



**GLOBAL METRICS Ltd.**



*Attitudes of magistrates towards reform in the  
Bulgarian judiciary  
(short resume)*

May-June 2016

## **Attitudes of magistrates towards reform in the Bulgarian judiciary**

*Resume of the results of the national representative survey among judges of regional, district, appellate and supreme courts and prosecution offices throughout the whole country. For the purposes of the study a sample of 85 courts and prosecution offices was drawn to guarantee representativeness and reliability of the results.*

*The study was conducted by Global Metrix Sociology Agency between May and June 2016 upon request of the Bulgarian Institute for Legal Initiatives Foundation among 606 magistrates from the whole country. They have replied to questions related to the reforms in Bulgarian courts and prosecution offices. The interviewees have shared their opinions on the pending changes and amendments in the Judicial System Act.*

*The study was conducted with the financial support of the America for Bulgaria Foundation. It was carried out within the framework of the "Transparent Judicial Appointments Initiative". The study reflects solely the opinions and conclusions of the authors and in no way engages the funding organization.*

### **General assessment of the conducted reforms**

Over two thirds of the magistrates think that the changes within the judiciary during the last two years are narrow in scope and lack distinctive results. Mere 8-9% believe that the system is changing for the good and that the changes are significant. Performance evaluation of magistrates, promotion mechanisms, external pressure, which the system is exposed to and which it does not manage to cope with, bad legislation and using disciplinary penalties as means of biased sanctions are the key issues which emerge to the surface. The study among prosecutors distinguishes formalized criminal procedure (73%) and limitations to the free inner conviction and independence of magistrates (17%) as leading problems, which are pointed out as problems by prosecutors twice as often as by judges.

The skepticism and feeling of a lack of serious and sustainable reforms are also emphasized by the high intensity of the problems recognized. Every second magistrate recognizes more than 7 problems.

The survey also investigates factors, both external (political influence, legislative process) and internal to the system (performance evaluation, career advancement, disciplinary proceedings, professional ethics, etc.). The results show serious discrepancies between magistrates' expectations for the realization of the internal factors and the extent to which they are present in Bulgarian courts and prosecution offices. For example, one of the most important prerequisites for just internal mechanisms for system management – clear and objective criteria for career advancement taking into account the professional and managerial qualities of candidates, is almost absent according to magistrates. This criterion is assessed as very important with average value of 9,1 out of a maximum evaluation of 10 and at the same time its presence is assessed with a mere 3,6. The situation is similar with magistrates' appointments in clear, fair and transparent procedures (assessed with an average value of importance of 9,2 and a value of presence of 3,7). The results are similar in terms of the promotion mechanisms, professional ethics in the system, disciplinary penalties imposition, magistrates' independence guarantees, fair and objective performance evaluation, etc.

The other internal factor which demonstrates a serious deficit in fairness is competitions. The majority of magistrates (between 68 and 80% for the different types of competitions) takes the position that competitions are not being conducted under clear and objective criteria and do not manage to select indeed the best prepared and most suitable for the respective position magistrates. These critiques apply approximately equally to both leadership appointment and promotion competitions and to initial appointment to the system competitions.

### ***Assessment of the functioning of internal system regulators***

The study explicitly shows that the mechanisms for career advancement in the judiciary have been highly discredited. Over 70% of the interviewees think that it is not the people with the best professional and moral qualities to advance within the judicial hierarchy. With regards to the

disciplining procedures the study reveals the existence of **double standards**. According to 72% of the judges and 60% of the prosecutors there is a different treatment in the sanctioning of magistrates – in some cases for the same deed a penalty is being imposed while in other cases – it is not.

Although to a limited extent, there are cases of violation of the random case assignment principle. This is the explicit answer of 10% of the magistrates, while about 34% others point out that they have heard of such cases.

Oral instructions by highly positioned magistrates on the outcome of cases is a little more frequent in prosecution offices, however equally concerning among judges. The presence of such practices is pointed out by 40% of prosecutors and 34% of judges. However isolated, these cases show how susceptible to pressure the system is and how said pressure transforms into vertical pressure within the judiciary.

The formal and unjust evaluation of judicial work (assessment) is one of the key prerequisites for depletion of the internal self-regulating mechanisms of the judiciary. This problem has been strongly identified both by prosecutors (75%) and judges (67%).

The Inspectorate to the Supreme Judicial Council (ISJC), which is one of the important internal regulatory mechanisms created with the idea of defending judicial independence through objective and thorough inspections of judicial work, also receives inconsistent evaluations. According to 45% of judges, ISJC acts selectively in its work, as a tool for lynch law, and creates conditions for pressure over the judiciary. The opinions of prosecutors differ significantly on this matter. The position that ISJC creates guarantees for identification of irregularities and “clean-up” of the system predominates among them (45%). It is worth mentioning the fact that the wider scope of authority of the ISJC, provided for with the latest amendments to the Constitution of December 15, is not evaluated unambiguously as well. The idea of ISJC revising in essence judicial rulings is categorically rejected (43.8% and 69.7%). 53% of judges think that the new functions of the ISJC will create additional conditions for pressure in the judiciary. On the other hand, 31.5% of prosecutors see these functions as guarantees for clean-up of the judiciary. The idea of ISJC checking audio recordings of court hearings is also rather not accepted.

The opinions on the Ethics Committee with the SJC are also similar: according to 49% of judges it acts selectively, as a tool for lynch law, and 41% of judges believe that in this way the committee creates conditions for pressure over the judiciary. Again, the opinions of prosecutors differ a little: they think that the Ethics Committee with the SJC creates guarantees for identification of irregularities and "clean-up" of the system (38%), and about 28-29% of prosecutors see it as a tool for lynch law and an additional condition for pressure over magistrates.

***In fact, the system called upon guaranteeing justice in the state creates conditions for the lack of justice in the internal mechanisms for judicial management and operation.***

### ***Restrictions to professional independence of magistrates***

**Overlooking on incompetence and work of poor quality, focusing on formal criteria rather than on professionalism when evaluating quality of justice, too high pressure and influence on the part of political and economic circles** are among the most frequent and strong forms of judicial independence violations. At the same time counteraction to said pressure is too restricted with contributing factors being: lack of effective protection in cases of security threats to magistrates and/or their close ones, lack of professional (guild) reaction to pressure on colleagues, non-transparent disciplinary procedure and failure to apply same standard in similar cases, non-transparent evaluation procedure and career advancement mechanisms.

***The lack of clear and just environment for career advancement makes magistrates susceptible to pressure and places them in various dependencies.***

### ***Direct involvement of magistrates in the process of determining the faith of the judiciary***

The study clearly shows that judges and prosecutors would like to be able to a greater extent to determine by themselves what is happening in the judiciary, through:

- Association of magistrates and coming out with an official position on key issues from the agenda of the judicial system (explicit support 53-54% and moderate support 40-43%)

- National vote with participation of all magistrates on important issues of the judiciary (64% support among prosecutors and 70% among judges)
- Magistrates participation in hearing disciplinary cases through the creation of standing disciplinary committees of seconded magistrates (43% support among prosecutors and 48% support among judges) or through judicial panels which would propose to the SJC a penalty upon identified violation (47% support among prosecutors and 54% support among judges)
- High support to direct election of SJC members from the professional quota by general assemblies of courts/prosecution offices with guaranteed secrecy of the vote (78-79% support)
- More professional discussions among magistrates on key issues of procedural and substantive law and proposed legislative amendments (support on the part of 75% of prosecutors and 78% of judges)
- Abolition of the parliament quota in the SJC and constituting the SJC solely of a professional quota (support among prosecutors 68% and 75% among judges)
- Reduction of the parliament quota in the SJC (support by 76% of prosecutors and 74% of judges)
- Direct election by all judges of the chief justices of the Supreme Court of Cassation and the Supreme Administrative Court (support by 63% of judges)
- Direct election by all prosecutors of the Prosecutor General (support by 58% of prosecutors)

### ***Self-governance***

The study shows that rank-and-file magistrates reckon that they could assume part of the management of the respective court/prosecution office through general assemblies.

- More active participation of general assemblies of judges and prosecutors in the process of administration of courts and prosecution offices (49% support by prosecutors and 61% support by judges)

- Participation of a wider circle of magistrates in the work of the SJC through the establishment of committees comprising of seconded for this purpose magistrates (53% support by prosecutors and 61% support by judges)
- Direct election by the plenaries of the Supreme Court of Cassation and Supreme Administrative Court of the membership of the judicial evaluation committee with the SJC (61% support by prosecutors and 54% support by judges)
- Direct election by the general assemblies of the Supreme Court of Cassation and the Supreme Administrative Court of the membership of competitions for transfer and promotion of judges committees (support by 62% of judges)
- Direct election by general assemblies of Supreme Cassation Prosecution Office, Supreme Administrative Prosecution Office and National Investigation Services of the membership of competitions for transfer and promotion of prosecutors committees (support by 52% of prosecutors).
- Direct election by general assemblies of judges and prosecutors of the membership of competitions for transfer and promotion committees (support by 63% of prosecutors and by 59% of judges).

### ***Role of the Strategy for Continuation of the Judicial Reform and the Cooperation and Verification Mechanism***

Skepticism regarding reforms as a whole has influenced the positions of magistrates on whether the Strategy for continuation of the judicial reform would lead to real change in the judiciary. Close to half of the magistrates think that if accomplished the Strategy would lead to better functioning of the justice sector bodies. However, a major part of the magistrates does not manage to see in the proposed legislative amendments guarantees clear enough that key inside regulation factors – election of chief justices, career advancement, performance evaluation, opportunities for wider participation of magistrates in decision making on important system issues, would be resolved in a manner to start introducing a new model of conduct inside the judiciary.

Attitudes towards the Cooperation and verification mechanism are also interesting. According to 52% of judges the application of the mechanism should continue, whilst mere 27% of prosecutors support this opinion. It is important noting that in 2014, when a similar study was conducted among prosecutors solely with regards to attitudes towards reforms in the Prosecution Office, 49% of prosecutors thought that the application of the mechanism should continue. This change of attitudes was influenced to a great extent by the overall state of affairs and the unified position of the Prosecution Office leadership, as well as by the growing skepticism among prosecutor as to the extent to which the mechanism would be an effective factor of change.

***Attitudes of prosecutors – two years later skepticism and suspicion already prevail***

The first study of prosecutors' attitudes towards reform was conducted in May 2014. The predominating part then clearly identified the need for change, but was also filled with positive expectations for the direction of change. Two years later (May 2016) the evaluations of prosecutors show considerable skepticism. 64% of the prosecutor-interviewees believe that significant changes are still missing, and close to three fourths of the interviewees (73%) do not believe that the people with highest moral and professional qualities grow in the hierarchy of the prosecution office.