Bulgaria: Legal and Judicial Reform, Judicial Assessment

March [ ], 1999

Legal Department

Europe and Central Asia Region

CURRENCY EQUIVALENTS

(as of [March], 1998)

Currency Unit = Lev (plural Leva)

US$1.00 = 1,834 Leva

WEIGHTS AND MEASURES

Metric System

ABBREVIATIONS AND ACRONYMS

ADR --Alternative Dispute Resolution

BJA --Bulgarian Judges' Association

EU --European Union

GOB --Government of Bulgaria

JTC --Judicial Training Center

MOE --Ministry of Education, Science and Technology

MOF --Ministry of Finance

MOI --Ministry of Interior

MOJ --Ministry of Justice and European Integration

NGO --Non-Governmental Organization

NIS --National Investigative Service

SJC --Supreme Judicial Council

USAID --United States Agency for International Development

BULGARIA - FISCAL YEAR

January 1 - December 31

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BULGARIA: JUDICIAL ASSESSMENT

I. Introduction

Although the reform effort in Bulgaria is almost a decade old, until recently it was marked by fluctuating level of commitment of rapidly succeeding governments. As a result, despite isolated achievements (such as the passage of the new market-supportive Constitution in 1991, enactment of numerous market-friendly laws, price, trade and foreign exchange liberalization, restitution of property and de-monopolization of the large enterprise sector), the Government's failure to contain fiscal deficit and address structural problems in the state enterprise and banking sectors in a sustainable manner culminated in a fiscal crisis at the end of 1996. The economic crisis precipitated political protests that brought down the Government and resulted in dissolution of the Parliament in December 1996. Following the brief tenure of

an interim Government, the current majority party, the UDF, was elected in April 1997 with a reform platform that included promises to combat corruption and organized crime.

The current Government has made a strong, emphatic commitment to a variety of reforms throughout the public and private sectors, as evidenced by the adoption of a program entitled "Bulgaria 2001," which defines the principal guidelines for the development of the country until the year 2001. "Bulgaria 2001" reflects the Government's commitment to fulfilling its reform platform and achieving four interrelated objectives: (i) preparing Bulgaria for membership in the European Union (EU) by bringing Bulgaria's laws and institutions in compliance with EU standards; (ii) facilitating sustainable development and growth of the private sector; (iii) realigning government and strengthening public institutions, including the courts, in line with the needs of a market economy; and (iv) developing appropriate mechanisms for combating and eliminating opportunities for corruption and crime. The Government recognizes that its success in achieving these objectives will depend, in large measure, on its ability to develop legitimate and well-functioning public and legal institutions that would develop, implement and enforce Bulgaria's laws and provide effective mechanisms for addressing corruption. Indeed, one of the most important functions of the state is to provide an institutional infrastructure that assures property rights and enforcement of contractual claims, law and order, mechanisms for resolution of disputes, and rules that encourage efficient long-term investment. If the private sector does not trust the state to enforce rules governing business activities, investment and development of the private sector will suffer. If high levels of corruption are present, most reforms will be subverted or not implemented.

The twin priorities of strengthening the administrative capacity of the law-enforcement and judicial authorities and of taking active measures to combat corruption must form an important part of Bulgaria's pre-accession strategy, as identified in the 1997 opinion of the European Commission (EC) on Bulgaria's application for membership. The Opinion noted that in the short term (i.e. 1998) Bulgaria needs to take "concrete steps to combat corruption". In the medium term, "improved operation of the judicial system", "reinforcement of justice and home affairs institutions to improve their efficiency and effectiveness and embedding respect for the rule of law", "implementation of the fight against organized crime and corruption" were identified.

Since coming into office, the Government has taken a number of specific steps in order to address the issues of public administration, the judiciary and corruption. These include preparation of the legal framework for realigning public administration, including the Law on Public Administration, Civil Service Act, Access to Information Law, and revisions to the Law on Normative Acts and Public Procurement Act. The National Assembly is also preparing a Law on Financial Reporting which will apply to all high level officials. Laws that directly impact on the operation and efficiency of court proceedings are also being revised, including the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code. In addition, in July of 1998, the Council of Ministers established The Center for Information Technology, tasked with developing a unified computerized information system, tackling first criminal law enforcement issues and later expanding it to include the civil justice system. Such initiative will be an important tool in improving the administration of justice.

Specific anti-corruption measures are also being undertaken by the National Assembly, the Government and the NGO community. Following the report of the Temporary Anti-Corruption Commission of the National Assembly, on December 12, 1997, the National Assembly issued a Decision which established a permanent legislative commission to combat

crime and corruption and obliged the Council of Ministers to create a national strategy to counteract crime. Pursuant to this Decision, on July 16, 1998, the Council of Ministers issued the National Strategy that includes specific plans to combat organized crime, corruption, engender criminal policy and political power reforms, improve civil justice procedures and improve human resources for the justice system, including training. In addition, a group of NGOs, assisted by international donors, including USAID, produced, together with members of Parliament and judges, an anti-corruption action plan set out in a report entitled Coalition 2000.

Recognizing the complexities of designing and implementing the challenging transformation of its public sector and the judiciary and tackling corruption, in early 1998 the Government requested the assistance of the Bank and other international bodies. In response, the Bank is reviewing the Government's program and needs in the areas of public administration and judicial reform, taking into account the assistance that can be offered in this area by other donors, including the EU and USAID. As part of this effort, a combined Bank/USAID mission to Bulgaria took place in October 1998 to conduct a diagnostic assessment of Bulgaria's judiciary. As a result of the mission, the USAID design team prepared a report entitled "Judicial Strengthening in Bulgaria".

The present report sets out the Bank's findings on the main problems faced by Bulgaria's judicial system today. It is divided into four main sections: (1) the legal framework for the functioning of Bulgaria's judiciary (which includes a summary of constitutional provisions governing the judiciary and the structure of the courts and discusses the manner of court oversight and administration); (2) factors contributing to inefficiency in the court system; (3) problems relating to enforcement of civil judgments; and (4) access to justice and public perception of the judiciary. Measures for improvement are suggested in each of these sections as appropriate.

II. LEGAL FRAMEWORK FOR THE FUNCTIONING OF BULGARIA'S JUDICIAL SYSTEM

Since 1991, significant reforms have been undertaken to convert Bulgaria's judiciary from its ineffective role under a totalitarian regime to an essential institution in a market economy. Under the communist regime, the judiciary was little more than an arm of Party direction and control. Judges and prosecutors were hired for their ability to follow orders, and not for their independence of thought or high level of training. Parties to lawsuits knew the expected result of litigation from the start of a case, whether civil or criminal.

After the political turmoil and the adoption of a new Constitution in 1991, the judicial branch was recognized as a separate and independent entity. However, little structural or management reform took place at that time. Legislation was passed in 1991which created a separate Constitutional Court. Since the change in government in early 1997, some structural and substantive legal reforms have occurred, including the establishment of an intermediate Court of Appeals.

The GOB is aware that the judiciary is viewed by the public as an extremely corrupt and inefficient organ. The Bulgarian government has recognized the need for far more substantial reforms in the judicial branch and has taken some action toward effecting changes in the judicial branch. A summary of the Government's program to date is set out in Annex V to this report.

This section sets out the existing legal and institutional framework for operation of Bulgaria's courts and identifies key problems in the manner in which the courts are presently administered and supervised.

The Constitutional Framework

The 1991 Constitution of the Republic of Bulgaria provides that the country will be governed by the rule of law. The government is divided into three independent branches: the National Assembly is a unicameral legislature; the executive branch includes a Prime Minister and a Council of Ministers; and the judicial branch consists of three parts: the judges of various levels of courts, the Prosecutor's Office, and the investigating magistrates, who are all governed by the Supreme Judicial Council. The Constitution also established a separate Constitutional Court outside the judiciary.

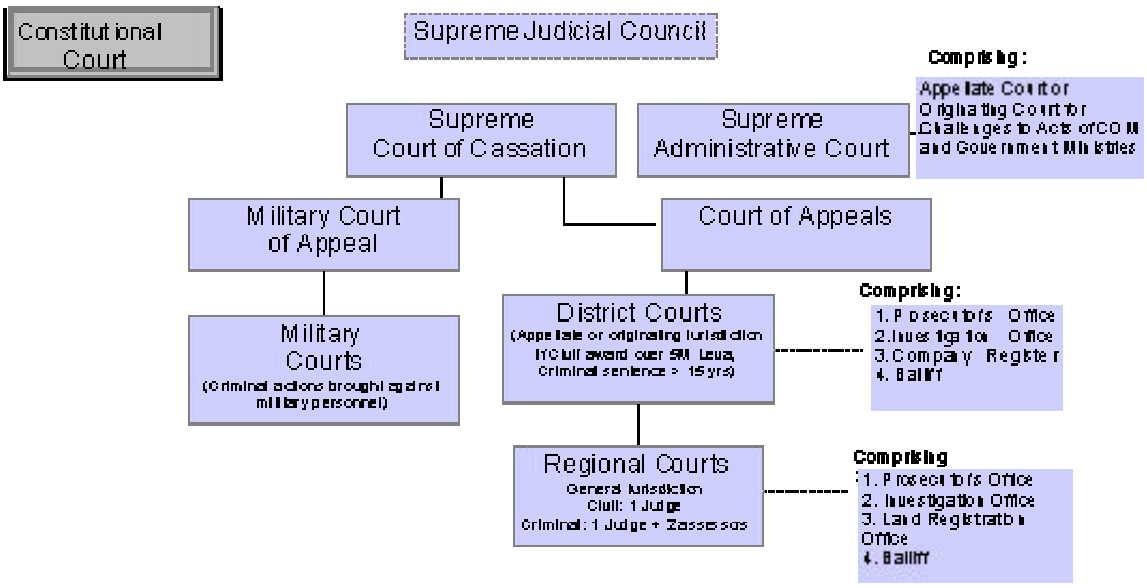
The judicial branch is specifically recognized to be independent of the other branches of government, including a separate budget. Pursuant to Article 117 (2), "[t]he judicial branch shall be independent. In the performance of their functions, all judges, court assessors [jurors], prosecutors and investigating magistrates shall be subservient only to the law" and (3) [T]he judicial branch of government shall have an independent budget". According to Article 129 of the Constitution, "[j]ustices, prosecutors, and investigating magistrates shall be elected, promoted, demoted, reassigned and dismissed by the Supreme Judicial Council." This independence is further recognized pursuant to Article 129, Section 3, "[j]ustices, prosecutors, and investigating magistrates shall become unsubstitutable upon completing a third year in the respective office. They shall be dismissed only upon retirement, resignation, upon enforcement of a prison sentence for a deliberate crime, or upon lasting actual disability to perform their functions over more than one year."

An even more unusual clause provides that "[j]ustices, prosecutors, and investigating magistrates shall enjoy the same immunity as the Members of the National Assembly". This immunity is described as follows: "A Member of the National Assembly shall be immune from detention or criminal prosecution except for the perpetration of a grave crime, when a warrant from the National Assembly or, in between its sessions, from the Chairman of the National Assembly, shall be required. No warrant shall be required when a Member is detained in the course of committing a grave crime; the National Assembly or, in between its session, the Chairman of the National Assembly, shall be notified forthwith." In addition, "[t]he immunity of a judge, prosecutor, or investigating magistrate shall be lifted by the Supreme Judicial Council only in the circumstances established by law".

B. The Judicial System

Prior to 1998, the court system was divided into Regional courts of first instance; District courts (of first instance for more serious civil and criminal cases, otherwise an appellate court) and two Supreme Courts, the Supreme Court of Cassation and the Supreme Administrative Court. In order to bring itself in line with EU requirements, Bulgaria created a new appellate level of courts in early 1998 to ensure that, in all cases, there was a three-tier system. The current structure of the Bulgarian court system is represented diagramatically below. A detailed description of the court system is set out at Annex 1 to this report.

A Snapshot of the Court System



C. Oversight and Financing of the Court System

All three parts of the judicial branch (judges, prosecutors and investigative magistrates) are governed by the Supreme Judicial Council (SJC). The Supreme Judicial Council is made up of 25 members, eleven elected by the National Assembly, eleven elected by the bodies of the judicial branch, the two Chairmen of the Supreme Courts of Cassation and Administration, and the Chief Prosecutor. The SJC is chaired by a non-voting member, the Minister of Justice. The main functions of the SJC are: (i) preparation and submission to the National Assembly for approval of the annual budget for the judicial branch; and (ii) appointment, election, promotion, demotion, reassignment and dismissal of judges, prosecutors and investigative magistrates. The members of the Supreme Judicial Council who are judges each have their own caseload and administrative responsibilities within their own judicial branch offices. They have only a handful of clerical staff to assist them in their SJC responsibilities. While the SJC plans on being fully computerized by the end of 1998, it does not have a coordinated record-keeping system for its responsibilities at this time.

While the MOJ has no direct supervisory or administrative authority over the judicial branch it plays a related role in the administration of justice. The Minister of Justice chairs the SJC meetings and can, therefore, exercise control over the SJC agenda. The MOJ is also responsible for three important aspects of the functioning of the courts. First, the MOJ is responsible for the upkeep and repair of court facilities. Second, MOJ is responsible for training of judges and court personnel. Third, the MOJ, through its Inspectorate department, conducts semi-annual inspections of the courts, designed to track civil and criminal cases through the lower courts and to ensure that all mandated standards regulating the progression of a case through the courts have been met.

An analysis of the manner in which the SJC and MOJ perform their respective functions in connection with court oversight and administration reveals serious deficiencies that undermine the efficiency of the judicial branch. Specifically, while the SJC has a broad-based

administrative mandate, it lacks the resources and capacity to execute its functions. The MOJ, on the other hand, appears to have resources, but does not at present utilize those resources for the optimal functioning of the system. The following analysis of court financing, ethics, personnel matters and disciplinary procedures illustrates the urgent need to strengthen and to allocate appropriate resources to the body, constitutionally charged with the oversight and administration of the court system, namely the SJC.

The Ministry of Justice's Inspection Function

The MOJ's Inspectorate Department conducts six month reviews on each set of courts below the Supreme Court level. The basic mandate of the Inspectorate Department is to review the administration of civil and criminal cases. In the process of these regular on-site inspections, statistical data is collected to ensure that all legal requirements are met.

There are three major drawbacks to the current inspection system:

the data is manually collected

Because there is no central computer database for the court system, information is maintained in a variety of fashions, often in duplicative logbooks, and the data maintained is not very reliable. Nor is the data coordinated with that maintained by other parties to the justice system, such as police, prosecutors, and investigators.

the data is very limited in nature

For example, information is strictly maintained as to whether criminal cases are filed within the three day statutory period once a person is incarcerated, and whether the case is resolved either before or after three months (based on another statutory requirement). But no data is kept on how long cases are kept in the system after the three month period, nor on the reasons for any such delay.

little follow-through on reports

Information is collected by the MOJ and reported to the SJC, but since these bodies are separate, there is little follow-through on the reports. Within the judicial branch, the original disciplinary responsibility devolves to the President (chief judge) of the particular regional, district, or appellate court. This individual may choose to further investigate a matter and to impose some administrative sanction, or may do nothing, depending on their personal choice. There is no regular reporting mechanism back to either the SJC or to the MOJ to determine whether any additional disciplinary or other corrective measures were taken at the lower level.

The first of the problems identified above was brought into stark focus last year when a scandal erupted in the national press regarding the referral, handling, and disposition of criminal cases. Statistics maintained by the Ministry of Interior (MOI) showed that of all police referrals on criminal matters, only one and one-half percent of cases were brought to the disposition stage in court. The MOJ's statistics were only marginally better, showing that eight percent of all criminal matters reached the disposition stage in court. Whilst neither set of statistics reflected well on the functioning of the judicial system, the discrepancy in the statistics could not be properly reconciled because the parties' systems (MOI's and MOJ's) were not coordinated.

1. Financing of the Judicial Branch

The Constitution clearly states that the judicial branch will have an independent budget. The SJC submits an annual budget request to the National Assembly. The SJC conducts this annual obligation without any staff expertise, and based on the information and requests sent to them by the individual presiding judges of each of the individual courts in the court system.

The general budget for the courts is awarded by the National Assembly to the SJC, which then divides the money between the judges, the prosecutors, and the National Investigative Service. Currently, the Chief Prosecutor and the Director of the NIS then decide how the money will be used for their independent groups. The money for the courts is divided by the SJC between the presidents of each court system, who each make independent decisions on the use of funds (aside from fixed expenses such as salaries). There is therefore no centralized control over the funds once they are disbursed within a particular budget year, and no system by which the individual courts report back on their expenditures. Several regions have managed to squeeze a few computers and software out of regular budget funds, but the decision to do so, and as to what to buy and how to use it, are made independently by each court.

An expert budgetary staff is urgently needed by the SJC, to deal with properly funding regular judicial branch expenses, to assist in special projects, and to permit centralized planning for the branch in order to respond to new national priorities. Very few, if any, of the members of the SJC possess this kind of expertise, and they each have a myriad of other obligations to fulfil. Without the development of an expert staff, the SJC cannot be expected to do a competent job at budgetary development.

2. Planning and Statistics

As part of its mandate, the MOJ Inspectorate Department collects statistics of various sorts on each of the court system. The data collected by the MOJ does not however assist in providing an overall picture of the functioning of the courts that could be useful to SJC in fulfilling its own mandate.

There is no collated information on the numbers of computers in each of the courts, or whether, and how particular courts use computers for record-keeping. One reason for this particular lack of information is that courts are permitted to accept "gifts" or "loans" of computer equipment and software from private sources. Some courts have accepted computers from banks and law firms who appear regularly in cases before those courts, thereby raising conflict of interest and corruption issues, while other presiding judges have squeezed money for computers out of budgetary items slated for building repairs. In addition, different regional courts have developed different software packages for court administration, and then sometimes try to "sell" this package to other court systems.

Statistical information on court costs, including operating expenses and salaries, is collected by the MOJ Inspectorate Department. The MOJ also collects information on court facilities and equipment, and it is the MOJ which is responsible for the upkeep and repair of court facilities (although the presiding judges handle the daily details of arranging repairs and other maintenance and each court pays a small percentage of its budget into a "buildings fund"). Information is <u>not</u> collected on how many computers there are in the various courts nor what various kinds of software are used for either case management or for legal research.

The lack of computerization and standardized administrative and case maintenance software within the court system, and the lack of a manual substitute creates a bureaucratic nightmare. Information is not reasonably certain on numbers of cases assigned, the kind of cases, the length of cases, and their disposition. Without this information, the individual professionals in the judicial branch cannot be reasonably supervised, either for competence or corruption. Nor can reviews of these issues be done on a system-wide basis, since neither the SJC nor the MOJ collect sufficient information.

There is also little or no coordination for future planning for any of the three parts of the judiciary. The SJC has the responsibility for the budget, but has no staff with budgetary expertise. The MOJ has staff with inspectorate and budget expertise, but does not have authority to make related budget or staffing decisions except for buildings and training. Nor are the MOJ and SJC sufficiently coordinated in these activities to make the best use of their collective information.

3. Personnel Issues

a. Appointments

All judges in Bulgaria are appointed by the Supreme Judicial Council. For the Regional courts, a judge must have at least two years of experience in the legal profession; for the District courts, five years. Judges will typically serve their first two years as "junior judges" in the District courts. This is a two-year term during which the junior judge will hear cases together with two fully-fledged District court judges on the bench. The Presidents of each of the courts are also appointed by the SJC.

As described in more detail in the USAID report, law graduates are required to serve an "apprenticeship year", structured according to which branch of the legal profession a candidate wishes to pursue. For those pursuing a judicial career, the apprenticeship year is split between the District and Regional courts. At the end of this year, all trainee lawyers and judicial candidates come together for a state examination organized by the Ministry of Justice. The findings of the USAID report suggest that the content of this examination appears to be open to question in terms of rigor and relevance to ultimate job performance.

In addition to these examination criteria, all judicial candidates must: (1) be Bulgarian citizens; (2) have no criminal record; and (iii) possess the "required moral and professional qualities". At the present time, no systematic background checks on judicial branch candidates and on the clerical staff for the judicial system are performed. There is also no systematic determination made as to the character of people who apply for judgeships. When this is coupled with the lack of job descriptions and lack of regular supervision, it is clear that this is one reason that there are serious problems within the judiciary as to incompetence and corruption.

b. Remuneration

Despite the fact that all Judicial Branch professionals obtain blanket job security after a three year probationary period, and also receive both civil and criminal immunity at that point, a large percentage of people leave these positions for private practice or other positions after a few years. These jobs are very poorly paid, with salary ranges of approximately $120 to $240 in U.S. dollars. The best-paid private lawyers receive between $80 and $100 per hour, and it is fairly common for private lawyers to receive about this amount per day. Almost any lawyer

can make more money than judges, prosecutors, or investigators. Newly-published statistics show that the average wage for all workers in Bulgaria is about $122 per month.?

The average judge's and prosecutor's salary is barely enough to meet the usual housing/rent costs in Sofia. All other basic expenses and any "extras" must be paid from a non-salary source. While some prosecutors and judges rely on spouses or professorships to meet these expenses, it is quite common for judicial branch personnel to accept bribes in order to feed their families.

The consequence of the extremely low pay, when added to the deep lack of respect for the Judicial Branch employees and the poor working conditions, are many-fold. First, few highly competent lawyers are attracted to this work. Second, many of the competent Judicial Branch professionals spend a few years learning everything they can about the judicial system, and then leave the judiciary for higher paid jobs. Third, according to strong anecdotal information, those who stay often resort to corruption in order to meet their basic living expenses. There remains a very small cadre of extremely dedicated and competent professionals who are strong supporters of change in the Judicial Branch. The large balance of remaining Judicial Branch employees are often not motivated to move their caseloads along, are not well-trained or otherwise informed about the law, or are directly susceptible to bribery.

This problem is equally great for the supporting clerical and administrative staff. Without exception, all of the judges interviewed strongly complained about the lack of competent and honest staff. The support staff is not properly trained in its functions, is not motivated to serve as part of a system which resolves disputes, is paid extremely low salaries, and does not have a proper civil service program in place to resolve disciplinary issues. It is commonly known that clerks are paid small sums to hide files or to move files up on a judge's calendar, and that larger sums are paid for a file to be completely lost. No efforts are made to retain or reward competent staff. Their working conditions are poor, especially in the busier court systems. Nor are the judges able to terminate incompetent workers without facing myriad civil and administrative claims, since there are no civil service standards yet in place.

The proposed amendment to the Judicial Powers Act also contains provisions as to the minimum salary for judges. The minimum salary for an entry level judge would be fixed at twice the national average public sector salary, plus a clothing and housing allowance. Whilst this is a move in the right direction in an environment of tight budget constraints, it would do little to bring the judicial career the esteem and the caliber of personnel it deserves.

c. Staffing

Determinations of staffing levels within the judiciary are ultimately made by the Supreme Judicial Council, after input and requests by presiding judges, the Chief Prosecutor, and the Director of the National Investigative Service. Staffing and related budgetary issues are addressed by the SJC in an annual budget request to the National Assembly, with assistance from the Ministry of Justice on buildings and training issues. The SJC does not have any expert staff to assist in these determinations or other administrative planning, and the budget and staffing requests depend on the tenacity or connections of the presiding judge or other supervisor rather than a systematic assessment of the needs of the particular offices or courts.

d. Promotions

There appears to be no set policy for promotion of judges, prosecutors, or investigators. A decision has just been made to require job categorization, systemic enforcement of

qualifications for employment, and regular standards for promotion and discipline of government personnel under the new Civil Service Law. No one could state with certainty that the civil service reforms would be applied to Judicial Branch personnel (although it was stated that it would apply to court clerical and other support staff). Notwithstanding the doubt surrounding its applicability, it is anticipated that the SJC will adopt similar principles for promotion and discipline for judges, prosecutors and investigators within a reasonable period of time. At this point, promotions are granted in a haphazard fashion, and are as often based on political and family connections as they are on levels of knowledge and experience.

e. Ethics and Disciplinary Procedures

The SJC has the clear constitutional responsibility and right to supervise and discipline all judicial branch employees. However, there is no regular bureaucratic system through which disciplinary matters are reported and investigated, nor is there a clear set of guidelines for the conduct of employees. Additionally, the SJC does not have staff experts or personnel whose responsibility would be to deal with disciplinary cases.

The Bulgarian Judges Association has produced a set of guidelines for judges, but these rules are voluntary and would apply only to the members of the BJA. A corresponding prosecutor's association has not produced ethical standards, nor are there written standards of conduct for investigators. Since these judicial employees are so poorly paid that they are commonly recent law school graduates with little practical experience, and since they receive little training (and no training on ethics), the usual result is that a variety of ethical breaches (by Western standards) are quite common. There is also very substantial anecdotal information that case decisions are commonly resolved through bribery of the judges, court administrative personnel, prosecutors, and investigators. In fact, one judge jokingly mentioned that judges are less corrupt than the other groups, simply because they are at the end of the time line for case procedure, after bribes have already been paid to dismiss cases or "lose" files.

The president of each court is responsible for reporting disciplinary matters to the SJC, where the president has determined that specific disciplinary measures are warranted, but without standards or administrative support for this function, this step is very rarely taken. There is a common saying in Bulgaria, "A crow does not pick out the eye of another crow." This sentiment demonstrates one of the reasons for the lack of referrals to the SJC. Another strong reason for the lack of disciplinary measures is that few judges desire to expose the corruption or inefficiency of their colleagues for fear that attention will be turned to their own conduct. Without an administrative structure and standardized rules of conduct, there is little impetus or pressure to refer judges or other judicial branch personnel for serious discipline.

As described above, while an inspectorate function is carried out by the Ministry of Justice, this function is not directly connected to the review of disciplinary matters. Neither the Judicial Branch nor the Ministry of Justice carries out an internal affairs function, resulting in a complete lack of review for internal corruption matters. This situation has partly contributed to the public view of an unmanaged and corrupt Judicial Branch.

A serious block to dealing with criminal activity by judicial branch personnel is the criminal immunity provided for them under the Constitution. Serious criminal matters would have to be referred for criminal investigation and prosecution, yet no charges may be brought against

any judicial branch professional unless the crime involved is a "grave" one (only the most serious felonies, of which bribery is not one), and unless the SJC gives permission to lift the immunity. This has virtually never happened.

According to members of the National Assembly, this "protection" was put into place because of some glaring instances of political maneuvering through criminal charges against various public officials. In their view, the judicial system is so weak that it cannot provide the normal kinds of protections against false claims or accusations. Additionally, without the public administration reforms, including the civil service legislative reforms and proposed changes in the substantive criminal law in place, those who abuse the system to bring specious charges against public officials cannot be punished, even administratively. While legislators, executive branch personnel, and some members of the judiciary generally agree that these immunities cause very serious problems, as a group they are not willing to take steps to remove these criminal immunities until other protective reforms are in place.

Opportunities for Corruption

The lack of sufficient national record-keeping and administrative follow-up also contributes to corruption. The SJC doesn't have staff to handle either statistical information or administrative supervision, and the MOJ does not collect data which would permit reviews of job performance or actions/delays in specific cases, nor does it have supervisory authority over the judicial branch. The presiding judges of the court systems have a variety of administrative duties, as well as their own caseload, and also have no administrative staff to support a thorough review of the caseloads of the other judges. Nor is there any modern docketing system for case files. The result is a lack of systemic administrative support or supervision of the judicial branch.

One consequence of this situation is that judges, prosecutors and investigators who decide to resolve cases corruptly can do so with the high probability that their actions will be neither reviewed nor questioned. According to strong anecdotal information, this kind of corruption is more common than the resolution of cases on the basis of the facts and applicable law.

D. POSSIBLE STRENGTHENING MEASURES

The SJC, as overseer of the judicial branch, must have the capacity to fulfil its mandate. As a first priority in a judicial reform program, the SJC requires fundamental institutional strengthening. This will involve allocation of additional budgetary resources to allow SJC to expand its staff to include appropriate professional support staff in finance, planning, statistics and personnel matters. SJC would also require additional material resources to fulfil its function appropriately (office space and equipment). The SJC will also require technical assistance in designing a strategic plan to address the needs of the judicial branch, including in some of the areas outlined below. In addition, in order to improve the functioning of the system as a whole, greater coordination will be required between the SJC and MOJ, particularly with reference to the inspectorate function.

1. Strengthening the SJC in order to:

develop its administrative capacity in budgetary matters and formalizing its supervisory and planning functions by expanding its support to include professionals in these areas;

develop transparent criteria for the hiring, promotion, and disciplinary system 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 judiciary branch personnel, including a process to lift criminal immunity where proper; it should also develop an expert staff to deal with disciplinary matters on a regular and standardized basis. This staff should conduct its own inspections of the offices and courts within the Judicial Branch, which would coordinate with or replace the Ministry of Justice inspection function.

establish an internal affairs structure to handle internal corruption investigations on an on-going basis for all parts of the judiciary.

2. A study be carried out to determine how criminal and civil immunity issues are dealt with in other countries, in order to decide if additional steps can be taken to deal with the existence of these barriers to dealing with misconduct/crimes.

3. In order to ensure greater coordination between MOJ and SJC, a systemic review be carried out of the data required to be collected by the courts and then monitored through MOJ's Inspectorate Department. SJC should review the type of data that should be collected and maintained by the courts in order to show the working and efficiency of the court system and to monitor personnel issues such as disciplinary measures. Given the sensitivity of some of this information, consideration should be given to how this information should be monitored by SJC, as clearly some of these issues rightly fall outside the mandate of the MOJ Inspection function.

4. A study be carried out in order to determine a satisfactory pay scale for all Judicial Branch employees The Bank Team would recommend an approach of linking judicial salaries to those of legislators, and raising all other judicial branch salaries accordingly. This approach was recently adopted by the Georgian government in it's judicial reform efforts.

III. FACTORS CONTRIBUTING TO INEFFICIENCY OF THE COURT SYSTEM

A. Case Load Management

The US AID report addresses very well the administration, management, and planning issues facing the judicial branch The table below contains a summary of the weaknesses identified by USAID on court administration. The full text of the USAID report is set out at Annex III to this report.

Summary of reasons for Case Delays

Administrative and clerical burdens of all judges

Administrative burdens of Chairman of Courts

Lack of legal research assistance and legal information software

Poor performance by court support staff

Lack of training of judges

Lack of work ethic among judges

Inability to quickly access information in criminal and civil codes

Complex summonsing process

Intentional delays by attorneys

Prolonged period for collection of evidence

Failure by witnesses to appear

Failure by judicial experts to appear

Workload associated with enterprise registration

Workload associated with high level of appeals

Absence of alternative dispute resolution mechanisms

Based on USAID report

As described in greater detail in the USAID report, problems exist on all levels. On an individual level, each judge has a variety of simple clerical duties to carry out; they must answer their own phones, accept visitors scheduled and unscheduled, hand-write or type their own correspondence and opinions (often on manual typewriters), conduct 100% of their own legal research, and handle most of the docket scheduling issues, as well as bearing the responsibility for the appearance of parties and witnesses for court hearings. This same situation is generally true for the prosecutors and the investigators. It is estimated that approximately 20% of an individual's time is spent on clerical matters.

The presiding judges must handle all of these matters for their own caseloads, and must additionally control and disburse the annual budget, contract for building maintenance and repairs, assign cases, and handle any disciplinary matters, in addition to the general supervision of the judges and court support personnel. It is estimated that 50 - 80% of a presiding judge's time is spent on administrative matters, depending on the particular court system.

Many of the members of the Supreme Judicial Council are also Chairmen or Deputy Chairmen of individual courts. As such each have their own caseload and administrative responsibilities within their own judicial branch offices. But the SJC is also responsible for handling the preparation of the annual judicial branch budget request and the discipline of employees. They have only a handful of clerical staff members to assist in these responsibilities. The SJC plans on being fully computerized by the end of this year, but does not have a coordinated record-keeping system for its responsibilities at this time.

One of the other reasons identified in the USAID report involves the conduct before the courts of lawyers in private practice. Whilst the USAID report rightly recommends the need for the courts to be able to impose sanctions for deliberate delaying tactics employed by lawyers, the role of the Bulgarian Bar Association in developing a strong legal profession is examined in the box below.

Intentional Delays by Lawyers

The USAID report identifies intentional delays by lawyers as one of the obstacles that can delay court proceedings. Under the current system, a judge cannot impose any sanctions on lawyers who abuse procedural rights. While the Law on Advocates sets rough guidelines for the conduct of lawyers in private practice (e.g. not employ procrastinating techniques in court, ban on trade advertising, limited conflict of interest rules). These standards are generally viewed as being weak when measured against comparable international standards (for example, the conflict of interest rules only apply to court representation and do not extend to representing conflicting parties in the same business deal or even taking a personal stake in business deals which should be negotiated solely for the client). The Law on Advocates also establishes disciplinary procedures against lawyers.

Each lawyer in private practice must be registered with a regional Bar Association (corresponding to the regional courts) and the national Bar Association. These are self-financing independent bodies, however, given the low level of fees charged, the Bar Associations may not be able to fully fulfil all their stated functions. Each Bar Association has its own Disciplinary Court before which an aggrieved party can bring an action against a lawyer. The Disciplinary Court can impose fines and/or temporary or indefinite suspension. To date, most of the cases before the Disciplinary Courts have been brought by the Bar Associations for failure to pay membership fees, with only some cases brought for negligence. Virtually all sanctions imposed have been for failure to pay Bar Association fees.

Intentional Delays by Lawyers

In addition to the recommendation made by USAID to change the Civil Procedure Code to provide for sanctions to be imposed by the courts on private lawyers, the Bulgarian Bar Association could be provided assistance and training to develop a set of standards of conduct for attorneys; the BBA could be provided training in the exercise of it’s disciplinary function and a review undertaken of the financing needs for the proper exercise of these functions.

The lack of coordination within the judicial system and the lack of any information link between the users of the court system and government agencies are both highlighted as problems in the USAID report. It is not currently possible to follow a case from the police complaint to the conclusion of a court case, nor to follow a convicted defendant through a prison term or alternative punishment. Nor is there a civil docketing system which permits a reasonable review of the civil justice system. This situation will be exacerbated by the expected creation of the financial police within the MOF, which has its own computer and software systems.

Even within the court system, there is no coordinated system for case management or for court administration. While the maintenance of certain ledger books is mandated by law, there is no centralized set of records through which case numbers, types, disposition, and length of case are maintained or reviewed.

The computerized case tracking system is a stated goal of the GOB; the Council of Ministers' National Strategy to Counteract Crime has as one of its goals the creation of a computer system which would track criminal (and later civil) cases from initiation by the police through disposition of the case in court and any following imposition of sentence. The court records would be one module of this broad unified system, which would also standardize the statistical record keeping across all of the governmental parties involved in the justice system. This system should include both a court record and file management system, and should specifically include a docketing system.

Suggested Measures:

1. The judicial branch should set as a high priority the creation of the Uniform Information System, which would initially be established for the criminal caseload, and would later be expanded to the civil caseload. It should cooperate with the Council of Ministers in general, and specifically with the MOJ, the MOI, and the Center for Information Technology to agree on the bases for such a program, and to determine the hardware and software needs to support the development of the system. Part of the development of this system would include a common statistical system with the National Statistics Institute, to assist in pinpointing problems and delays in the judicial system, and as a planning and supervision tool to develop responses to those issues.

2. Following on from the pilot activities recommended by USAID in certain courts, the SJC should develop a computerized case-tracking, file management, and docketing system which will capture complete information on length of cases and manner of disposition at each stage of a case.

3. The SJC and MOJ should conduct a complete review of each part of the judicial branch to determine the computer assets owned in the courts and to evaluate the software systems available to manage individual caseloads, to provide supervisory data, and to provide system-wide data for administrative, management, and disciplinary decisions; in addition, this review should be combined with an analysis of any physical modifications required to the court buildings in order to provide the appropriate wiring for increased computerization.

4. As stated in the USAID report, the SJC should undertake a review of the needs of individual judges for clerical assistance, and should prepare a plan to fulfill these needs. The adoption of a computerized Uniform Information System will free up a large number of clerks who currently maintain various ledger books. A training center could also be utilized to retrain these support personnel to handle new administrative responsibilities. This review should include all judicial branch offices and officers, not just the judges and courts.

5. The SJC should review the need to provide professional court administrator staff to presiding judges (to be tested in a set of pilot courts), as recommended in the USAID report.

B. INADEQUATE COURT RESOURCES

1. Court Facilities

It is apparent that space constraints are a severe problem in Sofia where judges frequently share an office with one or two other judges. This, clearly, prevents judges from performing

to the best of their abilities. For many of the courts outside of Sofia, although the space allocated appears adequate, the court buildings may require some modification in order to be wired for a greater degree of computerization. An inventory of the space available to the judiciary is required, so as to determine whether the problem of physical space in Sofia is a prevalent problem throughout Bulgaria. Currently no statistics are maintained on the number of occupants per office in the court buildings. The courts visited by the Bank team outside of Sofia seemed spacious and no complaints were voiced as to working conditions.

In Sofia, the Bank team learned that the sections of the old Palace of Justice, currently used by the National Museum, would be reclaimed in 1999. Given the needs for physical space in Sofia and the need to increase the esteem in which the judiciary is held, the Government would be urged to provide adequate space to allow the judges to efficiently discharge their duties.

The Constitutional Court is housed in a section of the government building assigned to the Council of Ministers. This physical proximity does not assist in a public perception of a clear separation of powers. Ideally, the Constitutional Court should be located in it's own building.

2. Legal Information

With the large volume of legislation enacted in recent years in Bulgaria, it is critical that the judiciary have access to up-to-date legal information comprising laws, normative acts, decisions of the Supreme Courts and other legal data. A lack of availability of current legal information has not been identified as a problem for judges (or other legal practitioners) in Bulgaria, nor was the prompt publication of laws and normative acts. There have been numerous complaints about the access to translated laws (for foreigners) and the quality of translations. The Ministry of Justice has plans to develop an "official" English translation of statutes and regulations to assist in attracting foreign business. The MOJ is seeking financial assistance in this endeavor.

A variety of sources of legal information is available to lawyers and judges, both in hard copy and in software packages carrying varying price-tags. It is the decision of each individual Court chairman which information sources will be available to the judges in his or her court.

A variety of loose-leaf compendia exist. The most widely used being the compendium of laws and ordinances "Normativni Aktove" which is edited by the COM. This is updated on a monthly basis.

A number of software packages are available on the market which vary in quality and in price. The four most widely used systems are DIGESTA (considered to be the most complete and reliable and carrying the highest price tag), APIS, CIELA and NORMA (the latter is state owned, the rest are owned by private companies). Prices vary according to purchase price and the frequency of updates. Few courts can afford to use DIGESTA (which is about twice the price of the others) but many courts declare themselves quite satisfied with APIS.

3. Computer Needs

As recommended in Section III.A above (Caseload Management), a review should be undertaken of the computers currently available in the courts including a review of their compatibility with each other/other users of the judicial system and of the capacity of the existing computers to run software packages in use in, and being developed for, the courts.

Recommendations

Undertake an analysis of the physical space allocated to the courts with details of office space allocated per judge and an assessment made of the wiring needs of the buildings for increased computer use. (The MOJ maintains statistics on this data and an analysis as to adequacy of space allocation could easily be carried out.) Set minimum standards of working conditions and, in coordination with MOJ, develop a time-bound action plan for meeting this standard for all judges.

The SJC should 1) establish a minimum level as to the information systems that should be available in each court and 2) should play a centralized role in exploring if there would be any economy of scale if the SJC played a coordinating role for the courts in acquiring software.

Undertake an analysis of the computers currently available in the court system and their compatibility. Set minimum standards as to hardware available, and develop a time-bound action plan for meeting this standard for all judges.

C. Registration Functions Performed by the Courts

The court system currently maintains the national registers of immoveables and of companies. The Ministry of Justice maintains the national Register of Collateral. Annex II contains a detailed description of the registration functions performed by the courts. Clearly, any attempt to alleviate the pressure on the court system will need to look at whether the functions performed by the courts are properly fulfilled by an independent judicial power rather than the executive branch of Government.

The 1997 statistics maintained by the MOJ show that the average monthly number of civil cases handled by a judge would fall **from 25 cases to 10** if company registration were removed from the courts. Clearly, removing this function, would alleviate the pressure on the courts and, according to one judge, remove one lucrative source of petty corruption from the judiciary. The impact of the loss of the registration fees would need to be determined. Another alternative would be to simplify the registration process (and registration forms) so that clerical staff could handle the process and, through a more automated procedure, some of the opportunities for corruption would be reduced. Even under the current system it is not apparent that judicial review of registration forms is necessary.

The subject of the proper location of the land registration function forms part of a separate study in preparation for a Bank-supported, cadastre project.

Recommendations

?? Simplify registration procedures (for land and companies) so that registration could be handled by clerical staff.

?? In the context of Bank project on Cadastre, consider whether land register should be maintained in the courts.

?? Consider efficiency gains in removing Company Register from the Courts.

D. Lack of Use of Alternative Dispute Resolution (ADR) Mechanisms and Lack of Forum for Small Claims

The reforms in the judiciary could usefully be complemented by the creation and use of modern alternative dispute resolution (ADR) methods, in particular private arbitration and the development of a "small claims" court with simplified procedures and shorter deadlines. These would provide efficient additional mechanisms for resolving civil disputes. There are some ADR methods currently employed in Bulgaria, however their use is limited and should be expanded.

1. Private Arbitration

Bulgaria has allowed for private arbitration since 1953 when the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry was established, largely to meet the needs of foreign trade. Although no restrictions exist, this remains the only permanent specialist arbitration institution in the country. The Law on International Commercial Arbitration (LICA) was enacted in 1988 and the Civil Procedure Code extended arbitration to domestic cases in 1993. The law allows for both institutional and *ad hoc* arbitration and permits parties to choose rules of procedure as well as the applicable law. Arbitration can be initiated only with the prior written agreement of the parties. There are a number of disputes which cannot be submitted to arbitration such as contracts of employment and administrative cases. An amendment to the LICA is under preparation which includes, amongst its objectives, the speeding up of the arbitration process and reducing the cost of arbitration. Arbitral awards can be appealed to the Sofia City Court (the proposed amendment would change this to the Court of Appeal) only on specific grounds, such as violations of arbitral procedures.

Arbitration allows for specialized business expertise to enter the resolution of commercial conflicts. ADR can provide a cheaper method of dispute resolution and should alleviate the pressure on the court system, decreasing caseloads. The Bulgarian Industrial Association has taken some initial steps toward establishing its own arbitration court and is being advised by ABA-CEELI in developing its own set of rules. All members of the judiciary interviewed lamented the limited use of arbitration in Bulgaria to date and would eagerly encourage the expansion of ADR possibilities in Bulgaria.

2. Mediation

There are a number of efforts underway to start mediation programs in Bulgaria. The most significant has been started by an NGO called Partners Bulgaria (an affiliate of Partners for Democratic Change). This NGO has developed mediator training programs (training of mediators and training trainers in mediation) and has assisted in several successful mediations (including one involving an international dispute over a franchise for manufacture of one of Bulgaria’s famous beers, Astika). It has also developed a mediation program for the Bulgarian Industrial Association. Partners Bulgaria employs a clinical training method for its training courses which requires parties to participate in mock mediation exercises and evaluate their performance. Also involved in mediation are business groups such as the Bulgarian Association for Building Partnerships.

Possible Measures

The use of ADR, especially commercial arbitration, should be supported through provision of training to, and developing awareness of, businesses, lawyers and judges about the forms, utility and advantages of ADR.

Within the court system, develop a "small claims" court with simplified procedures and limited appellate rights.

Develop civil procedure or court rules to actively involve the court in encouraging resolution of disputes through ADR – such as through court-ordered mediation. Courts need training in how to integrate ADR into their own court management systems;

Institute mediation training in law school, and JTC/training in apprentice year, and consider expanding training programs currently provided by NGOs. Training in mediation techniques could usefully be extended to judges, lawyers and businesses.

E. Inadequate Training of Judicial Personnel

The USAID design team had, as its principal focus, a review of the needs in the area of judicial training and legal education. In particular, the design team looked into three areas: the need for a judicial training school; legal education generally; and the apprenticeship year for judicial candidates. To avoid duplication of effort, the Bank team did not undertake any separate review in this area but has provided comments to USAID on the draft report. Based on the findings of the USAID report the present status of the judicial education process is outlined below.

1. Training for New Judges

a. Law Faculties

The quality of judges can be directly affected by the quality of general legal education. This is particularly true in a country like Bulgaria where one can go straight from university to being a judge after a one year apprenticeship.

The issues faced by law faculties in Bulgaria cut across the entire higher education system. A certain amount of reform has already occurred as a result of the Higher Education Act of 1995 (HEA) which has already brought about changes to the legal curriculum. The curriculum, as described by the USAID team, appears suitable, comprehensive and comparable to curricula in western European law faculties. The Bulgarian education system is a system which faces many of the problems that many western European civil law systems have faced in their recent evolution (i.e. moving away from strictly didactic teaching methods and limiting the number of students admitted to popular faculties such as law). Whilst there has also been an updating of teaching methods mandated by MOE, to introduce more interactive teaching methods and to make practical training a larger part of the syllabus, it is not clear that this has yet achieved any practical results.

The USAID team reported that there was a small number of "habilitated" law professors who, by virtue of their qualifications and experience, have been granted authority by the State Academic Qualifications Council to lecture at a certain level in the law faculty. Every law faculty must have a certain number of these "habilitated" professors. As a result many of them teach at more than one faculty. Consideration should be given to expanding the program to "habilitate" an increased number of professors.

USAID recognized their lack of comparative advantage in assisting in the reform of legal education in a civil law system. To the extent the Government would benefit from assistance in this area, civil law countries in the EU would be the optimal source for such assistance. As part of such assistance, a diagnostic analysis should be carried out current law curriculum, teaching methods, faculty qualification, terms and conditions of faculty employment, quality of law faculty libraries and quality of teaching materials.

In addition, the Council of Ministers is using its power under the HEA to limit the number of law students entering law faculties and other popular courses. It is reported that this power is being used to shake out certain higher education establishments (the number of law faculties has been reduced from 15 to 11). A National Evaluation and Accreditation Agency has been established under the HEA and, by the end of 1998, all educational establishments must apply for accreditation. If an institution fails to be accredited, it will lose state support. In this regard, technical assistance could be provided to MOE in connection with the accreditation of law faculties.

In order to graduate from university, law students take three compulsory State examinations. These examinations are considered to be challenging and a good measure of the student's accomplishments. The exams cover Public Law, Civil Law and Procedure, and Criminal Law and Procedure.

The Government therefore has, to a large extent, recognized problems in the Bulgarian higher education system and is taking initial steps to improve it. The Bank team was also informed that library facilities in law faculties are outdated and lacking in modern resources.

b. Apprenticeship Year

All judicial candidates must serve a one year apprenticeship period before starting their professional life on the bench, as prosecutors or investigators. Law graduates are required to spend one year as interns or residents, during which they should learn practical skills like legal research and writing and the detailed procedural functioning of the courts. Apprentices agree that this year is a waste of time for most. The skills learned during the apprenticeship year are not adequate due to deficiencies in the apprenticeship program, stemming from: (i) too many law school graduates seeking apprenticeships each year, resulting in space and mentor time constraints, (ii) lack of incentives for the judges and other court employees to devote the time and effort to providing the apprentices with useful experience, and (iii) too many compulsory rotations through the court system to receive a meaningful experience in any one "station".

The structure of the apprenticeship year is governed by Ministry of Justice Regulation No. 30 of February 29, 1996 which mandates strict rotations amongst various branches and arms of the court system with some time spent in the district and regional courts, some time served with judges, prosecutors and investigators and some time in the registries maintained at the courts. The compulsory examination that all apprentices must pass at the end of the year before they can become judges is considered inadequate in both rigor and content.

The USAID team makes recommendations for the strengthening of this year of training for the judicial branch. The Bank supports these recommendations.

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Judicial Apprentices – USAID Principal Recommendations

carrying out of a major effort to strengthen the structure and content of the apprenticeship year for judicial candidates taking into account not only the wishes of the judicial candidate but also the needs of the judicial system

design a serious, comprehensive examination to be given to all apprentices at the end of the year

consider a program of grants to one or more NGOs to work, in collaboration with MOJ, with judicial candidates to help design a positive work experience

New judges, prosecutors, and investigating magistrates take office without any further formal training beyond the apprenticeship year. Judges and most others serve in a "junior" capacity for a period of time (for judges, this period extends for the first year), assisting more experienced professionals, so that on-the-job training does occur.

3. Training for Existing Judges

There is no systematic program of continuing education for sitting judges. Such a program is necessary under any system, particularly a system with new concepts and changing laws. Up to now, no money has been budgeted by the SJC for this purpose. While the MOJ is responsible for training of judicial personnel, it doesn't have sufficient funds to do more than an occasional seminar. New judicial branch personnel generally only receive on-the-job training. The lack of continuing education for experienced judicial branch personnel is an equally great problem, because of the flurry of legislation being generated by the legislature, which result in a new and high demand for legal expertise in laws reflecting the transition to a market economy. While basic training was provided to a small extent before 1997, the government has cut these funds due to a lack of money.

This basic lack of training in substantive legal areas is exacerbated by a complete lack of training on moral/ethical standards of conduct. Since judicial branch personnel are not well educated on the applicable rules of law either substantively or ethically, and often have little practical experience, it is a small wonder that corruption is so common.

4. Judicial Training Center

The Bank would, in general terms, endorse the USAID team's recommendations for the establishment of a judicial training center to be established and operated by an NGO, comprising a coalition of members of the BJA, the MOJ and other legal NGOs. It is proposed that this center provide training to existing judges and newly appointed judges. In the design of the proposed JTC, consideration should be given to the target group for training; control and content of the curriculum; and the financial viability of the structures proposed.

Exclusive attention should not only be focused on the judges' training needs, whether in the short or the long term. In this regard, the Bank would endorse the conclusion of the Ministry of Justice regarding the importance of training for prosecutors, investigators, and clerical staff. Constitutionally the prosecutors and the investigators are part of the judicial branch, and planning decisions for the improvement of the judiciary must deal with these branches too. In addition, while much of the training needs would best be met by separate classes, some

substantive training can cost effectively be given to all of the judicial branch components together.

The curriculum of the JTC would have to cover areas of identified weaknesses in judicial performance. These could include the following specific areas: enforcement of judgments; bankruptcy; basic business and accounting practices; mediation techniques, ethical standards of conduct, financial criminal investigative practices; and cross disciplinary research and decision writing. In addition, the ability of the SJC to influence the curriculum of the JTC would have to be considered. Once strengthened, the SJC could, as part of its oversight function, play an active role in assessing the training needs of the judiciary.

Based on the experience in other countries, there are a number of forms such a training center could take (governmental/NGO run; residential/non-residential; permanent/transitory location). The sustainability of financing any of these options should be carefully considered.

5. Suggested Measures

Legal Education

A diagnostic analysis should be carried out by experts in legal education from civil law countries within the EU to evaluate current law faculty curriculum, teaching methods, faculty qualification, terms and conditions of faculty employment, quality of law faculty libraries and quality of teaching materials.

Apprenticeship Year

Adopt USAID recommendations to strengthen and restructure the apprenticeship program for judicial candidates.

Continuing Education

Establish a **Judicial Training Center** to address training needs of both existing and newly appointed judges and other judicial professionals and support personnel. The ultimate design of a JTC should take into account the target group for training; control and content of the curriculum; and the financial viability of the structures proposed.

F. Poor Quality of Legislative Drafting

From the early 90‘s, Bulgaria has had to adapt its legislative framework to the needs of a market economy. This resulted in the rapid enactment of a multitude of new laws and regulations, many on concepts and topics new to the existing system. The resulting legislative frenzy produced many unclear and inconsistent laws which compounded the difficulties facing judges in deciding cases under this new framework.. To address this problem, the process of legislative drafting should be improved to produce clearer and consistent laws, amenable to easier interpretation and application.

1. Current Problems

The quality of legislative drafting is described by government agencies, judges and lawyers alike as inconsistent at best. The current laws and procedures regulating legislative drafting are described in Annex V.

Perceived problems in Legislative Drafting

There is evidence to suggest that there is a tendency first to over-legislate, and also to place detailed implementation issues into the text of a law rather than use subordinate legislation. This results in part from the lack of direct definition as to what should be regulated by primary legislation and what by secondary legislation.

There is no formal procedure for comparing the policy objectives, as initially approved, and the final draft to determine if both are consistent. If additional policy issues come up during the drafting process, the drafters thenmselves are often left on their own to make judgments on policy issues.

Typically much of Bulgarian legislation is drafted using foreign models. The Ministry of Justice considers that using mixed teams of local and foreign experts to be the optimal mode of cooperation where foreign assistance has been found to be necessary.

The Government has no formal right to comment on legislation introduced by members of Parliament, although in practice it is often shared with the Council of Ministers before being formally offered in Parliament.

Those parties who would be involved in implementing a new draft law are frequently not invited to participate in the drafting process, which can lead to implementation difficulties.

No procedures exist for participation by NGOs in the legislative process. It is difficult for interested groups to obtain copies of draft laws without appropriate connections and to participate in the debate process. Public trust could be increased by making the process more transparent.

2. European Union Assistance in the area of Legislative Drafting

The European Union is providing assistance, through the MOJ, in assuring the conformity of new laws with the acquis communautaire. Beyond EU conformity, the EU, through its Phare program has provided some training in legislative drafting to line ministries but continues to find difficulties in the drafting capacity and in management of the drafting process. The EU had attempted to develop a manual of legislative drafting procedures for which EU would have provided financial assistance. The Government instead opted to amend the Law on Normative Acts. A review of this amendment to the law will further determine the nature of the Bank's recommendations in this area.

3. Possible interventions

Based on an analysis of the revised Law on Normative Acts, the Bank and the EU should consider whether the changes envisaged would improve the quality and process of legislative drafting. Following this review and, in coordination with the EU, potential interventions in this area could include the following:

Possible Measures

establishing a clear process for deciding whether and what type of legislative action is necessary to give effect to given a objective,

providing training to law drafters in key ministries and Parliament, including consideration of the budgetary consequences of legislative enforcement,

strengthening the capacity of MOJ to coordinate the process of legislative drafting, provide the conformity checks with respect to Bulgarian and EU legislation and to look at issues of implementation,

strengthening the process of including affected government bodies in work groups,

making the drafting process more transparent, so that there are opportunities for the public to comment on draft legislation and supplementary regulations.

IV. ENFORCEMENT OF CIVIL JUDGMENTS

The efficient and reliable enforcement of contracts and property claims is a fundamental element of a functioning market economy. Similar to most of the other European transition economies, enforcement of judgments in civil cases is widely recognized as being highly ineffective in Bulgaria. This impression is shared both within the judiciary, the MOJ and business community alike with adjectives such as "disastrous" being attributed to the enforcement process. In the opinion of one member of the business community, "the real problems with the courts start when you actually get your judgment".

Bailiffs in the Bulgarian system ("execution judges") are trained as judges and form part of the judiciary. Execution procedures are slow and some measure of change to these procedures is expected in proposed changes to the Civil Procedure Law which may assist in improving the speed of execution of judgements.

Annex VII shows the statistics maintained by the MOJ for execution cases in 1997. This gives some idea of the extent of the problem - **of a total number of 531,169 execution cases pending before the Regional courts in 1997, only 92,096 were enforced**.

A. Current Enforcement Procedures

Once a party has obtained an order for judgment before the Courts, an application to the office of the execution judge is made. The execution judge then serves a summons for voluntary execution giving the losing party seven days to pay the judgement order. At this time, bank accounts of the debtor are frozen, a notice is placed at the entry office for land, and the tax administration office is contacted for information on the location of real property. If taxes are unpaid the IRS also becomes a party to the proceedings at this stage. After the expiry of the seven day period the judge can commence action for involuntary execution and can proceed against the debtor's assets.

One estimate by an execution judge interviewed, put the average time to execute a judgment, which isn't appealed, at six months. The true average execution time was estimated to be much longer, as an order by the execution judge can be appealed before the originating court

and the appeals process through the courts can then be exhausted. If an execution order is not appealed within the appropriate time period, the execution judge can proceed to sell the assets of the debtor by auction. The auction process is public, carried out by the judge, extremely involved and time consuming. The execution judges also complain of a lack of space for carrying out these auctions.

B. Perceived Problems

Many of the problems identified with the enforcement of judgements echo the general problems in the court system outlined in Section III. A above, such as procedural problems related to summonses, working conditions, poor salary, and lack of training for execution judges. Some of the deficiencies in the system include those set out below:

Problems Identified in Civil Enforcement

Problems with serving of summonses - The USAID report identifies problems with respect to serving summonses on defendants and witnesses as key reasons for delays in proceedings – at the enforcement stage delays also result when the execution judge is unable to serve the summons on a debtor. The repeated need for a fresh summons at each stage slows down the process. Reform is needed so that if a debtor gets one notice, a creditor can proceed to judgment.

Lack of computer links between the courts – There are no computer links between courts (including the entry offices for land registration), the police, and tax offices. This makes the task of enforcement of judgments extremely burdensome and slows down the procedure.

Auctions are held by execution judges - The auction is conducted by the execution judge and is exceedingly time consuming. In looking at the judicial branch, the question should be asked whether there is a need for a judge to perform the role of auctioneer. Constraints of available space and resources would also support a move to subcontract this function to private agencies.

Inadequate means - Judges are given inadequate means, e.g. transportation, buildings, protection, to effectively discharge their duties. The need for some sort of assistance for execution judges, whether from MOI police or a suggested new special judicial police, in enforcing judgments was identified.

Lack of training - Execution judges were identified as frequently being the worst educated of the judges –no specific training is currently provided to the execution judges.

Leftover protectionism- The Civil Procedure Code still contains elements of leftover debtor protectionism of the socialist system. This needs to be amended to make the enforcement mechanism more creditor-friendly.

Finding assets - The inability of the courts to locate the assets of the debtor because of the hiding of assets /fraudulent conveyance of assets.

Asset valuations - Execution also requires substantial and complicated asset valuations and sales procedures tied to those estimates. For example, the execution sale price of movables must be at least 100% of the assessed value of the property, which is highly unrealistic for an execution sale. Real property sales must be at 80% of the assessed value.

In some countries, the enforcement function of the courts has, to a greater or lesser extent, been privatized. An interesting and positive development has taken place recently in Georgia. The newly privatized notary service has been used by several private parties in lieu of court executors to enforce monetary claims. Under the law, in non-contested cases (where the debtor does not argue the merits of the case and admits his/her debt in full), a private notary can enforce a claim. In a reported case of a mortgage foreclosure where the debtor did not contest the claim, the entire transaction took place through a notary who received a percentage (two percent) of the claim. With the recent privatization of the notarial function in Bulgaria, this type of solution may be workable in Bulgaria too.

Suggested Measures

The legal basis for the functioning of the execution judges lies in the Civil Procedure Code. Revisions to this code are currently being prepared with a view to submission to Parliament in 1999. The proposed revisions to this law should be reviewed to determine if problems identified in this area have been or will be effectively tackled through this amendment. Other laws may also require some revision in order to speed up enforcement and to prevent fraudulent measures intended to thwart judicial orders (e.g. provisions on fraudulent conveyance). Any changes would go beyond imposing tighter deadlines (as proposed in a current draft revision) which are often overlooked by the courts and the parties and could include developing summary case disposition mechanisms or fostering ADR options.

Undertake a study on the privatization of the bailiff function, including the use of private auctioneers. Execution sales could be conducted by a trustee / auctioneer, who is not a salaried court employee, but rather, a private person paid a commission based on the sale price obtained. This would place the execution sale process in the hands of a professional and provide substantial incentive to obtain a high price for the property.

To the extent the bailiff function is not privatized, or the enforcement of certain judgments is left to the execution judges, a training plan should be devised to establish a professional cadre of court executors (whether judges or not) and provide them sufficient resources, including means of transportation, information services, and protection, to discharge their duties efficiently.

V. ACCESS TO JUSTICE AND PUBLIC PERCEPTION OF THE JUDICIARY

A. Access to Justice

It appears that elements of the Bulgarian public are aware of their legal rights and that the court system is used by some in order to settle disputes. The public use of the court system has undoubtedly been assisted by a fairly active press which assists in increasing awareness of any legislative changes by publishing its understanding of the provisions and intent of laws and legislation.

The level of court fees does not appear to deter the public from using the courts. In civil cases where a monetary amount is specified, the court fee is 4% of the amount in dispute and must

be paid up front. In all cases, court fees are set by the Law on Local Taxes and Fees under which a common tariff is published intermittently. Tariffs are approved by a decree of the Council of Ministers (usually instigated by MOJ which consults SJC and MOF). It has been a stated priority of the Government to make fees accessible to the public. Court fees are collected by the courts and paid to the central government budget.

In civil cases, individuals appear to be using the court system with or without legal representation. A regional judge in a provincial town estimated that only in 20% to 50% of the civil cases before the court were the parties represented by lawyers. At the district level, this percentage was stated to be closer to 90%. The level of legal fees varies greatly in Bulgaria, but remains, in large measure, accessible.

The state provides a legal aid system under the Criminal Procedure Code for individuals charged with certain, more serious, crimes. This is provisioned in, and funded out of, the budget of each court. A list of local lawyers is maintained by the courts and their fees are then paid directly by the court. The Open Society has recently provided assistance in printing wallet sized cards summarizing rights for defendants upon arrest and has distributed these at police stations as well as publishing more specific brochures on legal rights of defendants for police officers.

No legal aid is provided in civil cases. The Civil Procedure Code does provide that the successful party in any case can be awarded an amount for costs incurred and nothing prohibits lawyers from accepting cases on a contingency basis. This happens little in practice. The development of small claims courts (without legal representation) could assist in alleviating the additional burden of unrepresented parties on the court system.

The European Union has identified the strengthening of the legal aid system as an area for potential further EU involvement.

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Possible Interventions

The level of use of Bulgarian courts in civil matters (excluding family law cases) should be confirmed by conducting an analysis of the current civil case load of first instance courts, comparing it to Bulgarian statistics for early 90s/late 80s and to analogous figures of a Western civil law country with comparative population. The study should also compare the level of court fees relative to average income to insure their appropriateness.

A study be undertaken on the number of cases which are tried with legal representation and the effect of legal representation on the outcome of the case in order to ascertain if the lack of legal aid in civil and some criminal cases prejudices the right to a fair trial before the courts.

A study be undertaken on the comparative level and accessibility of current legal fees charged by lawyers in private practice.

In order to confirm the anecdotal evidence on the level of public awareness of legal rights, survey work be conducted, and if awareness needs to be increased, specific public awareness campaigns could be conducted with a view to informing the public of their legal rights.

B. Public Perception of the Judiciary; Issues of Corruption

Very little respect for the law and legal institutions exists in Bulgaria, and even less respect is accorded the individual judges, prosecutors, investigators, and police. As the NGO Coalition 2000 stated in its Anti-Corruption Action Plan, "[the judicial system] receives a low measure of trust both from the public at large and from other state institutions. It is popularly believed to be slow, inefficient, and corrupt." If the private sector does not trust the state to enforce rules governing business activities, investment will suffer.

To address all of the causes of poor public perception, expected legislative reforms must be passed, and more importantly, implemented fairly and transparently. The Government program currently includes civil service reforms, public procurement reforms, transparency and access to non-sensitive government information, protection for whistle blowers, and extensive substantive reforms in the civil and criminal law and procedures. These reforms should establish and standardize the manner in which cases are handled, so that the outcome of any case would depend on the applicable substantive law, as opposed to an untrained or corrupt magistrate's whims.

However, one of the other major complaints by the public is that the judicial system is too slow, particularly in criminal cases. This cannot just be addressed by reforms of the civil and criminal procedure codes, although that will be an important step. As recommended above, the judicial branch must also computerize and systematize record keeping, case management, and statistical data, in order to be able to pinpoint problems resulting in delays. It must put in place an administrative control structure through which these issues are regularly addressed. Proper training for all components of the justice system will also result in fewer mistakes and more streamlined application of existing procedures. Higher pay would attract and retain a better class of judicial employee.

Disciplinary issues and criminal immunity problems must be addressed in order to reach the issue at the heart of the public perception problems. It is imperative that the SJC establish a series of standards of conduct for judicial branch employees, and establish a formal disciplinary system to enforce these standards regularly, equally, and fairly.

Perception problems with the judiciary cannot be addressed without also focusing on issues of criminal enforcement. One of the biggest perception problems in Bulgaria is the belief that high officials can get away with just about any criminal act, and particularly with corruption. Nearly any Bulgarian can recite examples of this truism, involving people with whom they are acquainted. This entrenched belief is perhaps strongest regarding the police and the members of the judiciary.

There are two issues which must be addressed in order to deal with this problem. First, the judicial branch must establish an internal affairs mechanism, so that routine criminal corruption investigations are carried out. All such cases would have to go directly to the Supreme Judicial Council, due to the second issue. Currently, the Constitution provides criminal immunity to all judicial branch professionals, and the only way to have this immunity lifted is to make a request to the Supreme Judicial Council. No plans exist to amend the Constitution, or the related implementing laws which additionally provide criminal immunity to these employees. Since requests to relieve an individual of immunity are almost never made to the SJC, this criminal immunity is virtually absolute, and the public perception of extensive and free corruption is well-founded.

Under existing circumstances, the only possible way to deal with this state of affairs is to create a strong and public factual basis for the lifting of immunity. This will only happen if internal affairs investigations are conducted and the criminal conduct directly exposed to the

SJC, and then widely exposed to the media. Public pressure would undoubtedly eventually grow for the removal of immunity and in favor of the criminal prosecution of a corrupt official, if a proper and complete factual basis is provided. We note, however, that the Bulgarian view of this second option is quite cynical.

The Coalition 2000 anti-corruption plan recommends the creation of an independent body which would investigate government corruption; this suggestion has been strongly support by foreign advisors, such as the US Treasury law enforcement team. An independent inspector general-type system would also work in this context, if it had the access to internal court workings in the manner of an internal affairs office within the judicial branch. The style and location of this function is a decision for the government of Bulgaria; however it decides to bring law enforcement and criminal law to apply to all citizens, including judicial branch employees, this action will directly address the most serious problem of the public perception of the current system of justice.

The National Assembly is currently considering legislation which would require public financial disclosure by high-level government officials. This requirement of financial disclosure is part of the national strategy to combat crime and corruption. The Bank would recommend that the draft law be amended to require disclosure by all professional members of the judicial branch. The review of such disclosure forms should be made on an annual basis by the requested disciplinary arm of the SJC. Any discrepancies and any potential conflicts of interest should be explained by the individual judicial branch member. If the form discloses evidence of criminal conduct, the matter would then be referred to the internal affairs criminal investigative structure. The refusal to cooperate with this requirement should be grounds for sanction under the disciplinary arm of the SJC; a final refusal to provide information should be grounds for dismissal. The law on financial disclosure would have to be carefully crafted to ensure that it coordinates with the applicable Constitutional requirements. Of course, if it is determined that criminal conduct has occurred, then the matter would be referred to the SJC with a request for the lifting of criminal immunity.

VI. SUMMARY OF RECOMMENDATIONS

The present Government has taken significant steps to start the reform of its public administration, including the judicial branch. In the area of legal and judicial reform, important changes have been or will soon be implemented. A summary of the initiatives undertaken to date by the Government in this area, and a description of reforms in the pipeline, are set out in Annex V to this report.

As illustrated in this report, much still remains to be done. The judicial branch has no centralized management staff for budgetary and administrative planning, no effective disciplinary organization, no facilities or other arrangements for training new personnel or for continuing education of existing personnel, no centralized or uniform case management criteria or system, very poor enforcement of judgements, poor physical court facilities in the busiest courts, and very poor administrative and clerical assistance for judicial professionals.

There is clear commitment on the part of the Government to fight corruption and, as part of this effort, to tackle some related issues in the functioning of the judicial system. Many of the reforms described in Annex V are extremely necessary and timely. In contrast to the Government's planned reform of its public administration, the measures taken to date in the area of judicial reform do not appear to form part of an overarching, integrated judicial reform strategy but rather, represent a sequence of reactive measures designed in large part to combat corruption and overcome perceived inefficiencies in the system.

In order to bring about systemic change in the judicial system as a whole, a strategic vision for the judicial branch needs to be developed and a holistic reform program designed and implemented. Assuming any such national program to be sound, its adoption would most certainly act as a catalyst in attracting foreign financing for judicial reform activities.

The most critical reforms and measures suggested in the body of this report are summarized below. All the suggestions made by the Bank in this report are intended to assist the Government in forming a clear picture of the breadth of the reforms necessary in designing a program to bring about systemic change in the judicial system. On the basis of these recommendations, the Government should continue its efforts to develop the direction and design of its own reform program and take the first, and most fundamental step toward this goal, the preparation of a phased reform program for the judicial system. An institutional body should be charged with this task, a body or working group representing a cross section of interests in the judicial system including the following: judicial branch professionals, SJC, MOJ, legal NGOs, legal academics, MOI, Bulgarian Bar Association, MOE. This working group would then also form a counterpart group to coordinate the activities of various donors and international financial institutions in the area of legal and judicial reform.

A Proposed Reform Agenda

Strengthening the SJC

An important weakness identified in this report lies in the lack of institutional support for the SJC in fulfilling its constitutional mandate to oversee the judicial branch. As recommended in this report, strengthening the SJC represents an essential prerequisite for any reform program in order to allow it properly to perform its constitutional role. Support is necessary to build its budgetary, supervisory and planning capacity, its methodology in personnel matters and its capacity to assess the physical needs of the courts. To implement the Government's anti-corruption strategy, an internal affairs function within SJC should be developed to handle internal corruption investigations on an on-going basis for all parts of the judiciary.

Fundamental Public Administration Issues

Other broader issues, critical to a judicial reform strategy, should be looked at by GOB. These include: the extent of the immunities given to the judiciary; determination of a satisfactory pay scale for judges; and achieving greater coordination between the functions and resources of the SJC and the MOJ and devising means so that these two bodies could work together to assist each in performing their respective roles.

Tackling the Inefficiencies in the Court System

Both this report and the USAID report make a number of recommendations for the improvement of caseload management in the courts**.** The GOB is urged to build upon existing efforts to create the Uniform Information System, initially for the criminal caseload, and later for the civil caseload. A computerized case-tracking, file management, and docketing system should be developed for the courts to enable them to capture complete information on length of cases and manner of disposition at each stage of a case.

Before seeking donor assistance, an internal review of each part of the judicial branch should be undertaken to determine the computer assets owned in the courts and to evaluate the software systems available. This review should be combined with an analysis of any physical space available and modifications required to the court buildings in order to provide for increased computerization. The clerical needs of the courts also need to be examined in the light of the USAID report and the advent of increased computerization.

Functions of, and Alternatives to, the Court System

Other components of an overall judicial strengthening program should also include measures such as the development of alternative dispute resolution mechanisms and the establishment of "small claims" courts or procedures. It will also be necessary to take a long, hard look at the functions performed by the courts, such as registration of land and enterprises, and to determine if the courts are the proper place for these functions.

Improving the Quality of Legal Education and Legislative Drafting

Within the context of the Government's reform program in the area of higher education, the education and training needs of Bulgarian lawyers and judges need to be reassessed. Experts, preferably from a civil law system within the EU, may be able to provide assistance in this area. A similar assessment should also be carried out, in consultation with the EU, of the process and quality of legislative drafting.

Focus on Enforcement

Greater emphasis should be placed on developing measures to improve the enforcement of judgments. Any other measures to strengthen the judiciary would come to nothing if the present weaknesses in enforcement remained an ongoing bottleneck in the administration of justice.

Access to Justice

In view of the EU's accession requirements, further analysis could usefully be undertaken of any real or perceived obstacles to easy access to justice for all citizens.

Anti-Corruption Strategy

A functioning and independent judiciary is central to any anti-corruption strategy. The courts cannot be effective in controlling corruption unless corruption is eradicated from within the ranks of the judiciary. The proposals made in this report for strengthening the SJC, establishing ethical norms, formalized disciplinary channels and an oversight function for the judiciary would constitute the first steps in attempting to rid the judiciary of internal corruption and equip it to be an effective tool in the Government's overall anti-corruption strategy. The Government is also urged to look at the issues raised in this report on the extent of the criminal immunity granted to members of the judiciary.

Annex I

Structure of the Courts

The court system of Bulgaria is based on a tradition dating back to the end of Ottoman rule over Bulgaria in 1878. At this time a court system was introduced that was based on Western

European experience and, with some amendments, continued to exist until the end of the Second World War. The existing system then was adapted to the Soviet model.

Under the 1991 constitution, as subsequently implemented by statute, Bulgaria has a three-tiered court system, consisting of first instance, intermediate appellate, and supreme courts. The current court system comprises not only the courts as such, but also prosecution and investigation offices located at each court

1. The Supreme Judicial Council

The organs of the court system are under the supervision of the Supreme Judicial Council (SJC), a body of 25 members, one half of which are elected by Parliament and the other half by organs of the judicial power (5 by the judges, 3 by the prosecutors, and 3 by the investigators). The presidents of the Supreme Court of Cassation and the Supreme Administrative Court along with the Prosecutor General are members of the Supreme Judicial Council ex officio. The Supreme Judicial Council is chaired by the Minister of Justice, who however, has no voting-right.

2. General Courts

There are two categories of courts: general and specialized courts. General courts are those that hear cases of any origin (private, commercial, criminal, administrative).

(a) Regional Courts

Regional courts are trial courts of general jurisdiction for all cases in Bulgaria except for those assigned by law to another court. By law a regional court must be established in any community or region with more than 10,000 inhabitants. Presently there are 116 regional courts in the country. After three years of service regional court judges are granted life tenure, subject to removal by the SJC for statutorily-defined reasons. They must have at least two years of legal or judicial experience. Civil cases are heard by one judge while in divorce, criminal, and labor cases two judicial assessors participate with the judge in hearing the case.

Regional courts are managed by a president appointed by the SJC. The president, in addition to maintaining the caseload, is responsible for the court's organization and administrative affairs and makes case assignments. Each regional court has its own executing judge (bailiff's office) prosecutor's office and investigation services.

Attached to the Regional Courts is the land registry.

(b) District Courts

District courts hear appeals from regional court decisions. They also have original jurisdiction in civil cases where the award sought exceeds five million leva and in criminal matters where the violations charged carry a sentence of more than 15 years. Currently, Bulgaria has twenty eight district courts corresponding to the 28 administrative regions into which the country used to be divided. In addition, there is Sofia City Court which to all intents and purposes functions as a district court.

District courts may be divided into departments depending on the caseload and the number of judges assigned to the court (e.g. civil, criminal, commercial, administrative and family law). Most cases are heard by a panel of three judges, one of whom may be a junior judge. A junior judge is usually a new judge who has graduated from law school and successfully completed his apprenticeship year. Junior judges are appointed to serve two year terms, but are eligible

to become regional court judges after one year of service. Panels are chaired by the most senior judge. Capital cases, and some other complex cases, may be tried by a panel of three judges and four assessors.

District court judges other than junior judges are appointed for life by the SJC, with limited removal ability, and must have at least five years of legal or judicial experience. The SJC appoints presidents of the district courts who have responsibilities similar to regional court presidents. They also assign judges to judicial departments. As with regional courts, each district court has a related prosecutor's office and investigation service.

Attached to the District Courts is the company register. The District Court of Sofia (called "City Court") has along with all the tasks attributed to a District Court the following functions:

- Registration of all political parties in Bulgaria;

- Accreditation of foreign judgements to be executed in Bulgaria;

- Appeal against arbitration decisions;

- Issuing of execution orders for arbitration decisions.

(c) Courts of Appeal

This level of court became operational early in 1998. The courts of appeal hear appeals, in three judge panels, from district courts within their jurisdictional territory. There are five courts of appeal in the country and one military court of appeal. The non-military courts are located in Sofia, Plovdiv, Burgas, Varna and Veliko Tornovo, the Military Court of Appeal is located in Sofia. As a rule they are second instance courts and review appeals on first instance decisions of the District Courts on civil, commercial and criminal issues. As a second instance court, the Court of Appeal hears the case de novo.

As a first instance court it hears cases on disciplinary measures against junior judges and junior prosecutors. There are three sections within the Court of Appeal: civil, commercial and criminal. The panels are staffed by three judges unless the law provides otherwise.

Judges for the courts of appeal have been appointed by the SJC, and must have at least ten years of legal/judicial experience. Appointments are for life, subject to removal for statutorily-defined reasons. The courts are divided into civil, commercial and criminal departments, and are presided over by a court president appointed by the SJC. Each court has its own appellate prosecutor's office.

(d) The Supreme Court of Cassation

The Supreme Court of Cassation, located in Sofia, is the highest instance of the general court system. The 1991 Constitution reinstated Bulgaria's old Supreme Court with two new courts: the Supreme Court of Cassation and the Supreme Administrative Court. The Cassation Court is the highest appellate court for civil and criminal cases and under the Constitution "shall exercise supreme judicial oversight as to the precise and equal application of the law by all courts." Its decisions are binding on all judicial and executive authorities.

The Cassation Court is organized into civil, criminal and military departments. Together, all judges of the Cassation court form the plenum, which determines the membership of the departments, and sits on disciplinary actions. In hearing appeals of individual cases the court sits on panels of three judges.

The SJC appoints Cassation Court judges for life, subject to removal for statutorily-defined reasons, and they must have at least 14 years of experience in the law or judiciary (Under pending legislation this may be reduced to 12 years.). A court president is also appointed by the SJC and serves a non-renewable seven year term. The President of Bulgaria may veto the SJC's choice for president once, but if the name is resubmitted (following a simple majority vote) he cannot veto it. The court president presides over the plenum and performs administrative functions similar to those of lower court presidents.

Disciplinary cases against judges, prosecutors and investigators, are heard by it as a court of first instance. The Supreme Court of Cassation is also to hear appeals against decisions of the disciplinary court of advocates, if the advocate has been indefinitely suspended from practicing law.

3. Specialized Courts

Specialized Courts in Bulgaria are the Supreme Administrative Court and the Military Courts.

(a) The Supreme Administrative Court

The Supreme Administrative Court is located in Sofia. The Supreme Administrative Court is the appellate court of highest instance for cases involving the legality of administrative acts and regulations, and hears appeals of that nature from the lower courts. In addition, this court has original and exclusive jurisdiction over challenges to the legality of acts of the Council of Ministers and other ministers.

The court sits in three-judge panels when it hears administrative challenges from individual litigants complaining of government actions that directly affect them. In these cases the court hears appeals as a cassation instance, from either the regional or district courts following first-instance decisions. In cases involving challenges to normative acts, the court has original and exclusive jurisdiction, and sits in five-judge panels. It sits in general assembly (*en banc*) when passing interpretative rulings, when resolving incorrect or contradictory judicial practice, and when referral to the Constitutional Court is at issue.

Judges for this court are appointed under the same conditions as Cassation Court judges: they are appointed for life and are subject to removal only for statutorily-defined reasons. The same holds true for the president of this court who serves a non-renewable seven-year term.

(b) The Military Courts

The Military Courts are attached to the general courts. However, the first instance of the Military Courts is not the Regional, but the District Court. Rulings of the Military District Court may be appealed to the Military Court of Appeal, and the decision of the latter are subject to appeal before the Military Section of the Supreme Court of Cassation. The Military Courts are mainly designed to try crimes committed by military staff or by civilians that are hired by the armed forces. A minor part of the jurisdiction of the Military Courts relates to civil cases brought in connection with the armed forces. There are rumors that the military courts will be abolished in the near future.

(c) The Constitutional Court

The Constitutional Court was established in 1991 and is located in Sofia. This court does not form part of the court system and it's budget is separate from the budget of the judiciary (not received through the SJC). Cases may only be brought before the Constitutional Court by:

- 1/5 of the members of Parliament (currently 48)

- The President of the Republic

- The Council of Ministers

- The Supreme Court of Cassation

- The Supreme Administrative Court

It sits in one panel of 12 judges. Four are elected by the Parliament, four appointed by the President, and four elected by the General Assembly of the Supreme Court of Cassation and by the General Assembly of the Supreme Court of Cassation. The judges are appointed for a term of nine years.

4. Prosecutors and Investigators

In Bulgaria, the prosecutorial and magistrate/investigative functions are constitutionally placed in the Judicial Branch. The placement of the prosecutorial function there is not historical; it was a response to the misuse of that power for political reasons during the Soviet regime. The Constitution makes very clear that the judicial power is to be independent of the other branches of government, and all members of this branch enjoy special civil and criminal immunities and tenures.

The structure of the prosecutor's offices is mandated to parallel that of the court systems. The Chief Prosecutor is charged to enforce the criminal law by bringing criminal charges, by overseeing enforcement of punishments, by moving to rescind all illegal acts of the government, and to take part in civil and administrative suits where legally appropriate. In coordination with the structure of the court system, the Chief Prosecutor is headquartered in Sofia, and is responsible for the various regional prosecutor's offices throughout the country. The new Judicial Powers Act is expected to change the authority of the Chief Prosecutor by dividing it. This change is in response to the widespread feeling by both the government and the public that the prosecutor's offices have not always acted to carry out their legal responsibilities, and that they have sometimes been the source of extreme delays and corruption.

The investigative function will also be affected by the Judicial Powers Act. Until now, it has been known as the National Investigative Service (NIS). The NIS has had the constitutional responsibility to perform all preliminary investigations in criminal cases. The preliminary investigation consists of both additional field investigation and the formalization of evidence for later presentation in court. However, again due to concerns about long delays and allegations of corruption, the NIS will now change to the Federal Investigation Bureau, which will concentrate on more serious national crime. The preliminary investigative function in lesser criminal cases will be performed by the police in the Ministry of the Interior.

Annex II

Registration Functions

1. Land Registration

Under the current system the registers maintained at the courts rovide official information on immovable property. At each Regional Court (112 in total) there is a land registration agency. Until recently land registration was part of the notary agency at the Regional Courts. As notaries have been private since September 1998, the newly private notaries no longer belong to the court system. Registration of rights over immovable property that used to be one of the tasks of the former notaries public, is now performed by the land registration agencies at the Regional Courts. Private notaries now assist their clients in the preparation, drafting and recording of transactions involving immovable property which the notaries then present to the registration agencies in the courts for registration.

The land register is arranged alphabetically according to the name of the owner of a plot of land (the "personal system" rather than the parcel-based system). In order to identify the owner of a certain piece of land, there is no other way than going through all the personal files to find the plot of land. This makes information very clumsy and uncertain. This deficiency of the current system was one of the major reasons behind a complete reform of the land registration system that is now underway and will start with a new land registration law to be presented to Parliament next year. One of the key elements of this law will be the transition to the so-called "parcel based system". Arrangement of the register will then be made according to the registered plot of land. Title searches will then be much easier and certain for the purchaser of a right on immovable property.

The current registration system is maintained on paper. There is, however, a computerized information system called NOTIS that follows the traditional "personal system", but enables the user to identify easily the owner of a certain piece of land. This system has been worked out under the sponsorship of the PHARE program since 1995. It was installed first at the Regional Court of the city of Pazardjik in 1996 and is now available at 7 of the 112 Regional Courts of Bulgaria. Further extension up to 22 Regional Courts is projected.

After transition to the "parcel based system" the NOTIS program will be changed into a new program to be called TIRES. The transition to TIRES is said to be easy from a technical point of view.

Private notaries still are not using the NOTIS system, since a network between the registration agencies and private notaries has not yet been created. As this network is deemed to be highly desirable, private firms will be engaged by PHARE to work on it from the end of 1998 on. The creation of computer links between registration agencies and private notaries will not be a difficult technical problem, as long as the network will operate on a local basis, since the connection will be made by telephone links. Local telephone connections in Bulgaria are fairly good, while long distance telephone communication, needed for a nation-wide information network, still is in in bad shape. The fees to be incurred by private notaries for local networks would be reasonable, whereas a national information system would be much more expensive.

The transition to the private notaries system has caused a significant relief for the Regional Courts. As an example, the staff of the land registration agency al the Regional Court of Sofia has been reduced from 20 to 10 after privatization of the notaries. This is due to the fact that an important part of the activities carried out und the former system at the notaries public section of the Regional Courts, e.g. documentary proof, is now being done by the private notaries. On the other hand, the fees to be paid by citizens for transactions of immovable property, due to a restrictive fee-policy of the Government, are less than they were under the former system. The fees charged by the private notaries are fixed by law and are quite moderate, maybe even too moderate to make the profession as a private notary attractive.

Privatization of notaries has another side-effect that is worth mentioning: All the former notaries public have left the registration agencies under the new law, most of them have become private notaries. The Ministry of Justice was forced to recruit a completely new staff at the land registration agencies. As a consequence, the personnel of these agencies is not sufficiently trained. Training should be a high priority in order to ensure a functioning land registration system.

2. Register of Collateral

In November 1996 a Law on Collateral was passed by Parliament creating a Central Register of Collateral. This register is under the control of the Ministry of Justice and is located in Sofia. The office is staffed by about 15 people. Claims, movables, shares, bonds etc. cannot be given as security unless physical possession is given to the creditor or the security interest is registered in the Central Register of Collateral. The registration system is fully computerized. Since registration fees are moderate and the procedures relatively simple, the system has become popular in a short time and can support itself out of the fees levied.

3. Company Register

Company registers are established at all of the 28 District Courts. The composition of registration staff in each court differs according to its work load. For example, the City Court of Sofia has 12 register-judges and 15 office staff, while the District Court of Sofia, competent for the district around Sofia excluding the city area, has only 3 registration-judges with 4 office staff. Most of the registration-judges are engaged in other activities, e.g. bankruptcy procedures, but in general, more than one half of their working time is devoted to registration issues.

The register is kept on paper, but there is a computer system called DELPHI that provides the same information as the official register on paper and is updated to the latest status of registration. There are efforts underway to create a centralized electronic company register for the whole country, which is needed for easy access to data mainly on bankruptcy of companies, but it is still not operative.

The procedure of registration takes about one week if the correct application documentation is submitted to the register. In big cities, however, the procedure may take significantly longer, due to the work load of the courts. Recently the increase of the common stock capital required for companies has caused delays.

Registration fees are considered to be reasonable. Even for large companies, they do not exceed $100.

Annex III

Legislative Drafting

A. Current procedures

Under Section 87 of the Constitution of Bulgaria, the right of legislative initiative belongs to:

- each member of Parliament; and

- the Council of Ministers.

The Law on Normative Acts was enacted in 1973 and has not been explicitly amended since. Much of this law is now considered void as many provisions contravene the provisions of the 1991 Constitution. A draft amendment to the Law on Normative Acts is under preparation and, at the time of writing, about to be released for comment. The stated purpose of the amendment will try to clarify the procedures for legislative drafting and introduce mandatory conformity checks. Also regulating this area are the Rules on the Organization and Structure of the National Assembly (the National Assembly Rules).

The drafting process for laws and subordinate legislation is defined in the Constitution, the National Assembly Rules and the Law on Normative Acts. Bills submitted by members of Parliament are drafted either by the respective member or by outside experts. All other instruments are drafted by Government officials, usually from sectoral ministries or, if the COM establishes an interagency group, by working groups established for the purpose.

If the Council of Ministers initiates a law, the draft law is usually prepared in the relevant line ministry. All the draft laws written by ministries are (in theory) submitted to the Ministry of Justice for review. The Legislative Council of the Ministry of Justice (a permanent body of about 21 lawyers) checks whether the draft law complies with Bulgarian and EU legislation, essentially a conformity review, and points out inconsistencies and other deficiencies in the draft. Due to resource constraints, the MOJ does not have the staff to perform the EU conformity checks. The draft is usually submitted for comment to related ministries, state agencies and labor unions. After having taken into consideration these comments, the draft is signed by the Minister that had initiated it and submitted to the Council of Ministers for approval. The legal department of the Council of Ministers then reviews the draft and adds

recommendations and comments. After approval by the Council of Ministers the draft is submitted to the Parliament. There it is reviewed by specialized committees before it is submitted to the plenary session, which votes on the draft at first and second readings.

Under the current procedures, draft laws written by members of Parliament can be submitted to the Parliament without being reviewed by any other body. In practice, however, members of Parliament often apply to the Ministry of Justice or other ministries for comments on their drafts. One of the weak points in the system is that the Government has no formal right to comment on a draft initiated by a member of Parliament. The conformity checks conducted by the Ministry of Justice do not occur, with the Parliament relying on its own Legislative Council or staff lawyers. It is anticipated that the revised Law on Normative Acts will subject all Bills to an MOJ conformity check but again, MOJ must be supplied with adequate resources in order to perform this role..

After approval by the Parliament, the President of the Republic signs the law or puts a veto on it. If the veto of the President is overruled by the Parliament in a second voting, the President no longer has a right of veto and has to sign the law. The law becomes effective after publication in the State Gazette.

Annex IV

Court Administration

Extract from USAID Report

1. Case Delays

There are many reasons for delays in the adjudication of cases and many changes that could be pursued which would shorten the time for case disposition. The team does not profess to have identified all of these areas. It is reporting some of the most common obstacles to the more rapid disposition of cases and areas brought to its attention which could be explored and addressed. ABA/CEELI has also been interested in the area of civil procedural code reform and has many ideas on this subject. Attempts to effect change in most of these areas, however, would require legislative changes. Some illustrative reasons for delay or areas in which changes would shorten case disposition time include:

a. Administrative and clerical burdens of all judges

All judges spend substantial time on administrative duties thereby depriving them of time that could be devoted to their cases. One judge estimated that two of five working days are spent on administrative and clerical functions, examples of which include:

(1) Certification of all copies of judicial documents

(2) Signing and verifying certificates of good conduct

(These certificates are issued after searches are made of court conviction records. They are required for many reasons such as getting licenses, for possible employment, etc.)

(3) Verifying/signing certificates of actual standing

(These certificates provide general data for businesses such as the name of the general manager, real estate holdings, amount of capital, shareholders, etc. for interested parties.)

(4) Issuing execution titles

(Judges who have issued case decisions issue orders to execution judges for enforcement of such decisions. These execution titles duplicate the contents of the decision.)

(5) Verifying summonses

(Undeliverable summonses are returned to the judge to write a resolution to notify parties that a new address for the person summoned is needed.)

(6) Certifying and signing summaries of proceedings (protocol) prepared by secretaries

(7) Procedurally reviewing claims for appeal

Since the judges do not have secretaries, they also type their own decisions (most on manual typewriters), answer their own phones, and receive their own visitors. The enormous amount of time spent in performing these administrative and clerical responsibilities takes valuable time from their true function to hear and decide cases and contributes to delays in the adjudication of cases. It also reinforces the relatively low esteem in which judges are held by the public. Attempts to relieve judges of the duties enumerated in (1) - (7) above would most likely require changes to Regulation #28 of the Ministry of Justice and, quite possibly, the Procedural Codes and the Commercial Act.

b. Administrative Burdens of Chairmen

Chairmen (who are comparable to Chief Judges in the US) spend considerable amounts of time on administrative functions. One Chairmen, who jokingly mentioned that he even hires the cleaning ladies and arranges for snow removal at the court, estimated that 1/3 of his time was spent on administrative functions of this kind, some examples of which include:

Personnel functions

Building maintenance, repair, and renovations

Ordering supplies

Statistical report preparation

Budget preparation

Assignment of cases

These responsibilities take valuable time from the Chairmen who are often the most senior judges in the court - time which could otherwise be devoted to hearing and deciding cases. Any efforts to relieve Chairmen of these functions would most likely necessitate a change in the Administrative Regulations of the MOJ. It may also necessitate change in the Judicial Powers Act.

c. Lack of legal research assistance/legal information data software

Many judges do not have assistance in terms of legal research (apprentices) or sufficient legal resources to aid them in their decision-making. While they are provided with the monthly Bulletin from the MOJ which contains decisions considered to have established precedent,

laws are changing rapidly and it is difficult to keep up with them. Some judges who have computers have purchased legal information data software which contains such information as updated legislation, normative acts (government decisions and regulations/subsidiary legislation), Supreme Court decisions which represent precedent, and digest/review of important court decisions below the Supreme Court level. Many judges, however, do not have computers or legal information data software.

d. Poor performance by court staff

Court staff are responsible for delays due to the fact that cases and papers are sometimes lost or misplaced, notices and other papers are not sent out in a timely fashion, and summonses are improperly served. In addition, several judges mentioned that they receive frequent complaints dealing with the behavior of the staff.

In general, there are no qualification standards for the selection of court staff. They receive no formal training programs either for orientation or continuing education. Therefore, each time a new employee is hired, the court has to provide fairly extensive on-the-job training. There are no procedural manuals to which to refer if there are questions regarding procedures.

The Civil Service Law which will professionalize all civil servants (including court staff) has passed first reading and is expected to pass second reading by the end of the year, with implementation expected in 1999. Training facilitates such professionalism and improves the performance of the staff.

e. Lack of training of judges

Judges are faced with cases involving areas in which they have never been concerned such as commercial and business law, patent and trademark law, environmental law, commerce and trade law, bankruptcy law, real and intellectual property law, and human and civil rights law. In addition, they are confronted with rapidly-changing legislation. An extreme example involves the law on ownership and use of agricultural land which has been changed 17 times in the last six and one-half years. Decisions in cases are delayed because judges are uncertain about the subject area to which it pertains. Training is needed in such areas. The Judicial Training section of the report deals with these training needs in depth.

f. Lack of work ethic among judges

Judges have 14 days to write their opinions in criminal cases and 30 days to write their decisions/opinions in civil cases. However, these time frames are often not observed. In fact, disciplinary action was recently taken against a judge who had not written a decision in two years.

Currently, District Court Chairmen are monitoring the performance of all judges in his region through periodic reports submitted to him, ledger books containing case progress kept at the regional and district courts, personal contacts, and inspections of regional courts. However, their judgments regarding a particular judge's performance is subjective. No systematic criteria is used. Chairmen are reluctant to report judges to the Supreme Judicial Council (which is responsible for monitoring judicial performance and taking disciplinary measures as appropriate) and use performance only in deciding who should be promoted. The Inspectorate of the Ministry of Justice performs evaluations of the administrative functions of the judges; however, it has a large number of vacancies and last year performed evaluations of only five district courts and two regional courts.

g. Inability to quickly access information in criminal and civil cases

Criminal judges mention this as the biggest cause of delays in criminal cases. Defendants often do not appear at hearings. In order to find the defendant, the court must send inquiries by mail to the Director of Internal Affairs to determine the registered address, to the Passport and VISA office to determine if the person has left the country, and to the Ministry of Justice to determine if the person is in prison. This process is slow. In fact, the team observed a hearing in which a case had been delayed for many years for several reasons, one of which was because the defendant could not be found because he was incarcerated. The retrieval of information, however, could be instantaneous through an integrated computer system which links all of these governmental entities. Similarly, the system would be useful in determining the registered addresses of witnesses and other needed information from other sources included in the integrated system.

The GOB is working to establish such a system for criminal cases. The Center for Information and Technology for Crime Prevention has been working since July 1998 to develop software programs which would provide full information and comprehensive monitoring of the movement of each individual case, from the point of registration by the Ministry of Interior, through the investigation service, prosecutor's office and court, to serving the punishment by the perpetrator, and his following resocialization.

Once the criminal software system is developed, the Center intends to work on software for civil cases. An integrated system in which judges can quickly access information from governmental records (such as land records, firm and vehicle registrations, etc.) which is needed in a case will shorten the time required to dispose of cases.

h. Complicated summonsing process

Reportedly, this is the cause of most of the delays in case disposition. If a defendant cannot be found in order to serve a summons, it is the responsibility of the plaintiff to try to locate him. This involves applying to the Director of Internal Affairs for the registered address of the defendant, providing the court with a number of different possible addresses, including a work address, and the issuance of many summonses to the same person at various addresses. If a person refuses to accept a summons, a witnessed statement must be provided to the court by the summons clerk. If the person cannot be ultimately found, he is summoned through the State Gazette 30 days before the hearing (if in Bulgaria) or 90 days (if thought out of Bulgaria). There are many instances in which a party has reported to have hidden to avoid being served. A decision on evidence solely presented by the plaintiff is made if the defendant does not appear.

Needed are procedural changes to simplify the summonsing process. Possibilities include consideration that the defendant has been served if notification is made to the person's registered address (as is done in commercial cases) or making parties responsible for the serving of summonses (as is done in the US). The Anti-Corruption Action Plan for Bulgaria (Coalition 2000 report) includes a recommendation that the system of summonsing be changed to preclude the possibility of intentional delays of court hearings.

i. Intentional delays by attorneys

Attorneys often abuse procedural rights by intentionally delaying court hearings. For example, they are frequently reported to feign sicknesses, scheduling conflicts, business trips, and allege that important witnesses are not available in order to delay cases.

The civil procedural code calls for a fine of 1/3 of the initially-determined state fee on the responsible PARTY (not attorney for the party) for such delays. There is no such fine in the code of criminal procedure. While the Law on the Bar contains disciplinary measures for attorney delays, the Superior Bar Council does not impose such measures because it says that it does not have sufficient funding to conduct the necessary investigation. Lawyers are not willing to pay dues to enforce laws that could affect them adversely, nor are they willing to do *pro bono* work to sanction their own.

Needed are substantial sanctions that judges can impose on attorneys who abuse procedural rights. Changes in the Law on the Bar and Penal and Civil Procedural Codes to provide for such sanctions were recommended in the Coalition 2000 report. Attitudinal training for judges may be necessary to insure the imposition of these sanctions once they are established.

j. Prolonged Period for Collection of Evidence

Neither the civil or criminal procedural code call for any exchange of information prior to the first meeting. (In criminal cases, the preferability for this exchange relates to private criminal complaints which are filed directly with the court) The civil code states that only by exception will new evidence be accepted after the first hearing; the criminal code is silent on this issue. In fact, a substantial part of the evidence is accepted after the first hearing.

Judges go to great lengths to collect all evidence, even when it is obvious that all such evidence may not be necessary. This practice may be rooted in the old civil tradition in which judges assisted the parties. Since they no longer do so, they give whatever time parties feel they need to adequately defend their positions. The tendency to allow prolonged periods for the collection of evidence in criminal cases, on the other hand, is related to the basic principles of the penal procedures which refer to the obligation of the court to establish what is the objective truth and to give all opportunities to the party to defend his position. Sometimes judges prefer to give to the defendant the opportunity to collect all evidence, irrespective of its relevance, in order to protect themselves against grounds for appeals that relevant evidence was not collected.

Needed are changes to the civil and criminal procedural codes to require the exchange of information prior to the first hearing and the establishment of reasonable deadlines for the production of all evidence. Attitudinal training for judges is also necessary for enforcement of any requirements related to deadlines.

k. Failure by witnesses to appear

Witnesses are summoned by the court or, sometimes in civil cases, parties or lawyers take responsibility for bringing them to the hearing. Witnesses frequently do not appear because they are negligent or, in cases of material interest, are afraid (no witness protection plan), or because their absence from work presents problems with their employer. In criminal cases, the police can be used to bring witnesses to court. The fine for failure to appear is 3,000 leva (less than $2.00 US) in civil cases but up to 100,000 leva(less than $63 US) in criminal cases. However, judges are hesitant to impose such fines.

Many witnesses prefer to pay the minimal fine in civil cases instead of showing up. Consequently, a higher fine in civil cases, requiring a change to the civil procedural code, is

needed to preclude the failure of witnesses to appear. Attitudinal changes by judges are necessary to insure that fines are indeed imposed. Such adjustments may be accomplished through training.

l. Failure by judicial experts to appear

Judicial experts are appointed by the court from a list of such experts. In civil cases, they are paid for by the parties through the court; in criminal cases, they are paid for by the State. The amount of the expert's fee is dependent on the type of case.

Judicial experts frequently do not appear at scheduled hearings in civil cases because they are too busy and have scheduling conflicts. This does not appear to be a problem in criminal cases because experts are more diligent to appear in these cases if necessary and often it is not obligatory for them to do so since the written report was given and already clarified in the preliminary investigation. Experts in criminal cases need not appear unless there is a need to question them. The fine for failure to appear is 3,000 leva in civil cases and up to 200,000 leva in criminal cases. However, judges often do not impose such fines.

Parties have the right to request additional experts when they are dissatisfied with the conclusions of an appointed expert. Three, five, or seven experts can be appointed by the court under these circumstances. There can be substantial delays associated with the appointment and coordination of these additional experts.

Needed are changes to the civil procedure code to insure attendance of judicial experts in civil cases. These could include higher fines (and the imposition of these fines by judges), removal of experts from the court's list for failure to appear, or allowing parties to produce their own experts. Privatizing experts would also reduce the number of hearings (and therefore delays) because attorneys are dissatisfied with the conclusions of experts appointed by the court.

m. Workload associated with firm registrations

All firm registrations - even sole proprietorships - and changes thereof are filed in the district court. There were 77,000 such registrations in 1997. Judges must review all business documents in order to approve registration. This is a purely administrative task that could be performed by an administrative arm of the court or possibly be transferred outside of the court. It is performed by independent State agencies in the US and by chambers of commerce in many countries in Europe. To effect such changes would most likely require amendments to the Commercial Act and the Regulations on Registers.

n. Workload associated with appeals

Approximately 50% of all cases are appealed. This has been attributed to the Bulgarian tendency to be suspicious and distrustful of the judicial system and the fact that the fee to appeal (2% of the material interest) is low. One ex-judge estimated that at least 20% of all civil appeals are frivolous. Such a high rate of appeals creates a workload burden on the courts since cases are heard more than once. A mechanism that would reasonably limit the number of appeals and, consequently, reduce the workload of the courts is desirable.

In the second instance court, new evidence can be introduced in both civil and criminal cases. This is often done in civil cases. The civil procedure code states that if one of the parties causes delays through new claims showing new evidence which could have been shown before, he is obligated to pay the expenses of the new court hearing (including the proceedings before the second instance court), expenses for the collection of new evidence,

expenses of the other party and its representative for the additional court hearing, as well as an additional state fee of 1/3 of the initially-determined state fee. However, this is rarely imposed because of the desire of the judges for all evidence before making a decision

Imposition of this penalty, however, would very likely reduce the number of appeals and the associated workload burden that it poses to the court. A substantial reduction in the number of appeals would make the use of electronic sound recording to record court proceedings a feasible alternative to the noisy and disruptive typewriters that are used during the court proceeding to record summaries of these proceedings as dictated by the judge during the proceeding. Attitudinal changes on the part of judges, facilitated by training, are necessary to insure the imposition of such penalties.

o. Absence of Alternative Dispute Resolution Legislation

There is no court-annexed mediation program whereby judges can suggest and parties can voluntarily agree to referral of a case to a well-trained third person mediator in order that some agreement outside of the court be achieved.

There is a small mediation program funded by Partners for Democratic Change, however, which provides for voluntary, community-based mediation. The parties decide among themselves to attempt to settle differences using a mediator outside of the court. The program has just started and efforts are now being taken to publicize the program and how it works. Although planned, these efforts have not extended to judicial personnel and, consequently, few judges are aware of mediation. Court-annexed mediation could be an effective tool to reduce judges' caseloads; however, there is no legislative provision for it at this time

2. Case Assignment

New cases are given an entry number by court clerks and sent to the Chairman for procedural review and assignment to a judge. Once considered procedurally approved, cases are returned to the court clerks for assignment of a case number and transmittal to the assigned judge.

Case assignment is done generally using subjective criteria. The difficulty of the case, as well as the qualifications and the general performance of the judges, is considered in the assignment process. Difficult cases are given to better judges, although there is an attempt to equalize newly assigned workloads (which, when properly done, is a time-consuming process). Such a subjective way of assignment, however, is open to manipulation (i.e., controversial or sensitive cases can be directed to specific judges), thereby undermining the integrity of the courts as impartial institutions, and leaving them vulnerable to charges of corruption. In fact, private attorneys in Bulgaria suggested that such abuse of the system may be happening. This issue is of critical importance in gaining the confidence of businesses which want the safeguards of impartial courts to resolve any potential dispute. A random system of assignment, in addition to precluding such abuse, lends itself to the delegation of the assignment function to administrative personnel. Administrative personnel could also perform the strictly procedural review of new cases now done by the Chairmen.

The last published national statistics (1997) indicate that the average number of newly-assigned criminal and civil cases per regional judge on a monthly basis was 25.65; the average of newly-assigned criminal and civil cases at both the first and second instance level per district court judge, on the other hand, was 25.29 including firm registration cases and

10.58 excluding firm registration cases. (First instance relates to trial level cases, while second instance level relates to cases on appeal.)

3. Record-keeping systems

a. Ledger Books

The Bulgarian courts do not use the equivalent of a single case log or docket to record the progress of a case. Instead, they rely on a system of pre-printed and ledger-type books. Because the number of different items of case information that are required to be recorded cannot be incorporated into a single ledger, there are a series of books, each of which is used to record a specific set of items. The books are kept by hand and there is much duplication of entry because the same items of information, such as the case number, are entered into several ledgers. Within certain ledgers, there are multiple entries for a particular case according to hearing dates. To follow the progress of a particular case requires tracking the case by these hearing date entries. Responsibility for maintaining portions of these ledger books extends even to judges who are required to summarize and initial how they disposed of cases assigned to them. The maintenance of these books is time-consuming and labor-intensive. Some examples of ledgers include: alpha book, criminal case ledger, civil case ledger, closed session ledger, appealed case ledger, execution of sentence ledger, and fine ledger.

b. Files/Filing Systems

Case documents are hand-stitched into the file folder in chronological order of receipt, a time-consuming process. Paper used by the court for protocols is often of poor quality and becomes dog-eared quickly; the typing on these documents is sometimes barely legible. Case documents are put into a case file jacket which is thin, unreinforced, and does not hold up well with extended use.

Case files are filed according to the date of the next hearing according to judge and separated into criminal and civil. In order to find a file, it is first necessary to determine the status of the case using the multiple-ledger system. The file will be either filed according to hearing date, or be with a clerk or judge who is working on the case. If filed by hearing date, it will be necessary to sort through a pile of folders calendared for hearing on that day of the month.

4. Computerization

Many efforts are being made to computerize court operations. As pointed out in a report by the Council of Europe produced several years ago, however, there is no inventory of hardware and software in the court system and no coordination of efforts or strategy to computerize it. For example, individual courts (like Varna regional and district courts) have developed software for nearly all court functions and are implementing certain programs which, in turn, are being used by other courts. The GOB, on the other hand, has created a Center for Information Technology and Crime Prevention which began working in July 1998 and is developing integrated programs which incorporates modules it is creating for each of the institutions involved in criminal cases including the police, prosecutors, investigators, courts, and prisons. The Center will later work in the civil area. The Center has not examined the modules already developed in the courts and it is possible that these already-developed modules could be used in the integrated model, thereby eliminating the need for the Center to create new modules. The design team, as well as all judges interviewed, recognize the importance of the integrated model which increases efficiency and the administrative handling of cases.

5. Recording Court Proceedings

The Bulgarian court system does not require the taking of a verbatim record of official court proceedings. Instead, the system relies on the production of a summary record called "protocol." It is typed by a secretary/typist during proceedings in the regional and district courts.

The protocol includes what a justice dictates to the secretary/typist during the hearing. This dictating is done in open court and may occur several times during the proceeding. During witness testimony, the secretary/typist adds to the protocol by typing, either on her own or upon dictation by the justice, a summary of the testimony. She also will include in the protocol a summary of the arguments by the opposing sides. The secretary/typist utilizes manual typewriters. The noise from the typewriters, combined with the judge's loud dictation creates an atmosphere much like a "market," rather than a courtroom.

Given the high rate of appeals, electronic sound recording of proceedings does not appear feasible as the "protocol" is needed for the case on appeal. If the rate of appeal was lowered, however, this record of proceedings should be considered with transcripts produced only for those cases that are appealed.

6. Supreme Judicial Council

The Supreme Judicial Council, created by the Constitution of 1991 and the Judicial Powers Act, is to be the policy-making body of a third and independent branch of government. It prepares the budget for the Judiciary for transmittal to the Legislature. It also appoints, promotes, disciplines, and removes judges.

Although the SJC represents an independent judiciary, its power may be limited by the Ministry of Justice. Under recently voted amendment, but not Presidentially sanctioned as of this writing, The MOJ will be able to "suggest" nominees for judgeships, promotions, and disciplinary measures.

The SJC, however, has many limitations:

It has no planning staff and must always react to proposals of the MOJ or Legislature.

It has no statistical department through which criteria for the numbers of judgeships can be established.

It has almost no ability to reach into the court system to direct the implementation of policy. Staffing of Council initiatives comes from the Ministry of Justice.

It has no Management Assistance Unit that can work with the individual courts to implement policy change.

It has no responsibility for training of judicial officers or support staff.

It has no vote in determining the content or parameters for its important role in training "interns." The MOJ has those implementing regulations.

It has no control over the investigation of judges accused of corruption or non-compliance with productivity standards.

Annex V

Government Program

Elected in January 1997, the current majority party (the UDF) has worked to fulfill its reform platform; this program's main objective is to bring Bulgaria in compliance with European Union standards. These reforms address a wide variety of important public administration, market reform, and anti-corruption issues, including a privatization program, the reform of the civil service structure, the strengthening of the Central Bank, support for private, and non-governmental organizations (NGO's), and the strengthening of the justice system (including bodies within the judicial branch, and the police), while at the same time stressing constitutional and other human rights for citizens. There is also serious commitment to working towards full membership in the European Union.

1. Anti-corruption Measures

Increasing respect for the law and the institutions vested with its implementation and enforcement is crucial to private sector growth. If the private sector does not trust the state to enforce rules governing business activities, investment will suffer. One of the most important functions of the state is to provide an institutional infrastructure that assures property rights and enforcement of contractual claims, law and order, mechanisms for resolution of disputes, and rules that encourage efficient long-term investment. A good judiciary is therefore essential for market-friendly policies to deliver their full benefits. The presence of corruption can operate to undermine these efforts. In Bulgaria, the problem of corruption is widely recognized internally by the Government, by the public at large, and by foreign investors and the international community.

One of the government's overriding concerns involves the high level of crime and public corruption, since it is very aware that all of the desired reforms can and will be subverted or not implemented if levels of corruption are not substantially reduced.

On September 19, 1997 the National Assembly created a temporary anti-corruption commission, to determine appropriate steps to establish a successful program to combat public corruption and strengthen its other public administration reform programs. This commission issued an extensive report on the problems existing within the Bulgarian, but party politics apparently prevented the full report from being directly adopted or approved by the full legislature. The report made several recommendations, including the adoption of a clear definition of corruption, the creation of legislation to mandate transparency in government, whistle blower protection for those who reveal government wrongdoing, training and education of young people in the rule of law and anti-corruption expectations, the creation of an anti-corruption strategy, greater control within the Judicial Branch over disciplinary and corruption issues, better coordination between the police (MOI), the investigators (the NIS), and the prosecutors to ensure the enforcement of criminal laws, the creation of a system to audit the finances of political parties and campaign finances, administrative reform to establish civil service controls on the employment and discipline of government employees, the creation of a public financial register for high-level government employees, the establishment of internal investigation offices within government bodies to inspect and

investigate corruption, and the creation of standard and regularized training for government employees, including on ethical and anti-corruption issues.

The full legislature issued a Decision (which has the force of law) on December 12, 1997. Among other things, the Decision established a permanent legislative commission to combat crime and corruption, required the creation of a public financial register for high-level government employees, required the creation of a unified information system to counteract crime, and obliged the Council of Ministers to create a national strategy to counteract crime. The Decision also obligated the legislature to give priority to legislation which would implement the recommendations of the temporary commission referred to above. The Chairman of the National Assembly, Yordan Sokolov, has assumed leadership of the permanent commission.

2. "The National Strategy to Counteract Crime"

Whilst recognizing that "the threatening expansion of crime during the last several years impedes development of democratic processes, market reforms and Bulgaria's accession to the European Union", the Council of Ministers approved on July 16, 1998 the Government's "National Strategy to Counteract Crime" (the "National Strategy"). In this it listed general state policy and goals and a variety of more specific reforms. Several of these specific reforms address public administration, judicial reform and anti-corruption concerns. The COM concluded that "solution of the crime problem becomes the highest priority and major task of the Bulgarian Government".

Thus, the national strategy includes specific plans to combat organized crime, combat corruption, engender criminal policy and judicial power reforms, reform the criminal code, reform the criminal procedure code, improve civil justice procedures, adopt a uniform information system for the justice system, from police through the courts and punishment of defendants, and improvement of human resources for the justice system, including training. Specific measures are identified including, by way of example, the shortening, simplification and acceleration of criminal proceedings; increasing judicial control over the actions of the prosecutor's office, investigation service, and police; acceleration of court proceedings; developing alternative procedures to replace slow and costly criminal proceedings; developing "fast track" court proceedings for certain civil cases.

The national strategy requires the Council of Ministers to organize and coordinate the implementation of the various parts of the strategy, and to approve a timetable for the implementation of specific programs to implement the strategy. Each ministry or other government agency is required to develop its own program. Both the Ministry of Justice and the Ministry of the Interior have agreed to provide copies of their strategies to the Bank.

3. The Coalition 2000 Report

With the assistance of US AID and some other international assistance providers, a group of NGOs worked with members of Parliament and judges (collectively Coalition 2000) to produce an anti-corruption action plan (the Coalition 2000 report). This strategy contains a platform of anti-corruption measures, including several steps which would strengthen the judicial branch and other participants in the justice system.

The Coalition 2000 report also makes recommendations to achieve greater transparency in court cases and assist in creating a more efficient system of justice. These recommendations are largely echoed in this report and in the USAID report.

B. Specific Reforms in Progress

1. Judicial Powers Act

In October 1998, the Law on Amendments and Alterations of Judicial Authority Act (or Judicial Powers Act) was passed by the National Assembly and was vetoed on several specific provisions by the President. This law will be re-debated and resubmitted to the President shortly. Under the Constitution, the President will be required to sign the revised bill into law.

In its current form, the JPA takes several steps towards the judicial reform required by the National Strategy. It increases the responsibility of the inspectorate within the MOJ to review judicial branch activity, permits the Minister of Justice to recommend disciplinary action for judicial branch personnel and to control the budgetary process of the lower courts, splits apart the authority of the Chief Prosecutor's Office, requires the cessation of criminal prosecution by the prosecutors to be approved by the appropriate court, formalizes the determination of staffing needs, promotion, and discipline within the judicial branch, and essentially disbands the National Investigative Service by sending a large part of the personnel to the MOI and reserving the investigative function to the remnants of the NIS in only serious criminal cases. The investigative function in lesser cases will be handled by police for the first time. The law also permitted the early dismissal of the current SJC two months after passage of the act, and took some other steps to coordinate the Judicial Powers Act with expected changes in the Criminal Procedure Code.

The President took issue with several portions of the law. While increased inspection of the judicial branch appears to be acceptable, he rejected the constitutionality of provisions permitting the Minister of Justice to recommend discipline against judicial branch personnel and to control the budget of the lower courts. He also took exception to the disbanding of the NIS, again based on the constitutional requirement for the existence of this function within the judicial branch. According to Bulgarian sources, the President will be successful in his objections to these clauses. It appears, however, that the Chief Prosecutor's function may be broken apart as originally anticipated, as a response to the extreme levels of corruption seen there by Bulgarians. In addition, the police will apparently be given the investigative function in lesser criminal cases.

2. Criminal Procedure Code

A new draft of the Criminal Procedure Code has just been prepared in compliance with the National Strategy, albeit outside of the normal legislative drafting process. The President of the National Assembly asked an informal but highly experienced small group of judges and academics to prepare a new draft of this code. This document, which is a partial revision of the old code, was submitted to the National Assembly in October 1998, and it is now being reviewed by the Council of Ministers (and specifically by related Ministries). The legislature expects to pass some version of this Code before the end of the year.

This draft takes several steps toward streamlining the criminal justice process and toward asserting judicial control over various parts of the police and investigative procedure. For example, advance judicial approval will be required for search and seizure, and approval for

the detention of citizens will be necessary. A form of plea bargaining is established for the first time. Perhaps the most important change in the draft is a move towards an adversarial procedure between the parties, and the placing of the burden to proceed on the party with the burden of proof. This would change the role of the judges, to lessen their direct participation in the development of evidence and witnesses at hearings.

3. Civil Procedure Code

The Civil Procedure Code was already revised about one year ago, and moved civil cases towards the adversarial structure. Another revision is anticipated, after the work on the Judicial Powers Act, the Criminal Code and the Criminal Procedure Code is completed. It is intended that the Civil Procedure Code and the Civil Code be brought into line with all of the other changes to the judicial system.

4. Law on Normative Acts

The Law on Normative Acts (dating from 1973) which governs the structure and issuance of secondary legislation and regulations has been amended and a draft of this amendment has now been submitted to Parliament. As of the date of writing the Bank has not been provided a copy of the draft.

5. Criminal Code

Another important piece of legislation, the completely revised Criminal Code, is anticipated to be passed by the end of the year. This legislation has not yet completed the drafting stage. One of the serious problems facing government participants in the criminal justice process is that the current Criminal Code dates from Communist times. Many criminal statutes, important to a modern economic structure, either don't exist or are arcanely worded. In addition, several criminal statutes exist which do not reasonably apply under the current status, and which are being used as a tool of corruption against political enemies. For example, a policeman who led a raid against a counterfeit music CD factory was required by the prosecutor's office to return the counterfeit heads used in the manufacture of the illegal CDs, and was then charged with the crime of exceeding the scope of his authority. It took a very public governmental outcry and several months for the charges to be dismissed. A nearly identical case was brought against a deputy governor of the Central Bank when she sought to shut down an undercapitalized bank pursuant to her proper authority; it has been alleged that one of the owners of the bank was a close ally of a highly-placed person within the Chief Prosecutor's Office. Clearly, the accomplishment of this goal of the national strategy is an important key to many other governmental reforms.

6. Ministry of the Interior-Internal Affairs Organization

An important reform has occurred within the Ministry of the Interior, albeit without legislation. Pursuant to the national strategy's requirement to create internal investigative structures to combat corruption, in July 1998 the MOI established the country's first internal affairs structure. A high-level council directly oversees internal corruption investigations; the MOI has successfully completed more than 22 investigations, and has either taken administrative disciplinary action (including termination of employment) or has referred the matters for prosecution. It remains for the other ministries, and for the judicial branch, to institute similar programs.

7. Establishment of Center for Information Technology

A step has been taken toward the implementation of the National Strategy's requirement to establish a uniform information system. While the Government hopes to establish a government-wide unified computerized information system, it has concentrated on beginning this system within the area of criminal law enforcement due to the high priority of reforms in this area. The second step in the development of this system will be to expand it to include the civil justice system. Without exception, the judicial branch and other government representatives interviewed by the team stated that this reform is of extreme importance to the improvement of the administration of justice.

In July 1998, the Council of Ministers established the Center for Information Technology, and tasked it with developing the unified criminal justice computer system. The director of the Center is working closely with the MOJ, the MOI, and judicial branch representatives to establish a plan for the system. It is envisioned that each participant in the system (the police, the investigators, the prosecutors, the courts, and the prison system) will have separate modules of computer programs which will systematize and streamline their record keeping responsibilities. From each of these separate modules, general and non-sensitive information will be automatically extracted and placed in a general module which will be available to all government participants in the justice system. This general module would ultimately include all related court records and information on the disposition of each case. It would permit easy tracking of cases to determine their current status and the reasons for any delay, as well as to coordinate and systematize the statistical data on the criminal justice system. It is anticipated that the efficiency of the overall court system would improve with the development of this system as valuable tracking information would be available to the courts which would assist, for example, in locating defendants and witnesses.

8. Other Public Administration Laws

Several additional public administration laws are also in the pipeline. Both the Law on Public Administration and the Civil Service Act have been drafted, submitted to the National Assembly, and have now passed its second reading. Both are expected to be signed by the President shortly. The Civil Service Act establishes a distinction between political and administrative (or civil service) positions, and establishes personnel policies for the civil service. A public procurement act, which would establish clear guidelines for all government procurement, has been drafted and is expected to be submitted to the National Assembly shortly. A government transparency law, providing free access to all non-sensitive government information, is currently in the drafting stage. This draft, which would also include whistle blower protections, is expected to be sent to the legislature before the end of the year.

9. Financial Reporting Law

In addition, the National Assembly itself is involved in the drafting of a financial reporting law, which is required by the national strategy, and which would apply to all high-level government officials. The MOI has announced that it will require such reports for all of its employees, due to the sensitivity of their work.

C. Non-Governmental Support for Reform Program

There are several associations and NGOs which are supporting, or even spearheading, some of the reforms established in the Government's National Strategy. The **Bulgarian Judges' Association** (BJA), a voluntary group of judges, has supported the legislative reforms outlined above, and strongly supports the creation of a judicial training center, and closer coordination with the prosecutors, investigators, and police, particularly through the uniform information system described above. A prosecutors' association also exists, but has not been involved in these kinds of reforms in any meaningful way as yet.

A new NGO was established recently by two important Parliamentary members. **The Alliance for Legal Cooperation** is a guild for lawyers who want to support systemic changes in the judicial branch, including the improvement of judicial administration and coordination with other members of the justice system. The group also seeks to ensure that changes provide harmonization with EU requirements for accession and that the legislative drafting process is improved. This Alliance is actively involved in seeking to establish a judicial training center, and may join with the BJA to run such a center, if funding can be found for the project.

Another NGO, the **Bulgarian Institute for Legal Development**, is led by Director Nelly Ognianova, who also participates as Project Manager of the Working Group on Information Strategy and as a Professor of Public Administration and Information Systems at the Law School of Sofia University. This Institute fully supports the creation of the uniform information system, and further seeks to provide public access to Bulgarian and EU legal documents, despite the recent loss of PHARE funding. The Institute also supports the establishment of a training institute for judges, prosecutors, and police, and supports increased practical education for law students, such as law clinics and practical ethics training.

ANNEX VI

1997 STATISTICS ON ENFORCEMENT OF JUDGMENTS

EXECUTIVE CASES

Movement of the executive cases

Uncompleted before the Beginning of the reporting period		Cases Entered	Cases total	Cases ceased	Remaining incomplete at the end of the reporting period
+ 1200 + 1200 + 1400)	1000	481,195	49,974	531,169	92,096
the state	1100	142,409	10,294	152,703	28,418
f the juridical bodies	1200	145,013	19,793	164,806	30,465
f citizens	1300	192,829	19,875	212,704	33,055
of foreign judgements	1400	944	12	956	157

AMOUNT OF THE EXECUTIVE CASES

on the executive cases		Amounts collected on the executive cases				
Cases Entered	Due Amounts – Total	Amounts Collected – Total	Interest Payments			
1000	59,823,127,255	94,973,690,535	154,796,817,790	32,920,890,689	11,772,856,444	2,878,194,784
1100	1,637,440,982	162,537,446	1,799,978,428	251,282,754	7,712,752	37,398,479
1200	55,581,980,311	88,956,104,090	144,538,084,401	30,682,070,755	10,618,333,923	2641,114,439
1300	2,457,594,961	5,849,705,314	8,307,300,275	1,986,138,234	1,146,809,769	199,663,008
1400	146,111,001	5,343,685	151,454,686	1,398,946	0	18,858