EUROPEAN
COMMISSION

Brussels, 28.1.2015
SWD(2015) 9 final

COMMISSION STAFF WORKING DOCUMENT

BULGARIA: Technical Report

Accompanying the document

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on Progress in Bulgaria under the Co-operation and Verification mechanism

{COM(2015) 36 final}

Benchmarks to be addressed by Bulgaria pursuant to Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime:

Benchmark 1: Adopt Constitutional amendments removing any ambiguity regarding the independence and accountability of the judicial system

Benchmark 2: Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on the impact of these new laws and of the penal and administrative procedure codes, notably on the pre-trial phase

Benchmark 3: Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually

Benchmark 4: Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high-level officials

Benchmark 5: Take further measures to prevent and fight corruption, in particular at the borders and within local government

Benchmark 6: Implement a strategy to fight organised crime, focussing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas

I INTRODUCTION

This technical report provides background information on the data which underpin the Commission's analysis and assessment. The information has been collected from a variety of sources. The Commission services are following developments in Bulgaria through a permanent presence,[1] as well as via contacts of the various Commission services with the Bulgarian administration. A constructive dialogue has been established over the years with the Bulgarian authorities responsible for CVM issues, which provides detailed information on new initiatives and on the outcomes of current policies in the form of written background material, as well as during frequent meetings with the Commission services. The Commission also meets regularly with the various institutions which form part of the Bulgarian judiciary and law enforcement system in order to discuss with them the initiatives taken and results achieved. The Commission benefits from invaluable assistance from independent experts from other Member States in its work and also draws on the various studies and reports that are available from international institutions and other independent observers in the field of judicial reform, corruption and organised crime.

II INDEPENDENCE AND ACCOUNTABILITY OF THE JUDICIARY

An independent judiciary is a crucial precondition for the protection of the rule of law. The courts should apply the law in an impartial and predictable manner and not be subject to political or economic pressure. At the same time, there need to be mechanisms in place to hold individual magistrates accountable, i.e. to ensure respect of procedural and ethical norms, prevent conflicts of interest and apply dissuasive sanctions in cases where judicial powers are misused to circumvent justice. This is a delicate balance which requires the establishment of a set of institutions adapted to the particular constitutional context and legal tradition of each Member State. In Bulgaria, two institutions in particular have been set up under the Constitution to guard the independence and accountability of the judiciary, namely the Supreme Judicial Council (SJC) and the independent Inspectorate that is attached to it (ISJC).

2.1. The Supreme Judicial Council (SJC)

The role and independence of the SJC is enshrined in the Constitution and the Judicial Systems Act, which confer on it wide-ranging powers with regard to staff policy and the general organisation of courts.[2] The Council is composed of 25 members. The Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court as well as the Prosecutor General are *ex-officio* members. 11 members are elected by the Parliament among jurists with more than 15 years of experience. The remaining 11 members are elected by the professions themselves in accordance with a system of quotas: 6 judges, 4 prosecutors and one investigating magistrate. The Minister of Justice chairs the meetings of the SJC but does not vote.

The Venice Commission has expressed concern[3] over the parliamentary quota on the grounds that it could lead to politicisation of the SJC.[4] The Commission's CVM report of July 2012 furthermore

[1] The Commission has a CVM resident adviser in Sofia.

[2] According to the Constitution the SJC shall appoint, promote, demote, transfer and remove from office judges, prosecutors and investigating magistrates, impose disciplinary sanctions, organise continuing education, and adopt the draft budget of the judiciary. The Judicial Systems Act provides more detail on the responsibilities of the SJC, which include also: determining the number and geographic delimitation of court districts and the number of magistrates in the individual courts, organising competitions for new magistrates, determining the remuneration of magistrates, proposing to the President of the Republic the nominees for the presidencies of the two supreme courts and for the post as Prosecutor General, appraising the performance of judges, approving the information systems of the judicial bodies, and assigning to the Inspectorate of the SJC to carry out inspections not included in its annual programme.

[3] *Opinion no. 444/2007 on the Constitution of Bulgaria* (CDL-AD(2008)009)2 See also Opinion no. 515 / 2009

[4] A simple majority in parliament could in principle determine the composition of the entire parliamentary quota.

expressed regret that the judges' quota had not been chosen by direct election. Although the members of the SJC are elected in a personal capacity and should therefore act in an independent manner, the system has given cause for concern among observers as well as practitioners in Bulgaria about the possibility of undue pressure being exercised via the SJC.[5] One member of the Council was dismissed - in a controversial vote[6] - following a leak to the media of wiretapped conversations between prosecutors discussing ways to secure votes for the then upcoming election to the SJC.[7] As regards the judicial quota, the Commission has in the past recommended that the judicial members of the SJC be elected directly in accordance with a principle of 'one judge-one vote'.[8] This principle was considered for the last election of the SJC in 2012, but it was argued that the necessary technical systems could not be made ready in time.[9] It was decided at the time to prepare the necessary IT-systems in time for the next election, to take place in 2017, and this is currently under preparation as part of a wider e-justice strategy for the Bulgarian judiciary.[10]

Furthermore, the structure of the SJC has been criticised as accentuating problems by not separating procedures for judges and prosecutors. The SJC takes its decisions in plenary and hence decisions regarding judges are taken by a body which is primarily composed of political nominees and members of the two other branches of the judiciary (prosecution and investigation service).[11] The systems do not therefore allow for judges to be assessed by their peers, a familiar feature of judicial councils in many other Member States.

An additional issue regarding the composition of the SJC concerns the representation of civil society actors, which can lend an important element of wider legitimacy to the judicial council, one way to offset claims of corporatism.[12] The SJC does not have an explicit quota for civil society representation, a feature in a number of other Member States. Instead, a separate council consisting of the main NGOs and professional associations has been set up, which plays a consultative role. However, tensions between the SJC and the Civic Council have developed over time due to claims on the part of civil society actors that their views are not being adequately taken into account, resulting in several organisations, including the largest judges' association, leaving the Civic Council.[13] The Civic Council is important for instilling an element of accountability and broader legitimacy in the SJC. Another element is to ensure transparency in the council's actions. In this domain the SJC has been preparing a

[5] An emblematic case of alleged politicisation of SJC decisions was the disciplinary dismissal from office of a judge in 2012 with reference to delays in the completion of written motivations in some case rulings, a general problem in the Bulgarian judiciary due to problems with workload. The judge, who was an outspoken public proponent of judicial reform, appealed the decision of the SJC and was later reinstated as magistrate by the Court.

[6] The issue raised was whether the decision was in line with the law as the two-thirds majority required under Article 27.6 of the Judicial Systems Act was not achieved. Only 16 members of the Council voted in favour of the motion for dismissal.

[7] The member concerned appealed the decision to the Supreme Administrative Court (SAC). The Supreme Administrative Court (SAC) hears appeals in a panel of three judges, the decision of which can be appealed to a panel of five judges. The SAC first overturned the decision of the SJC in a three member panel, but subsequently this ruling was overturned by a five member panel, arguing that the decision was not sufficiently reasoned. The case is currently again pending before the three member panel.

[8] COM(2012) 411 final.

[9] Instead, a system of indirect elections was followed, which has been criticised for giving predominant influence to court presidents.

[10] See section IV below.

[11] Observers have suggested that there are cases where members of the prosecutorial quota have taken a sustained interest in appointments and disciplinary cases involving judges.

[12] That is, a tendency to protect the interests of the professions and institutions which it represents rather than the common interest.

[13] The organisations which have left the Civic Council are the Bulgarian Helsinki Committee, the Bulgarian Union of Judges, the Bulgarian Human Rights Lawyers, the NGO Center Razgrad and the Bulgarian Institute for Legal Initiatives. Within the past month two other organisations joined the Council.

communication strategy as part of a project under the Operational Programme for Administrative Capacity.[14] In response to a recommendation in the Commission's January CVM report[15], the SJC has also adopted a procedure for reacting to media allegations regarding misconduct in the judiciary, whereby such press stories will be examined by the SJC ethics committee with a view to determining an appropriate response.

The debate on the structure of the SJC, which has been continuing with various degrees of intensity over a number of years, was given renewed life in the autumn of 2014 when the Minister of Justice presented a draft update of the Bulgarian Judicial Reform Strategy for the period beyond 2014.[16] The draft strategy contains several proposals on the structure of the SJC in order to bolster the independence of the judiciary, including, for example, the establishment of separate chambers within the SJC for judges and prosecutors/investigators respectively to make decisions relating to these groups, such as for appointments and disciplinary sanctions. The draft strategy was given particular momentum when it was adopted by the Council of Ministers as government policy on 17 December 2014 [17] and broadly endorsed by Parliament on 21 January.[18]

2.2. Appointments and disciplinary proceedings

The independence and impartiality of the SJC is particularly important in regard to decisions on high-level appointments and disciplinary proceedings, two areas in which there have been important developments in the course of 2014.

Appointment of a new President of the Supreme Court of Cassation

A large number of high-level appointment procedures were carried out by the SJC in 2014 but the most important of them was the procedure for the election of a new President of the Supreme Court of Cassation (SCC). The SCC plays a crucial role in the Bulgarian judiciary not only as a last instance cassation court but also (increasingly in recent years) in terms of issuing interpretative rulings on matters of law. Moreover, as mentioned above, the President of the SCC is an *ex officio* member of the SJC and therefore is directly involved in the wider management of the judiciary. In view of the importance of the post, the election was highlighted in the last CVM report of January 2014 as an important test case for the ability of the SJC to carry out high-level appointments in a fair, transparent and merit-based manner.[19] Following a failure of the SJC to reach the required majority in the first round the procedure has been prolonged into 2015.

The importance of the Presidency of the SCC - as well as the posts of Prosecutor General (PG) and President of the Supreme Administrative Court (SAC) - is reflected in the existence of separate procedures governing the appointment for these posts. According to Article 173 of the Judicial Systems Act, candidates for these posts require the support of a two-thirds majority of the members of the SJC in a vote by secret ballot. The successful candidate is proposed to the President of the Republic. The President may reject the chosen candidate once, but in a second round the SJC's vote is decisive. In case a two-thirds majority cannot be found in the first round, the law states that the election is pursued in respect of the two candidates who received the largest number of votes. The

[14] The preparations include public opinion surveys among all key stakeholders with regard to their views on the work of the SJC.
[15] COM(2014) 36 final.
[16] The strategy and all declarations by relevant stakeholders are here: http://mjs.bg/107/ The previous judicial reform strategy was adopted in 2010 and covered the period until 2014.
[17] The Minister of Justice, responsible for the draft strategy, was re-appointed by the new Government in November 2014.
[18] Some elements of the strategy appears to have been questioned in Parliament, including the reform of the SJC.
[19] COM(2014) 36 final.

procedure is set out in further detail in an internal regulation of the SJC[20], which contains important additions and clarifications of the procedure. For example, it is specified in the internal rules that the secret vote required by the law is to be carried out through an electronic voting system. However, the electronic voting system installed at the SJC has been criticised for not adequately ensuring the secrecy of the vote.[21] In addition, there continue to be instances where the total number of votes given through the electronic voting system exceeded the number of members present, implying that some members had voted more than once.

Another important element regulated in the internal rules of the SJC concerns the case where no candidate obtains the required two-thirds majority. In such cases the internal rules specify that if after repeating the vote a second time there is still no two-thirds majority for any of the candidates 'the procedure is terminated'.[22] Already before the election, which took place on 25 September, various Bulgarian observers predicted that the vote would indeed most likely prove inconclusive. The concern expressed by some civil society observers was that this result was designed to postpone the decision on a new President of the SCC until after the general elections set to take place shortly afterwards, with the implication that the SJC was showing itself to be open to political influence - or at least a certain degree of self-censorship.

In the vote of 25 September the SJC failed to secure a two-thirds majority in favour of any of the two candidates. It should be noted that in the run-up to the SCC election there were also several positive developments. Most importantly, the process had allowed the two candidates to be assessed on the grounds of professional experience[23] and integrity. Following consultations with civil society and the professions in the summer of 2014, the SJC had amended its internal procedural rules to introduce a possibility for magistrates of the SCC to hold a hearing with the two nominees in advance of the SJC's decision.[24] This was welcomed by many observers as contributing to a more open and transparent process. Other proposals from civil society actors to develop the process, such as the definition of a job profile against which the candidates could be assessed, had not been adopted.

Following the failure of the election procedure, the SJC launched a new procedure on 20 November (i.e. after almost two months) with the date of a new vote in the SJC planned for the end of January 2015. One of the candidates for the first process re-applied in the new procedure.[25] Another new candidate (currently working in the Supreme Administrative Court rather than the SCC) also came forward. At one point he withdrew the application following a traffic accident, but then decided to re-submit his candidature.

Other high-level appointments

[20] *Rules for the election of president of the supreme court of cassation, president of the supreme administrative court and prosecutor general*, as amended with a decision of the SJC registered in minutes No. 32/10.07.2014. Provided on paper in English translation to the Commission services in September 2014.

[21] The concern has been that it is in practice possible to see how other Members are voting. In addition, the system itself apparently has never been subjected to an external IT audit ensuring that in technical terms it is safe from the point of view of outside interference and monitoring.

[22] Point IV.4 of the internal rules. Experts consulted by the Commission suggested that such points should rather be regulated by law rather than the internal rules of the SJC. They also pointed to other options such as recourse to a lower threshold, rather than termination of the procedure. The problem has also arisen in respect of other appointment procedures. In November 2014, when seeking to elect a President of the Sofia appellate court, the SJC also failed to choose between the two candidates for the post. This was in spite of a lower threshold for appeal courts than for the supreme courts, requiring only a normal absolute majority (i.e. 13 votes in favour). .

[23] Both candidates were currently vice-presidents of the SCC.

[24] Point II.11 to the internal rules.

[25] The other candidate from the first round was designated as acting chair of the SCC (in her function as vice-president of the court).

As mentioned, there were also a large number of other high-level appointment procedures in 2014, such as in particular the appointment of Presidents of lower courts and heads of prosecution offices. Appointment procedures have evolved in recent years in the direction of greater transparency and a more thorough assessment of candidates. For example, integrity checks are now carried out in advance of appointments, sometimes leading to rejection of candidates, although doubts have been expressed by some stakeholders about the quality of these checks.[26] The procedures also allow for the magistrates of the individual judicial bodies concerned to organise hearings (in a similar fashion as described above for the SCC). However, this possibility has apparently not been used so far. This was explained by some interlocutors by wariness of magistrates about a process which could prove divisive within individual courts.[27] The idea that magistrates in Bulgaria tend to step back from entering into open contest for appointments would seem to be confirmed by the fact that procedures often feature only one candidate. In spite of recent efforts to improve procedures, the appointment process still lacks transparency.[28]

Partly in response to CVM recommendations, analytical work is currently being carried out within the SJC in order to further improve the basis for assessments, for example by better accounting for workload and developing a clearer basis for the regular appraisal of magistrates.[29]

Disciplinary proceedings

The SJC is the competent body when it comes to decisions on disciplinary sanctions on magistrates. The number of disciplinary procedures has increased somewhat in recent years after a temporary reduction in 2012.[30] The conduct of disciplinary proceedings requires safeguards to ensure that they be handled in a professional and impartial manner. In the past disciplinary proceedings have given rise to criticism of the SJC's decisions, and many of these have been successfully challenged in court. Such challenges have a detrimental effect on the reputation of the proceedings and their deterrent effect.

Responding to past recommendations of the CVM,[31] the SJC therefore last year initiated a process of analysing the practice in disciplinary proceedings and the related case law of the Supreme Administrative Court, in order to identify possible issues of divergence and develop a basis for a more consistent approach. The initial analysis carried out in 2013 confirmed the existence of inconsistencies in past decisions. As a next step, a working group was set up to develop clearer standards and a methodology for disciplinary proceedings. The draft methodology was finalised in autumn 2014. Apart from setting out some of the fundamental principles which should be observed when conducting disciplinary proceedings, the document is mainly concerned with matters of procedure and to a large extent restates the rules already present in the legislation. In addition, the SJC has put the emphasis on improving its own analytical capacity in such cases via the establishment of a searchable register of disciplinary cases and the planned setting up of a dedicated unit in the SJC's administration to assist the Council in the analysis of individual cases.

---

[26] For example, questions from external observers raising specific concerns already in the public domain do not always seem to have been taken into account.

[27] In addition, the procedure is not regulated by law and the input of the magistrates has an unclear status.

[28] In a recent survey among prosecutors in the Bulgarian public prosecutor's office, only ten per cent of the respondents agree that competitions for presidents of courts and prosecution offices are conducted in a transparent way or that the selected candidates are in fact the best prepared and best suited for the job. Six out of ten do not agree with the statement that for positions as administrative leaders in the prosecution system are appointed people with vision and high professional and moral qualities. See the 2014 survey of 450 prosecutors *Attitudes of Prosecutors for Reforms in Prosecution and Criminal Proceedings* by Global Metrix Ltd. and the Bulgarian Institute for Legal Initiatives.

[29] See below. The issue is also taken up in the draft judicial strategy which recommends a number of measures to develop a more systematic approach to appraisals within the judiciary.

[30] The number of completed disciplinary proceedings fell from 68 in 2009 to 14 in 2012 but increased again to 23 in both 2013 and 2014 (for 2014 the data cover only until November).

[31] COM(2012) 411 final. See also COM(2014) 36 final.

The SJC considers that the various measures taken over the last year have already had a positive impact in terms of improving the consistency of disciplinary practice. However, information provided by Bulgaria concerning disciplinary proceedings in recent years show that the number of successful appeals remains high.[32] A proper assessment would require a deeper qualitative analysis of decisions in terms of which types of sanctions are applied in different situations and the specific grounds for reversals of decisions in court. It is too early to say if the measures taken will be sufficient to protect the SJC against allegations of arbitrariness in future decisions.

The draft judicial reform strategy includes proposals to establish dedicated disciplinary commissions for judges and prosecutors respectively composed of magistrates elected by their peers, and for the authority to pronounce final decisions in disciplinary proceedings to be vested with the Supreme Court of Cassation rather than with the SJC.[33]

2.3. The Inspectorate to the Supreme Judicial Council (ISJC)

One of the first steps taken by Bulgaria to address the CVM's objectives in 2007 was the setting up of an independent judicial Inspectorate with the Supreme Judicial Council (ISJC). The ISJC should play a crucial role in protecting the independence and accountability of the judiciary. It conducts inspections of the various judicial bodies[34] and carries out targeted checks in respect of concrete allegations of malpractice. It also has the potential to systematically collect and analyse information about the functioning of the entire Bulgarian judiciary – information which can be used as a basis for proposals to improve the quality and efficiency of justice.[35]

While the ISJC is and should be independent of the SJC, the interaction with the SJC is still of crucial importance for its effectiveness. The ISJC can refer cases of disciplinary infractions to the SJC for decision and the SJC is empowered under the Judicial Systems Act to ask the ISJC to carry out inspections. A committee has been set up within the SJC to maintain a dialogue with the inspectorate. However, there appears to be an increasing tendency for the SJC to investigate disciplinary cases on its own, rather than relying on input from the Inspectorate.[36]

An important aspect of the independence of the ISJC is the fact that the Inspector General is appointed by the National Assembly with a two-thirds majority. The objective of this relatively demanding procedure is to ensure that the Inspector General enjoys broad political support, giving the ISJC a level

[32] Whereas there were 9 appeals each in both 2012 and 2013, resulting in 2 decisions being revoked and one being sent back to SJC for a new decision, in 2014 there were 10 appeals filed over the first eleven months of the year. This should be seen in relation to 23 completed cases during that period, in which sanctions were imposed in only 16 of them. In these cases 3 decisions to apply sanctions have been revoked by the court. A number of cases are pending. It should be noted that six of the proceedings this year resulted in decisions not to impose sanctions, including one case brought by the ISJC where the latter has appealed the decision not to apply a sanction (included in the 10 appeals cited above). In another case, no decision was taken by the SJC due to the expiry of the 6-month limitation period. Source: Information provided by the Bulgarian authorities in June and November 2014.

[33] The latter would likely require an amendment to the constitution.

[34] The ISJC has carried out inspections in all courts except the Supreme Courts.

[35] In 2014 the ISJC continued to carry out planned inspections in judicial bodies (both courts and prosecutor's offices) at regional, district and appellate level. As part of the inspections, the ISJC performed a quality review of completed case files and court acts and issued a number of concrete recommendations. Beyond the planned inspections, on a request by the SJC, the ISJC performed an inspection of the Specialised Prosecutor's Office for organised crime concerning compliance with the principle of random allocation of cases and issued recommendations.

[36] The change in the relative weight of the SJC and the ISJC in disciplinary proceedings has been reinforced by amendments to the Judicial Systems Act in 2011 which required the SJC to set up dedicated committees on ethics and disciplinary matters. However, the existence of dedicated committees would not in itself preclude reliance by these committees on the Inspectorate for the preparatory analysis.

of independent legitimacy which should allow it to avoid politicisation of its work. The disadvantage of this approach, on the other hand, became evident in 2012 when the term of the first Inspector General in office ended and the National Assembly proved unable to muster the required majority in favour of a successor. The result was initially that the incumbent stayed in the post awaiting the necessary political decision. Finally in October 2013 she stepped down, leaving the institution without the strong leadership that the procedure was designed to provide.

An attempt to open an election procedure during the very last days of 2013 gave rise to criticism due to a very short deadline for the nomination of candidates.[37] The procedure was subsequently cancelled after integrity issues were raised in relation to the only person that had been nominated within the deadline. A new procedure saw the presentation of two candidates supported by the independent professional Union of Judges. Both candidates were taken forward as official nominees in the National Assembly, which raised the prospect of an election process focusing on the merits of two non-political candidates commanding sufficient respect to be put forward by a professional association. However, in spite of calls by civil society for the election to be treated as a matter of priority,[38] no vote was scheduled in the National Assembly before it was dissolved in July 2014. As a result, the ISJC remains without leadership. However, the National Assembly has now re-started the procedure with a deadline for nomination of candidates on 30 January 2015. Reportedly the two candidates in the first procedure have expressed interest in running again.[39] After the nomination of candidates, hearings will be organised over the following two months, followed by a decision stage in the Parliament's legal committee, which would take another two weeks, so eventually the election can take place after mid-April at the earliest.

III REFORM OF THE LEGAL FRAMEWORK

In response to the CVM, the Bulgarian authorities have set up a permanent monitoring process regarding the implementation of its procedural codes in the civil, administrative and criminal law fields. The monitoring has been carried out with various levels of intensity over the years and has also produced results in the form of a series of concrete proposals for legislative amendments to the procedural codes, several of which have been adopted in Parliament. The debate on criminal procedures also led to a process of reviewing the Bulgarian penal code, a process which has now been ongoing for a number of years but is still in progress.

3.1. Monitoring of procedural codes

The procedural laws governing the judicial process in Bulgaria have been amended several times since accession. As noted in past reports, the judicial process in Bulgaria is characterised by a high degree of formalism. The legal framework is rather complex in some areas and has been subject to frequent amendments over time, without necessarily being part of a wider vision of legal reform. Experts have observed that courts tend to take a cautious attitude when it comes to interpreting the law or referring to existing case law as a basis for their judgements. Procedural requirements are complex and tend to be interpreted in a strict way, with the risk that proceedings are postponed or reversed due to technical errors. Partly as a result of these factors, there is a tendency for cases to be hampered by procedural

[37] See SWD(2014) 36 final.
[38] See http://www.bili-bg.org/514/news_item.html
[39] According to the Judicial Systems act nominations are officially made by the Members of Parliament. However, as in spring it would be possible for civil society actors to suggest candidates. The Legal Affairs committee adopted amendments to the procedure to formalise this element in the new election procedure, allowing for civil society actors to propose candidates for consideration by groups or members of Parliament.

obstacles and for the system to be burdened by a high number of appeals. These problems seem particularly important in the area of criminal justice.[40]

In 2014 a working group was set up to consider aspects of the criminal procedure code contributing to drawn out procedures, involving representatives of the SJC, the Inspectorate under the Ministry of Justice as well as from the academic community and legal professions. The working group has discussed possible amendments to expand the possibility for district prosecutors to assign complex criminal cases to investigating magistrates in the National Investigation Service.[41] Ways of improving the use of experts at court have also been discussed as well as ways of focusing the work of the Supreme Court of Cassation on core activities by relegating decisions on requests for re-opening of criminal cases to first instance courts.

In addition to the above, the Ministry of Justice is considering amendments to the criminal procedure code and other legal acts in order to: simplify the procedures for interviewing witnesses and experts via video-conferencing; clarify the rules on recusal of judges;[42] simplify court proceedings in complex cases; modify the rules on lay judges; and amend the legal framework on professional qualifications, financing and assessment of forensic experts. It remains to be seen what the outcome of these discussions will be in terms of concrete amendments to the procedural code, which will also have to be seen in the wider context of a general reform of penal policy in Bulgaria.

3.2. Penal code reform

An important initiative of the Government in office in January 2014 was the presentation of a new draft penal code. The draft had been in preparation since 2009, with different phases of preparation. The objective of introducing a new code was twofold: in general, to modernise the criminal code, which dates from 1968, in the light of international standards and developments in society and technology; and more specifically, to devise a more effective legal framework for certain specific problems, such as corruption and organised crime.[43]

In spite of a lengthy preparatory phase, including several years of committee work drawing on international experts as well as on local stakeholders, it quickly became clear that the draft code presented by the Government was not seen as sufficiently mature for adoption by the National Assembly. Two additional public consultations were launched by the National Assembly in spring 2014 involving civil society actors and the legal professions. The consultations revealed stark contrasts in the views of key stakeholders within the judicial system. For example, there were substantial differences between the Prosecutor's Office and the Supreme Court of Cassation.

The Prosecutor's Office, on the one hand, is generally in support of a new criminal code. Although it concedes that some improvements could be made to the current draft, notably in terms of clarification of the motivation behind the various provisions proposed, the Prosecutor's Office considers that the

[40] In a recent survey among a representative sample of prosecutors, carried out by a Bulgarian NGO, two out of three respondents mentioned a too formal process as one of the main difficulties faced by the prosecution. Op cit. *Attitudes of Prosecutors for Reforms in Prosecution and Criminal Proceedings.*

[41] The National Investigation Service forms part of the judiciary and consists of investigating magistrates attached to the prosecution offices. It has been criticised as part of a proliferation of investigatory bodies with overlapping responsibilities besides the police. It is specialised in certain categories of cases and its workload is generally considered to be low. Hence the debate as to whether it would be possible to assign more cases to it.

[42] At present there are no effective restrictions on the right to request the recusal of a judge, which has seen to be a regular cause for delays due to unsubstantiated requests.

[43] The Anti-corruption committee of the Council of Europe (GRECO) in a recent report identify continued shortcomings in the Bulgarian legal framework for the countering of corruption, in particular in relation to the provisions of the criminal code with regard to cases of active bribery in the public sector as well as active and passive trading in influence where the advantage is not given to the particular official but to a third party. See *Second compliance report on Bulgaria* (GRECO, October 2014).

existing penal code is outdated and needs to be replaced as it has been burdened by numerous amendments over the years, some of which have created mutual inconsistencies between various provisions and conflicting case law. In some cases, the same acts can for example be prosecuted under several different provisions of the law, with different levels of criminal sanctions. The Prosecution therefore calls for a new ordering of definitions of criminal offences in accordance with a clear hierarchy of importance to be attached to each crime.[44] Some criminal offences are outdated and should be abolished or reworded. Others need to be better defined. Also, the inclusion within a single chapter of corruption offences related to crimes against public finances, bribery, and trading in influence would in the view of the Prosecution be an important step towards a more efficient legal process in regard to such offences.[45] The Supreme Court of Cassation, on the other hand, is markedly more cautious about the benefits of the new draft code. Moreover, the current draft is seen as badly prepared, lacking a clear vision and overall of questionable value. The SCC has expressed reservations in particular about the complete replacement of the existing code, which could give rise to legal uncertainty. In the view of the SCC, a more thorough analysis and debate within the profession is needed in order to define a clearer penal policy concept before proceeding to the drafting of concrete amendments.

Shortly after the conclusion of the public consultation, the Government stepped down and Parliament was dissolved. In the absence of a working parliament to carry the draft proposal forward the interim Government, which had been appointed essentially with a mandate to prepare for the early elections in the autumn, set up a working group to discuss the ways forward on the proposal. Hence, it was effectively left for a future Government to decide on the fate of the draft law. The assessment of the draft is continuing under the new Government, which has set up a working group to identify any amendments that it would be urgent to make in the existing criminal code, which could then be adopted in the short term. Meanwhile, the issue of a possible broader reform of the criminal law framework would be carried forward in the framework of a wider debate with the relevant stakeholders.

IV QUALITY AND EFFICIENCY OF THE JUDICIARY

Judicial reform is about more than changes in legislation. Without effective management of the courts and the prosecution offices, changes to the legislation can be ineffective in solving complex problems of efficiency and accountability within the judiciary. In Bulgaria the day-to-day management of the judiciary is largely within the authority of the SJC,[46] in addition to the heads of the individual courts and prosecution offices. On the one hand, this independent authority provides the judiciary itself with an opportunity to take the lead and drive the reform process forward without political interference. On the other hand, it also requires the SJC to act as an agent of reform, alongside other key actors such as the Prosecutor-General.

Factors affecting the quality and efficiency of the Bulgarian judiciary include the effectiveness of systems for the random allocation of cases, consistent application of standards for appraisals and promotions, the fair distribution of workload between courts and individual judges and the judicial map,[47] the training of magistrates, the quality of pre-trial proceedings, and e-justice facilities.

4.1. Case allocation

The allocation of cases to individual judges is a managerial issue, but it is also an essential tool to safeguard independence of the judiciary and offset the risk of corruption. There are well-documented

[44] For example, the complexity of the existing code allows for some minor offices to be subject to more severe sanctions than more serious crimes.
[45] Source: Supreme Prosecution of Cassation of Bulgaria.
[46] The wide remit of competences of the SJC was outlined above.
[47] Size and demarcation of court districts.

cases where abuse of case allocation has been used to open the door to partiality in court decisions.[48] The Bulgarian authorities have responded to this risk with the implementation of electronic systems for random allocation of cases in all courts. However, controversy has been continuing with examples of manipulating the system.

The January 2014 CVM report explained that the SJC had decided to address the continuing concerns in a two-step approach. In the first step, a mechanism would be introduced for the local IT systems to automatically alert the SJC of decisions to allocate cases. This sought to address the risk of simply repeating the allocation until the desired result appeared. In a second step, a fully transparent and centralised IT system would be introduced covering the whole country. This system would be implemented as part of the wider e-justice strategy. The Commission had also recommended the development of common binding rules on the handling of case allocation in courts, the need for outside expertise to check the new system, and had noted the importance that court leadership should be held accountable to explain any divergence from random allocation.[49]

During 2014 the alert mechanism has been implemented as planned so that alerts are now submitted whenever a decision is made to allocate a case at local level.[50] The implementation of plans for a nation-wide centralised system for case allocation is still in preparation. Some related legislative changes of the Judicial Systems Act were prepared and agreed with the SJC by a previous government in spring 2014, but were not adopted before the National Assembly was dissolved. For the moment, the various courts therefore continue relying on local systems. Various courts have also continued using different procedures and rules for the practical application of the systems.[51]

In November 2014, a major controversy arose over the allocation of cases in the Sofia City Court. Case allocation procedures appeared to have been by-passed in the allocation of a high-profile insolvency case. The failure of the system to send the notification to the central register was initially explained as a result of problems with the internet connection, but this appeared not to be the case. The SJC was slow to react, initially denying that there was a problem and subsequently deciding to carry out additional checks of the software, which seemed to repeat similar checks which had been made in March 2013. Those earlier checks had already revealed serious weaknesses in the system, but the SJC did not appear to prioritise improved security as a result.[52] Around the same time a scandal also emerged in the public domain regarding another insolvency case involving a large foreign company. Following the public allegations of misconduct in these cases judges at the various Sofia courts publically called for the leadership of the Sofia City Court to be held accountable for the failings. Disciplinary proceedings against one judge as well as an inspection of the Sofia City Court are currently ongoing.[53] In December the SJC has announced the introduction of immediate urgency measures to improve the transparency of case allocation, subsequently to be followed by a more

[48] The problems related to random allocation of cases have been highlighted in several previous CVM reports. See e.g., SWD(2014)36, pp.7-8; SWD(2012)232, p.19; SEC(2011)967, p.11.

[49] There are for example cases, such as the need for specialisation in the prosecution, which could justify a decision to override random allocation.

[50] It is less clear how the alerts are followed up on central level. In addition, the system has apparently not entirely ruled out new controversies.

[51] In December the SJC adopted a draft unified methodology, which has subsequently been published for comments members of the judiciary.

[52] Checks made in 2013 also showed similar serious shortcomings in the random allocation system of the Supreme Administrative Court.

[53] The trustee appointed by the court to manage the company under insolvency proceedings in the second case has been barred from acting as a trustee in such cases after an investigation by the Ministry of Justice revealed several instances of malpractice also in past cases.

developed solution for centralised allocation of cases in a national system, to be contracted with an independent provider via a public tendering procedure in the course of 2015.[54]

4.2. Human resource management

An essential determinant of quality and efficiency in the judicial system is the management of the human resources of the judiciary. This comprises a number of aspects, such as a systematic approach to appraisals and promotions, and the provision of training, and an equitable distribution of workload.

Appraisals and promotions

An essential element of human resource management in the judiciary, the system for appraisals and promotions affects the motivation of judges and prosecutors. Its fairness and transparency is important also for the independence of the judiciary, as these systems can otherwise be perceived as means of pressuring magistrates. In response to recommendations in the last CVM report[55], two working groups were set up under the SJC to work on proposals for the improvement of methods for appraisal and career development of magistrates.[56] The conclusions of the working groups were taken into account in the development of the judicial strategy. The strategy includes for example proposals for an evaluation of practices in connection with magistrates' acquisition of tenure status, taking better account of workload in appraisals, and introducing an element of self-assessment and consideration of training needs in the appraisals.

Training

The National Institute for Justice continued to provide training and to develop its repertoire of training for magistrates in 2014. Its activities are financed partly by public funds from the state budget. However, the core budget is only sufficient to cover the mandatory training of young magistrates required by law and has not increased in recent years. All additional training activities, including continuing training, are covered through various one-off grants and programmes.[57] Nevertheless the institute has been successful in developing a range of new training offers in close cooperation with various institutions of the judiciary.[58] Many assessments have recognised the quality of the training and the efforts made to adapt the training offer to changing needs

The judicial strategy sets out a number of proposals for further developments in the training of magistrates, such as improving initial as well as continued training, developing mentor programmes, and enhancing the capacity for identifying training needs in the various judicial bodies. The independence of the Institute is also seen as an important factor in its effectiveness.

Workload analysis

An important aspect of human resource management in the judiciary concerns the distribution of workload among magistrates. This is important, not only in the context of ensuring a fair basis for

[54] An ongoing project under OPAC already includes development of a centralised solution in the context of the broader e-justice strategy, but it appears that the SJC has decided to cancel this element of the OPAC project.
[55] COM(2014) 36 final.
[56] The working groups comprised representatives from a number of judicial instances, including the supreme and appellate courts, the prosecutor's office, the national investigation service, civil society organisations and the judicial professions.
[57] Including EU funds.
[58] One of the recent additions to its remit has been joint trainings for magistrates and investigating police officers. While the main purpose of the institute is to train members of the judiciary, the joint trainings involving police officers have been developed with the purpose of improving the skills for cooperation between the two sides in pre-trial investigations. Cooperation has been identified as one of the challenges in Bulgaria in regard to criminal cases.

appraisals and promotions and motivating magistrates to devote the required energy to complex files, but also in terms of independence of individual magistrates. For example, a theme which has been raised in the context of the analysis of the random case allocation system is the need to take into account workload, which could in exceptional cases require the reallocation of a case.

An ongoing project under a specialised committee on workload analysis within the SJC aims to develop objective standards for workload of judges taking into account the complexity of cases as well as other tasked performed by magistrates. The various types of legal cases have been identified and a survey was carried out in the autumn of 2014 among judges within all the different branches and levels of the judiciary, in order to collect information on the average work associated with the different types of cases. The results of the survey will be used as a basis for developing rules for the assessment of workload in all courts which should be ready for adoption by the SJC during 2015.[59]

A similar process has been ongoing for the prosecutors and investigators, although in light of the different nature of the prosecution office compared to the courts a simpler approach has been chosen, based on a pilot study. The results have been used to develop a set of rules which will enter into force in 2015.

4.3. Judicial map and e-justice

Some elements of the judicial reform require a wider consideration at political level as they involve either legislative changes or need to be coordinated with other institutions outside the judiciary. This would be the case for example with regard to a possible reform of the judicial map, which touches upon a number of links to other parts of the public administration, and the implementation of e-justice, which requires legislative changes.

Judicial map

A reflection is ongoing in Bulgaria on a reform of the overall judicial map, as the court districts have essentially remained unaltered in recent time and are characterised by courts with very different levels of workload, with a disproportionate share of workload in the larger courts.[60] A first step was taken in early 2014 with the closure of two out of three regional military courts. Further analysis is ongoing as to the possibility of further reforming the military courts in order to leave only one covering the whole country.[61] The process is expected to continue with a reform of the regional courts in 2015. The preparation of a comprehensive system of workload assessment standards will feed into the process. In addition, studies were commissioned by independent experts concerning demographic, social and economic factors affecting the frequency of cases in courts and factors affecting access to justice for citizens, which will feed into the process.[62] Together, the various studies are intended to provide the

[59] The results of the survey will be processed in three focus groups representing the main branches of the judiciary in the beginning of 2015 after which the workload committee will determine the final time standards for the different types of cases. Finally, rules and arrangements will be decided on the measuring of workload across the courts.

[60] Bulgaria has 113 regional courts. In addition, there is a district court as well as an administrative court for each of the 28 provinces, five appellate courts of general competence, a Sofia City Court and appellate court with special jurisdiction in certain matters, a specialised court and appellate court for organised crime, as well as three military courts and one appellate military court. Finally, there is the supreme administrative court and a supreme court of cassation.

[61] The reform was adopted in 2013 following proposals from the Prosecutor General as part of the ongoing reform of the prosecution offices, which according to law have to be structured in accordance with the structure of court districts.

[62] To take into account the possible concerns regarding access to justice in remote areas, it will be reportedly considered to introduce a model of temporary courts, leaving an office open in such former court districts where courts may be convened at certain intervals to hear cases. Source: Meetings with SJC in December 2014.

basis for the preparation of concrete proposals in the second half of 2015.[63] More generally, the studies produced in preparation of the reform provide a rich basis for analysing the judicial system. It is the first time it is being done in Bulgaria but could ideally become a regular practice. Indeed, the draft judicial reform strategy includes the proposal that the analytical capacities of the SJC should be further enhanced in this respect so as to allow for a more effective administration of the judiciary.

Ultimately, the reform effort could involve also the district courts, appeal courts and administrative courts aiming at a gradual restructuring of the whole judicial map. However, this will require further analysis[64] and may also require broader consultations, as the district courts are currently aligned with the organisation of provincial government. The reform would therefore be a long-term process which will require continued support also from political level in order to succeed. Alongside the longer term efforts for reform of the judicial map, the SJC is therefore also working in the short term to alleviate the most serious problems flowing from the misallocation of resources in the system, by gradually adjusting the number of posts in the various bodies of the judiciary (courts and prosecution offices) in accordance with a more pragmatic assessment of relative workload. In the course of the first eleven months of 2014 the SJC closed 123 positions in judicial authorities with less workload while opening 129 additional positions in more highly charged authorities.[65]

E-justice

As part of the general e-government strategy, the Bulgarian authorities adopted an e-justice strategy in July 2014, following consultations with the relevant stakeholders including the various parts of the judiciary and NGOs active in the sector. The strategy sets out a number of objectives for the period until 2020 and assigns responsibilities to various institutional actors. Related legislative amendments to the judicial systems act have been prepared by a working group under the Ministry of Justice, comprising also representatives of the judiciary and civil society. In the meantime some intermediate steps have been developed in the various institutions of the judiciary. Most notably, in the prosecution offices, a Unified Information System for Combating Crime (UISCC) has now been completed with funds from the Operational Programme for Administrative Capacity, including a module concerning random allocation of cases.

4.4. Reform of the prosecution

In 2013 a broad action plan for managerial reforms within the public Prosecutor's Office was presented by the Prosecutor General and endorsed by the SJC.[66] The reform is now almost complete, reportedly resulting in a general streamlining of the prosecutorial offices as well as its connections with other parts of the public administration and judiciary. The still outstanding elements of the strategy, aiming at enhancing the independent capacity of the prosecution offices to carry out investigations and avail itself of expertise in the course of its investigations[67], are planned for completion by March 2015. In spring 2014 a number of additional measures were added to the action

[63] A decision of the SJC to reform the regional courts would not be the end of the process. First of all, although it is formally within the exclusive authority of the SJC to determine the delimitation of court districts, there will nevertheless be a need to coordinate the reform at a more general political level, as a wide range of other institutions within the remit of the executive power are aligned to the courts for practical reasons, including in particular the police offices, notaries and bailiffs. Secondly, the practical implementation of the reform can be expected to require careful planning and consultation with the local stakeholders.

[64] According to the SJC a proposal for consolidation of the district courts could be ready in 2016 at the earliest.

[65] Source: Information provided by Bulgarian authorities in December 2014.

[66] The action plan took its point of departure in a functional audit of the prosecution which was acknowledged by independent experts as a very candid account of the various weaknesses of the existing structure.

[67] The prosecution relies on externally procured experts. There are long delays and quality is not always sufficient. There could be a need for in-house expertise in certain areas. The prosecutor's office has recently been allocated additional funds for the procurement of expertise in relation to some complex criminal investigations involving the financial sector.

plan specifically to address the Commission's latest recommendations on the fight against corruption and organised crime.[68]

The issue of prosecutorial reform was reflected in the draft judicial reform strategy presented by the Minister of Justice, which provides for an independent international expert examination of the state and effectiveness of the prosecution service with a view to developing a new organisational model for it. The proposals in the draft judicial reform strategy were followed up by the Prosecutor General in the form of an opinion which embraced certain elements of the reform – it included concrete drafts of legislative amendments to the judicial systems act aiming to mitigate the extent of internal centralisation within the organisation, by providing greater autonomy for individual prosecutors. It also included ideas to enhance the accountability of the prosecution towards society, by specifying the reporting requirements of the Prosecutor General in regard to the SJC and the National Assembly, specifically in regard to the investigation of corruption and organised crime.[69]

Of great importance for the investigation of corruption related crimes – especially in cases involving high-level corruption – is the autonomy given to individual prosecutors within the prosecution service and the degree of hierarchical control. One important issue frequently noted by experts – both Bulgarian and foreign - is a general lack of motivation for prosecutors to take a pro-active approach to investigations[70]. Hence one of the problems that have been identified in the past has been the relatively passive role of the prosecution in the pre-trial investigation of complex cases, exacerbating the challenge of securing the close cooperation between the prosecution office and investigatory services needed for the effective pursuit of cases.[71]

The problem seems to be related, at least in part, to the hierarchical structure of the prosecution office, which does not promote a culture of individual initiative. The balance between the autonomy of individual prosecutors and the need for consistency and managerial control is one faced by prosecution services more generally. Transparent procedures can help to provide clarity in cases where prosecutors feel that hierarchical instructions are impeding their autonomy.[72] Some Member States counterbalance centralisation of powers in a single office with stronger control mechanisms.[73] This issue is of particular importance in corruption cases, because the remedy offered by the legislation (appeal by the victim of the crime) is rarely triggered in such cases.

Suggested legislative amendments recently published by the Prosecutor General go in the direction of increased clarity.[74] They need to be assessed in the context of a system characterised by high

[68] See the discussion in section V and VI below.

[69] The opinion also embraces other elements of the draft strategy, including the idea of a restructuring of the SJC in two colleges. *Position of the public prosecutor's office on the draft judicial reform strategy*, provided in English translation during meetings in Sofia in December 2014.

[70] According to 83% of the prosecutors, performance evaluations fail to give an accurate and just assessment of their work. A total of 40% think that they were not correctly evaluated. Op cit. *Attitudes of Prosecutors for Reforms in Prosecution and Criminal Proceedings.*

[71] The issue was for example highlighted in a review of corruption cases performed by the prosecution office in 2013. It has also been highlighted by independent experts.

[72] Almost 13 per cent of prosecutors surveyed in a recent study consider that prosecutors 'often' succumb to hierarchical pressures, whereas 28 per cent consider that it 'sometimes' happens and 38 per cent that it happens 'very rarely'. Op cit. *Attitudes of Prosecutors for Reforms in Prosecution and Criminal Proceedings.*

[73] For example, in some Member States there is a system of court control over the dismissal of cases.

[74] The opinion of the prosecution office on the draft judicial strategy includes proposals to change the wording of Article 143 of the Judicial Systems Act to clarify that only 'motivated' written orders given by a higher standing prosecutor shall binding and that the prosecutor to whom the orders are directed may appeal them before a higher standing prosecutor's office. A reporting mechanism to the General Prosecutor, the SJC or the Inspectorate already exist and have apparently been used on occasions. A system of random allocation of cases also limits the risks of undue interference in the distribution of cases. According to the general Prosecution,

concentration of powers in the hands of the management of the Prosecution. Hierarchical structures comparable to those of the Bulgarian prosecution exist in other Member States' judicial systems. The Bulgarian model adds to this hierarchical structure a direct control of the General Prosecution over special units investigating corruption within the magistracy, financial investigation units (FIU) and the specialised prosecution against organised crime.

V COMBATTING CORRUPTION

The fourth and fifth benchmarks of the CVM focus on, respectively, high-level corruption and corruption as a broader phenomenon within the public administration, including at local level and at the borders. Corruption undermines the trust in institutions and poses a threat to the economic and social well-being of a country. It has been one of the reasons underlying the public discontent that triggered widespread demonstrations in 2013 and 2014. The continued presence of widespread corruption as a major problem in Bulgaria is supported by a number of independent surveys and studies by civil society and international organisations. According to business leaders and experts surveyed by the World Economic Forum for the Global Competitiveness Index, corruption constitutes the single most problematic factor for doing business in Bulgaria.[75] In the World Bank governance indicators, Bulgaria ranks last among EU members on control of corruption.[76] In addition, the European Quality of Government Index highlights significant regional disparities within Bulgaria in perceptions of corruption and of public service quality and impartiality.[77] The 2014 Rule of Law Index of the World Justice Project ranks Bulgaria as the worst performer in its reference region of Western Europe and North America in regard to corruption.[78] Similarly the Corruption Perceptions Index of Transparency International consistently shows Bulgaria as one of the EU Member States where perceived corruption is the highest.[79] A study recently produced in the framework of the anti-corruption initiative *Southeast European Leadership for Development and Integrity* (SELDI) shows that corruption in Bulgaria has increased dramatically to levels otherwise not seen since Bulgaria's EU accession.[80] These perceptions have been echoed in the latest Eurobarometer study.[81]

Past CVM reports have underlined the lack of cases where serious allegations of corruption have led to final court decisions, and the need for a better coordination of the anti-corruption effort in Bulgaria. This section summarises action taken by the Bulgarian authorities to address problems in its anti-corruption system, both in terms of the prevention of corruption, and in the pursuit of cases of corruption by the authorities.

---

attempts to circumvent the system or for a senior prosecutor to take over would be very obvious and could be subject to disciplinary procedures.

[75] For the latest issue: http://www.weforum.org/reports/global-competitiveness-report-2014-2015

[76] Data from 2013: http://info.worldbank.org/governance/wgi/index.aspx#home

[77] Data from 2013: Nicholas Charron, Lewis Dijkstra and Victor Lapuente. 'Mapping the Regional Divide in Europe: A Measure for Assessing Quality of Government in 206 European Regions'. *Social Indicators Research.* https://nicholascharron.wordpress.com/european-quality-of-government-index-eqi/

[78] On the indicator 'absence of corruption' Bulgaria ranks 24 out of 24 countries in Western Europe and North America. Compared to the group of upper middle income countries worldwide it ranks 22 out of 29 countries. Finally, it ranks 64 out of the total 99 countries covered by the survey. http://worldjusticeproject.org/rule-of-law-index

[79] According to the latest edition, Bulgaria ranks number 69 out of the 175 countries covered by the survey. It shares the position with Romania, Italy and Greece. See: http://www.transparency.org/cpi2014

[80] Three out of ten Bulgarians surveyed for the study admit to have given a bribe in 2013 whereas four out of ten claim to have been asked for one. On several parameters the situation in Bulgaria appears to be comparatively worse than in several applicant countries in South Eastern Europe on a number of indicators. For further details, see *Anti-corruption Reloaded*, SELDI, 2014, http://seldi.net/publications/publications/anti-corruption-reloaded-assessment-of-southeast-europe See also *Anti-Corruption Policies Against State Capture*, Center for the Study of Democracy, Sofia 2014, p. 18. http://www.csd.bg/artShow.php?id=17172

[81] Eurobarometer 406.

5.1. Anti-Corruption Strategy

In 2009 Bulgaria adopted an integrated strategy on the fight against corruption and organised crime which has subsequently been followed up by a series of action plans. A number of concrete measures were implemented to intensify the fight against corruption. However, in spite of these measures, the overall approach has been criticised as fragmented and lacking in overall effectiveness and coordination.[82] Anti-corruption efforts remain diffuse, with no single institution given the authority and autonomy to proactively coordinate the fight against corruption, as recommended in previous CVM reports.

In response to Commission recommendations[83], a review of the anti-corruption strategy was launched in 2013 with the involvement of civil society and independent experts. As part of the review, an independent assessment was carried out of the strategy's impact.[84] According to the Bulgarian authorities the review (not yet published) confirms the presence of very serious shortcomings in the Bulgarian anti-corruption set-up as well as in the implementation of the anti-corruption strategy over the past five years. The new Government is yet to decide on the concrete follow-up to the conclusions of the independent review but has indicated that it considers this to be an important priority for the coming months.[85]

5.2. Investigation of corruption cases

In Bulgaria, past experience indicates that serious barriers exist for the effective investigation and prosecution of corruption, especially involving high-level officials. A number of cases have been taken up by the prosecution, often accompanied by wide coverage in the press, but convictions are rare and, when they happen, tend to be subject to lengthy appeals. The Commission has had difficulties in identifying high-level cases which have been brought to final conclusion.

The recent track record reported by the authorities shows some development in terms of new corruption cases being investigated[86] or brought to court.[87] In 2014 figures also show a decrease in the share of cases being returned to the prosecution by courts or ending in an acquittal, although it remains

[82] Though see below for ongoing effort to streamline work on corruption cases within the prosecution.
[83] COM(2012) 411 final.
[84] The study was contracted by the Inspectorate General and funded by the EU Operational Programme for Administrative Capacity (OPAC).
[85] Meetings in Sofia in December 2014.
[86] In the first ten months of 2014, according to the Prosecution office, pre-trial investigations were launched against 61 high or higher level public officials, including a member of parliament, a deputy minister, a deputy governor of the national bank, four municipal mayors, six deputy mayors, two district heads in a large regional town, two regional directors of state agencies, one director of a local environment inspectorate, a regional director of the agricultural fund, five judges (including two court presidents), a property registry judge, a notary, two private bailiffs, four investigative police officers, twelve police officers, seven customs agency officials. 11 public officials were removed from office in connection with pre-trial investigations. Source: Written material received from the prosecution office of Bulgaria in December 2014. Some other high-level cases are in an early stage of investigation, including a case involving a former Deputy Speaker of Parliament.
[87] During the first ten months of 2014, 31 high or higher level public officials were referred to the court, including a chief secretary of the Council of Ministers, a member of parliament, a chair of a state commission, two municipal mayors, one deputy mayor, two property registry judges, three private bailiffs, two ministry of justice officials, two investigative police officers, fourteen members of the police force, and two customs officials. Source: BG prosecution office.

high.[88] A number of first instance convictions of high or higher level officials have been issued in cases involving corruption charges.[89]

In spite of these recent developments, the general picture remains largely unchanged. While there may be more corruption cases going to court than previously, the numbers still appear low in comparison to the scale of issues as recognised both domestically and internationally.[90] The new cases are still at the earlier stages of the judicial process, so final convictions in high-level cases involving serious charges of corruption are all but non-existent. In cases where EU funds are involved and for which OLAF carried out an investigation and concluded that there were clear suspicions of the existence of fraud, it appears sometimes unclear why the judicial authorities did not initiate, or discontinued, judicial procedures.[91] A number of legal and organisational challenges are hampering the effective pursuit of justice in this area.

A series of measures have been taken in the context of the ongoing reform of the prosecution offices to give more priority to tackling corruption, such improving the training and specialisation of prosecutors and investigators, intensifying the cooperation with other agencies and state bodies and streamlining internal procedures and structures. In the course of 2014 additional measures were taken to address the lack of results in the prosecution of corruption, notably involving a more intensive supervision of such cases and a closer cooperation with SANS within a new specialised unit to target corruption a local level. These are discussed below. The impact of these measures will need to be followed.

Supervision of corruption cases within the prosecution

In 2014 the prosecution took steps aimed at ensuring a stronger surveillance of pre-trial proceedings in cases involving corruption. One important element of this was the establishment of a catalogue of corruption crimes which is to be used by prosecutors in their reporting to senior management. Another measure was the establishment of specialised units in all appellate prosecutors' offices focusing on corruption. The appellate prosecutor's offices have been put in charge of collecting the reports from the lower instance prosecutor offices. They are then submitting monthly reports to the senior management concerning developments in all corruption cases, including suspects, classification of the offence, investigating team, any procedures launched concerning financial verifications, and the timeframe of the investigation.[92]

The new reporting requirements are mirrored by rules setting out a system of special supervision of pre-trial proceedings for corruption cases falling within the definitions of the catalogue, cases monitored by the European Commission as well as 'other cases characterised by factual and legal complexity or important for the case law'.[93] Each case where pre-trial proceedings are initiated is reported to the appellate office, where it is assigned to a prosecutor working in the relevant area, who then provides an opinion as to whether the case needs to be put under special surveillance. The decision to put a case under special supervision is taken by the head of the appellate prosecutor's

[88] A frequent problem in criminal proceedings in Bulgaria involves cases being returned to the prosecution by the court due to formal or material errors in the indictment.
[89] Including a former minister of interior, a head of a state commission, a regional director in a state agency, a municipal mayor, and two police officers. Source: BG prosecution office.
[90] As an example, reportedly, there are currently only 2 (two) individuals serving sentences for taking bribes and 12 individuals serving sentences for giving bribes in Bulgarian prisons. Source: Bulgaria's Ministry of Justice.
[91] In the cases involving fraud to the EU budget which have been dropped, there is no system in place to give an explanation – except for general explanations such as the often used "lack of proven intention". OLAF does not receive information on the procedure applied to reach such conclusions, as there are no procedures to ensure that dismissals or refusals to initiate cases are motivated, decisions are recorded, and remedies made available.
[92] The appellate prosecutor's offices are also required to report orally every three months on concluded as well as newly filed cases including any problems encountered in the investigations and needs for methodological support.
[93] Source: Prosecutor's office.

office, and the prosecutor to whom it was originally assigned becomes 'supervising prosecutor' on the case. Particularly important cases may even be assigned for supervision by the Supreme Prosecutor's Office of Cassation. The special supervision implies in practice that the prosecutor in the appellate office provides assistance and methodological guidance to the responsible prosecutor in the pre-trial as well in as the trial phase. The supervising prosecutor may also handle the case at appeal.

This more systematic approach is designed to give greater priority to corruption cases and help identify systematic factors slowing down pre-trial proceedings. Data provided by the prosecution for the first months after the introduction of the new system seem to indicate a certain increase in the speed of pre-trial proceedings.[94] The system of special supervision may help address some of the key problems identified in the past in terms of poorly prepared case files and complex cases not receiving the necessary attention. The impact will be able to be assessed in terms of the flow and the success of future cases.

New inter-departmental unit investigating corruption

Bulgaria has a number of different investigatory agencies, including the police, the National Investigation Service (which forms part of the judiciary and consists of investigating magistrates attached to the various prosecution offices) and the State Agency for National Security. As mentioned above, one of the problems hindering progress of cases has in the past been identified as a poor cooperation between the prosecution and these agencies. In order to improve the quality of pre-trial investigations into corruption related crimes the Prosecutor General in June 2014 created a specialised interagency unit to assist in the investigation of such cases.[95]

Headed by a senior prosecutor, the new unit brings together the director of SANS in charge of corruption investigations, prosecutors and investigators from the Sofia City prosecutor's office and agents from SANS (including investigating agents). The unit may also be assisted by experts from the Ministry of Finance, the National Revenue Agency, the Customs Agency, and the State Financial Inspections Agency as well as other ministries and state authorities. The unit is housed within the premises of SANS. It is expected to promote a further specialisation of prosecutors, investigators and operative agents dealing with corruption cases as well as to provide a vehicle for a more efficient and confidential exchange of information between the prosecutor's office and the SANS in particular, thereby contributing to more effective pre-trial proceedings. It is authorised to carry out preliminary checks as well as pre-trial investigations concerning corruption cases as defined in the catalogue referred to above. The unit works on case files assigned to it by the Prosecutor General and the investigations are coordinated with the chairperson of SANS. The unit works via the assignment to specific cases of concrete teams of prosecutors and investigators, which continue to work throughout both the pre-trial and the trial phase of the cases.

It is evidently too early to assess the impact of this new measure. However, the Bulgarian authorities consider that the results so far are promising. Several investigations are ongoing in which the advantages of the new set-up has proven its worth, including ensuring the confidentiality of investigations, launching investigations swiftly, and shielding the prosecution of corruption crimes from political pressure. A future assessment of the effectiveness of the unit will need to consider the extent to which the first cases against corruption concerning important figures at the local level[96] are replicated and followed up by major cases on the national level (a particular challenge given the small size of the unit concerned). Concern has also been expressed that potential changes in the organisation of SANS (see below) might jeopardise the effectiveness of the new model.

[94] It is not possible to say if data are also representative of the most important cases.
[95] The unit is modelled over a similar body that was created in 2013 to assist in the investigation of crimes committed by magistrates. See below.
[96] For example, several cases involving mayors.

5.3. Investigation of corruption in the judiciary

Corruption within the judiciary is an especially difficult and challenging area for law enforcement institutions. Judicial corruption strikes at the heart of the legal system and the reputation of the judiciary and therefore has particularly detrimental effects on the economy and society in general.[97] The investigation of corruption allegations against magistrates is sensitive from the point of view of judicial independence: such investigations raise particular issues of confidentiality and impartiality. At the same time, the investigation of judicial corruption is crucial for citizens' trust in the judiciary and for the rule of law.[98] These challenges led to the establishment in October 2013 of a specialised interdepartmental unit bringing together specialised agents of the Prosecution Office, the National Investigation Service, the Ministry of Interior and the State Agency for National Security (SANS). Headed by the Prosecution Office, but housed within the SANS, this specialised unit is conducting all criminal investigations into cases involving crimes involving magistrates, including corruption, and also supervise the prosecution in the subsequent court trials.[99] The Bulgarian authorities have reported that the unit has improved the effectiveness of investigations in this area and it can be seen as the inspiration for the new specialised unit dealing with corruption among state officials discussed above. A number of cases are being investigated by the unit and the first cases are due to be brought to court in the near future.[100] An important challenge for the unit will be to show that it is able to carry out impartial investigations into complex cases potentially involving wider links to powerful economic interests.[101]

5.4. Prevention of corruption

When analysing the response to corruption it is useful to distinguish between preventive and repressive instruments. While criminal law enforcement plays an important role in sanctioning serious instances of corruption, the criminal justice system needs to be supplemented with effective administrative mechanisms to prevent and deter corruption.[102] An effective corruption prevention strategy requires institutions charged with raising awareness, promoting best practices, receiving and handling complaints, carrying out inspections to verify allegations, deciding on disciplinary sanctions and referring criminal matters to the relevant authorities etc. Another element is for public administration as a whole to prioritise the need to organise the public sector in such a way as to make corruption more difficult in the first place, and more easily detectable in case of transgression, as well as more generally promoting a culture of professionalism and integrity. Together with the common sense of public officials themselves, this is the first line of defence against corrupt practices in the public administration.

---

[97] Investors in Bulgaria complain that undue influence within the judiciary creates an uncertain business environment. The scale of the problem was once again highlighted at the end of 2014 when serious allegations of corruption and possible manipulation of the random allocation of cases led to calls from within the ranks of the judiciary for the resignation of the leadership of the Sofia City Court.

[98] Existing surveys indicate that Bulgarians continue to perceive corruption to be a widespread phenomenon in the judiciary, see *Anti-corruption Reloaded*, p. 76 and 82.

[99] In addition, administrative investigations can be performed by the judicial inspectorate as well as by the ethical committee of the SJC, as discussed earlier.

[100] Most notably charges were recently pressed in an embezzlement case involving 10 defendants, including two court presidents.

[101] Several such cases involving magistrates have become public through media coverage.

[102] A recent study notes that most corruption transactions have been initiated by the administration, with the levels of corruption being so high that criminal law enforcement becomes 'ineffective and inadequate.' Op cit. *Anti-Corruption Policies Against State Capture*, p.9.

The shortcomings in the Bulgarian anti-corruption system are not only visible in the criminal justice system, but also very much concern the preventive side, with issues of coordination and a lack of clarity in anti-corruption policy.[103]

Verification of Assets

Bulgaria has a legal requirement for all high public officials to report regularly to the National Audit Office on their financial assets. In addition, all officials declare assets to their respective administrations. The declarations are audited in regard to consistency with information present in other public registers and sanctions can be applied in case of misreporting. The registration and verification of the assets of public officials provides a means of transparency and accountability. In addition, it could be used to identify risk areas. Apparently, however, the checks performed by the National Audit Office and within the various administrations focus primarily on verification of the information reported into the system by comparison with other public registers. Whenever discrepancies are found with regard to high level officials, the information is forwarded to the SANS and National Revenue Agency for further checks. Similar checks are carried out in the respective services in relation to ordinary officials. Such verification is important in itself, but other approaches for the screening of the declarations, such as for example focusing on unusual changes in wealth over time, could provide additional means of identifying signs of illicit enrichment.[104]

Administrative Inspections

One of the most important administrative instruments for the prevention of corruption in Bulgaria is a network of inspectorates in the different parts of the state administration. At the centre of the network, an Inspectorate General under the direct authority of the Prime Minister is in charge of supervising the overall implementation of the anti-corruption strategy for the state administration. In this capacity it performs a number of inspections on its own in addition to providing guidance to the individual inspectorates within the various other ministries and state bodies. The inspectorates give recommendations for improved procedures, initiation of disciplinary procedures, investigation of conflicts of interest and checks on asset declarations of officials.[105]

The internal inspectorates of the State administration have a key role in addressing corruption risks. However, the system suffers from a number of weaknesses. First of all, their capacity in terms of staff and resources appears to be limited and they are vulnerable to turnover of in staff.[106] The conditions of work in the inspectorates are not sufficiently rewarding to attract and keep highly qualified personnel.[107] Interlocutors have also raised as an issue that the concept of internal control is not adequately recognised in the law. For example, there seems to be a lack of coordination and common binding guidelines, including on key issues such as how to carry out risk assessments as a basis for inspections.[108] In addition, there seems to be a direct political involvement in the vetting of planned

[103] As mentioned above this has been a recurrent theme of previous CVM reports and is reportedly also confirmed by the evaluation of the National anti-corruption strategy currently being finalised.
[104] Additional shortcomings have been noted in previous CVM reports, such as for example the fact that the register includes only certain classes of assets while excluding others. These shortcomings remain relevant.
[105] As described above.
[106] For example, the Inspectorate General itself had only 13 permanent staff positions in October 2014, of which two were vacant. In addition, there was a significant turnover in its staff in the course of 2013 and 2014, including the resignation of its administrative head, who left office in the midst of an administrative investigation into allegations that she failed to assert effective control over an inspection, which was not carried out in accordance with the instructions.
[107] This is particularly important in sectors characterised by legal or financial complexity in specialised fields such as the tax administration.
[108] The Inspectorate General has developed methodological guidance but this is not binding on the other inspectorates.

inspections.[109] This creates an evident risk of politicisation of the inspectorates' work and further highlights the need for systematic use of risk assessments in accordance with an approved methodology to guide the inspectorates' activities. In spite of these possible weaknesses, however, the inspectorates do appear to make a substantial contribution to helping to promote a culture of ethics and integrity within the state administration.

According to the Bulgarian authorities, the structure and role of inspectorates will be developed in the context of a new anti-corruption strategy.

Corruption in law enforcement institutions

A specialised inspectorate and an internal security service within the Ministry of Interior have been in place for some time to address problems of corruption within the police force as well as possible interference by organised crime groups.[110] The functions of the two departments overlapped somewhat and were vested with different degrees of authority. In particular, the inspectorate was in charge of disciplinary proceedings but did not have the same access to special investigative methods as the internal security directorate, which in turn was mainly focusing on investigations involving criminal acts. However, this distinction can often become apparent only during an investigation. In 2013 the services were therefore reorganised in order to better coordinate the anti-corruption efforts within the Ministry. The reform went into effect on 1 October 2013 and means that the Internal Security Directorate is now the main corruption fighting body in the Ministry of Interior, vested with both preventive and investigative functions with regard to all staff. The Inspectorate in turn retains competence with regard to conflicts of interest[111] and also carries out systemic checks to identify possible improvements in the administrative practices for which recommendations can be made to the Minister, but it no longer gets involved in individual corruption-related cases. Any reports on alleged corruption among police officers that are received by the Ministry are now systematically transferred to the Internal Security Directorate. Whereas the inspectorate has only administrative powers, the security directorate has actual investigatory powers, so it combines both administrative (disciplinary) procedures and actual criminal investigations which might lead to prosecution at the courts.[112] In addition, it can conduct covert operations using special operational techniques.[113] There is an anonymous hotline and website for signals and a new uniform methodology has been introduced for the assessment of risks in the ministry, which may provide a basis for a more targeted impact of investigations. The Internal Security Directorate is also in charge of vetting the staff and works with SANS for this purpose, notably for cross-checking information.[114]

The concentration of the anti-corruption effort within a single department of the ministry is designed to ensure a more effective response. However, its success would also depend on support from the higher levels of the organisational hierarchy, and ultimately from political level, as well as the authority to act independently. The effectiveness of the new structure will also rely on the wider efforts to be put in place by the Government to step up the wider anti-corruption efforts in Bulgaria.

---

[109] Both planned and ad hoc inspections are approved by the relevant ministers, for example the Prime Minister in regard to the Inspectorate General.

[110] In addition, as discussed above, an external body, the State Agency for National Security (SANS), was created in 2008 in order to intensify the fight high-level corruption among senior civil servants, politicians and the judiciary.

[111] It focuses mainly on high-level officials whereas conflicts of interest among lower level officials are dealt with by the relevant management structures in accordance with specific guidelines.

[112] After the reform the internal security directorate had 110 staff and carried out 262 inspections in the first ten months of 2014 regarding possible corruption or other criminal activity on the part of police officials. 67 disciplinary proceedings were initiated and 36 disciplinary sanctions imposed. 33 pre-trial investigations were launched.

[113] Via the State agency for special operations (SATO).

[114] The vetting procedure relies in the first place on the express consent of persons concerned. Otherwise information is obtained in the basis of a court order.

Prevention of Conflicts of Interest

The law on the prevention and detection of conflicts of interest has been amended several times in the past in order to enhance its effectiveness. In 2011 this led to the establishment of a Commission for the Prevention and Ascertainment of Conflicts of Interest (CPACI) which verifies cases of possible conflict of interest. The establishment of this Commission was an innovative step which promised a more proactive approach in this important area. However, the Commission became embroiled in a scandal in 2013 when its Chairman was arrested and charged with malfeasance and possible trading in influence. The allegations implied a possible direct political interference in the work of the Commission.

The scandal set off a parliamentary enquiry into the working methods of the Commission as well as two legislative initiatives which sought to carry through a general overhaul of the institution in order to enhance its the effectiveness and accountability. These legislative initiatives had not yet been adopted when the previous parliament was dissolved in July 2014.[115] The further fate of these proposals is uncertain at the current moment. The last parliament also proved unable to elect a new chairman of the committee, which therefore continues to function without a clear leadership. The former chairman was sentenced to 3½ years of prison in spring 2014 and the Sofia City appellate court has confirmed the sentence. In November 2014 an important piece of evidence in the case disappeared from the car of a court expert to whom it has been assigned for analysis. Given the high-profile nature of the case, this sparked a considerable controversy.[116]

The remaining members of the Conflict of Interest Commission are continuing to discharge their functions and are for example trying to take a proactive approach in promoting awareness among public officials on the issue of conflicts of interest. The commission has improved its internal rules of procedure, notably by introducing a system of random allocation of cases, limiting the deadline for ruling on the acceptance of a signal to 2 months and by extending the rights to remedies for people under investigation. However, the capacity of the Commission is limited. Furthermore, it has no independent investigatory powers. While it can verify cases of conflict of interest, it is up to the prosecution or individual administrations to investigate possible broader links to corrupt practices via disciplinary or criminal proceedings.

Public Procurement

One of the areas of public administration where conflicts of interest and corruption can potentially pose the greatest problems is public procurement. Irregularities in public procurement have been identified as a systemic problem in Bulgaria, affecting the implementation of EU fund programmes[117] and more widely the interaction between public administrations and private businesses.[118] While a

[115] The proposals generally went in the direction of past CVM recommendations. In addition to creating a system of rapporteur-ship on individual files to as to increase accountability, the legislative proposals would also have streamlined the appeal procedures which, as noted in past CVM reports, currently allow for up to four different court rulings on the same case, hence undermining the effectiveness of the sanctioning mechanism.

[116] An investigation has been launched into the affair. According to the prosecutor's office the loss of the notebook will not affect the ongoing court case. However the case raises important issues of effective safeguarding evidence in the prosecution offices. In the initial stage of the investigation the notebook of the former chairman of the Commission had been identified as crucial evidence pointing to possible wide-ranging political links to the case. The possible tampering with, and disappearance of the notebook led to another round of speculation as to the possible motives and potential implications of the theft.

[117] Payments under several EU fund programmes were suspended in the course of 2013 and 2014 primarily due to widespread irregularities in public procurement procedures.

[118] 58% of companies which had taken part in a public procurement procedure in Bulgaria considered that corruption had prevented them from winning a public tender or a public procurement contract over the past three years, according to *Flash Eurobarometer 374* (February 2014). This was the highest proportion recorded among EU Member States in the survey. The EU 27 average was 32%.

number of changes have been made over the years to the legislation to respond to the problems, these seem not to have diminished the extent of the challenges faced. Indeed, one of the problems highlighted by experts and practitioners is the overly complex and rapidly changing regulatory environment, which has not only contributed to a legal uncertainty but also poses a severe challenge to the capacity of the many administrative authorities involved in public procurement.

A number of agencies are involved in controlling the use of public procurement in Bulgaria. A Public Procurement Agency elaborates on legislative proposals to be made by the Council of Ministers to the Parliament and carries out *ex ante* checks of public procurement procedures. *Ex post* control is handled by the State Financial Inspections Agency and by the National Audit Office. Appeals are processed at first instance by the Competition Protection Commission. For EU funds' audits there is also a specialised executive agency under the Ministry of Finance. While the system has developed over time and includes most of the elements needed to ensure a functioning public procurement system, serious challenges remain in terms of effective implementation and administrative capacity. The checks performed by different agencies have been criticised as either superficial in nature or leading to differing results based on inconsistent interpretations of the legislation. The result is a low degree of trust in the fairness of procedures, as evidenced by the extensive use of appeal procedures.

In order to address the major problems hampering the management of public procurement in Bulgaria, a process was initiated in late 2013 involving European Commission services as well as the competent national authorities to prepare a comprehensive strategy for public procurement. A general Strategy for the Development of the Public Procurement Sector in Bulgaria over the period 2014-2020 was eventually adopted by the Bulgarian Government in July 2014. The strategy includes a range of measures with concrete deadlines to address the problems faced, including carefully prepared simplified and codified legislation and centralised guidelines which aim at the correct transposition of the new EU public procurement directives, enhanced administrative capacity at the various levels of the public administration, comprehensive and non-formalistic ex-ante controls combined with rationalised ex-post controls; the achievement of greater transparency via gradual introduction of electronic procurement and more efficient review procedures. The strategy carries the promise of important improvements, but its effectiveness will be dependent on its successful, timely and ambitious implementation over the coming years.

BORKOR

Another aspect of the Bulgarian anti-corruption institutional set-up is the Centre for prevention and counteraction of corruption and organised crime, called "BORKOR". This analytical unit was set up by the Council of Ministers and has, over a number of years, enjoyed a large staff and financial resources.[119] Previous CVM reports have noted a lack of concrete results from this investment, as well as a lack of clarity concerning BORKOR's role in Bulgaria's general policy on anti-corruption and how it can help more operational institutions like the inspectorates to do their job more successfully.[120] The Bulgarian Government has indicated an intention to once again review the functions of the institution in the context of a coming anti-corruption strategy, possible by intensifying its activities in conjunction with the internal inspectorates.

VI TACKLING ORGANISED CRIME

Addressing organised crime was adopted as a specific benchmark for Bulgaria in light of the particularly severe situation in the country in this area.[121] There has been very limited progress in the investigations of emblematic cases attracting high public attention, including many public killings.

[119] The Council of Ministers reports a spending of over 10 M BGN (€ 5 m) for the first three years since its inception.
[120] COM(2014)36 final, p.7; WD(2014)36, section 5.2.3; COM(2012)411 final.
[121] C (2006) 6570 final.

Progress has been slow in spite of a number of measures taken in a number of areas, such as the setting up of a specialised court and prosecution office to tackle organised crime cases, and a specialised commission to manage cases concerning freezing and confiscation of the proceeds of crime. Some of the procedural and legal problems hampering progress have been mentioned in earlier sections, such as the excessive formality of court procedures. There is a tendency for cases to be held up in court due to various tactics which can be applied by the defence to delay court proceedings[122] and there is a history of important cases being returned to the prosecution by the judge during the trial phase due to formal errors in the indictment or shortcomings in the evidence. Some of these challenges were partly addressed by successive amendments to the legal framework over the years,[123] but the problems remain pertinent.[124]

6.1. Track record of the specialised court and prosecution

One of the most significant steps taken by Bulgaria in this area was the establishment in 2012 of a specialised court and prosecution for organised crime. After a certain period of transition these institutions can now be considered to be up and running.[125] Past CVM reports have noted some weaknesses in the legal set up, such as a rather broad delimitation of the competence of the specialised court which in combination with the legal tradition in Bulgaria – based on the legality principle rather than the opportunity principle[126] – makes it difficult for them to focus their efforts on the most serious cases.[127] Another issue identified by the specialised prosecution concerns the deadlines for bringing cases to court, which are extremely tight and risk undermining the quality of the preparation of cases as well as limitations on the use of experts in court proceedings.[128] In spite of the various challenges connected to the legal framework, the specialised court and prosecution have contributed to a more speedy process in organised crime cases and also served to promote a stronger specialisation and cooperation between the various parts of the law enforcement system on such cases.[129]

---

[122] For example, defendants not being able to be summoned as they are not present on the registered address or the defendants or their lawyers not being able to appear in court due to illness.

[123] SWD(2012) 232 final, p. 10.

[124] Some further amendments to the procedural code are being considered as mentioned in section III above.

[125] Apart from the gradual building up of the capacity and staff of the new structures, including the development of expertise within the prosecution office in complex financial crimes, another important issue concerned the assignment of cases which had previously been handled by the Sofia court and were now returned for further investigation. There was a divergence in practice concerning such cases, where some cases were sent to the specialised office and others to the Sofia office. A ruling of the Supreme Court of Cassation in 2014 clarified that such cases should go to the specialised prosecution, resulting in 30 cases being overturned as they had instead been handled by the Sofia prosecution. These cases are now starting over at first instance, led by the specialised prosecution.

[126] Under the legality principle all crimes for which evidence exists should be investigated regardless of the potential harm caused. Under the opportunity principle on the other hand, the prosecution has a freer hand in focusing on cases with serious impacts or where indictment is more likely to be successful.

[127] In 2014 an analysis prepared by the Prosecutor's Office in the beginning of 2014 indicates that an increasing share (and indeed a majority) of cases handled by the specialised prosecution office did not concern organised crime as such but other cases which had been placed within its competence. Hence one way of focusing the activities of the court would be to delimit its competence to organised crime only. In addition, the definition of organised crime in Bulgarian law (more than two suspects involved) is also rather wide, leading to some cases being categorised as organised crime cases even though they do not concern particularly serious crime.

[128] These aspects were also raised by independent experts consulted by the Commission. The prosecution generally has to rely on experts registered at the courts and the quality of expertise available is not sufficient in all cases.

[129] In addition, one important function of the specialised prosecution and court flows from the unique character of their territorial jurisdiction, which covers the entire country. This feature of the specialised court and prosecution allows for cases to be taken out of their local context where a problem can be that organised criminal groups are able to exert pressure on local law enforcement authorities and judicial institutions.

As regards the track record, figures for the past three years show a gradually increasing trend of organised crime cases being brought to court. There is also an increase in the number of defendants, although the number of convictions has remained stable. Due to the broad definition of organised crime in the Bulgarian legislation a complete assessment would require a more qualitative analysis of the cases. The data confirm a continuing tendency for the majority of cases to be concluded via plea bargains as well as a high proportion of suspended sentences.[130] The Prosecutor's Office reports that several cases involving serious organised crime are in the pre-trial phase or have been brought to court in 2014.[131]

6.2. Celerity of trials and effective implementation of sentences

Delays in court proceedings concerning serious organised crime cases is a major problem in Bulgaria. In response to recommendations in previous CVM reports[132], Bulgaria has carried out several studies and seminars to identify the causes of such delays. In spring 2014 a broad interagency action plan was prepared and adopted by the SJC with input from all parts of the law enforcement system and judiciary. The action plan builds on work already undertaken in the General Prosecution and adds a number of additional elements, including a process for monitoring problems in the application of the procedural code (mentioned earlier in section IV), improving the training available for magistrates in new areas outside traditional legal studies (i.e. with a more practical angle) and the involvement of investigators in joint training, better coordination of the methods for summoning persons to appear in court, closer cooperation between prosecution and investigatory agencies, etc. Many of the elements in the action plan have the character of ongoing efforts or intentions to make changes in practice, the implementation of which is difficult to assess, but this does not make them less relevant. Some outcomes of the action plan are more concrete such as the legislative proposals concerning the criminal procedure code already discussed in section IV above.

Another issue which is difficult to address via simple one off measures, but which requires a determined effort and continued attention, is the effective implementation of court sentences. Once convictions have been handed down, the effective implementation of sentences is a crucial factor for the dissuasiveness of sanctions and effectiveness of the criminal justice system. In this respect it is significant that the annual report of the general prosecution office reports that 817 convicted criminals were evading imprisonment in 2013 by hiding in Bulgaria or abroad.[133] A number of high-level cases have been noted in past reports and the problem remains.[134] In such cases, measures of judicial control have appeared to be inadequate. In some cases of serious criminals facing long-term custodial sentences, sometimes house arrest has been applied where preventive custody would have seemed more in line with standard practice. Bulgaria reports that discussions have been taking place between the Ministries of Justice, Interior and the prosecutor's office on how to close loopholes, notably by implementing electronic monitoring ("electronic bracelets"). While such measures may be useful in some cases, they would not be likely to solve the problem of inadequate judicial control measures being imposed by prosecutors or judges in serious cases of organised crime.

6.3. Confiscation of assets acquired through crime

[130] Information from Bulgarian authorities September 2014.

[131] Two cases against organised a crime group have been brought to court involving charges of contract killings, trafficking in human beings, and distribution of drugs, and several cases are in the pre-trial phase involving charges of kidnapping, robbery, extortion, large scale drug trafficking and trade in forged identity documents.

[132] See e.g. COM(2014) 36 final.

[133] The 2013 Prosecution annual report can be found here (in Bulgarian): http://www.prb.bg/bg/documents/godishni-dokladi/godishen-doklad-prb-2013/

[134] For example two well-known figures of organised crime were able to leave Bulgaria just by the time their prison sentence was rendered and a high-level drug trafficker, sentenced to a long term of firm custody in Italy, was initially only put on house arrest in Bulgaria when surrendered by Italy to face trial in another case.

Asset forfeiture is an essential element of the fight against organised crime. The Commission for Illegal Assets Forfeiture (CIAF) operates on the basis of the Act on Forfeiture of Unlawfully Acquired Assets, which entered into force in 2012. A previous law still applies to earlier cases. According to the new law, the CIAF shall start a procedure where a reasonable presumption can be raised that particular assets have been acquired unlawfully. Such reasonable presumption shall be established when the examination of the assets of the person shows reason for doubt.

Procedures are launched on the basis of a notification of:

- The Prosecutor's Office, indicating that a person has been indicted for certain types of crimes;
- A State or Municipal body where an enforceable decision has been adopted against a person in connection with an administrative violation producing a benefit to an amount exceeding BGN 150'000, that cannot be forfeited according to another procedure; or
- If a foreign court has convicted the person for a similar offence.

The examination of the assets covers a period of 10 years calculated backwards from the date of the start of proceedings (25 years under the old law). Under the new law the threshold to determine whether there is a "significant lack of correspondence" between the assets and the net income is BGN 250,000 (€ 125,000) for the entire period under examination. The burden of proof is on the CIAF (contrary to the situation under the old law).

According to the information provided by the CIAF, they hold the necessary powers and resources to conduct a complete and exhaustive investigation of financial flows, also in cooperation with foreign authorities, so the institutional set up and capacities look appropriate. However, the final results are marred by obstacles coming from the new legal provisions, as pointed out in previous reports.[135] Of particular note is the threshold of BGN 250.000 set by the Law, which appears high in the Bulgarian context, with the burden of proof being put on the CIAF also making its task considerably harder. The multiple opportunities for appeal also limit the effectiveness of CIAF's decision, if precautionary freezing was not adopted previously.

The 2014 CVM Report recommended the Bulgarian authorities to carry out an independent evaluation of the new law on asset forfeiture and its impact on the capacity of Bulgarian authorities to effectively fight organised crime by depriving it of its revenues.[136] Such an evaluation has not yet been carried out.

6.4. Witness protection

Witnesses withdrawing their testimonies or failing to come forward constitutes an important stumbling block in criminal cases, especially when it involves serious organised crime. More than 150 likely "contract killings" have occurred in Bulgaria over the past twelve years, and investigations into such cases have rarely been successful. A number of these killings can be directly or indirectly linked to investigations into organised crime,[137] giving vivid testimony to the reality that strong pressures are often applied on witnesses in such cases. In response to these concerns it was decided in 2014 to reorganise the witness protection programme. While the programme was previously managed by the Security Directorate of the Ministry of Justice, as of April 2014 this responsibility has been transferred to a new Bureau for witness protection under the Office of the Prosecutor General. The Prosecutor

[135] The Bulgarian authorities report that the total amount of forfeited assets in 2014 was around 11 Million BGN (€5.5 m), which represents a significant drop in comparison with 2013 where 13 million BGN (€6.5 m) were confiscated (primarily under the previous legal framework).
[136] COM(2014) 36 final.
[137] In December 2014 a witness in a high-profile case against an organised crime group was shot dead in the open street in Sofia. The witness had reportedly refused to participate in the witness protection programme.

General has authority to accept requests for protection, issued either by the prosecutor or, if in the trial phase, the judge.[138]

According to the Bulgarian prosecution office the new structure will provide stronger safeguards with regard to confidentiality of information, hence making for a better protection of witnesses as well as more effective investigations into organised crime. In connection with the reorganisation, additional resources have also been allocated to the programme.

6.5. Role of SANS

An account of the fight against organised crime and corruption in Bulgaria would not be complete without mentioning the role of the State Agency for National Security (SANS). SANS was established in 2008 as an intelligence agency to provide intelligence on high-level corruption as well as on serious crime. It plays a complementary role to the police, as a vehicle for gathering information about criminal networks, with a special focus on particularly serious criminal activities which can be considered of relevance to national security. SANS is independent of the Ministry of the Interior and refers directly to the Prime Minister. As such it has the capacity to play a more independent role *vis-à-vis* the police.[139]

In 2013, shortly after taking office, a previous Government carried out a major reorganisation of SANS by transferring to it the Directorate for Organised Crime of the Ministry of Interior. The reform, which created a hybrid organisation comprising both intelligence and criminal investigative powers, became the subject of political and public comment, not least due to the initial appointment of a controversial political figure to head it.[140] Putting aside the circumstances surrounding the reform at the time, however, it is important in itself to consider the effectiveness of the new structure from the perspective of the fight against serious corruption and organised crime. In this respect, the Bulgarian authorities explained the reform in terms of more efficient communication channels between operative intelligence gathering agents and criminal investigators. Some observers had noted that the previous structure had required sensitive information to be transferred between the SANS and the Ministry of Interior via high-level contacts. In the new structure, on the other hand, information can more easily be shared across the single organisation. This has been cited as allowing the new SANS to play a more central and independent role in respect to sensitive cases (involving for example corruption charges).[141] The speed with which the 2013 reform took place did initially create serious organisational and legal problems, effectively halting investigations into organised crime for a period of several months and creating serious concerns in partner agencies of other EU Member States. However, in 2014 these challenges seem to have been overcome and the new structure appears now to be functioning.[142]

The new integrated approach to intelligence and investigation of high-level cases in SANS might allow a higher degree of confidentiality to be maintained to the extent that information does not have to cross over the Ministry of Interior. However, certain risks have also been identified. Here the main

[138] In cases where the Prosecutor General considers a request unfounded, the decision is made by a 'Council for Protection' in which sit the Ministers for Justice and Interior, a representative of the SJC, the President of the Supreme Court of Cassation, the Prosecutor General, and the Chairman of the SANS.

[139] Also, it is notable that SANS is the only law enforcement body which can independently use Special Investigatory Means (SIMs) without delegating the task to the new State Agency for Technical Operations (SATO). This agency was set up in 2013 to limit the risk of SIMs being misused for political purposes, following a number of scandals with illegal wiretapping concerning the Ministry of the Interior.

[140] COM(2014)36 final, p.8; SWD(2104)36, p19.

[141] This is for example reflected in the central role of the SANS in the new unit dealing with corruption of state officials discussed above, which is even housed within its premises. The same is true of the unit dealing with crimes committed by magistrates (see below).

[142] The Bulgarian prosecution has commended the investigations are currently being performed by SANS. Concerns related to international cooperation have also become less vocal.

issue is the integration within a single institution of two very different functions which normally refer to very different operational principles: intelligence gathering and criminal investigations. The new structure entails a risk of blurring the distinction in practice between objectives pursued in covert intelligence operations on the one hand and criminal investigations on the other. If this risk materialises, or if there is a perception that it does, the impartiality of investigations could be called into doubt. This can be particularly crucial when it comes to investigations into allegations of high-level corruption, which can often have important political implications. This would put a particular onus on safeguards to ensure accountability and transparency of procedures and the use of evidence in court which has been obtained by SANS.

The new Government which took office in November 2014 has announced its intention to move the responsibility for organised crime back under the Ministry of Interior.[143] The risk remains that changing the institutional set-up for tackling organised crime in the wake of political change will create unnecessary instability. The responsible ministers have indicated that they are aware of the wider concerns that the reorganisation could give rise to, in terms of yet another period of instability having a significant negative impact on ongoing investigations and on international cooperation, as well as on the general morale among the staff concerned and have expressed a determination to minimise this disruption.

[143] Amendments the Ministry of Interior Law have already been submitted to Parliament and amendments to other related laws are in preparation.