

# THE (NEVER) ENDING STORY OF BULGARIAN AND ROMANIAN JUDICIAL REFORM

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“20 years after November 10, 1989, 20 years of abortive attempts to accomplish judicial reform” – this is the title of an open letter written by the representatives of reform-seeking Bulgarian non-governmental organizations (NGOs)<sup>1</sup> to the Prime Minister of their country<sup>2</sup> in November 2009. It refers to the fall of the Communist regime in Sofia 20 years previously.<sup>3</sup> The title is symptomatic of the situation not only in Bulgaria but in most of the transition countries of South East Europe: two decades after the collapse of the Communist/Socialist regimes it is dawning on people that real, sustainable reforms have just not been accomplished. This is particularly true of the judiciary. From the beginning it was the focus of these countries’ efforts to move on from being totalitarian, authoritarian one-party states to become democratic states governed by the rule of law. This was particularly important in light of the European Council’s Copenhagen Criteria, set in 1993 as the political criteria for entry into the European Union (EU).



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- 1 | The NGOs include: Bulgarian Institute for Legal Initiatives (BiLI), National NGO Network for Civic Monitoring of the Court in Bulgaria, Transparency International, Open Society Institute – Sofia, Center for Liberal Strategies, Center for the Study of Democracy, Association for European Integration and Human Rights – Plovdiv and Institute for Regional and International Studies. The author holds a copy of this letter. The letter appeared in the legal journal “Legal World”. The original Bulgarian version is available online at <http://legalworld.bg/show.php?storyid=17674> (accessed November 22, 2010).
- 2 | The NGOs also sent copies of the open letter to the President of the National Assembly, the Bulgarian Justice Minister and the members of the Supreme Judicial Council.
- 3 | On 10 November 1989 the Bulgarian head of state Todor Zhivkov and his Communist government were toppled.

These stated that entry candidates must guarantee institutional stability, democracy, the rule of law, human rights and the respect and protection of minorities.<sup>4</sup> An important element of a functioning state under the rule of law is an independent, transparent and sound judicial system, which respects the principles and procedures of the rule of law.

Over the last 21 years there has been no shortage of judicial reform in the transition countries of South-East Europe. On the contrary, as part of their quest to become EU members, they have introduced countless legislative reforms, action plans aimed at reforming the judiciary and combating corruption and organized crime, and changes to the justice system. This is particularly the case in Bulgaria and Romania, the most-recent EU members. They faced a lot of time pressure in pushing through their reforms as they could not jeopardize their entry date of 1<sup>st</sup> January 2007. On that date both countries became full members of the EU.

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But disillusionment was to follow: only a few months after joining the EU, judicial actors in Bulgaria and Romania realized that it was not enough to simply adopt

European Community legislation as national legislation. It is much more important for these countries to have administrative and judicial structures in order to effectively apply existing law. In 1995 the Madrid European Council made this clear in an amendment to the Copenhagen criteria for EU candidate countries.<sup>5</sup> On their entry date of 1<sup>st</sup> January 2007, Bulgaria and Romania only partially fulfilled this condition, and even now, several years after their entry, they have still not totally redressed these deficiencies. In the first part of the letter mentioned above, the Bulgarian NGOs wrote: "There were three promises made to the Bulgarian society from the November 10, 1989 changes – democracy and civil rights, market economy and rule of law. These three promises were also

4 | Cf. [http://ec.europa.eu/enlargement/enlargement\\_process/accesion\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm) (accessed October 30, 2010).

5 | Cf. European Commission website, *Accession criteria*, [http://ec.europa.eu/enlargement/enlargement\\_process/accesion\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm) (accessed November 24, 2010).

among the main criteria for an EU membership. Almost three years after Bulgaria has become a full member of the EU and 20 years after November 10, Bulgaria is considered to be an acting democracy and market economy. However, it cannot succeed in completing the reform in the judicial system, so that it can guarantee effective justice to every Bulgarian citizen and justify the trust of its international partners.”

Looking back, the past year can be viewed as a watershed: 20 years after the collapse of Communism and four years after Bulgaria and Romania’s entry into the EU, the two countries have unveiled an unprecedented swathe of reforms. In 2010 both Bulgaria and Romania approved comprehensive national strategies for judicial reform, which will be examined and assessed in the course of this article. The main focus of this paper is the question why Bulgaria and Romania found it so difficult to create a coherent, sustainable agenda for reform with a view to the long-term, along with realistic proposals for reform of the legal and judicial system in the first two decades after the transition.

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## **REASONS FOR UNFINISHED JUDICIAL REFORM**

There are many reasons why judicial reform has not been completed. These include the fact that civil society was barely involved in the reforms for many years, the “reform formalism” observed in many transition countries which was heightened by the EU membership process, the lack of political will to reform and the lack of ethical and moral reforms linked to their failure to deal with the past.<sup>6</sup> This is of course not an exhaustive list. Transition processes are too complex to allow the reasons for their success or failure to be reduced to one or two points.

6 | This last reason will not be examined in detail here as the author has covered it elsewhere. Cf. Stefanie Ricarda Roos, “Und die Vergangenheit spielt doch eine Rolle...” – Zur Wahl von Richterin Bejinariu zur neuen Präsidentin des Obersten Rates der Magistratur Rumäniens (CSM)”, *KAS-Länderbericht*, in: [http://kas.de/wf/doc/kas\\_18660-1522-1-30.pdf?100125131714](http://kas.de/wf/doc/kas_18660-1522-1-30.pdf?100125131714) (accessed December 13, 2010).

## 1. Weak civil society and the personalization of judicial reform

In year one after Bulgaria and Romania joined the EU, observers of post-entry developments, along with national and international stakeholders, realized the key to success in carrying through sustainable judicial reform lay in the close involvement of civil society.<sup>7</sup> The attendees

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of the First Central and East European Rule of Law Symposium held in Sofia in June 2007 also came to this conclusion.<sup>8</sup> In their final recommendations they concluded that a state based on the rule of law could only be successfully built and consolidated through the closer involvement of civil society in the reform process.<sup>9</sup> This requirement is based on the realization that any reform of the rule of law and the justice system can only be effective and sustainable with the participation of a well-organized civil society, operating alongside governmental institutions and protagonists, which understands and is able to implement the necessary changes.

7 | There exists no clear definition of the term "civil society". This article uses it in the sense of the most comprehensive definition in the context of the European Commission's "Dialogue with civil society on enlargement". According to this, civil society means "all social structures outside of state structures": "social partners, normally organizations, who represent stakeholders in society and the economy (...); non-governmental organizations (NGOs ...) and grassroots organizations (...)." Cf. "Commission begins dialogue with civil society on enlargement", IP/05/805, 29 June 2005.

8 | Cf. [http://www.bili-bg.org/13/event\\_page.html](http://www.bili-bg.org/13/event_page.html) (accessed December 10, 2010). The author was a speaker at the Symposium.

9 | Cf. [http://www.bili-bg.org/22/event\\_page.html](http://www.bili-bg.org/22/event_page.html) (accessed December 10, 2010). This includes the following: "A greater role for the civic society and the NGOs has to be ensured including by a comprehensive set of legal and institutional guarantees for NGO participation in the legislative and policy making processes; Continued support for the work of the NGO's in the post EU accession period need to be ensured through national governments subsidies as well as EU and foreign donors' assistance adapted to the new funding circumstances in the wake of EU accession."

However, for many years this kind of well-organized civil society has not existed in Bulgaria and Romania.<sup>10</sup> Not surprisingly, it is taking time to develop after being almost totally wiped out by the Communist regimes. Even today, Communism casts its shadow over the way governmental institutions and protagonists view themselves. In Bulgaria and Romania, as in other transition countries, they still have an autarchic, authoritarian approach, often using their mandate to exercise power without restraints. Many representatives of governmental institutions have long been skeptical about the involvement of civil society in state judicial reform. This was and still remains inconducive to the growth of a strong civil society.<sup>11</sup>

Over the last few years the Western media have painted a correspondingly bleak picture of developments in the civil society of the two newest EU members. For example, the *Neue Zürcher Zeitung* of 31<sup>st</sup> July 2007 reported on Romania as suffering from a “hangover after an empty democratization process”. Despite sustained economic growth, Romania was stagnating in terms of making political steps towards a civil society.<sup>12</sup> In the NZZ, Emil Hurezeanu, former editor of the Romanian daily newspaper *România Liberă*, claims that an autonomous and above-all influential civil society has not been able to develop since the fall of Communism and that Romania’s domestic policies have been focused on personalities.<sup>13</sup>

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10 | Cf. Georgi Stoilov, “The current status of Bulgarian judicial reform with regard to criminal law”, unpublished paper dated April 2010 obtained by the author: “A serious obstacle on the path to judicial reform is the state of Bulgaria’s civil society which is (unfortunately!) still under-developed. Despite the repeated declarations of political will and the efforts of various foundations, NGOs, including some from abroad (e.g. USAID), and the Justice Ministry, there is still no official comprehensive national program for judicial reform.” This last has, however, changed with the advent of the above-mentioned “Strategy for Judicial reform”.

11 | Cf. Stefanie Ricarda Roos, “Watchdog and cooperation partner,” *D+C*, № 3 2010, issue 51, March 2010.

12 | “Macht und Ohnmacht in Rumänien,” *Neue Zürcher Zeitung*, July, 31 2007, in: [http://www.nzz.ch/macht\\_und\\_ohnmacht\\_in\\_rumaenien\\_1.534813.html?video=1.7669593](http://www.nzz.ch/macht_und_ohnmacht_in_rumaenien_1.534813.html?video=1.7669593) (accessed December 10, 2010).

13 | Ibid.

The latter has also had a certain effect on judicial policy. Over the past few years Romania in particular has exhibited a fixation on its Justice Ministers, something which is unknown in Western democracies. In this way the person of the Justice Minister is equated with judicial reform.

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This has not gone uncriticized within the judicial system: for example, the Romanian Magistrates Association (Asociatia Magistratilor din Romania, AMR), the country's oldest professional association of judges and attorneys, voiced its objections. Shortly after the country's EU accession, it publicly criticized the fact that judicial reform was solely linked to the person of the Minister of Justice at the time, Monica Macovei: "We are outraged that the Minister has set herself up as the Joan of Arc of judicial reform. We wish to make clear that judicial reform has not been the work of one person, but that the system itself has driven forward the reforms, which means the people working in the system."<sup>14</sup>

This fixation on the Ministers of Justice is hardly surprising in light of the fact that Romania was for many years an authoritarian society with a strong cult of personality and the judiciary is the central focus of reform. Justice reform still lies at the heart of post-accession monitoring by the European Commission. Western media and politicians have also contributed to this focus of attention on the person of the Minister of Justice.<sup>15</sup>

14 | Author's translation of the original Romanian version which appeared in the online legal news magazine *Stiri Juridice* on February 22, 2007 and which records the views of the erstwhile vice president of the AMR, Mona Maria Pivniceru, expressed in February 2007. In the original Romanian, the quotation is as follows: "Suntem profund indignati de faptul ca doamna ministru isi aroga niste merite de Ioana D'Arc in reformarea sistemului judiciar. Vrem sa se stie clar ca reforma sistemului judiciar nu a facut-o o persoana sau alta, ci insusi sistemul, adica oamenii din el." The author retains a copy of the text.

15 | Article in *Welt-Online*, November, 16 2006, "'Jeanne d'Arc Rumäniens': Monica Macovei kämpft gegen Korruption," including the following: "Macovei called herself an 'attorney of change' while the newspapers called her the 'Romanian Joan of Arc'. She described how people on the streets of Bucharest wished this single mother good luck and said 'I am fighting for human rights and against bad laws'. At first the government was her opponent but now she is part of it and it is at her disposal. But to do this Macovei had to turn the ▶

However, when looking back at this personalization of judicial policy and the equation of success in the area of judicial reform with the person of the Minister of Justice, care should be taken not to hold the Justice Ministers responsible for the failure to develop a strong civil society. There is no doubt that these Ministers have in recent years had an important role to play in Romania, and to a lesser extent in Bulgaria. It should, however, not be forgotten that Romanian Minister of Justice Macovei played a large part in the development of an admittedly small but critical civic society. An example of this is the NGO "Society for Justice – SoJust", which was founded in 2005 by a group of reform-minded Romanian lawyers.

"SoJust" sprang from an internet discussion group which included Romanian judges, prosecutors, members of official self-governing judicial bodies, barristers, journalists, political scientists, students and Macovei herself. The most active members of the group founded "SoJust" with the support of Macovei because they were convinced the Romanian judicial system was in crisis. In their view, the delay in carrying through necessary reforms led to the creation of a judicial oligarchy which clung to the past, shirked their duty towards society and was only out for personal gain. The goal of "SoJust" is real and comprehensive reform of the Romanian justice system. Whether, as her critics claimed, Macovei only encouraged civil society in order to please Brussels, or whether she was driven by the belief that civil society had to be involved in judicial reform, she in any event succeeded in allowing the emergence of a "critical voice" within the judiciary, which still exists today. Her supporters in Romania, mainly younger judges and prosecutors, even called it the "Macovei effect" (*efectul Macovei*).

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judicature inside out, fire state attorneys, replace the head of the anti-corruption authority and initiate judicial reform in the face of resistance from the opposition Social Democratic Party (PSD) – in the process making herself plenty of influential enemies." Cf. also the press review of the website of Monica Macovei, who has since become a member of the European Parliament: <http://www.monica-macovei.eu/ro/presa-internationala> (accessed November 25, 2010).

## 2. "Reform formalism"

Over the last twenty years, the success of sustainable judicial reform has been hampered in Romania and Bulgaria by "reform formalism", a phenomenon which can be observed in almost all the post-socialist and post-communist transition countries. This describes how previous reforms have run out of steam in the face of a plethora of amendments and action plans.<sup>16</sup> Many of these were not coherent with the overall system and did not effect real change. The reforms did not have a comprehensive, substantial concept.

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This "reform formalism" has led to reform fatigue in Romania, or at the very least to reform skepticism. This is illustrated by a discussion on the internet platform *reformaj*, whose name comes from the Romanian for "judicial reform" (*reforma justitie*). In February 2010, contributors to this discussion group, including reform-oriented lawyers and legal philosophers, held a discussion on basic principles under the heading "Cursed for 20 years by the word reform."<sup>17</sup> In the course of this they asked the question what "reform" really meant, who should be in charge of the reform process, when a reform begins and ends and whether reform is a process or a state. This produced wide-ranging opinions: some of the contributors attached no significance to the concept of "reform", saying it had lost all meaning over the last few years because the word had been over-used. For others, "reform" sounded like a Communist slogan and they thought the term had been abused over the years to manipulate the masses. It remains to be seen whether the judicial reform strategies of 2010 will succeed in rehabilitating the image of reform.

16 | The authors of the open letter of November 2009 also indirectly criticized these: "To a large extent, the failures to reform the system are resulting from the current model of the judicial system, established in 1991 with the new Constitution. This model lacks effective mechanisms for a mutual control among the separate powers. Without resolving that fundamental problem, every effort to reform the system restricted to changes in the current legislation, a method used in the last fifteen years, will be doomed to failure."

17 | "20 de ani sub blestemul cuvântului 'reforma'".



### 3. Lack of political will

In its latest report to the European Parliament and Council dated 20<sup>th</sup> July 2010 on the status of the reform process in Romania, the European Commission drew the following negative conclusion: "Romania does not show sufficient political commitment to support the reform process. [...] Romania should aim to establish broadbased political support in favour of transparency and the effective protection against corruption and conflict of interest."<sup>18</sup> Bulgaria's progress report was published on the same day, and it received a much more positive assessment in respect of its political will to carry through the necessary reforms: "In this year's report the Commission points to a strong reform momentum which has been established in Bulgaria since the Commission's last annual report in July 2009. The new strategy for judicial reform demonstrates the existence of a strong political will in Bulgaria to achieve a deep and lasting reform of the judiciary."<sup>19</sup> The Commission identified a strong pressure for reform emanating from the government which was producing results within the justice system.<sup>20</sup>

18 | Cf. "On Progress in Romania under the Co-operation and Verification Mechanism," *Report from the Commission to the European Parliament and the Council*, SEC(2010)949, Brussels, July 20, 2010, [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2010\\_401\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_401_en.pdf) (accessed November 24, 2010). In December 2006 the European Commission set benchmarks as a cooperation and verification mechanism (CVM) to measure the progress of these countries in the areas of the judiciary and the fight against corruption and organized crime. With this, Bulgaria and Romania were the first EU member states to be monitored by the Commission after accession. The European Commission justified the introduction of the CVM as follows: "The decision to further monitor Bulgaria and Romania shows that the EU is committed to the development of functioning administrative and legal systems, so that they can both fulfill the obligations of membership but also enjoy its benefits. Advances in the area of judicial reform and the fight against corruption and organized crime will allow the people of Bulgaria and Romania to experience the full benefits of being EU citizens." Cf. also Stefanie Ricarda Roos, "Rumänien im Jahr vier nach dem Beitritt zur Europäischen Union – ein Rückblick und Bericht über die aktuelle Lage der Justiz," in: *DRiZ*, September 2010, 276-280.

19 | "On Progress in Bulgaria under the Co-operation and Verification Mechanism," *Report from the Commission to the European Parliament and the Council*, SEC(2010)948, Brussels, July 20, 2010, 2.

20 | *Ibid.*, 3.

But this was not always the case. Until a few months ago, the lack of any real judicial policy was a serious weakness in the Bulgarian political system and it hampered the reform process. The change of government in July 2009 at first brought little change, despite expectations within Bulgarian society that the new government would speed up reforms, particularly in the judicial area. The new administration did little to meet these expectations in the first few months. Some people believed the political representatives did not understand that justice reforms are first and foremost a political issue. The form they should take has to be first of all decided by the government and members

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of parliament. This responsibility cannot be shifted to judges, prosecutors or legal NGOs, as has happened in Bulgaria and Romania in the past. NGOs can and must provide strong impetus for the reform process and be prepared to step in where necessary to correct its course. This is particularly the case for professional associations such as associations of judges, but they cannot replace governmental policies on reform. So the new strategy for judicial reform presented by the Ministry of Justice in Bulgaria was particularly eagerly awaited in the first half of 2010. It showed that the Ministry of Justice was the driving force behind judicial reform.

In future the parliaments of both countries need to take on even more responsibility for the successful completion of the reforms. The developments in Bulgaria and in Romania during past years show that it was a mistake to concentrate almost exclusively on the judicial reforms, without simultaneously reforming politics, respectively the parliament and its members. Within a representative democracy with separation of powers the parliament, as the representative of the sovereign, has legislative authority. It is primarily the parliament and not the government that has to engage in legislation. In Romania recent positive developments loom in this direction: thus, in summer 2010 the Romanian parliament passed a new code of civil and criminal procedure and thereby took on responsibility for a major legal reform. The European Commission and the Council estimates this in its latest report on progress as a positive development concerning the role of parliament: "After a slow-down of Parliamentary work, Romania has re-gained

some momentum for reform in the second quarter of 2010 and embarked on a major legislative reform with the Parliamentary approval of the civil and criminal procedure codes on 22 June. The preparations for the entry into force of the four new codes, now scheduled for October 2011, are an important opportunity for a thorough reform of the Romanian judicial system. To sustain this reform process, the Commission calls upon Romania to build on the strong Parliamentary support for the procedural codes and extend this political will to other areas.”

Continuing this positive trend, in mid October 2010 the Romanian parliament passed the so called “small law of reforms” in order to expedite lawsuits.

### **LATEST DEVELOPMENTS IN THE AREA OF JUDICIAL REFORM**

As previously mentioned, Year 20 has been a key year for Bulgaria and Romania in terms of judicial reform, with both countries approving comprehensive national strategies. In April 2010 the Romanian Minister of Justice published his Ministry’s “Strategy for the Development of the Justice as Public Service 2010-2014.”<sup>21</sup> Almost simultaneously, on 27<sup>th</sup> April 2010, the Bulgarian Ministry of Justice published its “Strategy for Judicial Reform in accordance with the Conditions for Full Membership of the European Union”.<sup>22</sup> Bulgaria’s Council of Ministers, i.e. the Bulgarian government,<sup>23</sup> passed this on 23<sup>rd</sup> June 2010.

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21 | “Strategia de dezvoltare a justitiei ca serviciu public 2010-2014” and “Strategy for the Development of the Justice as Public Service 2010-2014”. The strategy is available in Romanian and English on the website of the Romanian Ministry of Justice at [http://www.just.ro/Sections/Prima\\_Pagina\\_MeniuDreapta/Strategiedezvoltare20102014/tabid/1332/Default.aspx](http://www.just.ro/Sections/Prima_Pagina_MeniuDreapta/Strategiedezvoltare20102014/tabid/1332/Default.aspx) (accessed November 24, 2010).

22 | <http://www.justice.government.bg/new/Pages/Ministry/Default.aspx?evntid=26079> (accessed November 25, 2010).

23 | The Bulgarian Council of Ministers is a gathering of all ministers, headed by the Prime Minister.

## 1. The case of Bulgaria

For many years efforts have been made to bring about sustainable reforms to the justice system in Bulgaria. So, for example, a few months after EU accession, local NGOs, the Open Society Institute Sofia, the Bulgarian Lawyers for Human Rights and the Bulgarian Association of Judges initiated a program of "civic monitoring". Running parallel to the post-accession monitoring carried out by the European Union, which began on 1<sup>st</sup> January 2007,<sup>24</sup> the initiators wanted to observe developments in the judicial area and, where necessary, exert pressure on the relevant government bodies to achieve appropriate judicial reform.<sup>25</sup> One of the program's founders was of the opinion that Brussels was not strict enough and that after joining the EU reforms in the judicial area had quite clearly tapered off in Bulgaria.

Reactions to this "civic monitoring" were positive: the local media, NGOs, the Minister for European Affairs and even European Commission representatives praised the initiative. On 20<sup>th</sup> July 2007 it held its first round table in Sofia, with participants including the Bulgarian Minister of Justice, Miglena Ianakieva Tacheva.<sup>26</sup> Next steps included setting up an advisory board for the Ministry (convened at the request of the Minister of Justice) made up of several NGOs, and the completion of a judicial reform strategy by the Ministry of Justice in 2008, which was evaluated by NGOs. At that time it was still not possible to produce a deeper, more comprehensive document on national judicial reform such as the one which was published in 2010. A few more years were required before the first such document, the "Strategy for Judicial Reform" was produced. The current judicial reform strategy is primarily the work of the Bulgarian Ministry

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24 | Cf. On post-accession monitoring, n. 18.

25 | According to an e-mail to the author from the executive director of Bulgarian Lawyers for Human Rights and co-founder of the monitoring program, Zdravka Kalaydhjieva, dated June 26, 2007, the goal of the "monitoring and pressure group" was "to set up a group for pressure to undertake a proper reform."

26 | Ms Tacheva was appointed Bulgaria's Minister of Justice on July 18, 2007, after the previous Minister of Justice had to resign for health reasons.

of Justice, supported by the country's most notable legal NGOs. There was much discussion of the draft strategy in early 2010, including a meeting in May 2010 attended by both the President and Prime Minister.<sup>27</sup> The most important issues discussed were future reforms to the court system, the work of the Supreme Judicial Council, the responsibilities of the judiciary, and administrative questions. Representatives of all relevant judicial institutions, prominent legal NGOs and all legal professional associations took part in the discussions.

The fact that the Council of Ministers passed the Strategy for Judicial Reform in summer 2010 can be seen as a great success, also from a political standpoint. The approval of the strategy shows the goodwill of the Bulgarian government, which was also recognized by the European Commission in their progress report of July 2010: "Bulgaria's new strategy for judicial reform, approved by the Government on 23 June demonstrates political determination to achieve a profound reform of the judiciary. The strategy addresses the current shortcomings which should be addressed by Bulgaria as a matter of national priority and in a joint effort by the political level, the judiciary and Bulgarian society. Success will require a sustained commitment by Bulgaria, the Commission and other Member States."<sup>28</sup>

**"Bulgaria's new strategy for judicial reform, approved by the Government on 23 June demonstrates political determination to achieve a profound reform of the judiciary." (European Commission 2010)**

The current judicial reform strategy is particularly positive in that it provides for long-term judicial reform. One of the NGO staff members who was involved in putting together the reform strategy described it as follows: "It is a long term document which goes beyond the mandate of the current government and that is why I think that it will be a sustainable one, because it realistically maps out the problems, introducing at the same time solutions which are of benefit not only to the magistrates but also to the end users of the system. It is also the first one to try tackling serious issues like quality of the legal education

27 | The public discussions were organized in conjunction with the Bulgarian legal NRO "Bulgarian Institute for Legal Initiative – BiLI," the Ministry of Justice and the Konrad-Adenauer-Stiftung Rule of Law Program for South East Europe.

28 | Commission report, n. 19, 7.

and cooperation with the Bar. It also tries to deliver the message that changes in the constitution in its part governing the judicial system are inevitable.”<sup>29</sup>

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Another strong point of the current judicial reform strategy is that it brings together proposals and suggestions made over recent years by a wide range of specialists in different fields. These include legal NGOs, particularly representatives of legal professional associations, and the European Commission. So it is not surprising that these judicial actors have a positive opinion of the strategy as a whole. The strategy’s success now depends on the way it is implemented. To this end, the strategy has made provision for an advisory board comprising the Minister of Justice, representatives from the Ministry of the Interior, the Supreme Judicial Council, the Attorney-General, the Supreme Court, the Higher Administrative Court and the Bar Association. The strategy also recognizes the important role of civil society in judicial reform: in order to ensure the public’s involvement, the strategy provides for the participation of civil society representatives.

## **2. The case of Romania**

Unlike the Bulgarian judicial reform strategy, the Romanian strategy has not been officially passed by the national government. However, preparations for creating this strategy have been very similar in Romania, with several preliminary initiatives seeing the light of day since accession to the EU. For example, on 22<sup>nd</sup> June 2007 a group of Romanian NGOs<sup>30</sup> under the umbrella of the “Coalition for a Clean Government” started the “Initiative for a Clean Justice” (ICJ). The trigger for this was what the founders regarded as disturbing post-accession developments in Romania in the area of justice. In this way its motives were similar to Bulgaria’s “civic monitoring”. ICJ’s founders explained: “We note that the judiciary is now

29 | E-Mail to the author dated November 6, 2010.

30 | The NGOs included: The Advocacy Academy; Freedom House, Romania; Group for a Social Dialogue (GDS); Romanian Academic Society (SAR); Timișoara Society and Society for Justice – SoJust.

subject to provisional and uncertain times, in a moment when the reform should have reached its peak. The system is now propelled by mere inertia, no more than following the objectives and mechanisms previously set up. No new relevant objectives have been set up after the change in Government. Worse still, the measures pending are not being implemented according to the commitments undertaken.”<sup>31</sup>

The stated aim of the “Initiative for a Clean Justice” was to strengthen the rule of law in Romania and to assist in the fight against corruption. The ICJ hoped to achieve this aim through targeted monitoring of further reforms in the judiciary and through evaluation of government measures (decisions and actions) in this area. “The distinctive mark of ICJ stands in the belief that civil society has nevertheless the duty to intervene directly to end corruption and in support of a cleaner justice whenever a blockade appears due to the lack of political will. Any country must have good law, but these are not automatically applied as such in practice without proper support and supervision from the social actors. Only people who have to lose due to corruption may take action in order to fill the gap between lawful Romania and real Romania and to create thus a clean Romania.”

**The “Initiative for a Clean Justice” hoped to strengthen the rule of law in Romania and to assist in the fight against corruption through targeted monitoring of further reforms in the judiciary.**

Whatever happens, this initiative will not have been in vain, for it has had an indirect effect on comprehensive, long-term reform of the justice system. The crisis in the Romanian justice system came to a head after the country joined the EU, culminating in a “strike” by Romanian judges and legal officials in September 2009. The trigger for this controversial protest was the change in the law relating to standard rates of pay for all state employees, which included employees in the justice system. But the dispute over this law was just the tip of the iceberg. The real reason for the judges’ strike was the continuing lack of a real strategy for desperately-needed judicial reforms and of proposals to resolve the deficiencies in the justice area which still remained several years after the country’s

31 | <http://www.sar.org.ro/files/Justice%20monitoring%20report%20ICJ%20-%20June%2024.doc> (accessed November 24, 2010).

accession to the EU.<sup>32</sup> The "Strategy for the Development of the Justice as Public Service 2010" can certainly be seen as – albeit indirect – result of the judges' strike. Among other things, it points to the underfinancing of the justice system and the lack of institutional communication. So the

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strategy can be seen as a positive step, in that it is the first such strategy for Romanian judicial reform in three years. However, critics of the reforms claim it is a worthless document with no practical significance which will have no effect on the underfinancing of the justice system. Observers of current developments in Romanian justice, along with judicial actors think it is likely the judges will stage further protest actions.

In its progress report dated Summer 2010, the European Commission hung their hopes on the elections for the Superior Council of Magistracy (CSM), the self-governing body set up to guarantee the independence of the judiciary system. But at the present time it is still not clear whether the results of these elections, which took place at the beginning of November, will have an effect. So far, the Council has not succeeded in significantly spurring on any determination for reform, despite the fact that for the first time an array of reform-minded judges have been elected.

## CONCLUSION

It is not surprising to any close observer of the transitions taking place in former Communist and Socialist countries that Bulgaria and Romania are finding these transitions in the areas of the rule of law and judicial reform comparatively difficult. This means the current judicial reform strategies and their effective implementation by members of the legal system, by politicians and civil society are all the more important. The Bulgarian judicial reform strategy is designed to include the previously-discussed mechanisms to monitor their implementation because "the debate on the justice situation cannot be allowed to degenerate into separate discussions among experts."<sup>33</sup> Judicial reform must retain a clear and open political profile.

32 | For more detail cf. Stefanie Ricarda Roos, "Rumänien im Jahr vier nach dem Beitritt...", n. 18, 277 et seq.

33 | See Strategy, n. 22, 5.



Judicial reform will remain a key area of policy in both Bulgaria and Romania over the coming years. It remains to be seen whether the two newest EU member countries can succeed in using the judicial reform strategies set out in 2010 to drive through reforms in the justice system which will guarantee every Bulgarian and Romanian citizen effective justice and justify the trust placed in them by their international partners.

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