system, the principle of equality between citizens and authorities must be fully enshrined and observed by enacting clear rules on appeals against administrative decisions;
- In order for the disputes to be resolved more efficiently and rapidly, rules on alternative dispute resolution methods should be passed;
- The improvement of the reform's legal foundation should be aimed at eradicating all conditions conducive to corruption within the Judiciary.

3.3. Suggested Measures

The National Assembly is the sole authority of the Legislature in Bulgaria. On the grounds of the laws passed by the National Assembly, the bodies of the Executive issue instruments of secondary legislation. In order to improve the legal foundation of the judicial reform, amendments should be envisaged in some specific areas of law.

3.3.1. Civil Law and Procedure

3.3.1.1. Civil Law

During the past ten years the civil law of the country has been fundamentally modified, in line with the need to regulate the civil relationships in harmony with the transition from planned to a market economy and to bring Bulgarian legislation closer to European standards. The exuberant amendments to the existing legislation are not always well coordinated, the frequent result being inconsistent law enforcement.

On the whole, the following measures could be recommended in the area of civil law:

- harmonizing the terminology used in legislative instruments;
- harmonizing the rules governing analogous or similar situations;
- constantly observing the requirement to introduce European standards.

Below follows a brief list of suggestions for amendments to individual branches of civil law:

Property law:

- creating a new system of registration of estates - the "owner-based" system of registration should be modernized by infiltrating elements of the "estate-based" system in order to achieve certainty in all transactions in real estates.

Law of contracts:

- amending the existing rules to take account of the Rome Convention of 1980 on the law applicable to contractual obligations.

Banking and commercial law:

- the Commercial Code, as *lex generalis*, and the Law on Banks, as *lex specialis*, should be coordinated to eliminate the inconsistent rules on banking transactions;
- modern rules, in line with European standards, should be introduced on:
  - bank guarantees;
  - bank credits;
  - letters of credit;
  - consumer credits.
- the stock exchange trading in securities should be promoted by:
  - liberalising the rules on trading in some classes of shares currently excluded from turnover;
  - providing ample opportunities for block trades.

- legislative rules should be introduced on electronic commerce and electronic signatures. The draft law is prepared by experts at the Center for the Study of Democracy and representatives of the institutions concerned;

- the existing instruments of secondary legislation should be revized: they often contain "primary" rules that would better be included in the Commercial Code or in the Law on Banks.

Family law:

A new Family Code has been drafted which contains updated rules on:

- the system of property relationships between the spouses;

- adoption;

- the measures applicable *vis-à-vis* the children, etc.

It is necessary to develop a set of legislative and social measures aimed at:

- providing children with a more comprehensive and efficient protection;

- assisting the families whose marriage has drawn to a crisis or providing help in the event of problemaic relations between parents and children;

- providing for intermediaries in divorce cases and in parental rights cases ;

- including rules on co-habitation without marriage;

- introducing summary proceedings to avoid or interrupt violence in the family;

- providing opportunities to solve the pending property disputes in line with the new rules.

Labour law:

- updating the rules on employment relations, with due regard to the currently prevailing economic conditions;

- introducing protection against unfair clauses in the contracts of employment imposed by the employer;

- improving the rules on fixed-term employment contracts in order to protect the employees against the practice of "serial" fixed-term contracts;

- improving the legal rules on claims for invalidity of the employment contracts; it should be possible to bring such claims under the general rules of civil law and, occasionally, in the context of another labour dispute;

- bringing some categories of judgements in line with the principles of civil procedure (*i.e.* judgements in labour disputes which are currently not subject to judicial review);

- expanding and improving the rules on releasing from office elected servants or employees, especially in cases where the termination of their employment contracts is not subject to review by a court;

- setting up a Guarantee Fund for the protection of employees in the event of insolvency of the employer, in accordance with Directive 80/987/EEC of October 20, 1980;

- bringing the legislation in this sector in line with the European Social Charter.

Consumer protection:

The Law on Consumer Protection and on the Rules of Trade, passed recently, is the first one to introduce legislative provisions on this type of relations. Even before the actual enforcement of this law has started, however, it is possible to identify some problems that should be addressed urgently:

- the law should explicitly and clearly formulate the new concept of pecuniary damage, in line with the rules on liability for damages caused by defective products (EC Product Liability Directive);

- the law makes it possible to bring an action for the collective defence of injured consumers (so-called "class action"). However, the Code of Civil Procedure contains no rules on such actions and, hence, needs to be amended.

3.3.1.2. Civil Procedure

The 1999 amendments to the Code of Civil Procedure are aimed at:

- reducing unequivocally the possibilities to postpone the hearings of a case;

- differentiating between normal and fast proceedings;

- interim execution of judgements given by the courts of appeal;

- enlarging the powers of the instance of cassation to give the final judgement on a dispute;

- shortening the bankruptcy proceedings and reducing them to two court instances only (district court and court of appeal).

Nevertheless, further legislative amendments would be necessary in the following areas:

- providing better procedural guarantees for revealing the actual (not only formal) truth in the proceedings. The court should be given the duty to guide the parties appearing without counsel as to which circumstances are disputed and need clarification and proof. This opinion is shared by many lawyers who fear that the reinforced principle of adversarialism tends to impinge on the fundamental principle of procedural equality;

- providing for compulsory participation of counsel in certain types of proceedings and in the proceedings before the Supreme Court of Cassation;

- introducing an obligation for a preliminary exchange of papers between the parties, *i.e.* an exchange preceding the instituting of civil proceedings;

- further specifying the rules on "Fast Proceedings" which cover adversarial proceedings, non-contentious litigation and administrative proceedings in court;

- introducing the so-called "summary proceedings" for some types of actions. If the respondent in such cases recognises the claim or fails to object against it within the statutory time-limit, a writ of execution is immediately issued against him as if the execution proceedings were based on an out-of-court ground for execution. At present such a possibility only exists in defalcation cases;

- improving the rules on "complaints for delay";

- adopting legislative rules on the already established practice of submitting written pleas;

- changing radically the system of execution of judgements by the bailiffs and providing more possibilities to appeal against a bailiff's acts to avoid divergent regional practices.

The phase of execution puts an end to a civil dispute but this area remains the least reformed. The cumbersome and inefficient process of execution of judgements renders meaningless any effort to improve the administration of justice.

Urgent legislative amendments are needed to cut off the possibilities for deliberate protraction of the execution proceedings and to provide the creditors with more guarantees. In many member states of the European Union these functions are entrusted to private persons. In addition to the legislative amendments, a modification of the organization of work should be considered as well. After the reform of the work of the notaries public, a draft law could be prepared to reform, along the same principles, the work of the bailiffs who could then form a profession independent of external financial resources.

As neither the judicial system, nor the society as a whole are ready for such a radical change, some transitional options might be discussed as an alternative, namely:

- parallel existence of court departments for the execution of judgements combined with execution of judgements by especially authorized persons outside the Judiciary who work in a competitive environment and are retained at the choice of the execution creditors;

- providing additional financial incentives for the bailiffs on a contingency basis.

3.3.2. Criminal Law and Procedure

3.3.2.1. Criminal Law

In order for an efficient criminal justice system to exist, the elements of crimes and the execution of penalties should be updated and modernised.

The democratic changes at the end of 1989 brought about the need for substantial amendments to the Criminal Code. The former Criminal Code of 1951, and the Criminal

Codes of 1956 and 1968 had been entirely influenced by the Soviet legal system. After 1991, criminal law was irreversibly deprived of its ideological character, thus turning into a relatively efficient instrument for the protection of human rights. One specificity of Bulgarian criminal law is its relatively high degree of conformity with international law. Likewise, the death penalty was abolished in 1998.

As far as criminal law is concerned, there is still not a new general conception for its future development regardless of the Government's plans for combating crime. The amendments made over the past years were imposed by the need to match specific social exigencies, namely:

- reinforcement of the repression against organized crime;
- introduction of legal rules on the so-called "white-collar crimes", etc.

Criminal law is conservative by nature. Thus, in respect of the general theory of crimes (danger to society and forms of guilt) it has remained almost unchanged for some one hundred years.

In terms of structure, the Bulgarian Criminal Code is divided into ***General Provisions*** and ***Specific Provisions***. The ***General Provisions*** contain provisions on the main principles and institutes of criminal law, whereas the ***Special Provisions*** describe the types of crimes and set the penalties therefor. No other criminal law provisions exist in Bulgaria apart from those in the Criminal Code.

Regardless of the approach to be taken in the future - drafting of an entirely new Criminal Code or improving the current Code - new solutions are needed in the following areas:

In the ***General Provisions of the Criminal Code***, the efforts of the legislators should concentrate on the elements listed below:

- developing a modern system of penalties providing for more alternatives to the main penalty of imprisonment;
- enlarging the scope of application of the fine as a penalty; in cases of failure to pay a fine the court should be able to replace it with imprisonment;
- introducing the concept of ***probation***, *i.e.* a penalty served in community service under administrative supervision but without removing convicted person from his or her family and normal living environment. In case of violating the rules of probation the latter might be replaced with imprisonment;
- increasing the stimuli for assuring a law-abiding conduct of the offender by means of applying considerably lighter penalties in cases of cooperation with the authorities, confession or by retrieveing the damages of the crime.

Likewise, amendments will be needed to the ***Specific Provisions of the Criminal Code***, whereby:

- rules could be introduced in the new forms of criminal activity, like:
  - securities,
  - computer offences;
  - distortion of competition;

- the rights and interests of consumers;

- the provisions on tax and foreign exchange crimes could be improved;

- rules could concern:

  - the inviolability of private information;
  - AIDS infections, etc.

- some archaic provisions could be repealed and a number of acts could be decriminalized;

- the crime "***provocation to bribery***" could be decriminalized in cases where it is intended to expose corrupted officials;

- further harmonization with international law could proceed in the field of:
  - organized crime;
  - environmental crimes;
  - traffic in narcotic drugs and pieces of arts, etc.

- the scope of application of ***crimes prosecuted on complaint by the victim*** should be expanded;

- criminal liability could be envisaged for failure to comply with court orders.

3.3.2.2. Criminal Procedure

In 1999, the Code of Criminal Procedure was amended with effect from January 1, 2000. The amendments are substantial and could be outlined as follows:

- establishing the supremacy of the court and the trial phase as the central stage of the whole procedure;

- removing the unnecessary formalities from the preliminary investigation and establishing the legal basis for rapidity and efficiency;

- introducing police investigation for a significant number of criminal cases;

- providing guarantees for the rights of citizens, the most important of them being the introduction of judicial control in cases of infringement of constitutional rights;

- introducing adversarial court proceedings and limiting the *ex officio* principle in the activities of the courts;

- ensuring full compliance with all international legal instruments ratified by the Republic of Bulgaria;

- introducing the "***plea bargaining***" as a procedural tool to accelerate criminal proceedings.

These radical legislative amendments are a significant step towards building up of a modern criminal justice system.

The next goal would then be to draft an entirely new Code of Criminal Procedure founded on the identified long-term measures and on the experience gained on a step-by-step basis. Here are some fundamental ideas which should be reflected in the new Code of Criminal Procedure:

- the adversarial principle of court proceedings should be strengthened; it should be equally applicable in "appeal-on-the-merits" and cassation proceedings;

- an emphasis must be laid on speeding up the criminal proceedings but without impinging on the revealing of objective truth;

- more differentiated types of proceedings should be introduced depending on the nature and seriousness of the crime;

- the so-called "jump-over jurisdiction" should be introduced, *i.e.* a possibility to skip the appeal on the merits and directly file a cassation appeal.

The new Code of Criminal Procedure should also address the following issues:

- rules on modern methods of investigation (like wiretapping, electronic eavesdropping, undercover agents, ect.) should be included in it in order for all provisions in the field of criminal prosecution to be codified;

- the structure of the Code should be improved. The 1999 amendments follow the structure of the Code as established in 1974. This has produced some illogical results - for instance, police investigation is currently governed by the special rules of the Code though it is one of the main forms of investigation. The rules in question should be moved to another part of the Code and form a coherent set with the rules concerning the work of investigators;

- harmonization and modernization of terminology is required;

- the rules on evidence must be amended. The focus should be on the infringements of restrictions on citizens' fundamental rights and on the need for better protection against their violations;

- it is no longer necessary to compulsorily apply a measure for "non-absconding" in respect of every accused person;

- the so-called "principle of the funnel" should be introduced. It will alleviate the workload in the system, as it would no longer be necessary for all criminal cases to go through all the stages of the criminal proceedings;

- the accused should have the possibility to have the case tried, at his or her choice, by a judge or by a chamber including jurors;

- the so-called "preliminary hearing" should be restored, though with a different meaning. It should be initiated by the defendant or his counsel and represent a non-compulsory stage involving equal parties. The unfounded trials would then be avoided, thus sparing resources and torments to the defendant and his relatives;

- the substantive and procedural rules on juvenile delinquency should be set apart in a different law. That would be linked to setting up special courts and investigation authorities for juvenile delinquents, accepting a completely new terminology in the applicable special laws, etc.

3.3.2.3. Execution of Penalties

A substantial reform is also indispensable in the ***execution of penalties***. This should be brought about through important amendments to the Law on the Execution of Penalties. After 1990, the work of prisons in Bulgaria has undergone changes in numerous aspects in order to ensure respect for human rights of convicts and establish humane conditions for the serving of sentences. This, however, is not sufficient in itself. The existing system of sanctions in Bulgaria fails to match the crime rate and the structure of criminality. A new law on the execution of penalties is necessary which should provide for the following:

- building up a new system of detention facilities, namely:
  - specialized prisons;
  - local prisons, and
  - high-security prisons;
- combining the influence of criminal prosecution with psychological and pedagogic influence;
- providing for legislative basis for involving a wide range of Governmental and non-governmental organizations in the course of serving a sentence and during the subsequent period thereafter;
- developing the abilities of sentenced persons to re-socialize after the sentence is served;
- drawing up programs for re-socialization after the sentence is served;
- building up probation offices, in connection with the indispensable introduction of "probation".

The reforms in criminal law, criminal procedure and the execution of penalties should take place in parallel, on the basis of a general concept of criminal justice policy to be implemented in these fields.

3.3.3. Administrative Law and Procedure

3.3.3.1. Administrative Law

The amendments in the area of administrative law have been very dynamic, as they should fit the reform processes in the central and local administration and the requirement of bringing national legislation in line with EC law. A number of laws were passed, *viz.* the Law on State Administration, the Law on Civil Servants and the Law on Refugees. In addition, it is recommended to continue the harmonization of substantive Bulgarian tax legislation with the EC directives on taxes and excise.

3.3.3.2. Administrative Procedure

The Constitution of 1991 contains a general clause allowing appeal against any administrative act. It also provides for the establishment of a Supreme Administrative Court.

The latter exercises judicial control for the accurate and uniform application of the laws in administrative cases and pronounces on disputes concerning the legality of acts issued by the Council of Ministers or by the individual ministers, or of other acts listed in the law. The principle of comprehensive administrative control has been furthered in other organizational and procedural laws, *e.g.* the Law on the Judiciary and the latest amendments to the Law on Administrative Procedure.

The rules on administrative procedure are laid down in several legislative instruments, *viz.* the Law on Administrative Procedure, the Law on the Supreme Administrative Court , some provisions of the Code of Tax Procedure, the Law on Regional and Urban Planning, and the Law on Administrative Offences and Penalties. These instruments also contain some references to the Code of Civil Procedure. The above listed pieces of legislation were adopted at different times, in a different social and economic environment, and there is no synchrony among them or, at times, serious inconsistencies are found. The lack of a coherent administrative procedural framework is equally embarrassing for the citizens, the administrative authorities and the courts. No legal criteria exist as to which administrative acts should be excluded from judicial review on the grounds of s. 120, subs. 2 of the Constitution. Thus, conditions exist for some administrative decisions to be arbitrarily excluded from the control of the courts.

As a result, there is a compelling need to adopt a ***Code of Administrative Procedure*** which should bring the rules together and systematise the different types of procedure. In particular, the following essential elements should be taken into account in that Code:

- a clear legislative criterion should be introduced about the administrative acts to be excluded from judicial review;
- there should be guarantees for the equality of the parties in respect of the collection of evidence. After an appeal is lodged, the administrative authority should be obliged to submit to the court the whole administrative file in order to deprive that authority of the possibility to "doze" evidence to the disadvantage of the private party;
- legal guarantees must be provided for compliance by administrative authorities with the court judgements (by introducing a more efficient system of fines and other sanctions).

The Code of Tax Procedure, in effect as from January 1, 2000, codifies the rules on tax procedure. Amendments are still needed in order to make some of the disputable legal rules more precise. Likewise, more guarantees should exist against possible abuses by the tax authorities with their wide powers.

3.3.4. Other Legislative Amendments

The more efficient work of the judicial system would also require other amendments to the existing legislation, which should bear on the organization of activities within the system and on the activities of authorities and institutions whose functions are closely linked to the administration of justice. Discussions could be held on the adoption of a detailed framework comprising instruments of both primary and secondary legislation affecting the structure and work of the following entities:

3.3.4.1. Courts of Special Jurisdiction

According to s. 119, subs. 2 of the Constitution, and s. 3, subs. 5 of the Law on the Judiciary, "courts of special jurisdiction may also be set up by virtue of a law".

There has been a long-standing tradition in the administration of justice in Bulgaria for courts of first instance and appeal-on-the-merits courts to have general jurisdiction. Given the diversity of the disputes heard by these courts, the specificity of some types of cases which require judges to have special knowledge, the need for a speedier and more competent examination of cases having a particular social impact, the idea could be discussed about setting up first-instance courts of special jurisdiction which might hear in particular:

- labour disputes;
- bankruptcy cases;
- juvenile delinquency cases.

3.3.4.2. Court Registers

Commercial registers:

In line with the Bulgarian legal tradition, the commercial registers are kept by and preserved in the courts. The registration of companies, however, results in imposing on the judges an enormous workload, which does not necessarily require a law degree. In order to relieve the judges from that untypical work and channel their knowledge and experience into the in-depth examination of strictly legal problems, we would suggest the following alternatives:

- the provisions on the registration of traders in court should be amended so as to simplify the requirements for registration, draw up form documents and assign this work to employees with special qualification (similar to the German *Rechtspfleger*);
- the registration of companies should be brought out of the courts' functions and transferred to the bodies of the Executive or to the Bulgarian Chamber of Commerce and Industry.

Land registers:

In order to ensure the certainty of the transactions in real estates and to overcome the lack of coordination among the municipal urban planning services, the land cadastre services, the tax authorities and the court registration departments, amendments should be made to the relevant legislative instruments or a new Law on Land Registration should be drafted, which should be accompanied by a uniform information system for real estates. A new Law on land cadastre and real estate register was adopted on April 12, 2000. Most of its provisions will come into force on January 1, 2001. The implementation of this Law will provide for the gradually transition to the new system (property based) of real estate registers keeping.

3.3.4.3. Out-of-court Methods to Ensure Respect for Human Rights: Institution of the Ombudsman (People's Defender) and the civic mediators

The democratic European states tend to attach an ever rising importance to various out-of-court methods ensuring respect for human rights which complement or accompany the more expensive and slower judicial, administrative or other forms of redress. Among those

methods, the institution of the Ombudsman has had a shorter or longer history in several European countries.

The main function and objective of the Ombudsman and of certain similar institutions is to monitor the administrative work within a State and act as a brake upon corruption and arbitrariness which interfere with human rights, to assist the reinstatement of private persons' rights after the latter have been violated by the State or its officials, and to create an atmosphere of respect for human rights and of social autonomy. In a number of countries, the institution of the Ombudsman is well established as part of the mechanism ensuring the free and guaranteed exercise of human rights.

The opinion which favours the introduction of a People's Defender (Ombudsman) institution in Bulgaria takes account primarily of the needs and public attitudes existing in the country, and of the political and Constitutional realities. Likewise, it is based on a comparative legal analysis and on the study of foreign experience. Though the best approach in which such an institution could be established in Bulgaria while enjoying the indispensable reputation and meeting the requirements for efficiency is to have the basic rules in the Constitution, the prevailing opinion seems to be that at this stage a Constitutional amendment would require time- and effort-consuming discussions on a still unknown and unpopular figure coupled with lacking tradition. In view of these considerations, it is proposed that the institution be set up by a special law. The following arguments could be invoked here:

- as witnessed by the practice so far, the institution of the Ombudsman has been introduced in the European countries either by virtue of a law or through the Constitution. There are no obstacles to have an institution set up by law and later constitutionalize it (the example of Poland, Austria);

- according to the view proposed, the Ombudsman is not an authority endowed with power and its presence would not affect the principle of separation of powers; hence, and given the fundamental principles of the Bulgarian Constitution (s. 1, subs. 2), it is not mandatory to include rules on the Ombudsman in the Constitution;

- the main principles of the special law introducing the Ombudsman would also stem from the fundamental principles of the Constitution, *i.e.* the rights of the individual, his or her dignity and security, which have all been proclaimed as a fundamental principle (the Preamble), the principle of the rule of law (the State must be governed in accordance with the Constitution and the laws of the country, and is under an obligation to guarantee the life, the dignity and the rights of the individual, and to create conditions for free development of the individual and of the civil society - s. 4), the principle of free market economy (the laws should provide for and guarantee equal legislative conditions for the economic activities of all citizens and legal persons - s. 19, subs. 1 and 2).

Following this approach, detailed rules should be passed on the objectives, the scope of activity, the procedures and the organisation of the institution, while paying special attention to its relations with the authorities provided for in the Constitution and exercising the State power. The future law should be consistent both with the Constitution and with the entire frame of existing legislation in order to delineate the widest possible, and most beneficial, legitimate scope of activities of that institution.

According to the draft law developed by experts at the Center for the Study of Democracy, the institution of the "Ombudsman" could be introduced under the name "People's Defender", as well as Local Civic Mediator. The institution would have general

competencies and combine the classical Scandinavian model of the Ombudsman with some novelties typical of its modern forms in other European countries, and with the views on the indispensable and possible specificity of the institution in the Bulgarian context.

The draft law provides also for an institution of civic mediators that should garantee on local level respect for the rights and freedoms of citizens and legal persons.

3.3.4.4. Court Police

The Law on the Judiciary did not provide for court police, though such a proposal existed in the draft. Due to the lack of legislative rules on such a unit, the relations between the bodies within the judicial system are extremely complicated and affect adversely the work of the whole system. Thus, we would propose that a specialized Court **Police** unit be set up. The latter should:

- ensure the forcible bringing of witnesses, the convoying of accused and defendants;
- ensure good order in the court rooms;
- provide assistance in serving court papers and executing judgements.

3.3.4.5. The Bar Association

The role of attorneys as legal advisers and procedural representatives is extremely important both for the interests of citizens and legal persons, and for ensuring good quality in the administration of justice.

In parallel to the reform of the judicial system, the Bar has also been substantially reformed. The restriction was removed on the number of practising attorneys and free access was introduced to the Bar for all persons having law degree.

Regretfully, due to the lack of criteria on the admission of applicants to the Bar and the want of an operational internal control mechanism within the profession, a sharp decline has been observed over the past years in the quality of attorneys' services. There have been instances of abuse of procedural rights and unfair competition among the attorneys themselves. In addition, there is no well-regulated system to provide free legal aid to citizens who cannot afford the counsel fees.

In order to ensure qualified legal assistance to the citizens and raise their confidence in the Bar, the following measures are suggested:

- introducing an admission exam for the Bar;
- putting in place a system of rules on legal aid through which the access to court and free legal assistance should be guaranteed to any person who is short of funds to afford such services;
- a special fund should be set up, raising incomes both from the State budget and from non-governmental organizations, to pay for the services of attorneys acting as counsel for citizens placed at a disadvantage;
- "***legal clinics***" should be set up with the participation of law students, which should work under the patronage of experienced university professors and distinguished legal professionals;

- detailed rules must exist on the disciplinary liability of attorneys in the case of abuse of procedural rights.

The workings of the Bar could be improved through corresponding legislative amendments (the Law on the Bar, etc.). The latter could be initiated by the Supreme Council of the Bar or by the Minister of Justice. It is advisable to involve representatives of the NGOs active in this area in the drafting of such legislative amendments.

3.3.5. Utilization of Alternative Dispute Resolution Methods

The disputes arising in the Bulgarian society are mainly resolved in court. There are very few institutionalized exceptions to this rule, *e.g.* the courts of arbitration with the Bulgarian Chamber of Commerce and Industry, the Association of Commercial Banks, the Bulgarian Industrial Association, the Bulgarian Stock Exchange and Sofia Commodity Exchange. *Ad hoc* arbitration is possible as well but it is seldom resorted to in practice.

Mediation in dispute resolution is not popular yet. At present it is only envisaged by the Rules of the Court of Arbitration at the Bulgarian Industrial Association. Some other NGOs seem to work in this field as well, but practising lawyers and private businesses apparently lack sufficient information about them.

The experience of the US and the countries in Western Europe shows that the use of alternative dispute resolution methods is extremely efficient. On the one hand, many disputes are resolved more quickly and less expensively than in court. On the other hand, the courts are relieved from a large number of cases, which, in addition to legal qualification, would often require special knowledge of business, arts, psychology, etc.

If this form of out-of-court dispute resolution is to be accepted in Bulgaria, the following steps seem necessary:

- alternative dispute resolution should be advertized among the lawyers, the representatives of the Executive and the Legislature, the trade unions and the business circles;
- the public should be familiarized with the advantages offered by such alternative methods, with the assistance of the media;
- the existing obstacles to using ADR should be removed; one example is the absolute prohibition to resort to alternative methods when a State authority is a party to the proceedings;
- legislative requirements should be set for preliminary consultation with a mediator (for instance in divorce proceedings or in disputes concerning custody rights);
- specialized courts of arbitration should be set up to resolve disputes involving collective interests (consumer protection, environmental and urban planning conflicts, etc.);
- legislative rules should be introduced on the establishing and operation of independent arbitrators and mediators;
- the institution of the Ombudsman could be used as a form of ADR in disputes between citizens and the administration;

- the possibility should be discussed for passing legislative rules on ADR in administrative cases, after a comparative study of the experience gained in other European countries.