

2021 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The first annual Rule of Law Report was published on 30 September 2020. It is the core of the new European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues.

In the preparation of the first annual Rule of Law Report, the Commission relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through a targeted stakeholder consultation^[1]. The information provided has informed the Member State-specific assessments of the Commission in preparing the Report. Building on the positive experience from the first Rule of Law Report, the Commission is inviting stakeholders to provide written contributions for the preparation of the 2021 Rule of Law Report through this targeted consultation.

The contributions should cover in particular (1) feedback and developments with regard to the points raised in the country chapters of the 2020 Rule of Law Report and (2) any other significant developments since January 2020^[2] falling under the 'type of information' outlined in next section. This would also include significant rule of law developments in relation to the COVID-19 pandemic falling under the scope of the four pillars covered by the report.

The input should be short and concise, if possible in English, and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published.

Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

Please provide your contribution by 8 March. Should you have any requests for clarifications, you can contact the Commission at the following email address: rule-of-law-network@ec.europa.eu.

[1] https://ec.europa.eu/info/publications/2020-rule-law-report-targeted-stakeholder-consultation_en

[2] Unless the information was already submitted in the consultation for the 2020 Rule of Law Report.

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms and nominations for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the request for input[1])

Any other relevant developments

- National authorities are free to add any further information, which they deem relevant; however, this should be short and to the point.

Please include, where relevant, information related to measures taken in the context of the COVID-19 pandemic under the relevant topics.

If there are no changes, it is sufficient to indicate this and the information covered in the 2020 Rule of Law Report should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions and supreme audit institutions.

About you

* I am giving my contribution as

Civil society organisation/NGO

* Organisation name

250 character(s) maximum

Bulgarian Institute for Legal Initiatives Foundation (BILI)

* Main Areas of Work

- Justice System
- Anti-corruption
- Media Pluralism
- Other

* Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

BILI is an independent, non-partisan organization with a strong focus on judicial and legal reform and anti corruption. It has been established in 2006 and is among the most vocal and critical NGOs in Bulgaria. BILI is a member of the Council on the Updated Strategy for Judicial Reform under the auspices of the Minister of Justice and of the Civic Council at the National Council on Anti-corruption Policies. www.bili-bg.org, <https://www.facebook.com/BulgarianInstituteforLegalInitiatives/>

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

N/A

* Country of origin

Please add the country of origin of your organisation

Bulgaria

* First Name

Bilyana

* Surname

Gyaurova-Wegertseder

* Email Address of the organisation (this information will not be published)

* Publication of your contribution and privacy settings

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- Public - Your personal details (name, organisation name, transparency register number, country of origin) will be published with your contribution.
- No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

I agree with the [personal data protection provisions](#).

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[overview topics for contribution.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

Questions on developments in Member States

The following four pillars are sub-divided into topics and sub-topics. You are invited to provide concrete information on significant developments, focusing primarily on developments since January 2020, for each of the sub-topics which are relevant for your work. Please feel free to provide a link to and reference relevant legislation/documents. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices (as outlined under "type of information").

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Please note that, due to the size of the questionnaire, certain elements may be slow to load, especially if selecting many Member States at once. In such cases, it is recommended to wait a few minutes to let the page load correctly.

Member States covered in contribution [several choices possible]

Please select all Member States for which you wish to contribute information. For each Member State, a separate template for providing information will open. This may take several minutes to fully load.

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden

Justice System - Bulgaria

Independence

Appointment and selection of judges, prosecutors and court presidents

(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

3000 character(s) maximum

There are no significant developments as of last year. The system is still the same – entering and advancing in it happens through competitions. It has to be noted, though, that through the years legislative changes and amendments to the JSA provided for certain categories of magistrates to circumvent this process and advance without a competition. Some recent changes again established such an opportunity. This time it is for elected members of the SJC. A change in art. 28, 1 provides that when their mandate expires or is terminated preterm when an elected member resigns, then he/she returns to the position he/she has occupied before in the judicial system, equal to the level or with one level higher than the previously occupied position. For this, the respective elected SJC member has to submit a request to the respective SJC College 14 days prior the expiration/termination of the mandate. This change has created tensions in the system as it clearly allows for these SJC members to advance in the system without going through a competition. Another issue which might be described as problematic is related to the General Assemblies (GA) in the courts when it comes to election of court presidents. Changes in the law from 2016 provided that the GA can express a preference toward once candidate over another in the competition for president. Their preference is not obligatory to the respective College at the SJC. However, what is observed in practice is that the Judges College rarely elects the candidate preferred by the GA. And usually it is hard to provide a logical explanation as to why the preferred by the judges candidate is not elected. This is relevant especially for important courts/prosecution offices such as the Sofia City Court for example or the Specialized prosecution office.

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

3000 character(s) maximum

With regard to transfers and irremovability, there are no significant developments from last year. The latter is still 5 years and changing it would require amendment to the Constitution. Tenure is not a topic of discussion and, as mentioned in the previous contribution, judges seem ok with the current situation. All magistrates are retired at the age of 65 years. After that they cannot hold any position within the judiciary. While still acting magistrates, they are required to declare any retirement insurance they have in a retirement fund if its total amount is above 5 000 Euro. It is within the rights of the Inspectorate to the SJC to double check the declared information and it might request additional information from the respective pension fund and/or insurance company. When retiring a magistrate with more than 10 years of service is entitled to a compensation amounting to the number of brute monthly salary for each year of service, but not more than 20. The way this compensation is calculated is determined by the SJC. The retirement regime is the same for all magistrates regardless if regular ones or presidents of courts/prosecution offices.

Promotion of judges and prosecutors

3000 character(s) maximum

There are no specific changes on this issue. It should be mentioned that promotion is done through a competition. According to the law there should be a 9 months period in between competitions. In case some places are freed in this period, they should be filled in by candidates who were “under the line” in the previous completion and have a note which is not less than 5 (very good). Last year there was an interesting case when the Penal College of the Supreme Court of Cassation requested the announcement of a competition even though the 9 month term was still running. The request was rejected. A judge from the Sofia City Court also had a similar request, but for promotion at an appellate level with the argument that the two competitions are different. His request was also rejected and he appealed at the Supreme Administrative Court. The latter came out at the end of last year, with a decision that no competitions for promotion can be announced before the expiration of the 9 months term. One can argue that this decision is controversial and can potentially lead to a blockage in the system, allowing at the same time for candidates who dropped off during the call for the competition to get to the desired positions without applying again.

Allocation of cases in courts

3000 character(s) maximum

Perhaps the most significant development on the topic was the check up on the RCA system performed by the prosecution headed by the new PG. In the beginning of April last year, the prosecutor general announced that the prosecution has started an investigation based on a signal coming from six members of the SJC. The signal was in the form of an audit report stating a number of weaknesses in the system and the high potential for its manipulation. As in the previous consultations BILI notes that the Institute was the first to mention about the potential to manipulate the RCA system and based on this information the SJC undertook a series of audits and checks and subsequently upgraded the RCA software. As of today, there is no further official and public information as to the stand of the investigation initiated by the prosecution. As part of his media appearances on the topic, the PG stated that because of the weaknesses of the RCA system,, there was no justice in the last five years in Bulgaria (<https://nova.bg/news/view/2020/04/04/283892/%D0%B8%D0%B2%D0%B0%D0%BD-%D0%B3%D0%B5%D1%88%D0%B5%D0%B2-%D0%BA%D0%BE%D0%BC%D0%B5%D0%BD%D1%82%D0%B8%D1%80%D0%B0-%D0%B8%D0%BC%D0%B0-%D0%BB%D0%B8-%D0%BC%D0%B0%D0%BD%D0%B8%D0%BF%D1%83%D0%BB%D0%B0%D1%86%D0%B8%D1%8F-%D0%BF%D1%80%D0%B8-%D1%80%D0%B0%D0%B7%D0%BF%D1%80%D0%B5%D0%B4%D0%B5%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5%D1%82%D0%BE-%D0%BD%D0%B0-%D0%B4%D0%B5%D0%BB%D0%B0/>). This statement led to a letter from the Bulgarian Judges Association to the SJC from October in which it was stated that based on this and other publicly known facts about the PG, the SJC has to vote for his removal from office. The plenary of the SJC debated on the BJA’s position, however, it did not see any unethical and/or unprofessional behavior of the PG which can be so damaging to the system that can bring to his removal from office. Another important issue to be mentioned is the vulnerability of the systems in the courts dealing with court management and overall organization of the work. Last year as part of an EU funds supported project BILI participated in the preparation of a report on the topic which found some disturbing elements in the security of these systems – lack of regular audits /check ups of the systems, lack of disaster recovery plans, complete reliance on the local IT administrator with no backup sometimes. BILI informed the Judges College at the SJC about this and suggested that they at least hear the opinion of the IT specialist who worked on the report. On a regular meeting of the Judges Colleges in the beginning of February, it deliberated on our report and the information in it and voted against hearing the IT expert. It has to be noted that during this meeting and the discussions no specialist from the IT department of the SJC was present.

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

3000 character(s) maximum

Nothing has changed regarding the composition and the structure of the SJC in the last year. The main topic of discussion was the suggestion of the ruling coalition to change the Constitution of the RB and as a consequence a draft was presented to the public. The latter was labeled as a new Constitution, but, on the contrary, it was a more than 90% repetition of the current one with only slight changes. A large part of the legal community in the country criticized the paper, but the parliament continued the procedure. A temporary parliamentary committee was established to review the draft, also something which is against the law itself. BILI was invited to contribute to the work of the committee with an opinion, but rejected the invitation as it was contradicting the law. Subsequently the committee was dissolved. It should be mentioned that during that process the Venice Commission came out with two urgent opinions on the matter - [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)016-f](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)016-f) and [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)035-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)035-e) Both opinions were direct and critical on the draft stating that it is still lacking a decision on the main issue in the Bulgarian judicial system, namely "...a mechanism whereby in case of potential conflict of interests the Prosecutor General could be suspended and an independent acting Prosecutor, answerable before another authority than the Prosecutorial Council, would be appointed to investigate the case." According to the constitutional procedure for amending of the Constitution through a Grand National Assembly /GNA/, there should have been a qualified majority of 160 members of the parliament in order for the regular parliament to adopt the draft Constitution, dissolve itself and provide space for elections for a GNA. During the voting, the parliament was not able to achieve the required majority, therefore, the project for a new Constitution was abandoned. An interesting amendment in the JSA was adopted related to the elected members of the SJC. When their mandate expires, they can return to the system at the same position they have held previously or a position equaling this one. However, if their last performance evaluation had a grade "very good", they can return to the system at a higher position than from the one they had before becoming member of the SJC (art. 28, 1). It is a controversial amendment as advancement in the system happens through competition and in this case, ex SJC members can advance in the system circumventing the competition.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

3000 character(s) maximum

There are no significant changes as to what was presented in BILI's contribution for the first report. Besides the mentioned above discussion about the ethical and professional behavior of the PG, there were couple of other interesting cases relevant to the topic which are worth mentioning. In May last year after a final decision of the Supreme Administrative Court judge Tchenalova was disciplinary fired and left the judicial system. There were 3 suggestions for disciplinary proceedings against her – for being biased on a case, delaying cases and ruining the prestige of the judiciary. A prosecutor from the Sofia prosecution office was also disciplinary fired, because during a court hearing he was swearing at the President of the Supreme Court of Cassation. The case was initiated in 2018. Another interesting case was against a judge from the specialized court whose name was released by the US Embassy as a person who is prohibited from entering the US. The Judges College at the SJC decided to initiate a disciplinary procedure against him, however, it was found that the evidence presented are not sufficient for a further development of the procedure. Disciplinary procedures against magistrates are always a sensitive topic, which often has a political colouring. The also show the double standard used by the SJC when dealing with signals and information. Usually, when such come from magistrates or political figures who are from the opposition or labeled as pro-reform oriented, they get delayed or without further development, or not reviewed at all.

Remuneration/bonuses for judges and prosecutors

3000 character(s) maximum

By the time of the filling in of this questionnaire, the situation with the remuneration of magistrates – main and supplementary is still the same as it was described in the first contribution. There were no changes and or amendments to the law or the other relevant normative acts. The only new development is that the SJC formed a working group which has to draft changes and amendments to the Rules on determining the supplementary remuneration. The information about the working group is not public, as well as the draft it has developed. In February there was a discussion on the topic in the Judges College of the SJC and subsequently, the Rules need to be adopted by the Plenary of the SJC. Shortly before the meeting of the Judges College, BILI provided it with an analyses the Institute has developed on the topic. A summary of it in English can be seen here - http://www.bili-bg.org/cdir/bili-bg.org/files/MAGISTRATES_REMUNERATIONS_SUMMARY_ENG.pdf The analyses proves through an empirical way that with the years the number of court cases goes down as a total, but at the same time the price of one case goes up. The lack of a programmatic approach in the budget of the judiciary and the increase of the price could be explained only with an increase in the salaries, but it is still unclear what is the criteria and the reasoning behind the increase (the last one with 10% was approved by the Plenary of the SJC in February retroactively as of January 1, 2021). The latter has also triggered some tension in the society as during the pandemic situation salaries in a lot of sectors were frozen or even went down for a certain period of time. On the contrary, the judicial system made two increases – one last year with the promise that it will not make anymore and the second time this February.

Independence/autonomy of the prosecution service

3000 character(s) maximum

As of today the most important and still unresolved issue continues to be the lack of mechanism to hold the PG accountable, despite the recently adopted changes and amendments to the Criminal Procedure Code and the Judicial System Act which created the figure of a special (we call it ueberprosecutor) who can potentially investigate the PG and his deputies. As already stated on many occasions, the problem became more obvious with the ECHR decision on the Kolevi vs Bulgaria case from 2009. In the last ten years the Bulgarian authorities circumvented the implementation of this decision by using all institutional tools including the Constitutional Court (see Decision Nr. 11 from July 23, 2020). Nevertheless, in the fall of 2019 pressure was exercised by the unit responsible for the implementation of the ECHR decisions and it triggered certain processes on the ground. What was adopted and entered into force in mid-February, 2021, is controversial and its work in practice is questionable. Moreover, the draft now a law was criticized not only by legal experts and members of the NGO community, but also by the SJC and the prosecution itself (motives were not the same though). Every prosecutor with more than 12 years of practice can apply for the position of this new one. Nominations can be made by 6 SJC members. The SJC in a plenary has to vote for this prosecutor and he/she needs to receive at least 15 (out of 25) votes. The mandated is set to 5 years and after its expiration the person can return to the prosecution office or become a judge. The whole procedure for investigation and eventual indictment is “closed” only within the work of the specialized prosecution and the specialized courts. Certain activities can be transferred to an investigator from the specialized prosecution. Rejection to initiate an investigation could be appealed at the first instance specialized court. The law was vetoed by the President, but the veto was overruled in the parliament. Subsequently, the President challenged the texts of the law at the Constitutional Court (CC) which will initiate a case on the challenge on March 9. At the same time the SJC has to start the procedure for the election of the ueberprosecutor and according to the rules he/she has to be elected by May 26. The procedure at the CC is not suspending the other one, but expectations are that the SJC will look for such a solution in order to wait for the decision of the CC. CC is not bound by any term to come up with a decision, but most likely it will do so after the parliamentary elections in Bulgaria (April 4). The current structure of the prosecution makes it very difficult to find a really independent/autonomous figure to carry out an investigation against the PG. Therefore, an accountability mechanism is needed which does not depend on the prosecution, the mandate of the PG and its influence in the SJC. Additional info at http://www.bili-bg.org/cdir/bili-bg.org/files/PG_continued_ENG.pdf

Independence of the Bar (chamber/association of lawyers) and of lawyers

3000 character(s) maximum

N/A to the work of the organization

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

3000 character(s) maximum

After the first RoL report, the Council of Ministers adopted an Action plan (AP) with measures to respond to the recommendations from the report. Among them are legislative changes for accountability mechanism of the PG and also the establishment of a public register for attacks against the independence of the judiciary. The latter was established at the end of last year and can be viewed here - <http://www.vss.justice.bg/page/view/106204> The register itself does not contain actual attacks against the judiciary, but only institutional reactions (of the SJC, Judges and Prosecutors Colleges, separate courts) to such. In that case, the register contains only information to which some of the bodies within the judicial system have decided to react and not a more or less exhaustive list of attacks against the independence of the judiciary. A very serious problem remains the fact that one year after the expiration of the mandate of the ISJC and the chief inspector, there is still no election of new one. Last year BILI even called publicly for the chief inspector to resign in order to trigger new election, but that call was ignored, as well as the other open letters the Institute has sent to the parliament as the institution responsible for the election (all can be seen here in BG only: http://www.bili-bg.org/12/899/news_item.html , http://www.bili-bg.org/12/901/news_item.html At present it is too late to carry an election as parliamentary ones are on April 4, however this sends a very bad signal to the public and the judiciary itself, confirming indirectly the phrase used in one of the CEU decisions related to mandates and independence of institutions – “anticipatory obedience”. Similar situation is related to filling in of the parliamentary quota at the Prosecutorial College (PC) of the SJC. In January 2020 one of its members became Deputy PG and left the SJC. She was from the parliamentary quota (suggested by the MRL party). As of today her place is still empty, meaning that the parliament did not manage in more than a year time to elect a replacement. During the same period, another person from the Prosecutorial College was replaced (but from the professional quota; only one candidate participated and was elected). Such developments raise serious questions as to the necessity of the parliamentary quota at the SJC and/or its number. The election of European Delegated Prosecutors – after the adoption of changes and amendments in the JSA (sharply criticized by the opposition), the PC at the SJC adopted rules for this selection and the interviews were carried out in February 10-13. Candidates were 35, 31 remained and according to the rules the PC selected 10 out of 10 (the # of Bulgarian EDP). The names were sent to the EPPO, but on March 3, a letter was publicly announced saying that 7 names were returned for additional information. The PC is meeting on March 10 to discuss the situation, however, it is damaging for the reputation of the PC.

Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

Accessibility of courts (e.g. court fees, legal aid, language)

3000 character(s) maximum

N/A to the work of the Institute

Resources of the judiciary (human/financial/material)

Material resources refer e.g. to court buildings and other facilities.

3000 character(s) maximum

N/A to the work of the Institute

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

3000 character(s) maximum

N/A to the work of the Institute

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

(Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, does not need to be repeated)

3000 character(s) maximum

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

3000 character(s) maximum

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization

3000 character(s) maximum

The issue about reforming the judicial map has been on the table for at least 5 years, but moved forward quite slower than in the prosecution. Just recently the Judges College at the SJC speeded up the work which caused a lot of discussions and tension in the system. It has to be mentioned that the SJC is implementing an EU funded project part of which is also the work on the judicial map – Activity 1.6 of the project is called “Development of models for optimization of the judicial map”. According to this activity an analyses has to be produced and introduced with various models developed. In February a model (called Model #4) for restructuring of the court was introduced. An interesting element is that the model was introduced during a regular meeting of the Judges College, but it is not publicly available as a document. The analysis under Activity 1.6 of SJC’s project is also not publicly available on the website of SJC or anywhere else. Therefore, it is difficult to make an opinion on the efficiency of the suggested model or compare it with the other 3 (presumably). In BILI’s opinion the topic about the judicial map needs a much broader discussion as it is larger than the competences of the Judges College only. It touches also on demographic, social, economic and community aspects and cannot be restricted to the SJC only. Furthermore, it is also a matter of access to justice, procedural justice and training and development of the judgeship as a whole, therefore, it is a matter of state politics. At present, no such approach or initiative has been seen.

Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under “type of information”.)

Length of proceedings

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

Anti-Corruption Framework - Bulgaria

The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant)

3000 character(s) maximum

Nothing has really changed from last year's contribution. Authorities are still the same and it can be stated that the prosecution has accumulated more power through the so called Bureau for protection of witnesses. A series of changes and amendments regulating the powers and obligations of the Bureau turned it into the "pretorian guard"(as it is called by the media) of the PG. Initially the Bureau was under the auspices of the Ministry of Justice, but later on (2014) was transferred to the prosecution. It also gained the right to bring forcefully witnesses and accused to be questioned and to receive information from the MoI and the State Agency for National Security. It is currently a quasi-police structure, but under the direct supervision of the PG. In the beginning of last year, additional changes and amendments were made providing that the Bureau is taking care of the security protection of prosecutors and investigators. The decision who needs security protection is taken by a commission comprised entirely by members of the prosecution (the only external member is a representative of the MoI). No public information is available about the work of this body, its budget and personnel. The only information which can be obtained about it is from the sessions of the SJC and the Prosecutorial College, as well as the meetings related to the budget of the judiciary. These sources show that in the last 2-3 years, the number of the staff as well as the budget of the Bureau have significantly increased (<https://www.mediapool.bg/borisov-pompa-pari-kam-geshev-a-byuroto-za-zashtita-naedryava-barzo-news313710.html>). With regard to the Anti-corruption Commission headed by the former PG, it can be mentioned that it presented last week its annual report in the parliament which adopted it without any discussion or questions to the Head of the Commission.

Prevention

Integrity framework including incompatibility rules (e.g.: revolving doors)

3000 character(s) maximum

In the beginning of 2020 started the work on the new National Strategy for Prevention and Counteraction against Corruption in Republic of Bulgaria (2020-2027). It is a logical prolongation of the previous Strategy for the period 2015-2020. BILI, as a member of the National Council for Anticorruption Policies, took part in the working group and submitted two official statements considering the new Strategy. (HERE – in Bulgarian). However, mainly during the pandemic situation, the work was put on hold and restarted at the end of 2020. At present, the official public discussion on the draft has ended and it is expected that the new Anti-corruption Strategy will be adopted by the Council of Ministers only.

According to BILI's analysis a major weakness of the Strategy seems to be its very character – as a strategic document, issued by the Executive, not from the Parliament, some of its measures, concerning, or requiring, the interaction of the Judiciary and the Local Authorities, could remain only the field of wishful thinking, if not adopted later by the Nation Assembly. As Bulgaria is in an election campaign, it cannot be expected for the Strategy to be adopted by this parliament, however, it might be advisable that the document gets “the blessing” of the new parliament in order to guarantee more sustainability of the actions and measures envisioned.

Apart from that, the Strategy has numerous strong sides. It talks about the long awaited regulation of lobbying in Bulgaria. It also proposes the introduction of anticorruption modules in the early grade of school education. The document also establishes for the first time the notion of electoral corruption, a very sensitive issues for the Bulgarian society. The document, however, omits to introduce another, even more important notion, concerning once again the electoral process in the country – the abuse of public/state resource for party-political and electoral purposes. On the latter, BILI has submitted an official opinion as part of the public consultations, because the Institute is the only one which produced an in-depth study of the abuse of state resources (a summary in ENG is at http://www.bili-bg.org/cdir/bili-bg.org/files/ASR_Abstract_EDIT-EN.pdf)

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

3000 character(s) maximum

Lobbying is still not regulated at any level in Bulgaria. As stated above, the project for National Strategy for Prevention and Counteraction against Corruption in Republic of Bulgaria (2020-2027) includes ideas in that direction. The same future Strategy establishes for first time the notion of electoral corruption, but does not include details about abuse of public/state resources for party-political and electoral purposes. In the Bulgarian case this phenomenon is fundamentally significant for the political party financing. See also the answer to the previous topic. There is a wide-spread consensus among the Bulgarians that there are well-developed illegal/semi legal channels through which certain business circles, closely linked to political parties, pour money into them, both for campaigning and for more exotic practices like vote buying and supplying corporate voting. However, the institutions, summoned to control such activities, and especially the Prosecutor Office, in most of the cases, including such, exposed by media, stay muted. An amendment in the Electoral Code from 2019 allowed political parties to be officially more closely linked to their satellite economic circles. The new regulations allowed all kind of natural persons and legal entities, registered in Bulgaria, to become donor of political parties. The prohibition still stays for religious organization, foreign government organizations and local entities which has unpaid obligations to the state. In fact, this situation opens the door for potential donors, to pour money into politics, which are accumulated under public procurement contracts. There are no provisions restricting or prohibiting the proceeds from the implementation of public procurement contracts or other public funds received to be donated to a political party. More or less this is the financial equivalent of revolving doors in the appointments. The accounting legislation does not require the entities/natural persons' donation for political parties to be declared by them. This is a requirement for the political parties, which has to maintain a public register of their donors. The later however is also problematic, because the expenditure reports of the parties, they submit after each election is checked by the National Audit Office only on the documents, submitted by the parties. According to the Political Parties Act (Art. 34) all parties need to do annual financial reports, checked by independent auditors. However, there are no requirements for rotations of these auditors, as well as any State issued instructions or standards for their work. This problem was marked by GRECO in its Third Evaluation Circle.

Rules on preventing conflict of interests in the public sector.

3000 character(s) maximum

No significant amendments (legislative and practical) in the status-quo in the sector were done during the reported period. A sole exclusion is the freshly adopted (April 2020) Code for the Behavior of the State Administration Servants.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

3000 character(s) maximum

No special measures were taken during the reported period for strengthening and encouraging the whistleblowing protection, i.e. the respective EU Directive is still not transposed. In material aspect the whistleblowing and its protection, regulated by the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act (CCUAFA), should be seen only as a tool for fight against corruption of high level public servants. For that reason, the Act gives a strict definition of corruption (Article 3(1) as well as contains a list of the senior public servants (Article 6). The CCUAFA considers the private (non-public) sector only in certain cases when it is used to bridge criminal proceedings (the list of the crimes, in scope of the Act is a part of it) with the confiscation of the unlawfully acquired assets of the perpetrators, if there is data for such, of course. In that field still very important problems which need legislative measures as soon as possible are:

- submission of anonymous signals for conflict of interests and/or corruption is not allowed. Such signals are not considered at all.
- Not efficient mechanisms to protect whistleblowers against retaliation.

During the reported period the Ministry of Justice, together with the Ministry of Labor & Social Policy initiated a preliminary working group on the EU Directive 2019/1937. However, there isn't still a real discussion about its scopes. Some of the interested parties are still unaware of the process of its transposition (the trade unions for example, although they are supposed to have an important role in the implementation of the directive's requirements concerning the private sector). BILI was one of the two non-governmental organizations that took part in the work of the group, together with representatives of all Ministries and State agencies. The preliminary conclusion of the format is that whistleblowers, reporting for violation of the internal law, should have the same level of protection like those, reporting for violation of the EU legislation. At the same time, the idea of most of the governmental representatives in the working group is that the current inspectorates, within the different bodies of the Executive Authorities would be enough for the internal implementation of the Directive requirements. In our opinion, this does not seem sustainable and well-argued. The draft Anti-Corruption Strategy contains texts related to the transposing of the Directive and tackling the already mentioned issues for whistleblower protection.

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).

3000 character(s) maximum

The Pandemic situation opened the doors for higher corruption risks in:

- healthcare sector and public procurements: the Measures and Actions During Emergency Situation Act (voted by the Parliament on 13 March 2020 and amended on 15 May 2020) allowed for by-passing the action of the Public Procurement Act when it comes to deal with hygienic materials, medicines, etc.
- Financial sector: Under the excuse for funding the measures against the C-19 crisis in 2020 the Government turned the budget surplus into budget deficit, issuing new debts. This policy was accompanied by inconsistent explanations for the purpose of the new debt. On a discursive level officials were mixing expenses, and mistaking this money with the money coming from the different EU C-19 emergency tools, as well as the allocations of EU programs. BILI has produced and published infographics, trying to trace the truth between the chaotic explanations of the decisiontakers and their quite targeted actions. The graphics can be seen here: http://www.bili-bg.org/cdir/bili-bg.org/files/INF_ENG_1.png http://www.bili-bg.org/cdir/bili-bg.org/files/INF_ENG_2.1.png http://www.bili-bg.org/cdir/bili-bg.org/files/INF_ENG_2.2.png http://www.bili-bg.org/cdir/bili-bg.org/files/INF_ENG_3.png Apart from the crisis, another sectors, which seems to suffer higher risk of corruption are:
 - Infrastructure: despite the C-19 crisis, this sector was the most dynamic one during the reported period. The state has decided to use the so called engineering (in-house), a tool in the Bulgarian legislation, which allows the government to by-pass the public procurement procedures in favour of direct contracting with companies. Example - the 100 % State – owned Magistraly (Highways) stock company, which in the past year managed to become one of the most important companies in this sector.
 - Military equipment: the reported period was marked by auctions for ordering the construction of new armoured vehicles for the infantry, building of new warships, as well as the modernisation of the avionics of soviet-time jets.

Measures taken to address corruption risks in the context of the COVID-19 pandemic

3000 character(s) maximum

See the answer under the part for Covid – 19 significant developments

Any other relevant measures to prevent corruption in public and private sector.

3000 character(s) maximum

The reporting period was marked by actions targeting the adoption of new national strategy for the Roma minority (2021 - 2030). The official working name of the document is National Strategy of Republic of Bulgaria for Inclusion and Participation of the Roma (2021 - 2030) but that formula raised dissatisfaction among some Roma activists. BILI, as a member of the National Council for Cooperation on Ethnic and Integration Issues is actively involved in the working process of the Strategy. The first draft of the Strategy was widely criticised by numerous actors, including BILI, which forced the Secretariat of the National Council to make some amendments. Currently, the Strategy is published for a second time for public consultations on the official portal strategy.bg.

There are few weakness of the Strategy, which could not be omitted:

- Similarly, to the Anticorruption Strategy – this Strategy will also be issued by the Executive, not adopted by the Parliament, and for this reason its measures, requiring the interaction of the Local Authorities, are nothing but a wishful thinking, unless adopted by the Nation Assembly. Such and adoption by the Parliament is not in the plans, however.
- The Strategy is still not linked to any action plan – the latter would be designed in the foreseeable future after the Strategy is adopted by the Government.
- The new strategy counts a lot on the local Roma leaders, for the implementation of some of its strategic goals. This approach, however, has proven to be a mistake in the past decades, as in many Roma communities the Roma leaders, who are the most preferable partners of the state on local level, are also involved in illegal or semi legal activities, including vote buying during the election periods. This status-quo is an important prerequisite for the never happening emancipation of the Roma from their local leaders.
- In certain areas the Strategy envisages a strictly institutional approach to the problems which once again deprive the Roma citizens of the chance to transform into agents of change.
- There is not a consistency between this Strategy and other similar documents like the Anticorruption one, in the fields in which both of them interfere. For example – the early school anticorruption education was adopted in the Anticorruption Strategy, and rejected, from the National Strategy of Republic of Bulgaria for Inclusion and Participation of the Roma (2021 - 2030)

Repressive measures

Criminalisation of corruption and related offences

3000 character(s) maximum

Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards the implementation of EU funds

3000 character(s) maximum

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation).

3000 character(s) maximum

Other – please specify

3000 character(s) maximum

Media Pluralism - Bulgaria

Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

3000 character(s) maximum

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

3000 character(s) maximum

Existence and functions of media councils or other self-regulatory bodies

3000 character(s) maximum

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

3000 character(s) maximum

Rules governing transparency of media ownership and public availability of media ownership information

3000 character(s) maximum

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

Access to information and public documents

3000 character(s) maximum

Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

Other institutional issues related to checks and balances - Bulgaria

The process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

3000 character(s) maximum

In 2020 the legislative process continued to deteriorate. The parliament falls behind the democratic standards and good legislative practices. Several major problems were evident in 2020: 1) lack of public consultations and engagement of civil society in the legislative process; 2) introducing major changes in the laws through the transitional and final provisions of other bills; 3) fast and impossible to monitor amendments made in less than 24 hours prior to second plenary vote (Art. 79(1) of the Rules of Organization and Procedure of the National Assembly) and 4) lack of coherent arguments and motives on a legislative proposal and lack of ex-ante and ex-post impact assessment.

In a study (https://www.parliament.bg/pub/NCIOM/20210203031141NCPI_Research_44_NS_10th_Session.pdf) on the legislative activity of the 44th National Assembly for the period April 19, 2017 – December 21, 2020, carried out by the National Center for Parliamentary Studies (a structure within the parliament's administration) a several important highlights are made. 69,9% of proposed bills are for amendment and supplement of existing laws and only 7,9% are new legislative acts. The majority of proposals for laws are introduced by the members of parliament (69,9%) against those introduced by the government (38,1%). Those statistics show that the parliament circumvents the ex-post and ex-ante impact assessment, the mandatory public consultations, thus, shortening the time for passing a bill. Legal provisions do not oblige draft bills introduced by MPs or a parliamentary group to be subject to mandatory public consultations and impact assessment, which is valid for those proposed by the executive. The area that is the most regulatory and legislatively amended and supplemented is justice, albeit the judiciary is still not functioning effectively, key reforms are suspended and the public confidence in the judiciary is critically low which is notable for the quality of those pieces of legislation. According to the quoted study only 15,6% of law proposals are based on scientific expertise and 98,6% of laws do not require periodic cost-benefit (cost-results efficiency) assessment or any public reporting on the results of introduced regulations, rights and obligations. An estimate was made that 37% of the adopted laws required amendments in other laws. However, the extend and the legal subject they introduced is ambiguous and provokes critical public reactions.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

The situation described above deteriorated even more with the Covid-19 pandemic. During the autumn session of the parliament, several cases were quite indicative. In October, through the transitional provisions of the Law on Patents and the Registration of Utility Models by a proposal of a single member of parliament amendments were introduced in the emergency law regarding COVID-19, that backdated deadlines concerning the management of European funds. This provoked reaction by the opposition and they were not adopted. A scandalous example was again a proposal introduced by a single member of parliament between first and second vote with transitional amendments of the Merchant Shipping Code that amended the Penal Code and introduced provisions for imprisonment between 5 and 10 years for shared travel which is however not banned by law. The legislature chaos led to a motion by the President to the Constitutional Court for a mandatory interpretation of the parliamentary proceedings in regard to promulgation of laws when they are vetoed by the President and in a procedure to overcome by the parliament. The Presidents states that the National Assembly approach vetoes under different procedures - <https://www.president.bg/news5795/prezidentat-sezira-konstitutsionniya-sad-s-iskane-za-talkuvane-na-rzaporedbi-ot-konstitutsiyata-svarzani-sas-zakonodatelniya-protses.html>

Regime for constitutional review of laws.

3000 character(s) maximum

COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- measures taken to ensure the continued activity of Parliament (including possible best practices)

3000 character(s) maximum

On March 13, 2020 the National Assembly adopted a new Law on the Activities During the Emergency Regime which granted vast powers to the executive. On March 26, 2020 the National Assembly was dissolved with a proposal by the majority and highly contested by the opposition. The decision envisaged that members of parliament will be gathered only for adoption of new legislation, regarding the emergency COVID-19 situation. Parliamentary oversight on the executive was suspended. The parliament was convened again on May 14, 2020. Distant voting mechanisms were introduced late in the autumn of 2020 and they were only available for those members of parliament who were under quarantine. The firstly adopted law about the emergency situation extended all deadlines for pending court trials, except for some cases in regard to penal procedures. The two colleges of the Supreme Judicial Council, adopted rules for the activities of the magistrates, respectively on March 13, 2020 and March 18, 2020 that were amended many times through the year. The parliament amended the emergency law decentralizing the responsibility with postponing pending trials to court presidents in November, 2020. For a long period of time during the emergency situation court trials were closed for the public. Although e-justice was encouraged only limited instruments were used in practice. An ad-hoc parliamentary Committee for oversight of the expenditures of public resources related to overcoming the consequences of COVID-19 spreading was established. The Commission has a total of 8 sittings for the period May 2020 – February 2021 - <https://www.parliament.bg/bg/parliamentarycommittees/members/2813> . Apart for the publicized correspondences between the committee and various structures of the executive, no other findings are publicized and available. There is no evidence the Committee to have reported to the plenary composition of the National Assembly or the public. As a lot of concerns were raised in regard to the protection of human and civil rights of citizens whilst solid repressive measures were introduced by the insistence of the prosecutor general. Thus, Art. 355 of the Penal Code was amended and up to 5 years' imprisonment and a fine between 10 000 (5 000 euros) and 50 000 (25 000 euros) BGN replaced 400 (200 euros) BGN fine for penalty for those who spread contagious disease in humans - https://www.capital.bg/politika_i_ikonomika/bulgaria/2020/08/14/4102008_muchenicite_na_karantinata/. On e separate note, BILI was the only one to do a blitz survey on how the pandemic affected some of the largest Roma communities. Summary in English is here: http://www.bili-bg.org/cdir/bili-bg.org/files/Communique_FIN_ENG.pdf

Independent authorities

Independence, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>

3000 character(s) maximum

In regard to the independent authorities with powers over the protection of human rights and major public sectors, several bad examples shall be noticed. The mandate of the Commission for Protection of Personal Data ended in April, 2019 and currently no procedure for a new one is initiated. According to the law, the procedure starts by Council of Ministers' nomination to the parliament, which appoints the members and chair. BILI has appealed to the government on several occasions to initiate the procedure as currently this means that all members of the Commission for Protection of Personal Data are in a situation of "anticipatory obedience" to the executive as their mandate can be terminated any moment and they are insecure for the period their powers are vested by the parliament - http://www.bili-bg.org/12/838/news_item.html. This is a major breach to the human rights protection as after the adoption of the GDPR, the Commission has broadened its powers, including to imposing sanctions to media. Without solid mandate that grants institutional independence, the society cannot have firm convictions about citizens' protection, including from the government, as the Commission is also responsible for personal data handling by the executive and other public institutions. In 2021, behind the motive of transposition of EU Directive on protection of competition, the majority in the parliament amended the timeframe for the mandates of members and chairs of the Commission for Protection of Competition. The proposed amendments of the legislation were written by the Commission itself and they propose automatic continuation of their mandates, as well as a longer one from 5 to 7 years and the right to be re-appointed which the parliament granted 4 months prior the termination of their mandates - https://www.capital.bg/politika_i_ikonomika/bulgaria/2021/02/11/4173817_malko_predi_izborite_upravliavashtite_uduljiha_mandata/. Such mandates do not rely on democratic logic and further, they prohibit any oversight on the Commission by other institutions and the society, because any termination of a mandate is a per-se assessment on the work done and the credibility of the institutions. The term of the Director expires this summer and just last week changes to the Regulation about the competition procedure were introduced which in some way presuppose the automatic reelection of the current Director for a second mandate. It is yet to be seen if this scenario realizes, however, it shows the trend already described.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

3000 character(s) maximum

Implementation by the public administration and State institutions of final court decisions

3000 character(s) maximum

The enabling framework for civil society

Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

3000 character(s) maximum

As there are other organizations which are more focused on this type of work, BILI only wants to mention that last year the elections for organizations-member of the new Council for the development of the civil society were carried out. This body was created with the latest changes and amendment sin the NGO Act and is tasked with organizing and forming the policies of the development of the civil society actors in Bulgaria. It is under the auspices of the Council of Ministers and his Chair is a Deputy Prime Minister. Unlike other types of elections, these ones were completely online on a special platform developed by the Council of Ministers. All went well, however, after the elections, a smear campaign was organized in specific media targeting concrete NGOs which were elected for members. At some later point a public announcement was made by the Anti-corruption Commission that it was not consulted during the work on the Regulation of the activities of the Council (BILI was a member of the working group which drafted the Regulation and at that point – end of 2018, beginning of 2019, it all seemed ok. The working group was formed by the Council of Ministers). As of today the Council is not comprised, not functioning and there is no information as to what will happen with it in practice.

Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)

3000 character(s) maximum

BILI did not observe the organization and/or implementation of such initiatives whatsoever.

Other - please specify

3000 character(s) maximum

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

3000 character(s) maximum

Contact

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