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**COMMISSION STAFF WORKING DOCUMENT**

**2023 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**

**2023 Rule of Law Report**

**The rule of law situation in the European Union**

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## **ABSTRACT**

Until 2019, reforms in Bulgaria in the area of justice and anti-corruption were followed by the Commission under the Cooperation and Verification Mechanism (CVM) and are, since then, being monitored under the Rule of Law Mechanism. By a letter of 26 June, the Prime Minister informed the Commission about the measures taken by Bulgaria which fulfilled the last outstanding commitment that was listed in the conclusions of the 2019 CVM report, as well as including further measures to continue upholding the rule of law

The Parliament adopted a law, as part of the rule of law commitments under the RRP, establishing a mechanism for the effective accountability and criminal liability of the Prosecutor General and his/her deputies, as well as judicial review of prosecutorial decisions not to open an investigation. This law addresses the long-standing concerns from previous Rule of Law Reports and meets the last specific commitment made by Bulgaria under the CVM. Concerns remain related to the composition of the Supreme Judicial Council and the Inspectorate to it. Pending competitions for promotion were concluded but a significant number of judges remain seconded for an extended period. There is some improvement in the availability of electronic communications within the justice system, and some steps were taken to amend the legislation on the introduction of fully digitalised justice. Administrative justice continues to be efficient, but a lack of disaggregated data hampers the evaluation of the overall efficiency of justice. New laws regarding the expansion of legal aid and mandatory judicial mediation were adopted and have been welcomed by most stakeholders.

The National Anti-Corruption Strategy continues to be implemented. Corruption prevention measures aimed at improving the integrity of specific sectors of the public administration, including the police and the judiciary, continue to be deployed. Whistleblowers' legislation was adopted. The reform of the Anti-Corruption Commission will still need to be adopted as part of the commitments under the RRP, and draft legislation is being discussed in the Parliament. The effectiveness of investigations and a robust track-record of prosecution and final convictions in high-level cases of corruption continues to be an issue. Serious gaps remain on integrity measures for top-level functions. Rules on asset and interest declarations for public officials are systematically implemented but the control mechanisms need to be improved. A working group has been set up to examine the issue of lobbying as part of the commitments under the RRP, and a public debate will be organised based on ongoing work by this group.

The Government took measures to set up a working group to reflect on updates to the legislative framework on media freedom and pluralism, including the protection of journalists from SLAPP cases. The lack of a clear framework to ensure transparency in the allocation of state advertising remains a concern despite the creation of a working group which is meant to start working also on this topic. As regards media ownership transparency, reflections are ongoing about a more effective enforcement of media ownership obligations. Journalists have been faced with lawsuits and encounter various threats, such as online harassment which is on the rise. Some positive trends as regards access to public information can be noted.

An improved national Post-monitoring Mechanism was established and is functioning, with an expanded scope to cover the EU Rule of Law Report. The renewal of the mandates of independent and regulatory authorities has been delayed due to the political situation. There are new procedural rules in place, but concerns regarding the law-making process persist. The Council for Civil Society Development has begun functioning and is working on a national funding mechanism for the sector. Concerns were raised as regards a draft law on foreign agents, which was resubmitted to the legislature by one of the political parties in Parliament despite the negative opinion of the Minister of Justice on the first draft law.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2022 Rule of Law Report, Bulgaria has (made):

- Significant progress on ensuring 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.
- No progress yet on advancing 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.
- No progress yet on taking steps to adapt the composition of the Supreme Judicial Council, taking into account European standards on Councils for the Judiciary.
- Some progress regarding corruption prevention measures aimed at improving the integrity of specific sectors of the public administration, including the police and the judiciary.
- No progress on improving the effectiveness of investigation and a robust track-record of prosecution and final convictions in high-level cases of corruption including through the institutional reform of the Anti-Corruption Commission and specialised judicial authorities
- Some progress on improving transparency in the allocation of state advertising, in particular with regard to state advertising contracted through intermediaries, such as media agencies.

On this basis, and considering other developments that took place in the period of reference, and 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, it is recommended to Bulgaria to:

- Take steps to adapt the relevant legislative framework to avoid long-term secondment of judges to fill in vacant positions, taking into account European standards on secondment of judges.
- Advance with the preparation of 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.
- Step up efforts to adapt the composition of the Supreme Judicial Council, taking into account European standards on Councils for the Judiciary.
- Ensure an improved effectiveness of investigations and a robust track-record of prosecution and final judgments in high-level corruption cases including through the institutional reforms of the Anti-Corruption Commission.
- Improve the integrity of top executive functions, taking into account European standards, in particular by ensuring that clear integrity standards for the Government as well as an appropriate sanctioning mechanism are in place.
- Advance with the work aimed at improving transparency in the allocation of state advertising, in particular with regard to state advertising contracted through intermediaries, such as media agencies.

## I. JUSTICE SYSTEM

The judicial system of Bulgaria<sup>1</sup> includes a total 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>2</sup>. The Prosecutor's Office has a unified structure and is headed by the Prosecutor General<sup>3</sup>. Bulgaria participates in the European Public Prosecutor's Office (EPPO). 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>4</sup> are appointed, promoted, transferred and dismissed by their respective chamber (Judges' or Prosecutors') of the SJC<sup>5</sup>. In addition to the SJC, activities of magistrates are supervised by the Inspectorate. The Supreme Bar Council is an independent and self-governing body established by law<sup>6</sup>.

### Independence

#### **The level of perceived judicial independence in Bulgaria continues to be low among the general public and continues to be low among companies, despite recent improvement.**

Overall, 30% of the general population and 33% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023<sup>7</sup>. According to data in the 2023 EU Justice Scoreboard, the perceived judicial independence among the general public has consistently decreased in the last few years, although it remains higher than in 2016 (23%). In particular, this figure has decreased in comparison with previous years (32% and 31% in 2021 and 2022, respectively). The perceived judicial independence among companies has

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<sup>1</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>2</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 2.

<sup>3</sup> Art. 126 to 128 from the Constitution.

<sup>4</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>5</sup> 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 and its chair. The Plenary of the Supreme Judicial Council (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.

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

<sup>7</sup> Figures 49 and 51, 2023 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%).

increased in comparison with 2022 (28%), as well as in comparison to 2016 (21%), but still under the 43% it had in 2021.

**A law for the effective accountability and criminal liability of the Prosecutor General and his/her deputies was adopted by Parliament.** As mentioned in previous reports<sup>8</sup>, the lack of a possibility for an effective criminal investigation of the Prosecutor General and his/her deputies had been a long-standing issue, which was raised by the European Commission<sup>9</sup>, the European Court of Human Rights (ECtHR)<sup>10</sup> and the Council of Europe<sup>11</sup>. The Government committed, in the context of the Bulgarian Recovery and Resilience Plan (RRP)<sup>12</sup>, to establish an effective mechanism for the accountability and criminal liability of the Prosecutor General and his/her deputies<sup>13</sup>. On 26 May 2023<sup>14</sup>, the Parliament adopted the law, addressing the long-standing concerns from previous Rule of Law Reports, and meeting the last specific commitment made by Bulgaria under the CVM<sup>15</sup>. The adoption came following an opinion of the Venice Commission on the draft law. During their session on 21-22 October 2022, the Venice Commission adopted an opinion on the draft law, considering that the mechanism proposed by the draft law could be read as being consistent with the constitutional framework<sup>16</sup>, and would be capable of aligning the system to a considerable extent with the requirements of the European Convention for Human Rights (ECHR), as set out in the judgments of the ECtHR in cases *Kolevi* and *S. Z. v. Bulgaria*<sup>17</sup>. The Council of Europe's Committee of Ministers equally considered that the draft law overall responded to its Interim Resolution of 2019<sup>18</sup>, while remaining within the existing constitutional framework and providing for key safeguards<sup>19</sup>. The adopted law provides for a mechanism according to which, when legal grounds for starting an investigation against the Prosecutor General and his/her deputies exist, a notification is sent to the chair of the Criminal Chamber of the Supreme Cassation Court

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<sup>8</sup> See 2020, 2021 and 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Bulgaria, pp. 3-5.

<sup>9</sup> Progress report Bulgaria 2019, COM(2019)498, p. 6.

<sup>10</sup> ECtHR, judgment of 5 November 2009, *Kolevi v. Bulgaria*, paras. 121-127, 129, 135 and 136.

<sup>11</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>12</sup> 2022/0112 (NLE) - Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Bulgaria of 28 April 2022.

<sup>13</sup> As well as a judicial review of prosecutorial decisions not to open an investigation.

<sup>14</sup> The draft law was tabled on 30 December 2022 but was not adopted before the dissolution of the Parliament on 2 February 2023. Due to that dissolution, it lapsed but it was reintroduced by the interim Government in the 49th National Assembly on 13 April 2023.

<sup>15</sup> See commitments made at the time by the Bulgarian Government, notably the commitment to put in place procedures concerning the accountability of a Prosecutor General in line with Venice Commission recommendations. Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism, COM/2019/498 final, p. 13.

<sup>16</sup> As defined in the Constitutional Court Decision No. 7 of 11 May 2021.

<sup>17</sup> ECtHR, judgment of 5 November 2009, *Kolevi v. Bulgaria*.

<sup>18</sup> Committee of Ministers of the Council of Europe Interim Resolution CM/ResDH(2019)367 of 5 December 2019 and CM/Notes/1362/H46-6 of 3-5 December 2019.

<sup>19</sup> Council of Europe, Supervision of the execution of the European Court's judgments, CM/Del/Dec(2022)1451/H46-9, para. 6.

(SCC). Subsequently, a randomly selected judge<sup>20</sup> would be appointed as a prosecutor responsible for the investigation of the Prosecutor General and his/her deputies. As regards the judge selected, it would be for the Prosecutorial Chamber of the SJC to appoint that judge as a prosecutor<sup>21</sup>. In case the Prosecutor General or his/her deputies are indicted, and following the same procedure, a second judge would be appointed to the position of Deputy Prosecutor General tasked with the hierarchical control of the acts taken by the first judge appointed as prosecutor<sup>22</sup>. On 5 June 2023, the Prosecutor General challenged the constitutionality of the law<sup>23</sup>.

**The mandate of the Prosecutor General was terminated following further requests that had been filed before the Supreme Judicial Council.** As mentioned in last year's report<sup>24</sup>, following the confirmation by the Constitutional Court<sup>25</sup> of the right of the Minister of Justice to request to the Supreme Judicial Council for an early termination of the Prosecutor General's mandate, on 7 July 2022, four months after the request was filed<sup>26</sup>, the SJC held a hearing on the topic and rejected the proposal<sup>27</sup>. Two more requests have been filed by members of the Prosecutorial Chamber of the SJC<sup>28</sup>. On 5 June 2023<sup>29</sup>, the Plenary decided that the request is admissible and will be combined with the first one for discussion on the merits. The Prosecutor's Office published a press release on 18 May 2023 in defence of the publicly

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<sup>20</sup> The selection will be from a list of judges having a rank of a Supreme Court judge with prior experience in criminal law matters. The judges who are fulfilling the requirements should consent to being part of that list.

<sup>21</sup> This magistrate would then gain the power to conduct investigations and to file an indictment before the court.

<sup>22</sup> Both judges would remain in function until the conclusion of the criminal proceedings but no longer than two years. If the proceedings are not concluded after two years, they could decide to extend their mandate or two new judges would be appointed following the same procedure. If the criminal proceedings are concluded before the end of the two years, the two judges are reappointed at their previous positions.

<sup>23</sup> See Constitutional Court Case No. 10/2023. A referral to the Constitutional Court does not automatically lead to non-application of the law. It would stop being applied only after a decision for being unconstitutional. Nevertheless, according to Art. 54 of the Administrative Procedure Code, any ongoing administrative procedure would have to be suspended if there is a request for constitutionality check related to it, and if the Constitutional Court decided that the request is admissible.

<sup>24</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 6.

<sup>25</sup> Constitutional Court Decision No. 1 of 2022/Case No. 17 from 2021.

<sup>26</sup> The Minister of Justice requested the early termination of the Prosecutor General's mandate on 2 March 2022. See Plenary of the SJC, Agenda No.8 of 2022.

<sup>27</sup> See Plenary of the SJC, Protocol No.23 of 2022.

<sup>28</sup> See press release on the website of the SJC of 12 May 2023 and press release on the website of the SJC of 23 May 2023. The two requests were filed by a majority of the Parliament-elected quota of members of the SJC. The first one of 12 May 2023, was filed by four members elected by the Parliament and two members elected by their peers. The second one of 22 May 2023, was filed by three members elected by the Parliament and one member elected by their peers.

<sup>29</sup> Protocol No. 14 and 16 from the SJC plenary meeting of 25 May and 5 June 2023. The first request was discussed on 17 May 2023 in the Prosecutor's chamber, and it was decided to transmit the request to the ethics and disciplinary committees. The same request was discussed on 25 May 2023 in the Plenary of the SJC and it was decided to discuss the merits of the request. During the meeting on 1 June 2023, the SJC created a list of witnesses that will be questioned in the context of this proceeding. Protocol No. 17 from the Prosecutor's chamber meeting of 17 May 2023. The request for the early termination states as a basis the position of the Deputy Prosecutor General and Director of the National Investigative Service published on 8 May 2023 by the Bulgarian Telegraph Agency (BTA). The same had also filed a request for a hearing before the SJC on 16 May 2023 on the same issue. These were related to alleged irregularities during an ongoing investigation of an explosion that took place aside of a road where the Prosecutor General's convoy was passing by.

announced calls for the resignation of the Prosecutor General<sup>30</sup>. On 29 May 2023, the Prosecutor General filed a request to the Constitutional Court, to clarify whether a SJC with an expired mandate has the power to decide on the early termination of his mandate<sup>31</sup>. During the discussions on the 8 and 12 June 2023, the first request of 12 May was withdrawn<sup>32</sup>. However, based on the second request of 22 May the Plenary of the SJC decided to early terminate the mandate of the Prosecutor General for undermining the prestige of the judiciary<sup>33</sup>. The early termination vote relied on one of the new provisions introduced by the new law on the accountability and criminal liability of the Prosecutor General – the reduced majority from 17/25 to 13/25. On 16 June 2023, the Prosecutorial chamber of the SJC selected the Deputy Prosecutor General and Director of the National Investigative Service<sup>34</sup> as an *ad interim* Prosecutor General until a new Prosecutor General is appointed<sup>35</sup>.

**The draft law for the introduction of judicial review against decisions of prosecutors not to open investigations was adopted.** These provisions are part of the same draft law as the mechanism for the accountability and criminal liability of the Prosecutor General and his/her deputies, which was originally tabled on 30 December 2022, as well as part of the commitments under the RRP. On 26 May, Parliament adopted the law, thus providing judicial review covering decisions on investigations regarding serious crimes<sup>36</sup> and a number of other, corruption related crimes<sup>37</sup>. The review has a limited scope and the decision not to open an investigation first has to be appealed before a higher standing prosecutor, and only in case of a confirmatory decision by this higher standing prosecutor would there be a possibility to appeal the confirmed decision before the court<sup>38</sup>.

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<sup>30</sup> See press release of the Prosecutor's Office of 18 May 2023. <https://prb.bg/en/news/64771-prosecutor-general-ivan-geshev%3A-i-will-finish-my-mandate-no-matter-what-it-costs>. The Prosecutor's Office also started investigations against several former and current members of Parliaments.

<sup>31</sup> See Case No. 9 of 29 May 2023.

<sup>32</sup> See Protocol No. 17 of the SJC Plenary from 8 June 2023. The members of the SJC motivated their decision with the recent decision of a prosecutor not to open an investigation on the same issue due to the fact that they did not find that the Prosecutor General committed any crime. The aforementioned decision was taken prior to the adoption of the law on the accountability and criminal liability of the Prosecutor General.

<sup>33</sup> See Protocol No. 17 of the SJC Plenary from 12 June 2023.

<sup>34</sup> On 2 June 2023, between the first and second vote, the Parliament adopted amendments to the JSA with which separated, to certain extent, the National Investigative Service from the Prosecutor's Office. On 14 June 2023, the President of the Republic vetoed the amendments due to potential issues with the Constitution and the Rules of Procedure of the Parliament. The Parliament has begun discussing the veto and took into account the concerns raised by the President in the Legal Committee discussions on the topic. Moreover, the provisions that were not vetoed but were part of the same package of amendments remain non-promulgated until there is a decision of the Parliament on the vetoed provisions.

<sup>35</sup> See Protocol No. 21 of the Prosecutorial chamber from 16 June 2023. Moreover, on 19 June 2023, the Bulgarian Judges Association published a position denouncing the procedure for selecting an *ad interim* Prosecutor General, as it was done solely by the Prosecutorial chamber of the SJC, and not by the Plenary of the SJC, which would be the normal procedure for electing a new Prosecutor General.

<sup>36</sup> Art. 93 (7) of the Criminal Code – A "serious crime" is one punishable by law with imprisonment for more than five years, life imprisonment or life imprisonment without parole.

<sup>37</sup> Art. 119-122, 123 (4), (124) (1) and (2) and (4), (126)(1), (127)(4), (131), (132), (133), (134) to (141), (153), (154a), (155)(1), (159)(3), (6), (7), (162) to (165), (167)(1), (169),(169a), (184) to (187), (188)(1) and (2), 225c, 282, 283, 304b(2), 305a, 307, (331)(3), (335), (343), (343a), (349a), (352)(1), (2), (4), (353), (4), (353b)(4) and (5), (353d)(1), (2), (3) and (5), (379), (387) and (419a) of the Criminal Code.

<sup>38</sup> According to the authorities, this structure of the judicial review would help avoiding excessive workload for both judges and prosecutors, as recommended by the Council of Europe in the Committee of Ministers of the Council of Europe decisions CM/Del/Dec(2021)1419/H46-8, para. 10, CM/Del/Dec(2021)1398/H46-6, para.

**There has been no progress yet with the reform regarding the composition of the Supreme Judicial Council.** The 2022 Rule of Law Report recommended to Bulgaria to “take steps to adapt the composition of the Supreme Judicial Council, taking into account European standards on Councils for the Judiciary”<sup>39</sup>. The situation mentioned in the previous Rule of Law Reports, and the concerns raised there<sup>40</sup>, that judges elected by their peers<sup>41</sup> do not form a majority in the Supreme Judicial Council (SJC), remains unchanged<sup>42</sup>. As mentioned in last year’s report, since 1 July 2021, the SJC functions with only four peer-elected judges due to the resignation of two peer-elected members<sup>43</sup>. After the expiry of the SJC’s mandate on 4 October 2022<sup>44</sup>, its composition was not renewed so that it continues functioning with the same composition, for an undetermined period of time<sup>45</sup>. The voting practice of the Plenary of the SJC also continued to reflect the decisive role of the Prosecutor General<sup>46</sup>. As previously mentioned<sup>47</sup>, the combination of powers held by the Prosecutor General<sup>48</sup> and his/her position in the Supreme

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3; CM/Del/Dec(2020)1377bis/H46-9, para. 4; CM/Del/Dec(2019)1362/H46-6. Information received from the Ministry of Justice in the context of the country visit to Bulgaria.

<sup>39</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 2. See also Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 27 – “*Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.*”

<sup>40</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 3-5. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 5-7. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 6-8.

<sup>41</sup> The *ex officio* judges do not count as peer elected judges. Venice Commission opinion (CDL-AD(2020)035), para. 44.

<sup>42</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>43</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 7.

<sup>44</sup> The term of the current SJC ran until 3 October 2022. The procedures for election of new peer elected members have already been concluded and new members were elected. Nevertheless, the elections for the Judges’ Chamber were challenged because of alleged irregularities in the e-voting system before a mixed panel of the Supreme Administrative Court and the Supreme Cassation Court, which decided that the elections were conducted according to the established procedure and maintained the validity of their outcome.

<sup>45</sup> The undetermined period of time is due to the impossibility of the Parliament to form the necessary majority (qualified majority of 2/3) and to elect the new members, which is the case also for the Inspectorate to the SJC, which operates on an expired mandate since 2020. In this regard, please see Venice Commission 2010, Report on the Role of the Opposition in a democratic Parliament, CDL-AD(2010)025; Venice Commission 2019, Report on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, CDL-AD(2019)015; Venice Commission Opinion on Montenegro (CDL-AD(2018)015-f).

<sup>46</sup> In the vote for the dismissal of the Prosecutor General, the usual voting practice was observed, whereby the members from the Prosecutors’ chamber voted in block against the proposal, together with the members of the Judges’ chamber elected by the Parliament. See the meetings of the Plenary of the Supreme Judicial Council: Protocol No. 23 of 2022 on the vote for the dismissal of the Prosecutor General. See also 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.6 and p. 7: 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).

<sup>47</sup> See 2020, 2021 and 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Bulgaria, p. 3-5.

<sup>48</sup> The Prosecutor General may, in situations defined by the law, 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,



Judicial Council<sup>49</sup> result in a considerable influence within the Prosecutor's Office as well as potentially within the SJC (both in its Prosecutorial Chamber and its Plenary) and within the magistracy<sup>50</sup>. The commitment under the RRP<sup>51</sup>, reported in the previous Rule of Law Report<sup>52</sup>, which aims at limiting the potential influence of the Prosecutor General within the SJC<sup>53</sup> is now under discussion in Parliament<sup>54</sup>. The concerns regarding the composition and functioning of the SJC have been reiterated by the Council of Europe<sup>55</sup> and stakeholders<sup>56</sup>. The combination of these elements increases the overall concerns regarding the situation of the SJC. The Government has informed that a change in the composition of the SJC would require an amendment to the Constitution and that the Commission's recommendation in this respect could not be addressed in the current political context<sup>57</sup>. There has thus been no progress on the implementation of the recommendation made in the 2022 Rule of Law Report. On 26 May 2023, the Parliament also passed an amendment, which annulled the elections for peer-elected members of the SJC that took place in 2022<sup>58</sup>. It should be recalled that if such a termination through the law of a mandate is not supported by safeguards, such as a judicial review, then there could be repercussions as regards the judicial independence of the members of the SJC, as well as the independence of the judiciary as a whole, since the SJC's main function is to preserve judicial independence<sup>59</sup>. This provision was challenged before the Constitutional Court as a result of the aforementioned request for a constitutionality check by the Prosecutor

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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>49</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 plenary of the SJC decides upon the draft budget, disciplinary removal from office and proposals for the 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>50</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>51</sup> Also part of the same milestone on the accountability and criminal liability of the Prosecutor General – Milestone 222.
- <sup>52</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 5.
- <sup>53</sup> This could be achieved by removing the possibility of selecting prosecutors and investigators for members of the SJC through the Parliament-elected quota.
- <sup>54</sup> The provisions for limiting the election of magistrates through the Parliament-elected quota for the SJC members was adopted on 2 June 2023. However, on 16 June 2023, the President of the Republic vetoed part of the amendments passed with the same law due to potential issues related to their constitutionality.
- <sup>55</sup> Committee of Ministers decisions CM/Del/Dec(2022)1451/H46-9, para. 11, and CM/Del/Dec(2023)1459/H46-5, para. 6. See also Venice Commission opinion (CDL-AD(2022)032), paras. 15-17.
- <sup>56</sup> Written contribution from Bulgarian Institute for Legal Initiatives Foundation and Civil Liberties Union for Europe, report on Bulgaria for the 2023 Rule of Law Report.
- <sup>57</sup> Input from Bulgaria for the 2023 Rule of Law Report, p. 73.
- <sup>58</sup> According to § 41, par. 1 of the Transitional and Final Provisions of the Law on Amendments and Supplements to the Criminal Procedure Code, adopted on 26 May 2023, within three months from the entry into force of this law, the National Assembly and the bodies of the judiciary shall initiate a procedure for new election of members of the Supreme Judicial Council.
- <sup>59</sup> See ECtHR, judgment of 15 March 2022, *GRZEDA v. Poland*, paras. 300-3, 344-346.

General<sup>60</sup>. Furthermore, the same law also added the possibility of opening a disciplinary proceeding against a member of the SJC for their actions as members of the SJC<sup>61</sup>.

**There has been no progress yet with the reform regarding political influence and the functioning of the Inspectorate to the Supreme Judicial Council (ISJC).** The 2022 Rule of Law Report recommended to Bulgaria to “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”<sup>62</sup>. As mentioned in previous Rule of Law Reports<sup>63</sup>, 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 Parliament<sup>64</sup>. As previously reported, working groups had been established to find ways to address concerns regarding its functioning and the risk of political influence<sup>65</sup>. The Government has expressed the view that a constitutional change would be needed for the involvement of judicial bodies in the selection procedure of the ISJC’s members<sup>66</sup>. The ISJC continues to operate with an expired mandate<sup>67</sup>. In this regard, on 12 September 2022, the Constitutional Court ruled<sup>68</sup> that after the expiration of their mandate, the Inspector General and the Inspectors should continue to perform their functions until their successors have been appointed by Parliament. The Court considered it inadmissible in such a situation to have the activities of the ISJC suspended for an indefinite period<sup>69</sup>. Given that no measures have been taken yet to advance with legislative amendments aiming at improving the functioning of the ISJC and avoiding the risk of political influence, no progress on the implementation of the recommendation is reported.

**Significant progress was achieved regarding the finalisation of competitions for the promotion of judges to avoid long-term secondment of judges to fill in vacant positions.** The 2022 Rule of Law Report 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”<sup>70</sup>. The past two Rule of Law Reports<sup>71</sup> have highlighted that while magistrates may be promoted only through a competition, in practice as of July 2022, only one competition for the promotion of judges had been

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<sup>60</sup> See Constitutional Court Case No. 10/2023.

<sup>61</sup> See Art. 308(2) of the JSA. On 2 June 2023, with the law adopted by the Parliament, which was vetoed by the President of the Republic (see footnote 34 for a thorough explanation), a new disciplinary sanction for magistrates was introduced. The sanction allows the SJC to suspend the rights of magistrates to perform any legal profession for a period of up to 2 years.

<sup>62</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 2.

<sup>63</sup> See 2020, 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, pp. 7-9; 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>64</sup> Art. 132a of the Constitution.

<sup>65</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 8.

<sup>66</sup> Information received from the Ministry of Justice in the context of the country visit to Bulgaria. No indications have been given as to which provisions of the Constitution would be violated.

<sup>67</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 8.

<sup>68</sup> Constitutional Court Decision No. 12 of 27 September 2022.

<sup>69</sup> See footnote 37.

<sup>70</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 2.

<sup>71</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, pp. 9 and 10; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, pp. 6 and 7.

completed in the previous four years<sup>72</sup>. The absence of regular competitions for the promotion of magistrates, combined with an extensive use of secondments had raised concerns in the previous Rule of Law Report. The Government has informed that as of 9 December 2022, 109 magistrates were promoted at various judicial bodies after competitions for promotion, some of them pending since 2019, have been concluded<sup>73</sup>. The SJC achieved this by applying the administrative procedure for preliminary implementation of administrative decisions<sup>74</sup> (i.e. decisions on promotion). Furthermore, on 26 May 2023, the Parliament adopted an amendment, which removed the possibility of seconding prosecutors and investigators to an open position for an undetermined period, which leads to secondments lasting for more than two years<sup>75</sup>. The new amendment takes into account European standards which highlight that secondments should happen with consent and on a temporary basis<sup>76</sup>, and only in exceptional circumstances<sup>77</sup> and limits these secondments to six months maximum within a year<sup>78</sup>. Nevertheless, the amendment covers only the secondment of prosecutors and investigators but not the one of judges<sup>79</sup>. Therefore, while the competitions were concluded, this action by itself would not prevent the widespread use of secondments that may have a negative effect 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<sup>80</sup> if they are competent to decide on secondments and their termination<sup>81</sup>, which may create situations of dependence<sup>82</sup>, which in turn risks affecting judicial independence. Therefore, there is significant progress in implementing the recommendation.

**The Constitutional Court confirmed the constitutionality of the law for the closure of the specialised judicial authorities.** On 14 July 2022, the Constitutional Court published its

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<sup>72</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>73</sup> Input from Bulgaria for the 2023 Rule of Law Report, pp. 7 and 8.

<sup>74</sup> Art. 60(1) of the Administrative Procedure Code. The reason for using this procedure is that the postponement or delay in the enforcement of these decisions would continue to negatively affect the work of the courts, part of which are forced to resort to the institution of secondment in order to ensure the administration of justice in the country. Nevertheless, this procedure represents some shortcomings. Namely, in case a candidate challenges the decision on promotion before the court, and obtains a favourable decision, the already promoted magistrate would have to be demoted. This has not been identified as a serious concern by stakeholders but more as a different type of a temporary secondment – Information received from the Bulgarian Judges Association, Bulgarian Institute for Legal Initiatives and Initiative Justice for Everyone in the context of the country visit to Bulgaria.

<sup>75</sup> See website of the SJC, register for seconded magistrates for October 2022 and January 2023: for October 2022, 231 seconded judges (99 of them are seconded for more than 24 months, some secondments have been ongoing for more than 10 years (128 months)); for January 2023, 159 seconded judges (65 of them are seconded for more than 24 months, some secondments have been ongoing for 12 years (132 months)).

<sup>76</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>77</sup> Venice Commission (CDL-AD(2017)018), paras. 86 and 87.

<sup>78</sup> Art. 147(4) of the JSA.

<sup>79</sup> Such a restriction is not provided for judges. The amendment is only in the special text under Art. 147, para. 4 of the JSA, but not in the general text for magistrates under Art. 227 of JSA. There is no change for judges.

<sup>80</sup> Administrative heads are the presidents of the different territorial divisions of Courts and the administratively superior prosecutors heading each of the territorial divisions of Prosecutor's Offices.

<sup>81</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>82</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, pp. 9-10.

decision<sup>83</sup> on the constitutionality review requested by the Prosecutor General<sup>84</sup>. The latter had challenged the constitutionality of the law of 14 April 2022 which sets out the closure of the specialised judicial authorities<sup>85</sup>. The Court found that the majority of the challenged provisions are compatible with the Constitution. Nevertheless, the quotas for reappointment that were introduced as a means to equally distribute the magistrates after the closure of the authorities were declared unconstitutional. All magistrates affected by the closure of the specialised judicial authorities have been placed at the judicial bodies of their choice<sup>86</sup>, thus putting an end to the reappointment procedure without any legal challenges.

## Quality

**New laws regarding the expansion of legal aid and mandatory judicial mediation have been adopted.** As part of the efforts of the Government to address the concerns related to the accessibility of courts<sup>87</sup>, included in Bulgaria's RRP, on 16 December 2022 amendments to the Legal Assistance Act were adopted. With the aim of facilitating the citizens' access to justice the scope and field of application of the types of legal assistance in alternative dispute resolution and proceedings has been expanded<sup>88</sup>, and the range of persons with access to legal assistance was broadened<sup>89</sup>. Stakeholders have welcomed these positive amendments<sup>90</sup>. On 23 January 2023, amendments creating mandatory judicial mediation were adopted, also as part of the RRP. According to the new provisions, the court may oblige the parties, after conducting an evaluation of the facts in the case<sup>91</sup>, to participate in mandatory mediation in a limited number of cases, including family law, lower value contract law proceedings, and in a number of labour law and intellectual property law disputes<sup>92</sup>. As regards the length of the mediation,

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<sup>83</sup> Constitutional Court Decision No.7 of 14 July 2022.

<sup>84</sup> Constitutional Court Case No.9 of 4 May 2022.

<sup>85</sup> The specialised judicial authorities here comprised of first and second instance Specialised Criminal Court and first and second instance Specialised Prosecutor's Office.

<sup>86</sup> The majority of them were reappointed in Sofia. Some of them have been placed in the same court and some panels of the Specialised Criminal Court have been maintained. According to stakeholders, maintaining the panels created "specialised" panels within the Sofia City Court. The Sofia City Court submitted a preliminary reference to the Court of Justice of the European Union on the compatibility with EU law, including the requirements of judicial independence, of the abolition of the specialised judicial authorities (case C-634/22, pending).

<sup>87</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; and 2022 Rule of Law Report Country Chapter on the rule of law situation in Bulgaria, p. 11.

<sup>88</sup> Input from Bulgaria for the 2023 Rule of Law Report, p. 11 – "*administrative criminal proceedings, administrative proceedings for issuing and appealing an individual administrative act, in proceedings before non-judicial bodies – arbitration and others, as well as in mediation procedures*"

<sup>89</sup> Input from Bulgaria for the 2023 Rule of Law Report, p. 11 – "*including persons with temporary protection status under the Asylum and Refugees Act, persons deprived of their legal capacity or whose deprivation is claimed, persons with physical and mental disabilities.*" Moreover, the new provisions also provide legal aid in criminal, civil, administrative and international disputes in civil cases in connection with a whistleblower or publicly disclosed information under the terms and procedure of the Law on the Protection of Whistleblowers.

<sup>90</sup> Information received from Supreme Bar Council and Bulgarian Judges Association in the context of the country visit to Bulgaria.

<sup>91</sup> See Law for amending and supplementing the Law on Mediation, promulgated in State Gazette No.11 on 2 February 2023 – para. 6, Art. 140a(3) of the Civil Procedure Code.

<sup>92</sup> See Law for amending and supplementing the Law on Mediation, promulgated in State Gazette No.11 on 2 February 2023 – para. 5 and 6. If the parties do not reach an agreement during the mediation procedure, the case is taken back to the court where the proceedings would continue. If there is an agreement, the court then

the court can determine the exact length, but it can be no longer than two months, which could be extended on a request by the parties<sup>93</sup>. As regards the cost of the mandatory mediation, if the mediation was concluded within the time limits imposed by the court, regardless of the outcome, there are no additional costs for the parties, and the mediation is paid for by the court's budget<sup>94</sup>. Finally, it appears that the new procedure suspends the period for the time-barring of claims.<sup>95</sup>

**Some steps have been taken to amend the legislation on the introduction of fully digitalised justice.** On 22 December 2022, the Government published for consultation a draft law aiming to guarantee the smooth operation of the judiciary in the process of introducing a fully digitalised justice. Stakeholders have expressed some concerns regarding the formal aspects<sup>96</sup> and content<sup>97</sup> of the draft law. Due to the dissolution of Parliament, the draft law was not tabled for discussion and lapsed. The draft law was reintroduced by the Government in the 49<sup>th</sup> National Assembly on 13 April 2023. As mentioned in the previous reports<sup>98</sup>, judges and court staff continue to claim that the current system, the Unified Information System for Courts (UISC), does not improve their work, but still represents obstacles<sup>99</sup>. As reported in last years' Rule of Law Report, this prompted the former president of the Supreme Court of Cassation to order the discontinuation of the use of the UISC<sup>100</sup>. On 18 July 2022, the Supreme Administrative Court confirmed the decision of the previous instance regarding the complaint of the SJC against the discontinuation of the use of the UISC by the Supreme Court of Cassation, which obliged the latter to restart using the system. The discussion has led to the creation of a working group which would try to determine the necessary legislative changes to meet the need for adequate implementation of digitalised justice at cassation level<sup>101</sup>. In view of the final decision of the Supreme Administrative Court, as well as after consultations with representatives of the SJC and Information Service of the SJC, the President of the Supreme

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needs to approve it. Moreover, the new provisions introduce two categories of cases in which the court shall or may require the parties to participate in a mediation procedure. The court shall oblige the parties to participate in a first mediation meeting in cases concerning the allocation of the use of a co-owned property, monetary claims arising from co-ownership, partition, disputes between co-owners in a condominium, payment of the value of a company share upon termination of participation in a limited liability company, liability of a manager or controller of a limited liability company for damage caused to the company.

<sup>93</sup> See Law for amending and supplementing the Law on Mediation, promulgated in State Gazette No.11 on 2 February 2023 – para. 5, Art. 22(4) of the Law on Mediation.

<sup>94</sup> See Law for amending and supplementing the Law on Mediation, promulgated in State Gazette No.11 on 2 February 2023 – para. 6, Art. 78a(1) of the Civil Procedure Code.

<sup>95</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. At national level, concerns were expressed by the Supreme Bar Council that some of the new provisions might be unconstitutional, although no challenge before the Constitutional Court has been initiated so far.

<sup>96</sup> See Opinion of the Administration of the Council of Ministers on the website for public consultations. They consider that some requirements from the legislative process are not fulfilled, and the impact assessment does not represent a proper picture of the problems that the draft law is trying to solve.

<sup>97</sup> See Opinion of the Bulgarian Judges Association on the website for public consultations. The main criticism is regarding shortcomings that are not present in the draft and choosing solutions that may complicate the work of the courts rather than simplify it.

<sup>98</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.12; See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 11.

<sup>99</sup> Written contribution from the Supreme Cassation Court in the context of the country visit, p. 4.

<sup>100</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 12.

<sup>101</sup> Written contribution from the Supreme Cassation Court in the context of the country visit, p. 4.

Court of Cassation ordered<sup>102</sup> the resumption of UISC’s use in the Court, starting from 26 September 2022<sup>103</sup>.

**There is limited improvement of the availability of electronic communications within the justice system.** Secure electronic communication is available to some extent<sup>104</sup> for communication between courts, while not being available for other legal professionals<sup>105</sup>. Not all court staff and judges can currently work remotely in a secure manner<sup>106</sup>. Access to digital tools for the different aspects of judicial proceedings remains limited, despite the introduction of the possibility to file an application for legal aid online<sup>107</sup>. The projects under the RRP aiming to improve the digitalisation of justice are envisaged for the end of 2023 and late 2024.

## Efficiency

**Shortcomings in the data gathering and presentation on the overall efficiency of justice persist, while administrative justice continues to perform efficiently.** There is a persistent lack of disaggregated efficiency data for the litigious and non-litigious civil and commercial cases<sup>108</sup>. This does not allow for a proper evaluation of the overall efficiency of the judicial system<sup>109</sup>. Thus, specific inefficiency problems could remain unnoticed<sup>110</sup>. However, the administrative justice continues to perform efficiently. As in previous years, the disposition time for administrative courts is very low at first instance courts<sup>111</sup>. Furthermore, in a specific area of EU law – consumer protection – both in terms of administrative and judicial proceedings, the courts and administration appear to be very efficient<sup>112</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 conflicts of interests, the confiscation of illegally acquired assets, carrying out certain investigation

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<sup>102</sup> See Order No. 691 of 11 August 2022.

<sup>103</sup> Written contribution from the Supreme Court of Cassation in the context of the country visit, p. 4

<sup>104</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>105</sup> Figure 45, 2023 EU Justice Scoreboard. The percentage of female judges at the HCCJ is of around 80%, currently the second highest percentage among supreme courts within the EU. See Figure 36, 2023 EU Justice Scoreboard.

<sup>106</sup> Figure 44, 2023 EU Justice Scoreboard. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.12.

<sup>107</sup> Figures 46 and 47, 2023 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, and the official court documents cannot be served electronically.

<sup>108</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 12.

<sup>109</sup> Figures 7 and 8, 2021 EU Justice Scoreboard.

<sup>110</sup> Written contribution from the Supreme Court of Cassation in the context of the country visit to Bulgaria. “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>111</sup> Figures 9 and 10, 2023 EU Justice Scoreboard. It is to be noted that this result is based on the methodology used by CEPEJ.

<sup>112</sup> Figures 22 and 23, 2023 EU Justice Scoreboard.

activities as well as the monitoring of the implementation of institutional integrity action plans. Other institutions, such as the National Investigation Service, the State Security Service, the Internal Security Directorate, and the Chief Inspectorate provide various additional functions in the prevention and repression of corruption. The abolition of the special judicial authorities was completed during the reporting period, with cases concerning special criminal offences (including high-level corruption) transferred to the regional and appellate judicial authorities around the country. The National Anti-Corruption Council continues to operate as an inter-ministerial advisory body.

**The perception among experts and business executives is that the level of corruption in the public sector remains high.** In the 2022 Corruption Perceptions Index by Transparency International, Bulgaria scores 43/100 and ranks 26<sup>th</sup> in the European Union and 72<sup>nd</sup> globally<sup>113</sup>. This perception has been relatively stable over the past five years<sup>114</sup>. The 2023 Special Eurobarometer on Corruption shows that 81% of respondents consider corruption widespread in their country (EU average 70%) and 29% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>115</sup>. As regards businesses, 78% of companies consider that corruption is widespread (EU average 65%) and 59% consider that corruption is a problem when doing business (EU average 35%)<sup>116</sup>. Furthermore, 40% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>117</sup>, while 11% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>118</sup>.

**The Government has tabled a reform of the Anti-Corruption Commission in light of the concerns regarding the effectiveness of the current Anti-Corruption Commission, although it has not been adopted yet.** A reform to improve the Anti-Corruption Commission is envisaged under Bulgaria's RRP<sup>119</sup>, and aims at introducing the investigative powers<sup>120</sup> and further reorganising the structure of the Anti-Corruption Commission by splitting it in two

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<sup>113</sup> Transparency International (2023), Corruption Perceptions Index 2022, 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>114</sup> In 2018 the score was 42, while in 2022 the score was 43. 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>115</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

<sup>116</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>117</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>118</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

<sup>119</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. 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>120</sup> According to the current anti-corruption law, the Commission does not have powers to carry out investigative activities, as the competent directorate collects, analyses, and verifies information about acts of corruption of persons occupying high public offices, i.e. which includes operational searches.

separate bodies<sup>121</sup>. A draft law, adopted by government, currently is progressing through the parliamentary procedure<sup>122</sup>. Parliament did not nominate a chair for the Anti-Corruption Commission since the previous chair resigned in February 2022<sup>123</sup>. According to the Government, the legislative reform is necessary as it considers that the Anti-Corruption Commission currently struggles to effectively and proactively implement its broad mandate (including verification of asset and interest declarations, carrying out integrity checks as well as confiscation of criminal assets). According to civil society, this is further compounded by a lack of public trust and a lack of transparency by the agency itself<sup>124</sup>, although the Anti-Corruption Commission itself maintains it provides transparent information on its activities on its website<sup>125</sup>. The OECD has also recommended improvements in how the Anti-Corruption Commission approaches integrity checks and the implementation of codes of ethics with regards to civil servants, which is currently seen as rather fragmented<sup>126</sup>. In the meantime, internal reorganisation continued, including moving more staff towards the processing of asset declarations, although it is unclear how this affects the functioning of other parts of the Anti-Corruption Commission<sup>127</sup>. The Anti-Corruption Commission itself reports increased efficiency and results based on an increase of reports and procedures on conflicts of interest<sup>128</sup>, although civil society criticises the formalistic approach and lack of actual conflicts of interest

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<sup>121</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 14 and Input from Bulgaria for the 2023 Rule of Law Report, pp. 4-5 and pp. 16-17. The draft legislative reform foresees the creation of an Anti-Corruption Commission that would focus on senior public office holders by collecting and analysing information about national anti-corruption policies and measures, by developing and proposing measures for prevention and counteraction of corruption and coordination of their implementation; and by the detection and investigation of certain crimes, characterized as corrupt, committed by senior public office holders. The existing Commission would remain focused only on the seizure and confiscation of illegal assets.

<sup>122</sup> A draft law was initially adopted by the Government on 1 November 2022, but did not pass the parliamentary procedure before Parliament was dissolved in February 2023. The acting Government then re-approved the draft law in late March 2023 and tabled it in the newly constituted Parliament (following elections) in April 2023 (no. 49-302-01-16). Further, two other draft laws were proposed by political groups in Parliament (draft laws no. 49-354-01-13 from 26 April 2023, and 49-354-01-62 from 2 June 2023). On 14 June 2023, the Legal Committee of the Parliament endorsed in a first vote the draft law submitted on 2 June. On 15 June, the Anti-Corruption Committee of the Parliament also endorsed it in a first vote. However, this draft law deviates on number of points from the one proposed by the Council of Ministers, with elements of potential concern in particular as regards political independence of the Anti-Corruption Commission. Input from Bulgaria for the 2023 Rule of Law Report, pp. 4-5 and pp. 16-17; Information received in the context of the country visit from the Ministry of Justice).

<sup>123</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, pp. 14-15, written contribution from the Anti-Corruption Commission received in the context of the country visit to Bulgaria and information received in the context of the country visit from the Anti-Corruption Commission. The Commission maintains that the lack of a chair does not affect their performance.

<sup>124</sup> Information received in the context of the country visit from the Anti-Corruption Fund and the Centre for the Study of Democracy; Contribution from the Centre for the Study of Democracy for the 2023 Rule of Law Report, p. 14, Contribution from the Bulgarian Institute for Legal Initiatives for the 2023 Rule of Law Report, p. 18 and GRECO Fifth Evaluation Round – Evaluation report, para. 50.

<sup>125</sup> Input from Bulgaria for the 2023 Rule of Law Report.

<sup>126</sup> OECD (2023), *Reforming Integrity Checks and Code of Ethics in Bulgaria: Recommendations for the Anti-Corruption Commission*. This report was produced in the framework of an EU-funded project, implemented through the Technical Support Instrument (TSI).

<sup>127</sup> The workload is affected by the frequent parliamentary elections. Written contribution from the Anti-Corruption Commission received in the context of the country visit to Bulgaria and information received in the context of the country visit from the Anti-Corruption Commission.

<sup>128</sup> Written contribution from the Anti-Corruption Commission received in the context of the country visit to Bulgaria.



established<sup>129</sup>. In 2022, the Anti-Corruption Commission received 384 reports on conflicts of interest; it initiated 140 procedures that resulted in 25 decisions regarding senior public officials (finding 44 conflicts of interest)<sup>130</sup>. Additionally, the anti-corruption directorate of the Anti-Corruption Commission<sup>131</sup> received 801 alerts in 2022, and, in 559 cases, performed operational or investigative actions on demand of the prosecution offices (of which 86 turned up evidence of criminal activity) and 735 searches across the country in relation to alerts received<sup>132</sup>.

**The National Strategy for Prevention and Countering Corruption continues to be implemented.** The Government has committed in its RRP to providing yearly implementation reports on the 2021-2027 anti-corruption strategy by 2026 at the latest<sup>133</sup>. For now, it remains difficult to monitor the progress on the implementation of the anti-corruption strategy without these yearly reports<sup>134</sup>. Some partial results for 2022 were reported by the Ministry of Justice, albeit many of the proposed legislative revisions were delayed due to the political situation<sup>135</sup>. While the Anti-Corruption Council should monitor the implementation of the strategy, this work has not started, possibly due to the political situation<sup>136</sup>. The Anti-Corruption Council held one meeting in June 2022, which discussed updating and reporting on the implementation of the Anti-Corruption Strategy, although this did not result in concrete changes or steps

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<sup>129</sup> Anti-Corruption Fund (2023), “Anti-Corruption institutions 2022: eyes wide shut”, 2022 annual report, pp. 6-7.

<sup>130</sup> While the number of reports and the number of procedures have increased compared to 2021 (384 reports in 2022 compared to 255 in 2021; leading to 140 procedures initiated in 2022 compared to 90 in 2021), the number of decisions establishing a conflict of interest remains similar (22 decisions in 2021 compared to 25 decisions in 2022). Written contribution from the Anti-Corruption Commission received in the context of the country visit to Bulgaria.

<sup>131</sup> The Anti-Corruption Commission is organised into six specialised directorates: prevention of corruption, public register of asset declarations, conflict of interest, countering corruption, confiscation of the illegally acquired property and management of confiscated assets.. Information received in the context of the country visit from the Anti-Corruption Commission.

<sup>132</sup> Compared with 877 alerts; 618 integrity checks with 97 showing criminal activity and 800 searches in 2021. Activity Report for the Commission for Anti-Corruption and Illegal Assets Forfeiture of 2022, pp. 23-26.

<sup>133</sup> Under its RRP (milestone 226), the latest possible deadline for these implementation reports is Q1 2026. Bulgaria committed to provide “Annual analyses on the implementation of the National Strategy for Preventing and Combatting Corruption (2021-2027) and its associated Roadmap and annual reporting on the progress of implementation in the context of the European Rule of Law mechanism”. See also information received in the context of the country visit from the Ministry of Justice and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 15.

<sup>134</sup> This is without prejudice to the assessment of Milestone 226 from the RRP regarding the reporting on the yearly implementation of the strategy.

<sup>135</sup> Civil society points to unclarity over the implementation of corruption prevention measures included in the Anti-Corruption Strategy. Contribution from the Centre for the Study of Democracy for the 2023 Rule of Law Report, p. 15; contribution from the Bulgarian Institute for Legal Initiatives for the 2023 Rule of Law Report, p. 18 and Input from Bulgaria for the 2023 Rule of Law Report, Annex 3.

<sup>136</sup> Written contribution from the Anti-Corruption Council received in the context of the country visit to Bulgaria; information received in the context of the country visit from the Anti-Corruption Council and GRECO Fifth Evaluation Round – Evaluation report, para. 45. See also Contribution from the Bulgarian Institute for Legal Initiatives for the 2023 Rule of Law Report, p. 18.

forward<sup>137</sup>. There is some concern that the responsibilities of the Anti-Corruption Commission and the Anti-Corruption Council may overlap<sup>138</sup>.

**There has been no progress made on improving the track-record in high-level cases of corruption.** The 2022 Rule of Law Report recommended to Bulgaria to “Ensure that the institutional reforms of the Anti-Corruption Commission and 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.” Given that accurate reporting, including disaggregated data, on high-level corruption cases remains lacking, it is not possible to conclude that there are concrete results on the track-record of high-level case of corruption. The Prosecutor General’s Office and the Supreme Court of Cassation continue to report different streams of data on corruption and high-level corruption cases, which makes it problematic to establish a clear picture. Regular annual reporting on high-level corruption cases, envisaged under the RRP to improve accuracy and reliability of data, has not yet started<sup>139</sup> although a working group on the issue has been set-up<sup>140</sup>. The Supreme Court of Cassation has started differentiating between high-level and regular corruption cases since the fourth quarter of 2022. Under this mechanism, the Supreme Court of Cassation currently tracks eight cases related to high-level corruption<sup>141</sup>, while it also reports six cases “with high-level defendants” were initiated before the court in 2022<sup>142</sup>. On the other hand, the Prosecutor-General’s office, reports 144 new pre-trial proceedings in relation to corruption<sup>143</sup>, and 48 indictments brought to the courts, in cases in the first 9 months of 2022<sup>144</sup>. Overall, the perception remains that the prosecution remains ineffective, sometimes leading to a lack of

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<sup>137</sup> Written contribution from the Anti-Corruption Council received in the context of the country visit to Bulgaria and Council of Ministers (2022), The National Council of Anti -Corruption Policies discussed updating the National Strategy for Prevention and Counteracting Corruption.

<sup>138</sup> GRECO Fifth Evaluation Round – Evaluation report, para.53, written contribution from the Anti-Corruption Commission received in the context of the country visit to Bulgaria and information received in the context of the country visit from the Anti-Corruption Council and Ministry of Interior. While GRECO recommends the Bulgarian authorities to clarify the responsibilities of both bodies, both the Anti-Corruption Commission and Anti-Corruption Council, as well as the Ministry of Interior deny any issues with overlap of responsibilities in practice.

<sup>139</sup> This concerns milestone 222 under Bulgaria’s RRP. 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>140</sup> Input from Bulgaria for the 2023 Rule of Law Report, p. 3 and written contribution from the Supreme Court of Cassation received in the context of the country visit to Bulgaria.

<sup>141</sup> This concerns the case reported in the first half of 2023. Written contribution from the Supreme Court of Cassation received in the context of the country visit to Bulgaria.

<sup>142</sup> The list includes high-level defendants as defined by Art.6, para. 1, points 3, 21, 32, 46 of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act, but it remains unclear if this represents all high-level cases. Written contribution from the Supreme Court of Cassation received in the context of the country visit to Bulgaria. Overall, in 2022, 34 cases related to corruption offences were initiated before the Supreme Court of Cassation. Input from Bulgaria for the 2023 Rule of Law Report, Annex 4 - list of initiated cases in front of the Supreme Court of Cassation.

<sup>143</sup> The prosecutor’s office reports that these cases are “initiated for corruption offences with an alleged perpetrator, accused or perpetrator in a position of authority or in a specific capacity (managerial and control functions)”. This definition appears to cover some high-level corruption cases, but also other proceedings involving lower-level civil servants. Written contribution from the Prosecutor-General received in the context of the country visit to Bulgaria.

<sup>144</sup> Written contribution from the Prosecutor-General received in the context of the country visit to Bulgaria.

effective investigations in corruption cases or charges brought forward that are not supported by sufficient evidence or failing to meet legal requirements<sup>145</sup>. While acknowledging that results could be improved, the prosecutors indicate that the limited results are related to the closure of the specialised judicial authorities, the way investigations are set-up as well as the multiple and frequent legislative changes<sup>146</sup>. GRECO has called for more proactive and systematic investigations and prosecutions for corruption offences linked to top executive functions, a removal of procedural impediments, and an effective and proportionate sanctioning<sup>147</sup>. This was confirmed by a stakeholder's analysis, according to which the ratio of convictions in high-level corruption cases appears low with few cases reaching the final stages of proceedings<sup>148</sup>. Further, Parliament focused on the prosecution's performance in a hearing of the Prosecutor General before the Constitutional and Legal Affairs committee, where the discussion focused on the low conviction rate in high-level corruption cases and lack of results<sup>149</sup>. A number of former and current Bulgarian political figures were sanctioned by third countries during 2023 related to high-level corruption, which signals further concerns<sup>150</sup>. Following arrests made in a high-level corruption case involving various former top executive officials<sup>151</sup> under suspicions of corruption during 2022, as well as their subsequent release from prison<sup>152</sup>, the administrative court ruled that the arrest warrants in the case were issued illegally<sup>153</sup>. Given that the reform of the Anti-Corruption Commission has not yet been adopted, and that a robust track-record of prosecution and final judgments in high-level corruption cases

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<sup>145</sup> Civil society insists proceedings are marred with political interference, a lack of a proactive stance and proper investigative actions by the prosecutor and a mixed quality of the indictments. The "Eight Dwarfs" case is also used as an example to demonstrate the inaction of the prosecution in face of numerous (public) allegations. Information received in the context of the country visit from the Anti-Corruption Fund and the Centre for the Study of Democracy and the Bulgarian Institute for Legal Initiatives; Yankulov, A (2023), What needs to change in criminal justice, pp. 8-9; Anti-Corruption Fund, "Anti-Corruption institutions: a zero year", 2021 annual report, p.6 and pp. 24-25. and Anti-Corruption Fund (2023), The prosecutor's office has terminated the criminal proceedings on the "Eight Dwarfs" because it did not detect a crime.

<sup>146</sup> Information received in the context of the country visit from the Association of Public Prosecutors and the Prosecutor-General, Written contribution from the Association of Public Prosecutors and the Prosecutor-General received in the context of the country visit to Bulgaria and input from Bulgaria for the 2023 Rule of Law Report, Annex 2.

<sup>147</sup> GRECO Fifth Evaluation Round – Evaluation report, recommendation xiii, para. 119. "The [evaluation team] firmly believes that at present, Bulgaria's criminal justice response to corruption cases involving [top executive functions] is unsatisfactory and needs to be addressed as a matter of urgency."

<sup>148</sup> Monitoring work and analysis by civil society signal 5 convictions but 15 acquittals in the high-level cases it monitors, with a conviction of a mayor to six years imprisonment for corruption offences being recognised as "the first conviction within this sample of cases in six years". The report stresses the conviction rate for high-level corruption rate fundamentally differs from conviction rates in other types of cases. Anti-Corruption Fund (2022), "Anti-Corruption institutions: a zero year", 2021 annual report, p. 6 and pp. 24-25 and Anti-Corruption Fund (2023), "Anti-Corruption institutions 2022: eyes wide shut", 2022 annual report, pp. 5-6 and pp. 23-24.

<sup>149</sup> National Assembly (2022), Transcript of the regular meeting of the Parliamentary Committee on Constitutional and Legal Affairs held on 21 July 2022.

<sup>150</sup> On 10 February 2023, the US and UK sanctioned a number of current or former Government official under their Global Magnitsky Act, referring to allegations of corruption. Notably, this included some individuals against whom investigations or indictments were previously halted or dismissed within the Bulgarian justice system.

<sup>151</sup> This relates to administrative detention for a period of 24 hours by police authorities. Notably the former Prime Minister, Finance Minister, Chief of the parliamentary budgetary Commission, as well as a media adviser are involved.

<sup>152</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 16.

<sup>153</sup> Final Decisions by the Sofia City Administrative Court of 24 August, 1 November and 31 December 2022.

remains to be established, there has been no progress on the implementation of the recommendation made in the 2022 Rule of Law report.

**The impact of the closure of the specialised judicial authorities in the fight against corruption cannot yet be fully assessed.** The Specialised Prosecutor’s Office and Specialised Criminal Courts in the fight against corruption were closed in 2022, with their competences and cases transferred to the regional and appellate level authorities<sup>154</sup>. Only limited practical issues were detected with the transition<sup>155</sup>. It remains too early to substantially assess the effect of the closure of these institutions. Nonetheless, the prosecutors claim less cases of corruption are being sent to the prosecution following the closure of the institutions as well as a lack of specialised expertise among regional prosecution offices to deal with corruption cases<sup>156</sup>. Other stakeholders, however, see only little to no positive or negative impacts at this stage<sup>157</sup>. A number of measures were taken by the authorities to ease cooperation with the European Public Prosecutor’s Office (EPPO)<sup>158</sup>, though the EPPO has expressed concerns about the independence, general working conditions and working environment in Bulgaria<sup>159</sup>. The EPPO called on the authorities to establish an independent administrative structure, to ensure the urgent assignment of dedicated and specialised police investigators to the EPPO and to nominate missing candidates as European Delegated Prosecutors<sup>160</sup>. An agreement to detach police officers to the EPPO remains pending with the Ministry of Interior<sup>161</sup>.

**Work is ongoing on the framework on foreign bribery.** Detection, investigation and prosecution of foreign bribery cases is seen as ineffective and has been criticised by the OECD<sup>162</sup>. In this context, work is ongoing on a legislative reform in the area of foreign bribery. Under the 2021-2027 Anti-Corruption Strategy, a working group is to examine ways to improve liability of legal persons and other legislative changes relevant in the area of foreign bribery, in line with OECD recommendations<sup>163</sup>. This process is seen as sensitive, although the working group aims to formulate a proposal during 2023<sup>164</sup>.

**Some progress has been made on corruption prevention measures aimed at improving the integrity of specific sectors of the public administration, including the police and the judiciary.** The 2022 Rule of Law report recommended to Bulgaria to “Continue the implementation of measures to improve the integrity of the specific sectors of the public

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<sup>154</sup> Input from Bulgaria for the 2023 Rule of Law Report, p.4 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, pp. 15-16.

<sup>155</sup> Information received in the context of the country visit from the Ministry of Justice and written contribution from the Supreme Court of Cassation received in the context of the country visit to Bulgaria.

<sup>156</sup> Information received in the context of the country visit from the Association of Public Prosecutors and the Prosecutor-General and written contribution from the Association of Public Prosecutors and the Prosecutor-General received in the context of the country visit to Bulgaria.

<sup>157</sup> Information received in the context of the country visit from the Initiative Justice for Everyone, the Anti-Corruption Fund, the Bulgarian Institute for Legal Initiatives and the Centre for the Study of Democracy and the Bulgarian judges association.

<sup>158</sup> Input from Bulgaria for the 2023 Rule of Law Report, p. 17.

<sup>159</sup> Including during a meeting with the Minister of Justice in February 2023.

<sup>160</sup> EPPO (2023), Press Release – Meeting between European Chief Prosecutor and Bulgaria’s Minister for Justice

<sup>161</sup> Input from the EPPO for the 2023 Rule of Law Report, p. 4.

<sup>162</sup> OECD (2021), Phase 4 evaluation of Bulgaria, p.54 (para.197).

<sup>163</sup> OECD (2021), Phase 4 evaluation of Bulgaria, p.54 (para.197).

<sup>164</sup> Input from Bulgaria for the 2023 Rule of Law Report, Annex 3 and information received in the context of the country visit from the Ministry of Justice. See also OECD (2021), Phase 4 evaluation of Bulgaria, p.54 (para.197).

administration, including measures tailored to the police and the judiciary”. The Ministry of Interior continues to implement various projects to improve the integrity of the police, and particularly the border police<sup>165</sup>, including integrity tests<sup>166</sup>. The Ministry of Interior maintains it has already set high standards for integrity among police officers<sup>167</sup>. Nonetheless, GRECO has recently expressed concerns in relation to the overall police integrity, as gaps remain<sup>168</sup>, such as the operational independence of the police from the Ministry of the Interior<sup>169</sup> and a lack of dedicated anti-corruption policies, such as a detailed code of conduct for the police, risk assessment or rules on gifts<sup>170</sup>. Authorities have set-up a working group that drafted an action plan to address all GRECO recommendations<sup>171</sup>. As regards the judiciary, authorities are revising the law on the Inspectorate to the Supreme Judicial Council (ISJC) in order to make its corruption prevention systems more robust, to achieve the commitments under the RRP<sup>172</sup>. The ISJC signals that a number of training courses on integrity – in particular on the asset declaration system for magistrates – were carried out; and it has prepared three analyses that aim to further improve integrity among magistrates<sup>173</sup>. Of the 12 integrity checks carried out by the Inspectorate in 2022, 3 led to disciplinary proceedings<sup>174</sup>. Measures to improve the integrity of specific sectors continue to be implemented, although some of the announced

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<sup>165</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 17, Input from Bulgaria for the 2023 Rule of Law Report, pp. 21-22 and Information received in the context of the country visit from the Ministry of Interior. See also European Commission (2022), Report of the voluntary based fact-finding mission to Bulgaria and Romania on the application of the Schengen acquis and its developments since 2011, p. 51. “Measures for the border police include, among others, an email address and a 24/7 telephone number where anyone can report problems when travelling at the border crossing points of Bulgaria or alerts on incorrect treatment by border police officers. Video surveillance has been installed in all control booths for border checks, and areas of the border crossing points to control the organisation of preventing and countering corrupt behaviour of staff. Staff rotation is frequently (every couple of hours, on a random basis) carried out to distribute staff within border crossing points.”

<sup>166</sup> For example, through unexpected inspections of the traffic police. Written contribution from the Internal Security Directorate received in the context of the country visit to Bulgaria.

<sup>167</sup> Information received in the context of the country visit from the Ministry of Interior and written contribution from the Internal Security Directorate received in the context of the country visit to Bulgaria. For all officials of the Ministry of Interior (which includes the police), during 2022, the Directorate verified 307 reports concerning corruption; with 27 pre-trial proceedings initiated. For the border police, during 2022, there were 118 reports of misconduct received, which resulted in opening pre-trial proceedings against eight officers.

<sup>168</sup> In particular for the police, some key recommendations from GRECO include: Operational independence of the police, including instructions; sponsorships and donations; a dedicated anti-corruption policy; a comprehensive risk assessment; a code of ethics; and rules on gifts and strengthened integrity checks. GRECO Fifth Evaluation Round – Evaluation report, paras 124, 127, 135, 142, 146, 162, 181.

<sup>169</sup> GRECO, Fifth Evaluation Round – Evaluation report, para 124.

<sup>170</sup> GRECO, Fifth Evaluation Round – Evaluation report, para 142, 146 and 162.

<sup>171</sup> The action plan is being consulted with various institutions in advance of adoption by the government. Information received in the context of the country visit from the Chief Inspectorate and Ministry of Interior and Written replies from Bulgaria to the European Parliament LIBE Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG), p. 12.

<sup>172</sup> See milestone 219 of the Bulgarian RRP. The ISJC needs to progress on a revision of the ethical guidelines for the conduct of magistrates, the reporting of its cases and the delivery of anti-corruption training courses, which is ongoing. The milestone does not require necessarily the use of legislative amendments to achieve this.

<sup>173</sup> Work on the electronic public register of declarations, which should facilitate online submissions of assets and interest declarations of magistrates, has been suspended due to non-fulfillment of the contract by the contractor. Input from Bulgaria for the 2023 Rule of Law Report, p. 16 and information received in the context of the country visit from the Inspectorate to the Supreme Judicial Council.

<sup>174</sup> Input from Bulgaria for the 2023 Rule of Law Report, p. 10 and information received in the context of the country visit from the Inspectorate to the Supreme Judicial Council.

measures still need to be fully implemented. There has therefore been some progress on the implementation of the Recommendation made in the 2022 Report. In addition to this, public procurement continues to be an area at high risk of corruption and measures to improve competition in public procurement as well as to improve and intensify controls and related sanctions are key deliverables under the RRP in 2023-2024<sup>175</sup>. Parliament adopted amendments to the Public Procurement Act in December 2022. The revised act aims to increase transparency and competition and curb corrupt practices and conflicts of interest<sup>176</sup>. The Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 55% of companies in Bulgaria (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years<sup>177</sup>.

**Serious gaps remain as regards integrity of top executive functions.** This has been noted by GRECO<sup>178</sup> and civil society<sup>179</sup>. In particular, there are no legal requirements on the integrity or incompatibilities of persons hired for ministers' private offices<sup>180</sup>, and there is no comprehensive code of conduct, or sanctioning mechanism for top executive functions in place. The code of conduct for public officials does not cover top executive functions<sup>181</sup>. It remains unclear whether the Chief Inspectorate and various ministerial inspectorates have appropriate functional independence to carry out their corruption prevention tasks adequately<sup>182</sup>. A working group aims to address the GRECO recommendations further.

**The rules on asset and interest disclosure for public officials are systematically implemented, but effectiveness of verifications and sanctions could be improved.** For 2022, there were 11 915 declarations of assets received by the Anti-Corruption Commission<sup>183</sup> and a total of 11 363 verifications of asset declarations submitted in 2022 with 750 decisions establishing an administrative violation. 8 844 verifications of declarations submitted in 2021 were also still processed in 2022<sup>184</sup>. In 2022, the Anti-Corruption Commission carried out 11 inspections in response to alerts received in connection with declarations of incompatibility of

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<sup>175</sup> See Milestones 242-250.

<sup>176</sup> These measures are subject to dedicated milestones under the RRP and will be assessed in this context and in accordance with dedicated procedures and timeline. Input from Bulgaria for the 2022 Rule of Law Report, p. 23.

<sup>177</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). This is 29 percentage points above the EU average.

<sup>178</sup> GRECO Fifth Evaluation Round – Evaluation report, par 3: “The integrity framework applicable to public officials does not cover PTEFs in a sufficient manner: no code of ethics applies to them, and there is no awareness-raising on integrity matters, nor any established mechanism for confidential counselling on ethical issues.”

<sup>179</sup> Contribution from the Bulgarian Institute for Legal Initiatives for the 2023 Rule of Law Report, pp. 18-19.

<sup>180</sup> GRECO Fifth Evaluation Round – Evaluation report, recommendation i and ii, para. 31 and 33. According to GRECO, these persons and their functions should also be made public in an online register.

<sup>181</sup> i.e., government members and their private offices. Nonetheless, the development of such a Code of Conduct is foreseen in Measure 5, Priority 1 of the National Anti-Corruption Strategy for 2021-2027. GRECO Fifth Evaluation Round – Evaluation report para 43.

<sup>182</sup> GRECO Fifth Evaluation Round – Evaluation report, paras. 78-79.

<sup>183</sup> Compared to 12 430 declarations received and 679 decisions on violations for 2021. Written contribution from the Anti-Corruption Commission received in the context of the country visit to Bulgaria and Activity Report for the Commission for Anti-Corruption and Illegal Assets Forfeiture of 2022, pp. 14-18.

<sup>184</sup> This concerns cases of both failure to submit and wrongly submitted asset declarations. Activity Report for the Commission for Anti-Corruption and Illegal Assets Forfeiture of 2022, pp. 14-18.

persons holding senior public positions<sup>185</sup>. The Anti-Corruption Commission assigned more staff to the handling of asset and interest declarations, but continues to be overburdened, as noted by GRECO, also due to the frequent parliamentary elections and governmental changes. This may result in irregularities going unnoticed<sup>186</sup>. The control mechanism appears superficial and not sufficiently dissuasive<sup>187</sup>. Civil society also signals the lack of higher sanctions in case of repeated violations of the Law on Anti-Corruption and Illegal Asset Forfeiture<sup>188</sup>. Clear rules on the declaration of gifts to top executive persons remain lacking<sup>189</sup>.

**A working group has been set up to examine the issue of lobbying, as it remains unregulated.** As noted in the previous Rule of Law Reports, there are no specific obligations for the registration of lobbyists or reporting of contacts between public officials and lobbyists<sup>190</sup>. Bulgaria has committed to adopt legislative measures to regulate lobbying under the framework of the RRP by the end of 2023<sup>191</sup>. GRECO has also strongly recommended authorities to introduce rules on how top executive functions engage in contacts with lobbyists<sup>192</sup>. Authorities report that a working group has been convened in February 2023 to create a concept and possible draft legislation by the end of the year<sup>193</sup>.

**Audits on political party financing continue, although the framework has come under increased strain due to the frequent elections.** The National Audit Office (NAO) remains responsible for carrying out audits on the consistency of financial activities, revenue, expenditure and management of assets made available to political parties, including managing the Unified Public Register of political parties<sup>194</sup>. The audit office has come under increased strain due to the repeated elections in Bulgaria, having carried out five electoral audits on declarations of revenue and expenditure of electoral campaigns in the period 2021-2022. Regularly scheduled audits had to be dropped to accommodate for unforeseen elections due to

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<sup>185</sup> No information was provided regarding the development of an online platform to file and verify declarations of asset and conflict of interests. Input from Bulgaria for the 2023 Rule of Law Report, p. 19 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 18.

<sup>186</sup> GRECO Fifth Evaluation Round – Evaluation report, recommendation ix, para 111-112. GRECO States that “verifications of property, income, asset and interest declarations, whether by the Anti-Corruption Commission, or other authorised bodies [...] were not sufficiently comprehensive, which allowed considerable irregularities to pass unnoticed.” (par. 111).

The Ministry of Interior, although they do not exert any control over the Anti-Corruption Commission, considers that the staffing of the Anti-Corruption Commission is adequate Information received in the context of the country visit from the Ministry of Interior and the Anti-Corruption Commission and GRECO Fifth Evaluation Round – Evaluation report, recommendation ix, para 112.

<sup>187</sup> GRECO Fifth Evaluation Round – Evaluation report, recommendation ix, para 112.

<sup>188</sup> An MP not filing his declarations generally gets the same administrative fine, even if he repeatedly does not file a proper declaration. Information received in the context of the country visit from the Centre for the Study of Democracy.

<sup>189</sup> GRECO Fifth Evaluation Round – Evaluation report, para. 95 and Contribution from the Centre for the Study of Democracy for the 2023 Rule of Law Report, p. 15.

<sup>190</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 18.

<sup>191</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>192</sup> This includes also the necessity to include an element of transparency towards the public. GRECO Fifth Evaluation Round – Evaluation report, recommendation xiii, para. 74.

<sup>193</sup> Input from Bulgaria for the 2022 Rule of Law Report, p.19 and information received in the context of the country visit from the Ministry of Justice.

<sup>194</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 18.

insufficient resources<sup>195</sup>. Some conclusions of two of these electoral audits were forwarded to the prosecution for possible criminal violations<sup>196</sup>. On 22 May 2023, the National Audit Office announced it will publish 17 audit reports that were sent to the Prosecutor's Office in the period 2016-2020 on suspicions of criminal activity, where all pre-trial proceedings have been dropped<sup>197</sup>. Due to the political situation, the National Audit Office continues to operate with an expired mandate<sup>198</sup>. Moreover, the chair of the National Audit Office was dismissed by Parliament in January 2023<sup>199</sup>. Following these allegations that the dismissal was without objective reasons<sup>200</sup>, the Constitutional Court decided that the members of Parliament removed the chair in violation of the Constitution, invalidating Parliament's decision<sup>201</sup>.

**Passports from the discontinued investor citizenship scheme were revoked.** Bulgaria has started a process of revoking Bulgarian citizenship previously granted under its investor citizenship scheme due to investors' failure to comply with the national legal framework<sup>202</sup>. This scheme was abolished with effect as of 5 April 2022<sup>203</sup>. Such schemes have high inherent corruption-related risks. The former head of the Bulgarian Investment Agency, responsible for the scheme, has been charged with abuse of office in relation to the grant of Bulgarian citizenship under the scheme<sup>204</sup>.

**Legislation on whistleblowing has been adopted by Parliament.** Legislation on the protection of whistleblowers aiming to transpose the EU Whistleblowers Directive<sup>205</sup>, a requirement under EU law, and also included in Bulgaria's RRP<sup>206</sup>, was adopted by Parliament in January 2023, right before its dissolution<sup>207</sup>. Civil society raised concerns about the fact that

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<sup>195</sup> Information received in the context of the country visit from the National Audit Office and written contribution from the National Audit Office received in the context of the country visit to Bulgaria.

<sup>196</sup> Information received in the context of the country visit from the National Audit Office and written contribution from the National Audit Office received in the context of the country visit to Bulgaria. The Office points to restriction of the current legal regime in force (art. 58 of the National Audit Office Act), the National Audit Office cannot communicate or obtain further information about cases it sends to the prosecution, until the closure of criminal proceedings. This makes receiving feedback on or seeing results of their work difficult.

<sup>197</sup> The Audit Office intends to publish findings from audits sent to the Prosecutor's Office, where the proceedings had ended with a refusal to initiate pre-trial proceedings or with a decree to terminate pre-trial proceedings. Such a public release of audit findings has not happened over the past reporting periods.

<sup>198</sup> Information received in the context of the country visit from the Bulgarian Institute for Legal Initiatives and contribution from the Bulgarian Institute for Legal Initiatives for the 2023 Rule of Law Report, p. 24.

<sup>199</sup> Motion for the dismissal of the chair of the Bulgarian National Audit Office, of 20 January 2023 and National Audit Office, Press Release - The National Assembly dismissed the chairman of the Audit Office.

<sup>200</sup> The dismissal was criticised by civil society as being without objective reasons and potentially affecting the independence and operation of the National Audit Office. Information received in the context of the country visit from the Bulgarian Institute for Legal Initiatives.

<sup>201</sup> See Constitutional Court Decision No. 5 of 22 June 2023 on Case No. 5 of 20 January 2023.

<sup>202</sup> SEGA (2022), Bulgaria has begun confiscating golden passports. Bulgarian Minister of Justice Zarkov, in the context of a close door hearing in the European Parliament, mentioned to reporters that 12 "golden passports" have already been revoked, with the procedure for 5 more underway.

<sup>203</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 19.

<sup>204</sup> Lex.bg (2023), Former head of investment agency charged over 'golden passports'.

<sup>205</sup> Directive (EU) 2019/1937.

<sup>206</sup> Milestone 217 of Bulgaria's RRP requires, among other issues, that Bulgaria "[introduces] the requirements of Directive (EU) 2019/1937, notably: the creation of confidential internal and external channels for reporting irregularities and corruption; the establishment of verification mechanisms of the submitted signals; providing protection and support measures to whistle-blowers; ensuring provision of feedback and publicity on the results of the performed inspections based on signals.

<sup>207</sup> The Law on the Protection of Whistleblowers or Publicly Disclosing Information on Violations, adopted by the 48th National Assembly on January 27, 2023.





operators<sup>218</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<sup>219</sup>. Although the legal framework is in place<sup>220</sup>, not all media declare their ultimate owners. Stakeholders refer in particular to some online media that have untransparent ownership, and this lack of transparency was considered common for websites disseminating disinformation about the war in Ukraine<sup>221</sup>. An expert working group was set up within the Ministry of Culture in 2021 to consider changes to the 2018 Law on the Deposit of Copies to improve the effective availability of media ownership information and work is progressing in that setting<sup>222</sup>.

**There has been some progress as regards transparency in the allocation of state advertising.** The 2022 Rule of Law Report recommended Bulgaria to improve transparency in the allocation of state advertising, in particular with regard to state advertising contracted through intermediaries, such as media agencies. As indicated in the 2022 Rule of Law Report, prior to that recommendation, some general measures had been taken to improve transparency in practice, notably through the publication of a list of contracts awarded for the purpose of state advertising, including recipient and amount received<sup>223</sup>. Moreover, stakeholders indicate that electronic media have had for some years already the obligation to declare the source of the advertising received from public authorities<sup>224</sup>. However, several print media and websites fail to declare such information<sup>225</sup>. More generally, the overall picture regarding allocation of state advertising by the public authorities has not improved, and the absence of clear rules on how public funds are allocated to the media has raised concerns that this may be based on their perceived editorial loyalty<sup>226</sup>. The Government indicated that in December 2022 the members of the Council for the Rule of Law agreed to form an expert working group to discuss topics affecting the media environment, including the transparency in the distribution of state advertising which was one of the priority topics identified. This working group was formally set up at a meeting of said Council on 26 June 2023<sup>227</sup>. At the same time, the authorities also

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<sup>218</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p.16. A link to the register is available at [Собствеността в медиите \(sem.bg\)](http://Собствеността в медиите (sem.bg)).

<sup>219</sup> The public register is accessible at: [Министерство на културата на Република България \(government.bg\)](http://Министерство на културата на Република България (government.bg)).

<sup>220</sup> The indicator of transparency of media ownership scores low risk (29%) as it did last year, due to the existence of legal provisions (2023 Media Pluralism Monitor, p. 15).

<sup>221</sup> 2023 Media Pluralism Monitor, p. 9, 15 and 17. Information received from Media democracy Foundation in the context of the country visit.

<sup>222</sup> Information received from Bulgaria in the context of the country visit and follow-up contribution. Discussions in the expert group have focused on clarifying the ownership of online publications, which will improve the effectiveness of law enforcement, but also on other issues, such as reducing the excessive penalties provided for in the law and refining the scope of obliged persons by removing the obligation to declare the ownership and funding of specialised publications.

<sup>223</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria.

<sup>224</sup> Information received from NCJE and ABBRO in the context of the country visit.

<sup>225</sup> Written contribution from *Reporters sans frontières* for the 2023 Rule of Law Report. Information received from Media democracy Foundation in the context of the country visit.

<sup>226</sup> Information received from Media democracy Foundation and Union of publishers in the context of the country visit. Written contribution from *Reporters sans frontières* for the 2023 Rule of Law Report. The 2023 Media Pluralism Monitor indicates that there are no significant improvements in the rules and distribution of state advertising, which continues to be a key tool by governments 'to advance media capture' (p. 19).

<sup>227</sup> On 26 June 2023, the Council for the Rule of Law adopted a concept note which stresses the commitments of the Bulgarian authorities to take measures to implement the recommendation on state advertising, as well as other questions relevant for media pluralism and media freedom in Bulgaria. Written contribution from Bulgaria.

indicated that the issue of state advertising would be discussed in parallel and regulated in the context of the European Media Freedom Act<sup>228</sup>. As a result, it is considered that only some progress has been made in relation to the aforementioned recommendation.

**While legal safeguards for editorial independence are in place, there are claims of political influence over the media in practice.** 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>229</sup>. The 2023 Media Pluralism Monitor indicator on ‘Political independence of the media’ scored a medium risk of 42%, which shows a decrease of 33.3% compared to the previous year<sup>230</sup>. The report underlines that these positive changes are, to some extent, attributed to the easing of the political pressure observed in previous years. At the same time, the report confirms the absence of sufficient safeguards capable of preventing in practice conflicts of interests as well as influence of political actors over the media. It also notes that journalists consider that economic entities are among the leading sources for external pressure over the media<sup>231</sup>. Moreover, some stakeholders point to the economic weakness as a main challenge for the media sector, which makes it dependent on external sources. This can lead media, in particular local media, to turn to state resources, which creates risks that such resources are granted in exchange for favourable reporting<sup>232</sup>. Finally, 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>233</sup>.

**The media regulator failed to elect a new Director General of the Bulgarian national television.** The media regulator CEM appoints the Directors-General of the Bulgarian national radio (BNR) and television (BNT) following a public competition and after hearings of the relevant candidates. 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>234</sup>. In 2022, the CEM was unable to elect a new Director-General of BNT, which leads to the continued mandate of the present Director-General running for an unspecified period of time<sup>235</sup>. This outcome has been considered as a source of concern by some stakeholders<sup>236</sup>. The 2023 Media Pluralism Monitor considers that independence of public service media scores a high risk of 94%, an increase of two percentage points compared to last year’s assessment. The rise

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<sup>228</sup> Input from Bulgaria for the 2023 Rule of Law Report; Information received from Bulgaria in the context of the country visit.

<sup>229</sup> Art. 5 of the Radio and Television Law; Section 3 of the Code of Ethics. See also Article 11 of the Radio and Television Law, specifically for rights granted to journalists of electronic media.

<sup>230</sup> 2023 Media Pluralism Monitor, p. 18.

<sup>231</sup> 2023 Media Pluralism Monitor, p. 16 and 18.

<sup>232</sup> Information obtained as a follow-up to the country visit from the Union of publishers.

<sup>233</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria. The NCJE also indicates that no thresholds exist to prevent high concentration in the media (information obtained during the country visit). Others refer to concentration in the hands of companies, which are also active in the telecommunications sector, information obtained from Union of publishers. See also 2023 Media Pluralism Monitor, p. 16.

<sup>234</sup> Art. 58(1) Radio and Television Act.

<sup>235</sup> This is due to the fact that following the unsuccessful election of a new Director General, one of the candidates in the competition launched a court case against it. A new procedure for appointment can only take place once this case is resolved.

<sup>236</sup> Written contribution from *Reporters sans frontières* for the 2023 Rule of Law Report; information obtained in the context of the country visit from Association of European journalists.

of the risk factor regarding public service media over the years is reported to be linked to the fact that the term of office of the management boards and the directors general of the BNR and the BNT can be extended indefinitely in case the CEM does not endorse new directors general and management boards<sup>237</sup>. The envisaged<sup>238</sup> revision of the law, previously reported<sup>239</sup>, which aimed to strengthen the independence of public service media and define in more detail the public service remit and the related financing, has not been further discussed due to the political situation<sup>240</sup>.

**Although issues remain, there are some positive trends as regards access to public information.** There have been some improvements, notably in terms of access to information functionalities of institutional websites, as well as a slight increase in the number of institutions responding within the statutory deadline and in the number of institutions providing full access to the requested information<sup>241</sup>. At the same time, some of the known obstacles, such as administrative tacit refusals, are still present<sup>242</sup>.

**The protection of journalists is being examined by a working group, while journalists continue to encounter various difficulties and threats in their activities, including online threats.** A positive legislative development relates to amendments to the criminal code, notably in terms of crimes of insults and defamation, where the amount of possible fines against journalists is planned to be reduced<sup>243</sup>. Stakeholders report on the continued use of strategic lawsuits against public participation, so-called SLAPPs cases, against journalists<sup>244</sup>. A recent example is the defamation claim made against a media service provider seeking a compensation of approximately EUR 500 000 (BGN 1 million), an unprecedented amount claimed in court<sup>245</sup>. The working group on the media environment set up by the Council for the Rule of Law on 26 June 2023 will also cover the protection of journalists from SLAPPs, which will be among the key topics for future reflections<sup>246</sup>. Other attacks against journalists can also be noted, in

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<sup>237</sup> 2023 Media Pluralism Monitor, p.19-20.

<sup>238</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, which referred to the draft law introduced in Parliament in 2021.

<sup>239</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 22.

<sup>240</sup> Information received in the context of the country visit from the Ministry of Culture. Please refer to pillar I and pillar IV on more information as regards the political situation. More generally, according to European Parliament's Flash Eurobarometer: News & Media Survey 2022, 44% of respondents in Bulgaria stated that they trust public TV and radio stations, below the EU average of 49%.

<sup>241</sup> 2023 Media Pluralism Monitor, p.12. See also information received in the context of the country visit from Access to information programme.

<sup>242</sup> 2023 Media Pluralism Monitor, p.12. See also information received in the context of the country visit from Access to information programme and written contribution from *Reporters sans frontières* for the 2023 Rule of Law Report, which refers to several refusals of access to information specifically by the Prosecutor's office.

<sup>243</sup> Input by Bulgaria to the 2023 rule of law report, confirmed during the country visit by stakeholders. On 19 May 2023, a joint draft to amend and supplement the Criminal Code was passed in a first vote in Parliament. Written contribution from Bulgaria.

<sup>244</sup> 2023 Media Pluralism Monitor, p.13. Liberties 2023 Rule of law report, p. 31. See also 2022 report of the Agency for fundamental rights ('FRA'). See also written contribution from *Reporters sans frontières* for the 2023 Rule of Law Report. One development regarding lawsuits concerns a register of cases against journalists and the media which is made available on the website of the Supreme Court of Cassation.

<sup>245</sup> See report on the civil claim made at the Sofia City Court against Mediapool in March 2023: <https://www.mapmf.org/alert/30013?q=mediapo>.

<sup>246</sup> In this regard, a concept note to ensure media freedom, media pluralism and protection from SLAPPs was adopted by the Council for the Rule of Law on the same day as the setting up of the relevant working group. Written contribution from Bulgaria. See also <https://www.justice.government.bg/home/index/396aedca-f63a-48c5-a5c2-e145d29fa69d>.

particular online harassment of journalists which is on the rise; this was perceived in particular in the context of reporting on Russia's war against Ukraine and the COVID-19 vaccination rollout<sup>247</sup>. Stakeholders reported pressure by public institutions, political parties and a controversial statement made against a journalist from a member of a regulatory authority<sup>248</sup>. Apart from online harassment, journalists rank physical threats as the most common form of external pressure<sup>249</sup>. Four new alerts regarding attacks and harassment of journalists were registered in 2023 on the Council of Europe Platform to promote the protection of journalism and safety of journalists<sup>250</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>251</sup>. Bulgaria has two national human rights institutions. First, the Ombudsperson is an independent constitutional body, elected by the National Assembly and tasked with the promotion and protection of human rights and fundamental freedoms. Second, the Commission for the Protection against Discrimination is a body that implements policies in the spheres of gender equality and non-discrimination.

**An improved national Post-monitoring Mechanism was established with an expanded scope to align with the EU annual Rule of Law Report.** As indicated in previous reports<sup>252</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 reforms, the fight against corruption and organised crime in an independent, transparent, and objective manner. On 5 August 2022, the Government amended the decree establishing the Council<sup>253</sup>. The amendments renamed the mechanism as "A Mechanism for the Rule of Law", with a Council for the Rule of Law established for the application of the mechanism<sup>254</sup>. Furthermore, the amendments expanded the competences of the Council to cover the full scope of the Annual Rule of Law Report<sup>255</sup>. The Council for the Rule of Law is co-chaired by the Minister of Justice and the Representative of the Supreme Judicial Council. The members of the Council include representatives of the relevant Governmental authorities for each topic, judicial authorities and civil society organisations (CSOs)<sup>256</sup>. Stakeholders have informed that the cooperation with the

<sup>247</sup> 2023 Media Pluralism Monitor, p. 9, 12 and 14; see also 2022 survey on freedom of speech in Bulgaria by the Association of European Journalists. See also Liberties 2023 Rule of law report.

<sup>248</sup> Information received in the context of the country visit from Media democracy Foundation, Access to information programme and the Association of European Journalists. See also written contribution from *Reporters sans frontières* and Liberties for the 2023 Rule of Law Report.

<sup>249</sup> 2023 Media Pluralism Monitor, p.12; see also 2022 survey on freedom of speech in Bulgaria by the Association of European Journalists. See also Liberties 2023 Rule of law report.

<sup>250</sup> Moreover, since the last rule of law report, 5 alerts have been reported in autumn 2022.

<sup>251</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. The draft is then published in the State Gazette and enters into force three days after its publication, unless the act provides otherwise.

<sup>252</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 23. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 17.

<sup>253</sup> Decree of the Council of Ministers No. 240 of 24 September 2019.

<sup>254</sup> Art. 1 of the Decree of the Council of Ministers No. 240.

<sup>255</sup> Art. 2 of the Decree of the Council of Ministers No. 240.

<sup>256</sup> Art. 6 of the Decree of the Council of Ministers No. 240.

authorities is very constructive<sup>257</sup> and they are managing to achieve progress with the first decisions related to the necessary measures for the implementation of the recommendations of the 2022 Rule of Law Report<sup>258</sup>. They also reported that while the Supreme Bar Council was not included in the original list of participants in the Civil Council, part of the Council for the Rule of Law, an amendment to the Decree establishing the Council was made in order to include the Supreme Bar Council in the list<sup>259</sup>.

**The renewal of the mandates of independent and regulatory authorities has been delayed due to the political situation.** Over the past two years, there have been five parliamentary elections, with only one of them managing to create a stable government, which lasted only eight months. On 6 June 2023, a new regular government took office<sup>260</sup>. This situation has had the consequence of delaying the renewal of the mandates of important independent and regulatory authorities<sup>261</sup>. With a growing number of independent and regulatory authorities operating under a prolonged expired mandate, there is a potential risk that decisions of these authorities could be influenced<sup>262</sup> by the fact that actions on the renewal of mandates have not

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<sup>257</sup> Information received from Bulgarian Institute for Legal Initiatives, Centre for the Study of Democracy and Access to Information Programme in the context of the country visit to Bulgaria.

<sup>258</sup> See Protocol No. 1 of the Meeting of the Council for the Rule of Law.

<sup>259</sup> Information received from the Ministry of Justice and the Supreme Bar Council in the context of the country visit to Bulgaria. On 5 December 2022, a procedural motion was made, unanimously adopted by the members of the Council, to amend the Decree No. 240/2019 by including a representative of the Supreme Bar Council in the composition of the Civil Council of the Council for the Rule of Law. Following this decision, the Ministry of Justice drafted an amendment to the decree, which was promulgated in Official Gazette No. 25 of 17 March 2023.

<sup>260</sup> This is a rotation government between the first and the second political powers represented in the Parliament. The first 9 months, the Government will be presided by the representative of the second biggest political power, while for the second 9 months, it will be presided by the representative of the biggest political power. During the periods when they are not Prime Ministers, they will be Deputy Prime Ministers.

<sup>261</sup> Currently, these are: Bulgarian National Bank – Governor and two Deputy Governors; Supreme Judicial Council – 11 members (quota of the National Assembly); Inspectorate to the Supreme Judicial Council – Inspector General and 10 Inspectors; Commission for Personal Data Protection – Chairman and four members of the board; Commission for Public Oversight of Statutory Auditors – Chairman and four members; Committee for disclosing the documents and announcing affiliation of Bulgarian citizens to the State Security and intelligence services of the Bulgarian National Army – Chairman, Deputy Chairman, Secretary and six members; Financial Supervision Commission – Chair; National Social Security Institute – Governor; Bulgarian National Audit Office – President, two Vice-Presidents, two Members; Bulgarian Fiscal Council – Chairman and four members; Commission for Protection against Discrimination – Chairman, Deputy Chairman and three members; Public Enterprises and Control Agency – 1 member of the Supervisory Board. There are also authorities for which the mandate was prematurely terminated without appointing a new person on the position: Commission for Combating Corruption and Confiscation of Illegally Acquired Property – Chairman; Energy and Water Regulatory Commission – Chairperson; National Bureau for Control over Special Intelligence Means – one member; National Health Insurance Fund – Director. A special case is the Constitutional Court of the Republic of Bulgaria which operates with two judges less from the quota of the National Assembly. Another judge’s mandate from the quota of the National Assembly would expire in 2024. If no judge is appointed at any of these positions, this would make the functioning of the Constitutional Court very difficult. See Chapter VIII of the Constitution.

<sup>262</sup> This situation creates a potential risk of taking decisions with a form of prior compliance. This means that institutions are more likely to take decisions, which would comply with the predicted reaction/position of the current or future authorities responsible for renewing their mandates due to the threat of premature termination of the already expired mandate. As explained in pillar II, according to stakeholders, a recent example is that of the chair of the Bulgarian National Audit Office. Furthermore, upon a request by members of Parliament of the 48<sup>th</sup> National Assembly, the Constitutional Court reviewed the constitutionality of the decision on the dismissal of the chair and decided that the members of Parliament removed the chair in violation of the

been taken. If the situation with the renewal of mandates is not remedied, there could be a particular issue with regard to the Constitutional Court. It already works with a limited number of judges and another mandate ending in 2024. The number of judges in that Court risks to be insufficient for it to fulfil its functions<sup>263</sup>. Another body with an expired mandate is one of the National Human Rights Institutions<sup>264</sup>, namely the Commission of the Protection against discrimination, whose Chairperson, Deputy and members have been operating with an expired mandate since July 2022.

**Important procedural rules regarding the law-making process are in place, however concerns arise in relation to implementation in practice.** As mentioned in the 2022 Rule of Law Report, and in line with the implementation of the RRP<sup>265</sup>, improved rules for law-making in the Parliament have been adopted<sup>266</sup>. Accordingly, all draft legislation proposed by Members of Parliament should be accompanied by a reasoning and an impact assessment. Moreover, a summary of stakeholders' opinions is to be presented with the draft laws as part of the parliamentary committee report on a draft law. In addition, the possibility of introducing important legislative changes through amendments to other legal acts between the first and the second reading is 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. As regards the practice of introducing legislative changes through amendments to other acts between the first and the second reading, no regular continuation of this practice has been reported, except for some notable examples<sup>267</sup>. However, stakeholders have reported that some of the new obligations are not thoroughly respected in practice. According to these reports draft laws proposed by members of the Parliament are still often accompanied by just a *pro forma* impact assessment<sup>268</sup>. Analysis of the law-making process published by the Centre for Regulatory Impact Assessment also reports insufficient progress with only sporadic implementation of the impact assessment requirement and frequent circumvention of mandatory public consultations for draft laws tabled by members of Parliament<sup>269</sup>. According to the data collected by the National Centre for Parliamentary Research for the legislative process in the 47<sup>th</sup> and 48<sup>th</sup> Parliaments, in about 90% of the draft laws tabled by members of Parliament, there is no information on public consultations or discussions held to determine the problems nor on reasons necessitating the adoption of the draft law<sup>270</sup>. The quality of law-making is an important

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Constitution, invalidating Parliament's decision. See Constitutional Court Decision No. 5 of 22 June 2023 on Case No. 5 of 20 January 2023.

<sup>263</sup> Information received from the Constitutional Court in the context of the country visit to Bulgaria.

<sup>264</sup> There are two National Human Rights Institutions in the country – the Ombudsperson, which has an A-status accreditation from Global Alliance of National Human Rights Institutions (GANHRI), and the Commission of the Protection against discrimination, which has a B-status accreditation from GANHRI.

<sup>265</sup> Milestone 241 under the RRP.

<sup>266</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 23.

<sup>267</sup> During the adoption of the Law on the Budget and during the adoption of the amendments on the Electoral Code for the reintroduction of paper ballots. During the adoption of the Law on the amendment and supplement of the Judicial System Act to introduce amendments regarding the Inspectorate to the Supreme Judicial Council, the Parliament adopted without any discussions and votes in the Legal Committee the separation of the National Investigative Service from the Prosecutor's Office and new disciplinary sanctions for magistrates.

<sup>268</sup> Information received from Bulgarian Centre for Not-for-Profit Law, Bulgarian Helsinki Committee and Open Society Institute – Sofia in the context of the country visit to Bulgaria.

<sup>269</sup> Project "Regulatory Reform In Bulgaria - Five Years Of Stagnation Or Development?" by Regulatory Impact Assessment (RIA) Bulgaria.

<sup>270</sup> National Assembly. Study of the law-making activity of the National Assembly (December 2021 – July 2022) and (October 2022 – December 2022), p. 50 and p. 35.

factor for investor confidence and a reason for concern about effectiveness of investment protection for 24% of companies in Bulgaria<sup>271</sup>. Stakeholder feedback suggests that quick adoption of laws before prior assessment results in costs and legal uncertainty for business<sup>272</sup>.

**On 1 January 2023, Bulgaria had 93 leading judgments of the European Court of Human Rights pending implementation, an increase of one compared to the previous year<sup>273</sup>.** At that time, Bulgaria's rate of leading judgments from the past 10 years that remained pending was at 55% (the same as at the start of 2022) and the average time that the judgments had been pending implementation was 6 years and 10 months (compared to 6 years and 4 months in 2022)<sup>274</sup>. One of the oldest leading judgments pending implementation for 22 years concerns the excessive use of force by law enforcement agents<sup>275</sup>. On 15 June 2023, the number of leading judgments pending implementation has increased to 96<sup>276</sup>.

**The Council for Civil Society Development has begun functioning.** As reported in the 2022 Rule of Law Report, the Council for Civil Society Development was appointed and has begun functioning<sup>277</sup>. The Council assembled for the first time on 8 March 2022 and until 20 January 2023 has held a total of 10 meetings during which it established priority areas for their work: volunteering; civic participation; dialogue and partnership; funding to the civic sector; and using the Council as a communication platform<sup>278</sup>. One of the main goals of the new Council is to create a national funding mechanism for CSOs. Stakeholders have reported that it is hard for CSOs to receive EU funding (through state agencies dealing with EU funds) because they are considered as commercial entities and the state applies the same state aid restrictions as for private companies receiving EU funding<sup>279</sup>.

**Despite the negative opinion of the Minister of Justice, the draft law for the registration of foreign agents was resubmitted by one of the political parties in the new Parliament and continues to raise serious concerns as regards the work of CSOs.** On 27 October 2022, a new draft law for the "Registration of foreign agents" was tabled in Parliament by some

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<sup>271</sup> Figure 54, 2023 EU Justice Scoreboard indicates that "Frequent changes in legislation or concerns about quality of the law-making process" are of concern to 24% of companies in Bulgaria.

<sup>272</sup> Figure 55, 2023 EU Justice Scoreboard.

<sup>273</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>274</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 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 2.

<sup>275</sup> Judgment of the European Court of Human Rights of 18 May 2000, *Velikova v. Bulgaria*, 41488/98, pending implementation since 2000.

<sup>276</sup> Data according to the online database of the Council of Europe (HUDOC-EXEC).

<sup>277</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, p. 25.

<sup>278</sup> Franet (2023), Country research - Legal environment and space of civil society organisations in supporting fundamental rights - Bulgaria, p. 4.

<sup>279</sup> Written contribution from European Civic Forum - Annual Civic Space Report 2022 concerning Bulgaria, p.16. Information also received from BCNL and Open Society Institute – Sofia, in the context of the country visit to Bulgaria. As explained by stakeholders, the main restrictions are related to the *de minimis* rule for receiving EU funds through national intermediaries (i.e. that is, less than EUR 200 000 in any rolling 3-year period).



Members of Parliament. The draft envisaged to set up a system where every entity (e.g. CSO, academic, journalist) that receives more than EUR 500 (BGN 1000) from a foreign state or entity (not including the EU Member States and funding coming through the EU) should be put in a register of foreign agents and they should state everywhere in their online or offline presence that they are a ‘foreign agent’<sup>280</sup>. Stakeholders have raised concerns that this could have a stigmatising effect and further affect the civic space in the country, which continues to be rated as narrowed<sup>281</sup>. However, following negative opinions from CSOs and the Ministry of Justice, the draft was never discussed and, as per the general rule of discontinuity, lapsed with the dissolution of the Parliament. On 28 April 2023, the same draft law was reintroduced in Parliament by the same political party.

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<sup>280</sup> Stakeholders have reported that this resembles almost entirely the Russian (as to the labelling in the offline and online presence of the entity) and Hungarian (as to the labelling, mandatory registration and imposed threshold for amount of money above which the registration would be mandatory) laws on the same topic. It should be recalled that the combination of the labelling and mandatory registration stigmatises CSOs and create a climate of distrust with regard to them, apt to deter natural or legal persons from other Member States or third countries from providing them with financial support. See Court of Justice of the European Union, judgment of 18 June 2020, *Commission v. Hungary*, C-78/18, paras. 50, 54, 56, 58 and 118. An open letter signed by 180 CSOs was published on the website of the Bulgarian center for not-for-profit law.

<sup>281</sup> See rating given by CIVICUS, Bulgaria. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. See also an open letter signed by 180 CSOs was published on the website of the Bulgarian center for not-for-profit law.

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

\* *The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at [https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en).*

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

The Commission services held virtual meetings in **February 2023** with:

- Access to Information Programme
- 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 Industrial Association
- 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
- Constitutional court
- Foundation Media Democracy
- Group of academics
- Initiative Justice for Everyone
- Inspectorate to the Supreme Judicial Council
- Ministry of Culture
- Ministry of Interior
- Ministry of Justice
- National Audit Office
- National Council for Journalistic Ethics
- Office of the Prosecutor General
- Ombudsperson
- Open Society Institute
- Public service media – Bulgarian National Radio
- 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:

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action 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
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU