



JUDICIAL REFORM PROPOSALS

by

JUSTICE FOR ALL

Civic Initiative

The JUSTICE FOR ALL Initiative is an independent civic movement, whose goal is to provide public support and pressure for a substantial judicial reform implementation. Disregarding the faltering political intentions on the reform, we firmly stand behind **five basic principles**, without which we consider the reform itself unachievable:

I. FIVE BASIC PRINCIPLES OF THE JUDICIAL REFORM:

1. Right of fair trial.
2. Transparency in the institution and progress of files and cases.
3. Independence of the judiciary officials from external and internal influences.
4. Speed and effectiveness of the judicial process.
5. Integrity and professionalism of all magistrates.

II. KEY PROBLEMS:

The essence of the principles we uphold is consequence of some of the key problems of the judiciary:

1. Non-compliance with the principle of random file and case assignment.
2. The magistrates' dependencies on their direct supervisors when working on particular files, pre-trial proceedings and cases.
3. The subjective secondment practices and placing in almost feudal dependencies magistrates from smaller courts to those in larger regional and even supreme courts and prosecution offices.
4. Uneven workload of prosecutors and judges (especially apparent in larger state district and regional courts).

5. Non-compliance with the procedural time frames for handling pre-trial procedures and cases, as well as with the time frames for judges' and prosecutors' rulings.
6. Lack of accountability and justification of the decisions and votes, as well as absence of clear criteria about how the Supreme Judicial Council should work.
7. An Investigation Service that is isolated and devoid of actual powers.
8. Inefficient, slow and often non-transparent work of the Inspectorate with the Supreme Judicial Council.
9. Corruption and influence trading, which have entangled whole structures of the judiciary in networks of dependencies, suffocating every considerable attempt to impose the rule of law and every magistrate's pursuit of transparent and fair justice.

III. OUR IDEAS FOR SOLVING THE PROBLEMS OF THE JUDICIARY

We strongly oppose the current status quo, and, as free and responsible citizens, we demand from our own country to ensure fast, effective, transparent and fair trial. Therefore, we unite ourselves around the following problem-solving ideas:

1. Ensuring the Court's independence from any political, economic, and oligarchic mafia influence.
2. Effective, accountable and responsible Prosecution Office, where each prosecutor has and decides based on his/her operational autonomy and inner conviction, and not based on mandatory instructions and suspicious orders coming from their direct superiors.
3. Timely prevention of corruption, nepotism and all forms of undue influence on the magistrates' work.
4. Administrative and organizational management of the judiciary based on knowledge, transparency and clear criteria for career development and leadership election procedures.
5. Accountability and demand for carrying out effective disciplinary proceedings against magistrates, who have undermined the prestige and integrity of the judiciary.
6. Ensuring objective, transparent and efficient trial that guarantees the fundamental principles of equality of the parties, adversarial, timely ruling and motivation of the judicial acts.

7. Provision and implementation of e-justice in the shortest time possible, with remote access to all case documents and possibility for electronic filing of requests and documents.

8. Clear criteria for the magistrates' promotion, transfer, appraisal and career development.

IV. SPECIFIC REFORM SUGGESTIONS FOR THE INDIVIDUAL STRUCTURES OF THE JUDICIARY, REQUIRING CHANGES & AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF BULGARIA

In order to achieve the above goals, we firmly believe that the Updated Strategy for Judiciary Reform, sanctioned by the Parliament on 21 January 2015, should be implemented through swift adoption of the necessary amendments of the Judicial System Act and the procedural laws, including the necessary amendments in the Constitution's chapter on the judiciary.

We propose for discussion:

SUPREME JUDICIAL COUNCIL

Reforming the structure, method of election and activity of the Supreme Judicial Council (SJC). It should become a truly professional and honourable authority for managing the judiciary and, as such, it needs to be completely freed of any and all political and behind-the-scene influences. To this measure, supporting the separation of the Council's operative activity in two chambers– one of judges and one of prosecutors – we propose:

1. Decreasing the number of the members of the Parliament's quota in the Council from the current 11 members to 7 members. The representatives of this quota should be magistrates of integrity and proven merit, supported by their professional guild, or persons with proven expertise in judicial science. Four of these elected members shall sit in the prosecutors' chamber and three shall sit in the judges' chamber.

2. Direct election of all members of the SJC at the general meeting of all judges, prosecutors and investigators, with each magistrate's vote counting as one single vote.

3. Open vote ballot on all matters of the Council and its two chambers; every member should bear moral responsibility for his/her proposals and votes on disciplinary and staffing matters.

4. Detailed specification of the procedures for raising and executing disciplinary proceedings at the SJC. Providing objectivity, public transparency and reasonable motivation for all acts.

5. Shortening the SJC's mandate to three years with no right of second consecutive mandate. This would provide faster member rotation and mitigate the risk of members losing qualification due to their detachment from practice, while working in a permanently operational institution. Alternatively, we suggest the SJC not to work as a permanently operational body; thus, magistrates in it will not be detached from their principal duties by it.
4. Increased powers and more effective control of the Inspectorate at the SJC with regard to the progress of files and cases. Parliamentary control on this authority's activity.

INDEPENDENT, COMPETENT AND RESPECTABLE COURT

1. Introducing individual plans for the judges' career development, with strict criteria and objective evaluation of their ethical and professional qualities.
2. Clear and unified criteria for the secondment of judges and prosecutors; every such assignment should be justified by the relevant supervisor with a specific need and precise time frames.
3. Objective, reliable and transparent procedures for the election of administrative heads (chairs of courts/prosecution offices). A significant extension of the powers of the general meetings of the judges/prosecutors with regard to the nomination and election of their heads.
4. We support the updated strategy for judicial reform's idea for the establishment of an auxiliary agency for integrity at the SJC, which would perform routine checks of magistrates and the judicial administration staff for conflicts of interest, pro-corruption practices and facilitation of corruption practices.
5. Decisive and swift implementation of e-justice, providing fast and reliable access to case files and an opportunity for electronic submission of documents to all courts and for all types of proceedings.

EFFECTIVE, TRANSPARENT AND UNBIASED PROSECUTION'S OFFICE

The overall structure and way of work of the Prosecution's Office needs to be reformed. More specifically, we suggest for discussion the following points:

1. The professional growth and performance assessment of prosecutors and investigating officials should be tied to the evaluation of the results of their work.
2. Public accountability and transparency in the work of prosecutors.
3. Introducing actual accountability of the Prosecutor General for the work of the Prosecution's Office and, more specifically, for all criminal proceedings started, terminated and expired, as well as for the efficiency of the prosecution at the trial stage, and the number of convicted criminals versus the number of resolved

crimes. Discussing this report in the SJC and presenting it in Parliament with specific suggestions for enforcing the law.

4. Reducing the Prosecutor's General mandate from seven to five years, with the goal of faster evaluation of the results of his work.
5. Repealing the Prosecutor's General function for "methodical guidance of the work of all prosecutors", stipulated in Art. 126 of the Constitution of the Republic of Bulgaria, and his/her excessively empowered functions in the Judicial System Act, which extend even beyond the constitutional provisions.
6. Discussing the introduction at a Constitution-level of disciplinary and even penal liability of the Prosecutor General and his/her deputies. Whether this will happen through a special disciplinary jurisdiction in the SJC; through introducing the position of an "independent prosecutor", who will have the right to charge and prosecute the Prosecution's Office in court, against the Prosecutor General and his/her deputies, when there is evidence or reason to believe that they have committed crimes; through a special Parliamentary agency; through the Constitutional Court, or through other means, remains subject to discussion, but the discussion should be carried out together with the debate for amendments in the constitutional foundation of the judiciary.
7. It is also important to discuss the idea of changing the manner of nomination and election of the Prosecutor General. So far, this election has always involved political negotiation at the highest level about a specific person. It is never clear what the exact criteria for these nominations and election are, which is unacceptable in a democratic country of law.
8. Real and effective de-centralisation of the system of the Prosecution's Office and providing genuine independence and autonomy, as well as effective responsibility of all prosecutors, who are entitled to lead the fight against crime.
9. Detailed clarification of the capacities of the Investigation Service, in accordance with the Constitution's provisions, and achieving effective performance of its investigative function.

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