

## REPORT ON THE EXCHANGE AND SUMMARY

### Instructions:

1. The report must be sent to the EJTN ([exchanges@ejtn.eu](mailto:exchanges@ejtn.eu)) within one month after the exchange.
2. Please use the template below to write your report (recommended length: 4 pages).
3. Please write in English or French. Should this not be possible, the report can be written in another language but the summary must be in English or French.
4. Please read the guidelines for drafting the report (in Annex). Feel free to add any other relevant information in your report.
5. The summary shall contain a synthesis of the most important information of the report.
6. Please note that NO NAMES, neither yours nor the ones of the persons you met during your exchange, should appear in the report in order to ensure anonymity<sup>1</sup>. Initials can be used when necessary.

### Identification of the participant

Name: Florstedt

First name: Jens

Nationality: German

Country of exchange: Bulgaria

### Publication

**For dissemination purposes and as information for future participants in the Programme please take note that, unless you indicate otherwise, EJTN may publish your report in its website. In this case the report will remain anonymous and your name and surname will not appear. To this aim, please do not mention any names in the reports. Initials can be used instead.**

Please tick this box if you do not wish for your report to be published

### For completion by EJTN staff only

Publication reference:

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<sup>1</sup> To that purpose, the first page of this report will be taken out before any possible publication



## **Identification of the participant**

Nationality: German

Functions: Judge

Length of service: 10 years

## **Identification of the exchange**

Hosting jurisdiction/institution: National Institute of Justice, Bulgaria

City: Sofia and Burgas

Country: Bulgaria

Dates of the exchange: 07/07/2014 - 18/07/2014

Type of exchange:

one to one exchange

group exchange

general exchange

specialized exchange (please specify :         )

# **REPORT**

## I . Programme of the exchange and hosting institutions

The group exchange programme which I took part in July 2014 was divided into two parts. The first week our group – comprising of eight judges and prosecutors from France, the Netherlands, Austria, Romania and Germany – spent in Sofia. The second week four colleagues were sent to Varna. Together with three other colleagues I had been sent to Burgas, a comparatively wealthy city at the coast of the black sea.

In the first week, we were warmly welcomed by a representative of the NIJ, The National Institute of Justice (NIJ). It is a public institution, which provides learning opportunities for the Judiciary. The National Institute of Justice became operational in 2004. It was built upon the achievements of the Magistrate Training Center, a nongovernmental organization established five years before.

The main goal of the National Institute of Justice is to improve the efficiency of jurisdiction. It provides for professional training and enhancement of qualification of Bulgarian magistrates and court clerks.



The NIJ is an independent legal entity. But there is a functional relationship between the Institute, on one hand, and the Supreme Judicial Council and the Ministry of Justice, on the other. The Institute obtains its funding from the budget of the Judiciary as well as from various programs and projects.

The National Institute of Justice is headed by a Managing Board. Members of the Managing Board are elected by the Supreme Judicial Council (five members) and by the Ministry of Justice (two members). These members have a five years seat. The chairperson of the Supreme Court of Cassation is an ex lege Managing Board's Chair.

The National Institute of Justice is managed by a Director. The Director is responsible for the implementation of the NIJ Managing Board's resolutions; the organization of NIJ activities as well as for its management; the development of the Institute's training curriculum, its annual budget, interior regulations, NIJ strategic development plan, etc. as well as for their approval by the NIJ Managing Board.

The NIJ activities are supported by a Program Council. It is an advisory body, which contributes to the preparation and updating of training programs and to lecturers' selection process. Program Council members are elected by the Managing Board. It consists of judiciary and academic members.

For further details of our programme please refer to the following schedule :

#### MONDAY, 7th JULY

10.00 – 12.00	National Institute of Justice
14.30 – 16.30	Commission for Forfeiture of Criminal Assets

#### TUESDAY, 8th JULY

10.00 – 12.00	Sofia District Court
14.30 – 16.30	Sofia City Prosecutor's Office

#### WEDNESDAY, 9th JULY

10.00 – 12.00	Supreme Court of Cassation
14.30 – 16.30	Supreme Prosecutor's Office of Cassation

#### THURSDAY, 10th JULY

10.00 – 12.00	State Agency for National Security
14.30 – 16.30	Specialized Criminal Court

#### FRIDAY, 11th JULY

10.00 – 12.00	National Investigation Service
12.30 – 14.30	Sofia Penitentiary

## II. The law of the host country



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The principles, the structure and the manner of organization of the Bulgarian judiciary are established by the Constitution. Justice is made in the name of law and is accomplished through two or – depending on the case – three instances. In difference to the German judiciary Bulgaria did not develop specialized courts as social and labour courts.

The Constitution of Bulgaria is the supreme law in contemporary Bulgaria, and the legal system is based on the principle of civil rights. Bulgaria's current constitution was adopted in July 1991. According to the constitution the Republic of Bulgaria shall be a State governed by the rule of law, governed by the Constitution and the laws of the country. The constitution guarantees the life, dignity and rights of the individual.

### III. The comparative and European law aspect in your exchange

As I joined quite a few hearings at some courts I could observe many similarities between the Bulgarian justice and the German one. Judges wearing gowns hear witnesses, give lawyers the possibility of pointing out their opinions on the facts and the law. Clerks report the most important essentials of the hearings in the minutes, parties outside the courtroom are nervous about their approaching trials. However, the differences between the systems are more interesting to me. In the Bulgarian civil process, for example, the judge may not give any opinion on the facts or the law during the process until the court takes the final decision in order not to be regarded partial. In my opinion that is the main reason for not resolving disputes in court peacefully: many cases end with a pronounced judgement; court settlements are almost unknown in the Bulgarian legal system, whereas in Germany almost half of the cases conclude with an applicable settlement.

I could observe differences between the prisons in Sofia and Burgas and German prisons. The court of appeal in Hamm (OLG Hamm) ruled on 26.01.2011 (11 U 181/09) that in a particular case the imprisonment of many inmates in one cell may violate human dignity. According to this court's opinion the conditions of imprisonment always violate human dignity if the space provided for the inmates is less than 5 square meters. The same applies to cells for more than one inmate with toilets devoid of separating walls and ventilation.

In the Burgas penitentiary only murderers are kept in single-person cells. The measurements of the cells in this prison differ a lot. The single cells have a total space of approximately five to six square meters. The prison was built for 450 inmates providing a total space of 4 square meters for each inmate. According to the information given by the prison's chairperson, on the day of our visit 718 persons were imprisoned. Consequently, the average total space for each prisoner is about 2.5 square meters. There are cells with very high occupancies - up to 20 inmates! During night time from 9pm until 6am prisoners are locked in the cells and even these highly occupied cells lack a toilet. During night time, a bucket is provided for necessary matters, which cannot be delayed. According to German standards and understanding, the violation of human rights in the prisons of Burgas and Sofia is quite obvious.

### IV. Benefits of the exchange and suggestions

It has been a very valuable experience to see how a young member state can establish an effective judicial system. The stay deepened my understanding of many aspects of law. I strongly believe that old member states like Germany have a lot more to do to build a genuine European area of justice.

I gained much more confidence in the Bulgarian system and in their verdicts. Surely I will tell my colleagues about my experience in Bulgaria and some prejudices towards the Bulgarian system may be broken. In order to give more judges the opportunity to take part, I would prefer a one-week exchange.



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## SUMMARY

Great job! The organization of our stay by the host in Sofia was as excellent as my hosting colleagues from the court of Burgas. Thanks to the efforts of our hosts and their colleagues we did not only have interesting meetings with representatives of many judicial authorities but also interesting partners to talk to and to undertake trips to get an impression of life in Bulgaria.

I was very lucky to take part in a group exchange, which during the discussions with our Bulgarian partners allowed each of us to compare the national with the French, Austrian, Dutch, Romanian and German law. The experience of the exchange resulted in a deeper understanding and confidence in foreign colleagues – a first step to build a genuine European area of justice.



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## ANNEX

### GUIDELINES FOR DRAFTING THE REPORT

#### **I- Programme of the exchange**

Institutions you have visited, hearings, seminars/conferences you have attended, judges/prosecutors and other judicial staff you have met...

The aim here is not to detail each of the activities but to give an overview of the contents of the exchange.

If you have received a programme from the hosting institution, please provide a copy.

#### **II- The hosting institution**

Brief description of the hosting institution, its role within the court organisation of the host country, how it is functioning...

#### **III- The law of the host country**

With regard to the activities you took part in during the exchange, please develop one aspect of the host country's national law that you were particularly interested in.

#### **IV- The comparative law aspect in your exchange**

What main similarities and differences could you observe between your own country and your host country in terms of organisation and judicial practice, substantial law..? Please develop.

#### **V- The European aspect of your exchange**

Did you have the opportunity to observe the implementation or references to Community instruments, the European Convention of Human Rights, judicial cooperation instruments? Please develop.

#### **VI- The benefits of the exchange**

What were the benefits of your exchange? How can these benefits be useful in your judicial practice? Do you think your colleagues could benefit of the knowledge you acquired during your exchange? How?

#### **VII- Suggestions**

In your opinion, what aspects of the Exchange Programme could be improved? How?

