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**2020 Rule of Law Report
Country Chapter on the rule of law situation in Bulgaria**

Accompanying the document

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**2020 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

Since accession to the EU in 2007, Bulgarian reforms in areas including justice and corruption have been followed by the Commission through the Cooperation and Verification Mechanism (CVM).

Judicial reform in Bulgaria has been a gradual process with important implications for judicial independence and public confidence. Challenges remain, in particular on the need to finalise, taking account of the Venice Commission opinion, the reform process commenced in 2019 regarding legal procedures concerning the effective accountability and criminal liability of the Prosecutor General. The composition and functioning of the Supreme Judicial Council and its Inspectorate have also been subject of further debate, leading to new reform proposals. More generally, attacks against the judiciary are reported to increase without proper reaction from the competent authorities. Controversial provisions relating to the automatic suspension of magistrates in case of a criminal investigation, and to the obligation for magistrates to declare their membership in professional organisations, have been repealed.

In 2017 and 2018, Bulgaria carried out a comprehensive reform of its legal and institutional anti-corruption frameworks. The reform has led to improved cooperation between the relevant authorities. A number of high-level investigations were launched in the first half of 2020 and charges have been brought in a number of cases. The new reforms provide for public access to the property and interests declarations of senior public office holders which can be considered a good practice. Nevertheless, important challenges remain, as also illustrated by the perception surveys that show a very low level of public trust in the anti-corruption institutions. Lack of results in the fight against corruption is one of the key aspects raised throughout the summer 2020 protests. A solid track-record of final convictions in high-level corruption cases remains to be established. Better and more effective communication as regards the development and implementation of the anti-corruption strategy would be beneficial. It is important that the authorities are provided with sufficient resources in order to be able to fight corruption effectively. A legal framework is in place for conflict of interest, yet concerns exist as regards lobbying, which remains unregulated by law, and the transparency and predictability of the legislative process in the country.

Concerning media pluralism, the Bulgarian legal framework is based on a set of constitutional safeguards and legislative measures, such as the Radio and Television Act, which are often not effectively implemented in practice. The Audiovisual Media Regulatory Authority (CEM) is considered as independent and transparent about its activities, but the Authority lacks resources to perform its tasks efficiently. Lack of transparency of media ownership is considered as a source of concern. The legal framework against political interference in the media does not explicitly forbid politicians from owning outlets, and links between political actors and some media outlets have been established. Several media freedom associations report physical or online attacks on journalists.

Issues concerning checks and balances include concerns about the limited use of public consultations and impact assessment in the legislative process. Despite their limited resources, the functioning of national human rights institutions has continued to improve. The already narrowed civic space in Bulgaria could be further affected in view of a new draft law on foreign funding for NGOs.

The Cooperation and Verification Mechanism (CVM) was established at the accession to the European Union in 2007 as a transitional measure to facilitate Bulgaria's continued efforts to reform its judiciary and step up the fight against corruption and organised crime.¹ In line with the decision setting up the mechanism and as underlined by the Council, the CVM ends when all the benchmarks applying to Bulgaria are satisfactorily met.² The latest CVM report, adopted in October 2019, recorded that Bulgaria had made a number of further commitments and the Commission concluded that the progress made under the CVM was sufficient to meet Bulgaria's commitments made at the time of its accession to the EU. As the Commission also underlined, Bulgaria will need to continue working consistently on translating the commitments specified in its report into concrete legislation and on continued implementation. Before taking a final decision, the Commission will also take duly into account the observations of the Council, as well as of the European Parliament.³

I. JUSTICE SYSTEM

The judicial system of the Republic of Bulgaria⁴ includes a total number of 182 courts which are ordinary and specialised. As a general rule, the ordinary courts hear cases in three instances, with the system of these courts comprising 113 regional courts, 28 district courts and 5 courts of appeal. The specialised courts include also military, criminal and administrative courts. The Supreme Court of Cassation is the court of last instance in cases heard by ordinary, military and specialised criminal courts, while for administrative cases, the Supreme Administrative Court is the court of last instance. Outside of the ordinary court system, the Supreme Court of Cassation and the Supreme Administrative Court are the courts of last instance. The judiciary also includes the Prosecutor's Office, while the Constitutional Court of Bulgaria is not part of it.⁵ The Prosecutor's Office has a unified structure and is headed by the Prosecutor General. The Supreme Judicial Council is the highest administrative authority in the Bulgarian judiciary. It is responsible for managing the judiciary and ensuring its independence. Judges, prosecutors and investigators⁶ are appointed, promoted, transferred and dismissed by their respective chamber (Judges' or Prosecutors') of

¹ Following the conclusions of the Council of Ministers, 17 October 2006 (13339/06), the Mechanism had been established by a Commission Decision of 13 December 2006 (C(2006) 6570).

² Council Conclusions on the Cooperation and Verification Mechanism, 12 December 2017 - https://ec.europa.eu/info/sites/info/files/20171212-st15587_en.pdf.

³ On 18 December 2019, the Chair of the LIBE Committee addressed a letter to the President Sassoli, notifying him of the Committee's support for the Commission's report, notably the lifting of the CVM for Bulgaria. President Sassoli in turn has confirmed this message in a letter of 20 December 2019 to President von der Leyen. Meanwhile in the Council no consensus was reached on conclusions, and the Finnish presidency issued a Presidency report on 13 December 2019, noting the divisions on the line to take with regard to Bulgaria among Member States in the Council. Other discussions on Bulgaria and the CVM were organised by the LIBE Committee in August and September 2020.

⁴ For a description of the judicial structure see e.g. CEPEJ (2020), Study on the functioning of the judicial systems in the EU Member States.

⁵ The Constitutional Court is not included in Chapter 6 Judiciary of the Constitution. It has a special Chapter 8. In addition, Case 18/1993 of the Constitutional Court says that it is outside of the Judiciary.

⁶ Venice Commission opinion (CDL-AD(2019)031) para. 13-14: The majority of the investigators are police officers, procedurally supervised by the prosecutors; a smaller number of investigators have the status of magistrates and work in the National Investigative Service or in investigative units which are part of prosecutors' offices at regional level. Procedurally, they are all under the supervision of prosecutors. Procedural supervision means that all decision by an investigator can be overturned by a supervising prosecutor. The supervising prosecutor is, in turn, subject to a supervision by a hierarchically superior prosecutor, up to the level of the Prosecutor General.

the Supreme Judicial Council.⁷ The Supreme Bar Council is an independent and self-governing body established by law.⁸

Independence

A reform concerning the accountability of the Prosecutor General and his or her deputies is ongoing. In the past years, the Prosecution service underwent a series of reforms, which aimed to restructure the service.⁹ Despite this progress, in Bulgaria, the combination of the powers and position of the Prosecutor General exerts considerable influence, as the Prosecutor General may annul or amend any decision taken by any prosecutor which has not been reviewed by a judge.¹⁰ Furthermore, he may second prosecutors without their consent, for a period of 3 months within a calendar year, and issue written instructions to them, including in individual cases.¹¹ The Prosecutor General also has significant powers over the prosecutors who are the heads of offices at district and provincial level.¹² Consequently, all prosecutors and investigators are *de facto* subordinate to the Prosecutor General. As regards his or her accountability, the Prosecutor General can only be removed from office by a proposal of the Plenary of the Supreme Judicial Council (SJC) to the President of the Republic.¹³ While the powers of the Prosecutor General are not unique to the Bulgarian justice system¹⁴, concerns have been raised due to their combination with the Prosecutor General's position in the SJC. In the Prosecutors' Chamber, the Prosecutor General, as an *ex officio* member and chairman, plays a decisive role in relation to the career and disciplinary proceedings regarding prosecutors.¹⁵ The lack of a possibility for an effective criminal

⁷ In accordance with the Constitution and the Judicial System Act (JSA).

⁸ Art. 134(1) and (2) of the Constitution.

⁹ The 2016 JSA reform removed the possibility of verbal instructions (JSA, Art. 143(2) JSA) and established that the prosecutors are subordinate to the administrative heads of their prosecution office, and not directly to the Prosecutor General (Art. 136(3) and (4)).

¹⁰ See the powers under Article 126 of the Constitution, Article 139(2) of the Judicial System Act and Article 243 of the Criminal Procedure Code. See also Constitutional Court Case 15/2019, 23 July 2020.

¹¹ Other powers: to carry out acts within the competence of lower prosecutors in cases determined by the law, to ensure the identification of omissions and breaches of prosecutors, and the grounds for taking appropriate organisational and/or disciplinary measures. JSA, Art.138 para. 1 n. 6, Art.227, para. 1 and Art.147, para. 2 and 3, Art.143 para. 3, Art.139 para. 2; Bulgarian Constitution, Art.126 para. 2; Figure 55, 2020 EU Justice Scoreboard; Figure 56, 2019 EU Justice Scoreboard.

¹² JSA, Art.136 para. 3 and 4. See also Venice Commission opinion (CDL-AD(2019)031), para. 8. The Supreme Judicial Council has been reorganised in 2015 with the creation of two separate Chambers for Judges and Prosecutors. On the one hand, the creation of a separate judicial Chamber reduced the influence of the Prosecutor General on the career and discipline of lower courts' judges, but on the other hand it increased his or her influence within the Prosecutorial Chamber on the career and on disciplinary matters concerning prosecutors and investigating magistrates, as well as on the appointment or dismissal of heads of prosecutor's offices. In addition, he/she retained influence on the appointment of the presidents of the highest courts through the Plenary of the SJC.

¹³ Venice Commission opinion (CDL-AD(2019)031), para. 17: In case the judge/prosecutor is found guilty of an intentional crime, he/she is automatically dismissed. In addition, dismissal is possible for a serious disciplinary offence, by a decision of the respective chamber of the SJC, or, in the case of the PG or two chief judges – by 17 votes (out of 25) in the Plenary of the SJC. See also JSA Art. 320 para. 4 and para. 6, Art. 33 para. 3 and Art. 129 para. 2 and para. 3 of the Constitution.

¹⁴ Figure 55, 2020 EU Justice Scoreboard. See also Figures 55 and 56, 2019 EU Justice Scoreboard.

¹⁵ Venice Commission opinion (CDL-AD(2019)031) para. 8. The reorganisation of the SJC increased [PG's] his or her influence within the Prosecutorial Chamber on the career and on disciplinary matters concerning prosecutors and investigating magistrates, as well as on the appointment or dismissal of heads of prosecutor's offices; see also para. 18. That decisive role also stems from the fact that he or she is the hierarchical superior of the peer elected members (four prosecutors and one investigator) and the majority is obtained through their votes and his or her own vote in the Prosecutors' chamber of the SJC. In addition, lay

investigation concerning the Prosecutor General and his or her deputies is a long standing issue which has been raised not only by the European Commission¹⁶ but also by the European Court of Human Rights¹⁷ and the Council of Europe.¹⁸ In June 2019, a draft law was tabled to address this issue but serious concerns were raised by various stakeholders. On a recommendation from the Commission, Bulgaria requested an opinion from the Venice Commission to avoid any risk to judicial independence, while still ensuring the effectiveness of the proposed mechanism. In December 2019, the Ministry of Justice published a new draft law which addressed some of the recommendations of the Venice Commission.¹⁹ This new draft law on the matter is now before Parliament²⁰, providing for a “special prosecutor”²¹ who would be in charge of investigating crimes possibly committed by the Prosecutor General. This special prosecutor would be elected by the Prosecutors’ Chamber of the SJC, on a proposal from three of its members and with a majority of eight out of eleven votes, for a fixed-term mandate of seven years. He or she would enjoy procedural independence when supervising an investigation against the Prosecutor General and his or her deputies, but would remain subordinate to the Prosecutor General for other activities.²² Certain elements in the appointment procedure and the investigative powers of the “special prosecutor” have raised concerns and it would be important that the draft law takes account of the Council of Europe recommendations.²³ On 18 December 2019, the Government asked the Constitutional Court whether the supervision of legality²⁴ by the Prosecutor General, a power which is enshrined in the Constitution, also applies to the investigations against him or her. This request indirectly challenged the constitutionality of the draft legislation. On 23 July 2020, the Constitutional Court ruled that the Prosecutor General cannot exercise supervision of legality over prosecutors who investigate him/her.²⁵ This ruling will enable Parliament to resume its

members of the Judges’ chamber elected by Parliament may also come from the ranks of prosecutors. See also the paragraph regarding the composition of the Supreme Judicial Council.

¹⁶ Progress report Bulgaria 2019[COM(2019)498], p. 6.

¹⁷ ECtHR, judgment of 5 February 2010, *Kolevi v. Bulgaria*, paras. 121-127, 129, 135 and 136.

¹⁸ Council of Europe, Supervision of the execution of the European Court’s judgments, CM/Notes/1377bis/H46-9 of 1-3 September 2020, and Committee of Ministers (Decision CM/Del/Dec(2020)1377bis/H46-9); See also CM/Notes/1362/H46-6 of 3-5 December 2019, and Committee of Ministers (Interim Resolution CM/ResDH(2019)367 of 5 December 2019; Venice Commission Opinion (CDL-AD(2019)031).

¹⁹ As recommended by the Venice Commission, the new draft abandoned the envisaged suspension mechanism of the Prosecutor General as well as the extension of the accountability to the presidents to the two supreme courts. Venice Commission Opinion (CDL-AD(2019)031), paras. 66-67.

²⁰ Draft law approved by the Bulgarian Government on 7 December 2019.

²¹ The head of an “Inspectorate” Department of the Supreme Cassation Prosecutor’s Office.

²² Venice Commission opinion (CDL-AD(2019)031), paras. 55 and 63. It clarifies that cases implicating the Prosecutor General (PG) should be withdrawn from the jurisdiction of ordinary investigators and prosecutors, subordinated to the PG, and entrusted to a body or an official who does not receive instructions from the PG, who does not owe his/her appointment to the PG, and whose further career does not depend, even in the long run, on the PG, and that it would be important to ensure that after the termination of their mandate such ad-hoc prosecutors do not need to return to the prosecution system and to become subordinate to the PG.

²³ Interim Resolution CM/ResDH(2019)367 of 5 December 2019 para. 7: “arrangements envisaged to secure hierarchical and institutional independence of all bodies supervising or conducting the investigation should ensure also strong practical independence, *inter alia* through rules which make it impossible for a Chief Prosecutor to be able to influence the appointment or the career of persons responsible for investigating him or her”.

²⁴ ‘Supervision of legality’ is the expression used in the Constitution which refers to the legality of the prosecution activities, including those conducted by the prosecutors.

²⁵ Constitutional Court [Case](#) 15/2019, 23 July 2020. On the ruling, see Council of Europe’s Decision CM/Del/Dec(2020)1377bis/H46-9 of 3 September 2020: the Chief Prosecutor’s oversight does not apply in respect of investigations against him, that limitation does not appear to concern investigations into high-

work. However, the ruling does not solve the concerns related to the appointment procedure of the envisaged special prosecutor and to the fact that he or she would remain subordinate to the Prosecutor General for activities other than the investigation against the latter and his or her deputies. A further consultation of the Venice Commission on the draft law would give reassurance about the effectiveness of the new accountability mechanism.

Despite the progress made, the composition and functioning of the Supreme Judicial Council has been subject of further debate. Notwithstanding previous reforms and progress,²⁶ the situation of the SJC has been identified as a source of concern by the Council of Europe²⁷ and various stakeholders.²⁸ As regards the composition, the abovementioned reforms have provided for a more balanced structure of the SJC.²⁹ However, the overall number of judges elected by their peers does not amount to a majority.³⁰ Furthermore, the Prosecutor General plays a decisive role in the Prosecutors' chamber³¹ and has also an influence on the plenary³² and potentially the Judges' chamber³³, as the law provides that lay members elected to the Judges' chamber by Parliament may theoretically also come from the ranks of the prosecutors.³⁴ This has been raised by the Venice Commission³⁵ as a source of concern because prosecutors, and the Prosecutor General in particular, are still significantly involved in the governance of judges. The overall structure of the SJC could limit its ability to safeguard judicial independence³⁶ against pressure by the executive, the legislature, the

ranking officials, in particular prosecutors, close to the Chief Prosecutor nor address the risks to independence caused by the existing appointment, accountability, career, supervision and subordination arrangements.

²⁶ Amendments to the Constitution of Bulgaria (2015) – Art. 130a; Amendments to the JSA (2016) – Art. 30(1).

²⁷ GRECO Fourth evaluation round – Second compliance report, recommendation v, paras. 13-15; CCJE Bureau, 2019 edition of the Report on judicial independence and impartiality in the Council of Europe member States.

²⁸ Contributions from Anti-corruption Fund and Bulgarian Institute for Legal Initiatives Foundation for the 2020 Rule of Law Report.

²⁹ Venice Commission opinion (CDL-AD(2017)018), para. 9.

³⁰ CM/Rec(2010)12, para 27; JSA, Art. 16(3) and (4) - The Judges' chamber of the SJC (14 members) is presided by either one of the ex officio members, the President of the Supreme Court of Cassation or the President of the Supreme Administrative Court. Six of the members are elected directly by judges and six others are elected by Parliament. A majority can be reached, both in the Plenary of the SJC and the Judges' chamber, without the votes of the judges elected by their peers.

³¹ JSA, Art. 16 (3) and (4) - The Prosecutors' chamber (11 members) is presided by the ex officio member the Prosecutor General and it consists of five members elected by the Parliament, four by prosecutors and one by investigators elected by their respective peers.

³² JSA, Art. 30(1) and 32 - The Plenary of the SJC (25 members) is comprised of both the aforementioned chambers and is presided by the Minister of Justice, who does not have the right to a vote. The plenary of the SJC decides upon the draft budget, disciplinary removal from office and proposals for the appointment of the Presidents of the Supreme Cassation Court, the Supreme Administrative Court and the Prosecutor General (JSA, Art. 30(2)). The two chambers take decisions on appointment, promotion, relocation and release from office, matters related to acquisition and restoration of tenure and decide on disciplinary sanctions (JSA, Art. 30(5)).

³³ Venice Commission opinion (CDL-AD(2017)018), para. 19.

³⁴ The legal requirement under JSA Art. 16, para. 3 states that the election by chamber shall be held from among judges, prosecutors, investigating magistrates, academic-degree-holding scholars in legal sciences, lawyers and other jurists of high professional standing and moral integrity, taking into account their professional qualification and specialization.” – Currently there are no prosecutors in the Judges' chamber, however it appears that in the previous Judges' chamber there were members who were former prosecutors.

³⁵ Venice Commission opinion (CDL-AD(2017)018) adopted in October 2017, para. 16, 17 and 19.

³⁶ JSA, Art. 16(1) JSA. The Supreme Judicial Council represents the judicial power, assures and upholds its independence, determines the composition and the organisation of the courts, the prosecution offices and the

judiciary, including the office of the Prosecutor General and the SJC itself. The risk to judicial independence is evidenced by the number of judges subject to attacks,³⁷ targeted criticism based on the content of their rulings³⁸ or the recent rhetoric used by public figures.³⁹ On 14 August 2020, the Prime Minister announced a plan for a new Constitution⁴⁰ which would include a reform of the composition of the Supreme Judicial Council⁴¹ and of its Inspectorate;⁴² it would also include a change in the appointment procedure and the length of the mandate of the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General.⁴³ It is important that any such reform should take account of the Council of Europe recommendations.⁴⁴

The level of perceived judicial independence in Bulgaria remains low. Only 37% among the general public consider it to be ‘fairly or very good’, and among companies it also remains average, with 45% considering it to be ‘fairly or very good’.⁴⁵

The regime for additional remuneration and promotion of magistrates raises concerns. In the current system, a magistrate can receive additional remuneration according to criteria set by the SJC, can become irremovable after five years of service, and can be promoted after passing a competition. The additional remuneration criteria has been raised as an issue by the

investigation bodies and secures from a financial and technical point their activity without interfering in it; Information confirmed also during the country visit.

³⁷ Examples of pressure against judges in the study on “Media Monitoring and Analysis of Attacks on Courts during the period 01/08/2017 – 30/11/2019” (99 judges pressured by the media; 16 judges pressured by 23 public figures and institutions, including representatives of the three branches of power). This is a second study on the matter, the first one was made for the period 01/01/2015 – 01/07/2017 (44 judges pressured by the media; 8 judges pressured by 15 public figures and institutions, including representatives of the three branches of power).

³⁸ COM(2019) 498 final, p. 2, para. 3 and footnote 11; See also the follow-up of the matter: Judges’ Chamber of the SJC statement (24 September 2019) related to the parole decision (No. 429 on 19.09.2019) adopted by the Sofia Court of Appeal - <http://www.vss.justice.bg/page/view/9671>. After a declaration signed by 292 judges on 26 September 2019 appealing to the Bulgarian society to step up and defend the independence of the judiciary, the rule of law and democracy in the country, a new statement of the Judges’ Chamber of the SJC was issued on 27 September 2019 - <http://www.vss.justice.bg/page/view/9686>. On 10 June 2020, the Inspectorate SJC concluded that there is no violation by the judges.

³⁹ Recent example of abusive rhetoric from the executive and from the representative of the SJC in support of it. <https://www.parliament.bg/bg/parliamentarycommittees/members/2577/steno/ID/6005>

⁴⁰ After several weeks of protests, the Prime Minister announced that a reform of the Constitution is currently being planned. A draft text was submitted to the National Assembly on 17 August 2020.

⁴¹ The SJC would be split in two Judicial Councils, one for judges and one for prosecutors and investigators, without a shared plenary. The Judicial Council for judges would be composed of 7 judges elected by their peers, 6 members elected by the National Assembly and, *ex officio*, the President of the Supreme Court of Cassation and the President of the Supreme Administrative Court. The composition of the Judicial Council for prosecutors would remain the same as the composition of the current prosecutors chamber. There is no provision on whether the mandate of the current members of the SJC would be prematurely terminated.

⁴² Two inspectorates would be established, one for judges and one for prosecutors and investigators.

⁴³ The draft provides for a 5 year term instead of the current 7 year term. There is no provision on whether the current presidents of the supreme courts and the Prosecutor General would reach the end of their mandate or whether their mandate would be prematurely terminated.

⁴⁴ Recommendation CM/Rec(2010)1 of the Committee of Ministers of the Council of Europe; Venice Commission opinion (CDL-AD(2019)031).

⁴⁵ Figures 44 and 46, 2020 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%). See also, a survey conducted among judges in 2019 found that 50 % of them had experienced a lack of respect for their independence by the Government and the media. European Network of Councils for the Judiciary, Independence and Accountability of the Judiciary – ENCJ Survey on the independence of judges, 2019, Figures 43 and 45. The survey covered 21 EU Member States.

Council of Europe concerning the rules set in 2018-19 by the SJC because they give broad discretionary powers to the Presidents of courts.⁴⁶ In the same context, the long period necessary to acquire a life tenure may also raise concerns about judicial independence.⁴⁷ In addition, following a recent amendment to the Judicial System Act (JSA),⁴⁸ members of the SJC can be automatically promoted to a higher-ranking position at the end of their mandate. This has raised concerns in light of Council of Europe recommendations⁴⁹ and may affect judicial independence taking into account the structure of the legal order set by the Constitution in Bulgaria, as indicated by the Supreme Court of Cassation.⁵⁰ As a result of those concerns, the JSA was very recently further amended and currently provides that the appointment to a higher position is subject to a number of conditions.⁵¹

Amendments to the Judicial System Act (JSA) have been put in place. In February 2020, the automatic suspension of magistrates in case of a criminal investigation against them has been withdrawn.⁵² Previously, the relevant chamber of the SJC was obliged to suspend without any assessment the magistrate in question. The provision of Article 230 of the JSA has been repealed in compliance with a decision of the Constitutional Court⁵³ and responds to the expectations of the European Commission and the recommendations of the Council of Europe.⁵⁴ Further amendments to the JSA concern the obligation of magistrates to declare membership in professional organisations. The former requirement for judges, prosecutors and investigating magistrates to declare their membership of professional associations to the Supreme Judicial Council had raised concerns over the freedom of association.⁵⁵ According to amendments, the declaration is no longer required.⁵⁶ Nonetheless, the register of magistrates participating in professional associations is still available on the website of the SJC and has allegedly been used by public figures to pressure judges.⁵⁷

A motion for a reform of the Inspectorate to the Supreme Judicial Council has been proposed. Under the current regime, the Inspectorate scrutinises the activity of the judiciary, carries out checks on the integrity and potential conflicts of interest of magistrates, and proposes the opening of disciplinary proceedings regarding magistrates to the SJC. The Inspectorate consists of an Inspector General and ten Inspectors, who are independent and elected by the National Assembly.⁵⁸ The risk of political influence has been previously raised by the Venice Commission.⁵⁹ Following the project “Support for the enhancement of the

⁴⁶ According to GRECO, the system of applying supplementary remuneration appears still to be subject to broad discretionary decisions and risks of undue influence. GRECO Fourth Evaluation Round – Evaluation report, recommendation x, para. 26; See also Venice Commission (CDL-AD(2010)004), para. 46 and 51; Recommendation CM/Rec(2010)1 of the Committee of Ministers of the Council of Europe, para. 55.

⁴⁷ GRECO Fourth Evaluation Round – Evaluation report, recommendation vi, para. 17-21 2019.

⁴⁸ Law on amendment and supplement of the JSA - <https://www.parliament.bg/bg/laws/ID/157167>.

⁴⁹ Venice Commission, (CDL-AD(2010)004), para. 23-24.

⁵⁰ Request of 27 May 2020 addressed by the Plenary of the Supreme Court of Cassation to the Constitutional Court. <http://www.vks.bg/novini/2020-05-27-iskane-KC-ZSV-2020.pdf>.

⁵¹ On 3 September 2020, the National Assembly adopted amendments to Article 28 (1) of the JSA.

⁵² On 23 January 2020, the National Assembly adopted amendments to the JSA.

⁵³ The Constitutional Court ruled that the Supreme Judicial Council needs to be able to assess the necessity and proportionality of the suspending measure in each case.

⁵⁴ Committee of Ministers, Interim Resolution CM/ResDH(2019)367; 2019 Progress report for Bulgaria, COM(2019)498, p 6.

⁵⁵ COM(2019)489, p 6, footnote 29; Venice Commission (CDL-AD(2020)017), para. 29.

⁵⁶ On 23 January 2020, the National Assembly adopted amendments to the JSA.

⁵⁷ See footnote 39 – the statement by the executive was made on the basis of the information available in the register.

⁵⁸ Art. 132a Constitution of Republic of Bulgaria.

⁵⁹ Venice Commission (CDL-AD(2017)018), para. 58.

capacity of ISJC⁶⁰, the Inspectorate itself made a motion for an amendment of the JSA that would require the Inspector General and the Inspectors to be proposed by other bodies, such as the plenaries of the Supreme Cassation Court and the Supreme Administrative Court or the General Meetings of magistrates and professional organisations, rather than the members of Parliament.⁶¹ Nevertheless, the Inspectorate is currently working on the basis of a mandate that has expired⁶², under the principle of continuity.⁶³ Aside from the composition of the Inspectorate, concerns have been raised by stakeholders in relation to the activity of this body.⁶⁴ Concerns have been raised that under the provision that allows the Inspectorate to propose disciplinary proceedings for magistrates⁶⁵, the SJC⁶⁶ and the Prosecutor General⁶⁷ have been informing the Inspectorate to trigger an inspection, which resulted in pressure on individual judges.⁶⁸

Quality

Access to justice requires improvement. There are calls for lowering the threshold for legal aid accessibility⁶⁹, exempting legal aid recipients from court fees⁷⁰, lowering the amount of court fees to initiate proceedings⁷¹ and improving the digitalisation in the judiciary.⁷² In the

⁶⁰ Project funded by the Structural Support Programme of the European Commission, finalised in February 2020.

⁶¹ Contribution from the International Social Justice Commission for the 2020 Rule of Law Report.

⁶² The procedure for election of a new Inspectors and Inspector General was supposed to start no later than 9 February 2020 for the Inspector General and no later than 14 January 2020 for the Inspectors (JSA, Art. 44(1)). Such procedure has not been initiated to this date. A similar situation occurred also during the mandate of the previous Chief Inspector who operated under a *de facto* 2 year extension of the mandate.

⁶³ Decision No. 13/15.12.2010 on Case No. 12/2010 from the Constitutional Court of Republic of Bulgaria, which ruled that the principle of continuity is applicable to college governed bodies.

⁶⁴ Example of application of the powers of the ISJC - On July 18th, 2019, the ISJC published assets statement of a judge (involved in a professional association) without deleting her personal and family data; JSA, arts 54-60 – powers of the Inspectorate to the SJC. See also the website of the Bulgarian Association of Judges - http://judgesbg.org/wp-content/uploads/2020/07/Declaracia_IVSS.pdf

⁶⁵ JSA, Art. 312(1)(3) in conjunction with Art. 54(1)(6).

⁶⁶ On 28 November 2018, the president of Supreme Court of Cassation initiated an internal inspection on a decision of the Specialised Criminal Court of Appeal; 11 judges from the same Court complained through an open letter about the aforementioned inspection; after the inspection had found procedural irregularities, the president of the Supreme Court submitted a request for disciplinary action to the Judges' chamber of the SJC, which was rejected. By decision of the Judges' College of the SJC of 14 December 2018, the Inspectorate was notified of an inspection against the President the Supreme Court of Cassation, accusing him of breaching the principle of independence. On 1 April 2019, the Inspectorate adopted a decision closing the inspection due to insufficient evidence of violations.

⁶⁷ On 4 November 2019, the Prosecutor General filed a request to the Inspectorate for an inspection on the merit of a decision taken by a judge. On 22 February 2020, the Inspectorate declined its competence having "no right to make inspections on the merits of the acts of the magistrates". According to the Bulgarian Authorities, upon conducting a preliminary inquiry on the report, the investigating inspector upheld that the ISJC was not competent to rule on the merits of the judicial acts and, in so far as no violations of the formation, movement and completion of the case with an opinion of 2 January 2020 were established, the investigating inspector upheld that there were no grounds for investigation. See also contributions to the UN Special Rapporteur - Report on Independence of judges and lawyers – practice used by the Prosecutor General to send signal to the Inspectorate regarding judges.

⁶⁸ Contribution from Bulgarian Institute for Legal Initiatives Foundation for the 2020 Annual Rule of Law Report.

⁶⁹ Contributions from the Civil Liberties Union for Europe and the Bulgarian Prisoners' Association for Rehabilitation for the 2020 Rule of Law Report; Figure 23, 2020 EU Justice Scoreboard.

⁷⁰ 2020 EU Justice Scoreboard, p. 25.

⁷¹ Contributions from Anti-corruption fund Foundation, the Bulgarian Institute for Legal Initiatives Foundation and the Group of Bulgarian lawyers (informal group of activists) for the 2020 Rule of Law Report; Figure 24, 2020 EU Justice Scoreboard.

current state of the legal aid system in Bulgaria, even a person whose income is at or slightly below the Eurostat poverty threshold is not entitled to legal aid. Particular attention has been drawn to the significantly high level of court fees in the area of administrative justice.⁷³ As regards digitalisation, while it is not possible to submit a case online, it is possible to transmit summons and to monitor some cases.⁷⁴ In addition, the use of and follow-up on the results of surveys conducted among court users are limited.⁷⁵ A comprehensive view on the situation regarding e-justice will be available at the end of 2020, when the ongoing project “Development of a Model for Optimization of the Judicial Map of Bulgarian Courts and Prosecutor’s Offices and of a Unified Information System for Courts” is supposed to be completed.⁷⁶ The COVID-19 pandemic has illustrated the shortcomings of the judicial system in the area of e-justice. Following a decision of the Judges’ chamber of the SJC⁷⁷, the processing of court cases was temporarily suspended for one month during the state of emergency, except for urgent cases.⁷⁸

Financial and human resources raise concerns. It appears that authorities, among which the Prosecutor’s office, and the Specialised Criminal Court experience issues related to lack of human or financial resources, despite the reported investment made by the Government in the justice system over the past years.⁷⁹

Efficiency

The lack of data regarding civil and commercial 1st and 2nd instance courts still hinders the monitoring of the efficiency of justice. The process of collecting statistical data through aggregate statistics does not allow for a breakdown of litigious and non-litigious civil and commercial cases (1st and 2nd instance) and does not permit a proper evaluation of the overall efficiency of the judicial system.⁸⁰ However, there are two positive developments. When it comes to the length of proceedings at the Supreme Court of Cassation, Bulgaria is performing well in comparison to the other Member States.⁸¹ Furthermore, the performance of administrative courts regarding the length of proceedings shows improvement. The estimated

⁷² Figure 27, 2020 EU Justice Scoreboard.

⁷³ Contributions of the Bulgarian Institute for Legal Initiatives Foundation, the Anti-corruption fund Foundation and the Group of Bulgarian lawyers for the 2020 Rule of Law Report. Under the current legislation, every citizen may approach the relevant court, seeking an exemption from court fees. The power to grant such requests is entirely within the competence of each individual panel of the court. The Code of Administrative Procedure also contains mechanisms for exemption or reduction of court fee depending on the financial means of the person.

⁷⁴ Figure 27, 2020 EU Justice Scoreboard.

⁷⁵ Figures 41 and 42, 2020 EU Justice Scoreboard. See also European Commission, Country Report Bulgaria 2019, SWD(2019) 1001 final/2, p. 59.

⁷⁶ ESF funded project (2016-2020). <http://2020.eufunds.bg/en/1/0/Project/>. The Supreme Judicial Council is implementing a number of projects, funded by budgetary resources and external donor programs, to improve and enhance e-justice and facilitate its accessibility.

⁷⁷ Judges’ chamber SJC, Extraordinary Session, Short Protocol No. 9, 10 March 2020.

⁷⁸ Such as those on reviewing pre-trial detention, or undertaking victim protection measures and child protection measures. See also Fundamental Rights Agency, “Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications”, p.3. https://fra.europa.eu/sites/default/files/fra_uploads/bulgaria-report-covid-19-april-2020_en.pdf.

⁷⁹ Figures 32-35 and 37, 2020 EU Justice Scoreboard.

⁸⁰ Figures 6, 2020 EU Justice Scoreboard.

⁸¹ Figure 7, 2020 EU Justice Scoreboard.

time for resolving administrative cases at all instances have been improving over the past years.⁸²

II. ANTI-CORRUPTION FRAMEWORK

In 2017 and 2018, Bulgaria carried out a comprehensive reform of its legal and institutional anti-corruption frameworks. Through the merging of several existing structures, the reform established the Commission for Counteracting Corruption and Illegal Assets Forfeiture (hereinafter the Anti-corruption Commission). The competence for high-level corruption cases was transferred to the Specialised Criminal Court while the investigation of such cases is carried out under the supervision of the Specialised Prosecutor's Office. The current anti-corruption strategy covers the period 2015-2020 and a new strategy for 2021-2027 is under preparation. The fight against corruption has been declared a main priority of the Government in its 2017-2021 programme⁸³. At the same time, protests that erupted in summer 2020 show discontent in society with the lack of progress in effectively fighting corruption. The protests led to the resignations of five ministers in July and September 2020.

In the latest Transparency International 2019 Corruption Perceptions Index, Bulgaria scored 43/100 and was ranked last in the EU and 74th globally.⁸⁴ 80% of Bulgarian respondents to the latest Eurobarometer survey on corruption are of the opinion that corruption is widespread in their country (EU average: 71%)⁸⁵ while 85% of companies consider corruption to be widespread (EU average 63%). Similarly, 51% of businesses considered corruption to be a problem when doing business in the country. 28% of respondents state that they feel personally affected by corruption in their daily lives (EU average 26%), while 63% do not think that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%). Finally, only 13% of companies responded that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).⁸⁶

The National Strategy for Preventing and Countering Corruption covers the period 2015-2020.⁸⁷ The implementation of the strategy is monitored and coordinated by the National Council on Anti-Corruption Policies. The latest report on the implementation of the strategy for the period until 31 January 2019⁸⁸ notes the continuous upgrading of the institutional framework, the improved authority of the inspectorates and anti-corruption trainings of public administration. The Council reports that it launched consultations on the evaluation of the implementation of the 2015-2020 strategy and the development of the new strategy for 2021-2027. The Council's website does not provide functional access to information as regards the current members of the council or its activities, including its meetings or discussions.⁸⁹ Furthermore, a new Code of Conduct for Public Administration was adopted in April 2020.⁹⁰ The new code puts an emphasis on anti-corrupt behaviour in the administration.

⁸² Figures 8 and 9, 2020 EU Justice Scoreboard.

⁸³ Management Program of the Government of the Republic of Bulgaria for the period 2017-2021.

⁸⁴ Transparency International (2020), 2019 Corruption Perceptions Index.

⁸⁵ Flash Eurobarometer 502 (2020), Corruption.

⁸⁶ Flash Eurobarometer 482 (2019), Businesses' attitudes towards corruption in the EU.

⁸⁷ National Strategy for Prevention and Countering Corruption in the Republic of Bulgaria 2015-2020.

⁸⁸ Report on implementation of the national anti-corruption strategy 2015 – 2020 for the period until 31 January 2019.

⁸⁹ Public consultation portal - <http://www.strategy.bg/>.

⁹⁰ Available at <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=147322>

The legal framework to fight corruption is largely in place, but challenges remain. Corruption and related crimes are regulated in the Special Part of the Bulgarian Criminal Code. The overall implementation of the Council Framework Decision 2003/568/JHA on combating corruption in the private sector can be considered satisfactory.⁹¹ Only natural persons can bear criminal responsibility in Bulgaria. Legal entities can only be subject to administrative (non-criminal sanctions) pursuant to the Administrative Offences and Penalties Act. The complex and formalistic Bulgarian system of criminal procedural law has been highlighted by different reports and analyses over the years as an obstacle to the effective investigation and prosecution of high-level corruption.⁹² This has also been raised by the Anti-Corruption Fund Foundation, which pointed out that the formalism of the criminal proceedings prevents the development of innovative and original investigation strategies.⁹³ The contribution of the national authorities highlights several deficiencies in the legal framework, including the encouragement of *bona fide* procedural behaviour by excluding criminality or imposing lighter sentences in the cases where the persons committing a bribery offence voluntarily report it and cooperate with the investigating authorities.⁹⁴

The institutional framework has recently been consolidated. Through the merging of several structures, the 2018 Act on Counteracting Corruption and on the Forfeiture of Illegally Acquired Property (hereinafter ‘the anti-corruption law’) established the new Commission for Counteracting Corruption and Illegal Assets Forfeiture. The Anti-corruption Commission has a broad remit of responsibilities.⁹⁵ The chairperson of the Anti-corruption Commission, his or her deputy and the three members are elected by simple majority in the National Assembly. Stakeholders have raised concerns about this election procedure, noting that it creates possible risks for the political independence of the Anti-corruption Commission’s work. Amendments to the Criminal Procedural Code in 2017 transferred the jurisdiction for high-level corruption cases, committed by senior public office holders, from the remit of the Sofia City Court to the Specialised Criminal Court.⁹⁶ The investigation of such cases is carried out by investigating magistrates from the investigation department of the Specialised Prosecutor’s Office. Outside of these cases, the detection and investigation of corruption offences committed by persons who are not senior public office holders falls under the competence of the Ministry of Interior.

The Anti-corruption Commission has faced a number of challenges since its establishment. A series of highly publicised scandals took place in the spring of 2019, involving the purchase of private properties at below market value by high-level officials. The Anti-corruption Commission did not find any evidence for conflicts of interests. The scandal, referred to as ‘Apartmentgate’, led to the resignation of a number of high-level

⁹¹ COM(2019) 355 final.

⁹² Technical report on Bulgaria accompanying the Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism SWD(2019) 392 final.

⁹³ Contribution of the Anti-Corruption Fund Foundation for the 2020 Rule of Law Report.

⁹⁴ Input from Bulgaria for the 2020 Rule of Law Report, p. 44.

⁹⁵ They include: (i) the implementation of preventive anti-corruption activities; (ii) the gathering, analysis and verification of information where there is reason to believe that senior public office holders have committed acts of corruption; (iii) the verification and analysis of declarations of assets and interests by senior public office holders; (iv) ascertainment of conflicts of interest of senior public office holders; (v) the initiation of confiscation proceedings for illegally acquired assets and (vi) preparation of analyses and development of methodologies for corruption risks.

⁹⁶ The persons holding senior public positions are listed in Art. 6 of the Act on Countering Corruption and on Seizure of Illegally Acquired Property.

officials, including the former chairman of the Anti-corruption Commission. The latest annual report of the Anti-corruption Commission highlights challenges in the area of human resources with 100 empty vacancies out of 477 staff in total (representing more than 20%)⁹⁷. This could have a potential impact on the effectiveness of the Anti-corruption Commission. The authorities indicated that measures have been taken to remedy the situation. The latest Eurobarometer survey shows that only 18% of Bulgarian respondents trust the Anti-corruption Commission to deal with a case of corruption, a decrease of 4% compared to previous years.

The reforms are beginning to show first results but challenges remain. In 2019, 553 inspections were assigned by the Prosecutor's Office to the Anti-corruption Commission, compared to 343 in 2018. In 450 cases, the work was completed and the results have been reported back to the prosecutors, with evidence for a committed criminal offence in 83 of the cases. The most recent annual report of the Anti-corruption Commission notes improved cooperation in the automatic electronic exchange of data with other public institutions.⁹⁸ Several outstanding challenges for the investigative authorities have been highlighted, including the need to hire competent and highly-qualified specialists for the purposes of the criminal proceedings, as well as a significant imbalance in the workload of prosecutors and investigators of the Specialised Prosecutor's Office.⁹⁹

A solid track record of final convictions in high-level corruption cases remains to be established. The statistics on the investigation and prosecution of corruption offences show that, in 2019, there were 486 accused persons put on trial for corruption offences (508 in 2018, 582 in 2017 and 614 in 2016). The Supreme Court of Cassation's 2019 annual report shows that convictions were upheld in 20 out of 28 corruption-related cases, among which seven public office holders were convicted.¹⁰⁰ A recent report by a Bulgarian anti-corruption watchdog analyses the progress of several high-level corruption cases and highlights that only a few have resulted in final convictions. The above-mentioned report also shows that there were no final convictions in high-level corruption cases in 2018 and 2019.¹⁰¹ Moreover, 78% of respondents to the latest Eurobarometer survey are of the opinion that high-level corruption cases are not pursued sufficiently (EU average 68%) and 72% are of the opinion that Government efforts to fight corruption are not effective (EU average 55%). It is particularly noteworthy that 77% of businesses responding to the Eurobarometer survey think that it is unlikely that corrupt people would be fined or imprisoned by the courts.

The Internal Security Directorate investigates offences committed by officials of the Ministry of Interior and conducts integrity tests. Over the course of the past six months, the Directorate has played a key role in a number of operations for the arrest of high-level law enforcement and customs officers accused of bribery. The investigative activities of the Directorate in 2019 included the processing of 562 reports for alleged criminal offenses, including corruption crimes committed by officials from the Ministry of Interior, compared to 172 in 2018. It also carried out 81 pre-trial investigations for police misconduct, compared to

⁹⁷ Report on the activity of the Anti-corruption Commission for counteracting corruption and forfeiture of illegally acquired assets for 2019.

⁹⁸ See previous note.

⁹⁹ Input from Bulgaria for the 2020 Rule of Law Report.

¹⁰⁰ Annual report of the activity of the Supreme Court of Cassation in 2019.

¹⁰¹ Anti-Corruption Fund, Konrad Adenauer Foundation (2020), Anti-corruption institutions: activity without visible result'.

98 in 2018.¹⁰² Most of the judgments on corruption-related cases delivered by the Supreme Court of Cassation in 2019 concerned the offering/giving/demanding/receiving of bribes to/by officers from the Ministry of Interior (ten convictions out of 28 corruption cases). Notably, 61% of respondents to the Eurobarometer are of the opinion that bribery and abuse of power for personal gain are widespread among law enforcement and customs authorities.

In 2012, Bulgaria put in place a civil confiscation regime. The procedure is initiated by the Anti-corruption Commission when a person is charged with crimes listed in the anti-corruption law. The person's property is inspected for a period of 10 years in retrospect and the Commission has to identify a 'significant discrepancy' between the lawful net income of the suspect or accused person and the value of his or her property.¹⁰³ The civil confiscation procedure is independent from any criminal proceedings and enables the confiscation of a person's property without a prior conviction for a criminal offence.¹⁰⁴ Article 148 of the Anti-corruption Law lays down the general method of appraisal of unlawfully acquired assets. Stakeholders have raised serious concerns that the civil confiscation cases are not conducted in an independent and impartial manner.¹⁰⁵ By June 2020, there were 309 final court judgments confirming the confiscation of assets of a total value of BGN 133,133,611.25 (approximately EUR 68,273,646).

The Anti-corruption Commission verifies declarations of assets and interests by senior public office holders and ascertains conflicts of interest. The anti-corruption law defines the term 'senior public office holder'. The declarations of the senior public office holders are accessible via the Register of Senior Public Office Holders.¹⁰⁶ The anti-corruption law enables senior public office holders to request that the information of their spouses or *de facto* cohabitants and their children below the age of 18 is not made publically available. In 2019, the Anti-corruption Commission carried out checks on 8,573 senior public office holders. In 2019, the Commission adopted 162 decisions on conflicts of interests (140 in 2018). Fourteen of those decisions identified a conflict of interests (28 in 2018) and sanctions amounting to BGN 173,511 (approximately EUR 88,980) were imposed.¹⁰⁷ Office holders at the regional and local level also fall within the scope of the anti-corruption law.¹⁰⁸

Recent legislative amendments¹⁰⁹ enhanced the role and functions of the General Inspectorate and the inspectorates in the ministries. Their competencies include the exercise of control and checks as regards conflicts of interest and the content of the mandatory asset declarations, submitted by civil servants, advisors and experts and the alerting of the prosecution authorities in the cases where evidence is found for a committed offence. The inspectorates also assess corruption risks and propose measures to limit them.

¹⁰² The data quoted is provided in the Report on the implementation of the Anti-corruption Plan 2018 and Report on the implementation of the measures of the Anti-corruption plan 2019.

¹⁰³ The term 'significant discrepancy' is defined in the additional provisions of the anti-corruption law as a discrepancy between the lawful net income of the inspected person and the value of his or her property amounting to at least BGN 150,000 (EUR 76,700).

¹⁰⁴ Art. 108(4) of the Anti-corruption Law explicitly highlights that the civil confiscation proceedings commence and proceed even if the criminal proceedings are terminated.

¹⁰⁵ Contribution of Group of Bulgarian lawyers for the 2020 Rule of Law Report.

¹⁰⁶ Register of the Anti-corruption Commission. <https://register.cacaf.bg/>.

¹⁰⁷ Anti-corruption Commission (201), Annual report 2019 (n12).

¹⁰⁸ Following the 2019 regional elections, the Anti-corruption Commission reported the receipt of 6,300 declarations of mayors and members of municipal councils, of whom 5,116 have submitted their introductory declarations. 272 representatives of local institutions did not submit their declaration within the prescribed period and 102 failed to submit at all.

¹⁰⁹ Amendments were carried out as regards the Public Administration Act as well as the anti-corruption law.

The 2019 annual activity report of the inspectorates illustrate their increasingly active role as regards conducting checks and ad-hoc inspections (following alerts by citizens, organisations or institutions).¹¹⁰

Lobbying is not regulated in Bulgaria. There are no specific obligations for registration of lobbyists or reporting of contacts between public officials and lobbyists. A recent analysis by the National Centre for Parliamentary Research covering the period April 2017 to December 2019 shows that nearly 37% of the adopted legal acts modify other acts by amendments, including in the transition and final provisions of the amending act.¹¹¹ In some cases, the amendments concern legal acts which are completely unrelated to the amending act.¹¹² Stakeholders have expressed serious concerns that this practice not only impacts negatively on the transparency of the legislative process in the country, but could in some cases be a sign of irregular lobbying.¹¹³

The anti-corruption law introduced measures to ensure whistleblower protection and encourage the reporting of corruption. The persons entrusted with examining the alert are obliged not to disclose the identity of the whistleblower, not to make public any facts and data of which they have become aware in connection with the examination of the alert and to safeguard the written documents entrusted thereto against unauthorised access by third parties.¹¹⁴ The Bulgarian Institute for Legal Initiatives pointed out that a possible weakness of the existing regime is that it does not allow the submission of anonymous alerts.¹¹⁵ The Anti-corruption Fund raised similar concerns as regards the requirement that the whistleblower discloses their personal identification number.¹¹⁶

¹¹⁰ In 2019, the total number of conducted checks reached 2,221 (1,485 in 2018 and 1,365 in 2017). The total number of ad-hoc inspections (following signals by citizens, organisations or institutions) is 1,902 (1,219 in 2018). The total number of reports by citizens and organisations is 1,297, of which 1,192 refer to violations of legal procedures by administration and 105 to corruption; 2019 Annual Activity Report of the Inspectorates; Public Administration Act, Art. 46.

¹¹¹ National Centre for Parliamentary Research (2019), Research of the legislative activities of the 44th National Assembly: comparative data, covering draft laws, submitted in the 8 parliamentary sessions.

¹¹² For example, via the transitional and final provisions of the Independent Financial Audit Act, the National Assembly amended other non-related legal acts concerning taxation matters as well as provisions on the freezing of bank accounts. Furthermore, in April 2020 the Access to Information Programme expressed concerns that the transitional and final provisions of the draft law for supplementing and amending the excise duties and tax warehouses act amends the access to public information act.

¹¹³ The risks linked to irregular lobbying are specifically highlighted in the contribution of The Bulgarian Institute for Legal Initiatives Foundation for the 2020 Rule of Law Report.

¹¹⁴ Chapters VI and VII of the Law on counteracting corruption and for the forfeiture of illegally acquired property.

¹¹⁵ Written contribution by the Bulgarian Institute for Legal Initiatives.

¹¹⁶ Written contribution by the Anti-corruption Fund.

III. MEDIA PLURALISM

The Bulgarian legal framework concerning media pluralism is based on a set of constitutional safeguards and legislative measures, such as the Radio and Television Act¹¹⁷. The Access to Public Information Act regulates access to public information and the re-use of public sector information. A Public Information Access Platform was launched in 2019, streamlining the application process and ensuring that the information published in response to an application becomes accessible to all citizens.¹¹⁸

The regulator for audiovisual media services, the Council for Electronic Media, is vested with powers in compliance with the Radio and Television Act.¹¹⁹ The Council for Electronic Media (CEM) is an independent body composed of five members: three members are elected by the National Assembly, and two are appointed by the President of the Republic of Bulgaria. The term of office of the members is 6 years. The composition of CEM rotates every two years from the quota of the National Assembly and every three years from the quota of the President¹²⁰.

The independence of the CEM has been assessed as being at low risk.¹²¹ According to the Media Pluralism Monitor (MPM 2020), the duties and responsibilities of CEM are clearly defined by law, and the authority is transparent about its activities.¹²² However, it is widely recognised that CEM lacks resources to perform its tasks efficiently and is financially dependent on the State for the allocation of the necessary resources¹²³. The revised Audiovisual Media Services Directive (AVMSD) sets out a range of specific guarantees for the independence and effectiveness of national media regulators¹²⁴. A draft Act amending and supplementing the Radio and Television Act was prepared by a working party set up within the Ministry of Culture to ensure transposition of the revised AVMSD.¹²⁵

As regards self-regulation, Bulgaria also has a media ethics committee. The Bulgarian National Council for Journalistic Ethics Foundation (NSW) was established in 2005 as a non-profit legal entity for performing activities in the public interest. The purpose of the Foundation is to establish and maintain a self-regulatory system for print and electronic media in Bulgaria on the basis of the Bulgarian Media Code of Ethics, adopted in 2005.¹²⁶ The NSW processes complaints by citizens and organisations against print and electronic media about violations of media ethics.¹²⁷

¹¹⁷ Radio and Television Act. <https://www.mtitc.government.bg/en/category/168/radio-and-television-act>.

¹¹⁸ In 2020 Bulgaria is at 111th position worldwide in the Reporters Without Borders World Press Freedom Index. See <https://rsf.org/en/ranking>.

¹¹⁹ Section III of the Radio and Television Act. Council for Electronic Media has the powers to exercise supervision over the broadcasting activities of media service providers; to elect and remove the Directors General of the Bulgarian National Television (BNT) and the Bulgarian National Radio (BNR) and to endorse, upon nomination by the Directors General, the members of the management boards of BNR and BNT.

¹²⁰ Radio and Television Act, Transitional and Final Provisions.

¹²¹ 2020 Media Pluralism Monitor.

¹²² All its sessions are public.

¹²³ ERGA Report on the independence of National Regulatory Authorities: and Country visits.

¹²⁴ Directive 2010/13/EU (Audiovisual Media Services Directive (AVMSD)), Art. 30.

¹²⁵ Input from Bulgaria for the 2020 Rule of Law Report.

¹²⁶ Bulgarian Media Code of Ethics.

¹²⁷ However, it appears from the country visit that media often disregard the Council's decisions and recommendations.

Lack of transparency of media ownership in Bulgaria is considered as a source of concern. The CEM maintains and regularly updates a public register of linear and non-linear media services, as well as a list of undertakings distributing Bulgarian and foreign programmes.¹²⁸ In November 2018, the Compulsory Deposit of Copies of Printed and Other Works Act was amended to require media outlets to provide information about their owners and all funding received, including the names of donors. Some observers considered that this placed an excessive burden on small, independent media outlets, funded mainly through donations (e.g. crowdfunding) and could discourage private individuals from supporting such outlets.¹²⁹ The law has also been criticised because it does not oblige media to disclose certain other sources of income, such as Government funding beyond funds received through contracts with relevant contracting authorities. In practice, according to stakeholders and MPM 2020, many outlets do not comply with the law, and the disclosed information is not always easily accessible to the public. A report published by the European Centre for Press and Media Freedom (ECPMF) following a joint fact-finding mission held in 2018 points to several issues linked to transparency of media ownership.¹³⁰ Furthermore, the report following the visit of the Commissioner for Human Rights of the Council of Europe in Bulgaria in November 2019 indicated that the provisions on ownership disclosure continue to be implemented only partially. Furthermore, transparency is not ensured in many cases, as media outlets tend to register under proxies or offshore companies.¹³¹

State advertising reportedly plays an important role in the country's media landscape, especially at local level. MPM 2020 reports that in Bulgaria, there are no regulatory safeguards for fair and transparent distribution of state advertising.¹³² Stakeholders also report that the regulatory framework governing political advertising does not extend to social media.¹³³ It appears that distribution of state advertising expenditure is not based on clear and non-discriminatory criteria.¹³⁴ Stakeholders also report that sometimes, EU funds are allegedly used by local authorities to strengthen their control of local newspapers and TV channels¹³⁵.

The legal framework against political interference in the media does not explicitly forbid politicians from owning outlets. It is reported that the ownership of several media outlets is closely linked to political actors in Bulgaria, even if not officially owned by them.¹³⁶ Stakeholders report that the political climate is not favourable to independent media, and that many media owners prefer to be close to the Government in order to avoid being marginalised. Moreover, national and local media in all sectors are subject to systematic political control, and the majority of the leading newspapers in the country follow an editorial

¹²⁸ Bulgarian authorities indicate that since the beginning of 2020, the Council for Electronic Media has been posting a link to the Commercial Register along with the data on media service providers

¹²⁹ Commissioner for Human Rights of the Council of Europe (2019), Report on the visit to Bulgaria.

¹³⁰ <https://www.ecpmf.eu/archive/news/press-releases/ecpmf-fact-finding-mission-bulgaria.html>

¹³¹ The report also claims that offshore companies continue to operate, although the law prohibits such companies from holding TV or radio licences since 2014.

¹³² 2020 Media Pluralism Monitor.

¹³³ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. contribution by CEM. However, the Bulgarian authorities indicated that the envisaged amendments to the Radio and Television Act contain provisions concerning political advertising on video-sharing platforms and social media.

¹³⁴ Joint fact finding mission to Bulgaria. <https://www.ecpmf.eu/archive/activities/fact-finding-/bulgaria.html>. See also MPM 2020.

¹³⁵ See previous note.

¹³⁶ See previous note.

policy favourable to the Government.¹³⁷ In addition, a large number of Bulgarian journalists characterised political interferences in the media as “common” and “widespread”.¹³⁸

During the Covid-19 pandemic, the Parliament tried to change the Criminal Code in order to criminalise disinformation.¹³⁹ The State of Emergency Act initially adopted on 20 March 2020, included amendments to the Criminal Code providing for a prison term of up to three years and fines of up to BGN 10 000 (about EUR 5100) for disseminating “untrue information about the spreading of an infectious disease”. Although there was no definition of false information, citizens were threatened with the imposition of heavy fines and imprisonment. In this light, experts, journalists and citizens would be forced to engage in self-censorship.¹⁴⁰ However, the President vetoed that provision citing the impact on freedom of speech. Subsequently, on 23 March 2020 the Parliament adopted the law without the controversial provision.

Bulgarian law provides the main legal safeguards for the protection and activities of journalists and media. The right to freedom of expression is protected by the Constitution.¹⁴¹ The Access to Public Information Act regulates access to public information and the re-use of public sector information. Stakeholders report that the law has proved to be a powerful tool for investigative journalists and citizens alike. A Public Information Access Platform was launched in 2019, streamlining the application process and ensuring that the information published in response to an application becomes accessible to all citizens.¹⁴² However, obtaining access to public information remains difficult in Bulgaria, despite an increasing number of open public data sources.¹⁴³ It appears that some independent journalists and publications have been forced to use access to information requests in order to communicate with certain institutions.¹⁴⁴

In February 2019, the Bulgarian Parliament passed amendments to the Personal Data Protection Act. Although the General Data Protection Regulation (GDPR) foresees exceptions covering the work of journalists, they were not incorporated in the new Bulgarian legislation, which also established sanctions for media. Legal and media experts criticised the Act for its potential chilling effect on journalistic investigations.¹⁴⁵ On 15 November 2019, the Bulgarian Constitutional Court declared the relevant provisions of the Act unconstitutional.¹⁴⁶

Attacks on journalists are frequently reported. In particular, stakeholders denounce smear campaigns against independent and investigative journalists who are exposing corruption cases.¹⁴⁷ In 2019 and 2020, eight alerts regarding attacks on journalists, harassment of journalists and other media actors as well as abusive lawsuits were registered for Bulgaria on

¹³⁷ 2020 Media Pluralism Monitor.

¹³⁸ According to a survey carried out in mid-2017 by AEJ-Bulgaria. https://www.aej.org/page.asp?p_id=622.

¹³⁹ Law for measures and actions during the state of emergency. <https://www.parliament.bg/bg/laws/ID/157379>.

¹⁴⁰ Bulgarian Presidency website. <https://m.president.bg/en/speeches-and-statements5437/izyavlenie-na-prezidenta-rumen-radev-po-povod-prietiya-ot-parlamenta-zakon-za-merkite-i-deystviyata-po-vreme-na-izvanrednoto-polozhenie.html>.

¹⁴¹ Art. 39, 40 and 41 of the Constitution.

¹⁴² Public Information Access Platform.

¹⁴³ 2020 Media Pluralism Monitor.

¹⁴⁴ Information received in the context of the country visit and of the consultation process for the preparation of the report.

¹⁴⁵ 2020 Media Pluralism Monitor.

¹⁴⁶ Journalistic exemption under the European data protection law.

¹⁴⁷ Contribution from Civil Liberties Union for Europe for the 2020 Annual Rule of Law Report.

the Platform to promote the protection of journalism and safety of journalists of the Council of Europe.¹⁴⁸ A series of similar threats and attacks have also been reported until recently.¹⁴⁹ Media freedom associations claim that journalists and media owners face politically motivated charges with a view to silencing critical reporting. MPM 2020 reports cases where the State is allegedly threatening media independence by way of political, administrative and judicial pressure. The Council of Europe Platform to promote the protection of journalism and safety of journalists¹⁵⁰ as well as Mapping Media Freedom¹⁵¹ also report such alleged cases. Threats to journalists linked to their online activities are reported too. It has been noted that the most vulnerable targets are critical and investigative journalists.¹⁵² There are court cases launched against journalists for posting critical information on social media.¹⁵³

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Bulgaria is a representative democratic republic with a directly elected President, a unicameral National Assembly and a Constitutional Court in charge of constitutional review of laws. The National Assembly has a final decision-making power when adopting laws.¹⁵⁴ Bulgaria has two national human rights institutions. First, the Ombudsman is an independent constitutional body, elected by the National Assembly and tasked with the promotion and protection of human rights and fundamental freedoms. Second, the Commission for Protection against Discrimination is a body that implements policies in the spheres of gender equality and non-discrimination.

The establishment of a post-monitoring mechanism is ongoing. As reported in the Cooperation and Verification Mechanism (CVM) report of October 2019¹⁵⁵, the Government has decided to establish an additional, more comprehensive mechanism for domestic monitoring centred in a Coordination and Cooperation Council ('post-monitoring council'). The aim of the Council is set to be the assessment of Bulgaria's progress in judicial reform, fight against corruption and organised crime in an independent, transparent and objective manner.¹⁵⁶ The new body would receive information from a broad range of relevant institutions and would also include a Civic Council with representatives of civil society and professional associations of the judiciary. The activity of the Council would start once the

¹⁴⁸ Council of Europe, Platform to promote the protection of journalism and safety of journalists.

¹⁴⁹ Mapping Media Freedom. <https://mappingmediafreedom.usahidi.io/posts/23231>. On 17 March 2020, Slavi Angelov, a long-time criminal reporter at 24Chasa daily and currently the editor in chief of its weekly edition - 168Chasa, was attacked and heavily beaten. Three people have been charged in connection with the assault.

¹⁵⁰ Council of Europe, Platform to promote the protection of journalism and safety of journalists.

¹⁵¹ Mapping Media Freedom: Bulgaria. <https://mappingmediafreedom.org/country-profiles/bulgaria/>.

¹⁵² 2020 Media Pluralism Monitor.

¹⁵³ In that respect, it should be recalled that, taking account of Council of Europe recommendations, a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear is recommended by the Council of Europe. Recommendation CM/REC(2016)4 of the Committee of Ministers of the Council of Europe.

¹⁵⁴ Art. 87 of the Constitution: any member of the National Assembly or the Council of Ministers has the right to introduce a draft law. It is adopted by the National Assembly in two readings. The adopted draft law is sent to the President of the Republic of Bulgaria, who signs a decree for its promulgation. The act is promulgated in the State Gazette and enters into force three days after its publication, unless the act provides otherwise. See also the recent draft reform of the Constitution mentioned in footnote 40, which extended the right of legislative initiative also to the Councils for the judiciary. However, this was later left out of the draft.

¹⁵⁵ COM(2019)498, p.3.

¹⁵⁶ The Decree No. 21 of 14 February 2020 has amended the original entry into force of the Decree (No. 240 of the Council of Ministers of 2019) establishing the National Mechanism for Monitoring.

CVM comes to an end. The Bulgarian authorities started the selection process for the so-called Civic Council that gathers NGOs from various fields related to the functions of the Council. However, the result of the selection regarding civil society representatives has been cancelled and a new procedure has been launched.¹⁵⁷

The use of public consultation and impact assessment is limited. Bulgaria's regulatory process is considered to be lacking predictability and stability due to frequent changes of the legislation. For example the public procurement law alone was amended eleven times in 2018.¹⁵⁸ Furthermore, the Judicial System Act (JSA), adopted in 2007, has already been subject to 51 amendments.¹⁵⁹ In addition, the 'legal technique' observed in the anti-corruption chapter with the amendment of legal acts through other legal acts bypasses the requirements for public consultation and impact assessment.¹⁶⁰ Moreover, there is a trend, noticed by stakeholders, in the procedure for adopting laws in which amendments introduced between the first and second reading in the National Assembly can create significant changes without the relevant public debate.¹⁶¹

A state of emergency, followed by a new emergency regime, were used to face the COVID-19 pandemic. On 13 March 2020, Parliament announced a state of emergency for the duration of one month¹⁶², which was later extended with another one month¹⁶³, to tackle the pandemic. This decision gave extensive powers to the Government in order to take all necessary measures to deal with the emergency. On 12 May, an amendment to the Health Act was adopted¹⁶⁴ which introduced a new emergency regime ('emergency epidemic situation').¹⁶⁵ On 13 May, the Council of Ministers, on a proposal by the Minister of Health, decided to declare an emergency epidemic situation for the duration of one month, which was later renewed several times and is currently declared until 30 September. This new emergency regime was reviewed by the Constitutional Court¹⁶⁶ which decided on 23 July that the regime is compliant with the Constitution.¹⁶⁷

¹⁵⁷ On the 2 June 2020, the Minister of Justice cancelled the draw that determined the NGO dealing with anti-corruption as part of the Civic Council. As a result of an appeal before the Supreme Administrative Court, the procedure for the draw of NGOs to the Civic Council is currently frozen.

¹⁵⁸ European Commission, Country Report Bulgaria 2020, SWD(2020) 501 final, p 57.

¹⁵⁹ Review, inventory and cataloguing of legislative initiatives and changes, related to judicial reform in Bulgaria – Bulgarian Institute for Legal Initiatives Foundation.

¹⁶⁰ Study on the lawmaking activity of the 44th National Assembly of Bulgaria.

¹⁶¹ A survey on this matter has been conducted under the project "Administration and Civil Society – partnership in governance", supported through the ESF. See EUPACK 2019, p 94 – challenges: unclear responsibilities in the interaction with the civic structures among civil servants and decision makers in the consultative process; absence of adequate capacity among decision-makers and civil servants for working with civic participation; insufficient administrative capacity for organising and maintaining the functioning of the consultative structures; lack of resources for the activities related to public discussions and consultations.

¹⁶² Decision to declare state of emergency. <https://www.parliament.bg/bg/desision/ID/157374>.

¹⁶³ Decision to extend the state of emergency. <https://www.parliament.bg/bg/desision/ID/157396>.

¹⁶⁴ Law to amend and supplement the Health Act. <https://www.parliament.bg/bg/laws/ID/157427>.

¹⁶⁵ Art. 63 Health Act. According to this new regime, the Council of Ministers could declare an emergency epidemic situation for a certain period of time at the suggestion of the Minister of Health. This would allow some of the measures taken under the state of emergency to continue to apply and new ones to be introduced, despite the end of the state of emergency.

¹⁶⁶ On the request of the President of the Republic; Constitutional Court, Case 7/2020, 14 May 2020.

¹⁶⁷ Constitutional Court Decision 10/2020 of Case 7/2020, 23 July 2020.

The Ombudsman is now an A accredited body in accordance with the UN Global Alliance of National Human Rights Institutions (GANHRI).¹⁶⁸ The Ombudsman is a supreme independent constitutional body that is elected publicly and transparently by the National Assembly for a period of 5 years. The latest amendments to the Ombudsman Act from 2018 vested in the institution the power to receive and deal with complaints and reports of violations of citizens' rights and freedoms, concerning state and municipal authorities and their administrations, persons entrusted with the rendering of public services, as well as private entities. In exercising this power, the Ombudsman can also make proposals and recommendations for the promotion and protection of the citizens' rights and freedoms from private entities.¹⁶⁹ In addition to the Ombudsman, the Commission for Protection against Discrimination is an independent specialised state body which examines complaints and reports and issues related to discrimination. Financial and human resources issues have been underlined as shortcomings in both institutions.¹⁷⁰

The new draft rules on increased transparency of foreign funding for NGOs raise concerns. The already narrowed civic space¹⁷¹ in Bulgaria could be further affected in view of a new draft law tabled on 3 July 2020.¹⁷² This draft law would impose new obligations on non-profit legal persons which receive more than BGN 1000 (about EUR 500) from foreign donors except for the EU itself. The draft provides that directors and members of the governing bodies of the organisations would be requested to provide asset declarations and that this information will be stored in a register. Stakeholders raised concerns¹⁷³ about the draft law, including as regards its compliance with EU law. It is important that any such envisaged amendment be in line with EU law requirements.¹⁷⁴

¹⁶⁸ Global Alliance of National Human Rights Institutions (GANHRI), Sub-Committee on Accreditation (SCA), Accreditation Report – March 2019.

¹⁶⁹ More than 49 000 citizens and representatives of organisations received assistance from the Ombudsman in 2019, and the number of completed checks on complaints and reports was 13 762. (2018 – 12 258). Crucial to the effect of the Ombudsman's activity as a public defender is the degree of implementation of the recommendations as a result of checks made on complaints and reports from citizens - for 2019 the implemented and partially implemented recommendations of the Ombudsman account for 96% of overall recommendations. Input from Bulgaria for the 2020 Rule of Law Report.

¹⁷⁰ UN CESCR review of Bulgaria 2019 – state party report.

¹⁷¹ See rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹⁷² Draft law 054-01-60 - <https://www.parliament.bg/bg/bills/ID/157496>.

¹⁷³ Concerns raised by stakeholders in their opinions published on the website of the Parliament as part of the process for enacting the law include limitations of the freedom of association and free movement of capital, as well as the publicity of the register which could also result from implementing acts (see contribution Bulgarian Centre for Not-for-profit Law, Bulgarian Donation Forum, Bulgarian Helsinki Committee), - <https://www.parliament.bg/bg/bills/ID/157496>.

¹⁷⁴ Court of Justice of the European Union, judgment of 18 June 2020, Commission v. Hungary, C-78/18.

Annex I: List of sources in alphabetical order.*

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

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Virtual country visit to Bulgaria in the context of the 2020 Rule of Law Report.

Annex II: Country visit to Bulgaria

The Commission services held virtual meetings in June 2020 with:

- Association of European Journalists
- Association of Prosecutors
- Bulgarian Institute for Legal Initiatives
- Bulgarian Judges Association
- Centre for the Study of Democracy
- Commission for Anti-Corruption and Illegal Assets Forfeiture
- Council for Electronic Media
- Supreme Court of Cassation
- Inspectorate to the Supreme Judicial Council
- Institute for Market Economics
- Media Democracy Bulgaria
- Ministry of Justice
- Ministry of the Interior
- National Council on Anti-Corruption Policies
- Office of the Deputy Prime Minister
- Office of the Prosecutor General
- Open Society Institute
- Specialised Criminal Court
- Supreme Judicial Council
- Union of Publishers

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU