



Luxembourg, 13.7.2022  
SWD(2022) 502 final

## **COMMISSION STAFF WORKING DOCUMENT**

### **2022 Rule of Law Report Country Chapter on the rule of law situation in Bulgaria**

#### *Accompanying the document*

**Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions**

#### **2022 Rule of Law Report The rule of law situation in the European Union**

{COM(2022) 500 final} - {SWD(2022) 501 final} - {SWD(2022) 503 final} -  
{SWD(2022) 504 final} - {SWD(2022) 505 final} - {SWD(2022) 506 final} -  
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## **ABSTRACT**

Reforms in Bulgaria in the area of justice and anti-corruption were first followed by the Commission under the Cooperation and Verification Mechanism (CVM) and are currently monitored under the Rule of Law Mechanism.

The Government has committed, in the context of the Bulgarian Recovery and Resilience Plan, to establish an effective mechanism for the accountability and criminal liability of the Prosecutor General and his/her deputies, as well as a judicial review of prosecutorial decisions not to open an investigation. This would address longstanding concerns referred in the previous editions of the Rule of Law Report and in the CVM. There are increasing concerns related to the functioning of the Supreme Judicial Council and the need to address its composition is all the more important. Concerns related to the Inspectorate to the Supreme Judicial Council remain. The absence of regular competition for the promotion of magistrates, combined with an extensive use of secondments, risks to affect the independence of magistrates. A legislative reform has abolished the specialised judicial authorities, while providing for the reappointment of the relevant magistrates to ordinary courts and prosecution offices, with safeguards to protect judicial independence and procedural rights. Challenges remain in the area of digitalisation of justice. Administrative justice continues to perform well in terms of efficiency.

The Anti-Corruption Commission has continued to perform its activities, with envisaged reforms aiming at restructuring it to improve its capacity towards investigation of corruption cases. A solid track-record of final convictions in high-level cases of corruption is still lacking. The National Strategy for Prevention and Countering Corruption, as well as the general provisions for the integrity of the public administration continue to be implemented, including provisions for specific sectors and a mechanism for the declaration and verification of assets. Lobbying and protection of whistleblowers are still not properly regulated, although there are plans to address that. Sector-specific corruption risks such as management of budget funds and control activities, including procurement were identified during the COVID-19 pandemic.

As regards media freedom and pluralism, the legal framework, based on a set of constitutional safeguards and legislative measures, guarantees freedom of expression and editorial independence. The lack of a clear regulatory framework to ensure transparency in the allocation of state advertising remains a concern, despite some measures having been taken to improve transparency. As regards media ownership transparency, reflections are ongoing about a more effective enforcement of media ownership obligations. Legal safeguards exist regarding the independence of public service media, but appear to be insufficient; a revision of the law is being considered in order to strengthen the independence of public service media and define in more detail the public service remit and the related financing. The professional environment of journalists has slightly improved since the last year but issues such as access to public information, working conditions and strategic lawsuits, remain.

The establishment of a Post-monitoring Mechanism to accompany future CVM related reform is progressing well after a decision of the Supreme Administrative Court. New rules have been adopted by the Parliament to improve the law-making process. The emergency regime related to the COVID-19 pandemic has ended. A Council for Civil Society Development has been set up with the objective of assisting civil society, which will include drafting and implementation of policies covering Civil Society Organisations themselves.

## **RECOMMENDATIONS**

In addition to recalling the commitments made under the national Recovery and Resilience Plan relating to certain aspects of the justice system and the anti-corruption framework and the remaining commitments under the Cooperation and Verification Mechanism, it is recommended to Bulgaria to:

- Ensure timely ordinary competitions for promotion to avoid long-term secondment of judges to fill in vacant positions, taking into account European standards on secondment of judges.
- Advance with the legislative amendments aiming at improving the functioning of the Inspectorate to the Supreme Judicial Council and avoiding the risk of political influence, in particular by involving judicial bodies in the selection of its members.
- Take steps to adapt the composition of the Supreme Judicial Council, taking into account European standards on Councils for the Judiciary.
- Continue the implementation of measures to improve the integrity of the specific sectors of the public administration, including measures tailored to the police and the judiciary.
- Ensure that the institutional reforms of the Anti-Corruption Commission and the specialised judicial authorities lead to an improved effectiveness of investigations and a robust track-record of prosecution and final judgments in high-level corruption cases.
- Improve transparency in the allocation of state advertising, in particular with regard to state advertising contracted through intermediaries, such as media agencies.

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<sup>1</sup>. 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<sup>2</sup>. 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. Said implementation continues to be monitored in the context of the Rule of Law Mechanism, and more concretely, in the Commission's annual Rule of Law Report.

## **I. JUSTICE SYSTEM**

The judicial system of the Republic of Bulgaria<sup>3</sup> 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 and administrative courts. The Supreme Court of Cassation is the court of last instance in cases heard by ordinary and military courts, while for administrative cases, the Supreme Administrative Court is the court of last instance. The judiciary also includes the Prosecutor's Office. The Constitutional Court of Bulgaria reviews constitutionality of laws and gives interpretative decisions<sup>4</sup>. The Prosecutor's Office has a unified structure and is headed by the Prosecutor General<sup>5</sup>. 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 investigators<sup>6</sup> are appointed, promoted, transferred and dismissed by their respective chamber (Judges' or Prosecutors') of the SJC<sup>7</sup>. In addition to the SJC, activities of magistrates are supervised by

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<sup>1</sup> 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.

<sup>2</sup> Council Conclusions on the Cooperation and Verification Mechanism, 12 December 2017.

<sup>3</sup> For a description of the judicial structure see e.g. CEPEJ (2021), Study on the functioning of the judicial systems in the EU Member States.

<sup>4</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 2.

<sup>5</sup> Art. 126 to 128 from the Constitution.

<sup>6</sup> 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.

<sup>7</sup> 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.

the Inspectorate. The Supreme Bar Council is an independent and self-governing body established by law<sup>8</sup>.

## Independence

**The level of perceived judicial independence in Bulgaria continues to be low among the general public and is now very low among companies.** Overall, 31% of the general population and 28% of companies perceive the level of independence of courts and judges to be ‘fairly or very good’ in 2022<sup>9</sup>. According to data in the 2022 EU Justice Scoreboard, the perceived judicial independence among both the general public and companies has consistently decreased in the last years, although it remains higher than in 2016 (23% for the general public and 21% for companies). Both figures have decreased in comparison to 2021 (32% for the general public and 43% for companies).

**Provisions for an effective accountability and criminal liability mechanism for the Prosecutor General and his/her deputies are planned within the framework of the Recovery and Resilience Plan (RRP) related reforms<sup>10</sup>.** The lack of a possibility for an effective criminal investigation of the Prosecutor General and his/her deputies has been a long-standing issue, which was raised not only by the European Commission<sup>11</sup> but also by the European Court of Human Rights<sup>12</sup> and the Council of Europe<sup>13</sup>. As pointed out in previous reports<sup>14</sup>, the combination of the powers held by the Prosecutor General<sup>15</sup> and his/her position in the Supreme Judicial Council<sup>16</sup> result in a considerable influence within the Prosecutor’s

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<sup>8</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 3.

<sup>9</sup> Figures 50 and 52, 2022 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%).

<sup>10</sup> They will take place by Q2 2023.

<sup>11</sup> See 2020 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Bulgaria, pp. 3-5; Progress report Bulgaria 2019, COM(2019)498, p. 6.

<sup>12</sup> ECtHR, judgment of 5 November 2009, *Kolevi v. Bulgaria*, paras. 121-127, 129, 135 and 136.

<sup>13</sup> Council of Europe, Supervision of the execution of the European Court’s judgments, Committee of Ministers Decision CM/Del/Dec(2022)1436/H46-6 of 10 June 2022 and CM/Notes/1436/H46-6 of 8-10 June 2022, Committee of Ministers Decision CM/Del/Dec(2021)1419/H46-8 of 2 December 2021 and CM/Notes/1419/H46-8 of 30 November- 2 December 2021, 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).

<sup>14</sup> See 2020 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Bulgaria, p. 3-5.

<sup>15</sup> 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.

<sup>16</sup> In the Prosecutorial Chamber, where the five members elected by Parliament are currently also prosecutors or investigating magistrates, all members are subordinates to the Prosecutor General, the *ex officio* member and chairman, who plays a decisive role in relation to their career and disciplinary proceedings. In the Plenary, the prosecutorial members have been noted to usually vote as a block supporting the Prosecutor General’s proposals or position. See also Art. 16 (3) and (4) of the JSA - 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; Art. 30(1) and 32 of the JSA - 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

Office as well as potentially within the Supreme Judicial Council (both in its Prosecutorial Chamber and its Plenary) and within the magistracy<sup>17</sup>. On 14 October 2021, Bulgaria submitted its RRP to the Commission<sup>18</sup>. The European Commission adopted a positive assessment of Bulgaria's RRP on 7 April 2022. On 3 May 2022, the Council adopted the implementing decisions on the approval of the plan. As part of the rule of law-related reforms in the plan, the authorities committed to introduce an effective mechanism for the accountability and criminal liability of the Prosecutor General and his/her deputies. The mechanism would include guarantees for the independent character of the investigation, including by introducing measures that would allow the suspension of the Prosecutor General and his/her deputies in the event of criminal proceedings against them, as well as including the selection by the Supreme Judicial Council of a judge<sup>19</sup> appointed to the position of prosecutor acting as an investigating magistrate. The envisaged reform would also include safeguards to ensure the career stability and independence of that judge<sup>20</sup> in accordance with the decisions of the Committee of Ministers of the Council of Europe<sup>21</sup> and the opinions of the Venice Commission<sup>22</sup>. Furthermore, the Bulgarian Government committed to cooperate with the Human Rights Directorate of the Council of Europe and to consult the Venice Commission of the Council of Europe on the draft amendments prior to their submission to the National Assembly. In addition, in view of limiting the potential influence of the Prosecutor General within the Supreme Judicial Council, the Government has also committed to exclude the representatives of the prosecution and investigation services from being nominated as members elected by the Parliament to the Council<sup>23</sup>. Finally, as regards the increased accountability of the Prosecutor General, the Government has committed in the RRP to set up procedures for hearings of the Prosecutor General, as well as annual reporting obligations on corruption related matters.

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appointment of the Presidents of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General (Art. 30(2) of the JSA). 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 (Art. 30(5) of the JSA); voting majority for decisions of the Judges' chamber are described in Art. 33 para 4 of the JSA.

<sup>17</sup> Council of Europe, Supervision of the execution of the European Court's judgments, CM/Del/Dec(2021)1419/H46-8 of 2 December 2021 and CM/Notes/1419/H46-8 of 30 November- 2 December 2021, CM/Del/Dec(2021)1398/H46-6 of 9-11 March 2021. See also the 2021 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria.

<sup>18</sup> One component of the plan is devoted to addressing challenges to the 'business environment' and aims to increase the overall resilience of the Bulgarian economy by addressing the concerns with the rule of law, corruption, money laundering and effectiveness of the public administration. Once approved by the Council of the European Union by means of an implementing decision, the reforms and investments under the RRP as set out in the annex to the implementing decision become legally binding.

<sup>19</sup> According to the milestone set in the RRP as regards the Prosecutor General, that judge should have a minimum professional qualification and experience in criminal justice, and would be selected using an independent random selection mechanism.

<sup>20</sup> Written contribution from the Minister of Justice in the context of the country visit: the "judge will not be able to be removed by the SJC, the Prosecutor General will not be able to intervene and instruct him on the investigation, and while it is under way, the Prosecutor General will be suspended from office. The career development of the investigating judge will be protected, regardless of the outcome of the investigation. The investigation will be able to cover both actions and inactions of the Prosecutor General".

<sup>21</sup> Committee of Ministers Decision CM/Del/Dec(2022)1436/H46-6 of 10 June 2022, CM/Notes/1436/H46-6 of 8-10 June 2022 and Analysis of the general measures in the Kolevi case, H/Exec(2022)8 of 24 May 2022

<sup>22</sup> See footnotes 14 and 15.

<sup>23</sup> Written contribution from the Ministry of Justice in the context of the country visit, p.5. See also Venice Commission Opinion (CDL-AD(2019)031), para 27; CM/Notes/1419/H46-8 of 30 November- 2 December 2021; and CM/Del/Dec(2020)1377bis/H46-9 of 9-11 March 2021, para. 9.

**The Constitutional Court confirmed the right of the Minister of Justice to request to the Supreme Judicial Council the early termination of the mandate of the Prosecutor General.** On 8 February 2022, the Constitutional Court declared constitutional the possibility for the Minister of Justice to ask for the early termination of the mandate<sup>24</sup> of the Prosecutor General (and also of the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court). On 22 July 2021, the interim Minister of Justice filed a request to the Supreme Judicial Council for the dismissal of the Prosecutor General<sup>25</sup>. The Plenary of the Supreme Judicial Council voted the request of the Minister as inadmissible and considered that the Minister did not have the power to file such a request<sup>26</sup>. Following this, the Minister of Justice challenged the decision of the Supreme Judicial Council before the Supreme Administrative Court and requested clarifications from the Constitutional Court on the powers of the Minister of Justice to request the early dismissal of the Prosecutor General<sup>27</sup>. The Constitutional Court confirmed that the Minister of Justice has such power to request the early dismissal of the Prosecutor General<sup>28</sup>. On 2 March 2022, the new Minister of Justice filed a new request for the dismissal of the Prosecutor General<sup>29</sup>.

**The introduction of judicial review against decisions of prosecutors not to open an investigation is envisaged.** In the adopted RRP, the Government has committed to introduce a mechanism for judicial review of any decisions of prosecutors not to open an investigation. As noted in the 2021 Rule of Law Report<sup>30</sup>, this is a long-standing concern and the envisaged measures would address the recommendations from the Council of Europe<sup>31</sup>. On 2 December 2021, the Committee of Ministers of the Council of Europe reiterated the recommendation<sup>32</sup> but also welcomed that the authorities committed under the RRP to work together with the Council of Europe in order to develop the legislation for this mechanism<sup>33</sup>. In addition, arrangements would be made to avoid an excessive additional workload for courts and prosecutors<sup>34</sup>. The reform is expected to be adopted by mid-2023.

**Concerns over the functioning and composition of the Supreme Judicial Council have increased, also in the context of disciplinary proceedings.** The situation mentioned in the 2020<sup>35</sup> and 2021<sup>36</sup> Rule of Law Reports, with the judges elected by their peers<sup>37</sup> not forming

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<sup>24</sup> Pursuant to Art. 176.5 in conjunction of Art. 173.3 of the JSA, for the circumstances outlined in Art. 129.3 point 5 of the Constitution.

<sup>25</sup> The power would stem from Art. 130c of the Constitution – “The Minister of Justice shall be able to make proposals for appointment, promotion, demotion, transfer and release from office of judges, prosecutors and investigating magistrates.” See also Plenary of the SJC, Protocol No.14 of 2021.

<sup>26</sup> See Plenary of the SJC, Protocol No.14 of 2021.

<sup>27</sup> Art. 130c of the Constitution. This article also includes the power to request the early dismissal of the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court.

<sup>28</sup> Constitutional Court Decision No. 1 of 2022/Case No. 17 from 2021: “... it should be assumed that although the Minister of Justice does not have the right to vote in the Supreme Judicial Council, this does not deprive him of the opportunity to propose issues within the competence of the Supreme Judicial Council and therefore does not preclude proposals for engagement of responsibility or ascertainment of other facts under art. 129, para 3 of the Constitution and in respect of the three senior magistrates...”.

<sup>29</sup> See Plenary of the SJC, Agenda No.8 of 2022.

<sup>30</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 5.

<sup>31</sup> European Court of Human Rights, judgment of 3 March 2015, *S.Z. v. Bulgaria*, 29263/12.

<sup>32</sup> See CM/Del/Dec(2021)1419/H46-8, para. 10, 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.

<sup>33</sup> See CM/Del/Dec(2021)1419/H46-8, para. 4.

<sup>34</sup> In the context of the RRP, the authorities committed to adopt arrangements to avoid an excessive additional workload for courts and prosecutors, which will be clarified in consultation with the Council of Europe.

<sup>35</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 3-5.

a majority in the Supreme Judicial Council (SJC), remains unchanged<sup>38</sup>. Since 1 July 2021<sup>39</sup>, the concerns have increased as the SJC functions with only four peer-elected judges<sup>40</sup> due to the resignation of two peer-elected members<sup>41</sup>. The same voting practice of the Plenary of the Supreme Judicial Council presented in the previous report<sup>42</sup> continues<sup>43</sup> to underline the decisive role<sup>44</sup> of the Prosecutor General in the SJC<sup>45</sup>. The concerns regarding the composition and functioning of the SJC have been reiterated by the European Parliament's *ad-hoc* delegation to Bulgaria<sup>46</sup>, the Council of Europe<sup>47</sup>, the UN Universal Periodic Review<sup>48</sup> and various stakeholders<sup>49</sup>. In addition, similar concerns over the functioning of the SJC have arisen in the context of disciplinary proceedings. On 19 October 2021, the European Court of Human Rights<sup>50</sup> issued a decision regarding disciplinary proceedings against a judge before the SJC. While the Court confirms that the disciplinary proceedings before the SJC comprised a number of procedural guarantees<sup>51</sup>, it considered that the

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<sup>36</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 5-7.

<sup>37</sup> The *ex officio* judges do not count as peer elected judges. - Venice Commission opinion (CDL-AD(2020)035), para. 44.

<sup>38</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 27; Venice Commission opinion (CDL-AD(2020)035), para. 44; JSA, Art. 16(3) and (4) – Since the Judicial Chamber (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) a majority can be reached, both in the Plenary of the SJC and the Judicial Chamber, without the votes of the judges elected by their peers.

<sup>39</sup> See Plenary of the SJC, Protocol No. 12 of 2021.

<sup>40</sup> The total number of members at the SJC is currently 22 (Judicial Chamber is with 12 members; Prosecutorial Chamber is with 10 members) – there is one vacancy for a Parliament elected member of the Prosecutorial Chamber since January 2020 and two vacancies for peer elected members of the Judicial Chamber since July 2021.

<sup>41</sup> After a call to all members of the SJC to follow the two-peer elected members and resign, which did not have any effect, in October 2021, a majority of judges decided not to participate in two attempts for the election of new peer-elected members, which resulted in unsuccessful elections (Statement of the Bulgarian Judges Association of 23 June 2021). About only 20% of all judges in the country took part in the elections. No new elections were scheduled because the mandate of the current SJC ends in October 2022 and the procedures for election of the new members have started in early 2022. See also Art. 29k, para. 2 and 3 of the JSA.

<sup>42</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.6: 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 from the meetings of the Plenary of the Supreme Judicial Council: Protocol No. 14 of 2021 on the vote for the dismissal of the Prosecutor General; Protocol No. 16 of 2021 on renovating the summer resorts of the Prosecutor's Office.

<sup>43</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 5-6. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 3-4.

<sup>44</sup> 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 an important influence in the Plenary of the Supreme Judicial Council.

<sup>45</sup> Art. 16 (3) and (4) of the JSA - 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.

<sup>46</sup> Mission Report following the *ad-hoc* delegation to Slovakia and Bulgaria – 21-24 September 2021 Committee on Civil Liberties, Justice and Home Affairs, p. 15.

<sup>47</sup> Committee of Ministers decision CM/Del/Dec(2021)1398/H46-6. See also Venice Commission opinion (CDL-AD(2020)035), para. 40.

<sup>48</sup> Contributions from UN OHCHR Regional Office for Europe for the 2022 Rule of Law Report, p. 1.

<sup>49</sup> Contributions from Austrian Federal Economic Chamber, European Association of Judges, and Bulgarian Institute for Legal Initiatives Foundation for the 2022 Rule of Law Report.

<sup>50</sup> ECtHR, judgment of 19 October 2021, *Todorova v. Bulgaria*, 40072/13.

<sup>51</sup> ECtHR, judgment of 19 October 2021, *Todorova v. Bulgaria*, 40072/13, para. 109.



disciplinary proceedings conducted by the SJC and the sanctions imposed had amounted to an interference with the exercise of the magistrate's right to freedom of expression which had not been "necessary in a democratic society" for pursuing legitimate aims set out in Article 10 of the Convention<sup>52</sup>. In addition, in 2021, the Supreme Administrative Court annulled several decisions of the SJC imposing disciplinary sanctions on judges or prosecutors for insufficient reasoning or procedural irregularities<sup>53</sup>. Addressing the issue of the SJC's composition<sup>54</sup> by aligning it to European standards, is all the more important in view of the forthcoming end of the current mandates of SJC members<sup>55</sup>.

**Concerns remain regarding political influence and the functioning of the Inspectorate to the Supreme Judicial Council (ISJC).** As mentioned in previous Rule of Law Reports<sup>56</sup>, currently the Inspectorate oversees the activity of the judiciary, assesses the integrity and potential conflicts of interest of magistrates, and is responsible for proposing any opening of disciplinary proceedings regarding magistrates to the SJC. The ISJC consists of an Inspector General and ten inspectors, who are independent and elected by the National Assembly<sup>57</sup>. The working group that was set up in December 2020 and tasked with addressing concerns regarding the risk of political influence on the Inspectorate<sup>58</sup> has finalised its work<sup>59</sup>, identifying two groups of proposals for legislative amendments. One, needing further work within the framework of the current working group<sup>60</sup>. The other, would require a longer period for implementation, which is why, no amendment has been tabled in Parliament alleviating these concerns. These concerns are aggravated by the fact that the Inspectorate is still working on the basis of an expired mandate<sup>61</sup>. In February 2022, the Ministry of Justice asked representatives of the judiciary, professional legal organisations, as well as the

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<sup>52</sup> ECtHR, judgment of 19 October 2021, *Todorova v. Bulgaria*, 40072/13, paras. 164 and 173.

<sup>53</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 12.

<sup>54</sup> See Art. 130 and Art. 130a paras. 3 and 4 of the Constitution.

<sup>55</sup> The term of the current SJC runs until October 2022 and the procedures for election of new members have already begun.

<sup>56</sup> See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.8; 2020 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.8.

<sup>57</sup> Art. 132a of the Constitution.

<sup>58</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 3: as part of the previously mentioned Government's Action Plan, in December 2020, the Minister of Justice established a working group tasked with drafting legislative amendments to address the Inspectorate related issues identified as a concern by the 2020 Rule of Law report. See also Venice Commission (CDL-AD(2017)018), para. 58.

<sup>59</sup> Written contribution from the Ministry of Justice in the context of the country visit to Bulgaria, pp. 5 and 6.

<sup>60</sup> Formed Order No. LS-13-88/21.12.2020 of the Minister of Justice with the task of drafting a comprehensive draft amendments to the Judiciary Act.

<sup>61</sup> 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 still 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. To be noted that other institutions which are also in similar situation: five other independent and supervisory authorities also operate on the basis of an expired mandate: Commission for protection of personal data, mandate expired since 16 April 2019; Commission for consumer protection, mandate expired since 27 March 2020; Bulgarian National Bank, mandate expired since July 2021; Fiscal Council expired since November 2021; National Social Security Institute Committee for disclosing the documents and announcing affiliation of Bulgarian citizens to the State Security and intelligence services of the Bulgarian National Army, mandate expired since July 2017 (Written contribution from the Bulgarian Institute for Legal Initiatives in the context of the country visit).

academic legal community to submit proposals regarding the optimisation<sup>62</sup> of the organisation and activities of the SJC and the ISJC in the context of the established European and international standards<sup>63</sup> for the activities of these types of bodies<sup>64</sup>. The Plenary of the Supreme Administrative Court<sup>65</sup> made a request to the Constitutional Court concerning the interpretation of the constitutional provisions regarding the ISJC<sup>66</sup>. That request was declared admissible on 17 May 2022 and is now pending.

**The absence of regular competitions for the promotion of magistrates, combined with an extensive use of secondments, continue to raise serious concerns.** As underlined in the 2021 Rule of Law Report<sup>67</sup>, while magistrates may be promoted only through a competition, in practice only one competition for the promotion of judges has been completed in the last four years<sup>68</sup>. The absence of regular competitions has resulted in an extensive use of secondments<sup>69</sup>. European standards highlight that promotions should be based on merit<sup>70</sup> and secondments should happen with consent and on a temporary basis<sup>71</sup>, and only in exceptional circumstances<sup>72</sup>. A widespread use of secondments may negatively impact on seconded magistrates, if they are faced with the risk of a termination of their secondment against their will; this increases the power of the administrative heads if they are competent to decide on secondments and their termination<sup>73</sup>, which may create situations of dependence<sup>74</sup>. The lack of regular merit-based promotions combined with an extensive use of secondments therefore

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<sup>62</sup> Improving the procedures for competitions, selection of administrative heads and attestation in order to speed them up and ensure objective results; refining the procedures for disciplinary proceedings in the light of practical experience; increasing the effectiveness of the training activities of the National Institute of Justice.

<sup>63</sup> Opinion of the Venice Commission on the Judiciary Law from 2017 (CDL-AD(2017)018); Opinion of the Venice Commission on the draft amendments to the Constitution from 2015 (CDL-AD(2015)022); Opinions of the Consultative Council of European Judges (CCJE).

<sup>64</sup> Written contribution from the Ministry of Justice in the context of the country visit to Bulgaria, p. 8.

<sup>65</sup> Constitutional Court Case No. 7 of 29 April 2022

<sup>66</sup> In particular, the request touches upon the question whether the Inspector General and the Inspectors should continue work after the end of their mandate until new holders of office are appointed by the Parliament at these positions.

<sup>67</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, pp. 6 and 7, footnote 74. See also website of the SJC, register for seconded magistrates which for 2022 recorded a number of 217 seconded judges (97 of them are seconded for more than 24 months).

<sup>68</sup> Written contribution from the Supreme Court of Cassation; Contribution from Bulgarian Institute for Legal Initiatives in the context of the country visit to Bulgaria.

<sup>69</sup> The lack of competitions has been reported by civil, criminal and administrative judges – Information received from Bulgarian Judges Association, President of the Supreme Administrative Court; President of the Supreme Court of Cassation; Specialised Prosecutor’s Office in the context of the country visit to Bulgaria. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria p. 9 on the number of seconded judges which kept increasing and on the number of long secondments (with consent) to fill in higher-ranking positions. See also written contribution from the Supreme Court of Cassation in the context of the country visit to Bulgaria, topic 3, p.1, stating that “In the past period no development has been achieved in the staffing of the Supreme Court of Cassation, but on the contrary – there is a clear trend of regression, as the number of seconded persons is gradually increasing”.

<sup>70</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 44.

<sup>71</sup> As regards EU law requirements, see CJEU, Judgment of 16 November 2021, *Prokuratura Rejonowa w Minsku Mazowieckim*, Joined Cases C-748/19 to C-754/19, EU:C:2021:931, point 72.

<sup>72</sup> Venice Commission (CDL-AD(2017)018), paras. 86 and 87.

<sup>73</sup> The Judicial Chamber can also terminate prematurely secondments when during the secondment there are violations of the terms and conditions provided in the JSA, or in case of necessity for staffing the body of the judiciary from which the judge is seconded. See Art. 30(5), point 18 of the JSA.

<sup>74</sup> Written contribution from the Supreme Court of Cassation in the context of the country visit to Bulgaria, p.4 of topic 3.

risks to affect judicial independence. Some practices have been developed within the judiciary to circumscribe the powers of the administrative heads in this respect<sup>75</sup>, but only regular and timely competitions based on merit would effectively avert the abovementioned risk<sup>76</sup>.

**Legislative amendments have been introduced to put an end to the special promotion regime for magistrates in the Inspectorate to the Supreme Judicial Council and the Supreme Judicial Council.** As to the automatic promotion of magistrates described in the 2020 Rule of Law Report<sup>77</sup>, on 14 April 2022 the same law adopted for the closure of the specialised judicial authorities<sup>78</sup> amending the Judicial System Act also removed the specific promotion mechanism for SJC and ISJC members<sup>79</sup> by ending the possibility for these members to be reinstated at the end of their term of office in a higher position as judge, prosecutor or investigator than that held before the election<sup>80</sup>. Furthermore, concerns related to the automatic promotion of judges within the envisaged judicial map reform did not materialise in a draft law<sup>81</sup>.

**The Supreme Judicial Council adopted criteria for deciding on additional remuneration of magistrates, aiming at limiting the discretionary powers of court presidents.** In order to address the Council of Europe's concerns regarding the broad discretionary powers of the Court Presidents for allocating additional remuneration of magistrates<sup>82</sup>, in November 2021 the SJC set out criteria for additional remunerations for judges and prosecutors (except for the specialised judicial authorities<sup>83</sup>) linked to the degree of workload of courts, prosecutor's offices, and district investigation departments<sup>84</sup>.

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<sup>75</sup> Written contribution from the Supreme Court of Cassation in the context of the country visit to Bulgaria: the selection of judges to be seconded is increasingly carried out by the plenaries of the court's colleges, which propose to the administrative head of office the judge for secondment. In addition, courts are drafting rules for objective criteria for secondment.

<sup>76</sup> The power of court presidents, to impose a disciplinary measure (under Art. 327 of the JSA, court presidents may draw the attention of judges, prosecutors and investigators to the violations committed by them in the formation and movement of cases or in the organisation of their work) was further increased with respect to single judges due to the practice of the ISJC to recommend the issuing of less severe disciplinary sanctions (e.g. reprimand). In addition, they can also decide to refer the matter to the SJC, asking the latter to open a disciplinary proceeding aiming at imposing a more relevant sanction (Written contribution from the ISJC in the context of the country visit to Bulgaria).

<sup>77</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.8-9.

<sup>78</sup> Adopted on 14 April 2022, and promulgated on 26 April 2022.

<sup>79</sup> See 2021 Rule of Law Report p. 10

<sup>80</sup> Written contribution from the ISJC in the context of the country visit to Bulgaria, p.1.

<sup>81</sup> The proposal issued by the SJC was strongly criticised by stakeholders (Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 24).

<sup>82</sup> 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)12 of the Committee of Ministers of the Council of Europe, para. 55: “Systems making judges’ core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges”.

<sup>83</sup> The specialised judicial authorities include the Specialised Criminal Court and the Specialised Prosecutor's Office.

<sup>84</sup> Decision under Protocol No. 42 of 23 November 2021 of the Judicial Chamber of SJC and decision of the Plenary of the SJC under Protocol No. 23 of 25 November 2021; Decisions of the Prosecutorial Chamber of SJC Protocol No. 40 of 23 November 2021. See the categorisation made pursuant to Art. 233, para. 6, sentence 1 of the JSA, the SJC proposed categorisation of the abovementioned offices under extremely

**A new draft law was adopted to close the specialised judicial authorities and provides for a mechanism for the reappointment of magistrates.** On 14 April 2022, the Parliament adopted a law for the closure of the specialised judicial authorities because of several concerns also mentioned in previous Rule of Law Reports<sup>85</sup> and raised by various stakeholders<sup>86</sup>. Regarding the reappointment<sup>87</sup> of the magistrates who worked in the specialised judicial authorities, the respective chamber of the SJC<sup>88</sup> would have the obligation to open positions at district and appellate level based on the workload of each court, prosecutor's office, and investigative service<sup>89</sup>. The decisions of the SJC on reappointment would be subject to judicial review before the Supreme Administrative Court<sup>90</sup>. This reappointment procedure appears to present sufficient safeguards for the protection of judicial independence. However, on 4 May 2022, the Prosecutor General challenged the constitutionality of the reform before the Constitutional Court. The Court considered the challenge admissible on 17 May 2022. The procedures for reappointment of these magistrates are suspended pending the ruling of the Constitutional Court<sup>91</sup>.

## Quality

**Improvements on legal aid, court fees and alternative dispute resolution are envisaged.** As noted in the previous two Rule of Law Reports, accessibility of courts remains a concern<sup>92</sup>. In the adopted RRP, the Government has committed to improve the system of legal aid by extending it to additional types of cases and by including additional grounds for requesting the aid. In addition, amendments would provide for exemptions from court fees

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heavy (2.7 basic monthly remunerate for magistrates), high (2.3 basic monthly remuneration for magistrates), medium (1.5 basic monthly remuneration for magistrates) and low workload.

<sup>85</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.12, and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.13-14. In its judgment of 11 January 2022 (*Ekimdzhev v. Bulgaria*, paras 356, 311, 312), the European Court of Human Rights underlined the lack of proper judicial oversight over decisions to issue warrants for secret surveillance as since 2018 the Specialised Criminal Court has been issuing roughly half of all surveillance warrants in Bulgaria and as regards the judgments of the Specialised Criminal Court examined in that ruling, the majority of the warrants issued had completely blanket contents and were general enough to be capable -of relating to any possible surveillance application. On 14 September 2021, the report of the Temporary Committee of the 46th National Assembly for investigating the facts and events around the protest of 2020 confirmed these concerns. In their written contribution, the European Association of Judges has expressed concerns on the additional remunerations for the specialised magistrates and referred to the fact that the public does not perceive the specialised criminal court as independent.

<sup>86</sup> See Mission Report following the *ad-hoc* delegation to Slovakia and Bulgaria – 21-24 September 2021 Committee on Civil Liberties, Justice and Home Affairs, p.14; Information received from Bulgarian Institute for Legal Initiatives and Justice for Everyone Initiative in the context of the country visit to Bulgaria.

<sup>87</sup> The reappointment will be done based on Art. 194, para 1 of the JSC – “In cases of closure of courts, prosecutor's offices and investigative bodies or reduction of the number of positions held in them, the relevant chamber of the SJC opens the respective positions in another equal body of the judiciary in the same appellate district and reassigns the magistrates without competition.” - §41(1) and §42(1) and (4) of the Law amending and supplementing the Judicial System Act.

<sup>88</sup> The magistrates inform the respective chamber of the SJC about their preferred place for reappointment. In cases of several magistrates applying for the same position, the respective chamber of the SJC would decide on the reappointment based on pre-established criteria (§41 and §42 of the law).

<sup>89</sup> §41(2) and §42(2) and (5) of the Law amending and supplementing the Judicial System Act.

<sup>90</sup> Written contribution from the Ministry of Justice in the context of the country visit, p. 2.

<sup>91</sup> Constitutional Court Case No. 9 of 4 May 2022.

<sup>92</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.8; and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.10. See also contribution from the European Judges Association for the 2022 Rule of Law Report, p.23.

for beneficiaries of legal aid<sup>93</sup>. Furthermore, a second commitment relates to the introduction of a mandatory alternative dispute resolution for certain cases, such as divorce by petition, disputes concerning parental rights and obligations. While this is a welcome reform, when drafting the amendments account will have to be taken of the case law of the Court of Justice of the EU, which outlines the conditions under which a mandatory alternative dispute resolution is acceptable under EU law<sup>94</sup>. The entry into force of these reforms is envisaged for the last quarter of 2022.

**Challenges remain for the Unified Information System for Courts.** As of 1 June 2021, all courts in Bulgaria should have started working with the Unified Information System for Courts (UISC). However, as mentioned in the 2021 Rule of Law Report<sup>95</sup>, judges and court staff continue to claim that the system does not improve their work, but actually creates more obstacles. This was exemplified on 28 July 2021, when the plenary of the Supreme Court of Cassation requested from its President to order the discontinuation of the use of the USIC<sup>96</sup> because the system appeared to be complex, cumbersome, and time-consuming for both judges and court staff<sup>97</sup>. On 10 August 2021, the President of the Supreme Court of Cassation ordered the system's discontinuation on the grounds that it does not have the capacity to provide citizens and legal entities with due access to fast and equal justice<sup>98</sup>. On 28 January 2022, the Sofia City Administrative Court decided that the order of the President of the Supreme Court of Cassation was null and void<sup>99</sup>. However, the new President of the Supreme Court of Cassation confirmed that the concerns regarding the USIC persist<sup>100</sup>, and has challenged the ruling of the Sofia City Administrative Court, which is currently pending before the Supreme Administrative Court.

**There is still room for improvement in the area of electronic communications.** In particular, it is not possible for all court staff and judges to work remotely in a secure manner<sup>101</sup>. Secure electronic communication is available, to some extent<sup>102</sup> for communication between courts, while not being available for other legal professionals<sup>103</sup>. Access to electronic tools remains limited<sup>104</sup>. There are several projects under Bulgaria's RRP that aim to improve the digitalisation of justice. Namely, the foreseen reforms include

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<sup>93</sup> See RRP milestone on Accessible, effective and predictable justice.

<sup>94</sup> See Judgment of the Court of Justice of 17 June 2017, *Menini & Rampanelli v Banco Popolare – Società Cooperativa*, C-75/16, ECLI:EU:C:2017:457, paras. 58-71; Judgment of the Court of Justice of 18 March 2010, *Alassini and Others*, Case 317/08 to C-320/08, ECLI:EU:C:2010:146, paras. 62-67.

<sup>95</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.11.

<sup>96</sup> Statement of 27 July 2021, signed by 69 judges from the Supreme Court of Cassation, named "Why is the USIC dangerous" and sent to the interim Minister of Justice and the Supreme Judicial Council.

<sup>97</sup> Contribution from the European Association of Judges, p.30. Information also confirmed by the Bulgarian Judges Association; President of the Supreme Court of Cassation during the country visit. In addition, the system might risk to breach procedural rules.

<sup>98</sup> Order No. 893 by the President of the Supreme Court of Cassation of 10 August 2021.

<sup>99</sup> Decision No. 500 of 28 January 2021, Sofia City Administrative Court.

<sup>100</sup> Written contribution from the Supreme Court of Cassation in the context of the country visit "Information on Topic 4", p.2.

<sup>101</sup> Figure 44 2022 EU Justice Scoreboard.

<sup>102</sup> There is no full electronic connectivity, allowing for a case to be accepted by another court electronically. - Written contribution from the Supreme Court of Cassation in the context of the country visit, "Information on Topic 4", p.2.

<sup>103</sup> Figure 45 2022 EU Justice Scoreboard.

<sup>104</sup> Figures 46 and 47 2022 EU Justice Scoreboard. Currently, it is only possible to consult electronic files and to receive information online about court fees. However 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 electronically.

annual analyses of the implementation of the legislative arrangements regarding digitalisation of justice to allow, among others, for secure electronic communication<sup>105</sup>. These arrangements include, among others, the rules on service of notices and summons to an electronic address, the possibility of payment of fees and other obligations to the court by electronic means, and drafting of judicial acts as electronic documents. However, their finalisation is foreseen by late 2023 and late 2024.

## Efficiency

**Administrative justice continues to perform efficiently.** As last year, the disposition time for administrative courts is among the most efficient in the EU at first instance courts<sup>106</sup>. However, stakeholders report delays, which tend to occur when the Supreme Administrative Court reviews decisions of the Supreme Judicial Council<sup>107</sup>. As for litigious and non-litigious civil and commercial cases, the persistent lack of disaggregated data does not allow for a proper evaluation of the overall efficiency of the judicial system<sup>108</sup>. As a result, specific inefficiency problems could remain unnoticed<sup>109</sup>.

## II. ANTI-CORRUPTION FRAMEWORK

The Commission for Counteracting Corruption and Illegal Assets Forfeiture (the Anti-Corruption Commission) remains responsible for both preventive and sanctioning actions for high-profile corruption, the implementation of rules on asset declarations and conflict of interests, the confiscation of illegally acquired assets, as well as the monitoring of the implementation of institutional integrity action plans. Created in the context of the post-2018 reform<sup>110</sup>, the Anti-Corruption Commission has progressed in its reorganisation. Special criminal offences (including high-level corruption) remain under the competence of the specialised judicial authorities until July 2022. Afterwards, the competence will be transferred to the regional and appellate judicial authorities around the country.

**The perception of public sector corruption among experts and business executives is that the level of corruption in the public sector remains high.** In the 2021 Corruption

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<sup>105</sup> The arrangements are laid down in the Civil Procedure Code and the Criminal Procedure Code.

<sup>106</sup> Figures 9 and 10, 2022 EU Justice Scoreboard. It is to be noted that this result is based on the methodology used by CEPEJ.

<sup>107</sup> Information received from Bulgarian Judges Association; Specialised Criminal Court; Specialised Prosecutor's Office in the context of the country visit. For example, in 2019, according to Figure 9 of the 2022 EU Justice Scoreboard, the average length for all administrative cases was 107 days, according to statistics provided by the Supreme Administrative Court, the average length for SJC appeals was 442 days; in 2020, according to Figure 9 of the 2022 EU Justice Scoreboard, the average length for all administrative cases was 124 days, according to statistics provided by the Supreme Administrative Court, the average length for SJC appeals was 217 days. Moreover, some delays have occurred due to a preliminary ruling request before the CJEU and a constitutional case, which suspended a number of ongoing administrative cases.

<sup>108</sup> Figures 7 and 8, 2021 EU Justice Scoreboard.

<sup>109</sup> Contribution from the President of the Court of Cassation "Delays in commercial dispute proceedings are a very serious problem. It entails not only adverse consequences, but also significant material damage to the parties". In particular, the adverse consequences caused by the delayed handling of cases cannot be remedied by organisational measures alone as the main reason lies in the lack of resources in the Commercial Chamber.

<sup>110</sup> Following the comprehensive reform of 2017 and 2018, Bulgaria established the Commission for Counteracting Corruption and Illegal Assets Forfeiture (hereinafter the Anti-corruption Commission). 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.12.

Perceptions Index by Transparency International, Bulgaria scores 42/100 and ranks 27<sup>th</sup> in the European Union and 78<sup>th</sup> globally<sup>111</sup>. This perception has been relatively stable over the past five years<sup>112</sup>. The 2022 Special Eurobarometer on Corruption shows that 88% of respondents consider corruption widespread in their country (EU average 68%) and 30% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>113</sup>. As regards businesses, 87% of companies consider that corruption is widespread (EU average 63%) and 61% consider that corruption is a problem when doing business (EU average 34%)<sup>114</sup>. Furthermore, 15% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>115</sup>, while 10% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>116</sup>.

**The reorganisation of the Anti-Corruption Commission has progressed, and a new reform of the Commission is envisaged.** A reform of the Commission<sup>117</sup> is foreseen under Bulgaria's RRP<sup>118</sup>, and aims at modifying the investigative powers and further reorganising the structure of the Commission by splitting it in two separate bodies<sup>119</sup>. The objectives of these changes are to streamline the operations of the Commission and achieve better results on both anti-corruption<sup>120</sup> and asset recovery actions. The impact of the reform on the effectiveness of the investigative operations of the Commission remains to be assessed, as the relevant draft-law remains to be approved, and it was made public on 9 June 2022<sup>121</sup>. In the meantime, the reorganisation of the Commission is ongoing in line with the 2018 reform plan. In 2021, eight territorial offices were closed, bringing the territorial structure to 20 units in total<sup>122</sup>. The Commission has also recruited 20% additional personnel (bringing the staff up

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<sup>111</sup> Transparency International (2022), Corruption Perceptions Index 2021, 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).

<sup>112</sup> In 2017 the score was 43, while in 2021 the score was 42. 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.

<sup>113</sup> Special Eurobarometer 523 on Corruption (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

<sup>114</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>115</sup> Special Eurobarometer 523 on Corruption (2022).

<sup>116</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022).

<sup>117</sup> In March 2022, the president of the Anti-Corruption Commission resigned from his role - See press release of the Commission for Counteracting Corruption and Illegal Assets Forfeiture from 14 February 2022.

<sup>118</sup> Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Bulgaria, SWD(2022) 106 final and COM(2022) 172 final.

<sup>119</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.13, in addition to information received in the context of the country visit from the Ministry of Justice. While the specific roadmap for the full adoption of such reforms remains unclear, the agreed deadline for its finalisation is the third quarter of 2022. Information received in the context of the country visit from the Anti-Corruption Commission (for the period from the beginning of 2022 to the date of the visit).

<sup>120</sup> Two specific milestones on the reform of the Anti-Corruption Commission are envisaged under the Bulgarian RRP, namely the milestones 218 (titled: Entry into force of the legislative amendments reforming the Anticorruption and the Illegal Assets Forfeiture Commission) and 220 (titled: Anti-Corruption body set up and operational).

<sup>121</sup> Draft law for countering corruption of 9 June 2022.

<sup>122</sup> Namely 5 directorates, 13 central offices and 2 remote bureaux. Information received in the context of the country visit from the Anti-Corruption Commission.

to 500 officers in total)<sup>123</sup>, acquired updated office equipment, signed cooperation agreements with foreign peer agencies, and adopted internal rules and guidelines for external stakeholders<sup>124</sup>. Furthermore, the Commission received 255 reports on conflicts of interest; initiated 90 procedures that resulted in 22 decisions regarding senior public officials. Additionally, the anti-corruption directorate of the Anti-Corruption Commission<sup>125</sup> received 877 alerts in 2021, performed 618 integrity checks (of which 97 on the demand of the prosecution offices), responded to 45 requests for support in corruption crimes, and forwarded 93 files to the Special Prosecutor's office<sup>126</sup>.

**The National Strategy for Prevention and Countering Corruption continues to be implemented.** In 2021, a working group was tasked by the Government to prepare an annual report on the implementation of the 2021-2027 anti-corruption strategy<sup>127</sup>. To facilitate the implementation of the anti-corruption strategy, the Government proposed measures in its RRP<sup>128</sup>. More precisely, the measures foreseen in the RRP aim at fighting corruption at all levels of public administration and of the justice systems. They intend to ensure that the members of the Civil Council of the National Council on Anti-Corruption Policies monitor the implementation of the National Strategy for Prevention and Counteraction against Corruption and its associated Roadmap<sup>129</sup>.

**Despite the work of the specialised judicial authorities, a solid track-record of final convictions in high-level cases of corruption remains to be established.** In 2021, the Prosecutor's office<sup>130</sup> and Specialised Prosecutor's office<sup>131</sup> presented data on their activity regarding corruption cases. The accuracy and reliability of these regular reports are envisaged

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<sup>123</sup> Information) received in the context of the country visit from the Anti-Corruption Commission (for the period from the beginning of 2022 to the date of the visit.

<sup>124</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.14.

<sup>125</sup> The Anti-Corruption Commission is organised into two main directorates: an anti-corruption directorate, and an illegal assets forfeiture directorate. Information received in the context of the country visit from the Anti-Corruption Commission.

<sup>126</sup> Information received in the context of the country visit from the Anti-Corruption Commission.

<sup>127</sup> Decree of the Council of Ministers n.235 of 19.03.2021. Input from Bulgaria for the 2022 Rule of Law Report, p.15.

<sup>128</sup> Information received in the context of the country visit from the Ministry of Justice. To this end, a specific milestone in the RRP foresees that the National Council on Anti-Corruption Policies to annually adopt reports (starting from 2022) analysing and evaluating the implementation of the National Strategy for Preventing and Combatting Corruption (2021-2027), as well as an annual reporting on progress of implementation of the European Rule of Law mechanism shall be ensured.

<sup>129</sup> In addition to that, reforms intend to: set up an electronic platform for the exchange of information to facilitate the verification of declarations of assets and interests and the identification of conflicts of interest; improve the role of the Inspectorate of the Supreme Judicial Council in the prevention and counteracting corruption through revised ethical guidelines and trainings; enhance the integrity of civil servants by implementing an integrity verification mechanism for civil servants occupying positions that have a high corruption risk; promote integrity in the State Owned Enterprises through the adoption of a Code of Ethics; introduce corruption risk management systems and measures to enhance transparency.

<sup>130</sup> It reported 215 individuals convicted for corruption (compared to 262 individuals convicted in 2020), seven individuals imprisoned (compared to 16 for 2020), while imprisonment was suspended in 148 cases (compared to 165 individuals for 2020).

<sup>131</sup> It supervised 292 pre-trial cases (compared to 274 in 2020), including 58 newly opened files, closed 82 pre-trial proceedings, indicted 61 individuals, and proposed a plea bargain for five persons. Moreover, 16 convictions, none of them final, were issued on corruption cases against officials (including a Minister, a mayor, a deputy mayor and a judge), in addition to eight plea bargains.



to be improved through the reforms introduced in the RRP<sup>132</sup>. As mentioned above, in April 2022, the Parliament adopted a law for the closure of the specialised judicial authorities<sup>133</sup>. The law presents a mechanism for redistribution of the cases currently with the specialised judicial authorities<sup>134</sup>. Given the early stage of the reform, it is too early to assess the effects in practice. In 2021, 33 cases related to corruption offences were initiated before the Supreme Court of Cassation<sup>135</sup>, with 19 decisions issued (including eight appeal decisions quashed, and nine convictions with up-to seven-year imprisonment)<sup>136</sup>. In March 2022, former top executive officials (notably the former Prime Minister, Finance Minister, Chief of the parliamentary budgetary Commission, as well as a media adviser) were detained under suspicions of corruption as part of a police operation<sup>137</sup>.

**The introduction of a verification mechanism for enhancing the integrity of the civil servants is envisaged in the RRP.** An effective system for checking and improving the integrity of civil servants occupying positions with high corruption risks is foreseen among the RRP measures. Moreover, general provisions for the integrity of the public administration continue to be implemented, including through practical projects<sup>138</sup>. In 2021, 90 cases were registered in 2021 for new corruption offences committed in the public administration (16% less than 2020). The Ministry of Interior received 1 478 reports of misconduct within the public administration<sup>139</sup>. In 2021, the Ministry of Interior launched two projects on public

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<sup>132</sup> The reports are expected to include data on the number of the high-level corruption cases filed, the number of cases concluded, detailed descriptions of the grounds for conclusion (both in the investigative stage and trial stage), number of convictions and acquittals, as well as indicators defining the cases for high-level corruption. Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Bulgaria, SWD(2022) 106 final.

<sup>133</sup> See above under section I.

<sup>134</sup> The preliminary inspections and pre-trial proceedings before the Specialised Prosecutor's Office would be sent to the future competent district Prosecutor's Office (as per §43 of the Law amending and supplementing the Judicial System Act), whereas cases for which there has not been a preliminary hearing yet would be redistributed to the future competent district courts (as per §44 and §46 of the Law amending and supplementing the Judicial System Act), and all other ongoing cases would be sent to the Sofia City Court and the Sofia Appellate Court, where the same panels of judges would be temporarily reappointed and will conclude the proceedings (as per §45 and §47-§54 of the Law amending and supplementing the Judicial System Act). This arrangement would allow to avoid restarting proceedings. The Sofia City Court would be the court of first instance for cases within the competence of the European Public Prosecutor's Office.

<sup>135</sup> It is to be noted that the data of the Supreme Court of Cassation does not differentiate high-level corruption cases from corruption cases. Input from Bulgaria for the 2022 Rule of Law Report (Annex 1 - list of initiated cases).

<sup>136</sup> Input from Bulgaria for the 2022 Rule of Law Report (Annex 2 - list of issued decisions).

<sup>137</sup> Among others see press release from the Ministry of Interior from 17 March 2022. See also Press release from Reuters of 17 March 2022.

<sup>138</sup> One project is titled "Strengthening the capacity and improving the work of the authorities in charge of control and sanctioning powers in the administration", carried out by the administration of the Council of Ministers. The second project is titled "Reforming the integrity checks of employees in CACIAF", whose goal is to strengthen the integrity system in CACIAF by reforming the framework for checking the integrity of employees. Input from Bulgaria for the 2022 Rule of Law Report, p.17.

<sup>139</sup> These cases concern the activity of competent public services related to corruption crimes in general, and are not limited to acts committed by officials of the Ministry of Interior. The cases involved 133 individuals, compared to 145 individuals in 2020. Moreover, 364 employees received disciplinary sanctions, and 13 were dismissed. Input from Bulgaria for the 2022 Rule of Law Report, p.26.

administration integrity. Training on public ethics and anti-corruption are delivered by the Academy of the Ministry of Interior<sup>140</sup>.

**Measures aimed at improving the integrity of specific sectors of the public administration, including the police and the judiciary, continue to be deployed.** Several authorities have continued to implement sector-based measures to improve the integrity of the public administration. As regards police measures, the rotation of public officers at risk of corruption (such as border or traffic control staff, and staff involved in residence and/or citizenship procedures) has been in place since 2015 in order to deter corruption<sup>141</sup> and is being implemented on a permanent basis. The establishment of the facility to host the Centre for Active Monitoring in the System of the Ministry of Interior was completed at the end of 2021 to deter instances of corruption<sup>142</sup>. In order to reduce the potential for corruption within the Ministry of Interior, the number of electronic administrative services was increased<sup>143</sup>. During 2021, there were 126 reports of misconduct of border police received, which resulted in opening pre-trial proceedings against nine officers, plus five disciplinary proceedings (for serious disciplinary breaches), and disciplinary sanctions were issued in 12 cases (including the dismissal of six officers)<sup>144</sup>. During 2021, the National Revenue Agency (NRA) performed an assessment on conflicts of interests of its personnel; an online training on ethics was delivered to staff of both NRA and the National Customs Agency<sup>145</sup>. As to the judiciary, the Inspectorate to the Supreme Judicial Council publishes anonymised cases of violations of the Judiciary System Act. It has also established guidelines for the reporting of cases of misconduct<sup>146</sup>. To prevent and counteract conflicts of interest in the judiciary, the Inspectorate is in the process of developing a programme consisting of an electronic public register of electronic declarations of circumstances related to the prevention and establishment of conflicts of interest and property declarations. Moreover, in the context of the implementation of the Bulgarian RRP, it will, among other things, revise the ethical guidelines for the conduct of magistrates and deliver anti-corruption trainings.

**The system of declaration of assets and conflict of interests for public officials continues to be regularly implemented.** For 2021, there were 12 430 declarations of assets received by the Anti-corruption Commission (compared to 6 303 for 2020)<sup>147</sup>, and a total of 5 279 verifications of asset declarations, with 679 decisions (compared to 483 for 2020)

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<sup>140</sup> For example, in 2021, 33 training sessions covering anti-corruption were delivered to 871 police officers. Information received in the context of the country visit from the Directorate for Internal Security of the Ministry of Interior.

<sup>141</sup> The use of body cameras for patrol officers is also foreseen to deter corruption. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.14, in addition to Input from Bulgaria for the 2022 Rule of Law Report, p.16.

<sup>142</sup> The Centre allows for monitoring the actions of the employees of the Ministry of Interior, including border police officers, in real time. Input from Bulgaria for the 2022 Rule of Law Report, p.24.

<sup>143</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.16.

<sup>144</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.24.

<sup>145</sup> All employees of the National Revenue Agency have undergone mandatory electronic self-training in order to get acquainted with the updated Code of Ethics of the National Revenue Agency. All new employees in the specialized administration in the National Customs Agency in 2021 have been trained in prevention and counteraction to corruption, conflict of interest and the Code of Conduct for employees in the state administration and the Code of Conduct for Customs officials. Input from Bulgaria for the 2022 Rule of Law Report, pp.19-20.

<sup>146</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.17.

<sup>147</sup> The Public Register Directorate processed information on a total of 883 Senior Public Office Holders who did not submit or submitted the relevant declaration outside the statutory deadline during the year. Activity Report for the Commission for Anti-Corruption and Illegal Assets Forfeiture of 2021.

establishing an administrative violation in cases of both failure to submit and wrongly submitted asset declarations<sup>148</sup>. A tender for designing an online platform to file and verify declarations of asset and conflict of interests was launched in December 2021<sup>149</sup>. In December 2021, the Anti-corruption Commission adopted guidelines concerning the procedure to file declarations of property and interests<sup>150</sup>. Since July 2021, officers of the National Customs Agency<sup>151</sup> are required to sign declaration of assets, including bank accounts<sup>152</sup>.

**Lobbying lacks a dedicated regulation.** As noted in the 2020 and 2021 Rule of Law Reports, there are no specific obligations for the registration of lobbyists or reporting of contacts between public officials and lobbyists<sup>153</sup>. Milestones have been included in the framework of the RRP to regulate lobbying activities. As a result, legislative measures need to be adopted by the end of 2023 to specifically regulate lobbying activities in the context of public decision-making<sup>154</sup>.

**Provisions are in place for the audits on political party financing.** The National Audit Office (NAO) is responsible for carrying out audits on the consistency of financial activities, revenue, expenditure and management of assets made available to political parties<sup>155</sup>. On 8 January 2022, the NAO adopted a report covering the period from January to December 2020 and auditing the financial activities and real estate given to political parties<sup>156</sup>. Moreover, political parties submit an annual report to the National Audit Office, which is responsible for maintaining the Unified Public Register during elections. The Register renders public information about the participants in the elections, such as donors; type, purpose and amount of donations made; the funds provided by the candidates and the members of the initiative committees; the declarations of origin of the donated and provided funds; the reports of the parties, initiative committees and coalitions on revenues, expenditures and payment commitments in connection with the election campaign<sup>157</sup>. According to the law<sup>158</sup>, the Committee for Combating Corruption, Conflict of Interest and Parliamentary Ethics shall provide explanations to the Members of the Parliament on the application of the ethical norms, and may establish a breach of ethics rules, issue decision and impose measures<sup>159</sup>.

**A working group tasked to prepare a draft regulation on the protection of whistleblowers has been established.** The Anti-Corruption Commission is responsible for

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<sup>148</sup> Activity Report for the Commission for Anti-Corruption and Illegal Assets Forfeiture of 2021.

<sup>149</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.20.

<sup>150</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.22.

<sup>151</sup> Decree No. 227 of 13.07.2021 of the Council of Ministers, See also Input from Bulgaria for the 2021 Rule of Law Report, p.25.

<sup>152</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.25.

<sup>153</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.14, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.15.

<sup>154</sup> Notably, a concept note shall be prepared on the regulation of lobbying, and legislative measures shall be adopted to regulate lobbying activities in the context of public decision-making.

<sup>155</sup> Art. 172 of the Election Code.

<sup>156</sup> National Audit Office, Audit Report No. 0600100321 of 8 January 2022.

<sup>157</sup> Art. 171 of the Election Code.

<sup>158</sup> Rules of Organisation and Procedure of the National Assembly, Issued by the National Assembly Prom. SG No. 35/2 MAY 2017; amend. SG No. 34/20 APR 2018.

<sup>159</sup> Such as reprimand, censure or temporary removal. Rules of Organisation and Procedure of the National Assembly, Issued by the National Assembly Prom. SG No. 35/2 MAY 2017; amend. SG No. 34/20 APR 2018.

receiving whistleblowing complaints in cases of corruption or conflict of interest. In September 2021, the Ministry of Justice established a working group tasked to prepare draft regulation on the protection of whistleblowers<sup>160</sup>. The consultation process on the draft amendments for a regulation on the protection of whistleblowers ended on 23 May 2022<sup>161</sup>. At the time of publication of this report, the proposals for changes in the draft amendments received during the public consultation were being processed. . Nevertheless, as part of Bulgaria's engagements resulting from the adoption of the RRP, the introduction of legislative measures is planned for September 2022 to align with the requirements of the EU directive for the protection of whistleblowers<sup>162</sup>.

**Bulgaria abolished its investor citizenship scheme.** The European Commission has frequently raised its serious concerns about investor citizenship schemes and certain risks, including corruption, that are inherent in such schemes.<sup>163</sup> On 24 March 2022, the Parliament repealed the provisions allowing for the naturalisation of investors based on an investor citizenship scheme<sup>164</sup>.

**Specific corruption-risks such as management of budget funds and conducting control activities, including procurement were identified, in the COVID-19 pandemic.** On 31 January 2022, the Ministry of Health performed a corruption-related risk assessment<sup>165</sup> during the COVID-19 pandemic, which underlined specific corruption risks in the area of management of budget funds and in the conducting of control activities, including procurement. The analysis prompted the adoption of an annual health sector anti-corruption plan, including mitigating measures<sup>166</sup>. In January 2021, the Anti-corruption Commission

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<sup>160</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.21.

<sup>161</sup> See Draft Law on the Protection of Persons Reporting or Disclosure of Violations on the website of the Council of Ministers for public consultations from 23 May 2022.

<sup>162</sup> Directive (EU) 2019/1937.

<sup>163</sup> As mentioned in the EU Commission's report of January 2019, those risks relate in particular to security, money laundering, tax evasion and corruption and the Commission has been monitoring wider issues of compliance with EU law raised by investor citizenship schemes.

<sup>164</sup> Pending applications under the repealed Art. 12a and 14a are terminated. See para. 7 of the adopted law. See also State Gazette No 26 of 1 April 2022. Following Russia's invasion of Ukraine, the Commission also called on Member States operating an investor citizenship scheme to repeal it immediately and to assess the possibility to revoke such naturalisations previously granted to certain Russian and Belarusian individuals (see Commission recommendation on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes (C(2022) 2028 final). Bulgaria did not provide information on any specific assessments carried out following the Commission Recommendation.

<sup>165</sup> Anti-corruption Plan of the Ministry of Health for 2022.

<sup>166</sup> Such as the following: Involvement of a larger number of experts in the preparation of technical assignments and technical specifications for public procurement and application of the rotation principle for the employees included in the commissions under the Public Procurement Act; Separation of procurement from control in public procurement; Prevention - analysis of the current rules, instructions and methodologies of administrative structures and secondary budget managers at the Minister of Health, in order to identify opportunities for establishing corrupt practices and on this basis to amend them to cross these opportunities; Introduction of the principle of re-inspections of sites by another team; Rotation of employees from the units with control functions; Establishment of an electronic system for data entry and circumstances within the statutory deadlines in the Executive Agency Medical Supervision; Development of unified for all regional health inspections, procedures and samples of documents for the provision of administrative services; Development of specific internal rules and procedures for declaring and establishing conflicts of interest of employees evaluating applications for authorization of trade in medicinal products and evaluating clinical trials in the Bulgarian Drug Agency; Conducting trainings on prevention and counteraction to corruption and conflict of interests in the structural units of the Ministry of Health and the secondary budget managers at the Ministry of Health. Input from Bulgaria for the 2022 Rule of Law Report, p.22.

published a report on the sector-specific risk of corruption<sup>167</sup>. In 2021, the Public Procurement Agency issued guidelines<sup>168</sup>, including standardised model contracts, aimed at clarifying public procurement procedures<sup>169</sup>. A report on the results of the public procurement monitoring the period 2018-2020, including corruption-risk, was adopted in 2021<sup>170</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

The Bulgarian legal framework is based on a set of constitutional safeguards and legislative measures, such as the Radio and Television Act<sup>171</sup>. The Access to Public Information Act regulates access to public information and the re-use of public sector information. The Compulsory Deposit of Copies of Printed and Other Works Act contains requirements regarding media ownership transparency (“Law on Deposit of Copies”)<sup>172</sup>. The institutional framework consists of the media regulator, the Council for Electronic Media (CEM), and the National Council for Journalistic Ethics and its executive body – the Ethics Commission<sup>173</sup>.

**While the legal framework concerning the media regulator remains unchanged, concerns have been flagged about the lack of sufficient safeguards to secure its complete independence in practice.** While certain legal safeguards are in place, the CEM has raised concerns about the availability of adequate and stable financial resources for its activities (resources have nonetheless increased in 2021) which might have an effect on its work independently from state pressure<sup>174</sup>. Moreover, several stakeholders have shared doubts about the lack of complete political independence in the activities carried out by the regulator and some commentators point to the fact that the very constitution of CEM inevitably exposes it to risks of political influence<sup>175</sup>.

**The media self-regulatory body is the National Council for Journalistic Ethics (NCJE), whose decisions are not always implemented in practice by the relevant media<sup>176</sup>.** The decisions of the Ethics Commission (the executive body of the NCJE) are only binding on the

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<sup>167</sup> The report is titled Analysis of anti-corruption plans for 2021 of primary and secondary budget authorising officer. The analysis revealed that the corruption risks are divided into areas as follows: 96 risks in management, disposal or spending of budget funds and assets, including procurement; 148 risks in control activities; 61 risks in provision of administrative services, concessions, issuance of licenses and permits, registration regimes; 17 risks in competitive procedures/competitions for entering persons in registers or for performing regulated professions; 44 risks in gaps in laws and unclear legislation, presupposing contradictory interpretation and/or application of regulations; 73 risks in other measures in view of the specific risks in the respective departments; and 117 risks in publicity measures. Input from Bulgaria for the 2022 Rule of Law Report, p.22.

<sup>168</sup> On the website of the Bulgarian Public Procurement Agency from 14 June to 16 July 2021 a set of seven guidelines was published.

<sup>169</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.19.

<sup>170</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.19.

<sup>171</sup> Radio and Television Act.

<sup>172</sup> The enforcement of the Law on Deposit of Copies is carried out by the Ministry of Culture.

<sup>173</sup> Bulgaria ranks 91st in the 2022 Reporters without Borders World Press Freedom Index compared to 112th in the previous year.

<sup>174</sup> Information received from CEM during the country visit and confirmed by written input. See also 2021 Rule of Law Report, p.16.

<sup>175</sup> Contributions from Reporters sans frontières and International Press Institute for the 2022 Rule of Law Report. See also 2022 Media Pluralism Monitor, p.11.

<sup>176</sup> The media self-regulatory body acts on the basis of the Code of Ethics adopted in 2004 and signed by a number of media outlets. For the exact list of signatories, see ‘List of media which have signed the Ethics Code’.

signatories of the Bulgarian Media Code of Ethics and voluntary for other media players. Some stakeholders have expressed concerns that the decisions against media acting in breach of journalistic ethics have not always been implemented in practice and that no sanctions were imposed<sup>177</sup>.

**Some issues remain as regards the effective transparency of media ownership and related enforcement of these obligations.** In addition to the CEM public register covering media ownership structures of radio and television operators<sup>178</sup>, the Ministry of Culture hosts a public register based on declarations made by any media outlet of its beneficial ownership, as well as the funding received from public funds, political parties, etc. Although the legal framework is in place, some media do not declare their ownership structure (in particular online media)<sup>179</sup> while others declare owners who are not the ones that effectively control the media outlet<sup>180</sup>. A revision of the 2018 Law on the Deposit of Copies is being considered by the current government to improve the effective availability of media ownership information<sup>181</sup>.

**While the lack of a clear regulatory framework regarding transparency in the allocation of state advertising remains unchanged, some measures have been taken to improve transparency in practice.** Notably, this takes the form of a list of contracts awarded for the purpose of state advertising, including recipient and amount received, which can be consulted on a publicly-available website<sup>182</sup>. Stakeholders underlined however remaining issues in particular when it comes to a lack of transparency when media outlets receive state advertising through intermediaries (media agencies)<sup>183</sup>. The 2022 Media Pluralism Monitor also considered that state regulation of resources and support to the media sector, including state advertising resources, scored at high risk (97%) and that the lack of regulatory standards regarding the distribution of state advertising remains problematic<sup>184</sup>.

**Media in Bulgaria are subject to a set of rules regarding their operation on the market, but there are no specific media pluralism laws restricting media ownership and therefore potential media concentration.** Media can rely on the principle of editorial independence from economic and political actors which is set out in the Radio and Television Law and features in the Code of ethics of Bulgarian media<sup>185</sup>. Apart from general competition rules which are underpinned by economic considerations, no specific rules exist when it comes to activities that may have an impact on media concentration<sup>186</sup>. As to the entry and operation of media service providers, the law provides for different regimes when it comes to

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<sup>177</sup> Written contribution from Reporters sans frontières for the 2022 Rule of Law Report. Information also received from Association of European Journalists in Bulgaria in the context of the country visit.

<sup>178</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.16.

<sup>179</sup> According to the Bulgarian authorities, identifying the actual owners of online publications is often infeasible in practice.

<sup>180</sup> Information received from the Ministry of Culture and media stakeholders in the context of the country visit. See also written contributions from Reporters sans frontières and International Press Institute for the 2022 Rule of Law Report.

<sup>181</sup> Input from Bulgaria for the 2022 Rule of Law Report.

<sup>182</sup> Input from Bulgaria for the 2022 Rule of Law Report.

<sup>183</sup> Information received from Association of European Journalists in Bulgaria in the context of the country visit, see also written contribution from Reporters sans frontières for the 2022 Rule of Law Report.

<sup>184</sup> 2022 Media Pluralism Monitor, p.15.

<sup>185</sup> Art. 5 of the Radio and Television Law; Section 3 of the Code of Ethics.

<sup>186</sup> Information received from the Ministry of Culture in the context of the country visit.

linear services (licensing/registration requirement) and non-linear services (notification requirement)<sup>187</sup>.

**Certain legal safeguards exist regarding the independence of public service media but they appear to be insufficient.** The media regulator CEM appoints the Director Generals of the Bulgarian national radio (BNR) and television (BNT) following a public competition and after hearings of the relevant candidates. Director Generals submit reports on their activities to CEM at regular intervals (currently every six months).<sup>188</sup> The management boards of the BNR and the BNT consist of five members each, and are endorsed by the media regulator upon proposal by the Directors General<sup>189</sup>. The appointment procedure for management and board functions, taken together with the funding of public service media, does not seem to guarantee independence from the government or other political influence<sup>190</sup>. A revision of the law is in preparation in order to strengthen the independence of public service media and define in more detail the public service remit and the related financing<sup>191</sup>.

**The professional environment for journalists appears to have improved slightly since the last report.** Stakeholders consider that the press has been able to express itself more freely in comparison to past years<sup>192</sup>. Nevertheless, issues remain, in particular when it comes to access to public information<sup>193</sup>, working conditions and pressure on journalists at local level as well as the increase of strategic lawsuits against public participation, so-called SLAPPs cases<sup>194</sup>. Three new alerts regarding attacks and harassment of journalists were registered in 2022 on the Council of Europe Platform to promote the protection of journalism and safety of journalists. This includes physical threats against an investigative journalist and defamation lawsuits, including heavy fines in one defamation case. Finally, no measures supporting directly the media sector and its journalists have been put in place in the context of the COVID-19 pandemic<sup>195</sup>.

#### **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 and interpretative decisions. The National Assembly has a final decision-making power when adopting laws<sup>196</sup>. Bulgaria has two national human rights institutions. First, the

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<sup>187</sup> Input from Bulgaria for the 2022 Rule of Law Report.

<sup>188</sup> Input from Bulgaria for the 2022 Rule of Law Report.

<sup>189</sup> Art. 58(1) Radio and Television Act.

<sup>190</sup> 2022 Media Pluralism Monitor, p.15. In particular, the MPM 2022 implies that the selection procedure for PSM management does not safeguard against politically engaged nominees.

<sup>191</sup> Information received in the context of the country visit (e.g. Ministry of Culture and media stakeholders).

<sup>192</sup> Information received from Association of European Journalists and National Council for Journalistic Ethics in the context of the country visit.

<sup>193</sup> The 2022 Media Pluralism Monitor notes that while institutional websites provide better access to information functions in 2021 compared to previous years, explicit or tacit refusals of governmental bodies to provide public information or provide information that cannot be read in practice continue to take place.

<sup>194</sup> 2022 Media Pluralism Monitor. See also written contribution from Reporters sans frontières for the 2022 Rule of Law Report.

<sup>195</sup> The 2022 Media Pluralism Monitor indicates that some media outlets have resorted to financial instruments which were not media-specific and meant to limit the impact of the pandemic on the economy.

<sup>196</sup> 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. After more than one year of various court proceedings, at the end of 2021 a panel of three judges from the Supreme

Ombudsperson is an independent constitutional body, elected by the National Assembly and tasked with the promotion and protection of human rights and fundamental freedoms which has an A-status accreditation from GANHRI<sup>197</sup>. Second, the Commission for the Protection against Discrimination is a body that implements policies in the spheres of gender equality and non-discrimination which has a B-status accreditation from GANHRI.

**The establishment of a Post-monitoring Mechanism is progressing.** As indicated in previous reports<sup>198</sup>, the Government committed to set up a Coordination and Cooperation Council ('post-monitoring council') with the aim of assessing Bulgaria's progress in judicial reform, fight against corruption and organised crime in an independent, transparent, and objective manner. This body, which would become operational once the CVM is formally lifted, includes a Civic Council which provides for the representation of civil society in the mechanism. A positive development follows from the recent ruling of the Supreme Administrative Court<sup>199</sup> as regards the procedure to select members of the Civil Council in the framework of the post-monitoring mechanism. The Court's decision concerned the successful appeal made by an NGO to take part in the Civil Council previously rejected by the former Minister of Justice<sup>200</sup>. It is positive that the role of civil society is acknowledged as an important and vital element of any national policy development and implementation. On 23 June 2022, the Government published for public consultation draft amendments to the decision for the establishment of the Post-monitoring Mechanism<sup>201</sup>. The new amendments aim at extending the competences of the Mechanism to cover the topics included in the Commission's annual Rule of Law Reports. Moreover, the draft envisages that the Mechanism would start functioning immediately after its adoption by the Council of Ministers independently from the CVM.

**New procedural rules have been adopted to improve the law-making process.** In 2021, Bulgaria held three parliamentary elections<sup>202</sup>. All three of the Parliaments made amendments to their Rules of Procedure, which led to an improvement of the rules for the law-making process. As a result, all draft legislation proposed by Members of Parliament should now be

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Administrative Court ruled in favour of Bulgarian Institute for Legal Initiatives (the decision is available here in BG only e 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.

<sup>197</sup> Global Alliance of National Human Rights Institutions.

<sup>198</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.17.

<sup>199</sup> The decision of 12 December 2021 (Decision No. 12800 on Administrative case No. 7245/2020) which held the Minister of Justice responsible of violating Art. 146, points 3 and 4 of Administrative procedure code (substantial violation of administrative procedure rules and of contradiction with substantive legal provision). See also the Contribution from the Bulgarian Institute for Legal Initiatives for the 2022 Rule of Law Report. After more than one year of various court proceedings, at the end of 2021 the Supreme Administrative Court ruled in favour of the Bulgarian Institute for Legal Initiatives. The foundation has sued the Minister of Justice for rejecting without a reason its selection to be part of the Civic Council established by Decree 240 of the Council of Ministers for the creation of an internal monitoring mechanism related to the fight against corruption and the judicial reform. That internal mechanism is supposed to replace the CVM at national level.

<sup>200</sup> Contribution from the Bulgarian Institute for Legal Initiatives for the 2022 Rule of Law Report.

<sup>201</sup> See draft amendments of Decree No. 240 of the Council of Ministers of 2019 on the website of the Council of Ministers for public consultations from 23 June 2022.

<sup>202</sup> Regular Parliamentary elections were held on 4 April 2021. However, due to political fragmentation in Parliament and the resulting impossibility to form a ruling coalition, two snap parliamentary elections were held on 11 July 2021 and on 14 November 2021.



accompanied by a reasoning and an impact assessment<sup>203</sup>. Moreover, a summary of stakeholders' opinions<sup>204</sup> is to be presented with the draft laws. In addition, the possibility of introducing important legislative changes through amendments to other legal acts between the first and the second reading is now limited to amendments related to the matter of the initially submitted act and subject to the approval by a two-thirds majority of the committee responsible<sup>205</sup>. Currently, there is no data yet to confirm whether the practices followed by the previous Parliaments continue to be used or whether the new rules are fully respected. The quality of law-making is an important factor for investor confidence and a reason for concern about effectiveness of investment protection for 24% of companies in Bulgaria<sup>206</sup>. Stakeholder feedback suggests that quick adoption of laws before prior assessment results in costs and legal uncertainty for business<sup>207</sup>.

**The emergency situation regime related to the COVID-19 pandemic ended.** As described in the 2021 Rule of Law Report<sup>208</sup>, the emergency regime ('emergency epidemic situation')<sup>209</sup> adopted on 12 May 2020, and declared on 13 May 2020 was last renewed until 31 March 2022<sup>210</sup>. Further easing of measures was introduced through an order of the Minister of Health on 17 March 2022, including the abolishment of the requirement for a 'green certificate' for all activities and events in the country<sup>211</sup>.

**On 1 January 2022, Bulgaria had 92 leading judgments of the European Court of Human Rights pending implementation**<sup>212</sup>. At that time, Bulgaria's rate of leading judgments from the past 10 years that remained pending was at 55% and the average time that the judgments had been pending implementation was 6 years and 4 months<sup>213</sup>. One of the oldest leading judgments pending implementation for 22 years concerns the excessive use of force by law enforcement agents<sup>214</sup>. On 1 July 2022, the number of leading judgments pending implementation has increased to 97<sup>215</sup>.

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<sup>203</sup> Art. 70 of the Rules of Procedure.

<sup>204</sup> Art. 70, para. 2, pp. 2 of the Rules of Procedure.

<sup>205</sup> Art. 78, para. 3 of the Rules of Procedure.

<sup>206</sup> Figure 54, 2022 EU Justice Scoreboard indicates that "Frequent changes in legislation or concerns about quality of the law-making process" are of concern to 24.5% of companies in Bulgaria.

<sup>207</sup> Figure 55, 2022 EU Justice Scoreboard.

<sup>208</sup> To be noted that the legislative process was the regular one except for the emergency measures themselves. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.19.

<sup>209</sup> 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.

<sup>210</sup> Decision of the Council of Ministers of 24 November 2021.

<sup>211</sup> Order No. RD-01-138/17.03.2022.

<sup>212</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>213</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 30.

<sup>214</sup> Judgment of the European Court of Human Rights of 18 May 2000, *Velikova v. Bulgaria*, 41488/98, pending implementation since 2000.

<sup>215</sup> Data according to the online database of the Council of Europe (HUDOC)

**A Council for Civil Society Development has been appointed.** On 16 February 2022, the Government appointed the members of the Council for Civil Society Development. The Council was established through legislative amendments, which entered into force on 1 January 2018<sup>216</sup>, while the rules governing the operation of the Council were adopted in 2019<sup>217</sup>. The election of the Council's first members took place on 14 May 2020<sup>218</sup>. However, in May 2021, these first members published an open letter to the then interim Prime Minister claiming that they had not been able to perform any activity over the previous year and urged him to take the necessary measures that would allow the consultative body to begin operating<sup>219</sup>. The main purpose of the Council is to participate in the drafting and implementation of policies in support of civil society development. In addition, the Council is also responsible for the advancement of the national civil society strategy, for making available the information on funding for civil society organisations, and for the definition of priority areas for development<sup>220</sup>. At present however, the civil space is still considered narrowed<sup>221</sup>.

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<sup>216</sup> Art. 4 of the Non-Profit Legal Entities Act.

<sup>217</sup> Council of Ministers (2019), Rules on the organisation and activity of the Council for Civil Society Development, 10 September 2019.

<sup>218</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights - Bulgaria, p. 3.

<sup>219</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights - Bulgaria, p. 4.

<sup>220</sup> Art. 4 of the Non-Profit Legal Entities Act. See also Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights - Bulgaria, p. 4.

<sup>221</sup> See rating given by CIVICUS, Bulgaria. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. See also contribution from European Civic Forum for the 2022 Rule of Law Report, p. 9, public participation and civil society capacities remain low due to lack of public policies (or lack of implementation thereof) aimed at developing the sector, and lack of appropriate funding for advocacy work, in the context of weak rule of law infrastructures.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).*

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## **Annex II: Country visit to Bulgaria**

The Commission services held virtual meetings in March 2022 with:

- Anti-Corruption Council
- Anti-corruption Fund Foundation
- Association of Bulgarian Radio and TV Operators
- Association of European Journalists – Bulgaria
- Association of Prosecutors in Bulgaria
- Audio-Visual regulator – Council for Electronic Media
- Bulgarian center for not-for-profit law
- Bulgarian Helsinki Committee
- 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
- Group of academics
- Initiative Justice for Everyone
- Inspectorate to the Supreme Judicial Council
- Ministry of Culture
- Ministry of Interior
- Ministry of Justice
- National Council for Journalistic Ethics
- Office of the Prosecutor General
- Open Society Institute
- Public service media – Bulgarian National Radio
- Specialised Criminal Court
- Specialised Prosecutor's Office
- Supreme Administrative Court
- 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
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)

- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe