



Council of the  
European Union

022957/EU XXVI. GP  
Eingelangt am 25/05/18

Brussels, 25 May 2018  
(OR. en)

8682/02  
DCL 1

EVAL 19  
ELARG 152

## DECLASSIFICATION

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of document: ST 8682/02 RESTREINT UE

dated: 7 May 2002

new status: Public

Subject: Analysis of information on corruption (within the judiciary) in Bulgaria

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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# RESTREINT UE



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## **NOTE**

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From : the General Secretariat  
To : the Collective Evaluation Working Party  
Subject : Analysis of information on corruption (within the judiciary) in Bulgaria

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## **Legislation**

Bulgaria has ratified both the Council of Europe Civil and Criminal Law Convention on Corruption<sup>1</sup> as well as the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. However, more information is awaited from Bulgaria<sup>2</sup> on alignment of its legislation regarding the Protection of the EC Financial Interests Convention and its Protocols, including on future co-operation with OLAF<sup>3</sup> and regarding the Convention on the fight against corruption involving EC officials or officials of EU Member States (1997). Bulgaria continues to participate in the monitoring of anti-corruption measures through the OECD Working Group on bribery in international commercial transactions and the Group of States against corruption (GRECO).

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<sup>1</sup> Council of Europe Website Main Framework Conventions (status on 23/04/02)

<sup>2</sup> 11/03/02 - accession negotiations with Bulgaria, chapter 24/information provided by Bulgaria

<sup>3</sup> Article 7 of the 2nd Protocol of 19 June 1997

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<sup>1</sup>A number of amendments were introduced to the Criminal Code and the Criminal Code of Procedure during the period 1997-2001 with the aim of bringing national legislation in line with the *acquis* in the field of combating crime. The amendments to the Criminal Code in the field of the fight against corruption concern:

- introducing the term "foreign official"
- criminalising the act of promising, offering or giving bribes to foreign officials
- criminalising the act of promising or offering bribes to local officials (in addition to giving bribes, which has already been criminalised)
- criminalising the act of soliciting or agreeing to accept bribes by local officials (in addition to receiving bribes, which has already been criminalised)
- removing the restrictions whereby sanctions for active bribery of foreign officials are imposed only when international transactions are conducted
- providing more serious sanctions for active and passive bribery in the Section Bribery

In the field of the fight against money laundering:

- criminalising money laundering
- criminalising the failure of officials to apply the 'Measures Against Money Laundering Act' as well as offences against it
- criminalising the use of budgetary funds or other specially designated funds for purposes other than those for which they have been set aside

It is not clear which of these (or all) amendments have already been introduced or whether they have just been drafted. Bulgaria only states that "the amendments to the Criminal Code were planned to be submitted to the Council of Ministers for consideration by the end of March 2002."

Bulgaria has further stated that the Measures against Money Laundering Act was amended at the beginning of 2001 to to fully align legislation with the Council Directive of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC). Again, it is not clear whether the amendments have been adopted and implemented. More (detailed) information is awaited.

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<sup>1</sup> Information submitted by the Bulgarian Ambassador the Spanish Ambassador in Sophia (10 April 2002)

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## Justice

There are no comprehensive and objective reports on corruption within the judiciary, but there are many rumours. The 'Coalition 2000 annual report for the Corruption in Bulgaria for 2001' ranks the judiciary as the 4th most corrupted system in the state. However, the analysis is made purely on the basis of public perception indexes. The "Corruption Climate" report (Results of an International Research project on Corruption in 11 Central and Eastern European Countries<sup>1</sup>) indicates that 44% of the persons asked 'totally agree' with the statement that the state is corrupt.

In spring 2001, the Prosecutor General requested removal of immunity of an investigator caught in the process of receiving bribery. However, despite some cases where investigation has started, no results of such investigations have led to trials. One of the reasons is the Constitutional provision guaranteeing immunity to all magistrates. Furthermore, as there are no objective criteria for the recruitment of staff in the judiciary or any neutral standards for case assignment, the risk of corruption exists<sup>2</sup>.

The Supreme Judicial Council (SJC) is given as an example of the lack of an internal control mechanism within the judiciary. The Constitution and the Judicial System Act give magistrates immunity from prosecution from all but serious crimes that carry over 5 years of imprisonment. Both requests to the SJC to lift immunity and its lifting in practice are rare. These provisions not only make it difficult to know the potential scale of corruption or criminal activity within the judiciary but also hamper, to a very large extent, efforts to combat corruption.

Also, there are very few clear or objective procedures to guide the SJC in making personnel decisions. The SJC has neither developed a system for reporting and investigating disciplinary matters, nor are there any kind of clear instructions and guidelines for the behaviour of the servants (including investigators). In addition, the SJC does not have experts to deal with disciplinary actions in the judicial system. Finally, certain members of the SJC were divested of the ability to make proposals for opening disciplinary procedures. As a result, inappropriate behaviour of those working in the judicial system often remains unpunished.

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<sup>1</sup> GfK Prague, June, July, August 2001

<sup>2</sup> Answers from the Member States to the questionnaire (February 2002)

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Judges' pensions are quite low and rules on retirement are discretionary. These two facts combined may endanger judges' decisional independence<sup>1</sup>, i.e. as the OSI puts it "in the absence of a mandatory retirement age older judges effectively serve at the pleasure of their court president and the Council."

The law stipulates that the Court President distributes cases among judges in the respective court. So far, no other transparent neutral criteria have been introduced for case assignment. In the Supreme Administrative Court, a system exists allowing electronic distribution of cases. However, due to the lack of equipment and systems, this is not the case in all courts<sup>2</sup>.

The professional Association of Judges has adopted a Code of Ethics for Judges. At present, no such Code exists for prosecutors and investigators. The Reform Strategy envisages the elaboration of a common Code of Ethics for all magistrates<sup>3</sup>. After its adoption, the Judicial System Act will be amended accordingly to guarantee practical implementation. The Strategy has also pointed out a set of problems to be solved in order to improve the public image of the judiciary, which at the moment is unsatisfactory.

The National Strategy for Combating Corruption, adopted in 2001 covers 4 areas. One of them is the anti-corruption reform in the judiciary. More information on its content and planned measures is needed.

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<sup>1</sup> Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)

<sup>2</sup> However, common software is reportedly in the process of developing and should serve the entire courts system, allowing electronic distribution of cases.

<sup>3</sup> third quarter of 2002