

Tamara Trotman

Problems in Bulgaria are not dissimilar to those in Swaziland

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At the end of November, Tamara Trotman visited Bulgaria as a guest speaker at a conference organised by the Bulgarian Judges Association within the framework of the Project 'Creating a favourable environment for an independent judiciary in Bulgaria', implemented in co-operation with the Dutch Association for the Judiciary (Nederlandse Vereniging voor Rechtspraak, NvvR). In her presentation, dedicated to judicial solidarity, Justice Trotman spoke about several cases of pressure being put on judges in different countries in Europe which have come to the attention of the foundation Judges for Judges.

All these cases are, in fact, symptomatic of problems in the system — not just the judiciary, but the entire political establishment. However, neither Serbia and Ukraine nor Turkey are EU Member States whereas Bulgaria is, meaning that there is at least a presumption of a functioning democracy and rule of law, which includes court independence. In this context, how can your foundation and other international organisations of judges help to improve the situation in Bulgaria in that the challenges of our judiciary are part of a larger systemic problem?

Your question requires a very long answer. I am trying to follow developments in Bulgaria. Several years ago, Judges for Judges monitored the case of Judge Miroslava Todorova. When I was preparing for this conference, I read the European Commission reports on Bulgaria, including those under the co-operation and verification mechanism (CVM). I know enough to be able to say that the problems in Bulgaria are not unique to Bulgaria. In fact, many of the challenges here are essentially the same as those in other countries.

The position of the Supreme Judicial Council (SJC) in many countries is very sensitive — right in the middle between politicians and magistrates, between two separate branches of government, between the political class and the judiciary.

Apparently, many politicians find it irresistible to attempt to pull strings in the judiciary by gaining influence over the Supreme Judicial Council through the appointment of loyal council members.

We see the same happening in Serbia, Ukraine, Slovakia and many other places. So in this sense Bulgaria does not present either a new or particularly special challenge. The same is happening in many other countries all over the world, Swaziland being a case in point.

It is hardly a consolation that Bulgaria is encountering the same problems as Turkey and Swaziland. It is therefore important to consider what can be done?

In fact, Bulgarian judges have a very clear idea of what should be done. Bulgaria's problems are known to many and every single European Commission report in fact simply restates the same old findings. Change is a matter of political will, but also depends on the mentality of judges. Independent justice exists solely on account of the efforts of individual judges who have the strength to stand with their backs held high in difficult times, ready to accept the consequences of honestly performing the duties of their office.

But let me give you another example. I am in touch with dismissed judges from Georgia and the last time I spoke to one of them, she told me that *'our judiciary is beautifully organised — on paper — but some colleagues simply don't want to be free'*. And these words were quite literally repeated by Olexandr Volkov, the Ukrainian judge, when we discussed the judicial reforms and the attitudes of some of his colleagues.

A judge who gained his/her professional experience in a system where telephone justice was the standard way of adjudicating politically sensitive and generally high-profile cases, may all of a sudden feel very insecure when having to decide such a case in a fully independent way.

Being a judge is great because you get to decide. But at the same time, being a judge is very hard because sometimes the cases you must decide are very difficult. And some colleagues may then possibly try to avoid taking that last step of having to make an independent decision. It is then just easier to listen to your court president. Maybe some people felt better—more sheltered—in the old system. At least this is how things look to me as an outside observer.

Georgia and Ukraine — two countries that share a communist past with Bulgaria— are a case in point in that judges have to create a new self-image, being a loyal bureaucrat is not good enough you will have to ensure a fair trial for every citizen by being independent and impartial. This is what I meant when I said that judicial reform is not just about institutional reform but a change in the mentality of judges is needed as well. It is therefore important to continue to discuss these issues and conferences, like the one organised by the BJA, are very important.

In the meantime, we need to keep a sense of realism and accept that things won't change overnight. But we have to start acting today.

In Bulgaria, judges or at least those among them who are trying to bring about change, appear to be poorly understood.

The message we send to society and, equally, ensuring that it reaches all citizens are very important. Judges cannot and do not function in a vacuum — they are part of society — hence the need to communicate the importance of the principles of separation of powers, rule of law, and the meaning of authentic democracy. Citizens must be prepared to fight for these principles and give them serious thought in all elections. Judges will not be able to reform the judiciary on their own — they must reach out to citizens and the non-governmental sector to gain their support.

I have spoken to several fellow judges here in Bulgaria and they have all told me that they want reform for their children — for the world in which they will one day live. If we look at the next generation, we must act now. Life is difficult for many in Bulgaria, there are serious economic challenges and a hand-to-mouth existence probably makes the whole idea of rule of law very abstract. Therefore, I think that both judges—but also politicians—have the task of translating the importance of judicial reform for the benefit of their fellow Bulgarians. Citizens must know that justice is there to protect them and that they have the right to go to court and expect that justice is done in their individual case. This message must be communicated to everyone in society, in different appropriate ways. It is essential that people know both their rights and that there are guarantees in place that they will be able to exercise them in full.

Otherwise, we will simply continue to read the same reports every time, elections will come and go, and people will begin to feel confused, discouraged and decide

that nothing will ever change, no matter what they do. People can lose hope and this is a very dangerous state of mind, because when hope is lost we stop acting. It is imperative that people regain hope, that they keep their sight firmly on the goal.

In this context, are judges in Western democracies successful in sending such messages or are they the victim of the same prevailing attitude? As far as I know the understanding of the role of judges and courts is very dynamic?

Yes, I agree with you. Populist politicians have emerged everywhere and are gaining speed and traction — just look at what has happened in the UK before and after Brexit, there are also Marine le Pen in France and Geert Wilders in the Netherlands. Look at what happens in Poland and Hungary. Populist politicians could be a danger to the whole idea of democracy and separation of powers. If there are politicians who claim that only they know what people want, what they are in fact saying is that any other sound or critic is unwelcome because their voice runs contrary to what people ‘really’ think. This is the moment when the whole idea of separation of powers, a system of checks and balances, meaning that there always is, and should be, some tension between the different branches of government, is fully incompatible with the populist thinking of certain politicians.

Yes, there is such a challenge before Western societies and I am very much afraid that we judges are quite unprepared for it. We have grown complacent on account of enjoying the luxury of being in a situation where the separation of powers, and judicial and media independence is taken for granted to a degree where we are almost unable to imagine that things can be different. I think that judges should be sensitive to this danger.

The problem in Turkey, which is even more extreme, remains unresolved?

What is happening now in Turkey is a nightmare. It is obvious that a military coup can never be acceptable in a democratic society and in a state under the rule of law. Those responsible for the failed coup must be brought to justice. But the post-coup purges in Turkey are extremely worrying. There have been dismissals of thousands of judges on a previously unseen scale without even the pretence of a hearing, in flagrant violation with all international standards concerning the independence of the judiciary. Those dismissed have lost their jobs, but also their property and assets have

either been confiscated or frozen, and they are not allowed to leave the country, being forced to live in total social isolation. They have no way out.

What signal is the High Council of Judges and Prosecutors (HCJP) sending by dismissing thousands of judges without a hearing many of whom are currently in prison or in hiding with an arrest warrant hanging over them? For the many in the judiciary this has a chilling effect, regardless of whether we talk of judges with a lot of experience on the bench or those to be newly appointed. They have this example before them and know that the same can easily happen to them. According to data I recently obtained on Twitter 97% of Turkish citizens currently distrust the judiciary¹. Under these circumstances that doesn't come as a surprise.

The real danger is when such a policy is endorsed by the whole society.

We can hardly talk about the whole of society, but it is true that Turkish society is currently gripped by fear, with a few lone voices having the courage to speak up. It does take an enormous amount of courage on the part of the lawyers, for example, to defend indicted judges and prosecutors because they are also facing the threat of being arrested. Two judges whose trials we are monitoring have told their lawyers that they would understand if they gave up defending them to protect their families.

I'm not sure how the bleak human rights situation in Turkey will develop in the near future. As the president of the Turkish Bar Associations said (quoting Atatürk): there are no hopeless situations, just hopeless people.

And that is something we all should keep in mind, as citizens wherever we live. We have to keep the faith in the rule of law and support those that are committed to strengthen the rule of law and promote human rights.

¹ <https://www.turkishminute.com/2016/11/24/poll-shows-97-percent-turks-lack-trust-judiciary/>