

## **ATTITUDES OF PROSECUTORS TOWARDS THE REFORMS IN THE PROSECUTION OFFICE AND THE CRIMINAL PROCEDURE**

Results of a national representative study among prosecutors of the regional, district and appellate prosecution offices

*The study was conducted by Global Metrics Agency for social and market research on assignment by the Bulgarian Institute for Legal Initiatives Foundation. Within the study 450 surveys with prosecutors from around the country and in-depth interviews with judges, prosecutors, investigators and investigating policemen were conducted. The aim of the project was to distinguish the viewpoints of all interested in the work of the prosecution office and to study the attitudes towards reforms mainly among rank-and-file prosecutors.*

### **Accents of the study, conclusions about the work of the prosecution office and challenges it will face in the coming years.**

In the years of transition different parts of the judicial system have been subject to various surveys and analysis, generating public interest and suggesting measures for reforming the system. Judiciary is probably the legal profession which was subject to the most detailed scrutiny and monitoring through the years. At the same time, the work of the prosecution office and the daily activities of the rank-and-file prosecutors have been absent from the public discourse, despite the ongoing discussion for procedural and systematic changes.

The current survey is aiming, probably for the first time in the modern Bulgarian history, to analyze the working conditions within the prosecution office; what motivates the prosecutors to perform their duties; where do they see the problems from both factual and legal site; how these problems could be resolved and what still needs to be changed in order to achieve sustainable reform.

Indirectly, the survey is aiming at another very important goal, namely, to find out how the prosecutors define their independence and if there are some threats to it. It is important, especially in a complicated social and political situation, to figure out the borders of check and balances among the powers. Prosecutorial independence should not be measured only through the relative independence of the respective Head of Prosecution Office and the absolute independence of the Prosecutor General. It should be measured through the possibility for the rank-and-file prosecutors to be able to make independent assessments and take decisions free from the concern that these assessments and decisions can reflect on their career advancement in a negative way. The independence of the separate prosecutor should depend only on the law and his desire for justice.

Getting the system under control can be prevented through the development of internal mechanisms for filtering and the establishment of an internal intolerance against the various dependences.

In the light of the above, the survey makes an attempt to present the weak points in the prosecutorial work. At the same time, it tries to show the direction in which efforts should be steered and how the change can be realized through bottom up approach and engagement of the rank-and file prosecutors.

## ***I. Attitudes toward reforms in the work of the prosecution office.***

***There is a clear consensus among prosecutors on the need for more large scale and tangible reforms in the work of the prosecution office.***

The prosecutors' assessments of what has been happening in the prosecution office in the past year and a half are polarized – about one third of the interviewees (31%) think that, since the beginning of the term of the new Prosecutor General, there are **major** changes for the better, whereas 40% believe that the occurring changes are **low scale** and major reforms are still missing. About 23% of the interviewees think that the situation is even getting worse. Prosecutors from the regional prosecution offices are more critical, while the prosecutors from the higher prosecution offices give mainly positive evaluations. This picture, besides the heterogeneous assessments of the events of the past year and a half, and the polarization of opinions about the importance of changes, yet shows us a **clear consensus among prosecutors on the need for more large scale and tangible reforms in the work of the prosecution office.**

The identified problems and difficulties within the prosecution office are indicative of the attitudes towards change. First, we need to point that out of 23 problems, the average number of problems, that prosecutors refer to, is 6.67, which shows quite high intensity of responses, and of identified problems respectively. Second, about 83% of the prosecutors point out more than 3 problems, and every second prosecutor points out more than 5. A more detailed hierarchy of key problems pointed out by prosecutors shows that the main problems are untypical activities of the prosecutors (such as short reports for the status of the cases, summary of statistical information and analytical work, etc.), too formal process, formal (not real and objective) evaluation of the performance of the prosecutors, poor evidences on the cases because of poor job of the investigating policemen, lack of clear and transparent mechanisms for advancement in the hierarchy, poor legislative process and too frequent changes causing problems in the regulatory framework.

## ***II. Evaluation, career advancement and disciplinary sanctions***

### ***1. Performance evaluations fail to give an accurate and just assessment of the prosecutors' work.***

According to 83% of the prosecutors performance evaluations fail to give an accurate and just assessment of the prosecutors' work, one fourth of the prosecutors definitely share this view (25%), while another 57% occupy the "rather not" position. We should note that the formal evaluation was pointed out among the leading issues with the work of the prosecution office (pointed by 50% of the interviewees which places it on the third place in the hierarchy of problems of the prosecution office – after the workload of atypical tasks and the procedure formality). It's the prosecutors' view that the formal evaluation has a negative impact on the motivation for a high quality work of the individual prosecutor, and at the same time it is a prerequisite for the missed opportunity for a reliable feedback and the distinction of weaknesses and lapses in the work of the each prosecutor. Even when their own evaluation is concerned, the majority of the prosecutors find that it doesn't provide correct and adequate comment of their work. A total of 40% think that they were not correctly evaluated (11% "definitely not" and 29% "rather not"), while 37% respond "rather yes" and only 14% - "definitely yes".

**2. No unquestionable mechanisms for career advancement and appointment of chief prosecutors were developed in the system of the prosecution.**

It's the prosecutors' impression that no conditions were developed as to ensure that people advance in the prosecution office hierarchy only based on their personal and professional qualities.

The opinions regarding the competitions for promotion of magistrates within the judicial system are more critical. As the performance evaluation is the foundation for promotion, and since we saw that the assessment of the way evaluations are carried out is not high, the opinions about the promotion competitions have very weak image and trust. A mere one third of the prosecutors support a positive view of the promotion competitions that are being carried out. Actually, the criticism here mainly aims at the fact that the procedure creates no conditions for equal candidate assessment standards and thus those who advance in the hierarchy are not the best prepared.

Similar to the promotion competitions, those for election of chief prosecutors/ administrative leaders also receive low trust – the correlation between positive and negative opinions is 47:53%. The overall evaluations of the chief prosecutors appointment process show that the appointments don't enjoy the confidence and high opinion of prosecutors. Over two thirds of the prosecutors think that those who advance in the hierarchy of the prosecution office are not the ones with the best moral and professional qualities. A mere one fourth (24%) occupy the opposite position.

**3. There is no unified and consistent approach towards the infliction of disciplinary sanctions.**

The study clearly demonstrates that the opinion that disciplinary sanctions are not equally imposed and create conditions for system penetration dominate in the prosecutors' evaluations. In similar cases, for the same actions, in some instances a sanction is imposed, in others – not. Over two thirds of the prosecutors share this view, to a higher than the average extend in the regional prosecution offices. 16% of the interviewed prosecutors think that disciplinary sanctions are being used as means for biased sanctioning of particular prosecutors rather than to improve the jurisdiction process. These, along with the other characteristics of the environment, create a sustainable opinion for the lack of fairness, objectiveness and equal treatment of the prosecutors themselves and reflect the feeling of independence of the particular prosecutor.

**III. Random case assignment**

***Despite the attempts to build a strict system for random case assignment, still in some instances the cases are being assigned without the principle of random case assignment being complied with, and sometimes prosecutors receive oral instructions on particular cases by their superiors.***

According to 41% of the prosecutors, there are instances in their prosecution office, when the principle of random case assignment is not observed – according to 24% the reasons therefor are connected to the specialization of the separate prosecution offices, and according to another 17% - there is no convincing explanation for these practices. 12% of the prosecutors think that there are also instances when a superior prosecutor decides that a case would be "taken" from the supervising prosecutor and assigned to another prosecutor. Although this opinion is shared by one of every ten prosecutors, still the existence of such practices causes some doubts in the motives and reasons to such reassignments.

#### ***IV. Improper influence and attempts for pressure***

***The pressure toward prosecutors comes from upper hierarchical levels as well as from outer actors - influential political and economic circles.***

Among the most often mentioned forms of unethical or corrupt behavior are succumbing to hierarchical pressure, abuse of power by court and prosecution leadership, selective use of the opportunities for self-referral, yielding to pressure from influential political and economic factors, etc. The share of prosecutors that indicate each of these forms of unethical or corrupt behavior varies, but we must point out that the ones, who mentioned a particular form, even with different frequency, are more than two thirds of the interviewees.

#### ***V. Factors that influence the motivation of prosecutors***

***The social and organizational context doesn't influence the motivation of prosecutors positively.***

Separate characteristics of the work environment in the prosecution office were simultaneously evaluated by two criteria: level of importance to the particular prosecutor and level of satisfaction/presence at the prosecution office. The results clearly show that all characteristics tested at the study are highly important – the average evaluations under the importance criterion by a 10-scale are above 7.5. At the same time, the level of satisfaction by the separate characteristics of the environment is relatively low (the average satisfaction evaluations by a 10-scale range between 3.2 and 5.6).

On this basis we can divide the evaluations of the prosecution office in three groups.

##### **1. Factors with high importance and very low satisfaction**

All factors which determine the feeling of fairness in the given prosecutor with regards to the career advancement mechanisms and chief prosecutor elections, the promotion and payment mechanisms, as well as the internal regulation and the system's ability to detoxify itself of unethical and immoral prosecutors, fall into this category.

##### **2. Factors with high importance and average satisfaction**

The professional independence of prosecutors, the team spirit, the even workload, professional conduct and professional ethics and the career development opportunities fall into this category. It should be noted here, that the average responses of the prosecutors place this criteria in the average level of satisfaction. The study makes it clear that these criteria have not reached a satisfactory level and there is more to be required – the distance from the extreme values of the scale are considerably high – about five unit points.

##### **3. Factors with a little lower importance, which are below the average level of satisfaction**

These factors of environment are also important for the prosecutors, but are put on second ground (average evaluations on the level of importance between 7.4 and 8.5). The satisfaction with them is also below the average – average evaluations between 3 and 4.5. Here are the mechanisms for disciplinary sanctions infliction, prosecutor personal responsibility and personal contribution

reporting, the feeling of common mission and values, lack of stress and tension, and the prosecution office public image.

#### ***VI. Attitudes toward Cooperation and Verification Mechanism***

##### ***Cooperation and Verification Mechanism – key factor for achieving reforms in the prosecution and the judicial system***

According to 48% of the prosecutors the Cooperation and Verification Mechanism of the European Commission should be continued. This opinion is determined by the fact that, to a large extent, prosecutors see the EC reports as a true reflection of the problems of the judicial system and the prosecution office in particular. According to 27% of the prosecutors, the Mechanism is an important tool for the achievement of change, but its effect could be improved through more accurate findings and recommendations. 26% stand on the position that only through pressure from the EC the judicial system and the prosecution office in particular could achieve some positive changes. Some criticize the CVM reports and think that their arguments involve mainly general and political reports, which, according to them, don't show awareness of the Bulgarian judicial system and prosecution office reality. A total of 47% of the interviewees support this view.

To summarize, those who support the Cooperation and Verification Mechanism slightly dominate over the critics as the ratio between them is 53% to 47%.