CICC questionnaire to candidates for a post of judge of the International Criminal Court.

Please reply to some or all the following questions as comprehensively or concisely as you wish

Name: Ekaterina Trendafilova
Nationality: Bulgarian
Nominating State: Bulgaria
List: A

While the first question is relevant to either list A or list B candidates, we know that some candidates have competence that would qualify for both lists, and we would want them to show their full experience in both criminal law and international law. Question 1a) has been specifically drafted with list A candidates in mind. Likewise, question 1b) has been drafted for list B candidates. However, candidates with competence in both criminal and international law should feel free to answer any question in 1a) or 1b) to give the reader a more complete view of their background and experience.

1 a) For candidates on list A:

- **How would you describe your competence in criminal law and procedure?**
- **How would you describe your experience as judge, prosecutor, counsel or in other similar capacity, in criminal proceedings?**

After a serious consideration of the requirements under the two lists (A and B) for the position of a judge at the ICC, my personal understanding as well as that of the Bulgarian government was that the qualifications of list A fit better to my career and to the priorities in my work in the course of more than 25 years.

Herewith, I shall try to give in a nutshell the reasoning why being a nominee under list A correctly presents my experience and expertise with regard to the ICC.

I. Academic career

I have started my academic career at the Sofia University as a professor with a PhD degree in criminal justice.

More than 20 years I have been working in the field of comparative criminal law and criminal procedure, which contributed to my deep and profound knowledge of the two major criminal justice systems – case law and civil law, as well as to the specific approaches of the domestic legislation and practices of different countries (European, American, African, Asian, etc.).

The two prestigious scholarships - Alexander von Humboldt and Fulbright, which I was granted, were an additional impetus to my long lasting interest in comparative law.

The stay in Germany and in the United States made it possible to examine the way these systems (presenting the world's principle legal systems) operate in practice and the major problems they generate by attending court hearings, discussing important legal issues with judges, prosecutors, detectives, counsels.

The academic activities were of crucial significance to my professional growth in criminal law and procedure for they gave me a deep knowledge and a wide perspective in the field.

However, it has always been my firm understanding that doctrine alone is useless if it remains limited to theoretical writings or debates without practical implementation. On the contrary - it should be the fundamental for revising the application of law and urging its improvement according to the best legal practices nowadays as an effective and functioning mechanism with due respect for human rights.

Therefore, my strong motivation to participate actively in the historical changes taking place in the former communist countries, especially in legislation, legal practices and in the way lawyers and the general public understand the rule of law in the rising democracies. Some of my books and articles were the first comparative study in the respective legal field for the last 50 years – as for example is the monographic paper "The Judicial Control in the Pre-trial Phase of the German Criminal Procedure". Another book – "Amendments to the Criminal Procedure Code: Theoretical Grounds, Legislative Decisions, Tendencies", was prepared on a wide comparative basis, examining the best approaches of different criminal justice systems and the internationally recognized human rights standards in the field, thus outlining the main trends in the legal development nowadays. For its significant contribution to the reform in Bulgaria, it was acknowledged by the publishers in Bulgaria as the "Book of the year 2000".

In conclusion, I would underline that my academic and scholarly activities went far beyond its limited boundaries. The monographic papers and articles, which I have published in Bulgaria and abroad, turned out to be a stimulus to the judicial reform.

II. Other activities as an expert in criminal law and procedure

For my extensive expertise in the field of criminal justice I have been appointed in two National Assemblies for head of the criminal division of the Legislative Consultative Council with the Speaker of the Bulgarian Parliament.

Due to my expertise in comparative law I have been invited by the Speaker of the Bulgarian Parliament and by the USAID to become the first scientific advisor to the Internship Program between the American government and the Bulgarian Parliament. Under my supervision and guidance a good number of researches have been accomplished. They were of particular importance for the reform, which is going on and for the new legislation in line with the international standards and best national practices. More details on the researches, accomplished under my scientific guidance is to be found in my CV and on the web side of the Bulgarian Parliament.

III. Practical experience

A significant part of my professional career is the practical experience in criminal law and procedure. As stated already above, theory is useless unless it is of practical benefit and vice versa – practice, which ignores legal doctrine, its analysis and ideas, suffers inefficiency and ineffectiveness.

Hence, my work as a deputy district prosecutor and, later, as a counsel in criminal cases proved important in establishing a profound expertise in criminal law and procedure. It was a valuable experience in every step of criminal proceedings – both in its pre-trial and trial stage. The practice in criminal cases through the years was of genuine significance for my overall, wide and profound expertise. The combination of knowledge in theory and experience in practice is the ultimate prerequisite for a true professional in the field.

As to the ICC, the practice on the side of the two parties - for the prosecution and for the defence, should prove useful for a better understanding of their position in every case. A judge with such an experience will be able to assess more skillfully whether the prosecutor has performed with due diligence the duty for an operational, speedy and impartial investigation and the charges filed are based on solid and reliable evidence. With regard to the counsel, it will be much easier to evaluate the effectiveness of his/her participation and whether it was adequate to the specific circumstances of the case. The accused should be provided with the highest standards of professional defence for this is essential to ensure a fair trial and effective justice.

IV. Human rights law and humanitarian law

Another field of my professional activities is human rights law, as well as humanitarian law.

An integral part of a democratic and functioning criminal justice system is the respect for human rights. Therefore, the international standards in this field met my special interest and efforts. With regard to this aspect of my work and expertise it is worth mentioning:

- Participation in conferences, discussions, meetings, seminars in Bulgaria and abroad;
- Working with NGOs on different human rights issues;
- Member of the editorial board of Human Rights Review;
- Extensive research of international human rights standards and especially those of Art. 5, 6, 7 and 8 of the European Convention for Human Rights and Fundamental Freedoms;
- Writing monographic papers and articles dealing with human rights issues;
- Lecturing at seminars on the ECHR, jointly in some cases with European experts in the field.
- Contributing to the reform in foreign countries in accordance with the international human rights standards (Croatia, Albania, Montenegro, Macedonia, Uzbekistan, etc.).
- With regard to humanitarian law special interest was the issue of war crimes and universal jurisdiction.

- The international criminal justice could also be added to my special professional interests. I was presenting expert opinion to the Ministry of Foreign affairs of Bulgaria in the course of the international efforts for the establishment of the ICC, also an expert opinion to the Stability Pact on the enforcement of the Rome Statute. I teach a new course on international criminal justice, which is included in the curricular of the Faculty of law of Sofia University.

More detailed information on this issue is to be found in my CV.

V. International experience

In order to obtain a relatively full idea of my expertise one should take into consideration my international experience. Besides the large number of participations in different international seminars, meetings, lectures, which are to be found in my CV, it is worth pointing out the following facts:

- For the period 1992-1994 I was approved by the Secretariat of the UN to be the Bulgarian representative to the UN Commission for Crime Prevention and Criminal Justice in Vienna. During the mandate I was actively participating in the work of the Commission on some of the hottest issues at that time - concerted international action to deal with the new and sophisticated forms of crime that transcended national boundaries; exchanging of information on crime trends, as well as on the methods for its prevention and control; providing knowledge and expertise to the new democracies (the former communist countries) for developing and reforming their criminal justice system – preparing manuals on corruption, domestic violence, computer crimes, implementation of extradition and mutual assistance arrangements; combined efforts against national and transnational economic and organized crime, drug trafficking, money laundering, use of proceeds of crime, smuggling of arms, trafficking of women and children, violent crime; improving technical assistance and enhancing effective co-operation between the Member States etc.
- Middle-term expert under the PHARE Twinning Project “Execution of the judiciary reform strategy in Bulgaria. Access to justice”.
- European expert within the European Commission’s CARDS Regional Project “Establishment of an Independent, Reliable and Functioning Judiciary and the Enhancing of the Judicial Co-operation in the Western Balkans”.

VI. NGO activities

For the last 15 years I have been actively engaged in different NGO activities concerning different issues, most of them being, in one or another way, connected with the criminal justice practice and with the legal reform. It is worth mentioning the projects, I have participated in, on issues like criminal justice, legal aid, access to justice, implementation of human rights standards into domestic legislation, gender researches, trafficking of women and children, domestic violence, anti-discrimination issues, crises management, judicial independence, independence and accountability of prosecutors, anti-corruption strategies, etc. The NGOs, which were particularly active in the

accomplishment of these projects, are ABA – CEELI, Center for the Study of Democracy, Open Society foundation, Human Rights foundation, USAID.

In addition I should mention my position of a chair of the Board of trustees of the NGO "Programme and Analytical Centre for European Law" (PACEL). Brief information as to its main activities is attached to this questionnaire.

The true devotion to NGOs' initiatives is due to the fact that in Bulgaria they emerged with the democratic changes in the country. One has to highly evaluate their exclusive contribution to the revival of the autonomous and active civil society. A genuine strive for the establishment of an effective, due process of law could not be accomplished without seriously considering the assessment of the judicial practice and legislation on behalf of the civil society and its representation.

It was the support of NGOs (Open Society foundation, PACEL, etc.), which helped to pave the way of the judicial reform in the field of criminal justice. They strongly supported the first fundamental reform of the philosophy of the system in 1998-1999, made by a group of experts, which drafted the Law for amendments to the Code of Criminal Procedure in line with the European human rights standards. I had the honour to chair this group.

The efforts of the NGOs urged also the consequent steps in the legislative reform. NGOs were also initiating numerous professional meetings, seminars, public debates, where I used to be one of the main speakers.

VII. Legal reform

My comparative criminal justice knowledge proved to be essential to the implementation of the best approaches both of the civil law and case law criminal justice systems. Nowadays there is no national system limited just to the characteristics of one of the two models. One could experience a pragmatic approach of combining the best achievements of both systems.

The expertise gained during my work in the fields mentioned above, was of particular importance for the legal reform in Bulgaria and in other countries, predominantly but not limited to the Balkan region.

My writings outlined the main trends, which the legal reform should follow in line with the international human rights standards and the best approaches of the democratic legal systems nowadays. These ideas found a fruitful soil in the discussions with practitioners during meetings and conferences where I used to be the main speaker.

Since 1998 I have participated as expert to the government, to the Parliament in the drafting of legislation in the criminal justice field and other related branches of law. I used to be head of the expert group, which prepared the Law for Amendments to the Criminal Procedure Code in 1999. It not only introduced the human rights international standards into the Bulgarian legislation, but more importantly - made a crucial step towards the establishment of an effective system of criminal justice. This legislation received twice the highest assessment of the European Commission for Democracy through Law for having implemented the highest standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

A more detailed list of my activities related to the legal reform (expertise to different institutions in Bulgaria and the European Commission), lectures before the professional society, explaining the new philosophy, etc., is to be found in my CV.

Going back to question 1 in the questionnaire I would conclude - all the activities, which I have tried to outline as briefly as possible were not abstract, purpose in itself. Regardless of whether it was the academic field, practical or international experience, involvement in NGO projects or legal reform, the firm intend was to accomplish a deep knowledge, profound experience and wide prospective of criminal law and procedure. This field used to be the focus of all my professional interests and efforts.

Therefore, being nominated under list A correctly presents my real professional orientation and expertise.

2. What are the qualifications required in your nominating State for appointment to the highest judicial offices? How do you meet these qualifications?

The Bulgarian legislation provides for strict requirements for the appointment to the highest judicial offices. Under Art. 126, para. 1 and 4 of the Law for the Judicial Power the candidate should fulfill the following legal requirements:

- Bulgarian citizenship;
- Law degree;
- Successfully completed legal internship;
- Clear criminal record;
- High moral and professional qualities;
- At least 12 years of practice as a judge, prosecutor, investigator, member of the bar, professor in legal studies.

I fulfill these criteria for the appointment to the Supreme Cassation Court (the highest judicial body) due to my academic career and practice as a prosecutor and a barrister.

3. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure used for your nomination.

The procedure used for my nomination was under Art. 36 (4)(a)(ii). I was nominated by the National Group of Bulgaria in the Permanent Court of Arbitration after a thorough, detailed consideration of all the possible candidates for the position of a judge to the ICC. My nomination was supported both by the Ministry of Justice and the Ministry of Foreign Affairs.

The nomination itself, following a strict professional approach, is a great honour for me.

4. Have you provided the statement required by article 36(4)(a) of the Rome Statute and by the nomination and election procedure adopted by the Assembly of States Parties? If not, why not?

The Statement, required by article 36(4)(a) of the Rome Statute, was attached to the Note Verbale of the Embassy of the Republic of Bulgaria in The Hague to the Secretariat of the Assembly of States Parties to the Rome Statute, dated 28 July 2005, containing the communication that the Republic of Bulgaria has decided to present my candidature for the post of judge to the ICC. The Statement can be read on the site of the ICC in Internet.

5. What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in this language?

My native language is Bulgarian. I have graduated an English Language High School in Bulgaria, where in the course of five years I have studied the following subjects in English: English and American Literature, History, Geography, Biology, Chemistry and Physics.

English was also my working language during the mandate as a representative of Bulgaria to the UN Commission for Crime Prevention and Criminal Justice.

One of the requirements to be an expert to the European Commission was also a fluent knowledge of English.

All the international meetings, which I have attended (a more detailed information is to be found in my CV), were conducted mainly in English.

The lectures I delivered in Japan and California were also in English.

My Fulbright scholarship could not be possible and successful without a fluent knowledge of English.

Some of my monographic papers and articles have been written in English (see the answer to question 7a).

6. Do you have any specific legal expertise, including, but not limited to, violence against women or children?

The issue of violence, including violence against women and children, has been of particular attention during the democratic transition period in Bulgaria for the last 15 years. It has been a topic of extensive discussions organized mainly by NGO, in which I have participated myself. Recently, the Parliament passed a law on domestic violence. This law has been thoroughly discussed in the Legislative Council, where the Penal division, I am chairing, was assigned to elaborate a special report on it.

Being a scientific mentor of legislative interns at the "Students Internship Program" with the Bulgarian Parliament, I had to cope with quite a variety of legal issues in different fields of law, analysis of the case-law of the European Court for Human Rights, acts of the European Union, the Council of Europe, UN, NATO, WEU, OSCE, G-8, the legislation of EU Member-states, the legislation of Central and Eastern European countries, Scandinavia, Australia, Canada, USA, Latin American countries, Japan, Russian Federation, Ukraine, as well as acts of institutions like Interpol, FBI, Eurojust, the Stability pact, etc. It is worth mentioning the following legislative researches:

- Anti-discrimination Draft Bill, 264 pages
- Use of Special Surveillance Means, 104 pages
- Special Services – Intelligence; Counterintelligence and Others, 158 pages

- Legal Regulation of the Compulsory Course of Medical Treatment for Drug-dependent Criminals before Serving their Term of Imprisonment, 91 pages
- International Conventions adopted by the European Union and the Council of Europe - Ratified or not by the Republic of Bulgaria, 152 pages
- Control on the Firearms, Munitions and Explosives, 286 pages
- International Terrorism, 332 pages
- Coercive Measures (Measures of Encroachment), Different types: Procedure of Applying (Application procedure)
- Differentiated (Summery) Procedures in the Criminal Procedure, 139 pages
- Penal Regime for Juvenile Offenders, 171 pages
- Irremovability of Magistrates, Prosecutors and Investigators in the Legislation of the USA, European and Other Countries, 103 pages
- Euthanasia in European Countries' Legislation, 97 pages
- Witness Protection in European Countries' Legislation and the Legislation of the USA, 165 pages
- Legislation on Forfeiture of Illegally Acquired Property – Legislative Practice of Ireland and Other Countries, 115 pages
- Status of Protective Services within the European Union, 61 pages
- Legislation of the European and Other Countries related to the Establishment of the Fiscal Investigations Unit (Tax Police), 142 pages
- International Acts and Institutions for Co-operation against International Criminality, 182 pages
- Undercover Agent in Foreign Legislation, 115 pages

I should especially underline my legal expertise in comparative criminal justice. This area has been of special interest to me for more than 20 years. As a result of this I have an excellent knowledge of the two major models of criminal justice system (case law and civil law), but as well of the specific approaches of different national legal systems.

The issues of war crimes, universal jurisdiction, international criminal justice have also met my professional efforts.

Finally, the human rights standards of article 5, 6, 7 and 8 ECHR, on which I have written extensive articles and delivered quite a number of lectures.

7. a) Please provide us with a list of your writings and opinions relevant to evaluating your experience.

Due to the quite great number of writings, I shall try to list some of the most interesting and important of them.

Monographic papers and case-law books

- The Public Prosecution in Criminal Procedure, 1984 (320 pages) Doctorial theses;
- The Council for the Defence in Criminal Justice, 1992 (248 pages);
- Judicial Control in the Pre-trial Phase of German Criminal Procedure, 1995 (212 pages);

- Case-book of the Practice of the Bulgarian Supreme Court 1975-1995 (436 pages);
- Criminal Law – Republic of Bulgaria (International Encyclopaedia of Laws), Kluwer Law International (190 pages); *In English*
- Amendments to the Criminal Procedure Code: Theoretical Grounds, Legislative Decisions, Tendencies, 2000 (294 pages);

Articles

- Ensuring the Right to Effective Council for the Defense in Bulgaria. In: "International Review of Penal Law, Criminal Justice and Human Rights", 1991, USA; *In English*
- The Role of the Prosecutor in the Criminal Justice System of Bulgaria In: "International Review of Penal Law, Criminal Justice and Human Rights", 1991, USA; *In English*
- The Procedural Status of the Victim's Representative in Criminal Procedure, In: "Savremenno Pravo" ("Modern Law Review"), 1991, issue 2;
- Legal Reform in the Criminal Procedure of Bulgaria, In: Revue Internationale de Sciences Criminelles de Paris, Center International de Paris, 1993, Paris; *In English*
- The European Convention for the Protection of Human Rights and Fundamental Freedoms and Some Criminal Justice Issues in the Republic of Bulgaria, "Pravna Misul" ("Legal Thinking Review"), 1993, issue 2;
- Criminal Procedure in Bulgaria. In: Legal Reform in Post-Communist Europe, 1995, USA; *In English*
- The Office of the Prosecution and of the Investigation and the Rights of Citizens in Criminal Proceedings, In: "Savremenno Pravo" ("Modern Law Review"), 1996, issue 6;
- The New Legal Status of the Bulgarian Prosecutor's Office, In: "Comparative Law Review", 1997; *in English*
- Detention under the Code of Criminal Procedure and Civil Rights, "Pravata na choveka" ("Human Rights Review"), 1998, issue 1;
- Judicial Control over Detention under the Code of Criminal Procedure, "Pravata na choveka" ("Human Rights Review"), 1998, issue 2;
- Protection of Civil Rights under the ECHR and the Forthcoming Changes in the Criminal Procedure Code, "Pravata na choveka" ("Human Rights Review"), 1998, issue 4;
- The Urgent Need to Establish an Effective Criminal Justice System, In: Capital Weekly Newspaper, 27.04-03.05, 1998;
- The Plea-bargaining in Criminal Justice, In: "Lider" ("Leader Review"), 1999, issue 5;
- Police Investigation in Criminal Cases, In: "Lider" ("Leader Review"), 1999, issue, 7;
- The Principle of Speedy Proceedings, In: "Pravo, administrazia, politika" ("Law, Administration, Politics Review"), 1999, issue 3;
- The Amendments to the Criminal Procedure Code of 2001 – the Failure of a Legal Reform, In: "Pravata na Choveka" ("Human Rights Review"), 2001, issue 1]

- La legislazione processuale penale della Repubblica di Bulgaria, In: "LE ALTRE PROCEDURE PENALI" Transizioni dei sistemi processuali penali, Vol. I, 2002; *In Italian*
- Some Issues Raised by Article 5 of the ECHR Regarding the Serving of Sentences. In: "Pravata na Choveka ("Human Rights Review"), 2002, issue No. 4;
- About the Chief of the Undercover Agent, In the Electronic Legal Review "Apis-vreme", 2003;
- Judicial Interrogation in the Pre-trial Stage of Criminal Procedings, In the Electronic Legal Review "Apis-vreme", 2003;
- Special Surveillance Means of Investigation, In the Electronic Legal Review "Apis-vreme", 2003;
- Revival of Criminal Cases by the Supreme Cassation Court, In the Electronic Legal Review "Apis-vreme", 2003;
- Why the Reform of the Pre-trial Stage in Criminal Procedure is Indispensable, In: Capital Weekly Newspaper, issue 38, 2004;
- The Reform in Criminal Jurisdiction in the Republic of Bulgaria according to European Standards. In: "First Week of Law. Spain and Bulgaria. Reform of the Judiciary in the Process of the Accession of the Republic of Bulgaria to the European Union" (Sofia, October 15-17, 2003), 2004;
- Some Issues of the Criminal Procedure Code Draft, In the Electronic Legal Review "Apis-vreme", 2005.

7. b) Please provide us with an electronic copy of any writing or opinion describing your experience as outlined in questions 1a), 1b) and 5.

To my regret I do not have electronic copies of all my publications and especially of those in English, which I presume are easy to be read by the members of CICC. My hope is that the access to the papers, published abroad, will not be difficult. Hence, I send only those that are available now. At the end of this questionnaire you will find some short articles and reports with regards to this question.

8. a) For candidates not currently ICC judges:
Please explain your qualifications for this position. What aspects of your career, experience or expertise outside your professional competence do you consider especially relevant to the work of an ICC judge?

The coming years will be of crucial importance for the ICC to gain trust and credibility, to reach the goals for which it was established, to prove itself as the most effective international criminal justice institution and to reduce the tension against itself. The most convincing argument in favour of the ICC will be the work of the judges. Therefore judges should be persons of high integrity, moral qualities and professional expertise.

If elected for a judge at the ICC, my experience as a prosecutor and as a counsel for the defence in criminal cases will contribute to a better understanding of the position, tactics, argumentations of the parties in the trial and to evaluate whether they perform

their function according to the highest professional standards or their work shows unacceptable deficiencies.

My extensive knowledge of the two major legal systems (case law and civil law) would also be useful for the work of the Court as the Rome Statute itself is a result of the combined efforts of representatives of these two legal models. The provisions in the Rome Statute are neither following only the case law, nor just the civil law model of criminal justice. They are a combination of both.

My experience in human rights standards and humanitarian law will be useful for the deeper understanding of the substantive and procedural provisions of the Rome Statute and their application in a way as to ensure that every particular case has been conducted in compliance with the requirements for a due process of law, safeguarding the rights of the accused, as well as of the victims and the protection of witnesses.

I shall, however refrain from discussing my personal characteristics of honesty, impartiality, morality and other similar values, which must be an integral part of the judge's personality. The opposite would go beyond the universal rules of good breeding.

9. Why do you want to be a judge at the ICC?

Several considerations could be exposed with regard to this question.

For anyone, who has been following the development of international criminal justice and the debates on the establishment of the ICC, the Court is a historical landmark event. Regardless of the good intentions which led to the creation of the ad hoc tribunals, there are still concerns about the violation of the non-retroactivity principle in criminal law, the apprehension that this is "justice of the victors", the post-fact establishment of the substantive and procedural provisions, the collection of evidence, the high expenses etc.

For the first time in the history of international criminal justice the international community has agreed on the establishment of a permanent, treaty-based court, which is aimed at putting an end to impunity for the gravest crimes committed. The ICC is expected to urge the exercise of national jurisdiction for the crimes under the Rome Statute. It should also have a deterrent effect on future crimes.

On the other hand, the Court will fulfill its functions in accordance with the Rome Statute, which is a result of the efforts of the international community, recognizing the achievements of both major criminal justice systems.

The ICC should be highly evaluated, because from a legal point of view it meets the requirements of the legal principles in the field of criminal law and justice – the Rome Statute declares in abstract what behavior is deemed unacceptable by the international community and in case of violations of its provisions – what actions and in what kind of proceedings the organs of the Court will undertake respective measures.

At the same time, the ICC is still a controversial issue. Therefore, everyone who believes that this was the right step in the development of the international criminal justice should meet the challenge to contribute with all his/her energy, knowledge, devotion to strengthen the position and credibility of the ICC.

Hence, my motivation to be a candidate for the position of a judge at the ICC is to give my personal asset – practical experience and extensive knowledge, to this newly

established international institution, which, I have no doubts, was the right decision taken by the international community.

There is one more reason for me to participate in the election proceedings. No one can deny that to receive the trust, support and belief of the States Parties and to be elected to the position of a judge to the ICC is a great honour and an exclusive professional success. Moreover, to become a judge at the ICC at this historical moment, when the Court is still quite a debatable institution, and to contribute to affirm its central role in the new system of international justice is a real challenge and I have no doubts to face it.

10. What do you think will be the biggest challenges facing you as an ICC judge?

If I would become a judge at the ICC, I would meet the challenges that judges at the ICC face as a whole. Depending on the division of the Court they are assigned to some should determine whether the statutory threshold to start an investigation are met or the charges filed by the prosecutor are based on solid and reliable evidence, as well as the challenges in performing other powers of the Pre-trial Chamber like issuance of detention orders and surrender the detainees to the Court. Trying the first cases according to the universally recognized highest standards of criminal justice would be the task of utmost importance for the judges of the Trial Chamber. Finally, the challenges for the judges of the Appeals Chamber in reviewing the sentences as to whether the case has been tried in a professional and impartial way.

Regardless of to which chambers the judges belong, they should fulfill their functions with highest professionalism, objectiveness and devotion. It will be the work of the judges in this and the coming years that will be the ultimate judgment as to whether the establishment of the ICC was worth the efforts, the costs and whether it meets the expectations of the international community. The qualifications of the judges, the way they perform their functions will be an important impact on the work of the ICC and its success. It is essential that the ICC functions in a fair, effective and impartial manner, thus advancing the campaign for its universal approbation.

From a personal point of view, it is more than a challenge to be a judge at the first permanent international criminal court in the years when it is becoming an operational institutional. It is a matter of professional responsibility and dignity to contribute for gaining credibility for this new and first of the kind international institution.

It is however not a challenge, but a welcome experience to work together with representatives of different countries sharing one and the same goal.

11. What do you believe are currently some of the major challenges facing the Court, and what do you believe will be some of the major challenges in the coming years?

The ICC is expected to meet a lot of challenges because it is the first ever permanent international court without any such previous experience, which could be of benefit for the Court. The experience of the ad hoc International Criminal Tribunals, their practice and the difficulties they have gone through were of particular significance for the establishment of the ICC and will be of help in its work.

Some of the challenges could be foreseen, others will emerge in its practice.

The biggest challenge to the Court is to enter into a more operational status - an immense work, which has already started, but much more is still ahead.

Some of the major challenges, which the Court is currently facing, are the first investigations, conducted by the Office of the Prosecutor. In the narrow sense, it is not a challenge to the Court itself, but to the prosecution. The Office of the prosecutor should act in an effective manner, collecting reliable evidence so that the charges filed could be accepted by the Pre-Trial Chambers, and the cases could enter the trial stage.

The lack of national legislation (inclusively the countries where the first investigations have begun – Sudan, Uganda, the Democratic Republic of Congo) providing for cooperation with the ICC might create certain difficulties in the collection of evidence, the logistical assistance in gaining access to hard-to-reach areas, security of the teams of investigators etc. The question of security of victims and witnesses in remote and insecure areas, their effective protection and support could not be avoided. The experience of the ad hoc tribunals shows that the effectiveness of the ICC will greatly depend on the protection of those victims and witnesses, willing to testify and participate in court hearings. Hence, the Court should cope (hopefully, with the cooperation of national authorities) with the security challenges, faced by victims and witnesses and intervene immediately when necessary.

The contribution of the Court to the definition of the crime of aggression and the conditions under which the Court can exercise its jurisdiction is another challenge.

A major challenge in the coming years should be considered the ability of the Court to act efficiently and effectively. The Court should find a good balance between speedy proceeding and safeguarding the rights of the accused and of the victims.

In addition to this concern one should consider with deep attention the unique opportunity of the victims to serve as participants. The idea to make justice more effective for those who suffered the most should be supported. At the same time the ICC has limited budget and its increase must not become an unacceptable burden for the Sates Parties. Therefore, a challenge to the Court will be not to create unrealistic expectations for victims. It would hardly be possible to provide free legal aid for every indigent victim regardless of the deep concern and care for them.

Another balance must be reached in assuring the rights of the victims to participate in the proceedings, which should, however, not slow down the investigation and the trial proceedings. It is well known that "*Delayed justice is denied justice*". In each case the Court will have to decide, on the one hand, whether the personal interests of victims are not at stake and, on the other, to take steps to ensure that their intervention does not prejudice the fair, impartial and expeditious proceedings.

A balance should also be found between the right of the victim for reparations and the presumption of innocence. The rights of the victims for compensation should be highly respected without prejudicing the fairness of justice.

Efforts should also be made not to expand the costs of the Court and of the proceedings. It is vital for the ICC to act as a catalyst for national prosecutions, to strengthen national capacity to investigate and to prosecute crimes under the Statute. The Court should intervene only as a last possible means to cope with such crimes. The ICC is designed as a court of last resort that will defer to national proceedings. The Court should focus itself only on the gravest crimes under the Rome Statute in order not to hamper the national jurisdiction and not to be also flooded with a great number of cases,

which will result in long-lasting proceedings and huge increase in the costs of the Court. The ICC should take over a case only when it is absolutely convinced that the national authorities are unwilling or unable to exercise jurisdiction.

A serious challenge is the cooperation with countries. Without the assistance of the national authorities the work of the ICC will be compromised. The success of the ICC will be determined to a great extend by the level of cooperation from the states – to arrest individuals and surrender them to the Court, to collect evidence (states will generally have best access to evidence and witnesses), to serve documents in their respective territories, to protect victims and witnesses etc. The States Parties to the Rome Statute are supposed to fulfill their obligations under the treaty establishing the Court and to respect the letter and the spirit of the Rome Statute. Of particular concern is the cooperation with third countries, which have not ratified the Rome Statute. It could be possible that alleged perpetrators of gravest crimes try to escape the jurisdiction of the ICC on their territories.

The ICC should make serious efforts to maximize its impact on those, who were mostly affected by the crimes the Court is trying. It will be desirable for the ICC, as provided in Article 3 (3) of the Rome Statute, to be seated not far way from the place the crimes have been committed, but rather exercise its functions on the spot – near the evidence, the victims and the witnesses, the people who has in one or another way been affected by the crime. This approach will be crucial for the Court to gain the trust and the support of the population.

A challenge might also be the enforcement of sentences (although not pending) as just one country has expressed its willingness to accept sentence persons.

12. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions.
12 a) Members of the Coalition for the ICC and governments are concerned about the difficulties judges might experience in interpreting articles of the Rome Statute where their government has already expressed an opinion. Do you expect difficulties in your taking an independent position?

Impartiality, independence and morality of judges in performing their functions should be the pattern of every court and of the ICC. A judge should obey only the law and in deciding the case should consider only the evidence. Any other influence is absolutely inconceivable.

The nomination by the government is beyond any doubt a recognition for the nominee. But to receive the belief and approval of the States Parties is a great responsibility. The judges at the ICC will remain in the history of international criminal justice, why not in the history of mankind as well. Therefore it is a matter of both professional and personal dignity to leave a noble trace in the memory for the Court.

Moreover, Bulgaria has always been supportive to the ICC. Bulgaria was among the 10 countries, which simultaneously deposited their instruments of ratification with the Secretary General of the United Nations – a requirement under Article 126 of the Rome Statute for the enforcement of the Rome Statute. Regardless of the positive concept, which Bulgaria has towards the Court, my whole professional and personal life have always been fully devoted to common values, which also lay down the foundation of the ICC.

12 b) Would you be able to judge impartially whether an investigation by your government was genuine?

More than 25 years I have convincing evidence of being an independent and impartial person. The professional and honest approach would mark my work at the ICC if I would be elected for a judge, regardless of whether a particular issue is related to my country or not. A judge should take a decision only on the basis of facts. I can hardly imagine interpreting facts outside their objective logic just because they will affect my country in one way or another.

Moreover, the ICC has been established as an independent international criminal court. Its relation with the UN is governed by a special agreement, which evidences the intention of the States Parties and the international community to guarantee its independence and impartiality. Only such vision for the status of the Court would be beneficial to this newly created unique international institution. Therefore, the work of the judges at the ICC should be marked with an unprejudiced and independent approach to the accomplishment of their duties, so that it could shape the future of the ICC according to the intentions of, which led to its creation. The opposite would mean a failure in the appreciation and respect for the Court.

13. Victims have a recognized right to participation in the proceedings in the Rome Statute and to apply to the Court to award reparations under Article 75. What experience relevant to these provisions do you have?

For the first time in international criminal justice the Rome Statute provides for the victims to participate not only as witnesses, but far more actively in the proceedings before the ICC. They can as well as apply for reparations. This approach to the position of the victims in criminal procedure is characteristic of the civil law countries contrary to the law and practice in case-law countries, where the role of victims is limited to that of witnesses.

The Bulgarian legal system could be referred to the civil law model, although the reform, in which I was actively involved, implemented some important ideas from the case law system. By the way, this approach is to be witnessed in almost every domestic legislation nowadays – features, typical for one of the major models of criminal justice are “penetrating” into the other and vice versa. As far as victims’ participation in criminal proceedings is concerned, the tradition in Bulgaria is to provide for the victims to participate in trial proceedings as private accuser and civil plaintiff. In this way the victims are given the opportunity to accuse independently from the prosecutor the perpetrator of the crime as well as to apply for a compensation for their moral sufferings and material damages. The new Criminal Procedure Code of Bulgaria provided for the victims some additional rights – to be informed of the course of the proceedings, to submit questions, complaints, etc.

14. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked.

What experiences have you had dealing with crimes of sexual and/or gender violence? Are there situations or cases in the past where you believe you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted? If so, to what effect? Are there situations where you did not analyze the different impacts of a situation on women and men but on reflection you now think such an analysis would have been appropriate?

I would begin answering this question with the stipulation that until recently of special concern were only crimes under the Criminal code like rape, but it was quite a rare practice to discuss other issues of sexual or gender violence. Gradually, some other aspects of such violations of main human rights related to sex and gender are gaining publicity and attention of the community and of the state institutions. Some NGOs are particularly active in the field of domestic violence, gender equality, trafficking of women and children and I assist them when my professional legal experience is needed.

Of deep concern in the Bulgarian society is the fact that Bulgarian women are often victims of forced prostitution and sexual slavery. Therefore, the efforts not only of NGOs, but also of the Parliament are focused on finding a way to combat this grave criminality. Currently, the Internship program is conducting a research on the issue of prostitution, inclusive forced prostitution and sexual slavery, where I am contributing to a thorough study of the different approaches of other national systems to this problem.

However, in my personal practical experience in crimes of sexual or gender violence I have treated in an absolutely equal way men and women regardless of whether they were accused or victims of a crime. I find it incorrect to take a two-folded approach due to gender or any other characteristics outside the scope of the collected evidence.

15 a) Did you help advocate for the adoption of human rights or international humanitarian law treaties or other instruments? Please describe your experience.

My personal and professional pride is the fact that a great deal of my work is devoted to the implementation of the international human rights standards into the Bulgarian legislation, as well as to the legal reform in other countries (the countries from the Balkan region, Far-East countries like Uzbekistan). I cannot but share my satisfaction that the internationally recognized standards for the protection of the highest common human values – human life, liberty, dignity, privacy, etc., became national legislation of my country.

In 1990-1991 I used to be a member of the special Intergovernmental Commission for the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms with the Vice-minister of the Ministry of Foreign Affairs. My task was to compare the domestic legislation in the field of Criminal law and procedure with the case law of the ECHR (Articles 5, 6, 7, and 8) and to propose amendments thereto in line with the European human rights standards.

I have written extensive papers on human rights standards, especially article 5, 6, 7, and 8 ECHR.

With regard to human rights issues I have participated in international and national conferences as a speaker, worked on different projects of NGOs and of the European Commission and also delivered lectures in this field.

It is worth mentioning my active participation in the legal reform in line with the human rights standards in the field of criminal law, criminal justice, execution of penalties, health legislation, access to justice and other branches of law, whose provisions could threaten the right of liberty, security of person, etc.

Last, but not least, as far as adoption of international humanitarian law treaties is concerned I should point out the expert opinions to the Ministry of Foreign Affairs in the course of the discussions to set up an international criminal court, as well as, my expert opinion to the conference, organized by the Stability Pact in Croatia "Enforcement of the Rome Statute in the Stability Pact Countries".

15 b) Have you served on the staff or board of directors of human rights or international humanitarian law organizations? Please describe your experience.

With respect to this question it is worth noting:

- My work on projects initiated by human rights foundations and other NGOs. (More details are pointed out in my CV);
- I am member of the Editorial board of the Human Rights Review;
- Since 2000 I am chair of the Board of trustees of the NGO "Programme and Analytical Centre for European Law" (PACEL). Attached, I send a more detailed information about PACEL and its projects.

16. Have you ever resigned from a position as a member of the bar of any country, or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.

The answer to this question is negative.

17. Have you ever been found after an administrative or judicial hearing to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status? If yes, please describe the circumstances.

My answer is negative.

18. It is expected that a judge shall not, by words or conduct, manifest, or appear to condone, bias or prejudice, including, but not limited to bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff, court officials and others subject to his or her direction and control to refrain from such words or conduct.
Do you disagree or have difficulty with this expectation?
How will you be able to meet this expectation?

I have no difficulties at all.

19. Judges will be elected for a term of nine years.
A judge is expected to be on the bench or otherwise handling legal matters for at least seven hours per day, five days per week, and at times, a judge's responsibilities may require him or her to be on the bench or at work into the evenings and on weekends.
Do you expect to be able, now and in the foreseeable future, to perform these tasks on your own or with reasonable accommodation? If no, please describe the circumstances.

I am sure that I will not have any problems with the intensive work, which a judge is to perform. Especially in the coming years when the Court should prove itself to be an effective institution, it would have been doubtful not to presume a devoted and hard work as far as the activities of the Court are concerned.

20. Do you know of any factors that would adversely affect your ability to competently serve as a judge, to comply with a judge's ethical responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume? If yes, please explain.
No.

Here you can find additional information to some of the questions in the questionnaire.

Question 7b

THE NEW LEGAL STATUS OF THE BULGARIAN PROSECUTOR'S OFFICE*

After the collapse of communism, the countries of Eastern and Central Europe made fundamental changes within a short period of time. These changes affected all aspects of life - political, social, economic. The constitutional and legal system was no exception, undergoing radical reform. In 1991 a new Constitution replaced the old socialist Constitution.

I

For the first time in modern Bulgarian history, the new Constitution recognized the **principle of seperation of powers.** Article 8 divides the state power into legislative, executive and judicial branches. The judicial power includes judges, prosecutors and investigators.[1]

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* I would like to express my special thanks to **Professor Floyd Feeney** for his help with my article.

The infringements upon the independence of judges, prosecutors and investigators in the socialist past made the legislature very cautious as to which branch of government prosecutors and investigators should belong.[2] There was a long discussion and a number of different proposals. Some thought that the Prosecutor's Office should be part of the executive branch as in most European countries (Austria, Germany, France, Sweden, Norway, Denmark, Finland, etc.). Others believed that the Parliament should choose the chief prosecutor.

Ultimatly the new Constitution **placed the prosecutors in the judicial branch** - a decision that differs from the approach of most Western systems but is similar to that used by Italy.[3] The idea was to prevent interference into the work of the prosecutors by the executive branch and to insulate the prosecution from the kind of political influences represented in Parliament.[4] As a country with only a few years of experience in democracy, the Bulgarian people were very sensitive about the independence of the prosecution. The Constitution sought to respond to the people's expectations and demands that judges, prosecutors and investigators be given a place in the governmental structure that would allow them to defend the interests of society against arbitrary violations of the rights of its citizens.

For similar reasons the investigators were removed from the Ministry of the Interior. They were placed in a newly created National Investigation Agency. This agency was established as an independent body and was made part of the judiciary.

II

The Law for the Judicial Power of 1994 **created a new legal framework for the structure, organization and functions of the Prosecutor's Office.** Previously the Prosecutor's Office was closely affiliated with the ruling communist party. The Attorney General, according to the socialist Constitution of 1971, was "elected" by Parliament (National Assembly). In fact one candidate, previously approved by the central committee of the ruling communist party, was nominated. There was no open competition among candidates. The Attorney General was a person close to the ruling party, comforming the fulfilment of his duties with its policy.

Under the socialist regime the stucture of the Prosecutor's Office was hierarchically organized and extremely centralized. The Attorney General appointed every single

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[1] Bulgarian law has long required the investigation of crime to be carried out by officials with a legal education. A legal education is considered extremely important because the pre-trial stage of criminal proceedings requires knowledge of many special legal issues. Although investigators are similar in many respects to American detectives, under Bulgarian law they are not part of the police, and like judges and prosecutors must be lawyers. In the Bulgarian system, the police respond to crimes and receive crime reports. They may assist the investigators, but they do not themselves conduct investigations.

[2] There was never any doubt that judges should be placed in the judicial branch as in any legal system recognizing the principle of the seperation of powers.

[3] In Italy, prosecutors are members of the judicial branch. They have the same status as judges. For more details see: **G. Tinebra,** The Role of the *Pubblico Ministero* in Italy, Revue Internationale de Droit Penal, 593, (1993).

[4] For details on the debates and arguments, see **E. Trendafilova**: The Separation of Powers and the Prosecutor's Office, Modern Law Review, (1996), N 6.

prosecutor in the country. He also decided all the promotions, demotions and dismissals of the prosecutors throughout the whole system. The prosecutors were obliged to follow the orders and instructions of their superiors and of the Attorney General.

The new Constitution and the Law for the Judicial Power provide a new policy for judges and other members of the judicial branch - prosecutors and investigators. They are not elected, but are **appointed for life** with a probation period of three years. Following the Italian model, the new Constitution established a **Supreme Judicial Council** [5] which is authorized to appoint, promote and dismiss all ordinary judges, prosecutors and investigators. The Supreme Judicial Council also nominates the Chairperson of the Supreme Cassation Court, the Chairperson of the Supreme Administrative Court, the Attorney General and the Director of the National Investigation Agency. The President of Bulgaria appoints these officers.

The Law for the Judicial Power creates **safeguards for the independence** of prosecutors when prosecuting individual cases and **decentralizes** the Prosecutor's Office to some extent.

Membership in the ruling Communist Party was an important prerequisite in the socialist era for becoming a prosecutor or at least for a successful professional career. After the change in regimes, a new law was adopted, prohibiting state officials, including prosecutors, from membership in a political party or other political activity. The Law for the Judicial Power confirms this provision. Members of the judiciary are free to join together in a union or in union-like activity for the purpose of defending their independence and professional interests. This union may sponser seminars or courses in which judges, prosecutors, investigators and University professors discuss issues of practical importance or take other actions to improve the education and training of its members. The law forbids the union, however, from merging or acting together with organizations that are not judicial.

III

One of the crucial steps in creating the new legal framework was to redefine **the role of the prosecutor (procurator).** Under the socialist regime the role of the prosecutor differed considerably from that of prosecutors in Western countries. The socialist Constitution of Bulgaria gave the Attorney General a "**supervising power"**[6] over the

[5] The Supreme Judicial Council is an independent body with 25 members. Members must be lawyers with high professional and moral qualities and no less than 15 years of legal practice. The Chairperson of the Supreme Cassation Court, the Chairperson of the Supreme Administrative Court and the Attorney General are members of the Supreme Judicial Council by right. Eleven members are elected by Parliament and eleven by the judicial branch. The idea of the legislature was to insure the independence of the Supreme Judicial Council, on the one hand, and to create it as a widely representative body, on the other hand.

[6] In Bulgarian, this power is called "nadzor". In the Western literature, this term is usually translated as "supervising power" and this article follows the usual practice. The term might also, however, be translated as "oversight power". In reality, there is no perfect translation as the Bulgarian term involes a combination of supervision and oversight.

The socialist law defined six different kinds of prosecutorial activities: common supervision; supervision over three phases of criminal cases (the investigation, the trial

executive, local authorities, enterprises, mass organizations, public officials and citizens.[7] This "supervising" power was considered to be the prosecutor's basic function. The prosecutor also had the power to conduct prosecutions and, in some cases, criminal investigations. In principle, however, even the prosecutor's **prosecuting function arose out of the more general supervising power.** The two functions overlapped and influenced each other. When the prosecutor prosecuted a case, the prosecutor was not only the prosecuting party, but he also exercised supervision over the way the criminal case was tried. **The court was therefore also subject to the supervisory power of the prosecutor.** Although the court was not formally bound by the opinion of the prosecutor, in reaching its judgement, the judge was always conscious of the prosecutor's supervisory power and there was a serious question as to what political and psychological influence the prosecutor's supervisory power had on the court.[8] This consideration explains the heated debates in the course of many years as to what role the prosecutor should play in criminal cases - a prosecuting authority like in most modern democratic systems, a general supervisory role, or both.[9]

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stage, and the execution of sentences); supervision in civil cases; and supervision in administrative cases.

Prosecutors responsible for the "common supervision"reviewed the actions of the executive branch, local authorities, state enterprises, mass organizations, public officials, and citizens. Following a monthly schedule, for example, they visited the state enterprises to inspect the work and review the files. If the prosecutor came across a violation of the law, prosecution ensued. The prosecutor's "supervisory" power was not limited, however, to investigating violations of law. If the prosecutor observed something that was not working well, the prosecutor was expected to call this to the attention of higher authorities even though no violation of law was involved. The prosecutor was not allowed, however, to interfere with the work of the enterprise.

Although the common supervision work of the prosecutor's office was considered extremely important in the socialist system, it was not highly valued by the prosecutors themselves. The most professional of the prosecutors generally sought to avoid such work in favor of criminal prosecutions.

[7] Due to that Constitutional provision prosecutors used to have higher social status than judges. Greatest respect, or more correctly greatest fear, ordinary people had for police and investigators, who were officers of the Ministry of the Interior.

[8] **J. Herrmann,** The Role of the Prosecutor or Procurator (Synthesis Report), International Review of Penal Law, Criminal Justice and Human Rights 543, (1993).

[9] There were authors considering that prosecutor in criminal procedure should be exclusively a supervising body. Others maintained that prosecutor combined supervision with prosecution. According to that opinion the prosecuting function emerged from the general supervising power of the Prosecutor's Office. Starting criminal proceedings prosecutor, however, could not abandon his main duty - supervision. The supervisory power, like a "red thread", went throughout the whole process, being exercised by the prosecutor as integral part of his prosecuting function. A third group of authors regarded the prosecutor as a party in the first court instance and a supervisory state organ in the second. There were lawyers, on the fourth place, thinking of the prosecutor only as a prosecuting party both in the first and in the second court instances. They were not,

IV

The idea of giving the prosecutor a supervisory role over the system did not originate in the socialist countries. The history is the best explanation for the existence of the prosecutor's supervisory power in the socialist countries. It is interesting to trace its original appearance and development.

The prosecutor's office was first established in France during the 14th century. Its initial purpose was to secure the fiscal interests of the king. Soon, however, as the king received information about arbitrary abuses of power by the feudal landlords in the exercise of their judicial functions, the king decided to take over the judicial power over into his own hands. Having no other suitable institution, the king entrusted the prosecutor's office with the additional tasks of investigating, prosecuting and trying criminal cases [10]. In time, the prosecutorial and judicial functions displaced the fiscal duties and became the only duty of the prosecutor's office. Over the time other European states accepted the French model - the Netherlands, most of the Swiss cantons, Spain, Norway, Italy, etc. In these countries the prosecutor's office was established as a judicial body, exercising only the duty of prosecution.

The supervising function first appeared in Russia. Wanting to turn Russia into a strong and powerful empire, Peter the Great demanded that his personal will be respected and fulfilled by everyone in his monarchy. Peter undertook a series of redical reforms and urgently needed an effective control mechanism to support his reforms throughout the vast Russian Empire.

He seized on the institution of the French Prosecutor's Office. In a visit to France Peter was very much impressed by the respect and attention with which the members of the Parliament gave to the speech of the Prosecutor General. Peter could see the extremely important role that the prosecutor played in the French society.

On his return to Russia in 1721, Peter immediately took steps establishing a similar institution. He appointed a **Procurator General to the Senate** - the highest executive body in the empire. The Procurator General enjoyed the full confidence of the tzar and was responsible only to the monarch for his actions. In case of intentional abuse of power, however, the Procurator was to face the death penalty.

The **only function** Peter imposed on his Procurator General was **to supervise the Senate.** The Russian word for supervision "nadzor" successfully describes the mission of the Procurator - "nad" means "over" and "zor" comes from the word "vzor", which means "look". Hence, the role of the Procurator General was "to have a look over" everything and everyone in the huge Russian Empire.

The Procurator's exclusive duty was to attend the sessions of the Senate. He did not participate in its work. The only purpose was to observe whether the work of the Senate was in comformity with the tzar's Decrees. If not, the Procurator reminded the Senate of its obligation to fulfil the tzar's will. In case the Senate did not follow his directives, he informed the monarch. Lower level procurators were appointed throughout the territory of

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however, the prevailing group of authors due to the provisions of the socialist Constitution, accumulating great supervisory power to the Attorney General and his Office.

[10] This was a typical example of an iquisitorial process in which one and the same person investigated, prosecuted and decided the case.

the Russian Empire. They did not participate in the work of the local authorities. Their only obligation was to supervise these authorities.

The Russian Procurator's Office at that time was not organized on the principle of hierarchical subordination. Each individual prosecutor was subordinate directly to the Procurator General, but independent from all the other prosecutors. Each procurator had to fulfil the Procurator General's mandatory instructions. Thus, the tzar could, by relying on the person that he most trusted, exercise direct control over all the prosecutors in Russia. The idea was to avoid the corrupting effect of a multilevel bureaucracy and the possible "dilution" of personal responsibility. [11]

The Russian model placed the procurator over all the state authorities and gave the procurator the exclusive power to supervise them. The prosecutor had no function other than supervision. The prosecutor had access to every kind of activity in the country. Peter himself stated the duties of the Procurator General - "here is my eye, through which I shall see everything; he knows all my intentions and desires, you all must do what he considers to be good, and even if it seems to you that he acts against my interests and the interests of the state, you must regardless of that fulfil his orders".[12] The Procurator's Office was "the eye of the tzar", which could reach the remotest parts of the Russian Empire to insure that the personal will of the monarch was being respected and fulfilled.

That is how the French model of the Prosecutor's Office was established in Russia **but with a single and totally new task - supervision. It was not a prosecuting body.** The procurators did not participate in criminal trials to present the case on behalf of the prosecution. They attended trials, but only to exercise their supervisory power. This power included reminding the court what its obligations were and even suspending its decisions and orders.

The supervising power of the procurator was preserved during the time of Catherine the Great and the next Russian monarchs until the reign of Alexander II. Alexander sought to modernize Russia. After freeing the serfs, he undertook a global reform of the empire - military and judicial. As part of his immense judicial reform, he abolished the procurator's supervisory power in 1864. Like the similar agencies in the Western European countries, the Procurator's Office became exclusively a prosecuting body.[13] This reform had immense signifficance. The prosecutor's supervisory power over the court undermined the independence of the judiciary institution and deprived it of the respect it deserves.

V

Russia was not the only country to give its prosecutors supervisory power. France also used this system for a brief time. The Napoleonic Code d'Instruction Criminelle of 1808 **added a new supervisory power to the prosecutor's existing monopoly on prosecution.** The basic aim of this new power was to establish control over the corrupt police apparatus. The prosecutor became a supervising as well as a prosecuting body. The Prosecutor's Office was also reorganized with a centralized and hierarchically organized

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[11] It is interesting to know that this system is to be found in the modern Italian Prosecutor's Office. In Italy no hierarchial dependence exists among the various Offices of the Pubblico Ministero. Each office is absolutely independent in performing its institutional activities and has complete control over its powers. See: **G. Tinebra,** The Role of the ..., 594.

[12] **S. Veltchev,** The Procurator's Supervisory Power, 84, (1928).

[13] **S. Veltchev,** The Procurator's ..., 95; **J. Herrmann,** The Role of the ..., 533.

structure.[14] The supervisory function of the prosecutor gradually disappeared with the democratic developments in the countries of Western Europe (including France as well) during the end of the 18th and the beginning of the19th century.

When Bulgaria gained its freedom from Turkey in 1878, it created a Prosecutor's Office using the Russian model. Like the prosecutor in Russia and the other European countries at that time, the Bulgarian prosecutor had no supervisory power. In criminal trials the prosecutor was exclusively a prosecuting authority. He had no power to control the court. It was the court's duty to guard against infringements of the law, including the actions of the prosecutor. The prosecutor was not superior to the other parties and like the other parties was under the legal control of the court.

VI

The supervisory power of the prosecutor revived anew in Russia. After the October Revolution of 1917, communist Russia abandoned the old Procurator system and substituted a so called "peoples' prosecution". The revolutionaries sought to transfer the prosecuting power to the ordinary people. Thus if someone committed a crime, there was no special agency to prosecute him. Anyone could take the stand and prosecute the criminal on behalf of the ordinary people. After several years, however, it became clear that it was impossible to combat criminality successfully without a specialized prosecuting body.

The institution of the prosecutor was consequently revived in the judicial reform of 1922. This reform not only recreated the prosecutor's prosecuting function, but made an even more dramatic change. It created a prosecutorial power **to supervise the execution of the "revolutionary legislation".**[15]

The new Soviet State urgently needed a political body capable of guarding the new social order. Turning to the idea of Peter the Great it founded the institution of the Soviet Procurator. The reestablished Procurator's Office had the same main activity as in Peter the Great's time - **supervision over everything and everyone in the country.** The purpose of the new supervisory power was not, however, to protect the interests of the monarch but rather those of the Soviets. The discussions on the first draft of the Law for the Procurator's Office put a special stress on the prosecutor's power to watch over the carrying out of the revolutionary legislation. The office was directed to fight the bourgeois and counter-revolutionary elements of the society.[16]

The Soviet prosecutor also had the obligation to combat criminality. Criminality was thought to undermine the very foundations of the Soviet order and its revolutionary achievements. In addition to participating in criminal trials on behalf of the prosecution, the prosecutors were supposed to supervise whether the courts were conforming to the policy of the Communist Party, of the Soviets and of the working class.[17] The sentence of the court could be considered illegal and unfounded not only when it was contradictory to the law, but

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[14] Der Strafprozess im Spiegel auslaendischer Verfahrensordnung, 1990, 17; **B. Huber,** The Office of the State Prosecutor in Europe: an overview, International Review of Penal Law, Criminal Justice and Human Rights, 560, (1993).

[15] **M. Tzelzov,** A Course in Soviet Criminal Procedure, 688, (1957).

[16] **N. Polianskii,** Questions on the Theory of the Soviet Criminal Procedure, 77, (1956).

[17] **M. Tchelzov,** The Soviet Criminal ..., 196, (1928).

also when the court had not understood its political meaning, when it had not evaluated the political significance of the crime.[18]

After World War II **most of the socialist countries adopted the Soviet idea for the supervisory power of the prosecutor.** The prosecutor participated not only in criminal cases but also in civil and administrative trials.[19] This was a clear demonstration of his supervisory power.

VII

With the collapse of communism, **the supervisory role of the prosecutor** became a major topic in the debates about the legal reform. The prevailing opinion favored abolishing the prosecutor's supervisory power. Of particular concern was the control that the prosecutor exercised over the court in criminal, civil and administrative cases. The belief was that the prosecutor should not be granted a special role in relation to the court. In a democratic legal system the court is the institution that must decide disputes between the state and its citizens and between citizens themselves when other organs of government cannot do so. The court must be free to evaluate the facts and make its decisions according to the law. Any kind of control over its work undermines the very foundation of democracy. Perhaps nothing is as crucial to a democratic society as a truly independent judiciary.[20]

Although the prevailing opinion favored abolition, there are still firm supporters of the supervisory function of the prosecutor. These supporters believe that the only reason for the prosecutor to participate in trial is to take measures against violations of the law by the participants and by the court.[21] These are however isolated opinions. All of the former socialist countries have now - at least to a substantial degree - abolished the prosecutor's power of general supervision. In former Yugoslavia this was done in the 1960's. In the rest of the countries, this process began after the radical political changes in 1989.

The new Bulgarian Constitution established the **main role of the prosecutor as a prosecuting authority.** It does not fully give up the idea of the supervising function of the prosecutor, however. The Constitution and the Law for the Judicial Power still preserve this idea as far as the **punitive and other coercive measures are concerned -** the prosecutor is supposed to supervise their execution (Article 118, 3 of the Constitution and Article 127, 3 of the Law for the Judicial Power). The Constitution and the Law for the Judicial Power also authorize the prosecutor to participate in **civil and administrative proceedings.** Although the Constitution and the Law for the Judicial Power do not define the nature of this

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[18] **N. Polianskii,** Questions on the Theory of ..., 79, (1956).

[19] Some of the Western European legal systems also used to provide at the beginning of the 20th century for e participation of the prosecutor in civil cases - Austria and Germany for example. Fearing that this might be considered a kind of a legalized control of the prosecutor over the court, the Austrian legislature excluded that provision. The Gernan legislature reduced it to a minimum. The same considerations influenced the Bulagrian legislature in 1922 to abolish the participation of the prosecutor in civil cases See: **S. Veltchev,** The Procurator's ..., 159.

[20] **R. Cadahy,** The Independence of the Judiciary, International Review of Penal Law, 899, (1992).

[21] **V. Klochkov,** The Role of the Procurator in the Former USSR, International Review of Penal Law, 645, (1993).

participation, it is presumed that the legislature intended the supervisory power to continue in this area as there is no prosecuting function in these cases.

Even under the new Constitution, the prosecutor retains some authority to issue warrents. According to the Constitution (Articles 30, 31, 33, 34, 40), the authority to order arrest, searches and seizures of homes, of personal correspondence, and to prohibit the publications related to crimes, are entrusted to the **judicial branch.** The judicial branch under Bulgarian law, however, includes not only judges **but prosecutors and investigators** as well. This means that under the Constitution prosecutors and investigators in addition to judges are entrusted with the authority to order these special investigative measures. The new Constitution thus authorizes the continuation of the old socialist Code of Criminal Procedure (1975), which grants these powers to prosecutors and judges but not investigators.

The approach of the new Bulgarian Constitution seems wrong in allowing prosecutors to have this kind of power. Prosecutors are not neutral, detached observers, who are impartial and biased. They are participants in the investigation. The power to order special investigative measures such as arrests, searches and seizures should be placed only with the courts.

The idea of the judicial control is to provide real, effective constitutional guarantees for the rights of the citizens. Such guarantees could be a control exercised by **an independent state body,** which is not involved in any investigation or prosecution and which exercises its authority in open and public hearings. Following the approach of the modern democratic systems, **only a judge (or a court)** should be authorized with that control.

VIII

The basic approach of the new Bulgarian Constitution is to treat the Office of the Prosecutor as an ordinary government agency, rather than as a super agency with wide-ranging supervisory power. This approach is illustrated by the establishment of a new **Constitutional Court,** which is not subject to any prosecutorial supervisory power.

Every modern legal system recognizes the need of special authority in charge of judging on the constitutionality of laws, decisions of the Parliament, of the President and of the executive branch. Following the prevailing legislative approach, the Bulgarian Constitution gives this power to the newly established Constitutional Court, the highest court in the country.[22] Thus the Constitution rejects the old conception of the socialist era for the leading role of the Attorney General and his office and the supremacy of its supervising power. It is the Constitutional Court that the Constitution authorizes with that power. The prosecutor neither has an oversight role nor has the final decision on problems of constitutionality. The Attorney General can only initiate a proceeding with the Constitutional Court, like the President of Bulgaria, the Council of Ministers, one fifth of the members of Parliament, the Supreme Cassation Court and the Supreme Administrative Court.

In conclusion, it should be emphasezed that the new Constitution entrusts the court with constitutional and judicial control, leaving the prosecutor mainly the duty to prosecute.

[22] In some countries, like Germany, France,Hungary, this is the Constitutional Court and in others like U.S.A. - the Supreme Court.

Thus it elevates the prestige of the court and defines the leading role that it should have in the new democratic society of Bulgaria.

Regardless of the new approach to the role of the Prosecutor's Office, there is still a certain ambiguity as to **which state organ the Constitution of 1991 authorizes with control against arbitrary violations of constitutional rights.**

One of my reports as an expert to the European Commission with the CARDS Regional Project

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JUDICIAL JURISDICTION OVER CIVIL LIBERTIES

The analysis of the state of the legislation and case law in the Republic of Croatia regarding **JUDICIAL JURISDICTION OVER CIVIL LIBERTIES** is based on the following acts of the Council of Europe, the Committee of Ministers and acts of other European institutions in this area. Above all, these are the provisions of:

- Art. 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms (ECHR);
- Protocol 7 to the Convention and Case law of the European Court of Human Rights (ECHR);
- Indispensable in the studying of the status in the Republic of Croatia are also Recommendations of the Committee of Minister of the Council of Europe (81)7; (84)5; (93)1; (94)12; (2000)4, as well as
- Opinion No 1 (2001) of the Consultative Council of European Judges.

During the three-day stay in Zagreb intensive meetings were held with representatives of the judiciary (the President of the Supreme Court and a judge from the same court, the Vice-President of the Administrative Court, representatives of lower courts), the executive power (Ministry of Justice) and with non-governmental organizations (the Croatian Legal Centre, the Helsinki Committee).

During the meetings the possibilities for citizens to receive effective means for protection of their civil rights through the existence of a judicial jurisdiction, which rules finally in case of violation of these rights, were examined.

Subsequently the elements of the topic JUDICIAL JURISDICTION OVER CIVIL LIBERTIES according to the standards foreseen in Art. 6 and in the case law of the ECHR and the other above-mentioned acts were studied. The provision of Art. 13 of the ECHR for the existence of efficient internal legal remedies for protection before the respective national institution was discussed as well. Every person should have such a right, when its constitutional rights and freedoms have been violated, even when the

violation has been committed by persons acting in their capacity as representatives of the official authorities. In the context of Art. 6 this institution should be a court.

The respective internal normative acts such as the Constitution, the Law on the Legal Profession, the Law on Judges and Jurors, Criminal Procedure Law, Civil Procedure Law, Administrative Procedure Law and other relevant legislation.

I. The right to trial according to the European standards requires:

- An independent and impartial court established on the grounds of the law;
- A wide court jurisdiction, i.e. which rules in substance and whose decisions are mandatory;
- Access to court.

Regarding the mentioned standards the question arose whether the legislation of the Republic of Croatia contains guarantees for a right to trial for every citizen. Particular interest was shown towards the actual status – whether the legal guarantees function effectively in practice.

1. The issue related to **independence and impartiality of the court** was outlined.

> The legislation contains most of the due guarantees according to the European standards – the courts are bodies established by law (Constitution and Courts Act). The court organization is also regulated by a law and not upon a decision of the executive branch. They fulfil their competences in line with a procedure foreseen in the law. Their judgments are obligatory after they enter into force.

1.1 Special attention should be paid to **the independence of the court from the executive branch.**

> The appointment of judges is carried out by the State Judicial Council (SJC). This is a judiciary body with basic competences regarding the appointment, career of judges, disciplinary proceedings, dismissal. The SCJ comprises of judges (nine) and respectively one renowned representative of the legal theory and the attorney council (before the amendments to the law the number of the judges was respectively 7 and the representatives of the Law Faculty and the bar association – two from each). The chairperson and the deputy-chairperson are judges.

The still existing competence of the Minister of Justice to appoint court presidents upon a proposal of the court commissions of every court is problematic. This does not refer to the President of the Supreme Court. Despite of the recommendations made in this respect this competence of the Minister has not been repealed yet. In the conducted talks concerns were expressed that the competence of the Minister of Justice may lead to political appointments.

The official files of the judges are also kept at the Ministry of Justice. Purportedly this is an activity in service of the SJC. It was not ascertained whether this has any impact on the independence of the court from the executive branch.

The procedure for selection of judges is also a problem. The vacancies are announced by the Ministry of Justice, the applications are submitted to the Ministry. However, there are no clear, objective and legally defined criteria for selection of the most suitable among the candidates. No exam is conducted – written or oral, or both. There is also no interview with the candidates (this is only a possibility upon the discretion of the Ministry). The judicial councils at the courts may give opinions on the qualities of the candidates. However, this does not refer to those candidates who have not been court trainees. This automatically reduces their equal chances to be selected as judges. Thus the selection of judges does not guarantee the admitting of the best trained jurists. The knowledgeable judge is a guarantee for better justice, independence and fairness.

The training System – initial and throughout the whole professional career, is still in an early stage of organization and fulfilment. Steps have been taken in this direction. The Justice Academy is being launched within a European project and is gradually being established under the Ministry of Justice. Activities related to the establishment of training programs, approval of trainer schemes etc. are currently underway. It may be concluded, that the change in the way of thinking is important – from conviction that education is an obligation of every judge towards the understanding that training is an essential condition for knowledgeable, independent, impartial and competent judges. Therefore the actions of the Republic of Croatia in this respect should be highly praised. Moreover, as also the President of the Supreme Court underlined, the new legislation in line with the European requirements imposes new knowledge.

There is also another precondition for judge independence – their irreplaceability after five years of their appointment. The SJC takes the decision. They remain in their post until retirement age (70 years).

The court budget is managed by the Ministry of Justice. The Republic of Croatia has adopted one of the three models, which can be found in the various states – budget in the independent judicial body; under the executive branch and mixed between the first two models. In states with relatively fragile democratic traditions the model of formation and administering of the budget by the executive power triggers concern. It is possible that the executive power could be tempted to influence the work of the court through its budget. At the meetings ideas for necessary amendments to the State Budget Act leading to a possibility for independent allocation of the judiciary budget by the SJC were mentioned.

The salaries of judges are also considered to be a guarantee for independence and against corruption. For the countries in transition it can hardly be expected that remuneration levels close to the ones of the judges from the West European states may be ensured. Thus for a judge in the lowest court the salary is 1100 euro, for the second level – 1500 euro and for the Supreme Court – 2200 euro.

The involvement of judges in the taking of decisions affecting the functioning of the judicial system is another precondition for an independent and impartial court. In the talks held with judges it became clear that they receive from Parliament draft laws concerning the judiciary in order to give opinions and proposals. However, there is not enough time for an in-depth study of the drafts. The impression is created that the legislative power addresses the judges more formally, rather than for their full involvement in the elaboration of the final product. The judges' organization of the Republic of Croatia also gives opinions on the draft laws. But as a whole the judges do not demonstrate initiative and are not active in influencing this process. There are cases of inclusion of judges in working groups on draft laws, but their influence on the end results is insignificant. Practically this means that as a rule the judge guild does not influence the legislative process, contributing with its practical experience for the refining of the laws. The judges are accepted more as enforcers of the laws adopted by Parliament, rather than actively influencing their quality.

As a rule judges do not take part in other activities outside their judicial function. An exception is the case when the President of the Supreme Court chairs the Central Election Committee. Judges also participate in the election committees. The idea is that this guarantees the lawful holding of the elections. At the same time it was mentioned that judges who took part in the elections often have a speedier career than their colleagues. Therefore the seeking of a different solution would not be senseless. The court appeal of the elections can ensure in a sufficiently full manner the legality of the holding of the elections and their results.

A guarantee for independence and impartiality of the judges as a prerequisite for a just court trial is also the manner of case distribution. The adopted practice is to do this in the alphabetical order of the parties and the judges – i.e. completely randomly. Upon a corruption signal against a judge (for example in the press) he may resign or be discharged from the specific case upon a request of the parties. This is done by the court panel and not from the president of the court. Under the law the Minister of Justice may give priority in the distribution of specific cases (mostly with a major public significance), but such a practice was not ascertained.

1.2. The independence according to the European and international standards assumes responsibility as well. This responds to the care that they are not left as uncontrolled bodies with extremely significant competences and to prevent corruption practices. Thus the principle of separation of powers and checks and balances between them is fulfilled entirely. At the same time a balance should be found so that the control does not lead to dependence and subjectivity of the judiciary towards the legislative power.

In the Republic of Croatia some of the established control mechanisms, which ensure also the independence and impartiality of the court may be found. The forms of control may be external and internal – from the very judicial system.

One of the external forms of liability is related to the immunity of judges. The immunity is simultaneously a guarantee for their independence, but the

possibility for removal is a guarantee against misuse from the respective person. The judicial immunity is functional – for actions carried out in relation to their justice function. It may be removed upon the arising of some of the grounds foreseen in the law. This is an authority of the judiciary body – the State Judicial Council. Judges may be dismissed from office again by the SJC.

Another form of control from the executive power are the authorities of the Inspectorate of the Ministry of Justice. They are correctly limited to the scheduling and proceedings on the cases. This is an established standard in the European countries and other countries with a rule of law. The fairness of justice is guaranteed and the judges decide according to their inner belief based on the evidence and the law. The correctness of the court act is evaluated only via instance control and under no circumstances whatsoever from any state body, officer or citizen. It is worth mentioning the adopted practice in the Republic of Croatia that the Inspectorate is composed of acting judges. They keep their positions in the judiciary for the time of their service as inspectors. Following the expiration of a specific time period, the judge returns to court and assumes his office. The explanation given by the judges to this approach is the idea that the judicial activities should be evaluated by experienced practitioners. This practice can not be shared without reservations in view of the effectiveness of the exercised control. It is difficult to accept that the judge-inspector can fulfil this activity objectively and exigently and critically when faced with the perspective that in time he himself will be the object of such control from his colleagues. In other states the same goal is achieved with the appointing as inspectors persons with longer service as a judge.

The Inspectorate fulfils its activities ex officio or upon a complaint (most often for length of proceedings) sent to it. In the latter case the Inspectorate requests from the president of the respective court to carry out an inspection and to inform it. On this basis the Inspectorate responds to the citizen. As a result of the inspection the Inspectorate drafts a report, which is presented to the Minister of Justice and to the president of the respective court, who must respond to the made observations.

Another form of control is carried out within the judicial system itself, from the higher court. Every two years the regional court checks the work of the municipal court. The results are summarized in a report, which is sent to the Ministry of Justice. Thus the Minister gets a professional evaluation of the judicial work. He may compare the evaluation with the conclusions of the Inspectorate. Furthermore, once every month every judge has the obligation to report to the president of the court regarding his work. The president reports once per year to the Minister and provides him with statistics on the proceedings and status of the cases submitted to the court. A proposal was made to shorten the time period of the latter report.

Another established European practice is civil control over the objective, impartial and timely fulfilment of justice. The public should have access to the court hearings. The judicial system itself must ensure transparency of its activities. In principle in the Republic of Croatia all court hearings are public, with a possibility to proceed behind closed doors in individual cases, when a state secret, private life of citizens etc. are

threatened. However, there is still no system encompassing all courts for the publishing of court judgments on an web-site. For now such a practice has not been established for the Supreme Court. The published judgments are between 60000 and 70000 cases.

Also, the figure of the so-called press-attaché for every court is missing. His task is daily informing of the media on the work of the court, the proceedings on some cases where there is specific public interest etc. There are ideas in this direction, isolated and sporadic attempts to appoint court spokespersons, but with no regulatory basis or as a common policy of the judiciary. All of the judges, with whom this aspect of the mission was discussed, agreed that the work of the court is presented poorly. It was underlined that even though any journalist may be present at a court hearing, only sensational and scandalous cases are covered. The president of the Supreme Court stated that annually about 1500000 cases are decided, but this is not announced in the media.

The conclusion that the courts do not have a media policy is indisputable. The judges do not take any steps to create an objective notion of the system. Thus, in public minds the courts remain a closed institution. This is not useful for justice. The citizens should develop a clear and objective idea of the work of the court and the problems solved by it daily. The extremely opposite assessment of the judges was pointed out as a paradox – compared to the other professions they have a high ranking and the court as an institution has a weak rating. Therefore a purposive policy for the opening of the court towards the public and every citizen is needed. The people must understand all difficulties through which the system has passed and still bears the consequences of the quitting of judges in the 90ies, the accumulation of cases, new types of cases, for example privatization, the insufficient modern technical means for data processing etc. Therefore in the elaborated Strategy for Reform of Justice there is a special section on informing the public and better cooperation with the media in this direction. The setting up of the institution of court spokespersons is foreseen, the activities of which are aimed towards overcoming the lack of misinformation of the citizens regarding the work of the judiciary. The experts did not have the opportunity to study the strategy personally. They were informed about it and its main targets by the State Secretary of the Ministry of Justice Mrs. Bagic.

Surprisingly in the context of the said is the position expressed by the representative of the Helsinki Committee that the publicity, public comments on the work of the courts would be pressure on its work.

We should also note the existence of a judge organization since 1991, of which around 80% of the judges are members. Since 2000 it is a member of similar European and other international institutions. Besides defending the interests of its members, the organization has initiated the holding of round tables, discussions on current topics of the judicial reform. However, observations were not made that this judges' organization in the Republic of Croatia has a purposive policy for transparency of the system and openness towards citizens.

The judicial system should also foresee internal mechanisms for control over the individual judge. At the meetings of the experts with judges it was asked whether if a judge can not handle the work it is possible to remove him from a case, in which he has

acted ineffectively or unlawfully, whether a judge may be transferred to another job within the same court, is it possible to impose material sanctions, for example temporary reduction of the salary etc. The answers left a conviction that as a rule these practices are not typical for the courts. Upon the annual distribution of the cases it is possible to take measures against a judge who does not work well. It is possible that the judge be transferred to another job at the same court. The impression is of hypothetical possibilities rather than a real policy. Credible evidence of this is the small number of judges dismissed under a disciplinary proceeding. In the last 4 years there are a total of 55 opened disciplinary proceedings for non-handling of work or misuse of office with a total number of 190 judges, stated the President of the Supreme Court. There are various disciplinary measures and dismissal is only one of them At the meetings of the expert group with the representatives of the court and the Ministry of Justice cases of dismissal from office were indicated as well. However, they are rare and the procedure is excessively lengthy. The explanation to this observation of the expert group was that the judges themselves resign when a disciplinary proceeding for their dismissal from office is opened or underway. However, the public should receive more explicit evidence for non-tolerance of judges who retreat from their obligations. They should be sanctioned clearly and not supposedly.

2. The second main target of the study conducted by the expert group regarding the right to trial is the existence of a wide court jurisdiction, **i.e. whether the courts rule only in substance and whether their judgments are mandatory.**

Under this standard the problems arise only regarding the Administrative Court of the Republic of Croatia. It ratified the ECHR with a reservation regarding Art. 6. The Administrative Court does not hold public hearings and does not have the obligation to establish the facts in the case independently. Therefore in November 2003 the Constitutional Court of the Republic of Croatia ruled that this is not a court with a full jurisdiction. Thus for all cases in the jurisdiction of the Administrative Court the requirements of Art. 6, §1 of the ECHR have not been fulfilled. The court is one for the country. Before it decisions of the administration affecting civil rights are appealed. According to Art. 6 and the interpretation practice of the ECHR every decision, which has direct importance for the rights and legal interests of citizens should be subject to court appeal and re-examination under a procedure before an independent and impartial court. However, the administrative court is restricted only to the checking of the legality of the administrative act. The court does not deal with the facts – does not assess them, supplement them etc. When the administrative act is issued in violation of the law, the court repeals it and returns the case to the administration, which must rule in substance. If the respective body does not take into account the instructions of the Administrative Court, it decides the dispute. The court proceedings are conducted behind closed doors. The Administrative Procedure Law foresees cases when a public hearing is conducted, for example an action for indemnification against the state. In these cases the procedure is public and the court jurisdiction is full. In practice however a full jurisdiction is not fulfilled at the Administrative Court.

A special meeting with the vice-president of the Administrative Court was held to discuss these issues. Her opinion is that the current status of court organization and competences

should be preserved. The arguments are in the history of creation of the court from the times when Croatia was part of the Austro-Hungarian Empire. The conducting of public hearings is considered useless. This, underlined the vice-president, is a requirement for speediness and ensuring of inexpensive proceedings. Currently in the Administrative Court there are around 50000 cases, which must be decided by a total of 35 judges. The court panel in each case is composed by three judges.

But these arguments are not convincing for the cases of non-execution at all or within the legally foreseen by the administration time period of the judgment of the Administrative Court. In these cases the court decides. Speediness in the court defence of civil rights is hardly ensured in these cases. Evidence for the ineffectiveness of the work of the Administrative Court are the categorical opinions of the two non-governmental organizations with which a meeting was held on the very first day. The main complaints were related to the excessively lengthy procedure, because all of the disputes with the administration of the country are referred to the Administrative Court. Cases for temporary residence in the country were given as an example. These are urgent cases and their examination continues for an admissibly long period of time. Also citizenship cases, property disputes etc. point to the same main weakness – slowness and lack of effective protection of violated rights from the state administration. That is why the proposal of the non-governmental organizations is to establish an administrative court with a full jurisdiction. It is necessary to avoid returning to the administration, possible non-execution etc.

Despite of the opinion of the representative of the Administrative Court that the administration works well, but is poorly paid, experiences difficulties due to the lack of legal knowledge, the new legislation etc. a change in the position of the Republic of Croatia is essential. Currently the introduction of first instance administrative courts is discussed. Other steps are also necessary for full application of the standards under Art. 6, § 1 of the ECHR for full court protection of violated civil rights. Hopes for a reform of administrative justice towards the European standards are triggered also by the assurance of the State Secretary of the Ministry of Justice Mrs. Bagic that the reservations to Art. 6, §1 ECHR will be preserved for a year or two and afterwards will be removed.

3. The right to a trial under Art. 6, §1 of the ECHR ensures **access to court for every person, whose civil rights have been violated and every person accused in a crime.**

> Access to court assumes that every person may refer his case to a court in the sense of Art. 6, §1 ECHR without facing incorrect legal or factual impediments.
>
> The access to court includes a civil, criminal, administrative, disciplinary etc. procedure. From the above it is apparent that citizens, whose rights have been violated by the administration do not have an ensured access to court in the sense of Art. 6, §1 of the ECHR. Problems related to the court in civil and criminal procedures were not ascertained.

Nevertheless the state has not fulfilled its obligations regarding real access to court for every citizen. This mostly refers to the lack of free legal aid for persons who can not afford to authorize an attorney. The European standards connect free legal aid not only with criminal cases. In its practice the European Court of Human Rights underlines that sometimes civil cases set particularly complicated issues from a legal and factual point of view and without the participation of an attorney the interests of citizens would be compromised.

There is no developed state system for free legal aid in the Republic of Croatia. In the last 10 years non-governmental organizations have been providing such aid in a specific category of cases in relation to approved projects or in the form of consultations or writing of applications. The bar association provides aid to poor persons on the principle of "goodwill". For example in 2004 around 2000 persons have applied for aid and it has been granted to 324. They must be Croatian citizens and to fulfil a poverty criterion. In practice very rarely, if at all, a free attorney in civil cases is provided – this is a problem, which the ECHR underlines most often in its judgments.

The granting of legal aid is of particular importance when it comes to complicated procedures – another criterion for access to court (easy to comprehend, simplified procedure).

Currently a draft law on free legal aid is being elaborated at the Ministry of Justice. It is foreseen that it will be granted only to Croatian citizens. The state of poverty should be proved before an administrative body on the basis of a scale of criteria. Immovable property will be an impediment for receiving legal aid even when the person is unemployed for a lengthy period of time. It remained unclear when the group working on this draft will be ready with the final product.

The access to court assumes also reasonable court fees. The opinion of the non-governmental organizations is that currently they are too high and sometimes unaffordable for citizens, which in fact deprives them of access to court. There is a possibility for the court to relieve of fees on the grounds of a presented property declaration.

II. Under Art. 6, §1 of the ECHR the right to court defence must be ensured for all citizens when defining their civil rights and obligations or when criminal charges have been pressed against. In all cases, when a person is treated as a defendant, either explicitly or tacitly regarding the measures undertaken against him, all guarantees under Art. 6 of the ECHR should be applied. It does not matter whether the national legislation defines a procedure as criminal, administrative, disciplinary etc. The Croatian legislation ensures the right to court with the exception of the mentioned specifics of the Administrative Court.

The provision of Art. 6 of the ECHR does not guarantee the right to appeal. However, the position of the European Court of Human Rights is clear that if the national legislation foresees a second, third instance the standards of the Convention should be applied there as well. Again, with the exception of administrative appeal, procedure and competences of the Administrative Court, in the other cases problematic legislative solutions are not ascertained.

III. The requirement for a **reasonable time** poses the most serious problems before the European Court of Human Rights in Strasbourg. The case law on this requirement of Art. 6 of the ECHR is the most abundant. Also the number of states convicted under this provision of the Convention. The time period is calculated from the lodging of the action in civil cases and the pressing of charges in criminal cases. The approach is similar in the other procedures. The deadline also includes appeal procedures and the court hearings in the higher instances, including before the Constitutional Court if the result of them could influence the outcome of the case.

The requirement for reasonable time provokes a significant part of the reforms of the national legislations aimed at optimizing the procedures and reducing the proceedings on the cases. The Republic of Croatia is not an exception. The observations for slow, sluggish proceedings no matter whether in criminal, civil and other procedures were made at all meetings – with representatives of the executive power, as well as of the judiciary and with non-governmental organizations. All of the participants in the discussions realize that slow justice is one of the most serious problems of the judiciary in Croatia. The judges from the Zagreb municipal court clarified that this is the reason for the negative public opinion towards the system and that it will not change soon. The problem with the reasonable time is generated by various reasons – mass quitting of judges from the court system after 1990 and from there the clogging of the system with a large number of cases, the appearing of cases, which are completely new in nature, a new regulatory framework, the engaging of the court with various matters (for example the keeping of the cadastre by the court), the possibility for every citizen to go to a judge and to seek consultations, the need for new knowledge and skills in the court administration, deficient technical equipping of the work of the judges, insufficient number of judges, non-conducting of decriminalization in the criminal laws, more radical legislative amendments etc. The president of the Supreme Court believes that the problems with slow justice are in Zagreb and Split. The small court areas are effective. An example is the average duration of 4 years (under the law the period is 6 months) for the deciding of a labour dispute in Zagreb. The judges in this court area have 1100 cases compared to an average norm of 280 annually. This makes it necessary to increase the number of judges in Zagreb, as of now there are 450 people at the municipal court.

The governmental co-agent of the Republic of Croatia underlined that the state does not have any other cases besides under Art. 6, §1 of the ECHR in the requirement “reasonable time”. From the percentage point of view of the cases before the European Court of Human Rights and the population of the state, they are a high number. In view of avoiding convicting judgments of the ECHR an amendment is made and the Constitutional Court is becoming part of the internal legal remedies, which must be exhausted by the possible applicants, including for length of proceedings. As a result for

now the number of cases in Strasbourg has decreased, but the ones before the Constitutional Court have increased significantly.

The legislation foresees a possibility to file a complaint for length of proceedings before the Ministry of Justice. The latter requests from the court or the prosecutor's office explanations for the reasons for the delay. If the complaint is well-founded the undertaking of other actions regarding the acceleration of the proceedings on the case is required.

The review of the legislation indicates that the state has made efforts to accelerate the procedures. Measures for speedy procedures, time limits, measures for disciplining the parties to the cases, but as it was underlined at all of the meetings, it is still early to assess the results of the amendments to the Civil Procedures Code, the Criminal Procedures Code and other laws in 2003. This will probably become clear earlier in the small court areas.

The conclusion is that despite of the legislative amendments, which deserve high praise, the reforms should continue and the trends for restriction of the disputes entering the judicial system should deepen; the decriminalization of acts with a lower degree of public threat – the state should outline priorities in its criminal policy and should not squander the resources of the judicial system in cases of insignificant public interest; the insignificant violations should be sanctioned under an administrative procedure with a possibility to appeal before an administrative court – structured and organized in accordance with the standards of Art. 6, §1 of the ECHR; the introduction of alternative methods for dispute settlement such as mediation, agreement, criminal order, transaction and other; to continue the launched computerization of the judicial system, so that it encompasses all courts and units in the procedure; increasing the administration and training; possible increasing of the number of judges and training in new legal institutes and European standards; resolving of the cases in no more than two instances; further deepening of the legislative measures for disciplining the parties, like for example postponing the case in exceptional cases, sanctioning of *mala fide*, which leads to case delay (imposing of fines, non-admitting of a procedural action, which is not necessary and its only goal is to block the normal proceedings on the case, payment of damages to the opposing party caused by the ill-founded delay, removal of unimportant witnesses who do not appear etc); obligation for timely presenting of the evidence by the parties; sanctioning of a *mala fide* expert; immediate resolving of the case or as soon as possible and other;

Of course, the assessment regarding the keeping of reasonable time is made specifically for every case, including by the European Court of Human Rights. The final decision is taken in view of the complexity of the case; the nature and significance of the case; the number of instances. However, the reform in the mentioned and other directions will be only of use for the Republic of Croatia. They could be supplemented by drawing the attention to the proposal made by the legislator of Croatia for abolishing the figure of the investigative-judge and its substituting with an investigation body under the supervision of the prosecutor. The judge must remain engaged only in the cases of undertaken violations against fundamental rights of citizens (arrest, detainment in custody, house

arrest, search, seizure – all requirements of under Art. 5 and Art. 8 of the ECHR) and in the conducting of questioning, which may be used directly in court (Art. 6 of the ECHR). Currently the pre-trial proceedings in criminal cases are slow, the actions of the prosecutor and the investigative judge are repeated unnecessarily. Therefore there is a common trend in Europe for abolition of the figure of the investigative-judge. Unfortunately in the discussions it became clear that such a change is not foreseen despite of the recommendations in this direction and the best European practices.

IV. The fairness of the procedure is the last of the requirements regarding all types of procedures, not only criminal.

The procedure would be fair when the following elements can be found in it. First of all, the equality of the parties – each party should have a possibility equal to the other parties to defend its thesis and not to enjoy significant advantages before the others. In particular, this means the right of each party to present evidence in support of its procedural position, a right to dispute the evidence unfavourable for it, right of the accused to participate in the case personally etc. Second, the procedure for taking of evidence is very important – whether it guarantees the rights of the affected and the reliability of the evidence, the competitive court proceedings in the taking of the evidence, directness and publicity of the court proceedings. Last but not least, the trial is fair when the judgment is substantiated. This permits effective appeal.

The review of the legislation of the Republic of Croatia gives grounds to underline that the indicated requirements towards the law as a condition for a fair procedure have been put in place with the amendments of the respective procedural laws. A number of provisions can be indicated, introduced with the amendments to the Criminal Procedures Code and the Civil Procedures Code from 2003, which introduce the due standards and deserve appropriate praise. The problem remains regarding law enforcement. It is not clear to what extent these correct as a whole legislative solutions are applied in practice. The general conclusion of the non-governmental organizations, with which the expert group met is that in practice the new legislation rather does not find adequate application.

V. The expert group studied also the issues focused on the **position of the defendant in criminal procedures**. In particular, the answer to the following more important issues was sought in the legislation and practice.

The presumption for innocence, first of all. Not only the procedural aspect was studied, but also the wider contents of this constitutional guarantee for the rights of every person accused of a crime. No person may be treated by state representatives as guilty before there is a sentence entered into force. This guarantee is foreseen in the legislation of the Republic of Croatia like in any state with a rule of law. Therefore the interest of the expert group was focused on the actual fulfilment in practice. At the meeting with representatives of the non-governmental organizations no disregard of the presumption for innocence was pointed out. The concerns were focused more on the ineffectiveness of justice, the slowness, the unacceptable duration of the cases. This shaped into the leitmotif of the discussion on court protection of violated rights and freedoms of citizens.

Second, the right of the defendant to be informed about the charge against him was studied – about the facts, as well as the legal qualification, including any change in the charge. Regarding also this right the experts did not ascertain omissions at the level of the regulatory framework. However, problems arise in the police, which is not well trained in the legal area. Whether due to this or intentionally the defendant is not always informed about the charges against him and for all changes in the pre-trial procedural phase. It is true that the examination of the right in the context of Art. 6, §3, a, of the ECHR is somewhat more significant in the court proceedings when the charges have been pressed before court. It is unjustified to completely exclude also the preliminary proceeding as far as it is possible to use the evidence taken in it in the trial phase.

No problems were ascertained at a normative level, as well as in practice regarding the right of the defendant to have sufficient time and possibilities to prepare his defence against the charges. The right deriving from this basic right is problematic – the right to free communication with the defender. The representatives of the non-governmental organizations were definite that in practice the law is not observed. The violations are particularly serious when the defendant does not have an attorney authorized upon his own choice.

The right to personal defence and through an attorney is a problematic part of the legislation and law-enforcement due to the already examined lack of free legal aid. In addition to the above, it may also be noted that the correctness of the idea of the working group on the draft law that free legal aid should be refused to an unemployed person, with no monthly income due to the ownership of an immovable property. It is rather ill-founded to require that the defendant sell the house, for example, in order to authorize a defendant and prove that he is not guilty.

Moreover, an observation was made that little attention is paid to ineffective defence. In the Republic of Croatia there is no practice to dismiss a defendant, whose participation in the trial does not bring benefit to the represented person. This is possible only in the cases of an authorized defendant, if the client is not satisfied and on his own gives up his services. The dismissal due to ineffective defence is excluded when the bar association provides a free attorney in criminal cases as an act of goodwill. As it is well known, the ECHR has a principle view that the simple presence of an attorney in a case is not sufficient, but useful, active participation. Only then, according to the case law of the Court, the requirement of Art. 6, §3, c of the ECHR is fulfilled.

The held meetings did not ascertain problems in the legislation or in practice also regarding the right of the defendant to take part in the questioning or to require that the summoning and questioning of the defence witnesses be carried out under the same conditions. The same goes for the right to use the free services of an interpreter.

Finally, we may conclude generally that there are good legislative solutions in line with the requirements set by the European standards before the candidate-countries for EU membership. Despite of this overall positive assessment, the legislative process should develop a clear and transparent system for selection and professional career of judges, based on objective criteria. Administrative justice should be amended in accordance with

the foreseen in Art. 6, §1 of the ECHR principles for full court defence of the civil rights and freedoms. The law on free legal aid should not be delayed as well. Special attention should be paid to the practical fulfilment of the European standards with the active participation of all authorities and the non-governmental sector.

Prof. Dr. Ekaterina Trendafilova

My report for the International Conference, organized by the European Association of Jurist Democrats in Geneva, May 2003

THE BULGARIAN WAR CRIMES LEGISLATION IN THE LIGHT OF THE INTERNATIONAL HUMANITARIAN LAW STANDARDS

Thank you, Mr. Chairman, for giving me the floor. I am tempted to stress once again on the significance of the theme of the conference "Prevention of war crimes". The world of today knows a variety of mechanisms for prevention of crimes – political, economical, cultural, etc. However, we, as lawyers, should consider prevention in the light of prosecution and conviction of war criminals.

No one could deny the fact that legislation (domestic and international) has the utmost influence on people to restrain from committing crimes. The legislation, therefore, should not only prohibit the commission of crimes, but should also provide for effective procedures for prosecuting and sentencing those, suspected of committing crimes.

That is why the international community and the States take effective actions to bring a halt to violations of IHL. They also clearly demonstrate that such behavior is not going to be tolerated.

A historical review of international humanitarian law shows that this is also the understanding of the international community in preventing crimes against humanity, war crimes including. The prosecution and sentencing of those who have violated the rules of international humanitarian law is decisive in preventing further violations.

War crimes are those violations of international humanitarian law that as a principle incur individual criminal responsibility.

A brief glance into the history of armed conflicts shows that:

- Limitations on the conduct of armed conflict date back at least to the Chinese warier Sun Tzu (VI century b. c.);
- The ancient Greeks, however, were among the first to regard such prohibitions as law;
- The notion of war crimes appeared more fully in the Hindu code of Manu (ca. 200 b. c.) and eventually made its way into Roman and European law;
- The first true trial for war crimes is generally considered to be that of Peter von Hagenbach, who was tried in 1474 in Austria and sentenced to death for wartime atrocities;

- By World War I states had accepted violations of the laws of war as gravest crimes, much of which had been codified in the Hague Conventions of 1899 and 1907;
- The codification of international humanitarian law in the four Geneva Conventions of 1949 and the Additional Protocol also mark the first inclusion in a humanitarian law treaty a set of war crimes – the grave breaches of the conventions. The conventions, however, do not provide for mechanism to protect the rights against the crimes they regulate. The Geneva conventions require all parties to search for and either extradite or try all persons suspected in having committed grave breaches.
- In 1945 the United States and other Allies developed the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal, sitting at Nuremberg. Following the Nuremberg Charter, the International Military Tribunal for the Far East, at Tokyo, was established.
- The tribunals of Rwanda and former Yugoslavia which like the tribunals of Nuremberg and Tokyo were established ad hoc. They all are specialized tribunals providing *ex post facto* justice.
- In this row of examples one should have in mind the regional courts, a typical example of which is the European Court for Human Rights in Strasburg established after the Second World War. It differs from the rest of the former international tribunals for its judgments are against states and not against individuals.
- The International Court of Justice again is judging states, but is lacking mechanism to enforce its judgments.
- Last, but not least, the lately established International Criminal Court, the idea of which dates back to the days of the First World War. The ICC is competent to adjudicate upon crimes against humanity, the crime of genocide, war crimes including – the topic of today's conference. There is a lot to be said about this court, but I will limit myself only to its importance for preventing crimes for its clear statutory law and procedural rules. It guarantees, as well, the uniform interpretation and application of international criminal law, which guarantees the equal treatment of offenders, etc.

This brief historical survey shows:

- The efforts in the course of human history to establish rules for the harmonious development of the individual in society;
- The firm understanding of the international community that certain kinds of behavior are not permitted even in wartime. There are limits to the violence of man;
- The universal idea – many cultures have sought to limit the suffering that war can cause. International humanitarian law simply expresses that idea in legal terms. It stems from the codes and rules of religions and cultures around the world and sets forth a number of rules aimed at protecting human life and dignity and punishing those, breaking the binding rules of International humanitarian law;

- Every culture has rules strictly limiting the use of force. IHL simply translates those rules into legal and universal language. By adopting them, States give themselves the means of ensuring respect for humanity. They also guarantee that human dignity will be upheld in circumstances that threaten it.
- There can be no derogation from these rules, even in cases where State security or military necessity would seem to require it. Failure to meet the requirements of International humanitarian law represents, in most cases, a grave breach of the international standards and must be punished accordingly;

With regard to ICC it should be pointed out that this newly established international court does not replace the jurisdiction of national courts. It operates only when it becomes clear that a state does not inniciate proceedings against a person, suspected of committing a crime against humanity, or the iniciated proceedings are ineffective (slow, clumsy etc.) which after all would lead to impunity.

Neither is the ICC a second instance to the national jurisdiction. The intervention of ICC depends on the functioning of the national judiciary.

One should also remember that ICC has limited competence to adjudicate upon war crimes for two main reasons. Firstly, ICC has jurisdiction only for crimes, committed after its establishment (July, 2002). And, secondly, in consequence of Art. 24 of the Rome statute, states that sign the Statute may still suspend the competence of the Court for a period of seven years in respect of their own citizens.

Therefore, the issue of *general jurisdiction*, enshrined in the Geneva Conventions of 1949, is of crucial importance, when we discuss the issues of war crimes. Certain treaties also provide for universal jurisdiction, such as the UN Convention Against Torture.

Under the principle of *universal jurisdiction* International law (certain treaties) gives all states the legal right to prosecute war crimes regardless of the common basis of jurisdiction – territorial, i.e. the courts of the place where the action took place, as well as from the jurisdiction, based on nationality, recognized mainly by civil law systems.

The *universal jurisdiction* deviate from these principles due to the extreme graveness of the offences subject to the universal jurisdiction. They are unanimously accepted by the world democratic community as the most serious threat to the universal and highly estimated values of mankind.

The *universal jurisdiction*:

- Requires the state to try the suspect or to extradite him/her to stand trial elsewhere;
- Every state, bound by the treaties providing for *universal jurisdiction*, is under the legal obligation to search for and prosecute those in its territory, suspected of having committed grave breaches, irrespective of the nationality of the suspect or victim, or the place where the act was allegedly committed;
- A person, charged with a grave crime, can neither claim the "political offence exception" to extradition, nor the "defence of obedience to superior orders";
- The *universal jurisdiction* means also that states have the duty to assist each other in securing evidence needed to prosecute;

- No statute of limitation, contained in the laws of any state, can also apply;
- No one is immune from prosecution for such crimes, even a head of state;
- The state must also actually exercise jurisdiction, otherwise it should hand over the suspect to another country or international tribunal.

Universal jurisdiction raises a variety of questions as far as domestic legislation is concerned. The States should provide for legislative means for punishing violations of IHL. The States - party to international humanitarian treaties, are formally bound to comply with the rules thereof. They must do everything to respect and ensure respect for humanitarian law.

Respect for IHL implies (предполага) taking a number of legal measures (for example, ratifying the appropriate international treaty, adopting the required legislation and implementing rules).

Ensuring respect for IHL also implies "breathing life into it" by spreading knowledge of its contents and ensuring respect for the principle on which it is based. That is why Art. 1 common to the Geneva Conventions, reveals the fundamental idea that the parties undertake to "respect and ensure respect" for the rules of the Convention – this means also not only within their borders but throughout the world.

Therefore, the state authorities (key is the role of the national Parliament) have to ensure – preferably in time of peace – the implementation of the rules and principles the international treaties embody. If there is no respective domestic legislation or the existing rules are inadequate, the states should undertake the necessary steps to demonstrate its respect for IHL. This must be done without unnecessary delay.

Moreover, the adopted domestic legislation and the rules for its application should be in conformity with the norms of IHL. In particular this should be the case with two major laws – the Criminal Code and the Code of Penal Procedure or the respective legislation (if it is not codified) in the field of criminal law, prosecution and criminal justice. Said in other words, the states should "translate" IHL into national legislation, procedures, policy and even infrastructure. These necessary measures should be taken within a reasonable time, they have to be regularly re-examined and, if necessary, updated.

In countries where domestic legislation corresponds to the ideas, principles, standards and spirit of the IHL, war crimes will be prosecuted under the national jurisdiction. There will be no need for the international community to interfere, thus affecting, to a certain extent, the sovereignty of the state.

As far as I am a representative of the Bulgarian law society, my task is to give brief answers to the questions, concerning Bulgaria.

Bulgaria is a post-socialist country. After the collapse of the communist regime the country is experiencing fundamental political, economic, social and, of course, legal reforms. Therefore, the implementation of the international standards is an essential part of the immense legal reform, carried out since 1989.

The Geneva conventions of 1949 were, however, ratified by Bulgaria in 1954 - long before the transfer from a totalitarian to a democratic society. Most of the crimes against humanity have been recognized as essential part of the criminal legislation of

Bulgaria before the political changes for which neither limitation, nor immunity is provided. There are still, however, some new approaches that are worth mentioning.

- First, one should be aware of the fundamental principle of the Bulgarian constitution of 1991, giving priority to those international acts, which are ratified, promulgated and having come into force. According to Art. 5, para. 4 such international instruments "shall be considered part of domestic legislation and shall supercede any domestic legislation stipulating otherwise". Hence, the international norms become part of the national legislation and the national authorities, including the judiciary, should apply them directly and with preference to those norms of the domestic legislation that contradict the IHL.
- Regardless of this fundamental principle of the Constitution, some new laws and amendments to the existing legislation have been carried out in the domestic legislation, especially in the procedural rules, which I will mention later.
- The Criminal code of Bulgaria in its chapter XIV (Crimes against peace and humanity) regulates crimes against peace, war crimes, genocide and apartheid. Moreover, the Bulgarian Criminal code includes crimes, that are not provided for in Art.7 of the Rome statute – for instance, measures to prevent participation of a racial group in the political, social, economic, cultural life, etc.
- On the other hand, some crimes like forcible transfer of population, which were not included in the Criminal code, are to be implemented with a Draft for amendments to the Criminal code, which is at present in Parliament. Even if the Criminal code is not supplemented with these crimes, the direct application of international norms under the Constitution is a sound basis for prosecuting and convicting war criminals.
- Both the Constitution and the Criminal Code prohibit limitation for crimes against humanity, war crimes including.

The amendments of the Criminal Procedure code are another important issue which needs to be stressed upon in the course of my presentation. There are two main aspects that have to be discussed.

First, those regulations concerning the cooperation with other states and international institutions related to prosecution, conviction of criminals and execution of penalties, as well as legal aid in criminal cases. All these provisions of the Criminal Procedure code are in conformity with the number of international acts like the European Convention for Extradition, European Convention on Mutual Assistance in Criminal Matters, the Rome Statute, etc. A day before my arrival here in Geneva the Bulgarian Parliament passed a Law for amendments to the Code of Penal Procedure, which provides for proceedings for the extradition of alleged perpetrators to another state or to the ICC on extradition request.

These provisions contribute to the international cooperation in preventing and prosecuting international criminality and assigns an important role of Bulgaria to the efforts of the international community against criminality, including war crimes.

Of utmost importance, on the other hand, are the amendments to the domestic procedural legislation, cognizing the fact that the national judiciary has the task to prosecute and convict those, suspected of committing a crime, including war crimes, as far as national jurisdiction prevails over international one.

It should be pointed out that the international community is firm about the prosecution and punishment of those, committing crimes, including war crimes, but the international community is also firm about the fair trial or due process of law, which should be granted to the accused.

The laws of armed conflict as codified in the 4 Geneva conventions of 1949 explicitly prohibit the passing of sentences and the carrying out of executions without a fair trial. The domestic legislation should offer at least the *minimum standards* for a just and fair proceeding.

The judgment must be pronounced by a regularly constituted court, affording all the judicial guarantees, recognized as indispensable by civilized peoples. Additional protocol 2 of 1977 states that the court must offer "the essential guarantees of independence and impartiality". Similar requirements are to be found in other international acts like the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms. These requirements include:

- The right to be informed of the charges;
- To be tried without undue delay (the right to a speedy trial, to be tried in a reasonable time);
- To prepare and present a defence;
- To be assisted by council;
- The right not to be forced to confess (the right against self-incrimination);
- The right to be presumed innocent until proven guilty;
- The right not to be convicted on the basis of *ex post facto* law;
- To call witnesses;
- To have an interpreter;
- The right to appeal.

These are the minimum standards for a fair trial, set forth by the international legislation.

Bulgaria has made some serious steps towards a system, balancing between an efficiently functioning criminal justice system with due respect for human rights. Of course, I could not but confess that it's a difficult task to keep that balance but it's important to point out that since the political changes of 1989 Bulgaria undertakes subsequent steps towards establishing the international standards in the field of criminal justice. In order to estimate the achievements of the Bulgarian legal reform in the discussed field one should be aware of the state from which the reform started.

- The separation of powers was not recognized. Hence, the ruling party had influence over the judiciary.
- The socialist "prokuratura" was assigned with supervisory function – over the entire state bureaucracy, society and over the judicial system as well. This supervisory power was used to subordinate human rights to the interests of the ruling party. It was the prosecutor's basic function, part of which was the prosecution of criminal cases. When the prosecutor prosecuted a case, he was not just the prosecuting party, but much more the supervising authority over the way the criminal case was tried. The court was therefore also subject to the

supervisory power of the prosecutor. Although the court was not formally bound by the opinion of the prosecutor in reaching its judgments, the judge was always conscious of the prosecutor's supervisory power and there was a serious question as to what political and psychological influence the prosecutor's supervisory power had on the court.

- In the pre-trial stage of the criminal proceedings it was the prosecutor to decide on all coersive measures like arrest, detention in custody, house arrest, searches, seizures, physical examination of a person, removal of the accused from office, lodging for examination into a mental establishment, wire-tapping etc. Judicial control in the pre-trial stage was excluded. There were no real guarantees against arbitrary violations of human rights and for trustworthy evidence.
- The trial was doubtfully the main stage of the criminal proceedings. The court was obliged under the law to accept and to evaluate the self-confessions of the accused, made in the pre-trial stage before a prosecutor, investigator or police-officer. This was a practice contrary to Art. 6 ECHR for a fair trial, it confronted the principles of any democratic state where the rule of law is respected and applied. It was not such a rare practice to have forced self-confession, which the court should consider when deciding on the case.

After the collapse of communism within a short period of time Bulgaria made some extremely important fundamental changes.

- For the first time in modern Bulgarian history, the new Constitution recognized the principle of separation of powers.
- The Bulgarian constitution forbids the establishment of extraordinary courts – one could be convicted only by a regularly established court.
- All the elements of a fair trial (due process of law) are proclaimed by the Constitution or the Criminal Procedure code and guaranteed thereof;
- The Constitution explicitly states that there are no limitations provided for crimes against humanity.

- The supremacy of the court and the trial stage of the criminal proceedings is guaranteed.
- The supervising power of the prosecutors was abolished. The prosecutor is a party in the criminal proceedings, which does not dominate over the court.
- Although the prosecutor is *dominus litis* in the pre-trial stage, he does not have the power to decide on the infringements upon human rights. The judicial control was introduced as an essential safeguard with respect of human rights protection against arbitrary violations. Although there was a strong opposition on behalf of the prosecutions office, the Bulgarian legislator is firmly motivated not to neglect (to give up) the international standards.
- The court can evaluate self-confessions of the accused or witness testimonies, given in the pre-trial stage only before a judge in an adversarial hearing with the presence of the defendant and his council. This is an important step towards basing the sentence on trustworthy evidence and respect for human rights.

- Other important steps towards an efficiently functioning system ensuring equality of parties at the trial hearing is the introduction of the adversarial trial.
- Measures were undertaken for speeding up the proceedings by introducing some summary proceedings like penal order, the European model of plea-bargaining.
- Steps towards strengthening the exclusionary rule, known as the "fruits of the poisonous tree", etc.

These fundamental amendments, in conformity with the universally accepted principles, have received twice the high evaluation of the Venice Commission. All the further changes, that are ahead of the Bulgarian legislator, will strengthen these main tendencies of the reform in the field of criminal justice, implementing the international standards for a speedy and fair trial of the accused, including accused in committing war crimes.

Finally, I should mention that according to the Constitution of Bulgaria the president, the vice-president enjoy immunity from criminal prosecution with respect to acts committed in the performance of their duties (the so called "functional immunity) with the exception of state treason and violation of the Constitution. Hence, they do not enjoy immunity for committing crimes against humanity, including war crimes, as these are the gravest violations of the Constitution. There can neither be amnesty, nor limitation for such crimes.

Bulgaria with its domestic legislation proves to be a country, on which the international community could fully rely for prosecuting and convicting war criminals by assisting the international authorities, on the one hand, and by its efficiently functioning domestic legislation – on the other. The domestic legislation provides for the prosecution and conviction of war criminals in the proceedings with both guarantees against arbitrary violations of human rights and a fair and just sentencing of those suspected of committing war crimes.

The short presentation, on behalf of the European Commission, of the CARDS Regional Project at a conference in Skopie

The CARDS 2003 Regional Judiciary Project's Contribution to the Forthcoming Reform of the Judiciary: Independency of the Judiciary[23]

Dear colleagues, first of all I would like to express my sincere pleasure to be among you and to participate in this very important discussion on the reform of the legal system, especially the reform of the judiciary in your country. An independent and functioning judiciary is the pillar of any democratic society where the rule of law is respected and human rights are cherished. Therefore the government of your country clearly has recognized the reform of the judicial system as a strategic priority, whose two key areas are its independence and effectiveness.

[23] CARDS – Community Assistance for Reconstruction, Development and Stabilization

For those who follow the events in the Former Yugoslav Republic of Macedonia – political, social, in the field of the economy, legislation etc., this meeting is a logical consequence of the firm will of your country to accomplish the required reforms for a membership in the European Union.

It should be pointed out that your country experiences the problems or at least similar problems that other countries - candidates for a membership in the European Union has faced or are still overcoming towards achieving this goal. Bulgaria itself has gone through some extremely serious changes of its political, economic and legal system as to answer the requirements, stemming from the international and European standards. Regardless of the work done till now, there are some more reforms to be carried out, including the legal system.

The Former Yugoslav Republic of Macedonia has made some important steps - legislative, organizational, series of public debates and round tables, drafting Strategy on the Reform of the Judicial System, etc. etc. There is however still a lot to be done in overcoming the identified weaknesses in the system. This objective could successfully be fulfilled on the bases of a complex, complementary, comprehensive approach, sharing the experience of other countries and implementing the European standards and best practices in the field. The judiciary should be ready to function as part of the European justice system, the single European legal area so that everyone could enjoy the same standards for a just and fair trial in any place in Europe – either Germany, France, the Netherlands or Bulgaria, Croatia or here in this country.

I

This ambitious goal for an European oriented reform of the judiciary could successfully be accomplished with the help of the European Community, especially the CARDS Regional Project **"Establishment of an Independent, Reliable and Functioning Judiciary and the Enhancing of the Judicial Co-operation in the Western Balkans"**.

The CARDS project clearly demonstrates the support of the European Union for the potential candidates to move closer to the Union by offering real assistance to the efforts for reforms in the area of Justice and Home Affairs. It is therefore **the overall objective of the project to support the development of an independent, reliable and functioning judiciary in the CARDS countries and thereby to contribute to the approximation of legislation and its enforcement in the area of the judiciary to European values, principles, standards and norms at a national level and to define and gain the CARDS countries' acceptance of common benchmarks on the independence and functioning of the judiciary for the Western Balkans at a regional level.**

The CARDS Regional Project is implemented by a Consortium with the following partners: Austria, Bulgaria, Germany, Italy, Romania, Slovenia and the Council of Europe.

The CARDS beneficiary countries are: Albania, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Serbia and Montenegro.

To achieve the overall objective the CARDS project pursues the following specific objectives:

1. Contributes to a better awareness and understanding of the European and other international standards and best practices for the establishment of an independent,

reliable and functioning judicial system and for enhancing the judicial co-operation by the CARDS countries' respective civil servants and officials, courts, Ministries of Justice as well as their colleagues within all concerned law enforcement bodies.

2. Supports the development of a regional strategy, based upon commonly accepted EU standards, practices and principles on the independent and functioning judiciary.
3. Assists, on request, each CARDS country to elaborate a detailed National Strategy and Implementation Action Plan, as well as the supervision of this plan.
4. Enhances judicial co-operation among the CARDS countries themselves and with international organizations.
5. Enables, at the end of the project, the CARDS country officials to act as trainers for their colleagues as well as managers of the changes in the judiciary as proposed and initiated in the project.

The **target groups** of the CARDS project are:

- Judges and prosecutors;
- Judicial administration;
- Other legal professions like lawyers, notaries, law enforcement bodies.
- The academic community, politicians, the general public and the private sector.

The CARDS project consists of **four thematic modules** with leading partners.

Module 1 with Bulgaria as a leading partner focuses on **"An independent judiciary"**;

Module 2, where Germany is a leading partner, deals with **"A reliable and functioning judicial system"**;

For Module 3 **"International and European judicial co-operation"** the leading partner is Slovenia;

Module 4 **"Introduction to EC law and EU judicial system"** with leading partner Italy.

II

It is my pleasure shortly to present to this honored audience the first Module **"An independent judiciary".** The establishment of an independent judiciary is the ultimate goal of every country, especially of newly emerged democracies. Moreover Bulgaria is the leading partner of the Consortium in this module.

Module 1 itself consists of three chapters, which include the most important issues relating to the **"Independency of the judiciary"**.

The aim of Chapter 1 **"Judicial power"** is:

- To set out criteria for judicial independence. As far as criteria of an independent judicial power is concerned, the project defines those of crucial importance:
    - separation of powers;
    - clearly defined competence of courts and prosecutor's offices;
    - judicial review of legislation for constitutionality of legislation and official acts;
    - judicial oversight of administrative practices;
    - exclusive judicial jurisdiction over all cases, concerning civil rights and liberties;

- Another important aim of this first Chapter is to identify European and other international standards with particular reference to judicial self-government and the required balance between the three state powers – legislative, executive and judicial. The project elaborates guarantees for the judicial self-government like:
    - the establishment of judicial councils, deciding on the selection, promotion, evaluation, dismissal of magistrates, disciplinary liability, taking budgetary decisions, etc.;
    - meaningful opportunity of the judiciary to influence its budgetary;
    - location and architecture of judicial buildings so as to be easy to find and to provide a respectable environment for dispensation of justice
    - assuring safety of judges and prosecutors;
    - an adequate increase of the number of judges;
    - human resources support for the timely and qualified work of each judge;
    - encouraging judges to form professional associations, oriented towards safeguarding of their independence and protecting their interests.

The aim of Chapter 2 **"Status and role of judges and prosecutors"** is to set out the key elements of the career of judges and prosecutors and to highlight the guarantees, which should exist in respect of their accountability. It especially develops the issues of the judicial career and, in particular:

- excluding political influence on the appointment of judges;
- security of tenure and irremovability;
- objective criteria for the judicial career;
- accountability of judges and prosecutors. The immunity of judges should be combined with disciplinary liability and removal, based on objective and clear criteria.

The last Chapter of the Module, dealing with the **"Independent functioning of the judiciary",** includes activities related to effectiveness of judicial performance and transparency of judicial activity.

Under the CARDS project effectiveness is ensured by:

- Training of judges and prosecutors, as only a broadly based and high quality education and training guarantees the proper dispension of justice fully corresponding to the needs of the public. Hence, there should be an appropriate initial and continuing training.
- Effectiveness requires case assignment by an objective method in order to avoid any influence in deciding a particular case;
- The judicial system should also maintain a case finding and tracking system, so that the public is informed whether cases are tried in a reasonable time.
- Lastly, effectiveness depends on the need that judges receive in a timely manner information on current laws and jurisprudence – domestic and that of the European courts.

The issue of transparency of the work of the judiciary is the other special activity in Chapter 3. It is well known that **"justice should not only be done, it should be seen to be done"**. Therefore the public should receive assurance that justice is administered

independently and impartially. The transparency of the judicial system is one such important guarantee against improper influence. Hence, the CARDS project treats with due attention appropriate measures that should be taken to inform the public of the way judiciary fulfils its functions. Special emphasis is put on the control of the administration of justice. Such a control is of crucial importance for the transparency of the judicial activity and a guarantee for its independence.

This brief presentation of the main topics included in Module 1 should give an idea of the technical assistance, which the CARDS project could contribute to the reform concerning the independence of the judiciary.

Some of these issues are to be found as short and mid-term measures defined in the Strategy on the reform of the judicial system in the Former Yugoslav Republic of Macedonia. As the strategy dates since November 2004, most of these provisions are to be accomplished as a forthcoming reform. Therefore, it will be a fruitful assistance on behalf of the CARDS project to the efforts of the country to establish an independent judiciary, which is a benchmark of a democratic society founded on the rule of law and the respect for human rights.

III

Although the CARDS project came into force on April, the 30th 2004 I am tempted just to mention the main activities accomplished in Module 1 "Independent judiciary".

The first took place in late December (21st to 23rd) in Belgrade, Serbia – technical assistance mission "Guarantees against improper influences on the activities of judges and prosecutors"; "Anticorruption strategies". This activity was carried out upon the explicit request of the Serbian Ministry of Justice.

The second activity within Module 1 is again a technical assistance mission "Recruitment and preliminary training of judges and prosecutors" held in Croatia in February, 2005.

The next mission was in Romania in March, 2005. It was a study visit with "Training of judges and prosecutors", "Access to current laws and court decisions".

In April was the next technical assistance mission on "Recruitment of judges and prosecutors" held in Montenegro.

Immediately after this mission a seminar was conducted in Skopie in April on "Constitutional guarantees for independent justice", which was dealing with the ideas for amendments of the Macedonian Constitution.

Shortly after that again in April (22nd to 23rd) was the mission in Tirana on the issues of Separation of powers, competence of courts and prosecutors, judicial control on administrative acts and court jurisdiction on civil rights and liberties.

In all these missions, conducted in a very short period of time – through the end of December 2004 to April 2005, the experts had to deal with variety of different and serious issues that the independence of the judiciary is facing. The experts were assigned with the task to study the situation in the visited countries, to gather additional information in the intensive meetings with law professionals, to present the European and other international standards and best practices in the respective topics so that the beneficiary countries could be able to accomplish their legal reform in the right direction in due time.

The abundance of topics related to judiciary**,** the variety of partners of the Consortium – some of them with long-term democratic traditions, others recently having established the rule of law, the precise selection of knowledgeable and highly qualified experts, the intensive and devoted work of the staff of the CARDS project is a promising basis for a fruitful contribution to the ambitious legal reform that the Former Yugoslav Republic of Macedonia has undertaken.

Brief information on some of the activities of PACEL, whose Board of trustees I chair.

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Executive Director – Mr. Georgi Genchev (mobile +359 88 662644, e-mail giorro@mail.orbitel.bg)

II. I. OVERVIEW

The Programme and Analytical Centre for European Law (PACEL) is a public benefit foundation established in 2000. PACEL is registered in the Central Registry for Public Benefit Organizations.

The mission of the Programme and Analytical Centre for European Law is to support the efforts of Bulgaria in the process of accession to the European Union through harmonization of the national legislation with the Community law. At the same time, PACEL is not limited to the EU dimensions of the legal reform in Bulgaria. Models and practices of countries outside the EU are researched and promoted. PACEL pursues its mission on the basis of three groups of activities:

III. LEGISLATIVE RESEARCH

The legislative research is a focal point in the priority areas of PACEL. It is conducted through rendering an expert assistance to draft laws related to EU accession, prepared by Ministries, individual MPs and Parliamentary Commissions. The expert assistance is predominantly realized through comparative legal analyses focused on the regulatory framework of the Members States of the EU as well as the countries in accession.

The comparative legal research as a strategic policy component helps the identification of national legislative priorities and, in addition, the refinement of quality criteria for assessing the assets of various policies.

The uniqueness of the comparative research approach is due to the lack of analyses of the type within the law making process of Bulgaria traditionally underestimating the value of the foreign legal practice. PACEL's comparative approach is methodologically developed by a highly

qualified expert team, including university professors, legal consultants and lawyers involved with domestic and International Private and Public Law.

PACEL has signed Memoranda of Agreement for providing analyses and research with the 39th National Assembly of the Republic of Bulgaria, and with the Bulgarian Ministry of Justice and Ministry of Regional Development and Public Works.

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The PACEL Foundation provides local and international consultations to different government and non-government stakeholders on specific regulatory issues concerning the approximation of the Bulgarian law with the *acquis communautaire.*

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The PACEL Foundation implements projects that contribute to stimulating public debate on issues related to the Future of Europe and the EU enlargement. To this aim, PACEL organizes conferences, seminars, round tables and public discussion in terms of technological efficiency of the legislative process.

II. CAPACITY TO MANAGE AND IMPLEMENT PROJECTS
PROJECTS COMPLETED

2002

1. Project on the Amendments to the Judicial System Act

The project was launched by the PACEL independently and focused on conducting of an expert assessment of the draft proposals for amendments to the Judicial System Act. These amendments constitute a significant step towards achieving independence and accountability of the judiciary, identified as a priority in the ongoing judicial reforms of each candidate country. Indeed, the Copenhagen criteria take into consideration the judicial independence and judges' impartiality in the set political criterion, requiring "*stability of institutions guaranteeing the rule of law*". The relation between the European Union imperatives and the philosophy of the current judicial reform in Bulgaria was explored by the PACEL experts and the findings were summarized in a report delivered to the work group in charge of the amendments. The opinions of distinguished experts in the field of judicial reform were included in the project and were considered in the held roundtable meetings. The amendment proposals, along with the produced viewpoints and evaluating studies were submitted to the Minister of Justice in June 2002. On the basis of its analytical conclusions the Ministry of Justice launched its legislative initiative for Amendments to the Judicial System Act.

The Ministry of Justice as a main beneficiary under the project was provided with a helpful assistance in the process of transposition of the set horizontal measures which premised the future collaboration activities in the area of judicial reform, undertaken by PACEL.

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The project was assigned to PACEL by the Ministry of Economy. The activities envisaged by the project included:

- a comparative analysis on the legislative framework of the bankruptcy proceedings within the countries of the European Union;
- a summary report of the analytical survey to the Ministry of Economy;
- presentation of the analysis to a working group, organized by the Ministry of Economy in cooperation with the Ministry of Justice**.**

The analysis of the bankruptcy proceedings of the EU Member States involved investigation of the Community current legislation on the matter, urging candidate countries to raise the protection of the shareholders, creditors and workers in insolvent companies. The implications of the EU framework were further considered with regard to the transposition of the insolvency measures within the specific corporate governance models of Member States. The comparative analysis identified two main types of insolvency proceedings: the Anglo-Saxon governance model with comparatively low degree of creditor's protection and the continental insolvency model adopted in the civil law jurisdictions with traditionally higher degree of creditors' protection. The focus of the analysis logically fell upon the corporate governance models, representing the European Continental System, since the current insolvency framework of the Commercial Law is closely patterned after the German regulatory model.

The project generated 6 working meetings, held at PACEL office. The resulting proposals along with the analytical materials, representing the comparative survey were submitted to the Ministry of Economy in April 2002. State officials to the Ministry, representatives of the Ministry of Justice, leading Bulgarian magistrates, and lawyers took part in the discussion held at the end of April.

3. Free Legal Aid Project

Free legal aid is one of the most active issues in Europe, constituting an indispensable element of the European Union regulatory system. The accession process of Eastern European countries inevitably put that issue to be resolved by the national legislative bodies.

The Free Legal Aid Project in Bulgaria was initiated by PACEL and involved drafting of a comparative legal study, which encompassed the statutory framework of**:**

- European Union
- The Council of Europe
- the EU Member States, Switzerland and the United States.

An expert group, comprising distinguished lawyers in the field of protection of Human Rights was formed with regard to the implementation of the project.

4. Academic Degrees and Awards Law Project

The project reflected the legislative need for sectoral harmonization in the field of higher education. The European trend towards unification of the academic standards triggered the attempts of PACEL to assist with its expert capacity the Bulgarian implementation structures involved.

The project activities envisaged:

- **gathering and processing of assessment studies on the current legislative framework on academic degrees and awards.**
- **drawing comparative studies on the European educational awarding procedures.**
- **summarizing proposals for implementation of the European experience into the Bulgarian law**

A round table, discussing these issues was organized by PACEL which included representatives of:

- **The Committee on Education and Science to the Parliament**
- **and other interested MPs from the Parliamentary represented groups;**
- **The Ministry of Education;**
- **The Council of University Rectors;**
- **The Bulgarian Science Academy;**
- **The Accreditation Council to the National Agency for Accreditation and Evaluation;**
- **The Higher Attestation Commission;**
- **The Union of Bulgarian Scholars;**
- **The Club of the Women in Science;**
- **The Assistants' Collegium.**

The round table was held in March 2002. The various attitudes, opinions and recommendations generated in the course of the project were subsequently recorded in its final papers. These materials were submitted to the Committee on Education and Science to the National Assembly. As a result the future involvement of PACEL in the educational legislative initiatives for improvement of the current higher educational system was negotiated.

5. Depositary and Credit Institutions Project

The project was initiated by the PACEL in collaboration with the Academic Association for International Development (AAID). A legislative analysis reflecting the modern regulatory credit systems in European Union Member States was prepared by a PACEL expert. In brief, the analysis revealed a variety of institutional crediting forms, most of which are still absent in the Bulgarian developing economy. The work aimed at finalization of the study continued two months and was submitted to the assignor in September, 2002. The subsequent Draft Law on Depositary and Credit institutions was premised on the analytical results of the comparative study.

The results of the Credit Institutions Project were presented at a national conference which was held with the active participation of Ministry of Regional Development and Public Works. The involved NGOs in the sector, such as the Cooperation of Credit Institutions of Private Proprietors and the Bulgarian Association of Credit Institutions also took part in the discussion.

6. Bulgaria -Ten Years in the Council of Europe Conference Project

The project commemorated the tenth-year anniversary of the ratification of the European Convention on Human Rights and Fundamental Freedoms by Bulgaria. The anniversary initiative

was conducted by PACEL in cooperation with Open Society Foundation – Sofia and the Union of Bulgarian Scholars.

The organization of the event involved establishing contacts with Governmental Institutions in charge of the protection of Human rights in Bulgaria, as well as an interaction with NGOs, Bulgarian and international scholars, interested in the issue. In the course of the overall preparation the human rights' experience of UK, Germany and Russia was studied in depth.

The project was finalized with an organization of a conference, highlighting the tenth anniversary of the ratification of the European Convention on Human Rights and Freedoms. It was held under the auspices of Mr. Georgi Parvanov, the President of the Republic of Bulgaria. An honorable guest to the celebration was Mr. Ivan Bizjak, Minister of Justice of the Republic of Slovenia. Submissions were delivered by Mr. Stankov, Minister of Justice of the Republic of Bulgaria, the leaders of the parliamentary represented parties, as well by the Chairmen of the Constitutional Court, the Supreme Court of Cassation, the Supreme Administrative Court and the Bulgarian Bar Association.

7. Religious Freedoms and Associations Project

The freedom of religion in South-East Europe is one of the most debatable issues in the region because of the presence of various ethnic and religious groups on the Balkans, which often led to escalating conflicts, which attracted the attention of the foreign commentators.

In European perspective, the refinement of a national concept for religious freedoms, consistent with the Copenhagen political criteria is one of the challenges to which the Bulgarian legislature has to render an appropriate response.

In these circumstances the aim of the project was to provide legislative assistance to the preparation of a Draft Law on Religious Freedoms and Associations. The first project initiative concerned elaboration of the general principles of the Draft Law, which was subject to parliamentary discussions in the 38th National Assembly**.**

The expert assistance aimed at improvement of the regulatory framework with implementation of the European standards was also reflected in the work of the subsequently constituted 39th National Assembly. The Parliamentary Committee on Religious Freedoms assigned to PACEL a comparative analysis on the relationship between the religion and state in the Western European countries and the in the emerging South-East democracies. The study was completed in one-month period, coinciding with the parliamentary debates on the draft law. The results of the study showed the possible legislative solutions for elimination of discriminative practices involving abuse of religious and educational rights of minorities.

The comparative analysis along with the submitted proposals and viewpoints was presented at the Parliamentary Committee on Religious Freedoms. Leaflets with the analysis were handed to all MPs.

8. Historical and Comparative Legislative Analysis on the National Defense Systems Project

The Project was executed by PACEL experts on the assignment of Ministry of Defense. It was funded by the Open Society Foundation – Sofia.

The main project activities included research, processing and evaluation of the legislative defense frameworks, set within the European member states, signatories to the North Atlantic Treaty. The analysed national defense
models revealed a distinct similarity in the way by which the relationship between the military and civil command of the army is regulated. The notion of "civilian in uniform" denotes the precept of the supremacy of the civilian in the management and control over the army. The analysis was carried out along with several work meetings between PACEL experts and officials from the Ministry of Defense.

The results of the analytical study were submitted to the assignor in March, 2002. PACEL was invited to present a summary of the study at a conference, organized by the Atlantic Club and Manfred Vjorner Foundation in April with participation of Governmental officials and ambassadors to the countries, signatories to North Atlantic Treaty. The successful completion of the project and its significant impact on the strategic determination of the legislative reform within the Armed Forces regulation urged Ministry of Defence to assign a second task to PACEL.

9. Comparative Study on the Armed Forces Administration Project

This is the second part of the project, assigned by the Ministry of Defense and carried out from April till June 2002. The subject matter of the project was clarification and juxtaposition of the national regulations on the armed forces administration of the countries, signatories to the North Atlantic Treaty in a comparative study. Special consideration was given to the administration systems of Czech Republic, Hungary and Poland, as recently accepted NATO members.

The conclusions of the study were presented at a conference, held by the Ministry of Defence in July 2002. The in-depth expert work on the Armed Forces regulation carried out served as a basis of the subsequently drafted amendment proposals by the Ministry of Defence.

10. The European Accession Process of Bulgaria in terms of the Integration Activities of the National Assembly

The project was implemented within the framework of Programme Europe 2001, financed by the European Commission. The goal of the project was to raise the stakeholders' awareness on the role of the National Assembly in the Bulgaria's EU accession process, with regard to the legal framework, set by the Europe Agreement, the Bulgarian Constitution and the national legislation. Four seminars, followed by discussions with NGOs, political parties and media representatives, Members of Parliament and representatives of the executive power were held within 8 months to seek appropriate solutions to the identified problems.

The first project activity included analysis of the relevant regulations, defining the role and prerogatives of the National Assembly in the integration process. The analysis focused on:

- The Europe Agreement, concluded in 1995 between Bulgaria and the European Community
- The Bulgarian Constitution
- The relevant national legislation, concerning the European integration (such as Government decree No3/2000 on the coordination of activities of the authorities in charge of the European integration)

PACEL expert in collaboration with the expert body to the Committee on European Integration to the Parliament carried out the analysis. It was finalised in November, 2002, and subsequently published in December, 2002.

11. Management and Monitoring of Structural Funds in Bulgaria Project

The project was launched by PACEL on assignment of the Ministry of Regional Development and Public Works. The main task of the project related to preparation of a comparative analysis on the organization and procedures of the structural funds within the European Union Member States.

The results of the analysis affirmed the view that structural funds are the European Union's main instruments for supporting social and economic restructuring across the Community territory. Notwithstanding the unification approach of the Union, each Member State enjoys a considerable degree of discretion in administration of the EU Structural Funds. The analysis focused on the national mechanisms for inside monitoring and control over the management of structural funds.

The analysis was submitted to the assignor in September 2002. Draft amendments of the current legislative framework were prepared upon its analytical conclusions.

12. Legislative Framework of the Health Care Institutions Project

The Project was initiated by the PACEL in February 2002. It aimed at improvement of the current legislative framework on health care institutions in Bulgaria. The main project activity envisaged drafting of a comparative analysis on health care regulations in Europe, United States and Canada. The analysis showed a variety of institutional forms upon which are framed the health care structures.

The factual conclusions and modern trends were further summarized in the draft amendment proposals to the Health Institutions Law of the Ministry of Health Care. The analysis and the draft amendments were presented at two seminars on Heath Care Reform organized by the Ministry of Health Care with participation of state officials, media and NGOs.

13. Program for Assistance and Orientation of MPs

13.1. Preparation and coordination of the Program

The Program was launched under a MATRA/CAP financed project by the Royal Dutch Embassy in Bulgaria. The orientation seminars, directed at the parliamentarians were prepared by representatives of the National Assembly, USAID, UNDP, and the Embassies of the Netherlands, United Kingdom, France, the USA.

PACEL prepared the framework of the Program and assisted in its practical implementation throughout the seminars. The main objectives of the Program were to share the achievements of the world parliamentary practices, to improve relations between the MPs, civil society, NGOs, media and international organizations and to raise the standards of the national legislative process and bill drafting.

13.2. *Communications with Media* Seminar

The project was financed by MATRA/CAP Programme through the Royal Dutch Embassy in Sofia. A two-day orientation seminar for MPs was held in June 2002. Distinguished guest lectors from Dutch political parties were invited to the seminar. It concentrated on the creation of the

proper MP image. Workshops for MPs in press relations, drafting press releases, interviewing techniques were included as to raise the overall awareness of MPs.

14. Comparative Overview of the Antidiscrimination Practices and Procedures within the EU Member States and the candidate countries Project

The project was executed by PACEL experts on assignment of the Institute for International Development, Sofia. The subject matter of the project was orientated at antidiscrimination issues, and more specifically – laws, practices and procedures in the EU Member States and the candidate countries, providing equal opportunities and affirmative actions policies for prevention and elimination of discriminative conduct.
The work under the project continued one month and was finalized in October 2002 with a comparative study. PACEL was invited to present the results in a conference organized by the Institute for International Development in December 2002. An honourable guest to the conference was the Israeli ambassador to Bulgaria.

2003

15. Building up a Legislative and Institutional Framework for Protection of Consumers' Economic Interests

The project was financed by Phare-Access Programme of the European Commission. The main task of the project was to provide expertise to the Ministry of Economy and the Committee on Commerce and Protection of Consumers in the process of transposition of EU law on consumer protection.

The activities implemented could be summarized into three groups: analyses and assessment of the level of harmonisation of the effective legislation with the acquis; proposals for legislative changes; campaigns for achieving consensus on the proposed draft-laws.

16. Patients' Rights Project

The project was launched by PACEL as support initiative to the Open Society foundation's activities in the field of health care reform. The thrust of the project was drafting of a comparative study on the patients' rights laws worldwide. The analysis was prepared by a PACEL expert in collaboration with the expert body to the Parliamentary Health Care Committee. Apart from the national regulative frameworks, the international and EU acts on patients' rights were also considered. Deliberations on the modern trends in the health care reform constituted a separate part of the study.

The analysis was presented at a conference and instigated active debates on the health care reform amongst the state officials of the Health Ministry, which provided the analytical background of a Draft Law on Patients' Rights.

17. Draft Proposal for Amendments to Part VI of the Constitution of Republic of Bulgaria

The project on the draft amendments to the judicial system, as part VI of the Bulgarian Constitution integrated three groups of activities: comparative analysis on the judicial systems of the EU Member States and the Candidate countries; concrete proposals for specific constitutional

amendments; round table on the raised issues with participation of the Minister of Justice, magistrates and MPs.

The comparative analysis was submitted to the Minister of Justice and the Ad-hoc Committee on Amendments to the Constitution. PACEL prepared and logistically supported the Round Table for Constitutional Amendments, which took place in May 2003 at the National Assembly.

18. Analysis of the Hospice Regulation under the Bulgarian Law and the EU Member States

The project was initiated by the Bulgarian Centre for Non-profit Law in terms of preparation of draft law proposals in the area. The outcome analysis, drawn by the PACEL experts was submitted to the assignor and further presented at a round table on hospices regulation, held in November 2003.

19. Fiscal Decentralization Project

The project was launched the Open Society Foundation – Sofia. The analysis, directed by PACEL foundation under the project referred to drafting a comparative study of the normative decentralization models in the EU and the candidate countries. It was presented to the assignor in May 2003.

20. Higher Education Research Project

The project was assigned by the Ministry of Education. The PACEL activities under the project included: a comparative analysis of the financial regulation systems for higher education in Europe; an analysis on the credit system in Europe; analysis of the worldwide voucher schemes in education. The package of all analysis was presented at a public discussion with representatives of Ministry of Education and university deans.

2004

21. Building up an Integrated Care Standards System for Vulnerable People, **PHARE Project within the framework of Civil Society Development Programme 2001**

The objective of the project was to provide technical assistance to the Ministry of Labour and Social Policy in the process of drafting of an Integrated Care Standards System for vulnerable people, in particular for elderly people and people with disabilities. The project was framed on four groups of activities: analysis and assessment of the current regulatory system of provision of social services; comparative legal analyses of the Care Standards Systems in the EU Member States and the acceding countries; drafting up a model of a National Care Standards System; public discussions for achieving consensus on the proposed system.

22. Practical Information and Legal Assistance in Cases Related to Patients' Rights

The overall project objective aimed at strengthening the patients' rights through:

- Efficient public information campaign;
- Legal Protection of the patient;
- Practical issues related to the implementation of the legislative texts;

- Case law practice on issues, concerning the rights if the patients.

The project was financially supported by the OSF- Sofia.

23. Building up an Adequate Legislative Framework for the Credit Cooperatives in Bulgaria

The aim of the project was to synchronize the efforts of credit cooperative institutions in Bulgaria so as to prepare an adequate legal framework of their activities. PACEL provided logistic and technical assistance with a view to consolidating the stakeholders involved, such as the German Cooperative and Raiffasen Union (DGRV), "Nachala" Cooperative Union, Popular Casa- Rousse, etc.

24. Labour courts – Organization, Composition, Authorities

The implementation of the project was assigned by the Ministry of Justice in September 2004. The main aims of the Project were preparing of a comparative legal analysis and expert evaluations of the labour courts organization and statute in the EU member states. The results were presented to the attention of the Ministry of Justice.

25. Research and Promotion of Good Practices in Facilitation of the Public Access to the Court in Selected EU Member States and in the USA which to be successfully implemented in the Bulgarian Legal Environment

The long-term aim of the Project was to improve the public access to justice through preparing conclusions regarding the workability of the good practices in the field of the public access to justice in the EU member states and the USA. In the framework of the project it was researched: the public access to justice according to the Bulgarian legislation, the public access to justice according to The European Convention for the Human Rights; the internal mechanisms for public access to justice insurance in the EU member states and the USA. It was prepared conclusions for the workability of the good practices in the sphere of the public access to justice in the current Bulgarian legislation. The project is financed by East-West Management Institute of the USAID. The project ended in November 2004.

2005

26. Support for the Creation of a Favorable Legal Environment for Application of the Decentralization Models in Bulgaria

The overall aim of the project was to support the process of fiscal decentralization in select areas. Prime beneficiaries of the project results were leading NGOs with a proven successful track record in the area of local governance reform (e.g. National Association of Municipalities in the Republic of Bulgaria, Local Government Initiative, etc.). PACEL carried out six studies of EU member States decentralization models in six areas and participated in the relevant working groups. The analyses and their public presentation will support the advocacy efforts of the beneficiary organizations for the adoption of adequate legislative changes. The project was financed by the Open Society Foundation, Sofia.

27. Technical Assistance to Implement Key Measures of the Programme

for the Implementation of the National Anti – Corruption Strategy
(Ref: EUROPEAID/116056/D/SV/BG)

As a partner to the leading organisation, HAUS Finnish Institute of Public Management, PACEL Foundation assisted the implementation of the project by carrying out a series of analyses as follows: (1) Review and identification of best practices in the field of Anticorruption; (2) Review of the state of the Programme for the implementation of the National Anticorruption Strategy for 2004-2005; (3) Review of best legal practices of Bulgaria in the area of lobbying and conflict of interest; (4) Functional review of the Commission for Coordinating of the Activities for Combating Corruption (CCACC)and its capacity for coordination of various anticorruption activities; (5) Review and assessment of the structuring and functioning of the Regional anticorruption councils; (6) Analysis of the strengths and weaknesses of the Bulgarian rules and practices in the sub-project area; (7) Creation of common framework of the anticorruption action plans for Regional administrations and NGO in order to strengthen the Regional anti-corruption councils and to create a network of stakeholders, including NGOs, businesses, citizens; (8) Development of proposals for implementation of mechanisms for coordination of various anticorruption activities with CCACC

The project was financed by PHARE and the results were submitted in June 2005.

28. Research and Promotion of Best Practices for Improvement of the National Policy in the Area of Cultural Heritage and Enhanced Role of the National Museums System

The goals of the project were (a) support the adoption of legislative measures compliant with best EU models in the area and the national specifics, (b) introduction of mechanisms for effective and transparent governance and control on behalf of the State and society of the processes related to the protection of cultural and historic heritage and its use for public benefit, (c) adaptation of the museums system to function effectively in a market economy, (d) improvement of the measures for protection of cultural and historic heritage and increasing the role of the civil sector in this respect.

A series of meetings with government officials, experts, evaluators, museum professionals were held to outline the specific problem areas in the field. An extensive analysis of the Bulgarian legislation was carried out, as well as a comparative study of the related legislation of 7 EU member States. The results of the analyses, as well as specific recommendations for improvement of the legal framework were presented at a conference in the end of December 2005. PACEL was invited by the Ministry of Culture to assist in 2006 the drafting of new legislation.

29. New Perspectives for Vulnerable Groups - Raising the Quality of Social Care and Supporting the Social Enterprises (2005 – 2006)

The aim of the project is to support the Ministry of Labor and Social Policy and the Agency for Social Assistance in overcoming the isolation of vulnerable groups through developing and proposing a system for quality control of the provision of social services and promoting social entrepreneurship in Bulgaria. The project activities are organized in three main groups: (1) Analysis and evaluation of the legislation in the area of social services and social enterprises in the EU; (2) Development of a system for quality control of the social services provision and a set of practical measures for support of the social enterprises; (3) Awareness and advocacy campaign for wide public acceptance of the proposals.

The project is funded by PHARE Civil Society Development Programme.

30. Effectiveness and Efficiency for Change (2005 - 2006)

The aim of the project is to build and strengthen the capacity of the Bulgarian NGO sector to reach programmatic and financial sustainability. Its objectives are (a) to promote market-oriented behavior of Bulgarian NGOs; (b) to increase the efficiency and effectiveness of NGO operations; (c) to develop and assert successful models of cooperation of the NGOs with the State, EU structures and the Business community; (d) to increase the knowledge and develop the skills of NGOs for successful fundraising from the State and the EU funds; (e) to prepare NGOs for successful fundraising from non-traditional sources**;** (f) to enhance the access of NGOs to professional training and advice on general and specific aspects of their functioning**.**

Within the framework of the project PACEL as a partner to the leading organization (WCIF, Bulgaria) is conducting a series of trainings for NGOs developing their practical skills for acquiring and managing EU funding. In 2006 an extensive survey of the mode of operation of EU NGO networks will be carried out, and all forms of institutionalized civic participation in the decision making processes at a national and EU level will be analyzed and presented to Bulgarian non-profit organizations.

The project is funded by the CEE Trust for Civil Society.

PROGRAMME AND ANALYTICAL CENTRE FOR EUROPEAN LAW (PACEL)

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The Ministry of Justice as a main beneficiary under the project was provided with a helpful assistance in the process of transposition of the set horizontal measures which premised the future collaboration activities in the area of judicial reform, undertaken by PACEL.

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The project reflected the legislative need for sectoral harmonization in the field of higher education. The European trend towards unification of the academic standards triggered the attempts of PACEL to assist with its expert capacity the Bulgarian implementation structures involved.

The project activities envisaged:

- **gathering and processing of assessment studies on the current legislative framework on academic degrees and awards.**
- **drawing comparative studies on the European educational awarding procedures.**
- **summarizing proposals for implementation of the European experience into the Bulgarian law**

A round table, discussing these issues was organized by PACEL which included representatives of:

- **The Committee on Education and Science to the Parliament**
- **and other interested MPs from the Parliamentary represented groups;**
- **The Ministry of Education;**
- **The Council of University Rectors;**
- **The Bulgarian Science Academy;**
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The round table was held in March 2002. The various attitudes, opinions and recommendations generated in the course of the project were subsequently recorded in its final papers. These materials were submitted to the Committee on Education and Science to the National Assembly. As a result the future involvement of PACEL in the educational legislative initiatives for improvement of the current higher educational system was negotiated.

35. Depositary and Credit Institutions Project

The project was initiated by the PACEL in collaboration with the Academic Association for International Development (AAID). A legislative analysis reflecting the modern regulatory credit systems in European Union Member States was prepared by a PACEL expert. In brief, the analysis revealed a variety of institutional crediting forms, most of which are still absent in the Bulgarian developing economy. The work aimed at finalization of the study continued two months and was submitted to the assignor in September, 2002. The subsequent Draft Law on Depositary and Credit institutions was premised on the analytical results of the comparative study.

The results of the Credit Institutions Project were presented at a national conference which was held with the active participation of Ministry of Regional Development and Public Works. The

involved NGOs in the sector, such as the Cooperation of Credit Institutions of Private Proprietors and the Bulgarian Association of Credit Institutions also took part in the discussion.

36. Bulgaria -Ten Years in the Council of Europe Conference Project

The project commemorated the tenth-year anniversary of the ratification of the European Convention on Human Rights and Fundamental Freedoms by Bulgaria. The anniversary initiative was conducted by PACEL in cooperation with Open Society Foundation – Sofia and the Union of Bulgarian Scholars.

The organization of the event involved establishing contacts with Governmental Institutions in charge of the protection of Human rights in Bulgaria, as well as an interaction with NGOs, Bulgarian and international scholars, interested in the issue. In the course of the overall preparation the human rights' experience of UK, Germany and Russia was studied in depth.

The project was finalized with an organization of a conference, highlighting the tenth anniversary of the ratification of the European Convention on Human Rights and Freedoms. It was held under the auspices of Mr. Georgi Parvanov, the President of the Republic of Bulgaria. An honorable guest to the celebration was Mr. Ivan Bizjak, Minister of Justice of the Republic of Slovenia. Submissions were delivered by Mr. Stankov, Minister of Justice of the Republic of Bulgaria, the leaders of the parliamentary represented parties, as well by the Chairmen of the Constitutional Court, the Supreme Court of Cassation, the Supreme Administrative Court and the Bulgarian Bar Association.

37. Religious Freedoms and Associations Project

The freedom of religion in South-East Europe is one of the most debatable issues in the region because of the presence of various ethnic and religious groups on the Balkans, which often led to escalating conflicts, which attracted the attention of the foreign commentators.

In European perspective, the refinement of a national concept for religious freedoms, consistent with the Copenhagen political criteria is one of the challenges to which the Bulgarian legislature has to render an appropriate response.

In these circumstances the aim of the project was to provide legislative assistance to the preparation of a Draft Law on Religious Freedoms and Associations. The first project initiative concerned elaboration of the general principles of the Draft Law, which was subject to parliamentary discussions in the 38th National Assembly**.**

The expert assistance aimed at improvement of the regulatory framework with implementation of the European standards was also reflected in the work of the subsequently constituted 39th National Assembly. The Parliamentary Committee on Religious Freedoms assigned to PACEL a comparative analysis on the relationship between the religion and state in the Western European countries and the in the emerging South-East democracies. The study was completed in one-month period, coinciding with the parliamentary debates on the draft law. The results of the study showed the possible legislative solutions for elimination of discriminative practices involving abuse of religious and educational rights of minorities.

The comparative analysis along with the submitted proposals and viewpoints was presented at the Parliamentary Committee on Religious Freedoms. Leaflets with the analysis were handed to all MPs.

38. Historical and Comparative Legislative Analysis on the National Defense Systems Project

The Project was executed by PACEL experts on the assignment of Ministry of Defense. It was funded by the Open Society Foundation – Sofia.

The main project activities included research, processing and evaluation of the legislative defense frameworks, set within the European member states, signatories to the North Atlantic Treaty. The analysed national defense
models revealed a distinct similarity in the way by which the relationship between the military and civil command of the army is regulated. The notion of "civilian in uniform" denotes the precept of the supremacy of the civilian in the management and control over the army. The analysis was carried out along with several work meetings between PACEL experts and officials from the Ministry of Defense.

The results of the analytical study were submitted to the assignor in March, 2002. PACEL was invited to present a summary of the study at a conference, organized by the Atlantic Club and Manfred Vjorner Foundation in April with participation of Governmental officials and ambassadors to the countries, signatories to North Atlantic Treaty. The successful completion of the project and its significant impact on the strategic determination of the legislative reform within the Armed Forces regulation urged Ministry of Defence to assign a second task to PACEL.

39. Comparative Study on the Armed Forces Administration Project

This is the second part of the project, assigned by the Ministry of Defense and carried out from April till June 2002. The subject matter of the project was clarification and juxtaposition of the national regulations on the armed forces administration of the countries, signatories to the North Atlantic Treaty in a comparative study. Special consideration was given to the administration systems of Czech Republic, Hungary and Poland, as recently accepted NATO members.

The conclusions of the study were presented at a conference, held by the Ministry of Defence in July 2002. The in-depth expert work on the Armed Forces regulation carried out served as a basis of the subsequently drafted amendment proposals by the Ministry of Defence.

40. The European Accession Process of Bulgaria in terms of the Integration Activities of the National Assembly

The project was implemented within the framework of Programme Europe 2001, financed by the European Commission. The goal of the project was to raise the stakeholders' awareness on the role of the National Assembly in the Bulgaria's EU accession process, with regard to the legal framework, set by the Europe Agreement, the Bulgarian Constitution and the national legislation. Four seminars, followed by discussions with NGOs, political parties and media representatives, Members of Parliament and representatives of the executive power were held within 8 months to seek appropriate solutions to the identified problems.

The first project activity included analysis of the relevant regulations, defining the role and prerogatives of the National Assembly in the integration process. The analysis focused on:

- The Europe Agreement, concluded in 1995 between Bulgaria and the European Community
- The Bulgarian Constitution

- The relevant national legislation, concerning the European integration (such as Government decree No3/2000 on the coordination of activities of the authorities in charge of the European integration)

PACEL expert in collaboration with the expert body to the Committee on European Integration to the Parliament carried out the analysis. It was finalised in November, 2002, and subsequently published in December, 2002.

41. Management and Monitoring of Structural Funds in Bulgaria Project

The project was launched by PACEL on assignment of the Ministry of Regional Development and Public Works. The main task of the project related to preparation of a comparative analysis on the organization and procedures of the structural funds within the European Union Member States.

The results of the analysis affirmed the view that structural funds are the European Union's main instruments for supporting social and economic restructuring across the Community territory. Notwithstanding the unification approach of the Union, each Member State enjoys a considerable degree of discretion in administration of the EU Structural Funds. The analysis focused on the national mechanisms for inside monitoring and control over the management of structural funds.

The analysis was submitted to the assignor in September 2002. Draft amendments of the current legislative framework were prepared upon its analytical conclusions.

42. Legislative Framework of the Health Care Institutions Project

The Project was initiated by the PACEL in February 2002. It aimed at improvement of the current legislative framework on health care institutions in Bulgaria. The main project activity envisaged drafting of a comparative analysis on health care regulations in Europe, United States and Canada. The analysis showed a variety of institutional forms upon which are framed the health care structures.

The factual conclusions and modern trends were further summarized in the draft amendment proposals to the Health Institutions Law of the Ministry of Health Care. The analysis and the draft amendments were presented at two seminars on Heath Care Reform organized by the Ministry of Health Care with participation of state officials, media and NGOs.

43. Program for Assistance and Orientation of MPs

13.1. Preparation and coordination of the Program

The Program was launched under a MATRA/CAP financed project by the Royal Dutch Embassy in Bulgaria. The orientation seminars, directed at the parliamentarians were prepared by representatives of the National Assembly, USAID, UNDP, and the Embassies of the Netherlands, United Kingdom, France, the USA.

PACEL prepared the framework of the Program and assisted in its practical implementation throughout the seminars. The main objectives of the Program were to share the achievements of the world parliamentary practices, to improve relations between the MPs, civil society, NGOs, media and international organizations and to raise the standards of the national legislative process and bill drafting.

13.2. *Communications with Media* Seminar

The project was financed by MATRA/CAP Programme through the Royal Dutch Embassy in Sofia. A two-day orientation seminar for MPs was held in June 2002. Distinguished guest lectors from Dutch political parties were invited to the seminar. It concentrated on the creation of the proper MP image. Workshops for MPs in press relations, drafting press releases, interviewing techniques were included as to raise the overall awareness of MPs.

44. Comparative Overview of the Antidiscrimination Practices and Procedures within the EU Member States and the candidate countries Project

The project was executed by PACEL experts on assignment of the Institute for International Development, Sofia. The subject matter of the project was orientated at antidiscrimination issues, and more specifically – laws, practices and procedures in the EU Member States and the candidate countries, providing equal opportunities and affirmative actions policies for prevention and elimination of discriminative conduct.
The work under the project continued one month and was finalized in October 2002 with a comparative study. PACEL was invited to present the results in a conference organized by the Institute for International Development in December 2002. An honourable guest to the conference was the Israeli ambassador to Bulgaria.

2003

45. Building up a Legislative and Institutional Framework for Protection of Consumers' Economic Interests

The project was financed by Phare-Access Programme of the European Commission. The main task of the project was to provide expertise to the Ministry of Economy and the Committee on Commerce and Protection of Consumers in the process of transposition of EU law on consumer protection.

The activities implemented could be summarized into three groups: analyses and assessment of the level of harmonisation of the effective legislation with the acquis; proposals for legislative changes; campaigns for achieving consensus on the proposed draft-laws.

46. Patients' Rights Project

The project was launched by PACEL as support initiative to the Open Society foundation's activities in the field of health care reform. The thrust of the project was drafting of a comparative study on the patients' rights laws worldwide. The analysis was prepared by a PACEL expert in collaboration with the expert body to the Parliamentary Health Care Committee. Apart from the national regulative frameworks, the international and EU acts on patients' rights were also considered. Deliberations on the modern trends in the health care reform constituted a separate part of the study.

The analysis was presented at a conference and instigated active debates on the health care reform amongst the state officials of the Health Ministry, which provided the analytical background of a Draft Law on Patients' Rights.

47. Draft Proposal for Amendments to Part VI of the Constitution of Republic of Bulgaria

The project on the draft amendments to the judicial system, as part VI of the Bulgarian Constitution integrated three groups of activities: comparative analysis on the judicial systems of the EU Member States and the Candidate countries; concrete proposals for specific constitutional amendments; round table on the raised issues with participation of the Minister of Justice, magistrates and MPs.

The comparative analysis was submitted to the Minister of Justice and the Ad-hoc Committee on Amendments to the Constitution. PACEL prepared and logistically supported the Round Table for Constitutional Amendments, which took place in May 2003 at the National Assembly.

48. Analysis of the Hospice Regulation under the Bulgarian Law and the EU Member States

The project was initiated by the Bulgarian Centre for Non-profit Law in terms of preparation of draft law proposals in the area. The outcome analysis, drawn by the PACEL experts was submitted to the assignor and further presented at a round table on hospices regulation, held in November 2003.

49. Fiscal Decentralization Project

The project was launched the Open Society Foundation – Sofia. The analysis, directed by PACEL foundation under the project referred to drafting a comparative study of the normative decentralization models in the EU and the candidate countries. It was presented to the assignor in May 2003.

50. Higher Education Research Project

The project was assigned by the Ministry of Education. The PACEL activities under the project included: a comparative analysis of the financial regulation systems for higher education in Europe; an analysis on the credit system in Europe; analysis of the worldwide voucher schemes in education. The package of all analysis was presented at a public discussion with representatives of Ministry of Education and university deans.

2004

51. Building up an Integrated Care Standards System for Vulnerable People, **PHARE Project within the framework of Civil Society Development Programme 2001**

The objective of the project was to provide technical assistance to the Ministry of Labour and Social Policy in the process of drafting of an Integrated Care Standards System for vulnerable people, in particular for elderly people and people with disabilities. The project was framed on four groups of activities: analysis and assessment of the current regulatory system of provision of social services; comparative legal analyses of the Care Standards Systems in the EU Member States and the acceding countries; drafting up a model of a National Care Standards System; public discussions for achieving consensus on the proposed system.

52. Practical Information and Legal Assistance in Cases Related to Patients' Rights

The overall project objective aimed at strengthening the patients' rights through:

- Efficient public information campaign;
- Legal Protection of the patient;
- Practical issues related to the implementation of the legislative texts;
- Case law practice on issues, concerning the rights if the patients.

The project was financially supported by the OSF- Sofia.

53. Building up an Adequate Legislative Framework for the Credit Cooperatives in Bulgaria

The aim of the project was to synchronize the efforts of credit cooperative institutions in Bulgaria so as to prepare an adequate legal framework of their activities. PACEL provided logistic and technical assistance with a view to consolidating the stakeholders involved, such as the German Cooperative and Raiffasen Union (DGRV), "Nachala" Cooperative Union, Popular Casa- Rousse, etc.

54. Labour courts – Organization, Composition, Authorities

The implementation of the project was assigned by the Ministry of Justice in September 2004. The main aims of the Project were preparing of a comparative legal analysis and expert evaluations of the labour courts organization and statute in the EU member states. The results were presented to the attention of the Ministry of Justice.

55. Research and Promotion of Good Practices in Facilitation of the Public Access to the Court in Selected EU Member States and in the USA which to be successfully implemented in the Bulgarian Legal Environment

The long-term aim of the Project was to improve the public access to justice through preparing conclusions regarding the workability of the good practices in the field of the public access to justice in the EU member states and the USA. In the framework of the project it was researched: the public access to justice according to the Bulgarian legislation, the public access to justice according to The European Convention for the Human Rights; the internal mechanisms for public access to justice insurance in the EU member states and the USA. It was prepared conclusions for the workability of the good practices in the sphere of the public access to justice in the current Bulgarian legislation. The project is financed by East-West Management Institute of the USAID. The project ended in November 2004.

2005

56. Support for the Creation of a Favorable Legal Environment for Application of the Decentralization Models in Bulgaria

The overall aim of the project was to support the process of fiscal decentralization in select areas. Prime beneficiaries of the project results were leading NGOs with a proven successful track record in the area of local governance reform (e.g. National Association of Municipalities in the Republic of Bulgaria, Local Government Initiative, etc.). PACEL carried out six studies of EU member States decentralization models in six areas and participated in the

relevant working groups. The analyses and their public presentation will support the advocacy efforts of the beneficiary organizations for the adoption of adequate legislative changes. The project was financed by the Open Society Foundation, Sofia.

57. Technical Assistance to Implement Key Measures of the Programme for the Implementation of the National Anti – Corruption Strategy

(Ref: EUROPEAID/116056/D/SV/BG)

As a partner to the leading organisation, HAUS Finnish Institute of Public Management, PACEL Foundation assisted the implementation of the project by carrying out a series of analyses as follows: (1) Review and identification of best practices in the field of Anticorruption; (2) Review of the state of the Programme for the implementation of the National Anticorruption Strategy for 2004-2005; (3) Review of best legal practices of Bulgaria in the area of lobbying and conflict of interest; (4) Functional review of the Commission for Coordinating of the Activities for Combating Corruption (CCACC)and its capacity for coordination of various anticorruption activities; (5) Review and assessment of the structuring and functioning of the Regional anticorruption councils; (6) Analysis of the strengths and weaknesses of the Bulgarian rules and practices in the sub-project area; (7) Creation of common framework of the anticorruption action plans for Regional administrations and NGO in order to strengthen the Regional anti-corruption councils and to create a network of stakeholders, including NGOs, businesses, citizens; (8) Development of proposals for implementation of mechanisms for coordination of various anticorruption activities with CCACC

The project was financed by PHARE and the results were submitted in June 2005.

58. Research and Promotion of Best Practices for Improvement of the National Policy in the Area of Cultural Heritage and Enhanced Role of the National Museums System

The goals of the project were (a) support the adoption of legislative measures compliant with best EU models in the area and the national specifics, (b) introduction of mechanisms for effective and transparent governance and control on behalf of the State and society of the processes related to the protection of cultural and historic heritage and its use for public benefit, (c) adaptation of the museums system to function effectively in a market economy, (d) improvement of the measures for protection of cultural and historic heritage and increasing the role of the civil sector in this respect.

A series of meetings with government officials, experts, evaluators, museum professionals were held to outline the specific problem areas in the field. An extensive analysis of the Bulgarian legislation was carried out, as well as a comparative study of the related legislation of 7 EU member States. The results of the analyses, as well as specific recommendations for improvement of the legal framework were presented at a conference in the end of December 2005. PACEL was invited by the Ministry of Culture to assist in 2006 the drafting of new legislation.

59. New Perspectives for Vulnerable Groups - Raising the Quality of Social Care and Supporting the Social Enterprises (2005 – 2006)

The aim of the project is to support the Ministry of Labor and Social Policy and the Agency for Social Assistance in overcoming the isolation of vulnerable groups through developing and proposing a system for quality control of the provision of social services and promoting social entrepreneurship in Bulgaria. The project activities are organized in three

main groups: (1) Analysis and evaluation of the legislation in the area of social services and social enterprises in the EU; (2) Development of a system for quality control of the social services provision and a set of practical measures for support of the social enterprises; (3) Awareness and advocacy campaign for wide public acceptance of the proposals.

The project is funded by PHARE Civil Society Development Programme.

60. Effectiveness and Efficiency for Change (2005 - 2006)

The aim of the project is to build and strengthen the capacity of the Bulgarian NGO sector to reach programmatic and financial sustainability. Its objectives are (a) to promote market-oriented behavior of Bulgarian NGOs; (b) to increase the efficiency and effectiveness of NGO operations; (c) to develop and assert successful models of cooperation of the NGOs with the State, EU structures and the Business community; (d) to increase the knowledge and develop the skills of NGOs for successful fundraising from the State and the EU funds; (e) to prepare NGOs for successful fundraising from non-traditional sources**;** (f) to enhance the access of NGOs to professional training and advice on general and specific aspects of their functioning**.**

Within the framework of the project PACEL as a partner to the leading organization (WCIF, Bulgaria) is conducting a series of trainings for NGOs developing their practical skills for acquiring and managing EU funding. In 2006 an extensive survey of the mode of operation of EU NGO networks will be carried out, and all forms of institutionalized civic participation in the decision making processes at a national and EU level will be analyzed and presented to Bulgarian non-profit organizations.

The project is funded by the CEE Trust for Civil Society.
