



PROSECUTOR'S OFFICE OF THE REPUBLIC OF BULGARIA

SUPREME CASSATION PROSECUTOR'S OFFICE DEPARTMENT 05 - ANALYTICAL

No. 16421/2021

Sofia, 02.12.2022

1. Given the initiator (representatives of the EC) and the topics (indicated in the email) of the expert meeting (so-called „technical level meeting“), we propose to initially present a review of the implementation of the specified recommendations and measures, in accordance with the development after the previous report of Prosecutor's Office of the Republic of Bulgaria (PORB) from January 2022 to the present (i.e. execution of planned activity of PORB).

2. It concerns activity on the recommendations made in the EC's third annual report on the rule of law in the EU for 2022, as it relates to the activity of the Prosecutor's Office: *"Ensuring that the institutional reforms of the Anti-Corruption Commission and specialized judicial bodies lead to improved effectiveness of investigations and solid results in terms of prosecutions and final judicial decisions in high-level corruption cases"*, included in the topics of the meeting.

3. The Attorney General approved the *Instruction on the organization of the activities of the Prosecutor's Office of the Republic of Bulgaria on files and cases related to crimes that affect the financial interests of the European Union, and on the interaction with the European Prosecutor's Office (Order No. RD-02-01 of 09.02.2022)*. The Instruction aims to create an organization for:

- ✓ achieving timeliness and efficiency in the conduct of inspections and criminal proceedings by the prosecutor's offices in the country, related to crimes that affect the financial interests of the EU;
- ✓ ensuring interaction with the European Public Prosecutor's Office in strict compliance with the terms and conditions provided for in Regulation No. 2017/1939 of the Council on the establishment of enhanced cooperation for the establishment of the European Public Prosecutor's Office;¹
- ✓ unification of the prosecutor's practice and introduction of a single standard in the interaction and exchange of information with the European Prosecutor's Office.

The Instruction has been amended and supplemented (Order No. RD-02-12 of 23.06.2022 of the Attorney General), in accordance with the changes in the Notification of the Ministry of Justice pursuant to Art. 117 of Regulation 2017/1939, which defined the national authorities competent for the purposes of its implementation - every prosecutor in the PORB and every

¹ Prom, SG of 31.10.2017

investigator in the NSIS and in the district investigative departments of the district prosecutor's offices.

1.2. In implementation of the recommendations of the Report prepared as a result of the analysis of the current situation and the conditions allowing the PORB to ensure effective criminal investigation in accordance with the standards of the ECHR, incl. the normative environment has been established and the implementation of the *Plan-chronogram has been undertaken, in which specific measures from an organizational, methodological, training and qualification aspect are outlined.* In execution of the latter:

1.2.1. By Order No. RD-04-163 of 10.06.2022 of the Attorney General, an internal organization was created in PORB:

- ✓ to permanently ensure conditions for increasing the effectiveness of the investigation in accordance with the standards of the European Court of Human Rights ECtHR and the practice of the ECtHR,
- ✓ to carry out timely communication and show the necessary activity to ensure the procedural actions of government agents from the Ministry of Justice in cases brought before the ECtHR against Bulgaria, as well as
- ✓ to implement the decisions of the ECtHR in cases against Bulgaria, when the subject of the appeal or the case is an ineffective investigation in criminal proceedings.

1.2.2. With Order No. RD-02-04 of 01.04.2022, in accordance with the current regulations, the *Instruction on the organization of work of the Prosecutor's Office of the Republic of Bulgaria on files and pre-trial proceedings initiated on reports of domestic violence, threats of murder and domestic violence protection order violation.*

1.2.3. In an organizational aspect, an opportunity has been provided through the mechanisms of national networks or thematic groups to create prerequisites for *additional specialization in various topical areas of counteraction to domestic violence, police violence, hate crimes.*

1.3. By Order No. RD-02-22 of 18.10.2022 of the Attorney General, the Instruction on the organization of PORB's work on files and pre-trial proceedings instituted for human trafficking, was approved.

The Instruction aims to:

- ✓ create a unified mechanism in relation to the management and supervision of human trafficking cases;
- ✓ create effective protection of the victims of this crime;
- ✓ overcome difficulties in prosecutorial practice;
- ✓ strengthen the capacity to work on human trafficking cases, as well as improving intra-institutional, inter-agency and international cooperation on such cases.

1.4. Based on the findings in the report of the Working Group² for the Analysis of Corruption Cases, on which the Prosecutor's Office worked, and in the Report from the 2021 evaluation visit of the Organization for Economic Cooperation and Development (OECD) on the

² Created by Order No. RD-09-128/25.11.2020 of the Attorney General, to carry out an analysis of the corruption cases on which the prosecutor's office worked in the period from 01.01.2018 to 01.10.2020.

occasion of the Fourth Phase of mutual assessment of the implementation of the Convention on Combating Bribery of Foreign Officials in International Commercial Transactions, methodological, organizational and qualification measures have been taken:

1.4.1. An indicative letter was issued by the Attorney General to the territorial prosecutor's offices, containing general methodological recommendations (attached);

1.4.2. The existing information system is being upgraded to secure, collect and store information regarding requests for international cooperation in cases of bribery of foreign officials, including the crime in connection with which the request is made, the time required for their implementation and the nature of the assistance sought.

1.4.3. A proposal was made to the National Institute of Justice when planning upcoming trainings to include *topics related to the investigation and prosecution of crimes related to bribery, including of foreign officials, as well as other crimes related to bribery, international cooperation in the investigation of such crimes, as well as tracking of direct and indirect benefits acquired by the perpetrators, resp. the enrichment of legal entities from such crimes.*

1.4.4. *By order of the Attorney General, the Rules for media communication in the system of the Prosecutor's Office of the Republic of Bulgaria* have been amended, providing for an organization for adequate referral to the competent prosecutor's office, when during the review of the media information, data of a crime of a general nature is established, incl. when a foreign media source is indicated as the source of the crime data.

1.5. *Order No. RD-02-03 of 04/01/2022 of the Attorney General* has changed the methodology for reporting cases opened for corruption crimes committed by high-ranking officials and others holding responsible and supervisory positions in state and municipal institutions. The data are taken from pre-trial proceedings (PTP) (observed, newly established and decided pre-trial proceedings) instituted for corruption crimes in relation to the official capacity of the persons (accused, brought to court, convicted, sanctioned and acquitted) and the administrative, management and control functions performed by them. The periodicity of data reporting shall be for the first quarter, the first six months, the nine months and annually, respectively.

1.6. In order to carry out further specialization of the investigative bodies, with Order No. RD-04-250 of 26.08.2022 of the Attorney General, a specialized department 06 Cybercrimes was created within the structure of the National Investigation Service.

1.7.1. To optimize the legal framework related to combating crime, to the state bodies having the right of legislative initiative pursuant to Art. 87, para. 1 of the Constitution of the Republic of Bulgaria (CRB), the Attorney General has sent an expert proposal for the necessary amendments to the Criminal Code, which contains an analysis of the identified problems in the current legislation and motivated proposals with the aim of achieving higher efficiency and quality of the criminal justice.

The proposals are divided into 49 points, affecting both the general and the special part of the Criminal Code:

- ✓ new rules for determining a common punishment for multiple crimes (in the case of punishments of the same type, the determined total heaviest punishment should not exceed the sum of the individual punishments, nor the maximum amount provided for the corresponding type of punishment);
- ✓ abolition of the "public censure" penalty, due to its no longer having a sanctioning effect;

- ✓ mitigating the punishment or immunity for those who contributed to uncovering and proving the crimes for which the person is accused, but also for other serious crimes;
- ✓ application of a unified approach by creating a new general substantive legal norm, regulating the stimulation of the subsequent positive behaviour of the perpetrator;
- ✓ the model of Art. 354c, para. 4 of the Criminal Code, where there is no requirement that the participant in the group voluntarily surrendered to the authorities, before a crime was committed by him/her or by the group, to become an applicable norm for criminal groups and associations as well, by adding the requirement that the given information has significantly facilitated the disclosure and proof of crimes committed by members of the group;
- ✓ changes in the crime of "bribery" - the three forms of the executive act (the promise/offer, respectively their acceptance) should be separated into separate compositions;
- ✓ repeal of Art. 307 Criminal Code, criminalizing provocation to bribery. The idea is to regulate provocation to bribery as an activity permitted by law - as a new special intelligence tool, carried out by an undercover officer. Enhanced judicial review is also proposed, as a guarantee against abuses;
- ✓ criminalization of slavery, which has modern forms, for the fight against which numerous international acts are dedicated, proposing the creation of a new provision in the Criminal Code - Art. 159d;
- ✓ in the norm of Art. 255a Criminal Code – concealment and non-payment of tax obligations in large amounts, as an executive act to include the sale of shares in a commercial company to persons with low social status and without permanent residence in a given settlement;
- ✓ to add "homophobic and transphobic motives" in the crimes of murder and bodily harm, as well as to provide them as qualified components in the crimes of destruction, damage and arson;
- ✓ it is proposed to improve the criminal law regime of terrorism by separating it into a separate section;
- ✓ introduction of a new criminal composition in connection with online piracy, combined with the possibility of blocking sites and accounts;
- ✓ proposals related to ensuring the necessary criminal protection for human trafficking and crimes against the financial interests of the EU;
- ✓ proposals for harmonization of texts from the Criminal Code;
- ✓ technical changes.

1.7.2. Management of PORB, sharing the need to take action to improve the effectiveness of investigations into corruption cases, incl. for corruption at the highest levels of power, expressed principle consent before the Minister of Justice to participate in an inter-institutional working group, together with representatives of the Ministry of Internal Affairs and the State Agency for National Security (SANS), to discuss and, if necessary, propose legislative changes. At the same time, the understanding was expressed that before the formation of the group, it is necessary to clarify the specific subject of its activity (explicit definition of the categories of

cases that will be investigated, certain criminal groups, the period of the analysis), as well as the need to expand its composition, including representatives of the Ministry of Justice and the academic community.

It was also agreed that the draft law on combating corruption among persons holding high public positions submitted by the Council of Ministers to the 48th National Assembly should be sent to GRECO.

1.8. To improve the quality of law enforcement and the effectiveness of criminal prosecution, a total of 98 trainings (remote and face-to-face) organized by the National Institute of Justice (NIJ) and other external training providers have been conducted so far in 2022, 468 prosecutors, 109 investigators, 8 assistant prosecutors and 3 chief experts were trained. The topics of the trainings are mainly related to: digital piracy and cyber attacks; countering hybrid threats: foreign influence and disinformation; protection of EU financial interests, functions of OLAF, European Public Prosecutor's Office; violence against women, children and domestic violence; combating organized crime; auto technical expertise, etc.

2. Activity (of the management) of the PORB, imposed by the need to limit and overcome the substantial upheavals in the judicial system and to minimize the risk of blocking the development of criminal proceedings and files pending before the specialized bodies closed by the Law for the Amendment of the Law on the Judiciary (promulgated, SG No. 32 of 26.04.2022, in force from 28.07.2022), due to ascertained incompleteness, ambiguities and contradictions, which necessitated the initiation of an authentic interpretation

2.1. *By Order No. RD-04-166 of 22.06.2022 of the Attorney General regarding the organizational provision of the closure of the Specialized Prosecutor's Office and the Appellate Specialized Prosecutor's Office, amended, an internal organization was created to take the possible urgent measures to ensure readiness for closure of the Specialized Prosecutor's Office (SpPO) (SpPO) and of the Appellate Specialized Prosecutor's Office (ASpPO).*

2.2. In accordance with the structural and personnel changes that have occurred and with the aim of timely and rhythmically ensuring the process of sending/accepting the files and cases supervised by the SpPO and the ASpPO, with Order No. RD-02-13 of 27.07.2022 of the Attorney General the Rules for the application of the distribution of files and pre-trial proceedings on the principle of random selection in the Prosecutor's Office of the Republic of Bulgaria³ have been amended and supplemented.

- ✓ With the change, compliance with the principle of random distribution is guaranteed, and an opportunity is provided, when the conditions for this are present, to assist compliance with all procedural principles and requirements through procedural economy, which guarantees efficient, timely and accurate legal enforcement of specific file and/or pre-trial proceedings.

2.3. Given the cited legislative changes, incl. in the area of jurisdiction/competence (the changes in the NPC involve the DPO, and in the case of personnel transfers from the closed SpPO and ASpPO, the reassignments are mainly in Sofia prosecutor's offices), and with a view to immediately taking the necessary steps to ensure a high level of specialization are planned and are already being implemented in urgent order qualification measures to ensure the work of the prosecutor's offices in cases opened for organized crime.

The Prosecutor's Office has organized trainings with the theme "Combating organized criminal activity: Practical problems of the substantive legal regime", which will be held in several cycles, each with three stages. The lecturer is a lecturer at the St. Kliment Ohridski SU.

³ Approved with Order no РД-02-23 от 13.09.2021

The target group of the trainings are prosecutors from the district prosecutor's offices and investigators from the district investigative departments of the district prosecutor's offices, and by the end of the year 56 prosecutors and 3 investigators will be trained. The training cycles will continue in 2023.

3. Perhaps here it would be good to analyse the concerns about delay and in general the problems related to the closing of the specialized courts and prosecutor's offices (*attached are statistical data on crimes related to: corruption, European funds, organized crime, drug trafficking, human trafficking, so-called channelling*), incl. paying attention to:

3.1. The period of upheavals (from April to the end of July 2022 – formally, and until now – practical difficulties) regarding the organizational transformation, personnel and qualification provision of the DPO,

3.2. The factual objective delay in the handover and resumption of effective work on pending cases (... *no. of the most serious cases for Organized criminal group (OPG) and corruption crimes*);

3.3. The state of detection and referral to the PORB for organized criminal activity and corruption crimes, due to the state of the executive power, etc.

The data on newly formed and solved PTPs during the nine months, for corruption crimes, for crimes involving European funds, organized crime, compared to previous years (given the period), respectively, point to a significant decrease. Conversely - the so-called data channelling (transferring across the border) show some increase.