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COMMISSION STAFF WORKING DOCUMENT

**2021 Rule of Law Report
Country Chapter on the rule of law situation in Bulgaria**

Accompanying the

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2021 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

Reforms in Bulgaria in areas including justice and corruption have been first followed by the Commission through the Cooperation and Verification Mechanism (CVM) and are currently followed under the Rule of Law Mechanism. In response to the 2020 Rule of Law Report, the Bulgarian authorities adopted a dedicated Action Plan covering issues in all four pillars.

Judicial reform in Bulgaria has been a gradual process with important implications for judicial independence and public confidence, but challenges remain. A new law on the Prosecutor General and his/her deputies had entered into force. In the meantime, that same law has been challenged before the Constitutional Court, which declared it unconstitutional. As a consequence, the challenge with the accountability and criminal liability of the Prosecutor General remains. Concerns related to the composition and functioning of the Supreme Judicial Council also remain. A reform on this matter had been proposed in a draft new Constitution but this was ultimately not adopted. The Inspector General and the Inspectors of the Inspectorate to the Supreme Judicial Council continue their work despite their mandate ending in April 2020. The promotion regime within the judiciary raises concerns as appointments of judges to higher positions have not been carried out as per the ordinary procedure of open competition. Despite legislative efforts, digitalisation of justice is still lagging behind in practice. Efficiency of the administrative justice system is showing significant progress.

The implementation of the institutional reforms on anti-corruption has been consolidated. The new anti-corruption strategy for the period 2021-2027 was approved, with a new set of priorities, namely strengthening capacity to combat corruption; increasing accountability of local authorities; and creating an environment against corruption capable of timely responses. Significant challenges remain concerning the effectiveness of measures related to the integrity of public administration, lobbying and whistleblowing protection, where no dedicated regulation exists. Despite the increased investigative activity and the reinforcement of resources, final convictions for high-profile cases of corruption remains low and a solid track-record of final convictions remains to be established in this respect.

As regards media pluralism, the Bulgarian legal framework is based on a set of constitutional safeguards and legislative measures. New legislation has been adopted to transpose the Audiovisual Media Services Directive, which aims to strengthen the independence of the media regulator, the Council for Electronic Media. Lack of transparency of media ownership remains a source of concern. The working environment and safety of journalists do not appear to have improved. The COVID-19 pandemic has affected media plurality and protection of journalists in economic terms, particularly when it comes to regional journalism, but no specific support measures have been put in place.

Regarding checks and balances, the limited use of impact assessment and public consultation in the legislative process remains a concern, especially for draft laws proposed by the Parliament. Similar concerns also remain with the practice of introducing important changes through amendments to other unrelated legal acts, which bypass public consultation and impact assessment requirements. The emergency regime related to the COVID-19 pandemic is still in place. The resources of the National Human Rights Institutions have been increased. The draft law on foreign funding for Non-Governmental Organisations was abandoned but civic space in the country remains narrowed.

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 crime¹. 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 met². The Commission's latest CVM report, adopted in October 2019, recorded that Bulgaria had made a number of further commitments and 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 the report into concrete legislation and on continued implementation. Any decision on the end of the CVM will take duly into account the position expressed by the Council and the European Parliament³.

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 district courts, 28 regional courts and 5 courts of appeal. The specialised courts include 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. 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 General⁶. Bulgaria participates in the European Public Prosecutor's Office. The Supreme Judicial Council ("SJC") is the highest administrative authority in the Bulgarian judiciary. It is responsible for managing the judiciary and ensuring its independence. Judges, prosecutors and investigators⁷ are appointed, promoted, transferred and dismissed by their respective chamber (Judges' or

¹ Following the Council conclusions of 17 October 2006 (13339/06), the Mechanism was established by Commission Decision of 13 December 2006, OJ L 354, 14.12.2006, p. 58.

² Council Conclusions on the Cooperation and Verification Mechanism, 12 December.

³ Whereas the European Parliament initially supported a termination of the CVM (see the letter from President Sassoli of 20 December 2019 to President von der Leyen), it has now taken another position (see European Parliament resolution of 8 October 2020 on the rule of law and fundamental rights in Bulgaria (2020/2793(RSP)). In the Council, no consensus has been reached on conclusions on the matter. In its Presidency report of 13 December 2019, the Finnish Presidency has noted the division within the Council on the line to be taken with regard to Bulgaria.

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 See 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, p. 2.

⁶ Art. 126 to 128 from the Constitution.

⁷ 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.

Prosecutors’) of the Supreme Judicial Council⁸. The Supreme Bar Council is an independent and self-governing body established by law⁹.

Independence

The level of perceived judicial independence in Bulgaria remains low among the general public and average among companies, and has decreased slightly compared to 2020. Only 31% among the general public consider it to be ‘fairly or very good’. The level of perceived independence among companies remains average, with 43% considering it to be ‘fairly or very good’¹⁰. The level of perceived judicial independence has remained consistently low among the general public during the last five years. Among companies, the level of perceived judicial independence used to be very low until 2019 and ever since it remains average despite slight fluctuations.

The new law concerning the accountability and criminal liability of the Prosecutor General and his or her deputies has been declared unconstitutional and challenges remain. The lack of a possibility for an effective criminal investigation concerning the Prosecutor General and his or her deputies has been a long-standing issue which was raised not only by the European Commission¹¹ but also by the European Court of Human Rights¹² and the Council of Europe¹³. The combination of the powers of the Prosecutor General¹⁴ together with his position in the Supreme Judicial Council¹⁵ results in a considerable influence within the Prosecutor’s Office, potentially in the Supreme Judicial Council (both in

⁸ The Plenary of the Supreme Judicial Council has 25 members. The Supreme Judicial Council is composed by a Judicial Chamber and a Prosecutorial Chamber. The Judicial Chamber is composed of six judges elected by judges, six members elected by Parliament and the presidents of the two highest courts, who are *ex officio* members. The Prosecutorial Chamber is composed of four prosecutors and one investigating magistrate elected by their peers, five members elected by Parliament, and the Prosecutor General, who is an *ex officio* member.

⁹ See 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, p. 3.

¹⁰ Figures 48 and 50, 2021 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%).

¹¹ Progress report Bulgaria 2019[COM(2019)498], p. 6.

¹² ECtHR, judgment of 5 February 2010, *Kolevi v. Bulgaria*, paras. 121-127, 129, 135 and 136.

¹³ Council of Europe, Supervision of the execution of the European Court’s judgments, Committee of Ministers Decision CM/Del/Dec(2021)1398/H46-6 of 11 March 2021 and CM/Notes/1398/H46-6 of 9-11 March ; Committee of Ministers Decision CM/Del/Dec(2020)1377bis/H46-9 of 1-3 September 2020 and CM/Notes/1377bis/H46-9 of 3 September 2020. See also Committee of Ministers (Interim Resolution CM/ResDH(2019)367 of 5 December 2019 and CM/Notes/1362/H46-6 of 3-5 December 2019; Venice Commission Opinion (CDL-AD(2019)031).

¹⁴ The Prosecutor General may annul or amend any decision taken by any prosecutor which has not been reviewed by a judge. Furthermore, he may second prosecutors without their consent, for a period of 3 months within a calendar year, and issue written instructions to prosecutors, concerning only the application of the law, including in individual cases. The Prosecutor General also has significant powers over the prosecutors who are the heads of offices at district and provincial level.

¹⁵ In the Prosecutors’ Chamber (composed of four prosecutors and one investigating magistrate elected by their peers, five members elected by Parliament — currently all also of which are prosecutors or investigating magistrates in the current composition — and the Prosecutor General), the Prosecutor General, an *ex officio* member and chairman, plays a decisive role in relation to the career and disciplinary proceedings regarding prosecutors. In the Plenary, the prosecutorial members usually vote as a block supporting the Prosecutor General.

the Prosecutorial Council and in the Plenary) and within the magistracy¹⁶. On 29 January 2021, the Parliament approved a law concerning the execution of the Kolevi judgment of the European Court of Human Rights¹⁷, establishing a new framework for any investigation against the Prosecutor General and/or his/her deputies¹⁸. The new mechanism entrusted a special prosecutor with any investigation against a Prosecutor General and/or his or her deputies¹⁹. Any refusal by the special prosecutor to open an investigation would have been open to judicial review²⁰ before the Specialised Criminal Court at first instance²¹. Following some of the suggestions made by the Council of Europe²², the new law provided for the appointment of the special prosecutor by the Plenary of the Supreme Judicial Council instead of its Prosecutorial Chamber. On 10 February 2021, the President of the Republic challenged the constitutionality of the new law before the Constitutional Court²³. Consequently, the Plenary of the SJC decided to suspend the procedure for selection of the special prosecutor awaiting the decision of the Constitutional Court²⁴. On 11 May 2021, the Constitutional Court delivered a decision with which declared unconstitutional the provisions challenged by the President of the Republic, consequently considering the whole mechanism unconstitutional²⁵. Furthermore, following a recommendation from the Commission, on 23 February 2021, the Bulgarian authorities asked a new opinion of the Venice Commission²⁶ on this law. However, due to the Constitutional court decision, the expected opinion will not be issued. A number of other issues concerning this law have been identified by the Council of Europe²⁷. These stem from the abovementioned considerable influence of the Prosecutor General²⁸, which may lead to control on the candidacies for the special prosecutor²⁹ and on

¹⁶ Council of Europe, Supervision of the execution of the European Court's judgments, CM/Del/Dec(2021)1398/H46-6 of 9-11 March 2021. See also 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, p. 3.

¹⁷ ECtHR, judgment of 5 February 2010, *Kolevi v. Bulgaria*

¹⁸ Law supplementing the Criminal Procedure Code promulgated in the State Gazette under No. 16 of 23 February 2021.

¹⁹ This special prosecutor was to be appointed upon a proposal of six members of the Plenary of the Supreme Judicial Council or by self-nomination for five years by a majority of fifteen votes (out of twenty five) in the Plenary of the Supreme Judicial Council. In carrying out the investigation, the special prosecutor may have been assisted by an investigating magistrate from the Specialised Prosecutor's Office. At the end of the mandate, the special prosecutor would have been able to become a judge or an investigating magistrate, or remain a prosecutor, at the same level as the position held in the Prosecutor's Office before the mandate or at a higher level. The special prosecutor would have enjoyed hierarchical and decision-making independence. .

²⁰ The refusal, by an ordinary prosecutor, to open an investigation is not subject to judicial review; it can be revoked only by a higher-level prosecutor.

²¹ Cases investigated by the special prosecutor were to be treated by the Specialised Criminal Court at first instance, the Specialised Criminal Court of Appeal at second instance, and the Supreme Court of Cassation at last instance.

²² Council of Europe, Supervision of the execution of the European Court's judgments, Committee of Ministers Decision CM/Del/Dec(2021)1398/H46-6 of 11 March 2021 and CM/Notes/1398/H46-6 of 9-11 March. The bill took into consideration some of the preliminary comments of the Human Rights Directorate of the Council of Europe sent to the Bulgarian authorities on 15 December 2020, on 18 and 19 January 2021.

²³ Constitutional Case No. 4 of 2021.

²⁴ Decision of the Plenary of the SJC, Protocol No.6 of 8 April 2021.

²⁵ Constitutional Court Decision No. 7 of 2021.

²⁶ In the absence of improvements to address the existing concerns, the Department for the Execution of Judgments of the European Court of Human Rights stated that the new mechanism should be considered a temporary solution.

²⁷ CM/Del/Dec(2021)1398/H46-6 of 9-11 March 2021

²⁸ Council of Europe, Supervision of the execution of the European Court's judgments, CM/Del/Dec(2021)1398/H46-6 of 9-11 March 2021. See also 2020 Rule of Law Report Country chapter on the rule of law situation in Bulgaria, page 3.

his appointment³⁰. On 11 March 2021, the Committee of Ministers of the Council of Europe³¹ stressed the importance of reducing the influence of the Prosecutor General within the Prosecutor's Office, any potential influence in the SJC³² and within the magistracy, so to allow for the implementation of an effective investigation mechanism, including by extending the judicial review to any prosecutorial refusals to open investigations³³.

The absence of judicial review against a decision of a prosecutor not to open an investigation raises concerns. On 11 March 2021, the Committee of Ministers of the Council of Europe has reiterated its recommendation regarding the introduction of a judicial review for prosecutorial refusals to open an investigation, together with arrangements to avoid an excessive additional workload for courts and prosecutors³⁴. This recommendation has been made in the context of the Council of Europe enhanced supervision mechanism triggered following the European Court of Human Rights ruling, which considers the ineffectiveness of criminal investigations a systemic problem³⁵.

The concerns related to the composition and functioning of the Supreme Judicial Council remain. The situation where the overall number of judges elected by their peers does not amount to a majority remains unchanged³⁶. Furthermore, as explained in the previous paragraph, the Prosecutor General continues to play a decisive role³⁷ in the

²⁹ Potential candidates being prosecutors could fear career risks, in case their candidature is opposed by the Prosecutor General, because all members of Prosecutorial Chamber of the Supreme Judicial Council are also subordinates to the Prosecutor General (H/Exec(2021)9 11 March 2021, Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights).

³⁰ Because of the combination of the powers of the Prosecutor General and his/her position in the Supreme Judicial Council, voting by a majority of 15 out of 25 votes in the Plenary “does not make impossible for a Chief Prosecutor to be able to influence the appointment or the career of persons responsible for investigating him or her”, as required by the Committee's Interim Resolution CM/ResDH(2019)367. Indeed 11 members (out of 25) from the Prosecutorial Chamber might vote as a block in defense of the interests of the Prosecutor General. In this way they could veto decisions of the Plenary or oblige the Plenary to consider only candidates accepted by a Prosecutor General. Moreover, with the support of other few members under a “*de facto leverage*” of the Prosecutor General (CM/Notes/1398/H46-6), they can represent the main component of the majority.

³¹ Committee of Ministers decision CM/Del/Dec(2021)1398/H46-6

³² This also taking into consideration that the election of a new SJC will take place in 2022. In this context, while indicating that the proposed mechanism could only be considered a temporary solution before broader reform would be taken, the Council of Europe has suggested to introduce a double majority for the appointment of the special prosecutor in the Plenary of the SJC.

³³ It has to be recalled that in the past, concerns were expressed as to the possibility of introducing a judicial review because such an amendment would interfere with the constitutional competences of the Prosecutor office. With the new law having introduced a judicial review of any refusal to open an investigation against the Prosecutor General and his or her deputies, any doubt in that respect has disappeared.

³⁴ See CM/Del/Dec(2021)1398/H46-6, para. 3; CM/Del/Dec(2020)1377bis/H46-9, para. 4; CM/Del/Dec(2019)1362/H46-6

³⁵ European Court of Human Rights, judgment of 3 June 2015, *S.Z. v. Bulgaria*, 29263/12

³⁶ CM/Rec(2010)12, para 27; Venice Commission opinion (CDL-AD(2020)035), para. 44; 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.

³⁷ Due to the position of the Prosecutor General within the Prosecutor's Office and his role as a chairman of the Prosecutors' chamber, he has a decisive role in the Prosecutors' chamber and by extend an important influence in the Plenary of the Supreme Judicial Council.

Prosecutors' chamber³⁸ and preserves significant influence on the Plenary³⁹ and potentially also on the Judges' chamber⁴⁰, since lay members⁴¹ elected to the Judges' chamber by Parliament may also come from the ranks of the prosecutors⁴². Voting practice⁴³ demonstrates the limited influence in decision-making of the peer-elected judges in the SJC and the potential influence of the Prosecutor General over the SJC. Notwithstanding progress made through earlier reforms⁴⁴, the situation of the SJC continues to be a source of concern for the Council of Europe⁴⁵ and various stakeholders⁴⁶. Though reforms have resulted in a more balanced composition of the SJC,⁴⁷ the involvement of prosecutors, and the Prosecutor General in particular, in the governance of judges continues to raise concerns⁴⁸. The attempted amendments to the Constitution changing the composition of the SJC⁴⁹, tabled in

³⁸ 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.

³⁹ JSA, Art. 30(1) and 32 - The Plenary of the SJC (25 members) is comprised of the members of both 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)); voting majority for decisions of the Judges' chamber are described in Art. 33 para 4 of the JSA.

⁴⁰ Venice Commission opinion (CDL-AD(2017)018), para. 19.

⁴¹ Lay members are all elective members within the meaning of the Judicial System Act.

⁴² JSA Art. 16, para. 3 requires the election by chamber to 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 some members were former prosecutors.

⁴³ For important decisions, members from the Prosecutors' chamber seem to vote in block, together with the Parliament elected members of the Judges' chamber. See Committee of Minister of the Council of Europe (CM/Del/Dec(2021)1398/H46-6); see also Plenary of the SJC decisions - Protocol No.24 of 2019, vote for the election of the Prosecutor General; Protocol No. 27 of 2019, re-vote for the election of the Prosecutor General; Protocol No.26 of 2020, vote to stop the discussion whether to initiate a disciplinary proceeding against the Prosecutor General based on a signal from a professional organisation; Protocol No.2 of 2021, vote for preparing an analysis on the proposal for giving the management of a real estate (summer resort) to the Supreme Judicial Council for the needs of the Prosecutor's Office of the Republic of Bulgaria; Protocol No.2 of 2021, vote for giving the management of a real estate (summer resort) to the Supreme Judicial Council, for the needs of the Prosecutor's Office of the Republic of Bulgaria; Protocol No.3 of 2021, vote discussion and adoption of a model for reorganisation of the judicial structures at regional level and Roadmap with an action plan for reorganisation of the judicial structures at district and appellate level; See also a potential voting pattern in the Judges' chamber of the SJC – Protocol No.1 of 2021, votes related to the new Judicial map; Protocol No.2 of 2021, votes related to additional positions in lower instance courts; Protocol No.3 of 2021, votes related to changes to the judicial regions' borders.

⁴⁴ Amendments to the Constitution of Bulgaria (2015) – Art. 130a; Amendments to the JSA (2016) – Art. 30(1)

⁴⁵ Committee of Ministers decision CM/Del/Dec(2021)1398/H46-6. See also Venice Commission opinion (CDL-AD(2020)035), para. 40.

⁴⁶ Contributions from UN OHCHR Regional Office for Europe, *Magistrats Européens pour la Démocratie et les Libertés* and Bulgarian Institute for Legal Initiatives Foundation for the 2021 Rule of Law Report.

⁴⁷ Venice Commission opinion (CDL-AD(2017)018), para. 9.

⁴⁸ Venice Commission opinion (CDL-AD(2020)035), para. 42, Venice Commission opinion (CDL-AD(2017)018), para. 16, 17 and 19.

⁴⁹ It is to be noted that a change in the composition of the SJC requires a revision of the Constitution, which may be decided either upon the Grand National Assembly procedure, as sought by the Bulgarian authorities at the end of 2020, or by the simplified ordinary National Assembly procedure, similarly to the reform undertaken in 2015. See also Constitutional court Decision No. 3 of 2003, Decision No. 8 of 2005 and Refusal to give a decision on Case No. 7 of 2015.

September 2020, were intended to partially address these concerns⁵⁰. Addressing the issue regarding the SJC's composition has become a more pressing matter because the system in place would impact the future elections for members of the SJC, due to the forthcoming end of their current mandates, and would also impact other important positions within the judiciary⁵¹. Concerning the functioning of the SJC, a positive development has been the introduction of an online register of positions taken by the SJC, including its Plenary and the two chambers, against threats to judicial independence⁵². However, the register covers only cases in which the SJC or other bodies of the judiciary have taken a position and not all cases of attacks against judicial independence, which some stakeholders consider as insufficient⁵³. In addition, stakeholders have also pointed to cases where some of the positions taken by the SJC are characterised as contrary to the members of the judiciary itself⁵⁴.

The Action Plan adopted to address certain challenges expressed in the 2020 Rule of Law Report covers, among others, judicial reform. On 6 November 2020, the Government issued an Action Plan⁵⁵ in order to complete the reform on the accountability and criminal liability of the Prosecutor General, to improve the functioning and composition of the Inspectorate to the Supreme Judicial Council⁵⁶, to revise the criteria allowing for additional remuneration of magistrates, and to address challenges related to judicial independence.

A working group has been established on a possible reform of the composition and functioning of the Inspectorate to the Supreme Judicial Council. As part of the previously mentioned Government's Action Plan, in December 2020, the Minister of Justice established a working group⁵⁷ tasked with drafting legislative amendments to address the Inspectorate related issues identified as a concern by the 2020 Rule of Law report⁵⁸ and by the Venice Commission⁵⁹. Currently, the Inspectorate checks the activity of the judiciary, carries out

⁵⁰ On 17 August 2020, the Prime Minister announced in a video message that his party will propose a draft Constitution. On 2 September 2020, the draft new Constitution was filed at the Parliament. On 18 September 2020, the speaker of the Parliament asked the Venice Commission for an opinion on the draft. On 25 November 2020, the Parliament voted against the draft new Constitution and finally in December 2020, the Venice Commission released their opinion on the draft.

⁵¹ The term of the current SJC runs until October 2022 and the new members will be appointed as to the previously mentioned procedure. The term of the current President of the Supreme Court of Cassation runs until 10 February 2022 and the new one is elected by the SJC plenary.

⁵² Access to the register can be found here - <http://www.vss.justice.bg/page/view/106204>. The Register includes also the positions of other bodies of the judiciary, including administrative heads and judges.

⁵³ On 24 October 2020, in an interview, the Deputy Chairman of the National Assembly at the time accused named judges of the Supreme Court of Cassation, who ruled in a case concerning him, of being biased. The SJC adopted a position, on 3 November 2020, to defend the judges after having been asked to do so by a professional organisation. In October 2020, a website specialising in legal news published a decision of the Specialised Criminal Court of Appeal, in which the appellate judge (also Administrative head of the court) gives a personal assessment of the professional qualities of the first instance judge. A professional organisation asked the SJC to take a position and to develop a criteria for the admissible language, which the higher court should use in order not to jeopardise the objective and subjective independence of the court. Nevertheless, no position was taken and no criteria was developed.

⁵⁴ Declaration against the President of the Supreme Court of Cassation by the President of the Supreme Administration Court, position of 8 May 2020. Declaration against the President of the Supreme Court of Cassation by the Prosecutors' chamber, protocol No.16 of 13 May 2020. See also 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, , footnote 37, p.6.

⁵⁵ "Plan for the implementation of measures in response to the recommendations and the identified challenges in the European Commission's Rule of Law Report" (Action Plan)

⁵⁶ See below paragraph on the possible reform of the Inspectorate to the SJC.

⁵⁷ See Action plan adopted by the Council of Ministers; See also Ordinance No. LS-13-88/21.12.2020

⁵⁸ Input from Bulgaria for the 2021 Rule of Law Report, p.3

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

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 Assembly⁶⁰. The mandate of the working group includes a review of integrity checks, disciplinary liability of magistrates, creation of deontological prevention system, property and interests declarations⁶¹ as well as formalising the current practice that allows the Parliament to appoint the Inspector General and the Inspectors from among the persons nominated by the plenaries of the Supreme Courts and professional organisations⁶². However, there is no specific timeline for the finalisation of the amendments and the concerns related to judicial independence and the exercising of pressure on judges, raised by the 2020 Rule of Law Report⁶³ and the Venice Commission⁶⁴, remain. The Inspector General and the Inspectors continue to work on the basis of a mandate that has expired⁶⁵, under the principle of continuity⁶⁶. To be noted that other institutions are also in this situation: five other independent and supervisory authorities operate on the basis of an expired mandate⁶⁷. In other cases, changes in the rules of election and mandate allowed for the automatic re-election of their current directors⁶⁸.

The promotion regime of magistrates still raises concerns. Magistrates are normally promoted after passing a competition⁶⁹. However, in practice, no competition process for promotion of judges has been completed for more than three years⁷⁰. In addition to the normal promotion process through a competition, there is a promotion of lay members of the SJC at the end of their mandate. The plenary of the Supreme Court of Cassation challenged the constitutionality of the new law before the Constitutional Court⁷¹ considering it was a case of automatic promotion. On 11 May 2021, the Constitutional Court ruled that the law providing a promotion of lay members of the SJC at the end of their mandate is constitutional

⁶⁰ Art. 132a of the Constitution.

⁶¹ Under section 1a of the JSA

⁶² Input from Bulgaria for the 2021 Rule of Law Report, p.3

⁶³ See 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, , pp. 7-8.

⁶⁴ Venice Commission (CDL-AD(2017)018), para. 58.

⁶⁵ 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.

⁶⁶ Constitutional Court Decision No. 13 of 2010 on Case No. 12 of 2010, where the Court ruled that the principle of continuity is applicable to college governed bodies.

⁶⁷ Commission for protection of personal data, mandate expired since 16 April 2019; Commission for consumer protection, mandate expired since 27 March 2020; Commission for energy and water regulation, mandate expired since 20 April 2020.

⁶⁸ On the 11 February 2021, the National Assembly adopted amendments to the Law on protection of competition, which allowed for an extension of the mandate of the current director of the supervisory body with 2 more years. His current mandate was supposed to expire in June 2021 See also Law amending the law on protection of competition - <https://www.parliament.bg/bg/laws/ID/163501>; The management board of the National Institute for Justice Management (composed by five members of the SJC, the Minister of Justice and one member of the Ministry of Justice) changed the rules for appointment of the director of the Institute, allowing for almost automatic re-appointment of the current director.

⁶⁹ All competition procedures are conducted in accordance with the terms and conditions of the Judiciary System Act.

⁷⁰ Ordinary competitions for promotion have been announced during 2018, 2019 and 2020, but none of them has been completed (<http://www.vss.justice.bg/page/view/1878>).

⁷¹ Request of 20 December 2020 addressed by the Plenary of the Supreme Court of Cassation to the Constitutional Court – Case No. 15 of 2020.

because the SJC is still involved in the decision⁷². Stakeholders criticised the absence of regular competitions for promotion and the promotion mechanism of the SJC members⁷³. The absence of regular competitions has resulted in an increasing number of secondments. In particular, stakeholders reported that, since 2017, the number of seconded judges has been increasing⁷⁴ as well as the number of long secondments (with consent)⁷⁵, sometimes for up to 90-100 months or more⁷⁶, in order to fill in higher-ranking positions⁷⁷. European standards highlight promotion based on merit⁷⁸ and secondment happening with consent and on a temporary basis, used only in exceptional circumstances⁷⁹. The situation where there are no regular merit-based promotions may affect judicial independence. Concerns have also been raised⁸⁰ in the context of the envisaged judicial map reform where judges from district courts, which would become part of regional courts, would be automatically promoted to a higher position⁸¹. Since the discussions are at an early stage there is scope to have a wide consultation on the reform of the judicial map⁸². Furthermore, it is important that any reform of the judicial map is based on a thorough assessment of its likely effects, and preserves judicial independence and access to justice⁸³.

The SJC is modifying the criteria for deciding on additional remuneration. In order to address the Council of Europe concerns regarding the broad discretionary powers of the Courts Presidents for allocating additional remuneration of magistrates, two working groups have been set up⁸⁴. The draft rules were prepared in March 2020, however, they have not

⁷² Constitutional Court Decision No. 6 of 2021 on Case No. 15 of 2020.

⁷³ Contribution from the *Magistrats Européens pour la Démocratie et les Libertés* for the 2021 Rule of Law Report, p. 15.

⁷⁴ In 2017, there were 83 seconded judges; in 2018, there were 104 seconded judges; in 2019, there were 144 seconded judges; in 2020, there were 202 seconded judges. For more information, see study provided by Institute for Market Economics (IME)

⁷⁵ In 2020, there were 59 judges seconded for more than 24 months. For more information, see study on secondment of magistrates prepared by Institute for Market Economics (IME).

⁷⁶ See Register of seconded magistrates by the courts from 10.12.2020 prepared by the SJC. See also Contribution from the Supreme Court of Cassation for the 2021 Rule of Law Report.

⁷⁷ Such a distorted practice of secondment is reported to be used for secondment without consent in the Prosecutor's Office as alleged punishment. Contribution from Bulgarian Institute for Legal Initiatives and the President of the Court of Cassation for the 2021 Rule of Law Report and information received in the context of the country visit.

⁷⁸ CM/Rec(2010)12, para 44.

⁷⁹ Venice Commission (CDL-AD(2017)018), paras. 86 and 87.

⁸⁰ More than 500 judges signed an open letter to the SJC against the chosen model for judicial map reform. The Supreme Bar Council also criticised the reform.

⁸¹ Input from Bulgaria for the 2021 Rule of Law Report, p. 15; Contribution from the Supreme Court of Cassation for the 2021 Rule of Law Report.

⁸² The Ministry of Justice has organised a series of public discussions (14, 25 and 29 of June 2021) on the proposed model for reform of the judicial map with a participation of a broad range of representatives from various professional organisations in the field of justice, justices from the Supreme Court of Cassation, lawyers, local courts, municipalities and NGO's representatives.

⁸³ Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System As adopted on the CEPEJ's 22th plenary meeting, on 6 December 2013.

⁸⁴ According to the information received by the Bulgarian authorities in relation the "Action Plan", upon a decision of the SJC's Plenum on protocol No. 26/22.10.20, It. 32, a working group to propose to the SJC's Plenum amendments and supplements to the Rules for determining and paying of bonus remuneration to magistrates was established, which was meant to set clear, objective and transparent criteria for defining supplementary remuneration and for limiting the discretionary powers of administrative managers at the Judiciary. The working group includes members of the Supreme Judicial Council, representatives of judicial authorities and of the Supreme Judicial Council administration. This working group decided to wait for the adoption of rules under Art. 233, Para. 6, sentence one of the JSA (on the basis of the workload level of the

been discussed in the SJC plenary and have not been made public⁸⁵. It is therefore too early to assess whether the identified concerns have been addressed in light of the recommendations of the Council of Europe. It is important that any amendment takes into account such recommendations⁸⁶.

The online register on magistrate’s membership in professional organisations has been removed. The requirement for magistrates to declare membership in professional organisations⁸⁷ was repealed in 2020. At the time of the publication of the 2020 Rule of Law Report, the online database of magistrates participating in professional associations was still available on the website of the SJC. Meanwhile, the authorities have addressed this concern and, since 14 January 2021, the register is no longer available online.

Quality

Court fees have been reduced for claims introduced online. Amendments in the Code of Civil Procedure provided for a reduction by 15 percent of the fee due when the application for protection and assistance has been performed electronically. However, the measure is still too limited to substantially lower court fees to initiate proceedings⁸⁸ because it concerns only electronically submitted files and not all cases. Moreover, this measure does not concern the threshold for legal aid⁸⁹, nor does it exempt legal aid recipients from court fees⁹⁰. The impact of the reform is also jeopardised by the lack of digitalisation⁹¹. Furthermore, specific concerns regarding limited access to justice for women and girls have been raised by the UN Committee on the Elimination of Discrimination against Women⁹².

respective judicial body, the Supreme Judicial Council may determine additional remuneration to judges, prosecutors and investigating magistrates), as prepared by the working group established by a decision on protocol No. 3/19.02.20, It. 1.1. and protocol No. 7/27.05.20, It. 4.1. of the Judicial Map, Workload and Judicial Statistics Committee to the Judges’ College at the Supreme Judicial Council. By a decision of 22.06.2021, the Judges’ College of the Supreme Judicial Council adopted Rules for determining the amount of additional remuneration under the terms of Art. 233, para. 6, sentence one of the Judiciary System Act. The adopted Rules still need to be sent to the Budget and Finance Committee at the SJC Plenary and to the Judicial Map, Workload and Judicial Statistics Committee of the Judges’ College for action according to their respective competence. 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

⁸⁵ Input from Bulgaria for the 2021 Rule of Law Report, p. 7.

⁸⁶ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para 55: “Systems making judges’ core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges”.

⁸⁷ COM(2019)498, p. 6, footnote 29; Venice Commission (CDL-AD(2020)017), para. 29.

⁸⁸ 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, p. 9. Regarding the level of fees in civil and commercial cases see Figures 24 and 25, 2021 EU Justice Scoreboard.

⁸⁹ In the 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. Figure 24, 2021 EU Justice Scoreboard

⁹⁰ Figure 25, 2021 EU Justice Scoreboard.

⁹¹ In practice, currently, there is no possibility to file a case online; no possibility to participate in a hearing through videoconference; no possibility to file a case online. For more information see Figure 39 to 45, 2021 EU Justice Scoreboard

⁹² More particularly, notably owing to pervasive corruption, social stigma, inaccessibility of the judicial system, gender bias among law enforcement officers, including the police, and limited knowledge among judges and law enforcement authorities of the 1979 Convention on the Elimination of All Forms of

Amendments were introduced to allow for the use of videoconferencing in civil, administrative and criminal proceedings. On 17 December 2020, amendments to the Code of Civil Procedure, Administrative Procedure Code and Criminal Procedure Code were adopted. They allow for the use of videoconferencing in civil and administrative proceedings, and in criminal proceedings for the collection of evidence. However, in practice it appears that the system is not implemented yet⁹³. Further improvements have been announced through two projects in the context of the National Recovery and Resilience Plan of Bulgaria⁹⁴. Notwithstanding these reforms and plans, currently it is not possible for court staff and judges to work securely remotely⁹⁵, and secure electronic communication is available only for communication between courts but not with other legal professionals⁹⁶. While it is possible to access electronic files for ongoing and closed cases and to receive information online about court fees, it is still not possible to initiate proceedings online, to file an application for legal aid online and the official court documents cannot be served electronically⁹⁷. The European Social Fund funded project (2016-2020) “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”⁹⁸, covers a total of seven activities, including two specifically linked to digitalisation and e-justice⁹⁹. Concerns have been raised regarding the implementation of Unified Court Information System (UCIS) in the absence of a full digitalisation process¹⁰⁰. The COVID-19 pandemic has illustrated the shortcomings of the country’s judicial system in the area of digitalisation of justice. During the state of emergency¹⁰¹, for one month the processing of court cases was suspended, with the exception of urgent cases¹⁰². Once the state of emergency was declared by the Council of Ministers on 13 March 2020, the Judges’ College of the SJC adopted a new organisation of work in courts to limit contagion. However, remote hearings have been conducted in very limited cases on the initiative of specific courts, and remote working has been an exception¹⁰³.

Financial and human resources of the Specialised Criminal Court have been increased. The Specialised Criminal Court of first instance, which had been experiencing issues related

Discrimination against Women. Contribution from UN OHCHR Regional Office for Europe for the 2021 Rule of Law Report, p. 2.

⁹³ Figure 39 to 44, 2021 EU Justice Scoreboard; Information also received in the context of the country visit. (e.g. Association of Prosecutors in Bulgaria; Bulgarian Judges Association).

⁹⁴ Input from Bulgaria for the 2021 Rule of Law Report, p.11. It is to be noted that the NRRP could be further amended and these projects might eventually be removed from the final plan.

⁹⁵ Figure 41, 2021 EU Justice Scoreboard.

⁹⁶ Figure 42, 2021 EU Justice Scoreboard.

⁹⁷ Figure 44, 2021 EU Justice Scoreboard.

⁹⁸ Clarification sent by the SJC regarding the Action Plan – digitalisation. As to UCIS, the abovementioned clarification as well as stakeholders during the country visits have informed about dissatisfaction by judges and staff which led to the suspension of the system on 16.09.2020 (further extended till 31.12.2020) for new cases. The clarification from the SJC announced that with decision of the Plenary starting from 01.01.2021 till 01.06.2021 all courts will resume new cases.

⁹⁹ “Development and implementation of a Unified Court Information System – UCIS_” and the “Creation of a specialized information system for monitoring and analysis of the factors related to the socio-economic development of the judicial district and the workload of the courts – SISMA”.

¹⁰⁰ More precisely stakeholders reported that everything is carried out on paper and then encoded in the system. 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.

¹⁰¹ Judges’ chamber SJC, Extraordinary Session, Short Protocol No. 9, 15 March 2020.

¹⁰² 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.

¹⁰³ Contribution from the Supreme Court of Cassation for the 2021 Rule of Law Report.

to lack of human or financial resources, has been allocated two additional positions for judges¹⁰⁴. This is a positive development which addressed a concern raised in the Bulgarian country chapter of the 2020 Rule of Law Report. The reported investment made by the Government in the justice system over the past years has been increasing¹⁰⁵.

A new legislation has amended the regime applicable to law firms. In February 2021, amendments to the Bar Act were introduced, making possible the setting up of sole proprietor lawyer's companies, and removed the ban on lawyers serving as managers and executive directors of commercial companies¹⁰⁶. These amendments create the opportunity for the setting up of more law firms, which would in turn increase the competition between lawyers and could allow for greater access to legal practitioners.

Efficiency

The efficiency of administrative justice keeps improving. The performance of administrative courts regarding the length of proceedings is among the most efficient in the EU¹⁰⁷. However, the lack of data for the efficiency of litigious and non-litigious civil and commercial cases (first and second instance courts) does not permit a proper evaluation of the overall efficiency of the judicial system¹⁰⁸. When it comes to the length of proceedings at the Supreme Court of Cassation, Bulgaria continues to perform well in comparison to other Member States¹⁰⁹. Furthermore, as regards efficiency in specific areas of EU law, proceedings are resolved swiftly in the area of electronic communication and consumer protection¹¹⁰.

II. ANTI-CORRUPTION FRAMEWORK

Following the comprehensive reform of 2017 and 2018, Bulgaria established the Commission for Counteracting Corruption and Illegal Assets Forfeiture (hereinafter the Anti-corruption Commission). This Commission is mainly responsible for both the preventive and the repressive actions regarding high-profile corruption, keeping and managing the public register of asset declarations, monitoring and advising on issues related to conflict of interests as well as the confiscation of illegally acquired assets. It also performs institutional corruption risk assessments in order to develop tailor-made institutions' integrity action plans. Following this assessment, the recommendations delivered to public institutions are binding and follow-up actions are to be regularly reported to the Anti-Corruption Commission. The competence for high-level corruption cases was transferred to the Specialised Criminal Courts and the investigation of such cases is carried out under the supervision of the Specialised Prosecutor's Office.

¹⁰⁴ Judges' Chamber meeting, Protocol No. 3, 2 February 2021; Judges' Chamber meeting, Protocol No. 6, 23 February 2021. The Judges' chamber of the SJC rejected the proposal of the Commission for Attestation and Competitions to the SJC to not grant any additional positions to the Specialised Criminal Court, and afterwards approved two new positions to be added to the staff of the Specialised Criminal Court

¹⁰⁵ Figures 29-31, 2021 EU Justice Scoreboard.

¹⁰⁶ Law for amendment and supplement of the Bar Act - <https://www.parliament.bg/bg/laws/ID/163509>

¹⁰⁷ Figures 9 and 10, 2021 EU Justice Scoreboard. It is to be noted that there is no harmonised methodology to measure such performance.

¹⁰⁸ Figures 7 and 8, 2021 EU Justice Scoreboard.

¹⁰⁹ Figure 8, 2021 EU Justice Scoreboard.

¹¹⁰ Figures 18 and 20, 2021 EU Justice Scoreboard.

The perception among experts and business executives is that the level of corruption in the public sector remains high. In the 2020 Corruption Perceptions Index by Transparency International, Bulgaria scores 44/100 and ranks 19th in the European Union and 69th globally¹¹¹. This perception has been relatively stable¹¹² over the past five years¹¹³.

The Anti-Corruption Commission has further streamlined its organisational structure. It rationalised financial resources, which were increased in early 2021¹¹⁴. It also continued to increase its staff, including through new recruitments of inspectors in the directorate responsible for combating corruption. In 2020, the Anti-Corruption Commission confiscated EUR 6.2 million¹¹⁵ of illegally acquired property, while 30 individuals were sanctioned for conflicts of interest. Compared to 2019, there has been a decrease (of about 20%) in the number of performed inspections as well as in the reports received on alleged violations related to corruption¹¹⁶.

The new anti-corruption strategy for 2021-2027 was adopted in March 2021. Drawing on lessons from the previous strategy, new priorities have been established as regards high-risk sectors, including strengthening capacity to combat corruption; increasing accountability of local authorities; and creating an environment against corruption capable of timely responses. The strategy also contains a list of relevant goals, performance indicators, and responsible implementing entities¹¹⁷.

The Action Plan adopted in November 2020 to address certain challenges expressed in the 2020 Rule of Law Report also covers issues related to corruption. The Action Plan aims to improve investigations and to continue reinforcing operations of the Anti-Corruption Commission. Moreover, as announced in the Action Plan, a reflection is ongoing to improve the efficiency of investigations and trials. On 30 March 2021, a working-group was tasked with recommending changes to the Criminal Code as to improve the efficiency of investigations and trials¹¹⁸.

Despite increased investigative activity, results in final high-level corruption convictions remain low with no solid track-record of final convictions. In 2020, 33 decisions of the Supreme Court of Cassation on overall corruption cases were issued. In 19 cases the decisions were confirmed, in 8 cases the acts of the appellate court were revoked and returned for new consideration, in four cases the decisions of the appellate instance were amended and

¹¹¹ Transparency International, Corruption Perceptions Index 2020, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

¹¹² In 2015 the score was 41, while, in 2020, the score is 44. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

¹¹³ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

¹¹⁴ Input from Bulgaria for the 2021 Rule of Law Report.

¹¹⁵ BGN 12,172,551.64

¹¹⁶ Information and contribution received from the Anti-Corruption Commission in the context of the country visit to Bulgaria.

¹¹⁷ Contribution from the Anti-Corruption Commission. See also the Draft National Corruption Prevention and Counteraction Strategy (2021-2027).

¹¹⁸ Input from Bulgaria for the 2021 Rule of Law Report, p. 1.

in two of them the criminal proceedings were resumed¹¹⁹. On 17 December 2020, OLAF recommended to recover nearly EUR 6 million after alleged abuse of power at a Bulgarian ministry¹²⁰. Finally, a solid track record of final convictions in high-level corruption cases remains to be established¹²¹.

There is limited evidence as to the effectiveness of measures related to the integrity of the public administration. The enforcement of the code of conduct of civil servants¹²² is under the responsibility of institutional disciplinary commissions within each public service. Development of ethical standards of conduct of senior officials (including ministers and mayors), systems for verification of integrity and assistance for their implementation fall under the purview of the Anti-Corruption Commission¹²³. Ethics provisions for members of the Parliament are laid down in the rules of organisation and procedure of the National Assembly¹²⁴, whose implementation is the responsibility of a committee of the National Assembly. Whereas the legal provisions are in place, there is no factual evidence of their implementation or effectiveness¹²⁵. Concerning members of the judiciary, there is neither evidence of anti-corruption training being provided nor of an advisory committee having been set up for matters related to ethics. Concerning the police force, since 2021, the inspectorate of the Ministry of Interior has deployed a new system for video recording of actions by security officers and road patrols¹²⁶. Evidence on breaches of integrity rules, including corruption, collected through a video recording instrument, have been used to discipline, sanction or convict police officers from different departments¹²⁷.

A verification system for asset declaration and conflict of interest is in place. In 2020, the Anti-Corruption Commission conducted 21,587 verifications of declarations of property and interests of persons holding senior public positions (compared to 9,900 verifications conducted in 2019), including those of persons who participated in the local elections¹²⁸. The

¹¹⁹ Annual report of the activity of the Supreme Court of Cassation in 2020, pp. 41-43.

¹²⁰ European Commission: European Anti-Fraud Office, *OLAF recommends recovery of nearly €6 million after alleged abuse of power at Bulgarian ministry*- EU PRESS RELEASE No. 04/2021.

¹²¹ 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, p. 12. In addition, in June 2021 the US Department of Treasury issued sanctions targeting certain Bulgarian citizens (including a former member of the Parliament) for committing acts of corruption in accordance with the US Global Magnitsky Act. U.S Department of Treasury, Specially designated nationals list update- 2 June 2021.

¹²² Adopted by the Council of Ministers with Resolution No. 57 of 2 April 2020. The role of the Code of conduct of civil servants in the public sector integrity system is currently under review with the support of Organisation for Economic Cooperation and Development (OECD) within the project “Driving Public Administration Reform Forward”.

¹²³ Art. 32, para. 1, item 6 of the Law for combating corruption and forfeiture illegally acquired property.

¹²⁴ National Assembly of the Republic of Bulgaria (2017), Rules of organisation and procedure of the national assembly.

¹²⁵ Such as open or closed procedures, and decisions by the competent entities.

¹²⁶ A large number of body cameras have been provided by the Ministry of Interior (a project financed under the European Commission’s Internal Security Fund) and they have been deployed since 2021.

¹²⁷ Internal security report: in the period 2014-2020, eight traffic officers were convicted. In addition, information received in the context of the country visit to Bulgaria.

¹²⁸ In 2020, 83,316 declarations of assets and interest of persons working in the State administration were filed on time (i.e. 250 less than in 2019). In 46 cases, there was a violation of administrative rules (i.e. a decrease of 38% compared to 2019); and sanctions were issued in two cases (i.e. a decrease of 50% compared to 2019). In 2020, the internal inspectorates carried out 4,750 verifications (i.e. a decrease of 23% compared to 2019). In 2020, there were 21 administrative breaches found (compared to six breaches for 2019); with application of sanctions in four cases, in addition to nine cases of termination of employment due to incompatibilities (i.e. the same number of 2019). For 2020, the number of asset declarations of senior public office holders received and processed has decreased of about 36% compared to 2019. The number of

declarations are publicly accessible through the Register of Senior Public Office Holders on the webpage of the Anti-Corruption Commission. Conflict of interest and incompatibility measures for civil servants (applicable to the employees of the central and local government administration) are defined in the Civil Servants Act, the Labour Code, the Ministry of Interior Act, the State Agency for National Security Act, the Customs Act and other organic laws¹²⁹.

Lobbying still lacks dedicated regulation. Although regulation of lobbying is part of the national action plan in response to the 2020 Rule of Law Report¹³⁰, concrete steps forward remain to be taken.

There is no specific law on protection for whistleblowers. However, existing criminal legislation¹³¹, applicable to witnesses, provide *mutatis mutandis* protection to individuals reporting instances of crimes, including corruption. Anonymous complaints are neither allowed nor protected, hence the Anti-Corruption Commission cannot use the information received from unknown individuals or undisclosed sources.

The authorities have taken some measures to counteract corruption risks related to the COVID-19 pandemic measures. These measures cover sectors with high corruption risk, such as healthcare and public procurement. Urgent public procurement procedures were deployed, with significant use of negotiated procedures without publication and simplified procedures (i.e. with single vendor or vendor with neither previously proven experience nor corporate capacity for the specific contract). As a part of the COVID-19 pandemic coping policy approach, representatives of the Ministry of Interior¹³², the Ministry of Health and control authorities meet periodically to exchange operational information and decide on measures to be taken, including countering risk of corruption. A separate unit has been set up in the Ministry of Interior General Directorate Combating Organised Crime to counteract corruption in health care¹³³

III. MEDIA PLURALISM AND MEDIA FREEDOM

The Bulgarian legal framework¹³⁴ is based on a set of constitutional safeguards and legislative measures, such as the Radio and Television Act¹³⁵. The Access to Public

declarations, which were not submitted or were submitted late has increased of about 160% in 2020, compared to 2019. Input from Bulgaria for the 2021 Rule of Law Report.

¹²⁹ In 2020, the Anti-Corruption Commission conducted 28 verifications (compared to 17 for 2019) on cases of conflict of interest and incompatibility. In 2020 a total of 30 decisions establishing a conflict of interest were adopted, while in 2019 14 such decisions were adopted. Input from the Country for the 2021 Rule of Law Report. See also GRECO Fourth Evaluation Round – Second compliance report, recommendations iii and iv, para. 11. GRECO concluded that recommendations iii and iv on asset disclosure, disclosure and ascertainment of conflicts of interest and of its impact on the prevention and detection of corruption, have been implemented satisfactorily.

¹³⁰ As indicated in the 2020 Rule of Law Report, an analysis by the National Centre for Parliamentary Research covering the period April 2017 to December 2019 showed that nearly 37% of the adopted legal acts modify other acts by amendments, including in the transition and final provisions of the amending act. Stakeholders had 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.

¹³¹ Article 123 (on protection of witness) of criminal procedure code.

¹³² Directorate General National Police.

¹³³ Input from Bulgaria for the 2021 Rule of Law Report, p. 29.

¹³⁴ The 2021 World Press Freedom Index of Reporters without Borders places Bulgaria at 112th position out of 180 monitored countries, one place down compared to last year (the last place in the EU).

Information Act regulates access to public information and the re-use of public sector information. The media regulator, the Council for Electronic Media (CEM), is set up by and functions in compliance with the Radio and Television Act.

A new legislation has been adopted to strengthen the independence of the media regulator – CEM - and steps are taken to increase its resources. The National Assembly adopted in December 2020 the Act¹³⁶ amending the Radio and Television Act, to transpose the revised Audiovisual media Services Directive (AVMSD). This will enhance the independence of the CEM, particularly by ensuring that it will follow the public interest, and takes actions for the protection of the freedom and pluralism of speech and information and the independence of media service providers. The increase of EUR 574 867 (BGN 1,12 million) to the budget of CEM, foreseen in the 2021 State Budget, aims to address the concerns raised in the 2020 Rule of Law Report regarding CEM's lack of resources necessary to perform its tasks effectively¹³⁷. Although this is a welcomed development, recently in March and April 2021, the Government decreased the budget of the regulator¹³⁸. Moreover, it remains to be seen if the planned increase in the budget will be adequate in view of the additional tasks linked to the implementation of the revised AVMSD¹³⁹.

The lack of transparency of media ownership remains a source of concern. Despite the regular updates of the CEM public register of linear and non-linear media services referred to in the 2020 Rule of Law report, data on media ownership is still not fully disclosed to the public. Some stakeholders have raised concerns that the issue of media transparency may be aggravated by significant news media concentration that took place in 2020¹⁴⁰.

The lack of regulatory safeguards for fair and transparent allocation of state advertising¹⁴¹ continues to raise concerns. Furthermore, stakeholders have highlighted that transparency in the allocation of public funding to media outlets remains problematic¹⁴².

Political interference in the media continues to be a pressing issue. Lack of legislation preventing politicians and parties from owning media outlets appears to be an important factor, and a higher risk in this regard was registered in the TV and newspaper sectors¹⁴³. The authorities have presented an Action Plan including this issue as one of the priorities in the Bulgarian National Development Programme 2030¹⁴⁴. However, no concrete measures have been specified yet.

The COVID-19 pandemic has negatively affected media pluralism and no measures supporting directly the media sector have been put in place. The pandemic has affected

¹³⁵ Radio and Television Act.

¹³⁶ Promulgated in State Gazette issue 109/2020.

¹³⁷ 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, p. 15.

¹³⁸ Decree No. 113/ 29.03.2021 and Decree No. 177/ 29.04.2021.

¹³⁹ Information received from the CEM in the context of the country visit.

¹⁴⁰ Information received in the context of the country visit to Bulgaria and 2021 Media Pluralism Monitor Bulgaria, p. 12. High level of concentration is registered in the TV sector (92% total market share of the major 4 owners). The cumulative audience shares of top 4 TV media groups (74%) and the top 4 radio groups (79%) are also indicative of high concentration. The online media sector is characterized by a lack of precise data.

¹⁴¹ 2021 Media pluralism Monitor, Bulgaria, p. 15.

¹⁴² Reporters without Borders, Bulgaria.

¹⁴³ Media Pluralism Monitor 2021, Bulgaria, p. 14.

¹⁴⁴ Ministry of Finance (2019), National Development Programme Bulgaria 2030.

media pluralism and protection of journalists mainly in economic terms, due to salary cuts and delayed payments, with a severe impact on regional journalism, as highlighted by stakeholders¹⁴⁵. It is reported that some of the smaller and regional media went bankrupt as a consequence of the pandemic¹⁴⁶.

The working environment and safety of journalists continue to raise concerns¹⁴⁷. Access to public information remains difficult and journalists continue facing political pressure and self-censorship¹⁴⁸. Six new alerts regarding attacks and harassment of journalists were registered on the Council of Europe Platform to promote the protection of journalism and safety of journalists¹⁴⁹ since the last report. This includes one alert concerning the case of a journalist who was allegedly beaten by the police and detained for 24 hours, which the Prosecutor's office refused to investigate. The other alerts regard attacks on and harassment of journalists, and other media actors as well as abusive lawsuits. Furthermore, the COVID-19 pandemic led to the suspension of work on the roadmap, sent in March 2020 to the Bulgarian authorities by Reporters without Borders, to address the press freedom concerns in Bulgaria, including aspects such as journalists' safety, access to information, allocation of state advertising and media funding¹⁵⁰.

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 laws¹⁵¹. Bulgaria has two national human rights institutions. First, the Ombudsperson 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 yet to be finalised. As reported in the CVM report of October 2019¹⁵² and recalled in the 2020 Rule of Law Report, the Government 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 the assessment of Bulgaria's progress in judicial reform, fight against corruption and organised crime in an independent, transparent, and objective

¹⁴⁵ Information received in the context of the country visit to Bulgaria.

¹⁴⁶ 2021 Media Pluralism Monitor, Bulgaria, p. 7.

¹⁴⁷ 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, p.17.

¹⁴⁸ Information received in the context of the country visit to Bulgaria.

¹⁴⁹ The authorities have not replied to any of the alerts. Council of Europe, Platform to promote the protection of journalism and safety of journalists.

¹⁵⁰ Reporters Without Borders, Bulgaria.

¹⁵¹ 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.

¹⁵² COM(2019)498, p.3.

manner¹⁵³. The activity of the Council would start once the CVM formally comes to an end. However, the establishment of the Civic Council – a body within the Coordination and Cooperation Council that includes members of civil society and for which a selection procedure had been launched – has been suspended, awaiting the decision of the Supreme Administrative Court on an appeal on the matter¹⁵⁴.

The Action Plan adopted in response to the 2020 rule of law report includes measures seeking to address some identified challenges on the checks and balances This includes steps to increase funds for the National Human Rights Institutions (NHRIs), and to improve the decision-making process. For the latter, two initiatives were envisaged, the creation of a Guidance for ex-post impact assessment¹⁵⁵ and conducting ex-post impact assessments of key laws¹⁵⁶.

A recent study confirms the limited use of public consultation and impact assessment, especially for legislation proposed by Members of Parliament. A study conducted by the National Centre for Parliamentary Research, part of the National Assembly, examines the lawmaking activity of the National Assembly from April 2017 to March 2021¹⁵⁷. The main findings confirm the increased number of draft laws proposed by Members of Parliament¹⁵⁸, without compulsory stakeholder consultation, impact assessment and compatibility check with EU legislation¹⁵⁹ that applies to draft legislation proposed by the Government. The authorities committed to adhere to the recently reinforced rules¹⁶⁰ and to continue the practice of the Government of submitting draft laws to the Parliament with a full or partial impact assessment¹⁶¹. However, these efforts to improve the quality of impact assessment and public consultations do not cover the draft laws proposed by Members of Parliament. Moreover, even though the drafting of an impact assessment is a mandatory step in the legislative process since 2016, legislative intervention is based only in a limited number of the drafts on scientific expertise¹⁶². To address this, the authorities committed to start conducting *ex-post* impact assessments of key legislation, for which Guidance was adopted by the Council of Ministers on 3 December 2020¹⁶³. Furthermore, public consultation and stakeholders' feedback are also an integral part of the process. However, in most of the proposed draft legislation¹⁶⁴ there is no information on public consultations or discussions organised by the Members of Parliament or the Government to determine the problems and reasons for the

¹⁵³ 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.

¹⁵⁴ The appeal has been filed by the NGO affected by the cancellation of the initial procedure for selection of the so-called Civil Council within the post-monitoring mechanism.

¹⁵⁵ Adopted by Decision No. 885 of the Council of Ministers of 3 December 2020.

¹⁵⁶ The key laws are defined by the Council of Administrative Reform, after a 5-year term, as per the Law on Legal Acts of 2016.

¹⁵⁷ For more information see <https://www.parliament.bg/pub/NCIOM/2021>

¹⁵⁸ During the 44th National Assembly, more than 60% of the draft laws were proposed by Members of the Parliament. – Study of the lawmaking activity of the National Assembly (April 2017 – March 2021), p.9.

¹⁵⁹ Study of the lawmaking activity of the National Assembly (April 2017 – March 2021), p.62.

¹⁶⁰ The methodology for impact assessment was updated in 2019. The Council for administrative reform (a consultative body to the Council of Ministers) approved new templates and guidance on the impact assessments in February 2021. The government also publishes the list of impact assessments on its website for consultations. - www.strategy.bg.

¹⁶¹ The website of the Parliament shows that the Council of Ministers' draft laws have these documents.

¹⁶² Study of the lawmaking activity of the National Assembly (April 2017 – March 2021), p.16 and p.20.

¹⁶³ Council of Ministers (2020), Guidance for ex-post impact assessment.

¹⁶⁴ In 93% of the draft legislation - See Study of the lawmaking activity of the National Assembly (April 2017 – March 2021), p.56-57.

adoption of the draft law¹⁶⁵. Furthermore, the reasons for adoption of a law included the views of some or all stakeholders in very few of the proposed draft laws¹⁶⁶.

The practice of introducing important legislative amendments through amendments to other legal acts continues to raise concerns. The legislative technique of using the transitional provisions of one legal act to introduce major amendments in another unrelated act has continued¹⁶⁷. This confirms the concerns raised in the 2020 Rule of Law Report as such amendments bypass the requirements for public consultation and impact assessment¹⁶⁸. Moreover, another trend, which was identified in the 2020 Rule of Law Report, and continues to raise concerns, is the legislative practice of adopting major amendments between the first and second reading in the National Assembly without public consultation¹⁶⁹.

The emergency situation regime related to the COVID-19 pandemic is still in place. Following the adoption of the ‘state of emergency’ regime from 13 March to 13 May 2020¹⁷⁰, on 12 May 2020, an amendment to the Health Act was adopted¹⁷¹ which introduced a new emergency regime (‘emergency epidemic situation’)¹⁷². On 13 May 2020, 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 has been regularly renewed and is still in force until [31 July 2021]. This new emergency regime was reviewed by the Constitutional Court¹⁷³, which decided on 23 July 2020 that the regime is compliant with the Constitution¹⁷⁴.

The National Assembly adopted rules to ensure continuity during the COVID-19 pandemic. In order to adapt to the situation, the National Assembly continued its regular work and on 6 November 2020 adopted rules, adding the option of videoconference participation in plenary meetings for Members of Parliament who are placed under mandatory isolation or quarantine due to COVID-19¹⁷⁵. On 23 November 2020, 54 Members

¹⁶⁵ See previous reference...

¹⁶⁶ In 9% of the draft legislation – See Study of the lawmaking activity of the National Assembly (April 2017 – March 2021), p.59.

¹⁶⁷ In 37% of the proposed draft laws, the final and transitional provisions amended another legislation, which is 2% more in comparison to the previous National Assembly. Study of the lawmaking activity of the National Assembly (April 2017 – March 2021), p.46. (E.g. introducing amendments to the Criminal Code through the Maritime Merchant Code, making unregulated transport of people a criminal offense, despite it being already punishable under the administrative legislation).

¹⁶⁸ 2020 Rule of Law Report, Country chapter on the rule of law situation in Bulgaria, , p.19.

¹⁶⁹ Information received in the context of the country visit to Bulgaria. For instance, see law establishing the mechanism for accountability and criminal liability of the Prosecutor General and his or her deputies, where, the amendments between the two readings were introduced at the deadline and approved shortly after without thorough debate. The process can be explored at <https://www.parliament.bg/bg/bills/ID/163448>

¹⁷⁰ National Assembly of the Republic of Bulgaria (2020), Decision to declare state of emergency- 13 March 2020, and National Assembly of the Republic of Bulgaria (2020), Decision to extend the state of emergency – 3 April 2020 - This decision gave extensive powers to the Government in order to take all necessary measures to deal with the emergency.

¹⁷¹ Law to amend and supplement the Health Act.

¹⁷² 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.

¹⁷³ On the request of the President of the Republic; Constitutional Court, Case No. 7 of 2020.

¹⁷⁴ Constitutional Court Decision No. 10 of 2020 of Case No. 7 of 2020, 23 July 2020.

¹⁷⁵ Input from Bulgaria for the 2021 Rule of Law Report, p.42-43.

of Parliament challenged the constitutionality of these rules before the Constitutional court¹⁷⁶, which considered them compatible with the Constitution¹⁷⁷.

Financial and human resources of the National Human Rights Institutions have been increased. There have been increases in the budgets of the Ombudsperson and the Commission for Protection Against Discrimination. The Bulgarian authorities informed that the budget forecast over the period 2021–2023 foresees an increase of 10% of the personnel funds for both institutions. Moreover, in view of improving the capacity of the institution of the Ombudsperson, the draft budget envisages additional expenditure¹⁷⁸.

The draft legislation on increased transparency of foreign funding for NGOs has not been further pursued. The draft law that was tabled on 3 July 2020¹⁷⁹ and aimed at imposing new obligations on non-profit organisations had raised concerns among stakeholders¹⁸⁰ as regards its compliance with EU law¹⁸¹. Following the publication of the 2020 Rule of Law Report, the draft law has not been further discussed¹⁸². Nevertheless, the civic space remains narrowed¹⁸³, and in some occasions, members of the civil society appear to be under pressure, through smear campaigns, intimidation and negative narrative¹⁸⁴. In November 2020, at the occasion of the Universal Periodic Review, Bulgaria received several recommendations related to the need to improve civic space and to address intimidation and threats¹⁸⁵.

¹⁷⁶ Constitutional Court Case No. 13 of 2020.

¹⁷⁷ Constitutional Court Decision No. 2 of 2021 on Case No. 13 of 2020.

¹⁷⁸ For more information see Action Plan with measures to address the concerns raised by the 2020 Rule of Law Report - <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1314>

¹⁷⁹ Draft law 054-01-60 - Draft law amending and supplementing the law on non-profit legal entities.

¹⁸⁰ 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 from Bulgarian Centre for Not-for-profit Law, Bulgarian Donation Forum, Bulgarian Helsinki Committee), - <https://www.parliament.bg/bg/bills/ID/157496>

¹⁸¹ In the same line – see Court of Justice of the European Union, judgment of 18 June 2020, Commission v. Hungary, C-78/18.

¹⁸² Once the mandate a National Assembly expires, the pending draft legislations lapse. They may be reintroduced by the next National Assembly, however, the legislative process should start from the very beginning.

¹⁸³ See rating given by Civicus, Bulgaria. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹⁸⁴ Information received in the context of the country visit to Bulgaria.

¹⁸⁵ Contribution from UN OHCHR Regional Office for Europe for the 2021 Rule of Law Report, pp. 8-9

Annex I: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>.*

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Annex II – Country visit to Bulgaria

The Commission services held virtual meetings in March 2021 with:

- Access to Information Programme
- Administration Modernization Directorate
- Anti-Corruption Council
- Anti-corruption Fund Foundation
- Association of European Journalists – Bulgaria
- Association of Prosecutors in Bulgaria
- Audio-Visual regulator – CEM
- Bulgarian Institute for Legal Initiatives
- Bulgarian Judges Association
- Centre for the Study of Democracy
- Commission for countering corruption and for forfeiture of illegally acquired assets
- For the truth project
- Inspectorate to the Supreme Judicial Council
- Institute for Market Economics
- Ministry of Culture
- Ministry of Interior
- Ministry of Justice
- National Council for Journalistic Ethics
- Office of the Prosecutor General
- Sofia Bar Association
- Specialised Criminal Court
- Specialised Prosecutor's Office
- Supreme Bar Council
- Supreme Court of Cassation
- Supreme Judicial Council
- Union of Publishers in Bulgaria

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

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- 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
- European Federation of Journalists
- European Partnership for Democracy

- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU