NATIONAL INTEGRITY SYSTEM ASSESSMENT - BULGARIA

National Report 2011

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NATIONAL REPORT 2011

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BULGARIA
NATIONAL INTEGRITY SYSTEM

EXECUTIVE SUMMARY

OVERVIEW

The problem of corruption became a central political and social concern in Bulgaria towards the end of the 1990s, and since then has topped the governmental agenda. Despite the prioritization of the issue, Bulgaria has systematically demonstrated very high levels of perception of corruption: according to the TI Corruption Perception Index (2011) it is the lowest scoring country in the EU. If there is a trend in this regard, it is rather negative, which is formally paradoxical since, due to internal and external pressures, successive governments have introduced a series of institutional reforms and innovations in the field of anticorruption. Further, in political terms the last decade has been one of the most successful in Bulgarian history: the country had a long spell of uninterrupted economic growth (until 2009), became a member of the EU in 2007, and thus far has weathered the economic crisis better than many of the other European states.

From this perspective the study of the integrity system of Bulgaria is of particular interest. It raises in an acute form the issue of the effectiveness of anticorruption measures in an environment of widespread corruption perceptions, in which governments feel compelled to make reforms and introduce institutions with anticorruption raison d'être.

One of the main issues emerging from our research is that there is a systematic discrepancy between the scores for legal framework and actual practice and performance of different institutions in the anticorruption field. The reasons for this discrepancy can be various, but two stand out in particular. First, the legal framework has to stimulate the emergence of informal practices supportive of a given institution. Not everything could be dictated by the law, and where there are discretionary powers, officials should exercise good judgement, and should aim to achieve the best result from the point of view of the public interest. Unfortunately, this is not always the case in Bulgaria. For example, the Supreme Judicial Council – the main body responsible for the personnel policy in the judiciary – enjoys (in a comparative perspective) a very high level of institutional autonomy according to the law. Yet, in its practice, it has been involved in a series of scandals, which have suggested that there have been external influences on its decisions. In order for such problems to be eliminated, institutional reforms may be insufficient to eliminate such problems: ultimately, there should be a strong professional ethics helping the officials to take a full advantage of specific possibilities given to them by the law.

Second, some institutions are marketed as anticorruption fighters, when actually their primary functions are different or have changed over time. A case in point in Bulgaria is the security agency SANS, which was introduced in 2008 primarily with the aim to fight corruption among senior officials and serious organized crime. Gradually, the profile of the agency was changed, and now it is mostly a security agency dealing with intelligence issues. Thus, although it has significant resources, its specific anticorruption output is limited (which partly accounts for the discrepancy between its scores for legal framework and actual practice).
The example shows that governments are under significant pressure to report publicly on the accepted anti-corruption measures and the achieved practical results. Generally, corruption is a favorite topic for the political opposition: in order to counter opposition criticism governments too often make institutional anticorruption reforms, which may account for a certain proliferation of institutions with overlapping jurisdiction, the coordination among which can becomes a problem.

Finally, another paradox has been demonstrated by the anticorruption activities in Bulgaria: the continuing reforms aimed at tackling corruption have not brought back the trust of the people in institutions. This comes to suggest that public opinion forms mostly on the basis of the overall performance of the institutions. Further, corruption has become an umbrella term in Bulgarian public discourse, which covers a wide territory from concrete *quid-pro-quo* illicit transactions to problems of general institutional inefficiency, lack of representation, and even social injustice. In such an environment, institutions face very high public expectations, which often exceed their actual remit. The discrepancy between institutional roles and public expectations can also partly explain the low public trust in key anticorruption fighters, which is a specificity of the Bulgarian case.

The research for this study has been carried out under a standardized methodology suggested by Transparency International. We have relied in our assessment on publicly available sources, as well as on a number of in-depth interviews with experts in the field (at least two experts per pillar). We have discussed our findings with representatives of different institutions in two public meetings, and have received feedback in written form from some of the institutions. In addition to the pillar reports, a survey of public opinion on toleration of corruption was commissioned to a sociological agency.

The present study contains thirteen different chapters covering the most important institutional pillars of a national integrity system. These include the major branches of power (legislative, executive, judicial), the law-enforcement and controlling bodies of the state (the police, the prosecutors and the investigatory services, the anticorruption agencies, the state audit institution), the ombudsman, the civil society organisations, the media and business sectors. The comprehensive coverage of the study allows for comparisons among different sectors. Besides, it is done in most of the European countries under the same methodology and allows for cross-country comparisons as well.

In each of the pillars the researchers have been asked to answer specific questions in three different categories: capacity, governance, and role. The indicators in the capacity section aim to establish whether a specific institution has sufficient resources, and sufficient guarantees for its autonomy vis-à-vis other authorities or actors. In essence, these indicators reflect to what extent the institution could be an independent and efficient policy-making and policy-implementing body. The second group of indicators – governance – captures the quality of governance of a specific institution in terms of the transparency of its decisions, the integrity of its personnel, and the accountability of its actions. Thus, the second group of indicators allows us to establish not only the capacity of a specific institution to perform its tasks but the extent to which it performs its functions in a transparent and responsible way. Finally, the last group of indicators targets the output of institutions, the ultimate result of their activity in relation to the fight against corruption. Here, the specific indicators differ according to the profile and specific functions of the institutional pillars: the law enforcement bodies are judged on the basis of the successful anticorruption cases they produce and the public trust
they generate; courts are assessed on similar grounds, but also on the basis of the controlling function that exercise vis-à-vis the government and the administration, etc.

The indicators are usually divided in two groups: law and practice. The idea behind this division is to capture the difference between the law on the books and the actual situation in a specific field. It is a trivial fact of socio-legal studies that the practice never fully corresponds to existing normative frameworks. As mentioned already, however, our study highlights a significant discrepancy between normative commitments and realities in the Bulgarian case.

Each indicator allows the researcher to assign one of the following five scores: 0, 25, 50, 75, 100. Each of these positions is related to a specific level of institutional development and performance in the given pillar: the higher the score, the better the situation. The researcher is asked to examine specific issues (listed in detailed questionnaires elaborated by TI), such as, for instance, whether there are conflict of interest rules, whether they are implemented in practice, etc. The researcher is further asked to support her overall evaluation with a short narrative, in which there are references to specific facts, opinions of experts in the field, results of other studies. The scores have been subject to various levels of review and reflect different forms of feedback which has been received. Ultimately, the responsibility for the score lies with the research team performing the present study.

One of the difficulties with the assessments in the research is that in a situation of institutional proliferation the composite scores for a given field (especially in the public sector, law-enforcement and the judiciary) do not do full justice to the performance of single institutions. Every pillar contains a number of major institutions, whose capacities, governance methods, and overall performance may differ. Yet, for the purposes of international comparison, we have come up with a composite score for a given pillar as a whole, while in the narrative part have tried to highlight relevant differences among the institutions. Another difficulty stems from country peculiarities. In Bulgaria the prosecutorial office is part of the judicial branch of power, which means that its activities should be reviewed both in the pillar of the judiciary and the pillar of law-enforcement (as far as it is functionally responsible for investigation as well).

It needs to be noted that the scores assigned to a specific pillar should not be taken as a mathematical measurement of its overall performance. What we are interested in is the contribution of a specific institutional pillar to the integrity of public life: not its overall efficiency and usefulness. Further, the methodology allows us primarily to establish general trends and tendencies: it allows us to see how different sectors stand against each other in Bulgaria, and how the country generally compares with other European states. In this sense, the tools we use are intended to give a general picture of a specific sector, not a detailed and comprehensive account of the problems in it. In this sense, the recommendations we have come up with may sometimes be pointing at a general direction, which needs to be followed, without specifying particular solutions.

Finally, a main assumption of the present study is that a healthy polity needs all pillars – from the legislative branch to the business sector - to be in a good shape in order for the temple of public integrity to stay strong and capable of generating public trust. The wisdom of this assumption could hardly be disputed although one could imagine the possibility of certain trade-offs among the pillars. For instance, it is not at all clear that specific anticorruption agencies are necessary and indispensable for public integrity purposes: if the standard law-enforcement and judicial institutions perform their functions well, proliferation of integrity
pillars might be ultimately unnecessary. Yet, some deficiency could hardly be compensated for by additional emphasis in other areas: for instance, if civil society is inert, media are complacent and business is corrupt, no matter how excellent public institutions are, the overall situation with the integrity of specific polity cannot be satisfactory.

Main findings

Our study suggests that all pillars of the integrity temple in Bulgaria are standing, although their overall strength is around the middle mark of the scoring table (50). Leaving aside the methodological bias towards average scores in the overall design of the study, scores around 50 reflect well the general perception of citizens and analysts of the state of anticorruption activities and integrity mechanisms in Bulgaria: a lot has been done, but still there are important deficiencies and lasting problems.

More interestingly, the institutional pillars in our study (which are presented below both in a tabular and graphic format) could be divided into four different groups. The best scoring institutions are the State Audit Office (State Audit Institution) and the Ombudsman, whose overall scores are around the mark of 60. A large group of institutions and sectors is coming next, including the executive, the public sector, the judiciary, the legislature, and the civil society organisations, which score slightly over the 50 mark. The third group contains the political parties, the law enforcement agencies, and the media, which all stand at slightly above 45. And finally, the group of the laggards, which are the electoral commission, the anticorruption agency, and the business sector (they are closer to the 40 mark).

Now, the differences between group two, three, and four are not so pronounced as to allow seriously different treatment of them. In all these three groups it needs to be said that more work is necessary for strengthening their contribution to public integrity. The low scores for the anticorruption agency in the Bulgarian case are largely due to the fact that under this category we have analysed the State Agency of National Security (SANS), which has not operated as a typical anticorruption body – it is more of an intelligence agency. Especially telling, however, is the low score for the business sector: apparently, the anticorruption drive is left entirely to public bodies, while the private sector is either rather inert or reluctant to introduce integrity practices in its own affairs. Against this background, the existence of relatively vibrant civil society organisations in the anticorruption field is a positive sign.

Over the last decade, a lot of public funds have been invested in strengthening the public integrity of institutions. This is clearly shown by the high scores in the capacity column of the table below. The message here is that resources are available, that there is sufficient institutional capacity for much higher overall scores. Yet, the public investment of funds has not been translated into similarly high scores for integrity and anticorruption output, which is captured primarily by the indicators “Role” in the last column of the table. There are particularly striking mismatches in the major institutions of the country, starting from the legislature (75 Capacity: 25 Role); the judiciary (68,75:37,5); the executive (66,66:37,5); and law enforcement (58,33:25). Even our front leader – the State Audit Office – has this problem: in terms of resources it stands much better than in terms of its integrity role. This mismatch suggest that in the pursuit of public integrity these institutions are not cost-efficient: unfortunately, they in fact seem to waste public resources. A similar mismatch is typical of the business sector, although here the resources are private: the sector has a lot of resources and capacity, which however are apparently not put in the service of integrity.
In terms of cost efficiency, the ombudsman and the civil society sector stand better: the resources they have generally better match their role as a public integrity pillar.

The next major finding on the basis of the scores is that the governance of the major governmental institutions has been generally improved significantly in terms of transparency and accountability: the scores for that are consistently higher than the overall scores for most of the pillars. The most apparent exceptions from this trend are the judiciary and the electoral management body. The problems around the Supreme Judicial Council and its personnel and disciplinary practices account for most of the exceptionality of the judiciary in this regard, while for the electoral management body the problems in part relate to its institutional set up, and in part to the complexity and unclarity of the new Electoral Code.

Finally, the low score of the law enforcement bodies (mostly the prosecutors and the police) in terms of their role (anticorruption cases) corresponds well to the general view of the public and the analysts that the efficiency of these bodies and the coordination among them is not satisfactory. It is no surprise that they are not able to generate significant trust of the public in them, and that they are often at the receiving end of criticisms coming from the European partners.

Table: Overall scores for the thirteen pillars (in descending order)

<table>
<thead>
<tr>
<th>Pillar</th>
<th>Overall Score</th>
<th>Capacity</th>
<th>Governance</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. State Audit Office</td>
<td>61,11</td>
<td>75</td>
<td>75</td>
<td>33,33</td>
</tr>
<tr>
<td>2. Ombudsman</td>
<td>58,33</td>
<td>58,33</td>
<td>66,66</td>
<td>50</td>
</tr>
<tr>
<td>3. Executive</td>
<td>52,77</td>
<td>66,66</td>
<td>54,16</td>
<td>37,50</td>
</tr>
<tr>
<td>4. Public Sector</td>
<td>52,77</td>
<td>50</td>
<td>66,66</td>
<td>41,66</td>
</tr>
<tr>
<td>5. Judiciary</td>
<td>52,08</td>
<td>68,75</td>
<td>50</td>
<td>37,50</td>
</tr>
<tr>
<td>6. Civil Society</td>
<td>52,08</td>
<td>56,25</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>7. Legislature</td>
<td>51,38</td>
<td>75</td>
<td>54,16</td>
<td>25</td>
</tr>
<tr>
<td>8. Political Parties</td>
<td>47,91</td>
<td>56,25</td>
<td>50</td>
<td>37,50</td>
</tr>
<tr>
<td>9. Law Enforcement</td>
<td>45,83</td>
<td>58,33</td>
<td>54,16</td>
<td>25</td>
</tr>
<tr>
<td>10. Media</td>
<td>45,83</td>
<td>62,50</td>
<td>33,33</td>
<td>41,66</td>
</tr>
<tr>
<td>11. Electoral body</td>
<td>43,05</td>
<td>50</td>
<td>41,66</td>
<td>37,50</td>
</tr>
<tr>
<td>12. Anticorruption Agencies</td>
<td>40,41</td>
<td>43,75</td>
<td>40</td>
<td>37,50</td>
</tr>
<tr>
<td>13. Business</td>
<td>40,28</td>
<td>62,50</td>
<td>33,33</td>
<td>25</td>
</tr>
</tbody>
</table>
According to Transparency International, the national integrity system could be regarded as a Greek temple supported by pillars and foundations based on political, socio-economic and cultural character. Each integrity system is built on several key institutional pillars which are interdependent and equally important for the sustainability of the "temple": executive, legislative and judiciary, public sector, the main independent supervisory agencies (the supreme audit institution, law enforcement agencies) and political parties, media, civil society and business - as a basic social tools operating on the management arena.
Specific Strengths and Weaknesses by Pillar

The Parliament is by definition an institution with a high degree of transparency. Yet, there are obvious deficiencies in its work mainly in two areas: first, the parliament has failed to pass a code of ethics for MPs and a law on lobbying. Second, the policy expertise of the legislature is rather limited, which prevents it from being an effective check to or an instrument of review and improvement of the legislative initiatives of the government. Hence regardless of the consistent improvements both in the legal framework and the practices, which guarantee independence, transparency and accountability of the legislature, the role of the Bulgarian parliament in promoting and assuring integrity is still rather limited.

The Council of Ministers and the state agencies comprising the Bulgarian executive have undergone major administrative reform paralleled by substantial resource cuts caused by the austerity measures of the government in 2010 and 2011. The streamlining of the role and influence of the “political cabinets” of ministers and the Prime Minister is a positive development. Positive is also the trend to increase transparency of the decision-making process, though improvement is still needed if the highest standards are to be met. A formal integrity framework for ministers is being introduced. Nevertheless, recent developments and media disclosures show that conflicts of interest and shuttling on the level of member of Cabinet between their public roles and private business are eroding the integrity of the executive. Anti-corruption legislation and policy measures have lost momentum since concerns pertaining to economic crisis and reforms in key policy areas are dominating the government agenda.

The judiciary is one of the institutions which is least trusted in Bulgaria. From a legal point of view the judiciary (which comprises the prosecutorial offices as well) enjoys a very high level of independence and autonomy, ensured in the manner of composition of the Supreme Judicial Council, the tenure of judges and prosecutors, and its relative budget independence. Yet, the practice does not live up to the normative commitments of the system, and there have been, as already mentioned, a series of scandals suggesting possible external influences in the taking of decisions by magistrates (the most serious being an appointment scandal in the SJC). In terms of resources, the system is well provided for, as its budget has been prioritised by successive governments. Improvements in the area of transparency and personal integrity have been registered with the introduction of an ethical code, as well as asset declaration mechanisms. Further, there have been various commissions and bodies created responsible for the personal performance and integrity of magistrates. The biggest weakness of the system is in the actual results in the fight against corruption. Although output indicators are very difficult to establish in this area, there is virtually a consensus of internal and international observers that the results of the system as a whole are unsatisfactory.

The overall assessment of the law-enforcement bodies is difficult because of the fact that they include two constitutionally independent branches in the Bulgarian case – on the one hand, the prosecutorial office and the investigators (which under the Constitution are part of the judiciary) and, on the other hand, the police and the bodies of the Ministry of Interior (which are a part of the executive branch). The improvements in this area include the adoption of asset disclosure rules and rules against conflict of interest. Further, the resources of the system as a whole are more or less satisfactory, although there is still a dispute on this matter. Generally, the budgets of both the prosecutorial office and the Ministry of Interior have been prioritized by the last government, and the personnel of these institutions are rather extensive.
The main weakness in this area remains the anticorruption output, which is judged by commentators as low. Further, there are weaknesses in the enforcement of certain rules or at least controversial interpretations of conflict of interest standards, as the case with the private donations to the Ministry of Interior suggests.

The Bulgarian National Audit Office (NAO), which is the highest scoring according to our report, is an important institution for independent external audit of public finance in the country. The National Audit Office Act determines the range of public bodies to be audited by the NAO, which at present include – apart from the budgetary bodies - companies with national or municipal participation and political parties. Although the NAO performs relatively well, the Office still refrains from an active role in improving financial management; there is in principle an opposition to the idea of empowering NOA to sanction misbehaviour. The review of the Office’s reports show that they are rather focused on legality and compliance with accounting standards than on the expedience of financial management. Numerous media publications show that the Office is actively detecting misbehaviour, but apart from approaching the competent sanctioning authorities, further action is not taken. This is a problem in view of the general reluctance of the Bulgarian administration to impose sanctions, and to its tendency to shift the responsibility to the judiciary.

The institution of Ombudsman is relatively new for Bulgaria. Its activity is well regulated by the Constitution and laws. The Ombudsman's work is ensured through sustainable but small financial resources. The law provides sufficient backing for the ombudsman’s independence, however there are no criteria for professionalism during the selection of the ombudsman candidates. Candidates are selected on the basis of a political nomination process by parliamentary parties and the election is conducted by a simple majority, whereby naturally the ruling party(ies) candidate wins the nomination. The law requires the ombudsman to annually report to the Parliament. The law introduces requirements for when the report of the ombudsman has to be submitted and the type of information it contains. The law provides no sanctions for the failure to conform to the requirements for accountability of the ombudsman. The available public information provides evidence for attempts of the ombudsman to act independently from any external influences.

Despite the many structures dedicated to the fight against corruption in Bulgaria, there is no authentic anti-corruption agency fitting the concept applied in this study. Among the plentiful departments, directorates and commissions both at the national and the local level, the State Agency “National Security” (SANS) deserves special attention. It is an institution of durable nature and among its competences is the counteraction to high-profile political corruption; the main arguments for its introduction in 2008 were grounded on the fight against corruption and organized crime. Yet, as mentioned above, SANS has been gradually refocusing its activities on the security and intelligence field; some experts are even inclined to limit its functions exclusively to intelligence. It has no investigative powers as well. As a primarily security agency, SANS is not expected to be either independent or fully transparent. Apart from the assessment of resources, the scores are rather low which is mainly due to the secret nature of SANS. It should be stressed however, that the assessment in this report regards the role of SANS as an anti-corruption agency only. This is not an assessment of the work of SANS as a counterintelligence secret service.

Although the funding is generally adequate, there is no transparency of the finances dedicated to the maintenance of the public administration. The municipality authorities are strongly dependent on the will of politician on a central level in terms of the allocation of resources for
the local authorities’ duties. The maintenance of the local administration is a delegated government duty and the dedicated funds are determined on a central level. As a whole, Bulgarian legislation provides sufficient regulations to ensure the independence of the administration from unlawful political and economic actions. An Act of Publicity of Assets of Senior Public Officials, an Act for the Access to Public Information, an Act for the Protection of Classified Information have been passed. There is, however, a lack of a normative framework which to create publicity and transparency of the management of public property and there are gaps in the framework regarding the control and sanctions of the obligations in relation to the announcement of public information. Transparency in the work of the public administration in Bulgaria is improving; legislation includes rules for integrity in the work of the employees and institutions. These improvements are to a large extent in compliance with the existing international standards and Bulgarian laws are harmonized with the European legislative norms. Regardless of the large degree of provision by legal norms, the effectiveness of detection and sanctioning of corrupt practices in the public administration is not at the expected level, however. For instance, there is consensus among commentators and analysts that the area of public procurement remains vulnerable to widespread corrupt practices.

After the critical parliamentary elections from 2001 the party system in Bulgaria transformed from a two-block party system into a multi-party system with a considerable fragmentation of the vote, easy access for new comers, and volatile party affiliation. On the one hand, the very fact that newly-created parties are able to win elections and to form a government (as it happened in 2001 and 2009), qualify the political environment as sufficiently pluralistic and inclusive. On the other hand, the pattern of frequently and dramatically changing majorities is less conducive to the emergence of a stable set of accountability and integrity mechanisms. The anti-corruption vigour of the party elites of the ascending parties loses steam during their mandate in office, and is gradually replaced by the anti-corruption rhetoric of a brand new power claimer. After various amendments of the party law, the Bulgarian parties now are generously funded by the state, and subject to financial control by the state audit office. Remaining problems are the lack of bodies which exercise on the ground, factual control of observance of party and campaign regulation (especially during elections). A further problem has been caused by the allocation of the public subsidy: more transparency in this area is highly recommended.

The new Electoral Code (EC), approved by the Parliament in December 2010 (in force since 28 January 2011) set up a permanently functioning Central Election Commission (CEC) with a mandate of five years. Generally, over the last decade the quality of the administration of the electoral process in Bulgaria has somewhat deteriorated. The legislation was fragmented, not cohesive and subject to frequent changes; in the absence of permanent CEC the election administration underperformed, not being able to build on previous experience and often acted as an office of the ruling majority. It would be an overstatement to blame only the election administration for the deteriorating standards of administration of the elections. The slip in standards was rather caused by a combination of a deliberate strategy of the ruling majorities though the decade to introduce brand new and soft legal provisions in the election laws with subsequent inability of the respective CEC to come up with instructions that clarify the by definition grey areas of implementation. The following issues emerged as most important: lack of control over the out of the country voting, registration of parties/coalitions, the application of absentee certificates, and the increasing number of reports/evidence of vote buying, respectively the involvement of unofficial campaign budgets allocated for that purpose. The presidential and local elections in 2011 were the first ones to be carried out
under the new legislative framework and– it is premature to pass overall conclusions on its efficiencies, but the above mentioned problems remain. Due to the new regulations and the increased legal safeguards, which made the procedure cumbersome, the administration of the electoral process was impeded. This led to delays in the publication of the official results, numerous allegations of maladministration, and court proceedings for cancellation of the electoral results, some of which are still pending.

Even though the legislative framework is relatively adequate and supports the development of diverse media, the specialised legislation with respect to broadcast media is outdated and chaotic due to multiple, ad hoc legislative amendments. Nevertheless, the main problems in the sector come from applying the legislation, since a majority of the players in the media market do not conform to it. A major flaw with respect to media regulation of the press, to the extent such exists at all, is the lack of clear rules on transparency of the ownership of the press media outlets. There is no specific regulation with respect to vertical and horizontal media concentration: the general anti-trust legislation is applied to the sector, without paying any attention to the specificity of the media sector and without noticing the dangers an excessive concentration in this field present for reducing the pluralism and the independence of the media. The work of the main regulatory body in the sector – the Council for Electronic Media – is often criticized because of the political dependence of its members, who are politically appointed. Another source of its dependence is its funding, which is predominantly state-guaranteed (through a state subsidy). The long established practice of pre-term termination of its mandate still continues, further substantiating the concerns of its political dependence. The lack of special education and qualification requirements for the journalists, coupled with their relatively big number, brings down the quality of the journalistic output and triggers more dependence of the journalists, viewed as easily expendable. Self-censorship remains an issue. The reasons for it are: economic dependence of the crisis-stricken media on the state and potent economic groups. Investigative journalism is weak, with some coverage of minor problems, which do not pose a threat to the interests of the media owners and their business and political friends.

Bulgaria is a country with a civil society sector actively involved in anticorruption activities: there are a number of influential organisations working in this area. Notwithstanding this fact, there are several remaining problems, which include limited funding (especially private), a risk of overtaking of the NGO sector by civil servants and politicians, generally low level of transparency of funding, remaining suspicions of conflict of interest, low administrative capacity. The CSOs – or at least some of them – could still function as a check to the government, as a source of new ideas and initiatives: yet, there are more and more questions about the responsibility and accountability of the NGOs for policies they sponsor.

The business sector in Bulgaria is faced with a relatively good framework of rules and laws with respect to ensuring integrity of the actors involved. However, the practices in implementing and enforcing this framework leave a lot to be desired and in general do not create conditions favoring people with integrity and sanctioning people involved in more dubious actions. This is especially true for internal integrity mechanisms in the Bulgarian companies. At the same time, while claiming anti-corruption policy engagement and putting corruption consistently among the major problems to be addressed by political and policy actions, Bulgarian businesses rarely leave the realm of rhetoric in this respect and are very passive in engaging or supporting civil society efforts in fighting corruption.
RECOMMENDATIONS BY PILLARS:

Legislature:

- The National Assembly (NA) could consider strengthening its policy expertise by creating a special analytical unit with highly qualified personnel.
- Laws on lobbying and a Code of Ethics have to be passed.
- The NA should introduce transparency provisions in its internal rules covering MPs’ contacts with lobbyists and publish more extensive information about committee meetings.
- Members of parliament should be required to provide substantiation when they submit proposed amendments to bills already under review in the legislature.
- The NA budget expenditure should be subject to external auditing (or audited by the State Auditor’s Office) and the results of such audits should be published.
- The NA should discuss and pass strategy in accordance with the executive strategy, legislative agenda and time-schedule of planned measures in all prioritized policy areas including anti-corruption.

Executive:

- Standards for the prevention of conflicts of interest in the Cabinet of Ministers should be re-examined to control for at least the most risky situations, e.g. with the help of a requirement to declare conflicts of interest as they occur during deliberations and decision-making.
- Among issues that the executive should include in its agenda is setting up a framework for the protection of whistleblowers. This should include protections against harassment and perhaps even monetary rewards when whistleblowers’ activity averts major loss to the state budget.
- Partisan appointments in the administration should be limited: at present the range of positions allowing partisan appointments is too broad.

Judiciary:

- The nomination and appointment as well as the disciplining practices of the Supreme Judicial Council should be improved by bringing more transparency and predictability through clear indicators and rules and establishment of constant practice. This will ensure that only highly qualified magistrates with high personal integrity enter and promoted within the judicial system;
- Clear standards and constant practice of promotion and disciplining should be elaborated by the SJC and the Judicial Inspectorate. The attestation should be much more detailed as to allow for fine distinctions in the performance of magistrates;
- The transparency in the process of nomination of the candidates for both judiciary and the SJC, elaborations and discussion of decision-proposals and decision-making in the SJC should be improved, as well as the giving of substantive reasons for specific decisions;
- The resources of the system should be managed better, as to eliminate the problem of excessive caseload in certain courts and prosecutorial offices.
To develop a methodology for comprehensive investigation and interaction with other institutions on complex financial, economic and corruption offences linked to organised crime.

**Law enforcement:**

- Deepening the coordination among various bodies – especially the prosecutors and the police organs – so that efficiency in the investigation of corruption related crimes is increased;
- More transparency in the policy on the use of surveillance techniques used by the bodies of the Ministry of Interior, accompanied with a greater degree of control over this process;
- More efficient use of public resources in the Ministry of Interior so that problems of underfunding of specific activities are eliminated to achieve improvement of the functioning of MoI.
- Termination of all practices of receiving of donations by the bodies of the Ministry of Interior and full compliance with internal rules introduced in 2011 to overcome the practices of private donations.

**Public Sector:**

- Publication of financial information of the institutions on their websites;
- Creation and application of a national methodology for evaluation of the effectiveness of the provision of public services;
- The National Association of Municipalities in the Republic of Bulgaria should organize annual studies and analyses of the public expenditure on a local level and these analyses should be available at the website of the Association;
- Accelerated implementation of decentralization of responsibilities and resources towards lower levels in the system of governance as well as a reform at the regional level of governance;
- Creation and implementation of a mechanism for transparent and targeted selection, development and retention of young and talented people in the administration;
- The government should pass a procedure for the signing and ratifying of the Council of Europe Convention on Access to Official Documents;
- Development of a normative framework which ensures publicity and transparency in the management of public property;
- Empowerment of a clearly defined authority responsible for the enforcement of the Act for Access to Public Information;
- Review of the status of the officials responsible for the detection of violations and the sanctions following the Act for Access to Public Information, so that these are not the same as or subordinated to or dependent on individuals who are subject to control and sanctions;
- Introduction of effective mechanisms for control and sanctions of institutions in relation to their responsibilities to publicize public information;
- Creation of a methodology and standards and unification of the internet websites of the institutions in view of facilitating the access to and use of public information by citizens and in accordance with the Act for Access to Public Information;
- Introduction of effective administrative mechanisms for protection of citizens’ rights to access public information;
• Intensification of government policy for the inclusion of citizens and citizen organization in the fight against corruption;
• Introduction of an obligation to publish public procurement contracts;
• Intensification of the preliminary control over public procurement procedures;
• Improvement of the capacity of the Public Procurement Agency;
• Limitation of negotiation procedures for public procurement. Negotiation procedures should be bound by rules providing transparency and integrity as well as protection of public interest.

Political parties:

• The Law on Political Parties should be amended to establish a transparent procedure for budget party subsidy allocation. The Ministry of Finance should regularly (quarterly) release the information on the subsidy transferred to every entitled party;
• A publicly available register of the electoral parties should be maintained either by the Ministry of Justice or by Central Election Commission. The parties which meet the requirements established by the laws shall be entered in this register;
• The Electoral code should be revised to prevent effectively vote buying, controlled vote and administrative infringements;
• Parties and candidates who enter an election competition should publicly declare (sign an agreement or a Code of Ethics) they will not engage in corrupt practices.

Electoral Management Body:

• The application of the new Electoral Code should be improved;
• Measures against vote buying should be strengthened;
• Partisan bias in registration decision should be eliminated;
• Electoral lists correction measures should be implemented;
• The financing of electoral campaign should be monitored by the electoral management body.

State Audit Institution:

• Law provisions should be adopted, restricting political and other activities of the President and the two Vice-Presidents of the National Audit Office, apart from those embedded in the office’s code of conduct. The law should provide immunity of the President and Vice-Presidents from prosecutions resulting from the normal discharge of their duties.
• The National Audit Office Act should provide more precise requirements for the public dissemination of the audit results. The NAO should make clearer the procedure of decision making on key issues. Although, the NAO is obliged to report, the appealing procedure of its actions is weak. Therefore, more independent appealing mechanism should be elaborated.
• The National Audit Office should carry out larger number of performance audits. It should use its sanctioning capacity more actively.

Ombudsman:

• Development of a standardised internal procedure for working with citizen’s complaints;
• Hiring of new experts working on complaints by citizens. Introduction of an employee performance evaluation system;
• Amendment to the Ombudsman Act so that qualified majority for the election of the ombudsman and clear professionalism criteria for the nomination of candidates are introduced;
• Amendment to the Ombudsman law so that the political nomination of candidates by parliamentary parties is removed. Introduce a competition principle for the application for the ombudsman’s position;
• Creation of rules and leading criteria for the inclusion of representatives of the public in the activities of the ombudsman while ensuring confidentiality;
• Registry of complaints kept by the administration of the ombudsman available online;
• Creation of practices for wide publicity of the results of the ombudsman’s work and publicity of the debates in Parliament relating to it;
• The Code of Conduct of the employees of the ombudsman institution to be published at the ombudsman’s website;
• Employment of members of the administration on the basis of a public official contract. The status of public official will limit their opportunities to work on the basis of other employment contracts, except as lectors in universities. Provision of proper conduct education of the employees and creation of a system for tracking the conflict of interests during work on complaints;
• Development of an outreach programme for the popularisation of the ombudsman’s services and activities;
• Enhancing the cooperation between the Ombudsman and the public authorities.

Anticorruption Agency:

• At present, there is no genuine anti-corruption agency in Bulgaria. Recently the government started a new project aimed at establishing a Centre for Prevention and Counteraction of Corruption and Organized Crime called “BORCOR”. The main task of the Centre will be to develop decisions and measures against corruption and organized crime. Designed as a governmental think-tank, the centre will not have any investigative or enforcement competences, but will provide education on corruption to public administrators. Although not yet operational, BORCOR is designed to be a totally new institutional response to corruption and organized crime in the Bulgarian context.
• If BORCOR proves as an effective policymaking institution on corruption and the capacity of law enforcement agencies is strengthened, there will be no need for a special anti-corruption agency in the country. The Bulgaria decision makers should abandon the practice of creating new and newer institutions, but should aim their efforts at improving the capacity of the existing ones.
• The competences of SANS regarding high-profile corruption should be limited to providing information to the relevant decision making and law enforcement institutions.

Media:

• Discontinuation of the practice of pre-term termination of the CEM’s mandate by each new government;
• A separate civil-society quota in determining its members should be introduced, and all other politically appointed members should be widely agreed upon;
• Its financial independence from the state should be guaranteed – through financing it via a state-independent Radio and TV fund;
• Improving the quality of journalistic education, as well as including media literacy programs in the general course of secondary education. More corruption-related educational programs should be produced;
• Crimes against journalists should be effectively prosecuted;
• The self-regulatory bodies in the sector may develop a system for evaluating quality of the media, which may be used for labelling the media products and communicating to the public which media outlets produce reliable, well-researched and documented content.

Civil Society Organisations:

• A better legal distinction between economic and non-economic activities of CSOs. Currently the state administration has a wide prerogative in determining in which group a CSO activity falls, often used against the better interest of the CSOs;
• The non-for-profit CSOs should receive more sizeable tax breaks than currently given;
• State-guaranteed funds for financing CSOs should be created, where the funding should be on competitive basis, with clear rules, as well as control and evaluation mechanisms;
• A sectoral Ethics code should be adopted, and receiving state subsidy and tax breaks should be conditioned on conforming to its rules.

Business:

• Business organizations in the country should elaborate general ethical and specific anti-corruption code;
• Elaboration of such codes by separate companies, especially the larger ones;
• Introduction of a legal requirement for companies who participate in public contracts to have such codes as a prerequisite for participation. This can be done both at the national and the EU level;
• Whistleblowing legislation needs to be enhanced;
• Further improvements in the regulation of conflict of interest are needed;
• Companies should be encouraged to appoint chief compliance officers with respective powers;
• Companies found to engage in bribery and other unethical practices should be publicly blacklisted;
• Business organizations should include among their training courses and topics the issues of ethics and integrity with respective company policies and practices;
• Legislation related to corporate governance needs to make the definition of the role of supervisory boards clearer;
• Company liability for engaging in unethical business behaviour should be strengthened.
COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

POLITICAL-INSTITUTIONAL FOUNDATIONS

To what extent are the political institutions in the country supportive to an effective national integrity system?

Score: 50

The Constitution of Bulgaria, adopted in 1991 after the collapse of communism, provides for a system of governance featuring a parliamentary regime and checks and balances guaranteed by the legislative, executive, and judicial branches. Citizens may participate in the political process through elections, consultations on legislation, civil society organizations, and the media. Bulgaria’s political system has enjoyed considerable stability over the last decade; three consecutive governments have served their full constitutional terms without any major political disturbances. The country became a member of NATO in 2004 and the European Union in 2007. Democracy has firmly taken root in society, and though the public voices its dissatisfaction with the performance of Bulgarian democracy, no alternative nondemocratic projects exist or seem viable.

However, the Presidential and Local elections in October 2011 showed that the notorious vote-buying practices still represent a serious threat to the electoral process. The chaos, which emerged at the first election round, was partly due to the newly adopted Electoral code, which came into force a few months before the elections. Consequently, the opposition appealed to various courts, including the Constitutional Court, for the invalidation of the election results. Yet, the 2011 Freedom House report rates Bulgaria as a “Free” country. The media remain a weak spot. Bulgaria has been steadily sliding in international indexes of media freedom, especially markedly in the index of Reporters without Borders: for 2010 Bulgaria ranked 70 from 178 countries and for 2011 its position further deteriorated (80 out of 178).

Civil rights are guaranteed in the Constitution and other laws, although the ability of citizens to seek redress for the violation of their rights is sometimes undermined by the weakness of the judiciary and insufficient accountability of certain parts of the government. The disappointment of the Bulgarians in their judicial system finds an answer in the European Court of Human Rights, where the cases of Bulgarian citizens suing the state exceed 700.

The reputation of the Bulgarian politicians has been tarnished by a series of high-profile scandals. They include abuse of power, MPs’ expenses, allegations of links between party funding and some donors’ influence over the decisions taken by the MPs at the Parliament.

There is no strong or explicit opposition to democratic institutions and all principal actors accept and support them. At the same time in the Democracy Index 2011 of Economist

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3 http://www.capital.bg/politika_i_ikonomika/redakcioni_komentari/2012/01/25/1753025_na_dunoto_na_es_i_nadolu/
Intelligence Unit Bulgaria takes 52\textsuperscript{nd} place from 167 countries worldwide. The score of Bulgaria is 6.78 out of 10 and the country continues to slightly sink in the chart.\textsuperscript{5}

Overall, Bulgaria has a stable and vigorously competitive democracy. No government and parliamentary majority has managed to be reelected since the adoption of the new Constitution in 1991 (with some partial exceptions in 1994 and 2005, when parties supportive of the previous government took part in the formation of the new one, although in both cases there was no full overlap.) Moreover, in 2001 and 2009 newly established extra-parliamentary parties won de facto majorities in the Bulgarian National Assembly, which shows the open character of the party system and the volatile attitudes of the electorate. The competitiveness of the party system is a guarantee against the entrenchment of corrupt elites in Bulgarian public life. Yet, the volatility of electoral life has a considerable cost as well: it prevents the professionalization of Bulgarian politicians, and the creation of stable conventions and customs, including in the sphere of ethical behaviour and transparency.

\textsuperscript{5} http://www.dnevnik.bg/bulgaria/2011/12/18/1728899_demokraciiata_v_bulgariia_stava_po-malkoPokazva/
SOCIO-POLITICAL FOUNDATIONS

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

Score: 50

All Bulgarian historical constitutions and principal laws have noted the existence of various ethnic and religious communities in the country and upheld the principle of equal rights and obligations. At the same time they have guaranteed that the Bulgarian language and Bulgarian Orthodox Church enjoy a privileged position. The other ethnic communities are accepted as a part of the Bulgarian society, but they are sometimes marginalized, especially the Roma. Due to a small immigration to Bulgaria, immigrant communities are not perceived as a political challenge. The most important “significant others” for the Bulgarian majority population are the native minorities: especially the ethnic Turks and the Roma. Bulgarians represent 84.8% of the population. The two other largest minorities are Turks -8.8% and Roma – 4.9%. Ethnic Turks are well integrated, politically organized and with a very clear and well-expressed self-awareness. They can freely practice their religion, have newspapers and electronic media in their language and are actively involved in political life in Bulgaria. Yet, especially more recently, Bulgarian nationalist and populist parties have used the Turkish minority and their political representation as a target of rhetorical attacks; such attacks have been used for the purposes of political mobilization, although as the last local elections have shown, the vote in support of nationalistic calls has fallen below 10%. There are some Roma communities, which are almost completely excluded from the society. They are rejected not just by the majority population but by other minorities as well. There is a widespread perception that state institutions “tolerate” Roma too much and that instead of tolerating, the state should control them. The general public still perceives them in overwhelmingly negative terms and continues to reject and exclude them. This is visible in the education system, in health care, housing, labor market and numerous other areas.

Two smaller minority communities (Armenians and Jews) have been treated with respect and recognition and have traditionally enjoyed full freedom to express their ethnic, religious and cultural identity. Both communities have been fully accepted and are respected both on the state level and by the society, as is manifested by numerous highly respected individuals from both communities who have left their mark in Bulgarian politics, culture, science and sports.  

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6 International Center for Minority Studies and Intercultural Relations: http://www.imir-bg.org/imir/reports/Diversity_Discourses_BG.pdf p.6


11 International Center for Minority Studies and Intercultural Relations: http://www.imir-bg.org/imir/reports/Diversity_Discourses_BG.pdf p.8
Thus, the most persistent problem is with the Roma minority, whose integration into the Bulgarian society is far from being satisfactory. Despite various governmental and non-governmental programmes in this area, the results are very modest. Generally, there is a lack of sustained effort to devote significant public resources to this problem, or to introduce systemic affirmative action programmes.

An independent civic sector in Bulgaria is guaranteed by the constitution under the freedom of association, and by the Not–for-profit Legal Entities Act. During the period of transition many civil society organizations emerged and became very active at the local and national levels, achieving considerable influence.\textsuperscript{12}

The formation of NGOs and registration and tax regimes are relatively simple and stable. Civic organizations enjoy access to information rights. Public benefit NGOs are not obliged to pay direct taxes and are allowed to carry out for-profit activities that do not interfere with their stated aims if these projects are registered and taxed separately. Involvement of the civic sector in legislative and executive work in Bulgaria is not specifically regulated, but such engagement exists in practice. With the increase in the number of NGOs whose main task is to influence public decisions through advocacy—the absence of specific regulations for lobbying activities creates a space for dubious practices and hinders the ability of civil actors to effectively express the interests of various segments of society.\textsuperscript{13}

Under the Not-for-profit Legal Entities Act, the Bulgarian Ministry of Justice maintains a central register for entities that define themselves as acting in the public interest. By the end of 2010 there were 8,327 entries in the register, an increase of over 27 percent in two years. Of these, 85 percent are associations, 14 percent are foundations, and 1 percent are branches of foreign organizations. A new nongovernmental web portal for NGOs, including an information and registration feature, was started in 2010; as of the end of the year the site contained 5,094 self-registered entities, including 4,000 “for public purpose” groups and 200 “for private purpose” groups. Among these web-registered NGOs, 126 explicitly define their basic activity as related to ethnic issues, 170 related to human rights, and 70 related to women and gender issues. The two registers indicate that Bulgarian NGOs cover various social spheres (health, education, social services), rights issues (human, minority, gender, religious), public policy and advocacy, business and development, and sports.\textsuperscript{14}

In 2010 the economic crisis and consequent decrease in funding had a negative impact on civil society activity. Regular campaigns for raising charitable funds met with some success, but they remained very limited. A dominant portion of NGOs have to rely on foreign funding, which is increasingly dominated by EU sources. While this is helpful for the exposure of EU-wide issues in Bulgaria, it is less conducive to grassroots civil society projects originating within Bulgarian society itself. Thus, while the country’s civic sector is lively and has a significant capacity, its important role as a forum for expressing societal needs and ideas is still impaired. Financial difficulties notwithstanding, a number of Bulgarian CSOs, especially


trade unions and employer organizations, were very active and effective as partners with the government in managing the economic crisis in 2010, including formulation and implementation of specific policies.\textsuperscript{15}

SOCIO-ECONOMIC FOUNDATIONS

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

Score: 50

Unemployment rates in Bulgaria have steadily decreased from 10.1% in 2005 (and even higher rates in previous years) to the lows of 5.8% in the second quarter of 2008, 5.1% in the third quarter and 5.0% in the fourth quarter. The employment rate of the population between 16 and 64 years of age also rose steadily, reaching 61.7% in 2007 (3.1 percentage points higher than in 2006) and 64.3% in 2008. According to the annual labor force survey conducted by the National Statistical Institute, the number of the non-registered or hidden unemployed also fell by 24.3% compared with 2006, reaching an estimated 201,100 individuals at the end of 2007 and 152,800 in the fourth quarter of 2008. As a consequence of the financial crisis the unemployment rate rose slightly to 6.8% in 2009 and 10.2% in 2010.

Beginning on 1 January 2007, the first official poverty line began to be calculated. For 2007 it was set at BGN 152 per month (the exchange rate between the euro and BGN is approximately 1 to 2), for 2008 at BGN 166 and from 1 January 2009 at BGN 194. These calculations are based on a complex methodology created with the input of labor and business sectors, which corresponds to the Eurostat definition of poverty (60% of the equalized median income). According to the Institute for Social and Trade Union Research, in December 2008 the cost of living for one working adult in a four-member household (two adults and two children) was BGN 527 – an increase of 9.5% on a year-to-year basis. The poverty line based on a consumer basket of 77 essential commodities and services is BGN 185.21 per person, which indicates an 8.5% rise as compared to December 2007. Trade unions call this poverty line a subsistence line, and claim it is the minimum income necessary to meet an individual’s most basic needs. It is higher than the official poverty line, and results in a poverty rate of about 22% (22% of the households fall below this level of earnings, based on the Household Budgets Survey of the National Statistical Institute).

Although the GDP per capita rose from 12,668 in 2009 to 12,933 USD in 2010 Bulgaria remained the poorest country in the EU. The global financial crisis affected the incomes of the Bulgarian households as they experienced difficulties caused by salary cuts, reduced working hours and job losses. Vulnerable groups, like those with low levels of education and Roma people, have been the worst affected.

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Approximately 30% of households reported a decline in income between March 2009 and February 2010 due to labour market shocks, a decline in family businesses, decreased remittances, increased mortgage payments and the cessation of social security benefits. Almost 34% of workers reported an income shock through their job, primarily through lost or reduced employment or reduced wages. Salary cuts and reduced working hours affected close to 30% of workers (salary cuts 15.6%; reduced working hours 15.9%). Salary reductions have been concentrated in the private (informal) sector.

Job loss resulting in unemployment, which is the most severe type of labor market shock has affected 6.3% of workers in Bulgaria. Job losses were concentrated in construction and manufacturing. Bulgrarians have tried to cope with the crisis by seeking additional work, relying on savings and taking loans, drawing on remittances and social security benefits. Most households have tried to cope with the reduction in income by sending non-working family members to look for work or by seeking additional part-time work – but only the well-educated and rich have succeeded in finding additional work. Of the households that are crisis-affected and poor, 60% have looked for additional work and failed to find any. Only 22% of Bulgarian households reported having any savings. Most of the crisis-affected households reported having no savings and being in debt. Approximately 20% of households reported relying on some type of informal transfer (14% of households received remittances from abroad), and 6.7% of households sought, but did not receive, informal transfers. Key social assistance programmes (child allowance, eating allowance and the guaranteed minimum income programme) are responding to the crisis – however, only 60% of households from the poorest quintile who suffered an income shock are receiving at least one benefit from these three programmes.

The crisis has impacted on people’s social rights by reducing consumption, as well as reducing spending on health, education and social safety nets like insurance. Households responded to the economic contraction by reducing expenditure on basic necessities: 41% reported reducing use of basic utilities, 29% reduced consumption of staple foods and 8% reported skipping meals. As in other Central and Eastern European countries, crisis-affected households have significantly reduced expenditure on health, including stopping to take regular prescribed medications and skipping visits to doctors. Crisis affected households were more likely to stop paying social contributions and health insurance – increasing their vulnerability if exposed to additional shocks (falling ill or becoming unemployed).

Overall, Bulgaria has thus far weathered the financial crisis well from a macroeconomic perspective. In contrast to other countries, Bulgaria has insignificant public debt as proportion from GDP (around 17%), low deficit, and relatively stable banking system. At the level of living standards, however, Bulgaria remains at the bottom of the table of EU member states, with very low average salaries and income in general. A recent study by the Open Society Institute, Sofia, which generally corroborates these findings – the Catch Up Index – argues that:

“The current debt crisis in Europe… should not be perceived in economic and financial terms only. The debt ceiling of 60% of GDP, stated in the Maastricht criteria, cannot be a universal measure and the safe debt level ceilings seem to be country specific, defined by the particular debt to governance

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ratio of a country. Countries with poorer governance performance may be more exposed to
the crisis danger zone even when they have considerably lower debt levels than the Maastricht
defined limit. The assumption that integration will automatically bring about convergence in
Europe did not materialize in reality and the report recommends that Europe should pursue
convergence policies that deal with the divergence between the countries and not impose
centralized “one size fits all” policies, which might bring about further fragmentation.”

SOCIO-CULTURAL FOUNDATIONS

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

Score: 50

Trust levels in society are relatively low in Bulgaria. According to the fall 2010 Eurobarometer poll, the majority of Bulgarian citizens do not trust their national institutions. Some 44%25 of the respondents expressed trust in their government, which represents a 15%26 increase compared to the same period of the previous year. This raise can be explained with the optimism of the people who have elected a new Bulgarian government at the Parliament elections in July 2009. However, the part of citizens who distrust the government remains at 43%.27 The trust in the Bulgarian Parliament has also risen with 17% to 27%, which is lower than the EU average.28 The trust in the Bulgarian Judiciary system remains at 17% which compared to the other EU member states is much lower. The EU average is 44%.29 In contrast to the Bulgarian institutions, the trust in the EU-institutions among the Bulgarian is among the highest in the EU. 65% of the Bulgarian citizens trust the European Parliament; 59% trust the European Commission and 53% trust the Council of the EU.30 The percent of Bulgarians who are generally satisfied with the functioning of democracy in the country is 21%. At the same time 54% of the Bulgarian citizens are satisfied with how democracy works in the EU.31 Democratic values among society seem to be higher than in most Central and Eastern European countries according to a fall 2009 survey by the Pew Research Center’s Global Attitudes Project.32 A fair judicial system is regarded as very important by 81% of the Bulgarians.33 The democratic values both of freedom of the press and honest elections are considered very important by 61% of the population.34 Corruption is perceived to be a major problem for the country by Bulgarians. According to 2009 Eurobarometer data about eight of ten Bulgarian respondents “totally agree” that corruption is a major problem in their country. This is much higher than the EU average of 41%.35 The relative majority of respondents in Bulgaria – 54% mention the lack of appropriate punishment in corruption cases as the main factor contributing to it.36 The overwhelming majority of Bulgarians believe that corruption occurs on national, regional as

26 Ibid, p.24
27 Ibid, p.24
28 Ibid, p.25
29 Ibid, p.26
30 Ibid, p.26
31 Ibid, p.22
36 Ibid, p.36
well as local level and within respective institutions.\textsuperscript{37} Surveys also show that every other Bulgarian considers bribery in the courts and the prosecution to be very widespread.\textsuperscript{38} 64\% of Bulgarian respondents put confidence in the EU to resolve corruption issues they might encounter.\textsuperscript{39}

Generally, Bulgaria is a country characterized by very low levels of trust in major public institutions, both political and professional, like the National Assembly and government, on the one hand, and the courts and prosecutors, on the other. Trust in major political mediators, as parties and NGOs, is also low. To compensate for that, at different moments in the transition trajectory of the country there have been outbursts of public confidence and even affection vis-à-vis specific personalities, who are seen as a possible answer to a largely corrupt and inefficient political establishment. Such a wave of public enthusiasm was particularly visible in 2001 with the election of the former tsar – Simeon Saxe-Coburg-Gotha – as a Bulgarian Prime Minister.

The issue of the prevailing societal morality has been a matter of public discussion in Bulgaria for a very long time. The Ottoman legacy has often been cited as an aggravating factor, making corruption more acceptable as a means of solving problems in the economy or with the administration. The same has been argued for the communist legacy, which arguably also facilitates high public tolerance of corruption. The late socialist period (especially in the 1980s) has been marked by its own forms of corruption and evasion of various rules, by the prominence of nepotism and the influence of personal connections. Yet, since the end of the 1990s Bulgaria has been the target of successive anticorruption campaigns carried out by governmental and non-governmental actors. As a result of these campaigns, the fight against corruption has become a top societal priority in Bulgaria (in all polls, it consistently comes out among the three most important issues). Moreover, at elections Bulgarians consistently vote on anti-corruption grounds since 2001: all of the governments since then have also been ousted mainly because they are perceived by the public as corrupt or as inefficient in the fight against corruption.

Thus, despite various historical legacies, it could be argued that the public is largely aware of the problem of corruption as a societal problem. It is difficult to determine to what extent this general awareness is translated into personal behaviour. For the purposes of the present study, TI Bulgaria has carried out a representative for the country sociological survey of public attitudes. It deserves a separate detailed analysis of its own. For the present purposes, we highlight some of the most interesting results from the survey. Only 52,9\% of Bulgarians consider giving money by a businessman to an administrator an act of corruption. A similar percent of the population seem to consider giving money to a politician for a service to be corruption. These figures suggest that for a significant proportion of the people, not all forms of \textit{quid pro quo} illicit transactions are a core case of corruption. For them they are either entirely legitimate transactions, or constitute some sort of grey area where everything is allowed, or are not corruption at all. Similarly, less than 40\% of the respondents consider appointing relatives as employees, or giving projects and work to relatives and friends to be forms of corruption. Despite the open-textured way in which these questions are phrased, it does appear that the answer to them suggest significant levels of toleration to acts, which are

\begin{itemize}
  \item \textsuperscript{37} Ibid, p.28
  \item \textsuperscript{38} Ibid, p. 23
  \item \textsuperscript{39} Ibid, p.47
\end{itemize}
now generally considered corrupt. Particularly striking is the fact that only 27.1% of the respondents consider paying journalists for coverage to be corruption: against such a background, it is not difficult to explain why the so-called yellow press has made significant advances in Bulgaria over the recent years.

When asked about the prominence of corruption in the country, 37.2% of the respondents believe that the reason for that is that corruption is convenient for all. This functional explanation of the widespread character of the phenomenon seems to revive the theory of “corruption as grease” for the economy. Apparently, a significant proportion of the business community in the country does share this belief as well, which partly explains its meager involvement in anticorruption activities.

Finally, in order to complete the picture it needs to be said that there is a noticeable public fatigue regarding anticorruption activities. When asked whether they detect a change in the fight against corruption in terms of giving or taking bribes in the country, over 80% of the respondents consistently reply that the situation is the same or is getting worse than before.

Thus, institutions in Bulgaria act against a complex set of public attitudes to and perceptions of corruption. On the one hand, there is a widespread belief that corruption is a top societal priority and is a defining factor in the choice of political actors. Yet, at the level of everyday behavior corruption remains a tolerable course of action for many. A further complication of the picture is that international studies have suggested that in comparative perspective Bulgaria suffers more of what has been called “state capture” rather than of administrative corruption. This implies that the country suffers more from political forms of corruption rather than administrative day-to-day bribery. As said at the beginning, it could be claimed that “corruption” has become an umbrella term in Bulgarian society, depicting different problems ranging from bribery to social injustice. This vagueness of the concept makes the measurement of the success or failure of anticorruption initiatives a very complex matter indeed.

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ANTI-CORRUPTION ACTIVITIES

The process of European integration and the meeting of the standards of the EU is a key element in the initiation and implementation of anti-corruption activities in Bulgaria. This impulse has remained of special importance even after the accession of the country to the EU in 2007. One factor explaining the leverage the EU has in this matter is the still existing Verification and Cooperation Mechanism of monitoring the activities of the Bulgarian government by the EU Commission. This monitoring is focused on the fight against corruption and organised crime, as well as the reform of the judicial system.

In the evaluation of anti-corruption activities one should take into account the two-prong strategy of the Bulgarian government: on the one hand there is an overall anti-corruption strategy adopted by the government, and, on the other hand, there are sectoral strategies adopted by various other institutions. On the more general level, there is the governmental Action Strategy for Transparent Governance and Prevention and Counteraction of Corruption for the period 2006 - 2008, which is a strategy paper focused on preventing and combating corruption at the highest levels of government, transparency in the financing of political activity, and penal policy against corruption.

Along the lines of this strategy, various measures have been taken, including the adoption of laws on the disclosure of the assets of politicians, magistrates and public servants. According to the asset disclosure law a register of asset declarations has been established, accompanied with detailed rules of sanctions in cases of failure to comply with the requirements of the law. Further, a Law on Prevention and Detection of Conflict of Interest became effective as of 2009, which provides mechanisms for control and disclosure of conflict of interest in the public administration.

With regard to transparency and accountability of political activity in May 2009, changes were made to the legislation governing the financing of political parties and election campaigns. Many new rules governing limits on funding of election campaigns, rules for reporting to the Court, obligations to maintain a register of political party financing have been introduced.

In response to recommendations for further reform of the judiciary, from the beginning of 2008 an Inspectorate at the Supreme Judicial Council has been established, which has important prerogatives in the assessment of the performance of judge, prosecutors and investigators. Since mid-October 2009 a new integrated strategy for preventing and combating corruption and organized crime has been adopted, after the change of government in July 2009. The emphasis in the new strategy is the creation of a new institution: Center for Prevention and Counteraction of Corruption (BORCOR) – a consultative body at the Council of Ministers. This institution is not covered by the present report, since it has not become operational yet: it was set up at the end of 2010, but by the end of 2011 it had not appointed most of its staff. It is supposed to be a state-funded think tank with the main task to develop strategies counteracting corrupt activities.

Within the central public administration several measures and policies on transparency and accountability in governance have been taken: a telephone hotline for corruption; units for prevention and combat the corruption have been structured; some measures to protect persons signaling for corruption have also been undertaken.

In January 2011 a new Electoral Code was adopted, which unifies the rules for organizing the election process in Bulgaria. Although additional information to make an overall assessment of the impact of the new law is needed, some achievements can be noted: provisions governing the obligation of the Court to make a comparison between declared income and
expenses of candidates in election campaigns; new rules on media transparency on the financing of election campaigns; the election authority powers to supervise for infringement of the rules for financing of election campaigns. The presidential and local elections in 2011 were carried out under the new rules. As discussed in the report, there were numerous problems with their application. Due to these problems, the government has decided to revise the Code and to take into account various criticisms and recommendations raised by analysts and international monitoring organisations such as the OSCE.

Generally, Bulgaria has been the site of numerous institutional initiatives in the fight against corruption. Sometimes reforms have been introduced under pressure from external bodies, as the EU Commission. Sometimes reforms have been reversed either because of constitutional concerns (as the proposal for removal of the Prosecutor General by the National Assembly, for instance), or because they have come to be seen as counter-productive, as the granting of a limited investigative role to SANS. Some of the institutions introduced have been really innovative and may be considered, even an oddity in international comparison: a case in point is the Inspectorate of the Supreme Judicial Council, whose members are appointed by a 2/3 majority by the National Assembly (a higher majority than that required for the members of the SJC itself). Further, at different points in time the opposite proposals have been advanced in a specific area: for instance, the Supreme Judicial Council was made a permanent body a few years back, while at the moment of writing analysts agree almost universally that the previous arrangement had been better.

All in all, the anticorruption activities have very often boiled down to institutional innovation, which has subsequently proved insufficient or even counter-productive. This dynamic partly explains the anticorruption fatigue noted in the previous section of this introductory chapter.

Below, we start with the presentation of the reports on the thirteen integrity pillars, reports which are the substantive part of the study.
THE NATIONAL INTEGRITY SYSTEM

LEGISLATURE:
BULGARIAN NATIONAL ASSEMBLY

<table>
<thead>
<tr>
<th>Legislature&lt;sup&gt;41&lt;/sup&gt;</th>
<th>Overall Pillar Score: 51,38 / 100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indicator</td>
<td>Law</td>
</tr>
<tr>
<td>Capacity 75/ 100</td>
<td></td>
</tr>
<tr>
<td>Resources</td>
<td>100</td>
</tr>
<tr>
<td>Independence</td>
<td>100</td>
</tr>
<tr>
<td>Governance 54,16 / 100</td>
<td></td>
</tr>
<tr>
<td>Transparency</td>
<td>75</td>
</tr>
<tr>
<td>Accountability</td>
<td>75</td>
</tr>
<tr>
<td>Integrity Mechanisms</td>
<td>25</td>
</tr>
<tr>
<td>Role 25 / 100</td>
<td></td>
</tr>
<tr>
<td>Executive Oversight</td>
<td></td>
</tr>
<tr>
<td>Legal Reforms</td>
<td></td>
</tr>
</tbody>
</table>

Summary

The current state of the art of parliamentary integrity in Bulgaria is the outcome of a gradual evolution of the normative framework, improvement of the in-house practices and responsiveness to the persistent public pressure. The evident deficits are in three major areas –

1. The normative vacuum in the area of integrity mechanisms (key bills were drafted in 2002 and later in 2010 and have never been subjected to deliberation – Code of Ethics and Law on Lobbying);
2. The lack of policy expertise and specialized bodies working out policy strategies;
3. The legal tradition of high number of amendments and by laws, which promote an opportunistic and shortsighted legislative process.

Hence regardless of the consistent improvements both in the legal framework and the practices, which guarantee independence, transparency and accountability of the legislature, the role of the Bulgarian parliament in promoting and assuring integrity is still very limited.

Structure and organization

Bulgaria is a parliamentary democracy with a single chamber parliament (National Assembly – Narodno Sabranie). The Bulgarian Parliament is ‘sovereign’ meaning that no institution can dissolve it or terminate its mandate. Preterm elections are a procedural outcome of three consecutive unsuccessful attempts to form a cabinet.

<sup>41</sup> The overall pillar score is a simple average of the scores of the three dimensions capacity, governance and role. The dimension scores are simple averages of the respective indicator scores.
The Bulgarian Parliament has 240 elected Members of Parliament who are organized in party factions (parliamentary groups) and standing committees. The Chairperson of the Parliament and the Deputy-Chairpersons are voted during the first plenary meeting of the newly elected National Assembly. Usually each party faction has a Deputy Chairperson and they together with the Chairperson and the Leaders of Parliamentary Groups form Chair council with agenda setting powers.

CAPACITY

Resources (law)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

Score: 100

The powers of the Bulgarian National Assembly (NA) to decide independently on its own budget were explicitly defined in the constitution by an amendment passed in 2007 (relatively late, but this power was exercised de facto since 1991). Each newly elected NA votes its own Rules and Procedures, in accordance to the Constitution of the Republic of Bulgaria. The general rule, maintained in the Rules and procedures of each Assembly is that the Chairperson “organizes the National Assembly budget elaboration and implementation and the preparation of the annual financial report”. In this specific activity the Chairperson is assisted by a specialised administrative body - Directorate on Budget and Finance. For the first time in current 41st NA the procedure of Budget formation is regulated in detail in a special Appendix to the Rules entitled Financial Regulations for the National Assembly Budget.

The Standing committee on Budget and Finance consisting of 26 MPs has a key role in deliberating and proposing the NA Budget as well as the national budget and the overall budget policy of the government. The Parliamentary Budget is worked out within the general framework set by the Cabinet and is passed as part of the general budget according to a standard procedure.

According to the Law on State Budget the Chairperson has to submit an allocation plan of the NA budget spending within 30 days after the promulgation of the Budget, as the Ministry of Finance is authorised to provide the necessary financial resources according to it.

Each of the parliamentary factions is financed on the basis of the individual deputies belonging to the group – a lump sum is provided to each of the MPs. In case of change in the status of MPs to independent they may decide according to their personal preferences (switching of party faction, which has been a regular practice is restricted in the current Assembly).

A number of autonomous state agencies administratively affiliated to the NA have relative budget autonomy – the status of “second line spending administration”.

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45 Rules of Organisation and Procedure of the 41st National Assembly Art. 6 (5).
46 Закон за Държавния Бюджет на Република България за 2011 г., Обн. ДВ. бр.99 от 17 Декември 2010г., изм. ДВ. бр.31 от 15 Април 2011г. Чл. 3 (3)
The parliament has a secured and full discretion on determining what human and infrastructure resources shall be available to it.

Resources (practice)

To what extent does the legislature have adequate resources to carry out its duties in practice?

Score: 50

Overall the resources of the parliament meet its demands reasonably. It is fully supported technically and administratively but its in-house policy expertise is weak as only within the 37th NA there has been a specialized policy analysis/research unit. The annual budget of the NA for two consecutive years has been maintained at the level of 53 million BGN\(^{47}\) (approximately EUR 27 million), a relatively small decrease resulting from the policy of austerity budget cuts followed by the current government. The budget for 2009 – an example of a regular, pre-crisis financial plan amounted to 61 million BGN (approximately EUR 31 million).

The NA has a well developed and sustainable administrative structure\(^ {48}\). There are general departments with mostly coordinative functions – General Office services, Human Resources Directorate. A variety of specialized administrative units - Information and Communication Systems Directorate; Stenographic and Word Processing Services Department; Parliamentary Library; Questors Section; Information and Administrative Services Center Department deliver services during plenary meetings and meetings of the standing committees. Support is provided to the individual MPs, the standing committees Chair councils and the Parliamentary Chair council.

The parliamentary groups and the standing committees have their own staff and the individual deputies are entitled to personal assistants.

Currently (March 2011) the overall number of the full-time employees in the NA administration is 648 (the administrative staff of the affiliated autonomous institutions are not included) and since July 2009 regardless of the announced cuts their number has been increased. The plan is to have an additional 5% increase until the end of the year\(^ {49}\).

There are several autonomous institutions, which provide services not only to the legislature, but also to the other branches of power - for example the National Centre for Public Opinion Surveys – established by a decision of the National Assembly on December 15, 1989 as a state agency providing services to all branches of power but administratively subordinated to the Parliament. The NCPOS performs regular surveys as well as upon request it surveys public attitudes on specific issues.

Another public body with consultative functions is the Economic and Social Council - established on December 10, 1993 by a specialised law (Law on the Economic and Social Council, passed in 1991\(^ {50}\)). The ESC is designed after the model of the EU EESC\(^ {51}\) and


\(^{48}\) As it is evident on the site of the National Assembly http://www.parliament.bg/en/parliamentaryadministration and from the assessments of interviewed experts and politicians.

\(^{49}\) In July 2009 the full-time employees were 585, for two years 90 have retired or were dismissed, but 143 new administrators were recruited http://www.168chasa.bg/Article.asp?ArticleId=896070

performs a variety of activities. Annual reports of the ESC are discussed by the Parliamentary Committee on Labour and Social Policy.
The Stenographic and Word Processing Services Department supports the NA in several ways: through the stenographic summary making and minutes taking, recording of meetings, editing of research reports, safeguarding the storage time of the documents and assures publishing the required information of the NA for the public.
Staff of the units within the Legislative Affairs and European Law Directorate and the Parliamentary Library assists MPs in drafting initiative law proposals or amendments.
The Chairperson of the NA and respectively the Deputy Chairpersons are responsible for the order and practical aspects of the parliamentary process (e.g. the voting, sending the law proposal to the President, and publishing in the State Gazette etc.) The State Gazette is regularly published its internet site is updated and guarantees full access.
The electronic resources are updated and fully operational. Within the Operational Program Administrative capacity a project aimed at updating the e-government resources of the NA was effectively implemented. The Project “Модерна парламентарна администрация в услуга на обществото” has one year duration (Dec. 2009-Dec. 2011) and budget of BGN 587 683,85.
The office space of the parliament is spread among two buildings. Each of the committees and factions has a meeting room and some office space with several workstations. Individual MPs who are not chairs of either a committee or faction and their assistants usually share a room (with two maximum three working places/stations). The NA has premises for larger open public events but it is currently under renovation.
Resources for transportation are sufficient and regularly renewed as the NA car park provides official cars to the members of the Presidium, chairs of committees and factions as well as additional cars for factions. Other MPs may apply for the use of official cars under certain conditions or receive monetary compensation for transportation if they live away from the capital or are reimbursed for their transport expenses.
There have been attempts to use the format of expert councils (usually comprised of prominent academics) which is rejected in the current assembly.
The rapid renewal/high turnover of MPs and their short time of being in office (in the Current 41st NA, 70% of the elected deputies are newcomers) has been a persistent tendency in the Bulgarian parliament - as seen in the table below there is only one parliament with less than 50% newcomers – the 40th NA.

<table>
<thead>
<tr>
<th>Legislature</th>
<th>36th NA</th>
<th>37th NA</th>
<th>38th NA</th>
<th>39th NA</th>
<th>40th NA</th>
<th>41st NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of newcomers</td>
<td>63.8%</td>
<td>52.5%</td>
<td>61.3%</td>
<td>68.3%</td>
<td>42.9%</td>
<td>70.8%</td>
</tr>
</tbody>
</table>

It is an expert body affiliated to the NA and is parallel and nonrelated to the National Council for Tripartite Cooperation [http://www.saveti.government.bg/web/ce_13/1](http://www.saveti.government.bg/web/ce_13/1)
Available both at the page of the respective NA unit and at the RSS [http://parliament.bg/bg/rss](http://parliament.bg/bg/rss)
Assessments of all interviewed experts and politicians
The lack of knowledge and expertise of the majority of MPs requires extra expert support, and guidance for new MPs, which is not provided. The rapid renewal makes the lack of policy analysis/research unit even more visible.

**Independence (law)**

*To what extent is the legislature independent and free from subordination to external actors by law?*

**Score: 100**

No state institution can dissolve/dismiss the Bulgarian NA, even a qualified majority of its own members cannot decide on this issue. The mandate of the Bulgarian parliament is automatically terminated under two circumstances – after the expiry of its 4 year mandate or after three consecutive unsuccessful attempts to form a government. Only under these circumstances the President of the Republic is authorised to schedule regular or pre term parliamentary elections under strict time constraints – within a period of two months after the termination of the mandate. In the second case the President is also authorised to appoint a caretaker government.

The NA has a constitutionally guaranteed independence - “a permanently acting body” “free to determine its recesses”. NA is convened only by its Chairperson. The newly elected Assembly is convened by the President under strict time requirements (not later then a month after the elections), and with guarantees that if “the President fails to do so” the NA may convene on the initiative of 1/5 of the MPs. If emergency circumstances occur during or after the expiry of the National Assembly's term the mandate of the NA is extended until the expiry of the circumstances.

The agenda of the NA sessions is proposed by its Chairperson and voted by the plenary. The only way for the President to intervene in the agenda setting powers of the NA is exercised ex post - by vetoing a law within the 15 days period after the law is passed by the NA. The powers of the executive to impose its legislative agenda on the parliament are also regulated. If a bill is rejected on the first reading, it may be re-introduced not earlier than three months after its rejection and only after substantial changes in its main provisions, which are to be reflected in the motivation.

The Bulgarian NA has full control over the election of its Chairperson, Deputy-Chairpersons and Committee Chairs. They are elected and may be dismissed by ordinary majority. According to the Rules of Organisation and Procedure of the current 41st National Assembly they may be dismissed upon a request filed by 1/3 of the MPs or by the Parliamentary party faction, which has nominated them.

The Chairperson of the National Assembly approves the administrative structure and the staff positions at the National Assembly, the staffing of its departments; he/she appoints and

59 Constitution of the Republic of Bulgaria Art. 64 and Art. 99 (5).
60 Ibid., Art. 74.
61 On the initiative of: the chairperson; 1/5 of the MPs; the President of the Bulgarian Council of Ministers. see Constitution of the Republic of Bulgaria, Art 78.
63 Ibid. Art. 64 (2)
64 Ibid. Art. 77(1)
65 Ibid. Art. 101 and Art. 76.
66 Ibid. Art. 72
67 Ibid. Art. 81 (2).
68 Rules of Organisation and Procedure of the 41st National Assembly Art 6(1)
dismisses the Chief of the Administration (Secretary General of the National Assembly) and
eンドorses the Operational Rules for the Administration of the National Assembly. The
Chairperson also controls the internal and external security of the National Assembly placed
exclusively under her/his orders. 69 The parliamentary security service provides the
alternative to the police, which is not allowed in the premises of the NA.
Part of the administration of the NA is subject to the Law on Public Service, but the
permanent staff of parliamentary committees and party groups does not have the status of
public servants.
Members of the National Assembly cannot be held criminally liable for their opinions or
votes in the National Assembly.70 The constitutional texts providing for immunity against
detention or criminal prosecution were assessed as too restrictive and overprotective and an
amendment to the Constitution was passed in 2006. Currently the amended text stipulates that
members of NA are “immune from detention or criminal prosecution except for the
perpetration of criminal offence”. In the latter case permission of the NA (or, in between its
session, of the Chairperson of NA) is required. No permission is required if a Member is
detained in flagrante delicto or she/he has given her/his consent in writing. Nevertheless the
NA (or, in between its session, the Chairperson of NA) are to be “notified forthwith”.71
The independence of individual MPs is guaranteed also by the constitutional provisions
stipulating that “No Member of the NA shall be held to a mandatory mandate” and that
deputies “act in accordance with their conscience and convictions”. 72

Independence (practice)

To what extent is the legislature free from subordination to external actors in practice?

Score: 50

The Bulgarian parliament has effective legal guarantees against any interference from the
other power branches and state institutions, but as in all single chamber parliamentary
democracies the institutional pattern provides for “informal” dominance of the executive.
Since 1994 the consolidation of the Bulgarian parliamentary democracy has manifested itself
in a clear tendency of strengthening the executive vis-à-vis the legislature.
In the current 41st NA the single party minority government has even further contributed to
the dominant role of the executive. But parallel to this tendency there is a visible
intensification of the parliamentary control over the executive as well as intensification of the
legislative initiative of the parliamentarians73.
As seen from the statistics provided by the NA74 the legislative initiative of the
parliamentarians is stable, it often exceeds the initiative of the Council of Ministers, but
naturally the Cabinet is more effective when the numbers of passed laws is calculated.
There are specific acts that have been identified as commitment of the NA – the new Electoral
Code is exemplary of a legislation drafted and passed by the NA without procedural
interference of the executive. The major reason for the leading role of the NA in the drafting

70 Constitution of the Republic of Bulgaria, Art. 69.
71 Ibid. Art. 70.
72 Ibid. Art. 67.
73 See below monitoring reports of two NGO – Legal Barometer issued bi-annually by the Centre for Legal
Initiatives; and Monitoring Report – issued three times in a year by the Institute of Modern Policy
74 http://www.parliament.bg/bg/statistics
of the electoral code was the targeted consensus among all major parties. Even after it became clear that consensus is not effectively achieved the executive refrained from interfering. The acts of “informal” interference by the executive in the decisions of the current NA should be explained not only with party discipline but mostly with the specific leadership position of the acting Prime Minister Boyko Borisov. On several occasions Borisov has effectively influenced the behaviour of MPs from the ruling party GERB – not in cases of voting on bills, but on cases of personal appointments and personal sanctions. A notorious example is the case of a failed sitting of the Anti-corruption Committee scheduled to decide on violation of the Law on Conflict of Interest because a member of GERB failed to appear on a scheduled sitting – as the case appeared to have far-reaching political consequences on request of Borisov an irregular sitting was scheduled for the next day and the GERB MP attended and voted as declared by the Prime Minister. 

Despite the strong leadership and party discipline the 41st NA recently has rejected an important bill initiated by the executive. On July 8 the National Assembly rejected at first reading with 95 votes "against" 71 votes "for" and one abstention the Draft Act for Forfeiture of Property Acquired Through Criminal Activity and Administrative Violations. The executive may reintroduce the Bill not earlier than three months after its rejection and only after substantial changes in its main provisions, which are to be reflected in the motivation 

According to the bi-annual Legal Barometer for the last 20 years the legislative process in the NA has been characterised by “its instability and unpredictability due to the intensive changes of the acts” (high number of amendments to recently passed laws) a tendency that has been maintained during the 41st NA – see the Table below.

<table>
<thead>
<tr>
<th>Time period</th>
<th>New laws</th>
<th>Ratifications</th>
<th>Amendments (ASA)</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan-June 2010</td>
<td>6</td>
<td>22</td>
<td>43</td>
<td>71</td>
</tr>
<tr>
<td>July-Dec 2010</td>
<td>7</td>
<td>28</td>
<td>68</td>
<td>103</td>
</tr>
</tbody>
</table>

The lack of strategic legislative policy undermines the autonomy of the legislature as most of the ASA are initiated by the executive. In addition the high number of by-laws needed for the implementation of the passed legislation is the routine practice used by the government to strengthen the dominant role of the executive over the legislature by increasing its discretionary powers in vital policy areas. The average ratio of by-laws to laws is 12:1, but there are laws with 91 by-laws.

According to the regular monitoring reports of the Institute of Modern Politics (IMP) there is an effective system of parliamentary control and a positive tendency both of increase in the overall number of interrogations and interpellations and an increase in the number of deputies involved in the parliamentary control – see the table below.

<table>
<thead>
<tr>
<th>Time period</th>
<th>No of interrogations and interpellations</th>
<th>No of MPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.07.2009-14.11.2009</td>
<td>190</td>
<td>75</td>
</tr>
</tbody>
</table>

76 Legal Barometer – Issue 1, p. 6; Issue 2, p. 7 http://www.cli-bg.org/index_eng.html
77 Legal Barometer, Issue 2, p. 3 http://cli-bg.org/Legal_barometer_EN_2.pdf
78 Amendment and Supplementation Act.
79 Legal Barometer, Issue 2, p. 6-7.
80 Report http://www.modernpolitics.org/?page_id=204
The monitoring of the parliamentary control regularly presented to the media by Borislav Tzekov, director of IMP expectedly recorded higher activity of the opposition MPs, but the results indicated that substantial policy areas and hot policy issues are undermined.82

Recently a statement of the Institute of Modern Policy has made a very negative assessment of the passed legislation emphasizing that in many cases the legislation originating in the parliament has been related to unregulated lobbying practices and unrevealed conflict of interests83.

GOVERNANCE

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

Score: 75

Full shorthand records are drawn up of the sittings of the National Assembly on the day of the sitting or on the following day at the latest. Each record is signed by the stenographers, by the two Secretaries on duty and by the Chairperson not later than the week following its production. Explanatory memorandum and text of bills, resolutions, and other enactments of the National Assembly, and any proposed amendments, whether read out or not on the floor, and the printouts of voting results from the computerised system are to be attached to the shorthand records.84

The constitutional provisions stipulate that sessions of the National Assembly are public, but the NA “may by exception resolve to hold some sessions behind closed doors,”85

The media has a guaranteed access to the NA and it is regulated in detail.86 For the permanent accreditations there are fixed quotas depending on the type of media (varying from 2 to 8), but for the public radio and TV (Bulgarian National TV and Bulgarian National Radio) the quotas may be extended. The number of temporary accreditations is not restricted. The accredited journalists have de facto unlimited access to parliamentary sessions and information sources. Accredited journalists are free to record or broadcast plenary sessions (there is a special podium in the plenary and specialised sites in the main building hallways). The same holds true for most of the committee sittings.

Plenary sessions and committee sittings are open to the public with the exception of two specialized permanent committees - on Foreign Affairs and Defence and on Internal Security and Public Order. They hold closed door sittings, but occasionally their members may decide

82 Цеков, Б. „Доколко депутатите контролират кабинета”, в. Труд, 28.04.2011
http://www.trud.bg/Article.asp?ArticleId=871230
84 Rules of Organisation and Procedure of the 41st National Assembly Art. 63
85 Constitution of the Republic of Bulgaria, Art. 82
86 Правила за акредитация в Народното събрание на представителите на средствата за масова комуникация и за тяхната работа при отразяването на дейността на парламента http://www.parliament.bg/bg/mediaprocedures
to hold open sittings.\textsuperscript{87} Individual citizens have access to the parliamentary sessions and committee meetings upon request, which needs personal approval of an MP. Representatives of civil organisation, trade unions, professional and industries’ associations, on their request, may attend permanent committee meetings.\textsuperscript{88}

The records of the verbatim of floor sessions are obligatory part both of the legislation process and of parliamentary control as required by the Rules of Organisation and Procedure of the NA. The records are to be published within 7 days on the Parliament’s website\textsuperscript{89}. The latter requirement was passed in the autumn session of 2010 after an alleged manipulation of text of a bill has been disclosed\textsuperscript{90}. There are no explicit requirements to publish the agenda committee sittings and there is no time requirement for the announcement of the agenda of the plenary session.

The permanent committee on Human Rights, Religion, Citizens’ Complaints and Petitions is authorised to deal with all kinds of citizen’s complaints, inquiries and submit annual report.\textsuperscript{91}

The Information and Administrative Services Center Department is the administrative unit authorised to deal with citizens complaints, inquiries etc. There is a special electronic service for citizens’ queries, but they are also filed in the traditional way.\textsuperscript{92}

Since 2006 the asset disclosures of Bulgarian politicians are made public and are available on the internet.\textsuperscript{93} In accordance to the Public Disclosure of Senior Public Official's Financial Interests Act\textsuperscript{94}, declarations required by Law on the Prevention and Disclosure of Conflict of Interests are also available on the internet and a visible link is provided on the official webpage of the 41\textsuperscript{st} NA.\textsuperscript{95}

On the other hand, there is no legal requirement for MPs to state reasons for and disclose consultations that they have had in connection with proposed amendments to legislative bills already under review in the parliament. There is no Lobbying Act or register of lobbyists either.

**Transparency (practice)**

*To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?*

**Score: 75**

The NA maintains high effectiveness in its communication strategy, and the substantial reorganisation and updating of the parliamentary internet site has also contributed to this

\textsuperscript{87} Ibid Art 28 (4) and (5)
\textsuperscript{88} Rules of Organisation and Procedure of the 41\textsuperscript{st} National Assembly, Art 28 (3)
\textsuperscript{89} Rules of Organisation and Procedure of the 41\textsuperscript{st} National Assembly, Art 41 (5).
\textsuperscript{90} An ad hoc parliamentary committee was organised “Committee of inquiry to alleged serious violations of the Constitution and the Rules of Organization and Procedure of the National Assembly in the process of voting and promulgating the Act on Amendment and Supplement to the Control of Narcotic Substances and Precursors Act , namely the promulgation in the State Gazette issues N0 22/2010 and the amendment to the same act which appeared in the next issue SG N0 23/2010 http://www.parliament.bg/bg/parliamentarycommittees/members/338
\textsuperscript{91} Ibid., Art. 18 (4)
\textsuperscript{92} Виртуално деловодство http://www.parliament.bg/bg/online ; проверка на документ в деловодството
\textsuperscript{93} Регистър на лица, заемащи висши държавни длъжности http://register.bulnao.government.bg/
\textsuperscript{95} Регистър по закона по установяване и предотвратяване на конфликт на интереси http://parliament.bg/register/?page=DECL&lng=
improvement. The parliament is on the top of the news, MPs actively participate in electronic and in printed – with debates and interviews.

There have been some procedural delays and inconveniences regarding the public access to the shorthand records of parliamentary sittings. Since 2010 there has been a substantial improvement in the information provided on the internet site of the NA – both providing for easier access and shortening the delay of publication.

Plenary sessions may be viewed online and the transmission is guaranteed and provided by the public TV Channel 1. All TV and radio stations may broadcast legislative sessions free of charge. Generally the access to information is unlimited and easy with the exception of the information about the roll-call votes which requires a more complicated bureaucratic procedure and is usually delayed.

All bills are published with no exception and/or delay, but the publication of the laws usually has a substantial delay.

The agenda of plenary sittings is published not earlier then the morning before the opening of the sitting, as the Chair Council debates and decides on the agenda on the day of the sitting. An archive of the agenda of all passed plenary sittings dating back to October 2002 is available on the internet. The shorthand records of the plenary sittings are published within a week and an archive of the records dating back to November 1991 is available on the internet.

The agenda of the permanent committee sittings is usually decided and published a week before the scheduled sitting. Agenda archive is also available via internet.

The parliamentary control agenda is also published a week prior to the parliamentary sitting and ten-year archive (back to August 2001) is also publicly available.

There is a record of unjustified absences of the Members of 41st NA and it is made publicly available on monthly basis. An archive of all unjustified absences since July 2009 is maintained and available on the internet.

Through a software solution (RSS) there is integrated online access to 11 databases: news, forthcoming events; bills; declarations of NA; decisions of NA; unjustified absences; permanent committee sitting; plenary sittings; parliamentary control; shorthand records of plenary sittings.

The Budget and balance reports are published quarterly, but they are rather general – accumulated along “programming lines”.

Since 2006 the asset disclosures of Bulgarian politicians are made public and are available on the internet. Usually media pay high attention when the new declarations are made public. Declarations required by Law on the Prevention and Disclosure of Conflict of Interests are also available on the internet and a visible link is provided on the webpage of the 41st NA.

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96 Open Parliaments: Transparency and Accountability of Parliaments in South-East Europe, 2010
http://www.fes.bg/?cid=13&NewsId=803
97 Opinion of Vladimir Milanov, senior expert at the 41st NA
98 Ibid.
100 Plenary sittings shorthand records http://www.parliament.bg/bg/plenaryst
101 Committee sittings agenda http://www.parliament.bg/bg/parliamentarycommittees/sitting/#2011-07-19
102 Parliamentary control agenda http://www.parliament.bg/bg/parliamentarycontrol/ID/429
103 Unjustified absences http://www.parliament.bg/en/absense
104 RSS емисии http://www.parliament.bg/bg/rss
105 http://www.parliament.bg/bg/parliamentarybudget
106 Регистър на лица, заемащи висши държавни длъжности http://register.bulnao.government.bg/
107 Регистър по закона по установяване и предотвратяване на конфликт на интереси http://parliament.bg/register/?page=decl&lng=
The overall transparency of the NA may be assessed as going beyond the legal provisions as journalists, NGO-s and checking institutions have exposed actual normative loopholes and malpractices, which were respectively rectified and/or adjusted.

**Accountability (law)**

*To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?*

**Score: 75**

The Bulgarian model of separation of powers is a version of “rationalized parliamentarism” – the Bulgarian Constitutional Court has strong powers to declare unconstitutional acts of Parliament on appeal of one-fifth of all Members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, and the Prosecutor General.\(^{108}\)

The Assembly is independent but subject to constitutional control on several levels. The Constitutional Court has extensive powers, concerning the legislature as it:

- provides binding interpretations of the Constitution;
- rules on constitutionality of the laws and other acts passed by the National Assembly;
- rules on competence suits between the National Assembly, the President and the Council of Ministers;
- rules on the compatibility between the Constitution and the international treaties concluded by the Republic of Bulgaria prior to their ratification, and on the compatibility of domestic laws with the universally recognized norms of international law and the international treaties to which Bulgaria is a party;
- rules on challenges to the constitutionality of political parties and associations;
- rules on challenges to the legality of an election of a Member of the National Assembly;
- rules on impeachments by the National Assembly against the President or the Vice President.\(^{109}\)

There is an explicit constitutional provision stipulating that “No authority of the Constitutional Court shall be vested or suspended by law”\(^{110}\), meaning that the acting parliament has no way to circumvent the extended checking powers of the Constitutional Court. The Bulgarian constitution is very rigid and a special amendment procedure is required if the majority in the acting NA decides to amend the powers of any other power branch (Judiciary, Executive, Constitutional Court) – the acting Assembly is to be dismissed and a specialized body – Grand National Assembly needs to be elected and respectively amend the constitution.\(^{111}\)

The President also controls the NA, but has weak veto powers, which may rather renew the public debate than impede a decision of the governing majority by a requirement of broader consensus. As stipulated by the constitution, the President may decide to return a bill together with his motives to the NA for further debate, which shall not be refused within 15 days after the NA has passed this bill. The new passage of such a bill requires a majority of more than

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\(^{109}\) Ibid. *Art. 149 (1)*

\(^{110}\) Ibid. *Art. 149 (2)*

\(^{111}\) Ibid. *Art. 158; Decision of the BCC No. 3 from April 10/ 2003* (Обн., ДВ, бр. 36 от 18.04.2003 г.)
half of all Members of the NA, but following a new passage of the bill, the President has to promulgate it within seven days.\textsuperscript{112}

The Bulgarian \textit{Economic and Social Council} is a specialised public body with consultative functions administratively subordinated to the NA but providing consultations to all state institutions. The ESC was established on December 10, 1993 by a specialised law (Law on the Economic and Social Council, passed in 1991\textsuperscript{113}). The ESC is designed after the model of the EU EESC\textsuperscript{114} and performs a variety of activities. Annual reports of the ESC\textsuperscript{115} are discussed by the Parliamentary Committee on Labour and Social Policy\textsuperscript{116}. Representatives of civil organisation, trade unions, professional and industries’ associations, on their request, may submit written opinions and participate in the Standing Committees’ deliberations on draft legislation concerning their activities and issues of interest.\textsuperscript{117}

Recently (in June 2009) a legal option of initiating national referenda by citizen’s petitions has been introduced\textsuperscript{118}. According to the \textit{Direct Citizen Participation in State and Local Government Act} citizens’ petitions signed by more than 500 000 persons may initiate referenda on limited number of issues and a threshold of 200 000 signatures is introduced for a referenda petition.

In the 41\textsuperscript{st} NA by transforming the standing Parliamentary Ethic Committee into Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee effective mechanisms have been introduced to handle complaints against decisions and actions of individual MPs. The committee is organised to guarantee parity between all party factions – each faction may have only one representative and there is a rotating chairmanship giving each party faction representative equal opportunity to preside over the sittings of the committee. Nevertheless because of the existing legislative vacuum (Code of Ethics drafted in 2002 has not been passed yet), the sanctions are decided ad hoc and ad hominem. According to one of the rotating Chairpersons\textsuperscript{119} the legislative vacuum makes the committee ineffective and undermines its authority.

\textbf{Accountability (practice)}

\textit{To what extent do the legislature and its members report on and answer for their actions in practice?}

\textbf{Score: 50}

Since 1991 the Rules and procedures of four National Assemblies\textsuperscript{120} have been appealed to the Constitutional Court five times\textsuperscript{121}. Concerning the current 41\textsuperscript{st} Assembly its rules and

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{112} Ibid. Art 101
\item \textsuperscript{113} Закон за Икономически и социален съвет, Обн., ДВ, бр. 41 от 24.04.2001 г., изм., бр. 120 от 29.12.2002 г., изм. и доп., бр. 20 от 4.03.2003 г., изм., бр. 17 от 24.02.2006 г., в сила от 1.05.2006 г., изм. и доп., бр. 36 от 4.04.2008 г.
\item \textsuperscript{114} It is an expert body affiliated to the NA and is parallel and nonrelated to the National Council for Tripartite Cooperation \url{http://www.saveti.government.bg/web/cc_13/1}
\item \textsuperscript{115} Report of ESC for 2010 \url{http://www.parliament.bg/pub/eW/20110513111011otchet%20za%20deinosta%20na%20iss%20prez%202010.pdf}
\item \textsuperscript{116} Official record – 11.05.2010 \url{http://parliament.bg/bg/parliamentarycommittees/members/231/steno/ID/2087}
\item \textsuperscript{117} Rules of Organisation and Procedure of the 41\textsuperscript{st} National Assembly, Art 28 (3)
\item \textsuperscript{118} Закон за пряко участие на гражданите в държавната власт и местното самоуправление (Обн., ДВ, бр. 44 от 12.06.2009 г.)
\item \textsuperscript{119} Dimo Gyaurov, Member of the 41\textsuperscript{st} NA.
\item \textsuperscript{120} These are Rules of Organization and Procedure of 36\textsuperscript{th}, 37\textsuperscript{th}, 39\textsuperscript{th} and 41\textsuperscript{st} Assemblies
\item \textsuperscript{121} Нормативни актове, по които има произнасяне на КС \url{http://www.constcourt.bg/Pages/LegalBasis/Default.aspx?type=1}
\end{itemize}
\end{footnotesize}
procedures have been appealed twice and the Court has declared unconstitutional texts from the Art. 3 and Art. 98. In the second case the 41st Assembly attempted to strengthen the executive vis-à-vis the legislature unconstitutionally restricting the opportunity of the opposition to initiated no-confidence vote, while in the first case the Court abolished “lustration” text banning MPs who collaborated with the Communist Secret Services from being elected Committee Chairs, members of Parliamentary Delegations.

The same level of judicial activism is observed when reviewing passed legislation. During 2010, 12 out of the 15 decisions of the Bulgarian Constitutional Court concerned issues of constitutionality of acts of the NA. The appealed laws vary from texts in the State Budget and Penal Code, to provisions from the Insurance Code and the Energy Act. The appeals have been filed respectively by MPs – 6 appeals; by the President – 3 appeals; by the Ombudsman – 2 appeals and by the Council of Ministers – 1 appeal. Half of the appealed acts of the NA were declared unconstitutional.

Seven out of the eight decisions of the Constitutional Court taken during the current 2011 are on appeals for unconstitutionality. All but one are filed by a group of MPs, and the last one - by the Ombudsman. On six cases the Constitutional Court has declared the acts of the NA unconstitutional.

The Court is also active when providing binding interpretations of the Constitution. Transparency has been reaffirmed in Bulgarian democracy to a large extent due to the seminal decision of the Bulgarian Constitutional court from June 4/1996, stating that „the right to seek and obtain information includes the duty of the State institutions to provide access to significant for the public interest information. The content of this duty should be legislatively determined. It includes the duty of State bodies to publish official information, as well as the duty to provide access to the sources of information.“

During 2010 the then acting President Parvanov exercised his veto powers six times, and in 2011 – twice. Subject to presidential veto were important laws, which provoked public debate and juxtaposition in the parliament such as Electoral code (2011), Law on radio and TV, Labour Code etc.

Considering the widespread negative attitudes towards the MPs, particularly motivated by the televised empty seats at the plenary sittings, a new regulation was introduced – “fines” for the absentees. Fining absentees may have helped to balance the budget restrictions, but primarily it legitimized the parliament and helped maintaining the level of trust, which is low compared to other institutions and also characterized by dramatic decline during the second half of the four-year parliamentary mandate.

The 41st NA and its Chairperson have been very cooperative and responsive to the monitoring reports and recommendations of the Institute of Modern Policy – a think tank which has produced regular monitoring reports. A number of recommendations have been introduced in accordance with the published reports, which was appreciated in the later monitoring reports in balance to the new recommendations.

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122 Decision of the BCC № 11 from 3.12.2009 г. (Обн., ДВ, бр. 98 от 2009 г.)
123 Practice of the Bulgarian Constitutional Court for 2010 http://www.constcourt.bg/Pages/Practice/PracticeByYear/Default.aspx?y=2010
124 Practice of the Bulgarian Constitutional Court for 2011 http://www.constcourt.bg/Pages/Practice/PracticeByYear/Default.aspx?y=2011
125 Decision of the BCC No. 7 from June 4/1996 (Обн., ДВ, бр. 55 от 28.06.1996 г.)
126 Президентско вето http://www.president.bg/zakonod.php?type=5
127 See the overall tendency since last general elections (July 2009) for the parliament and compare with the other political institutions http://alpharesearch.bg/bg/socialni_izsledvania/political_and_economic_monitoring/parlament.html
128 Мониторингов доклад за дейността на XLI Народно събрание: юли-ноември 2010, р. 7.
The lifting of immunity has become a routine procedure mostly because of the public pressure for anti-corruption measures. In the 41st NA it has been applied on a number of cases – both for MPs from the opposition and from the governing minority.\(^{129}\) The practice is that as soon as the Chairperson of NA officially receives request from the Prosecutor’s Office, the respective MP voluntarily submits a written personal consent for lifting his/her immunity. This is done mostly to avoid public debate and vote on the plenary sitting, which is considered to be more humiliating and damaging both for the individual politician and his/her party. This procedure was introduced in 2006 by a constitutional amendment.\(^{130}\) The procedure was followed when the immunity of the ex-Prime Minister Stanishev (serving from 2005 to July 2009) was lifted on November 3, 2009.\(^{131}\) Plenary humiliation was not avoided in the case of ex-Minister of Labour and Social Policy Emilia Maslarova. After she gave “her consent in writing”, the right-wing opposition requested her dismissal from the position of Committee Chair. The majority voted for the dismissal, the act was appealed to the Constitutional Court and the Court upheld the decision of the 41st NA.\(^{132}\)

Citizens regularly file complaints, which are reviewed by the Human Rights, Religion, Citizens’ Complaints and Petitions Committee. The current NA has abandoned the practice of the previous one to publish a bi-annually and overview of the letters by citizens. Perhaps this might be due to the fact that there is online access to the database, but mostly because the largest number of them refers to “conflict of interest cases”\(^ {133}\) which are handled by the Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee (see a detailed comment in the respective section below).

In December 2010 a petition for Amendment of the Constitution was filed in the NA by a small opposition Law, Justice and Order Party. The petition was validated by Citizens Registration and Administrative Service Office – a procedure provoking public criticism initiated by the Law, Justice and Order Party. The Official report showed that only 389 705 out of the 597 167 filed signatures are valid (i.e. 35% invalid signatures were found).\(^ {134}\) The petition was discussed by the Legal Committee\(^ {135}\) and in accordance to the law unanimously the committee members have decided to propose to the plenum rejection of the petition request. Hence the practice of imitation of legislative and constitutional amendment by citizens’ petitions is not yet institutionalized.

**Integrity mechanisms (law)**

*To what extent are there mechanisms in place to ensure the integrity of members of the legislature?*

**Score: 25**

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\(^{129}\) For the two years of the 41st NA about 10 requests have been processed.

\(^{130}\) Constitution of the Republic of Bulgaria Art. 70 (2)


\(^{132}\) Decision of the BCC № 3 from 23 February 2010 (Обн., ДВ, бр. 18 от 05.03.2010 г.)

\(^{133}\) Interview with Maria Vladimirova, expert at the Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee.


Since 2002 there are attempts to pass two important legislative acts – *Code of Ethics* and *Law on Lobbying*. In the current 41st NA *Code of Ethics Bill* was drafted once again but there are no signs that it will be passed in the near future. However the existing legislative vacuum is producing both public scandals and procedural inefficiencies in the working of the *Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee (ACCIPEC)* set to deal with such issues. This is a brand new type of standing committee introduced for the first time in the 41st NA. It is designed to be strongly counter-majoritarian – both membership and chairmanship of the standing committee are in accordance with the principle of parity – one representative from each party faction, rotating chairmanship with equal duration for each party faction representative.

There are no rules on gifts and hospitality for legislators. As a result of the increased transparency of the legislature this normative vacuum became visible and provoked extensive concerns when a journalist action resulted in public scandal 16 MPs failed to attend a plenary sitting and instead attended a promotion of luxury cellular phones expecting to get free samples. The case was brought to the ACCIPEC but it failed to take any measures as its Chairperson commented "In the Rules of Organisation and Procedure of the 41st National Assembly there are only restrictions sealing the value of received gifts". The parliamentary majority refused to pass the draft Code of Ethics and I will try to initiated at least amendments to the Rules and Procedures, … but there is no political will to introduce such regulations. There are also no post-employment restrictions for legislators. There are no requirements for legislators to record and/ or disclose contact with lobbyists. The lack of such normative basis is compensated by *ad hoc* and *ad hominem* decisions referring to the laws on conflict of interests and public disclosure of assets.

**Integrity mechanisms (practice)**

*To what extent is the integrity of legislators ensured in practice?*

**Score: 25**

There have been a number of positive developments mostly related to the implementation of the two laws mentioned above. Annually MPs, experts and public servants in the NA are required to fill in declarations on conflicts of interests and report on their assets. For the first time legislators were sanctioned in accordance to the law. Two MPs were fined for not submitting declarations and two MPs were convicted by the Supreme Administrative Court of violating the law by submitting a Bill for Amendment to Law on Use of Arable Land. It is important to mention that the latter two legislators are members of the governing majority.
However the lack of consistent integrity mechanisms and norms has lead to a series of public scandals and organizational malfunctions. They have been most visible in the pattern of functioning of the Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee (ACCIPEC) which has been very active in implementing the new Law on prevention of conflict of Interest. ACCIPEC is one of the two parliamentary committees organised according to anti-majoritarian principles, but exactly these regulations (“one party-one representative” and “rotating Chairperson mandate”) have led to persistent malfunctioning of the standing committee:

**Vacant seat case** – while in the other committees specific education or policy expertise were considered important, members of ACCIPEC were presumed to abide with high ethical standards. When constituting ACCIPEC an overwhelming majority of the MPs voted against the person nominated by the Movement for Rights and Freedoms (in the 41st NA MRF has the third largest party faction) thus revoking the existing practice of uncritical support for the party nominations, followed in the constitution of all committees. The MRF, which has become notorious for its disregard of anti-corruption standards, has nominated Delyan Peevski, a former Deputy-Minister in the coalition cabinet of the previous government, who was dismissed in May 2007 over allegations of corruption. From 29.07.2009 to 24.03.2010 the MRF legislators refused to nominate another person for the ACCIPEC. The MRF representative Kamen Kostadinov was nominated and immediately elected in March 2010, when the ACCIPEC had to decide on accusations of conflict of interest against MRF party leader Ahmed Dogan. Though the vacant seat might be considered a symbolic act, it substantially hampers the effectiveness and the legitimacy of ACCIPEC which includes only one representative from each party faction.

**Interrupted mandate case** - Another inconsistency in applying good practices was provoked by the procedural dismissal of the first Chairperson of the Committee - Yane Yanev (leader of a small protest party with very aggressive anti-corruption electoral platform) who managed to perform his duties for less than 4 months (from 29.07 to 10.12.2009) and lost both his membership and chairmanship in the ACCIPEC because of “party switching” of 3 MPs from his party faction. In December 2009 his Law Order and Justice Party was left with less than 10 MPs required for a parliamentary faction and hence lost its entitlement to representatives in the standing parliamentary committees. However 18 months later seven independent MPs were provided with the opportunity of becoming standing committee members, allegedly in return for their support for the cabinet during the 3rd no-confidence vote.

**Double commitment or triple violation of ethical standards** - combination of interrupted mandate and vacant seat has been the third hurdle to the normal functioning of the Committee. When the representative of party ATAKA in the ACCIPEC, who was serving as Chair of the committee decided to defect from his party faction (together with two other MPs) accusing the party leader Volen Siderov of manipulative interparty practices. The three defectors filed a complaint to ACCIPEC accusing Siderov of violation of ethical standards. The answer was that ATAKA officially requested replacement of its representative in the ACCIPEC and nominated its leader – Volen Siderov for the position of member and rotating chair. 

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142 Комисия за борба с корупцията и конфликт на интереси и парламентарна етика
143 The disregard of MRF to abide with code of ethics requirements may be illustrated by two facts – several months after the dismissal of Peevski the party imposed on its coalition partners his reappointment; despite the overwhelming parliamentary majority, which rejected his nomination for the Anti-corruption Committee, three times MRF has tried procedurally to circumvent his rejection, protesting the vote on the basis of claim for preconception (discrimination and ethnic hatred were irrelevant as Peevski is Christian and ethnic Bulgarian)
144 in July 2011
145 „Герб се отплати на независимите депутати с квота в комисите“ в. Сега 27.07.2011; “ТЕРБ уреди 2-ма независими в парламентарни комисии“ в. Труд – 27.07.2011

49
chair. The opposition MPs accused Siderov of violation of ethical standards – once within his own party, second in his political activities (ATAKA is a radical nationalistic party and has recently provoked public criticisms by initiating violent clashes in front of Sofia Mosque) and third instrumentally – you are not supposed to preside over a committee scheduled to decide on your own misconduct. The governing party GERB motivated their positing by pointing to the ‘double commitment” of Siderov, who is a member and rotating chair of another parliamentary standing committee. Four consecutive times the plenary has rejected the nomination of ATAKA. Meanwhile the ACCIPEC is paralyzed as the committee cannot convene without a Chair and mostly it cannot produce any document without the signature of its Chair. Because of the limited number of members and rotating Chairperson Mandate it has no vice-chairs.

The chronic malfunction of the ACCIPEC has a two sided effect – on the one side it hampers effective decisions and policy initiatives in the three very important areas of parliamentary integrity, but on the other side it attracts public attention and motivates parliamentary parties and individual politicians to make commitments to high ethical standards.

ROLE

Executive Oversight

To what extent does the legislature provide effective oversight of the executive?

Score: 25

The NA by constitution and legal tradition has the power to set up committees of inquiry, but their ineffectiveness has been a consistent practice. The 41st NA has constituted three ad hoc inquiry committees:

- Ad Hoc Committee of inquiry on the expenditures, appointments and transactions made by the government of Sergey Stanishev in the last year – aimed at investigating wide-range clientelistic networks and corruption allegation against the previous cabinet - acting for more than five months from September 2, 2009 until March 3, 2010 146;
- Ad Hoc Committee of inquiry to verify the signals for alleged violations of the elections for National Assembly, held on July 5, 2009 – acting only three months from September 2, 2009 to December 2 2009 147
- Ad-Hoc Committee of inquiry to alleged serious violations of the Constitution and the Rules of Organization and Procedure of the National Assembly in the process of voting and promulgating the Act on Amendment and Supplement to the Control of Narcotic Substances and Precursors Act, namely the promulgation in the State Gazette issues N0 22/2010 and the amendment to the same act which appeared in the next issue SG N0 23/2010 – acting two months from May 13, 2010 to July 13, 2010 148

The first two of these committees are not dealing with the executive as the third in the list aimed at investigating misbehaviour of legislators, while the second in the list was formed to investigate electoral fraud, which only partially might be the result of misbehaviour of the

146 http://www.parliament.bg/en/parliamentarycommittees/members/242
147 http://www.parliament.bg/en/parliamentarycommittees/members/243
executive. In any case it is indicative that it was not the parliamentary committee investigation but the investigation initiated by the Constitutional Court, which produced real results\textsuperscript{149}.

The only committee substantially committed to investigation of executive misbehaviour was revealing the activities of the previous Council of Ministers, a triple coalition cabinet of political opponents of the current government. In March 2010 the committee as obliged by the parliamentary rules produced a 127 page Report\textsuperscript{150} but it could not attract much media attention. The activities of the committee are not administered appropriately - there are no online available records of the committee sittings and the agenda of only two of them is posted on the respective website.\textsuperscript{151} The role of the report was rather informative and the Chairperson of the investigation committee – Stoyan Mavrodiev - was elected with six year term head of the Financial Supervision Commission soon after the completion of the report.

The investigative capacity of these committees has been very limited as there are no legal provisions or binding practices that guarantee the responsiveness of the investigated persons or institutions. There are no records of investigative committee hearings which have produces in-depth reports and respectively substantial change in executive policy or practices. The legislature has strong powers to influence and scrutinize the national budget, through all its stages, but has systematically failed to do so during the last 20 years. The existence of Currency Board since 1997 might be a logical excuse for the passiveness of legislature, but it is more plausible to explain it with party discipline and dominance of the executive, as the governing party always has the majority and the Chairmanship in the Budget Committee, which is empowered to scrutinise the executive.

As in many European parliaments in the Bulgarian NA the no-confidence votes are initiated by the opposition, they may focus on a specific policy area and address a specific minister, but procedurally if successful they result in resignation of the Prime Minister. Therefore no-confidence votes in the 41\textsuperscript{st} NA and in all previous ones have always produced consolidation of the governing majority and public clash between legislators from the majority defending the cabinet and opposition MPs strongly accusing the cabinet as a whole or specific minister. The parliament has its quotas in most of the autonomous public bodies, but all of them have fixed mandate. There has been practice of opportunistic change in the appointments through legislative amendments, which introduce new rules of and require dismissal of the existing body and the election/appointment of a new one\textsuperscript{152}.

All autonomous bodies are due to present annual report to the NA committees but this is a largely ceremonial activity without visible outcomes for the public. Recently the supreme judicial authorities were also obliged to submit annual reports, but it is a symbolic act that is neither publicized sufficiently nor used by the legislature to hold them into account by analytic assessment of the reports and public debate of the identified challenges. The elections of parliamentary quotas for these bodies are expected to be based on broad consensus or be the result of an extensive public debate. However the election rarely requires qualified majority (the case with the election of the Ombudsman is a rare exception) and public debates are rarely constructive or productive. Sometimes they even fail to happen.

**Legal reforms**

\textsuperscript{149} Decision of the BCC № 2 from 16 February 2010 г. (Обн., ДВ, бр. 14 от 19.02.2010 г.)
\textsuperscript{150} www.dnevnik.bg/getatt.php?filename=co_878447.doc
\textsuperscript{151} http://www.parliament.bg/bg/parliamentarycommittees/members/242/sittings/period/2009-9
\textsuperscript{152} The case with the Supreme Judicial Council is indicative – consecutively the change in the parliamentary majority has lead to passing legal amendment, which required pre-term dissolution of the SJC, and respectively appointment of new SJC
To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

Score: 25

The current government was elected with a platform where the prevailing if not the single priority was to combat corruption and organized crime. Since the year 2000 and the official commencement of accession to the EU this has been the declared priority of each and every government, though it has also been considered the reason for most of the no-confidence votes initiated by the opposition, as well as initiated by the Prime Ministers and supported by the governing majorities cabinet reshuffles. It would not be an exaggeration to conclude that during the last 12 years, simultaneously and in competition with each other, the parliamentary majorities, the parliamentary oppositions and the extra-parliamentary forces in competition and disagreement with each other have prioritized anti-corruption legislation and policy measures. This self-refuting status-quo has been maintained in the current 41st NA.

Bulgaria has started to develop a legal framework against corruption. The central piece of legislation is the Law on Prevention of Conflict of Interest in Activities of Public Officials. It was passed as a result of persistent criticisms in the EU monitoring reports. In fact the 41st NA was the first Bulgarian institution which developed a specialized body charged with monitoring and reporting to the judiciary cases of conflict of interests.

The other piece of legislation is the Public Disclosure of Senior Public Official's Financial Interests Act. The 41st NA has passed a number of amendments to the existing legislation aimed at making it more effective, but it has also rejected at least piece of legislation with an a Bill on confiscation.

It is important to emphasize the fact that the 41st NA has no legislative strategy or concerning anti-corruption and organized crime or annual strategic program with priorities. In this area the dominance of the executive is evident as each and every cabinet since 1999 works out a strategy supported by annual legislative agenda and time-schedules of planned measures. Since 2000 the NGO associations and think-tanks have been assessing the weaknesses and challenges of the anti-corruption legislation, but the assessments of 2005 Transparency report are still valid.

Any assessments of the effectiveness of the passed legislation and its quality are to a large extent inadequate and irrelevant due to two specificities discussed in the above chapters – high and increasing number of amendments to recently passed bills and extremely high number of by laws in most of the corruption sensitive areas.

A good example of the lack of active involvement of NA in the anti-corruption initiatives is the mishandling of the election of members of the Supreme Judicial Council – after the resignation of two members of the SJC parliamentary quota had to be filled in. The legal and constitutional requirements are “practicing lawyers of high professional and moral integrity with at least 15 years of professional experience”. The parliamentary majority delayed the election for about two years. On July 20, 2011 the NA performed the election after 10 minutes.

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153 The report starts with analysis of cases of „legislatively generated corruption” in specific areas, but also points to the uncritical (passive) implementation of EU law and legal acts from other countries.

154 See Иво Христов „Дефицити в българското антикорупционно законодателство и практиката по неговото приложение“ http://resources.transparency.bg/Materials.html?cat=153

presentation of the short CV and 10 minutes of discussions\textsuperscript{156}. It was not at all a politicized party-disciplined decision, because the two persons (one of them with questionable public reputation)\textsuperscript{157} were elected with the votes of 64 MPs from the governing minority, 10 independent and 29 votes from the opposition MRF.

**Recommendations:**

- The NA should strengthen policy expertise by creating a special analytical unit with highly qualified personnel.
- A Code of Ethics has to be passed.
- The NA should introduce transparency provisions covering MPs’ contacts with lobbyists and publish more extensive information about committee meetings. Also lobbying regulations have to be passed.
- Members of parliament should be required to provide substantiation when they submit proposed amendments to bills already under review in the legislature.
- The NA budget expenditure should be subject to external auditing (or audited by the State Auditor’s Office) and the results of such audits should published.
- The NA should discuss and pass strategy in accordance with the executive strategy, legislative agenda and time-schedule of planned measures in all prioritized policy areas including anti-corruption.

\textsuperscript{156} Opinion of Christo Ivanov - Bulgarian Institute for Legal Initiatives - в. Сега 21.7.2011 г.
EXECUTIVE
BULGARIAN COUNCIL OF MINISTERS

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Summary

The Council of Ministers and the state agencies comprising the Bulgarian executive are undergoing considerable administrative reform paralleled by substantial resource cuts caused by the austerity measures of the government in 2010 and 2011. The streamlining of the role and influence of the “political cabinets” of ministers and the Prime Minister is a positive development. The trend to increase transparency of the decision making process is also positive, though improvement is still needed if the highest standards are to be met. A formal integrity framework for ministers has being introduced. Nevertheless recent developments and media disclosures show that conflicts of interest and continuing practice of shuttling ministers and especially vice-ministers between their public roles and private business are eroding the integrity of the executive. Anti-corruption legislation and policy measures have lost momentum since concerns pertaining to economic crisis and reforms in key policy areas are dominating the government agenda.

Structure and organization

Council of Ministers is the Bulgarian supreme executive. The cabinet consists of a Prime Minister and Ministers, but it is a routine practice one, two or even three of the ministers to have in addition the status of Vice-Prime Ministers. In rare cases a member of the cabinet may hold only the position of Vice-Prime Minister, without having ministerial responsibilities. Most of the ministers have specified portfolios and are directing respective administrative units, but it is also regular to have ministers without portfolio. A minister without portfolio may be responsible for a highly prioritized issue (EU accession) or may hold the status of Vice-Prime Minister.
Since 1991 the number of members of the Bulgarian cabinet has varied from 20 to 15. Currently Bulgarian cabinet consist of Prime Ministers (PM) and 16 ministers – one of the ministers is without portfolio and two of them have also the status of Vice-PMs.\(^{158}\)

In addition to the Council of Ministers, the heads (chairpersons, directors) of 8 State Agencies, 4 State Committees, and 29 Executive Agencies\(^ {159}\), have the status of politically responsible members of the executive. There are a number of offices subordinated to the Council of Ministers, which are directed by persons politically responsible to the Council of Ministers. There are state agencies directly subordinated to the legislature.

Regional governors and mayors, though part of the executive are not going to be included in bodies assessed in the current report.

Directly subordinated to the Prime Minister is the Administration of the Council of Ministers. The Prime-minister relies on its Political Office which includes Vice-Prime Ministers, the Chief of the Office, the Parliamentary Secretary and the Director of the PR Unit. Each Minister has also Political Offices. A specialised Directorate “Government Chancellery” provides organisational and administrative support of the Council of Minister’s meetings.

The Prime-minister has discretionary powers to appoint and dismiss Vice-ministers, regional governors.

There are 4 State-public consultative commissions, 34 Consultative Councils\(^ {160}\), which are permanent bodies assisting the decision-making process in executive. On key legislative drafts and strategic documents Task Forces are also formed\(^ {161}\).

**CAPACITY**

**Resources (practice)**

*To what extent does the executive have adequate resources to effectively carry out its duties?*

**Score: 50**

During the last two years the budget of all public sectors was consecutively cut. The annual budget of the executive for 2010 had been initially 5 708 million BGN (approximately EUR 2 918 million) 87,8 BGN (EUR 44,8) of which were allocated to the Council of Ministers, while later it was cut to 5 239 million BGN respectively 70,7 million for the Council of Ministers\(^ {162}\). For 2011 the respective sums were 5 815 million for the executive with all its branches and 77,7 million for the Council of Ministers\(^ {163}\). The budget for 2009 – an example of a regular, pre-crisis financial plan amounted to 7 109 million BGN (EUR 3 632 million)\(^ {164}\).

In addition to the budget cuts there have been personnel cuts and reduction of the administrative units (30 agencies and have been closed down 10 were reopened, and the balance of the administrative reform is 20 agencies less), which in general are done and assessed as administrative reform aimed at optimising the efficiency of the executive.

The technical resources of all branches of the executive are updated and are currently upgraded. The most substantial problem is still the lack of unified Information system (IT system) and it is not going to be solved easily because every ministry and most of the

\(^{158}\) The official site is [http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?g=001&p=0218&g=, but as part of the administrative register there is also a list of portfolios - http://ar2.government.bg/ras/index.html

\(^{159}\) Органи на изпълнителната власт [http://ar2.government.bg/ras/index.html

\(^{160}\) Портал за консултативни съвети [http://www.saveti.government.bg/web/guest/home

\(^{161}\) Структура на изпълнителната власт [http://ar2.government.bg/ras/index.html

\(^{162}\) Министерство на финансите на Р България, Бюджет 2010 [http://www.minfin.bg/bg/page/419

\(^{163}\) Министерство на финансите на Р България, Бюджет 2011

\(^{164}\) Министерство на финансите на Р България, Бюджет 2009 [http://www.minfin.bg/bg/page/348

55
agencies have already developed their specific and incompatible with each other Information systems and the process of integrating them will be time consuming and very expensive.\(^1\) There is also inconsistency between the data provided by the National Statistical Institute and the data provided by the Annual Report of the Council of Ministers. Starting from 2012 the NSI will be the only source of information and the Annual report will refer to it.

During the mandate (2005-2009) of the previous government, which was a triple coalition the practice of extensive political cabinets was established – each minister had three vice-ministers, two nominated by the coalition partners and one nominated by her/ his own party. As the current government is a single party minority cabinet, this practice was abandoned, which may have saved funds and deliberation time, but also has worsened the human resources of the executive.

One of the major factors hampering the capacity of the Bulgarian executive has been the rapid coming into power of brand new parties. This has been the case with the National Movement of the former monarch in 2001 and repeatedly with GERB in 2009. Twice the executive was composed of persons with limited political experience. There are two notorious examples which illustrate this problem. The first is a former Minister of Foreign Affairs Rumyana Zheleva, who was nominated as EU commissioner. In early January 2010, she caused international embarrassment to the country by her below par performance during her nomination hearing in the European Parliament and the allegations of questionable economic links.\(^2\) The second is a former Director of the Agriculture Fund Kalina Ilieva, who has been publicly disgraced after revelations that she lied about her professional credentials, diploma and pregnancy. It was proved that she lied about her university diploma from the Berlin University of Applied Sciences for Engineering and Economy, as officials in Germany confirmed that she never graduated, and her diploma was a forgery.\(^3\) To conclude, the problem with human resources is systematic as in key areas – Agricultural Fund and Ministry of Healthcare there have been three consecutive top personal replacements for a period of less than a year.

There are two trends, which substantially weaken the capacity of the executive. The first is the recurrent partisan appointment/election of high executives (heads of agencies and other autonomous bodies). This practice of politicising persisted over the last 20 years, and was strengthened and made more visible due to the fact that no parliamentary majority has managed to have a second term and each new majority has promoted its own political appointments partially violating the requirements of fixed mandates. A seemingly different, but very much interrelated tendency is also evident – the development of clientelistic networks which were meant to guarantee full mandate (term of office) for appointees with high expertise and public authority, but have gradually transformed into shadow or semi-legal representation of interest groups in the executive. The cases of Vice-ministers with clear interest-group affiliation are numerous.

**Independence (law)**

*To what extent is the executive independent by law?*

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\(^2\) [http://www.capital.bg/vestnikut/kapital_prim/2010/01/12/841379_skandalut_s_izslushvaneto_na_rumiana_jeleva_v](http://www.capital.bg/vestnikut/kapital_prim/2010/01/12/841379_skandalut_s_izslushvaneto_na_rumiana_jeleva_v)

\(^3\) [http://www.capital.bg/politika_i_ikonomika/bulgaria/2010/12/03/1004817_mente_kalinka/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2010/12/03/1004817_mente_kalinka/)
Score: 75

As in all parliamentary regimes the Bulgarian Council of Ministers is responsible to the legislature (National Assembly) and relies on the support and confidence of the parliamentary majority in order to effectively perform its powers. If the PM intends to introduce changes in the personal or structural composition of the cabinet he/she needs the approval of the legislature – a plenary, simple majority vote. There are 8 state committees, which are directly responsible to the legislature.

In addition to the regular checks and balances on the cabinet by the legislature and the judiciary, the independence of the Bulgarian executive is limited by the powers of the President to appoint high rank officials – the head of state appoints and removes the higher command of the Armed Forces and bestows all higher military ranks on a motion from the Council of Ministers. On a motion from the Council of Ministers, the President appoints and removes the heads of the Republic of Bulgaria's diplomatic and permanent missions at international organizations. There have been regular confrontations between the two branches of government during the last two years – a special issue of conflict was the recalling of Ambassadors revealed as collaborators to the communist State Security services. The motion of the Council of Ministers to dismiss these ambassadors was effectively blocked for almost a year by the President.

It is not legal provisions but on the contrary the existing legal vacuum that provides for the other restriction of the independence of the executive. According to a pre-1989 legal arrangements, that were not amended so far the Intelligence Services is under the direct subordination of the President. There is no explicit constitutional provision but pertaining to the presidential powers to “appoint and remove from office other state officials, established by law” the President still holds the control over the national Intelligence Service, which has to report to the Council of Ministers and to the legislature, but is responsible to the President. Considering the limited administrative capacity of the presidential administration this means that there is a deficit of civil and accountable governmental control over the intelligence service.

Independence (practice)

To what extent is the executive independent in practice?

Score: 75

The constitutionally regulated model of separation of powers in Bulgaria on the one hand and the procedures institutionalised since 1991 have produced a executive-dominated government system. The powers of the President have been gradually restricted and even if still not accomplished it is expected that the Intelligence Service will soon be subordinated directly to the Council of Ministers. Bulgarian military structures are definitely subordinated to civil agencies and unlawful interference of other state bodies in the functioning of the executive is not an issue of concern.

During the last year there have been two issues of public concern, which are directly related to the independence of the executive. The first was the use of “Special surveillance means”, technical equipment for recording private conversations. Several years ago the concern was

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168 Constitution of the Republic of Bulgaria Art. 100 (2).
169 Constitution of the Republic of Bulgaria Art. 98 (6)
170 http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/01/21/1029076_poslanicite_na_prezidenta/
171 Constitution of the Republic of Bulgaria Art. 98 (7)
about surveillance of journalists by counter intelligence service. This year the concern was about the leak of surveillance records from phone conversations of high executives, including the Prime Minister himself\textsuperscript{172}. Among the list of important questions arising from the scandal is the question about the independence of the executive.

The second issue refers to the capacity of the executive to guarantee rule of law when confronted with strategic interests of influential companies (businesses). A clear cut example is the conflict between the National Customs Agency and Lukoil. On July 22, the Customs Agency revoked Lukoil's licenses for two tax warehouses because of the company's failure to equip the facilities with the mandatory measuring devices providing a direct link to the tax authorities. A temporary production halt at Lukoil Neftohim caused Bulgaria to tap state reserves for jet fuel in attempt to guarantee normal functioning of the three major airports – Sofia, Varna and Burgas.\textsuperscript{173} The company used judicial procedures to get a respite but it became clear that Lukoil alone has the capacity to cause serious destabilization of the government.

**GOVERNANCE**

**Transparency (law)**

*To what extent are there regulations in place to ensure transparency in relevant activities of the executive?*

**Score: 75**

The 11th AIP report on the state of access to information in Bulgaria in 2010 concludes that after the 2008 amendments to the Access to Public Information Act the Bulgarian legislation is harmonized with the international standards set forth by the *Convention on Access to Official Documents*\textsuperscript{174} adopted in 2008 by the Council of Europe even though the Convention is not officially ratified by Bulgaria. There is a package of laws regulating the disclosure of information – on government decisions, on personal assets of the officials\textsuperscript{175}. In a number of laws it is explicitly required to establish public registers – on administrative structure and proceedings, on public procurement regulations, on municipal public property, on assets declarations of public officials.

There are specialized bodies authorized to enforce laws on disclosure of information – “twenty-six Structural Regulations of bodies within the executive set up administrative units to handle different aspects of the APIA implementation. This fact in itself reveals that the fulfillment of the obligations under the APIA is taken seriously”\textsuperscript{176}.

The 11th AIP report on the state of access to information in Bulgaria in 2010 indicates that there are a few deficits in the acting legislation\textsuperscript{177} and emphasizes that as a result of structural changes in the Council of Ministers there is no political figure responsible for the coordination and implementation of the Access to Public Information Act (APIA).


\textsuperscript{174} Adopted on November 27, 2008

\textsuperscript{175} Закон за публичност на имуществото на лица, заемащи висши държавни длъжности, Закон за достъп до обществената информация, Закон за защита на класифицираната информация.


\textsuperscript{177} For example “lack of prescribed obligation for the public authority to help the requestor, as far as reasonably possible, to identify the requested document” [http://www.aip-bg.org/en/](http://www.aip-bg.org/en/)
Each meeting of the Council of ministers is attended by a stenographer and at the end of it a protocol and a stenographic record attached to it is produced.\textsuperscript{178} The agenda of the meetings is set a week ahead and all materials are to be available in the properly recorded form\textsuperscript{179}. All proposals are in written and have the written authorization. They are submitted with attached written motivation, information about the budget effects from the implementation of the proposed measure, and written announcement for the media\textsuperscript{180}. All written materials are submitted in electronic form.

All proposals (draft acts) have to be published on the internet site of the agency, which brings the proposal.\textsuperscript{181} Within the Administration of the Council of Ministers there is a Directorate “Government Chancellery” with specific responsibilities to document and records all activities of the executive, to keep the records and to publish them. There is a specialized information system accessible via internet which contains records of all acts of the executive - decrees, dispositions (ordinances), decisions (resolutions), minutes (protocols) and stenograph records.

The government budget must be made public as part of the annual Budget Law. However there is no legislation pertaining to disclosure of information on management and disposition with state property. The legal provisions do not guarantee effective control and sanctions when the obligations for disclosure of information are not met.

\textbf{Transparency (practice)}

\textit{To what extent is there transparency in relevant activities of the executive in practice?}

\textbf{Score: 50}

The internet site and related info-portals of the Council of Ministers have been substantially improved during the last year, but this does not refer to all the other executive agencies. The 2010 AIP report on the state of access to information in Bulgaria has assessed that the number of state agencies with regularly maintained web site has decreased, mostly due to the cuts in the budget. The report indicates that this tendency is relevant mostly for the regional agencies.\textsuperscript{182}

The government budget is made public as part of the annual Budget Law. In addition the budget itself and documents related preparation and implementation of the budget are displayed on a specialised page of the Ministry of Finance internet portal\textsuperscript{183}. There are some changes in the format of this reporting. Since 2010 the practice of publishing monthly reports on the budget implementation\textsuperscript{184} was abandoned. On the other hand since 2011 a detailed, program-based structure of the budget for each autonomous body of the executive\textsuperscript{185} is published.

\textsuperscript{178} Rules of Procedure of the Council of Ministers and its administration, Art. 46
\textsuperscript{179} Ibid. Art. 38 and Art 36.
\textsuperscript{180} Ibid. Art. 35.
\textsuperscript{181} Ibid. 31 (4)
\textsuperscript{182} Ibid. p. 24.
\textsuperscript{183} Страница “Бюджет” на Министерство на финансовете на Р България \url{http://www.minfin.bg/bg/page/4}
\textsuperscript{184} For 2009 monthly reports are available at \url{http://www.minfin.bg/bg/page/389} (Месечен бюлетин за изпълнението на бюджета 2009)
\textsuperscript{185} Проектобюджети в програмен формат на първостепенни разпоредители с бюджетни кредити за 2011 година \url{http://www.minfin.bg/bg/page/581}
The stenograph records of the meetings of the Cabinet are regularly published on the site of the cabinet within a specially designed information system. However this practice has been established in September 2009 and since then the stenograph records of the cabinet meetings are available. An archive database is gradually established – currently it dates back to August 2005. Stenograph records of meeting held before that date are also available to the public but upon a special request and while for journalists it usually takes about a month to get the requested record, for individual citizens it is very difficult, almost impossible to get a copy. The internet archive also includes registers of decrees, decisions (resolutions), dispositions (ordinances) and minutes (protocols) dating back to January 1990. According to the modern Bulgarian state tradition Decrees of the Cabinet are published in the State Gazette since it was established. The internet archive in fact displays scanned copies of State gazette.

The asset declarations of all elected and appointed members of the executive are available on the internet site of the National Audit Office and are an issue of extensive media commentaries. In response to special public interest (allegations of unexplainable discrepancy between the income and the real estate properties) the Minister of Interior has requested exhaustive audit and gave permission to publicize the family income-expenditure balance. This has been the subject of parliamentary and media debates for almost a month. According to the 11th AIP report on the state of access to information in Bulgaria in 2010 “regardless of the 2% increase of the institutions, which have published their budget, the level of financial transparency is still far behind the standards and the practices developing in other countries.”

Accountability (law)

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

Score: 75

The oversight of the executive by the legislature is constitutionally guaranteed, and there are also adequate provisions regulating the check of the judiciary over acts of the executive. In 2005 special amendments to the constitution were passed explicitly providing that Council of Minister has to inform the National Assembly in advance about the drafting and adoption
of European Union instruments and gives detailed account for its actions; the executive must also inform the legislature on issues concerning the obligations of the Republic of Bulgaria resulting from its membership in the European Union (Art. 105 (3) and (4).

An amendment passed in 2007 provided that the National Assembly holds hearings and passes reports on the activity of bodies, wholly or partially appointed by the National Assembly, where this is provided by law (Art. 84 (17).

The most common procedure for holding the members of the executive accountable to the legislature is through the regular Friday sessions of parliamentary control when MP-s address questions and interpellations to the Council of Ministers and to individual ministers, who according to the constitutional provisions are obligated to respond (Art. 90 (1). A motion by one-fifth of the Members of the National Assembly is required to turn an interpellation into a debate on which a resolution shall be passed (Art. 90 (2). However the constitution stipulates that parliamentary committees are also “free to order ministers to attend their sessions and respond to questions” (Art. 83. (2), but there is no obligation on behalf of the Ministers to attend and in practice they very often do not attend the meetings.

It is also provided in the Constitution, that the Council of Ministers may rescind any illegitimate or improper act issued by a minister (Art.107).

According to the Law on Administration specialised bodies, a General Inspectorate and inspectorates in each ministry are responsible for reporting and checking on the activities of the administration

According to the National Audit Office Act the National Audit Office prepares an annual auditing program. The National Assembly may decide to request up to five additional audits, which are not envisaged in the annual program.

There is an explicit requirement in the Rules of Procedure of the Council of Ministers and Its Administration and in the Administrative Code for obligatory written motivation of each and every proposal and of all act of the executive. There are provisions in the Administrative Code which guarantee the rights of individual citizens to appeal administrative acts.

According to the acting legislation administrative bodies with consultative functions are established by the Council of Ministers (Art. 21 and Art. 53), by Heads of State Agencies and Executive Directors of Executive Agencies (Art. 45 (1), Art. 47 (8) and Art. 54 (8))

In the Bill for amendment to the Law on Administration streamlining of this process is envisaged – only the Council of Ministers will have the authority to establish consultative bodies and only according to provisions of Art. 21 (1), i.e. consultative councils.

The Labour Code provides for obligatory consultations within the National Tripartite Council but the issues subject of consultation are determined by an act of the Council of Ministers. National Tripartite Council needs a consensus of all sides to take a decision. The executive bodies are expected to consider the decisions of the National Tripartite Council, but may not abide with them.

Neither the constitution nor the acting legislation provide for immunity for members of the executive. Therefore a minister can be liable both administratively and criminally on the same terms as any citizen.

195 Law on the Administration, Art. 46, 46-a and 46-b.
196 National Audit Office Act, Art 7.
197 Law on the Administration (Закон за администрацията)
198 Consultative councils (Art. 21) and Consultative committees (Art. 53)
199 Consultative Councils established by Ministers Art.45(1), by Heads of State Agencies Art. 47(8) and by Directors of Executive Agencies Art. 54 (8).
201 Labour Code, Art. 3, 3a-e
Accountability (practice)

To what extent is there effective oversight of executive activities in practice?

Score: 50

The oversight rules are effectively implemented and the government reports on its activities as required by law. There are regular reports – once in six months on the overall policy and program implementation202 and regular financial (budget implementation) reports posted on the main page of the Council of Ministers. There is also financial report structured in accordance with the priorities and policy programming available to the public203.

The executive submits annual budget reports, and there is an annual audit report posted at the site of the government204 and at the site of the National Audit Office.205 There are no records of any interference while the National Audit Office is completing the audit.

An exhaustive list of the existing consultative bodies is provided by the Council of Ministers.206 Most of the consultative bodies are functional and there has been a major improvement as a specialised internet portal207 is providing updated and well-structured information. However there are cases of circumventing even the mandatory consultations with the Tripartite Council on key decisions concerning the reform in the social security system. It is important to notice that the cabinet is obliged to hold consultations with the Tripartite Council, but the positions of the social partners have no binding force.

There have been a high number of investigations carried out against members of the executive. Initially the practice on such occasions was that the investigated official just took a leave, but recently a practice of handling resignation is established. A number of former ministers are indicted and brought to trial and even some were convicted on first instance. However there are no effective sentences yet.

In the 2011 WJP Rule of Law Index Bulgaria is ranked at the bottom of its group208 and even though the best score is in the indicators “Open Government” and “Limited Government” they rank Bulgaria 6-7 from the group of 12 countries including non EU members states Croatia, Albania, Turkey, Russia, Ukraine, Kazakhstan, Kirgizstan.

Integrity (law)

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

Score: 50

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202 Отчет за изпълнението на политиките и програмите на Министерски съвет за 1-во полугодие на 2011 г. [http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0211&n=29&g=](http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0211&n=29&g=)
203 [http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0211&n=30&g=](http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0211&n=30&g=)
208 12 countries from Eastern Europe and Central Asia – Estonia, Poland, Czech Republic, Croatia, Bulgaria, Romania, Albania, Turkey, Russia, Ukraine, Kazakhstan, Kirgizstan.
A Code of Ethics for Members of the Executive has been passed by the Council of Ministers in 2005. The Code includes a provision stipulating that corruption practices within their sphere of competence (Art. 21). The Code provides definitions for accountability, conflict of interests, integrity, personal interest, provide service in public interest, and a list of official positions who should sign declarations abiding with this Code of Ethics. There is a Code of Ethics for Civil Servants and Employees in the Public administration. In 2008 Law on the Prevention of Conflict of Interests has been voted and later twice amended in order to guarantee effective implementation. In December 2010 an amendment was past, which provided for the establishment of a specialised body - Commission for Prevention and Ascertainment of Conflict of Interests authorised to implement the law.

There are rules on gifts and hospitality, and there are one year restrictions on post-ministerial employment and the legal provisions have been twice amended – in 2009 and 2010. This is a partial restriction on “revolving-door” appointments as most of the current members of the executive are promoted as having “expert” background – this means that they do not come from the parliament and even have not been included in the party lists during the last parliamentary elections. It is even presumed that nominees with expert” background –coming from the private or from the interest group sector – make better candidates for high rank positions. There are no comprehensive provisions on whistle-blower protection.

**Integrity (practice)**

*To what extent is the integrity of members of the executive ensured in practice?*

**Score: 25**

According to think-tank monitoring the Code of Ethics and even the requirements for avoiding conflict of interests are regularly disregarded - the Institute of Modern Politics points out to several cases which provoked public scandals with no effect on the Minister overstepping the norms. A typical case is the official trip of the Minister of Culture promoting a premiere of a movie funded entirely by a private film production company. During the last year a number of cases of obvious and undeclared conflict of interest have been publicised and Minister of Healthcare, vice ministers in several sectors resigned or were dismissed because of disclosures, mostly initiated by the media.

There have been cases of requested or submitted resignation, but these have not been in any way related to the activities of the specialised body – a Commission for Prevention and Ascertainment of Conflict of Interests. It was established with a considerable delay and its first published decision is dated 31.08.2011. Most of the cases of conflict of interests are disregarded, sanctions are mostly financial and if a person has to be dismissed on the grounds of conflict of interests this is not publicly announced as a reason for dismissal. The openness of the executive to interest group representation is determined by the “expert” profile of most

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211 Law on prevention of Conflict of Interests, Art.20-a, 21, 22
213 Комисия за предотвратяване и установяване на конфликт на интереси http://www.cpaci.bg/
of the ministers. It is indicative that two of the three Ministers of Healthcare appointed by the Prime minister during the last two years have been in the governing body of the Bulgarian Medical Association.

Regardless of the one year legal restrictions on post-ministerial appointments the “revolving door” practices are a rule rather than an exception, especially for vice-ministers. As a result of journalist investigation it was revealed that for a long period of time there has been the practice the Ministry of Interior to receive donations from a variety of firms. The development of the case showed that no political responsibility was assumed for this practice. The amount of the donated sums was reported to be 3 554 348 BGN for the 2010 as indicated in the Audit report of the National Audit Office, which was posted on the web page of the Ministry of Interior. The case provoked an increase of the transparency, but delayed and partial revocation of this weird donation practice. The trade union of the policemen reported on sanctions against whistle-blowers who reported on privileges offered to firms, which donated to the Ministry of Interior.

ROLE

Public Sector Management (law and practice)

To what extent is the executive committed to and engaged in developing a well-governed public sector?

Score: 50

Each minister relies on her/his political office of around 10 persons (vice-ministers included) to manage and exercise control over the public administration activities. However the system of individual assessment and promotion is formally applied and reported as inefficient. There are general requirements and regulations providing for transparent and accountable public service, but there are no special financial incentives, monitoring system or awards within the central administration. Such stimuli and incentives have been recently introduced on municipal level.

There is a specialised Law on Internal Audits and substantial part of the administrative reform is aimed at establishing and promoting appropriate mechanisms and bodies for effective supervision and management. The current austerity measures help tighten control and motivate vigilance. A special section within the report of the State of the Administration reports on the administrative sanctions (Ch. 9) and on the anti-corruption measures (Ch. 10).

In accordance to the amendment to the Administrative Code specialized administrative bodies are established (Inspectorates) which publicly monitor and announce the results of their assessments. According to the Annual Report on the State of the Public Administration 2010 the Ministry of agriculture has received and processed the highest number of signals on

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220 Interview with expert.

conflict of interests and corruption\textsuperscript{222}, but there is no available public information or feedback internet page of this Ministry.

There are no reports and no feedback on the web sites of four out of the six specialized units for reporting on corruption. The information on the site of the Ministry of Finance\textsuperscript{223} is indicative for the ineffectiveness of the channel of communication – the unit reports maximum 7 signals per year. The only “active” unit – the one within the Ministry of Justice\textsuperscript{224}, reports data which indicate the lack of any results of anti-corruption measures are implemented.\textsuperscript{225} There are no special transparency awards or financial incentives for the executive bodies and the public servants who conduct their activities in a transparent, accountable and inclusive way.

Legal system

\textit{To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?}

\textbf{Score: 25}

Since 1999 each and every executive has worked out a specialised strategy to fight corruption and organised crime. The current government has produced and adopted the respective document on 18.11.2009.\textsuperscript{226} However the efforts of the executive are focused mostly on fighting organised crime Anti-corruption legislation and policy measures have lost momentum since concerns pertaining to economic crisis and reforms in key policy areas are dominating the government agenda.

The drafting of the Electoral Code, which incorporated new provisions regulating the party financing was done without the participation of the executive – entirely within the parliament. The only piece of anti-corruption legislation drafted by the executive was the amendment to the Law on Prevention of Conflict of Interests, enacted in December 2010. An amendment to the Administrative Code\textsuperscript{227} has established inspectorates, which are regarded as tools for anti-corruption control.

The establishment of a specialised body – Center for Prevention of Organized Crime and Corruption (BORCOR) has been rather a formal act with no visible effect. The expectation that BORCOR will draft specialised bills and propose amendments to the acting legislation has not been met so far.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|c|c|c|c|c|c|c|c|}
\hline
\multicolumn{2}{|c|}{} & 09 & 08 & 07 & 06 & 05 & 04 & 03 & 02 & 01 & 2010 & 11.09 \\
\hline
Provisioned disciplinary measures & 12 & 12 & 20 & 19 & 25 & 13 & 22 & 12 & 16 & 127 & 17 \\
Impaired disciplinary measures & 12 & 12 & 20 & 19 & 25 & 13 & 22 & 12 & 16 & 127 & 17 \\
Signals by citizens & 106 & 104 & 130 & 164 & 154 & 125 & 180 & 116 & 134 & 1892 & 193 \\
Signals by officials & 1 & 1 & 3 & 1 & 3 & 8 & 2 & 4 & 6 & 30 & 2 \\
Signals by prisoners and detainees & 215 & 300 & 278 & 203 & 220 & 199 & 216 & 244 & 206 & 2509 & 256 \\
\hline
\end{tabular}
\caption{Signals by citizens and officials}
\end{table}

\textsuperscript{222} Ibid. p.125 – The total number of signals for this Ministry is 7,569 (46.3% of all signals) but only 19 of them are on conflict of interests and just 1 on corruption.

\textsuperscript{223} Сигнали за корупция в Министерство на финансовите (МФ) - http://minfin.bg/bg/page/214

\textsuperscript{224} Сигнали за корупция в Министерство на правосъдието (МП) - http://www.justice.government.bg/new/Pages/Anticorruption/Default.aspx

\textsuperscript{225} The monthly data are showing neither improvement nor worsening of the situation and the total annual data are also even.

\textsuperscript{226} Интегрирана стратегия за превенция и противодействие на корупцията и организираната престъпност - http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=577

\textsuperscript{227} Закона за администрацията – чл.46 и чл.46а
The public announcements of ministers and the Prime Minister regarding fight against corruption are regular but have been ritualised and gradually have lost appeal and credibility.

Recommendations:

- Due priority should be assigned to anti-corruption legislation. It should not be treated as a separate piece of legislation, but should also be incorporated into the bills aimed at reforming health-care and social-security systems. Anti-corruption provisions should also make anti-crisis measures more effective;
- A law on lobbying needs to be introduced and the respective restrictions and, sanctions and channels of communications need to be institutionalised;
- Normative framework for the prevention of conflicts of interest in the Council of Ministers needs to be optimised and upgraded - a requirement to declare conflicts of interest during deliberations and decision-making has to be introduced;
- Legislation on protecting of whistle-blowers needs to be drafted and passed. It should include not only protection against dismissal from office and harassment, but also financial stimuli if the signal has led to prevention of large-scale loss of public funds and resources. An efficient system for registering, checking and reporting on corruption signals needs to be maintained by each ministry.
JUDICIARY

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<tr>
<td>Corruption prosecution</td>
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<td>25</td>
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</table>

Summary

The judiciary is one of the institutions which is least trusted in Bulgaria. From a legal point of view the judiciary (which comprises the prosecutorial offices as well) enjoys a very high level of independence and autonomy, ensured in the manner of composition of the Supreme Judicial Council, the tenure of judges and prosecutors, and its relative budget independence. Yet, the practice does not live up to the normative commitments of the system, and there have been, as already mentioned, a series of scandals suggesting possible external influences in the taking of decisions by magistrates (the most serious being an appointment scandal in the SJC). In terms of resources, the system is well provided for, as its budget has been prioritised by successive governments. Improvements in the area of transparency and personal integrity have been registered with the introduction of an ethical code, as well as asset declaration mechanisms. Further, there have been various commissions and bodies created responsible for the personal performance and integrity of magistrates. The biggest weakness of the system is in the actual results in the fight against corruption. Although output indicators are very difficult to establish in this area, there is virtually a consensus of internal and international observers that the results of the system as a whole are unsatisfactory.

Structure and Organisation

The judicial system in Bulgaria comprises a variety of different institutions: not only the courts, but the prosecutors and investigators as well. At the top of the hierarchy of the court system, there are two bodies: the Supreme Administrative Court and the Supreme Court of Cassation. The first one acts as a final instance in administrative cases, while the second one – in civic and criminal cases. Apart from these high courts, there is a complex hierarchy of
lower level courts. The standard judicial proceedings go through three instances: first instance trial, appeal stage, and cassation stage.

The Prosecutorial office is organized to reflect the structure of the courts. The prosecutors are organized in a much more hierarchical way, however, and at the top of the pyramid is the Prosecutor General, who enjoys considerable powers.

The judicial system, as discussed below, enjoys considerable autonomy: the most important administrative decisions are taken either by the magistrates themselves, or by the Supreme Judicial Council, which is a body elected partly by the magistrates, and partly by the National Assembly.

The Constitutional Court is not a part of the judicial system: according to the Constitution it is a separate branch of power, primarily entitled to review acts of Parliament for compliance with the basic law. It is a judicial body, however, and it has played an important role guaranteeing the independence of the judiciary vis-à-vis other branches of power.

CAPACITY

Resources (law)

*To what extent are there laws seeking to ensure appropriate tenure policies, salaries and working conditions of the judiciary?*

**Score: 100**

The legislative framework in Bulgaria ensures a preferential treatment of the budget of the judiciary in comparison to the other public authorities. The judicial branch is constitutionally entitled to preparing a draft budget for itself independently from the government. This draft budget is a separate part of the overall draft state budget and it is prepared by the Supreme Judicial Council. The National Assembly has the right to introduce amendments and it is the body which finally approves the judicial branch budget, but still, in comparison to other branches of power, the influence of the government over the financing of the judiciary is reduced. There have been a series of constitutional controversies about the powers of the executive in this area, but generally the Bulgarian Constitutional Court has managed to defend the independence of the judicial branch in terms of financing.

The salaries of the judges are to be set generally by the Supreme Judicial Council, which is an independent body designed to administer the judicial system. According to **Art. 130 of the Constitution** the Supreme Judicial Council consists of 25 members. Sitting on it ex officio are the Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court and the Prosecutor General. Eligible for election to the Supreme Judicial Council besides its ex officio members are practising lawyers of high professional and moral integrity with at least 15 years of professional experience. Eleven of the members of the Supreme Judicial Council are elected by the National Assembly, and eleven are elected by the bodies of the judiciary. The elected members of the Supreme Judicial Council serve terms of five years. They are not be eligible for immediate re-election.

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228 **Art. 130**.

…(6) (new-SG 12/07)The Supreme Judicial Council shall:…

4. Adopt the draft budget of the judiciary;
The meetings of the Supreme Judicial Council are chaired by the Minister of Justice, who is not entitled to a vote. The specific rules of setting the salaries of the magistrates are set in the Law on Judicial Power. According to Art. 218 of this law, the chairmen of the Supreme Court of Cassation, the Supreme Administrative Court, and the Prosecutor General receive 90% of the basic monthly salary of the chairman of the Constitutional Court. The lowest magisterial salary in the system is set at twice the average monthly salary in the public sector, as calculated by the National Institute for Statistics. The rest of the salaries are determined by the Supreme Judicial Council. For each additional year in the system, the magistrates receive an additional payment of 2%, which cannot exceed 40% of the salary overall. Further additional payments could be provided for work during holidays. Every year there are also additional statutory payments in the amount of two average monthly salaries (in the public sector) for clothes and magisterial robes. The magistrates are entitled to use public housing in specific circumstances (especially if they are transferred to a new position in another city or the capital of the country). A very significant entitlement for every magistrate with more than 10 years is up to 20 monthly salaries (depending on their experience) on leaving the system. Further, the state pays the pensions and social security contributions of the magistrates, which is a significant privilege. In conclusion, although there is no fixed percentage of the national budget to be apportioned for the judiciary, there are sufficient legal instruments to prevent arbitrary decreases of the judicial budget, as well as a number of additional entitlements, which the judicial profession enjoys.

For all these reasons, it could be concluded that in terms of institutional framework the Bulgarian system follows established and respectable models in guaranteeing judicial independence in terms of resources.

**Resources (practice)**

*To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?*

**Score: 50**

The budget of the judicial system has been one of the most rapidly rising public expenditures over the last decade. Generally, the budget of the judiciary could be deemed adequate, and due to pressures for reform both from domestic actors and EU sources, it has been consistently prioritized. In comparative perspective, salaries in the judicial system are significantly higher than in other public institutions, and, as the discussion on rules suggested, they are statutorily (and as a minimum) two times higher than the average monthly salary for the public sector. Yet, one should bear in mind the low level of salaries in Bulgaria in general, which becomes

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229 The law is available at the site of the Supreme Judicial Council: [http://www.vss.justice.bg/bg/start.htm](http://www.vss.justice.bg/bg/start.htm)

230 A finding of the study of the Centre for Liberal Strategies illustrates the point ([http://www.cls-sofia.org/uploads/files/Projects%20files/1162302106__final_report_english.pdf](http://www.cls-sofia.org/uploads/files/Projects%20files/1162302106__final_report_english.pdf)): “The budget of the judicial system as a whole is adequate and has a considerable growth in the last years. In absolute terms the country spends less for justice than the other European countries, but this is explained by the difference in the living standards and in the economic development. As a percentage from the country’s budget, it is comparable to that in the other European countries.”

231 See the report: Цената на правосъдието в България (2009-2010 г.), Институт Отворено Общество, София, 2011 г.
conspicuous with the accession in the EU. Thus, in comparison with their colleagues in the EU, Bulgarian magistrates are significantly underpaid, as well as in comparison with the domestic (especially export-oriented) private sector. As to practicing private lawyers in Bulgaria, the situation is more complex: while magistrates could be underpaid in comparison to the top representatives of the profession, on average they may be actually better paid.\textsuperscript{232} These facts – taken together - are not an argument for further raises in the budget of the judiciary, which could be hardly justified on economic and moral grounds. Yet, these facts are relevant when we assess the exposure of the judiciary to corrupt influence, since the salaries of the magistrates cannot guarantee them a place at (or close to) the top of the social ladder, as is the case in many established democracies.

A further consideration to be taken into account is some structural features of the Bulgarian judicial system, and the relatively easy access to the courts, guaranteed by the comparatively low costs of the proceedings. This easy and cheap access to the justice system is one of the achievements of the Bulgarian transition. Yet, this access creates the problem of overloading of some of the courts and prosecutorial offices in the country. The situation is further complicated by a degree of mismanagement in the distribution of resources within the system. There are no well-designed criteria for fair distribution of workloads among courts and magistrates, which leads to overload in some parts of the system, at the expense of others. Similar is the situation with facilities: certain overloaded with cases courts (especially in the capital Sofia) have no sufficient rooms for hearing cases, which exacerbates their anyhow existing problem with backlogs.\textsuperscript{233}

As to opportunity to use clerks, the system is not very well developed. Although law school graduates are supposed to work as apprentices in order to receive their degrees, the judicial system does not take a full advantage of this resource, and very often such apprenticeships are just a formality. For this reason, many students actually prefer to have their apprenticeship in private law firms, which further illustrates a certain problem of public sector mismanagement. In general, Bulgarian judges write their opinions themselves and there is no practice of delegating drafting works to clerks – this is another aspect of the system, which contributes to backlogs in specific courts in the country.\textsuperscript{234}

While computer and electronic equipment is generally improving, the existence of libraries and access to literature (especially in foreign languages) is rather limited. With the creation of the School for Judges, opportunities for continuing education do exist. Much more needs to be done in this direction, however, and it should go beyond courses on EU law.

Due to the existence of problems with the management of the budget, and due to certain features of the judicial system in Bulgaria (i.e. the easy citizen access to the courts), the score of the practical resource policies in the system should be considerably lower than that of the general legal framework.

**Independence (law)**

*To what extent is the judiciary independent by law?*

**Score: 100**

There are numerous legal guarantees of the independence of the Bulgarian judiciary. A specific part of the constitution – chapter 6 – is devoted to the judiciary and it establishes the

\textsuperscript{232}Ibid.

\textsuperscript{233}Thus, the World Bank has been recently advocating a hike of the court fees in order to avoid backlogs. See http://dariknews.bg/view_article.php?article_id=294025&audio_id=25523

\textsuperscript{234}Interviews of the author with recent law graduates and students in their final year at law schools.
major principles relating to judicial independence. Thus, Art. 117. specifies that:

(2) The judiciary shall be independent. In the performance of their functions, all judges, court assessors, prosecutors and investigating magistrates shall be subservient only to the law.

(3) The judiciary shall have an independent budget.

The Constitution further defines the main bodies of the judicial system and their composition and prerogatives. These are then taken up by the Law on the Judiciary and other pieces of legislation, which clarify the details. For a start, two observations need to be made. First, the Bulgarian judicial system comprises not only the courts, but the prosecutors and investigators as well. Presumably, this guarantees a greater level of independence vis-à-vis the executive, since pre-trial work is governed by the prosecutors, who are institutionally independent from the executive and the police (responsible for carrying out investigative work). Secondly, the Bulgarian Constitution is particularly difficult to amend in regard to separation of powers issues. A controversial decision of the Bulgarian Constitutional Court of 2003 argued that any transfer of prerogatives across the main branches of power leads to change of the form of government, which is only possible through a very complicated amendment procedure. In order to amend the Constitution, there needs to be election of a Grand National Assembly, specifically convened to discuss and adopt such an amendment.\(^{235}\) It is generally agreed among constitutional and political scholars that the likelihood of such a development is low. So, for instance – if we follow the logic of the CC decision above – in order to take the prosecutorial office out of the judicial branch of power and to place it in the executive, there must be special elections for Grand National Assembly. This interpretation of the CC makes the Bulgarian Constitution especially “rigid” on separation of powers issues, including judicial independence. A majority of 2/3 in the normal National Assembly is not sufficient – there is a need for new elections, and significant public support for the idea (as expressed in the elections) in order for the amendment to pass.

Apart from these features, the Bulgarian Constitution contains a number of other provisions ensuring judicial independence. Thus, the process of appointment of judges and magistrates is designed to enhance their independence vis-à-vis the other branches. A primary role in this process plays the Supreme Judicial Council – a formally independent body. The SJC is composed by magistrates appointed to it by Parliament and the judiciary itself – 11 members appointed by each of these two. In addition, there are three ex officio members. Bulgaria follows the Mediterranean model of regulating the judiciary, which presumably ensures a very high level of independence from the political branches of power. It is true indeed that the political majority in parliament has the power to appoint less than half of the members of the SJC, but this political influence is counterbalanced by the appointment procedure for the rest of the members.

Once appointed, the SJC is completely institutionally independent both from the executive and the legislature in the personnel policies regarding the judiciary: it is responsible for the

\(^{235}\)Art. 157.
A Grand National Assembly shall consist of 400 Members elected according to the election law in force.

Art. 158.
A Grand National Assembly shall:
1. adopt a new Constitution;
2. resolve on any changes in the territory of the Republic of Bulgaria and ratify any international treaty envisaging such a change.
3. Resolve on any changes in the form of State structure or form of government;
4. resolve on any amendment to Art. 5 paras 2 and 4 and Art. 57 paras 1 and 3 of this Constitution;
5. resolve on any amendment to Chapter nine of the Constitution.
appointment, promotion, demotion and disciplining of the magistrates. As mentioned, the political branches of power have limited indirect budgetary instruments to influence decisions of the council: the budget of the judiciary enjoys a special status within the state budget. A further significant legal guarantee of judicial independence is the tenure of the magistrates (guaranteed until retirement age). This tenure – in fact permanence of the status of magistrate – is acquired after three years work in the judicial system: judges, prosecutors and investigators are entitled to this type of tenure.

Further, the two Supreme Courts and the Prosecutorial Office are constitutionalized, as well as the appointment of their heads. These heads are appointed de facto by the SJC (the SJC nominates and the President of the Republic appoints) for a mandate of seven years – much longer than the terms of office of the political branches of power.

Access to magisterial career is now based on professional qualification and open competitions. Young law graduates aspiring to become magistrates have to sit an examination and be interviewed in the framework of an open competition. For long years after the adoption of the Constitution, it was the practice of the SJC to make direct appointments in the system, without an open competition. This practice is now discontinued, which is a major improvement. However, doubts remain as regards the procedure on promotion of magistrates, the appointment of heads of courts, prosecutorial offices, etc. Two more institutions need to be mentioned regarding judicial independence. In the first place, this is the Constitutional Court, which has the power to overturn unconstitutional legislative acts, as well as to interpret the Constitution *in abstracto*. These powers of the court have turned it into an effective guardian of judicial independence. The CC has numerous decisions, which strengthen the principle of judicial independence, including the already mentioned one regarding the possibility of a constitutional amendment. It has ruled extensively on the budget of the judiciary, on the appointments of senior magistrates, as well as on the powers of the Minister of Justice and the cabinet vis-à-vis the judiciary.

A potential weakness in the legal arrangements regarding the CC is its lack of power to have judgements with retroactive force. This may sound paradoxical, but actually it creates problems with the effects of unconstitutional laws. For instance, if a parliamentary majority passes a law, which leads to a pre-term dissolution of the SJC, and if there is quick action in appointment of new SJC by parliament and the judiciary, then even if the CC finds the enabling law unconstitutional, it will have no powers to restore the mandate of the old SJC. This curious doctrinal construction has been abused by parliamentary majorities, which strengthens the case for its elimination (possibly through a constitutional amendment expanding the powers of the CC in such cases).

Finally, there is the Supreme Inspectorate at the Supreme Judicial Council – a body which is set to assess the individual performance of the magistrates. Its independence is guaranteed by the election of its members by 2/3 majority in parliament for a fixed term in office.236

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236 The institution was introduced in 2007. *Art. 132a.* (New-SG 12/07)

(1) An Inspectorate shall be established to the Supreme Judicial Council, which shall be composed of a chief inspector and ten inspectors.

(2) The chief inspector shall be elected by the National Assembly by a majority of two-thirds of the Members for a term of five years.

(3) The inspectors shall be elected by the National Assembly for a term of four years pursuant to the procedure laid down in paragraph 2.

(4) The chief inspector and the inspectors may be re-elected, however not for two consecutive mandates.

(5) The budget of the Inspectorate shall be adopted by the National Assembly within the frames of the budget of the judiciary.

(6) The Inspectorate shall inspect the activity of the judiciary bodies without affecting the independence of judges, court assessors, prosecutors and investigating magistrates while performing their duties. The chief inspector and the inspectors shall be independent and shall obey only the law while performing their duties.

(7) The Inspectorate shall act ex officio, on an initiative by the citizens, legal entities or state bodies, including
In conclusion, although there are some possibilities for undermining judicial independence, the general framework is sufficiently robust. In international comparative perspective the Bulgarian constitutional model contains most of the legal instruments guaranteeing judicial independence: rigid constitution, constitutional review, independent bodies administering the system, independent budget, judicial tenure, etc.

**Independence (practice)**

*To what extent does the judiciary operate without interference from the government or other actors?*

**Score: 25**

When the independence of the Bulgarian judiciary is assessed in practice, two factors need to be taken into account. First, this is the existence of serious pressure over the judiciary by political actors. In the 1990s the pressure was coming from strong, ideological parties – the Bulgarian Socialist Party and the Union of Democratic Forces. In the 2000s, pressure comes essentially from popular and sometimes populist calls for the intensification of the fight against corruption and organized crimes. Successive governments have started demanding ‘results’ from the judiciary, including higher convictions rates and overall numbers of convictions, more investigations, etc. The second relevant factor in the Bulgarian case – the on-going monitoring by the EU Commission, has paradoxically strengthened these pressures coming from political actors. The present situation in which important figures of the governing majority often criticize the judicial system, and accuse it of inefficiency is an illustration of these pressures.

In such circumstances, the judiciary faces two choices. The first one is to accommodate popular political demands, which however raises concerns about judicial independence and the impartiality of the magistrates. The second is to resist openly the pressures, entering into head-on conflict with the political establishment and popular expectations, thus risking further diminishing of the overall trust in the judiciary. Lack of trust in a given institution – and the Bulgarian judiciary unfortunately is not a trusted profession as a whole\(^{237}\) - undermines its authority, and raises questions about its capacity to operate effectively.

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<th>Trust</th>
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\(^{237}\)Table 1: Trust in Institutions
Source: Eurobarometer, № 66
The unpleasant dilemma has been faced in different ways by different parts of the judiciary and the magistrates. Focusing on current developments, it has to be pointed out that the Supreme Judicial Council and the prosecutorial office are more attentive to demands by the government. A case in point was a recent scandal concerning a magistrate, elected to head a key court in Sofia, whose alleged advantage vis-à-vis other candidates was her closeness to a vice-prime minister in the cabinet and minister of interior. The scandal led to the resignation of a number of senior judges, a member of the SJC, and open confrontation between the Minister of Interior and the Union of the Judges – a non-governmental organization of the judges.238

Thus, although there is no apparent institutional reason for the politicization of the Bulgarian magistrates, since they are prevented from being members of parties or trade unions, the judiciary cannot but take a stance on key political questions as the fight against corruption and organized crime, for instance. It is a positive sign that at least part of the magistrates have not yielded to political and populist pressures.239

A weak link in the system remains to be the Supreme Judicial Council, although here significant improvements have been introduced to its functioning since the beginning of the transition period. The most significant of these are the establishment of the Council as a permanently operative body (before that it required part-time involvement by its members)240, the introduction of compulsory open competitions for young magistrates, the introduction of the Inspectorate, and the generally greater transparency of the sittings of this institution. Despite these successes, serious problems remain, especially regarding the criteria of appointment, promotion and disciplining of senior candidates: the already referred to scandal well illustrated the point.

The existing standards for personnel policy leave a significant degree of discretion in the hands of the SJC. According to the formal standards, candidates with seriously different professional background and experience may happen to receive equal points, which in fact unite the hands of the SJC to appoint a candidate of their choice. A number of scandals – some of them already mentioned – have illustrated this weakness of the currently existing system of attestation of the judges.241

Thus, in 2009-2010 another scandal broke out, which led to the resignation of two members of the SJC: this has been the most serious scandal related to the institution thus far. In it transpired that a young person living obviously beyond his means has been involved in intense communication with members of the SJC just before key appointment procedures, allegedly even offering payments for support in the Council. This scandal has not been conclusively resolved yet, but it has marred the operation of the SJC and has seriously questioned its legitimacy.242

238 For a discussion of the scandal see:
http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/06/03/1100272_sudiia_s_vruzki/;
http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/09/30/1166588_vupros_na_vruzki/;

239 See my publication on courts, populism and the rule of law:

240 Actually, there are more and more voices, according to which the permanently operating council is not a good idea, because allegedly its members are being alienated from the actual legal practice of courts, prosecutors and investigators.

241 Interview with Kalin Kalpakchiev on BNR: http://bnr.bg/sites/horizont/Shows/Current/NeshtoPoveche/society/Pages/sad.aspx

Due to this general lack of legitimacy, and due to the still existing possibility for the governing majority to dissolve the body even at the cost of unconstitutionality of action, the SJC has probably become more sympathetic to the political majority and has made a series of senior judicial appointments of persons close to the ruling party.

Thus, despite progress made in the defence of judicial independence in practice, serious questions still remain to be resolved. These are not only issues of legislative amendments, but also of change of formal and informal practices, especially regarding the personnel policies and the assessment of the individual performance of judges and prosecutors. The Inspectorate at the SJC needs to prove its effectiveness further. The magistrates must start creating a culture and ethics of independence, which is applicable on all and is not suspended on account of the political sympathies of the given person. 243

GOVERNANCE

Transparency (law)

*To what extent are the reprovisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?*

**Score: 75**

The law requires the magistrates (including the members of the Supreme Judicial Council) to file asset declarations, and these could be taken into account by the Supreme Judicial Council and the Inspectorate in disciplinary, appointment and promotion proceedings. Under the law for declaration of conflict of interest special declarations are to be filed as well. The asset declarations of the magistrates are required by the *Law on Disclosure of the Assets of Senior Officials.* 244 The State Audit Office comes out with reports about the mismatches between the asset declarations and the tax returns of the officials. The asset declarations are publicly accessible and they are often discussed in the press and the media, especially in the cases when the SAO finds mismatches.

Bulgarian courts are obliged by law to give reasoned opinion and generally court trials are public. The SJC publishes its decisions on appointments, removal of justices and magistrates, as well as reports on its disciplinary practice.

Transparency (practice)

*To what extent does the public have access to judicial information and activities in practice?*

**Score: 25**

Over the recent years the transparency of decision making within the judiciary has increased significantly. Most obvious this process is in the work of the Supreme Judicial Council. Its http://www.dnevnik.bg/bulgaria/2011/02/18/1046657_obvinitelniiat_akt_sreshtu_krasyo_chernia_veche_e_v/;ht tp://www.dnevnik.bg/bulgaria/2011/06/23/1111596_otstranen_za_vruzki_s_krasyo_chernia_shte_izbira/243 The debates in parliament on the annual reports of the Inspectorate and the SJC provide an opportunity for a discussion of the problems in the system. For media reports of these debates see: http://dnes.dir.bg/news/prokuratura-parlament-vss-vissh-sadeben-savet-godishen-doklad-8942803

244 The register of all persons obliged to file asset declarations – including judges, prosecutors and investigators – is available at the site of the State Audit Office at http://register.bulnao.government.bg/2011/index.html
website has been improved dramatically, and now there the yearly reports of the courts and the prosecutors, various policy documents of the SJC, copies of important decisions, summaries of the disciplinary activities of the SJC and many others are posted. Another important aspect of the greater transparency in the workings of the council is the open character of its meetings, the possibility for journalist to be present, if there are no special reasons for a meeting to be closed.

With the advance of the internet, more and more information on the workings of the courts and the prosecutorial offices in practice becomes easily accessible and available. Electronic search engines for cases are available for some courts.

Further, the magistrates are supposed to file yearly asset declarations with the State Audit Office, which checks them and has developed the practice of announcing the names of the offenders. Generally, magistrates comply with the disclosure requirements despite the cases of violations.

Yet, despite these advances, due to already mentioned problems with the partially unclear standards for promotion and demotion of magistrates, the open character of meetings is not sufficient to guarantee adequate level of openness. There have been a number of scandals suggesting informal contacts and influence of politicians in appointment procedures, the most spectacular of which was the Krasyo Chernichkiya scandal.

Accountability (law)

To what extent are the reprovisions in place to ensure that the judiciary has to report and be answerable for its actions?

Score: 75

The question of accountability of the judiciary has moved to the forefront of discussions of reforms in the judicial system. There are widespread perceptions that the entrenchment of judicial independence has ultimately made the judiciary unaccountable and practically irresponsible vis-à-vis the public. For this reason several institutional innovations were introduced, with the idea to encourage members of the judiciary to report and account for their activities. One of the proposals was in fact to give the power to the National Assembly to remove from office the Prosecutor General, and the chairmen of the two supreme courts by 2/3 majority. This constitutional provision was invalidated by the CC, however, on account of its intrusion in the workings of the judicial branch of power. Yet, pre-EU accession reforms were able to introduce the following two accountability devices regarding the judiciary. In the first place, Art. 84, 16 (new-SG 27/06, amend. - SG 12/07) gave the power to the National Assembly to:

- hold a hearing and receive the annual reports of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General, submitted by the Supreme Judicial Council, on the application of the law and on the activities of the courts, the prosecution office and the investigating bodies;

Article 130(7) (New-State Gazette 12/07) further specified that:

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245 The website of the SJC: http://www.vss.justice.bg/bg/start.htm

246 http://www.legalworld.bg/print.php?storyid=8304

247 The scandal was already referred to in footnote 14 supra. See also: http://www.dnes.bg/temida/2011/04/11/krasio-cherniia-izliiza-chist-ot-lobistkiia-skandal.115912

248 Interview with Jonko Grozev (focus-news): http://www.focus-radio.net/?action=opinion&id=10817
The Supreme Judicial Council shall hold a hearing and pass the annual reports of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General on the application of the law and on the activity of the courts, the prosecution office and the investigating bodies and shall submit them to the National Assembly. These procedures contribute to the transparency of judicial and magisterial work, since they provide for disclosure of important information about the functioning of the judicial system in general. As to the more standard rules of accountability, the judges are obliged to give reasons for their opinion, and the Supreme Judicial Council as well as the Inspectorate could perform checks and review of the decision making of individual magistrates. In these, such reviews are intended to provide information for the promotion and demotion of magistrates, and for the imposition of administrative sanctions in cases of violation of their judicial duties.

One issue which does not contribute to accountable judiciary is the lack of general understanding about the differences in assessing the performance of the judges on the one hand, and prosecutors and investigators on the other. Under the Bulgarian constitution all are members of the judicial branch, but apparently they have different tasks. Judges must be impartial arbiters, while prosecutors – although forced to apply only the law in Bulgaria – are de facto responsible for the shaping of public policy in the fight against crime and corruption. It is highly desirable the roles of the different parts of the judicial system to be differentiated for the purposes of better accountability.

Proceedings against magistrates for corruption or failure of duties is not a common phenomenon, but is possible, and does happen in practice. Such procedures could be initiated by citizens or the media, if they file a complaint with the Supreme Judicial Council.

Accountability (practice)

_To what extent do members of the judiciary have to report and be answerable for their actions in practice?_

**Score: 25**

Courts normally provide reasons for their decisions. There is a certain degree of formalism in the provided reasons, but this is due to the highly formalistic nature of Bulgarian judicial proceedings.

The disciplining activities of the Supreme Judicial Council have undergone improvement in terms both the quantity of the output and the quality and transparency of the decisions.\(^{249}\) Yet, much remains to be desired, especially regarding the Swiftness and adequacy of reaction to potential cases of magistrates, who ruin the reputation of the judiciary as a whole with improper, immoral or even illegal activities.

The persistence of scandals at the highest levels of the judiciary and especially the SJC undermines public trust in the capacity of the system to manage itself\(^ {250}\), and to develop and live up to high standards of ethical behaviour. A particularly damaging scandal for the system was the already mentioned scandal in 2009-2010 concerning brokerage and informal dealing concerning judicial appointments at the highest level. The 2011 scandal with the appointment of a judge allegedly close to the party in power and the Minister of Interior, which antagonized significant groups of magistrates, further confirmed the already existing

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\(^{249}\) The VSS reports significant increases in disciplinary cases in response to accusations of ineffectiveness by the European Commission: [http://bnr.bg/sites/radiobulgaria/Lifestyle/News/Pages/200711-14.aspx](http://bnr.bg/sites/radiobulgaria/Lifestyle/News/Pages/200711-14.aspx)

\(^{250}\) Generally, trust in the judiciary in Bulgaria is low: [http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results](http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results)
perceptions of weak leadership by the SJC, dubious standards for the promotion of magistrates, and persisting political influences at the very helm of the system.\footnote{See footnotes 14 and 19 supra.}

Score: 25/100

**Integrity mechanism (law)**

*To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?*

**Score: 75**

There are a number of legal instruments aiming to ensure the integrity of magistrates. First, asset declarations have already been discussed – this is a major instrument ensuring personal integrity. These declarations are filed with the State Audit Office, which also has the power to check them against other evidence and especially information from the tax authorities.

Second, there are specific rules and laws on declaring and avoiding conflict of interest. The main act in this area is the *Law on the Prevention and Disclosure of Conflict of Interests*. This law was adopted in 2008 and entered into force from the beginning of 2009. Prior to the Law there have been numerous partial regulations for disclosing conflict of interests, spread in different pieces of legislation, such as the Penal code, the Law on Administration, the Civil Servants Act, the Ethical code of the Civil Servants, the Public Procurement Act, the Internal Rules of the Parliament, etc.

Third, within the judiciary there are several bodies responsible to monitor and control the integrity within the judicial system. The Commission for Professional Ethics and Prevention of Corruption in the judicial system is a permanent auxiliary body to the Supreme Judicial Council (SJC). Its members are 5 of the members of SJC, determined by SJC decision. The Commission meets weekly, and if necessary, more often. It has the following prerogatives:

- To perform checks based on concrete complaints and signals, to send information to the relevant state bodies and inform SJC about the results
- To analyse the information about corrupt practices within the judicial system.
- To prepare and propose to SJC concrete measures for prevention and countering corrupt activities within the judiciary
- To coordinate for anti-corruption activities with all other bodies with anti-corruption functions and with the Ombudsman

The decisions of the Commission for the presence of corrupt action of magistrates/administrative officials within the judiciary are to be reported to SJC and other responsible state bodies for undertaking administrative sanctions.

One of the major activities of the Commission, according to its official report for 2009\footnote{The report is available at the web-site of the Supreme Judicial Council - www.vss.justice.bg} was the adoption of an Ethics Code of the Bulgarian Magistrates.\footnote{The code is sufficiently detailed and elaborate, although there have been already controversial cases, for which it does not give a precise answer. See for instance: http://www.dnevnik.bg/bulgaria/2011/11/08/1199096_etichnata_komisiia_kum_vss_otkazva_da_se_zanimava_s_us/This was a case in which a judge refused himself in a decision on the invalidation of the appointment of judge Janeva as chair of the Sofia City Court.} According to it, in all the regional structures of the judiciary and the supreme courts and prosecutorial offices are to be established permanent ethics committees. Indeed, by the end of 2009, such committees have been established.
Another anti-corruption body within the Judiciary was established under pressure from the European Commission - the **Inspectorate with the Supreme Judicial Council.** This new independent body with the SJC was established after an amendment to the Constitution was introduced in 2007. Its main task is to check the activities of the bodies of the judicial power in the country, without infringing on their constitutionally guaranteed independence. The often-quoted excuse for not dealing with the corrupt activities of the representatives of the judiciary was the constitutionally guaranteed independence of this power. Yet the Supreme Judicial Council (SJC) and its Ethics Committee were incapable to discharge its responsibilities in overseeing the activities and checking for corruption this major branch of state power. This incapacity prompted numerous critiques both from the civil society and the European Commission, and one of the solutions advanced was to establish the Inspectorate. It:

- Checks the administrative activities of the courts, the prosecutorial offices and the investigative bodies
- Checks the organization of starting and development of the judicial, prosecutorial and investigative cases, as well as their timely completion
- Analyzes and summarizes the cases, completed with a court verdict, as well as with respect to the completed prosecutorial and investigative case files
- In cases of a contradictory judicial practice, sends requests to the competent bodies for interpretative decisions
- In cases of violations, signals the head of the respective administrative unit of the judiciary as well as the Supreme Judicial Council (SJC)
- Proposes to SJC the imposition of disciplinary sanctions to judges, prosecutors, investigators and the administrative heads of the units
- Sends requests, signals and reports to other state bodies and to the respective judicial bodies.

In general, regulation in this area is abundant. Rules do exist, but they are relatively new and have not had the time to accumulate significant interpretative practice. Some gaps in the regulation do exist, especially regarding possible conflicts of interest after leaving the system, and going immediately in the private sector.

**Integrity mechanism (practice)**

*To what extent is the integrity of members of the judiciary ensured in practice?*

**Score: 25**

Despite the existence of various codes of conflict and rules, these had hardly been internalised, and magisterial actions reveal that the concept of conflict of interest is interpreted in dubious ways.

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254State Gazette №12/6.02. 2007, art. 132a.
255The 2011 report of the European Commission was again critical vis-à-vis the SJC and the Inspectorate. See media coverage at: http://novatv.bg/news/view/2011/07/20/18835/%D0%95%D0%9A-%D0%BD%D0%B8-%D0%BA%D1%80%D0%B8%D1%82%D0%B8%D0%BA%D1%83%D0%B2%D0%B0-
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%D0%B2%D1%8A%D0%B2-%D0%92%D0%A1%D0%A1-%D0%BE%D0%B2%D0%B8%D1%81%D0%B2%D0%8B/D0%B8/D0%BC/ The report is available at: http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2011_459_en.pdf
256Art. 54 (1) of the Law on the Judiciary, State Gazette № 64/ 07.08. 2007.
As one of the first results of the introduction of the Code of Ethics in the SJC, two members of the body resigned (and another 18 magistrates were checked) as members of SJC, because of improper contacts with the citizen Krassimir Georgiev (nicknamed Krasyo Chernichkiya), who allegedly had impact upon the selection of magistrates for members of SJC (the 2009 appointment scandal, which was already discussed). In addition, in its 43 meetings for 2009 for instance, the Commission managed to hear and decide on more than 1650 complaints, signals and requests, related to corrupt actions and practices within the judiciary.\footnote{The annual reports of the commission are available at: http://www.vss.justice.bg/bg/start.htm}

Despite these activities, very often problematic practices transpire in the conduct of magistrates. First, in 2010 it appeared that a number of senior magistrates have managed to obtain expensive properties from the state at a price much below the market one: these properties were either for them or for their close relatives, and were allegedly given in return for specific judicial favours in administrative law context. Further, in a currently on-going scandal, a senior judge was accused of not declaring conflict of interest when sitting on a case of a Sofia municipal company, from which her relatives had obtained real estate property.\footnote{Ultimately, conflict of interest was not proven in the case of judge Janeva, although public suspicions to the contrary remained. See a typical media report on the case: http://www.dnes.bg/temida/2011/08/29/janeva-chista-po-kazusa-za-konflikt-na-interesi.127541}

In general, conflict of interest application and jurisprudence is in its infancy in Bulgaria, and it is too early to judge about the effects of its application.

On the ground of numerous scandals emerging over the last several years, the score on this indicator cannot be high.\footnote{“Report of the EC in the Cooperation and Verification Mechanism 2010, available at: http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_400_en.pdf}

ROLE

Executive oversight (law and practice)

To what extent does the judiciary provide effective oversight of the executive?

Score: 50

As the Freedom House reports on Bulgaria in the framework of the Nations in Transit project argue “the authority of the courts is recognized, and judicial decisions are enforced effectively in Bulgaria by both the traditional state enforcement judges and organs, and by an already established sector of private judicial enforcement entities (baliffs).” Further, the same report recognizes that “while many problems in its activities remain, the Bulgarian judiciary provides an effective check on both the legislature and the executive”.\footnote{Report available at: http://www.freedomhouse.org/images/File/nit/2010/NIT2010Bulgariafinalfinal.pdf}
This is a general position which could hardly be disputed. The Constitutional Court, although formally not a part of the judicial system, has played the role of an effective check of the legislature. Although its output in the first decade of the new century decreased, over the last two years there seems to be a certain surge in constitutional cases, and a number of very important reversals of key governmental policies (as the declaration of the unconstitutionality of the nationalization of the funds of private pension funds in 2011, for instance).\(^\text{261}\)

The Supreme Administrative Court has been active in invalidating normative acts of the executive for illegality. For the period 2007-2010, for instance, the SAC has invalidated 25 acts.\(^\text{262}\)

A maximum score on this indicator cannot be given, however, since the appointments to senior judicial positions, including in SAC (which is supposed to be one of the most significant checks on the executive), of magistrates allegedly being close to the currently ruling political majority take place. While such influences could hardly be ruled out in any system, such potential conflicts of interest need to be registered as a weakness of the Bulgarian system.

**Corruption prosecution (practice)**

*To what extent is the judiciary committed to fighting corruption through prosecution and other activities?*

**Score: 25**

The fight against corruption and organized crime has been a weakness of the Bulgarian judicial system, which has been pointed out many times over the last decade by both internal and external observers. Especially vocal critic has been the European Commission in its monitoring reports in the pre-accession and post-accession period. Although the reports for the last year did register certain positive trends, especially regarding the presence of ‘political will’ in the fight against corruption, criticisms of inefficiency of the system do remain.\(^\text{263}\)

These criticisms relate to the over-formalised judicial process, which provides numerous opportunities for delays and even failures of prosecutions, the lengthy proceedings, and the lack of final convictions of senior officials or politicians.

In terms of statistics, there is now a special emphasis on reporting corruption cases, partly due to pressures by the EU. The SJC also monitors key cases for the application of the law. Further, within the Supreme Prosecutors’ Office of Cassation there is a *directorate ‘Inspectorate’*, which specifically oversees the prosecutions and cases for corruption and other office-related violations of magistrates. In 2009 cases of some 57 magistrates were overseen (in 2008 – 46, and in 2007 – 23).\(^\text{264}\)

As a further response to the critiques of the weaknesses of the work of the prosecutors’ office and the police, four (and subsequently – five) inter-institutional groups for support of investigations of high level corruption between the Prosecutors’ Office, The Ministry of the Interior and the State Agency ‘National Security’ were established in September 2009.

In the words of the EU Commission important weaknesses remain in the fight against corruption at present:

> The Commission's analysis of judicial practice in this area points to a number of weaknesses that should be corrected. In its investigation of fraud involving EU

\(^{261}\) See the article by Georgy Ganev at http://www.cls-sofia.org/blog/?p=507&lang=bg

\(^{262}\) See publication Юридически барометър http://cli-bg.org/Legal_barometer_BG_1.pdf


\(^{264}\) See publication Юридически барометър http://cli-bg.org/Legal_barometer_BG_1.pdf
funds, a comprehensive and pro-active investigative strategy by the prosecution is necessary. This strategy should lead to systematic investigations of links between related cases, aspects of organised (financial) crime and links in fraud schemes to administrative authorities. In order to step up the fight against high-level corruption, Bulgaria should also consider a more forceful protection of witnesses in line with best practice in other Member States.

The data provided by Bulgaria on the first year of implementation of the law on the prevention of conflicts of interest which was introduced in late 2008 show that still few cases of conflict of interest have been identified or sanctioned and few signals on corruption have been sent to the prosecution. However, regarding the central administration, inspections have become more frequent and a number of cases led to disciplinary sanctions or have been forwarded to the prosecution. Bulgaria should strengthen as soon as possible the law on the prevention of conflict of interest in order to create an independent central Commission in charge of implementing the law.

At the time of writing, drafts of the 2011 report of the EU Commission are being discussed. As reported in the press, these drafts are critical of the achievements in the fight against corruption, especially regarding the lenience of sentences and their few numbers. An illustration was the case Borilski, in which the only reason for a protracted and inconclusive investigation leading to a series of acquittals of the defendant was his father’s connections with magistrates. The case concerned the killing of a Bulgarian student in France. The main suspects were his friends from his hometown of Varna. However, the main suspect was the son of a person well connected with the magistrates in Varna. After a protracted investigation, he was acquitted two times (at one point all magistrates in Varna excused themselves, so that the case was moved to a court in a different city). Only after pressure from the French Embassy and civil society, a complete reversal of judicial attitudes and interpretations of the same facts took place, and the primary suspect was convicted of murder around a decade after the crime. Although this case involves not only the police but the courts as well, it does illustrate the point that the intensity and quality of the investigative work (in which the police and the prosecutors are involved) may depend on the suspect and his/her relation with magistrates. The case also illustrates that the existing mechanisms of accountability are insufficient to eliminate such discriminatory biases.

In view of these persistent criticisms of the ability of the judiciary to tackle corruption, the overall score on this issue cannot be high.

Recommendations:

- The nomination and appointment as well as the disciplining practices of the Supreme Judicial Council should be improved by bringing more transparency and predictability through clear indicators and rules and establishment of stable practice. This will ensure that only highly qualified magistrates with high personal integrity enter and promoted within the judicial system;

266See the article by Edvin Sugarev at http://www.svobodata.com/page.php?pid=42&rid= See also http://paper.standartnews.com/bg/article.php?article=312388:
• Clear standards and stable practice of promotion and disciplining should be elaborated by the SJC and the Judicial Inspectorate. The attestation should be much more detailed as to allow for fine distinctions in the performance of magistrates;

• The transparency in the process of nomination of the candidates for both judiciary and the SJC, elaborations and discussion of decision-proposals and decision-making in the SJC should be improved, as well as the giving of substantive reasons for specific decisions;

• The resources of the system should be managed better, as to eliminate the problem of excessive caseload in certain courts and prosecutorial offices.

• Methodology for comprehensive investigation and interaction with other institutions on complex financial, economic and corruption offences linked to organised crime should be elaborated.
**PUBLIC SECTOR**

<table>
<thead>
<tr>
<th>Public Sector(^{267})</th>
<th>Overall Pillar Score: 52.77/ 100</th>
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<tr>
<td><strong>Indicator</strong></td>
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<td><strong>Capacity 50/ 100</strong></td>
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<tr>
<td>Resources</td>
<td>-</td>
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<tr>
<td>Independence</td>
<td>75</td>
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<tr>
<td><strong>Governance 66.66/ 100</strong></td>
<td></td>
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<tr>
<td>Transparency</td>
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<td>Accountability</td>
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<td>Integrity Mechanisms</td>
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<td><strong>Role 41.66/ 100</strong></td>
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<tr>
<td>Public Education</td>
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<tr>
<td>Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption</td>
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<td>Reduce Corruption Risks by Safeguarding Integrity in Public Procurement</td>
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### Summary

The public sector’s resources dedicated to the effective execution of its duties are relatively stable, but there is a large difference in the level of resource provision on a central and local level.

As a whole, Bulgarian legislation provides sufficient regulations to ensure the independence of the administration from unlawful political and economic actions. Regardless of the high degree of regulation within the legislation for protection of the administration from external influences – both political and economic, there is a wide spread view within society, that appointments based on political or family ties are regular.

An Act of Publicity of Assets of Senior Public Officials, an Act for the Access to Public Information, an Act for the Protection of Classified Information have been passed. In numerous acts the legislator prescribes the creation of public registries for the information for the work of the administration in sectors of large public significance.

During the last years the transparency in the work of the public administration in Bulgaria is improving, but there are still administrations without websites, and the existing administrative

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\(^{267}\) The overall pillar score is a simple average of the scores of the three dimensions capacity, governance and role. The dimension scores are simple averages of the respective indicator scores.
website to a large extent do not conform to the requirements for access to information, especially in relation to the financial resources at their disposal. The legislation provides sufficient mechanisms for making employees in the Bulgarian public sector accountable. The Legislation in Bulgaria includes rules for integrity in the work of the employees and institutions. These are to a large extent in compliance with the existing international standards and Bulgarian laws are harmonized with the European legislative norms. Regardless of the large degree of provision by legal norms, the effectiveness of detection and sanctioning of corrupt practices in the public administration is not at the expected level.

The legislation in the area of public procurement is at a very good level in correspondence with the existing European directives and the principles of integrity. The practices in the application of the laws and the control over them are well developed and correspond to the expectations for a fair, free competition in public procurement procedures. The mechanisms for appeal created are effective. The procedures are public, but the final contracts with the suppliers are not published. In the process of execution of the contracts there is sometimes renegotiation of the conditions via annexes to the contracts, which creates an impression of excessive tolerance towards some suppliers and of draining of additional funds.

Structure and Organisation

The public sector pillar includes the valuation of the central and regional administration, following the parameters defined in the Administration Act. This is the administration servicing the central executive authorities – the prime minister, the deputy prime ministers, the council of ministers, the ministers, the governmental and executive agencies, the governmental commissions; servicing the executive authorities on a regional level – the regional governor, the mayors of municipalities, the mayors of districts, the mayors of mayoralties and the mayor appointees; as well as servicing the administrative structures, reporting to the National Assembly, and the administrative structures, established through specific acts. The total count of administrations related to the executive power in Bulgaria is 593.

CAPACITY

Resources (practice)

To what extent does the public sector have adequate resources to effectively carry out its duties?

Score: 50

The public sector’s resources dedicated to the effective execution of its duties are relatively stable, but there is a large difference in the level of resource provision on a central and local level. The central level commands sufficient financial, technological and human resources, whereas there is a deficiency of financial, but also technological and human resources on a local level in the majority of Bulgarian municipalities. There is no transparency of the finances dedicated to the maintenance of the public administration. The municipality authorities are strongly dependent on the will of politician on a central level in terms of the allocation of resources for the local authorities’ duties. The maintenance of the local

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administration is a delegated government duty and the dedicated funds are determined on a central level.

The funds, which are allocated for the maintenance of the public administration in Bulgaria in 2011 are 2.3% of GDP\(^{269}\). This amount also includes the state funding for science, hence why it is impossible to independently evaluate the expenditure on the maintenance of the public administration.

The evaluation of the interviewed internal expert\(^ {270}\) is that the central administration commands sufficient resources for the execution of its duties, whereas on a local level the resources are very limited and insufficient\(^ {271}\). The remuneration level in the public administration corresponds to the average standard of living in Bulgaria. Based on preliminary data from the National Statistical Institute the average annual salary in the Governmental Sector for 2010 is 10134 BGN (6450 USD) compared to an average salary of 7769 BGN (4945 USD) for the country as a whole. For 2009 these figures are 9588 BGN (6831 USD) and 7309 BGN (5298 USD) respectively\(^ {272}\).

The remuneration levels are not sufficiently attractive for young talented people. Public service in Bulgaria is very much based on the Career System. Entry into public service for young people is restricted to lower positions, whereas higher and better paid positions have experience within the public sector and given ranks as prerequisites. The minimum and maximum salaries for different levels, ranks and positions in the administration are determined annually by the Council of Ministers, whereby the lowest level of remuneration in the administration is 335 BGN (244 USD) monthly\(^ {273}\). Such low levels of remuneration are not attractive for young and able people. As a result, the share of people at an age below 30 effectively employed in the administration has been shrinking in the last 3 consecutive years. In 2009 it was 9.4\%, compared to 11.2\% for 2008 and 12.1\% for 2007\(^ {274}\).

As a whole, there is no system for the evaluation of the effectiveness of the provision of public services in Bulgaria, or at least such analyses by state institutions have not been made publicly available. In 2010 the Institute for Market Economy launched a campaign for a more transparent, more effective and lower governmental expenditure\(^ {275}\). Analyses for the different public sectors are published at the organisation’s website. Attempts at the summarisation of the work of different governments have been made, whereby in 2011 a new version of a 2008 study on the successes and failures of Bulgarian governments has been published\(^ {276}\). The methodology of the study is based on an analysis of audits performed by the National Audit Office. Government activities requiring the expenditure of public funds have been classified into 3 different groups – successful, unsuccessful and neutral. The results of the study show a larger share of unsuccessful activities\(^ {277}\). The audit reports of the National Audit Office show that the Bulgarian administration is not sufficiently effective in the execution of its duties. Chart 1 depicts the summarised results of study. The conclusions of the authors of the study


\(^{270}\) The internal expert has 17 years of experience as a central administration (State expert in the administration of the Council of Ministers) functionary responsible for the reforms in administration and regional and local governance.

\(^{271}\) Interview with an internal expert conducted by the author, Sofia, June 2011.

\(^{272}\) http://www.nsi.bg/ORPDOCS/Labour_2.2.1.xls, available as of June 2011.


\(^{277}\) The study is available at http://ime.bg/var/images/Final_FEB_15_2011.pdf.
are: “The public sector redistributes a large share of the economy’s output and often does it inefficiently. This puts into doubt the necessity for government intervention in many sectors – through regulations, programs, and spending of funds, which often do not achieve the predetermined goals and quite often result in additional expenditure for citizens and businesses”\textsuperscript{278}.

\textbf{Chart 1: Number of cases reviewed (Y Axis), their classification and period (X Axis)}

\begin{center}
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\textit{Source: IME based on data from the National Audit Office. In red – failures, in green – successes, in yellow – neutral government activities requiring the expenditure of public funds.}

\textbf{Independence (law)}

\textit{To what extent is the independence of the public sector safeguarded by law?}

\textbf{Score: 75}

As a whole, Bulgarian legislation provides sufficient regulations to ensure the independence of the administration from unlawful political and economic actions. The laws prescribe neutrality and impartiality in the work of the administration. The access to public service employment and appointments follow a competitive process. Promotions in rank and position are regulated by law. A promotion comes after an attestation and evaluation of performance and after the employee has proven experience and the necessary professional qualification. However, there are gaps within the legislation which allow for a lawful appointment based on political or family ties, especially for executive positions.

The public administration reform in Bulgaria started in 1998 following the passage of the Administration Act, followed by the Civil Servant Act, the Access to Public Information Act, the Protection of Classified Information and other legislative acts, whose purpose is to ensure stability, neutrality, transparency and responsibility in the work of public administration. The occupation and execution of public service is legally safeguarded from discrimination, privileges and restrictions based on race, nationality, ethnicity, gender, origins, religion, personal views, membership in political, trade-union and other public organisations and movements, personal, social and property status or physical or other disability\textsuperscript{279}.


\textsuperscript{279} Civil Servant Act, Article 7, Paragraph 6.
The Civil Servant Act introduces a compulsory competitive process for the occupation of vacancies, whereby the competition is purely based on professional qualities\textsuperscript{280}. The types of competitive processes, the processes’ procedures and the corresponding terms are regulated through the Civil Servant Act, as well as through a specific ordinance. A designed commission which has to evaluate solely the professional qualities of candidates is appointed for each competition\textsuperscript{281}. An amendment of the Civil Servant Act in 2008 introduces a centralised competition process for the selection of civil servants. The competition process is organised by the Institute for Public Administration following an analyses and evaluation of the human resource needs of administrations\textsuperscript{282}. Article 15 of the Civil Servant Act provides a possibility for temporary appointment of servants “in lieu”, which allows for circumvention of the competitive principle.

The work of the administration is based on the principles of lawfulness, openness and accessibility, responsibility and reporting, effectiveness, subordination and coordination, predictability, objectivity and impartiality\textsuperscript{283}. Article 18 of the Civil Servant Act provides the principles, on which the execution of public service is based: lawfulness, loyalty, responsibility, stability, political neutrality and hierarchical subordination. The impartial and conscientious execution of duties in accordance with the law is included in the list of obligations of civil servants through a legislative act\textsuperscript{284}. Civil servants in Bulgaria can be members of political parties but cannot in any of their work be guided by political interests or aim to protect a political party’s interests or will\textsuperscript{285}. Civil servants have the option to participate in trade unions as a means to protect their rights, if they so desire. There is no specific act which concerns lobbying. The National Assembly President, as quoted by the media, suggests that the necessity of such an act is obvious and that it is expected that a proposal for such an act for lobbying will be provided to parliament for review in the winter of 2011\textsuperscript{286}. An inquiry within the proposed acts in the National Assembly shows that as of June 2011 such a proposed act has not been deposited\textsuperscript{287}. A conference under the title “The role of lobbyists” was organised in Sofia in November 2010 where the National Assembly President admitted the lack of readiness for such an act\textsuperscript{288}.

\textbf{Independence (practice)}

\textit{To what extent is the public sector free from external interference in its activities?}

\textbf{Score: 25}

Regardless of the high degree of regulation within the legislation for protection of the administration from external influences – both political and economic, there is a wide spread view within society, that appointments based on political or family ties are regular. The

\begin{flushright}
\textsuperscript{280} Civil Servant Act, Article 10.  \\
\textsuperscript{281} Civil Servant Act, Article 10e.  \\
\textsuperscript{282} Civil Servant Act, Article 10f.  \\
\textsuperscript{283} Administration Act, Article 2, Paragraph 1.  \\
\textsuperscript{284} Civil Servant Act, Article 21, Paragraph 1.  \\
\textsuperscript{285} Civil Servant Act, Article 42.  \\
\textsuperscript{287} \href{http://www.parliament.bg/}{http://www.parliament.bg/}  \\
\end{flushright}
problem of political appointments and the influence over the work of the administration has been reviewed numerous times, including by Parliament. In response to a question by a representative from the opposition regarding a case of concrete pressure on a civil servant to join the GERB party, including threats of dismissal, the prime minister responded that there are no political appointments within the administration. Following a change of government, in different time frames a change of the directors of independent administrative structures, which are part of the executive power, but are not elected, usually occurs. These positions are not protected by the Civil Servant stature, they are part of the political level of the system of governance and the actions of governments for the replacement of directors are not going to be evaluated in the following paragraphs.

Based on data from the Report for the Condition of the Administration in Bulgaria for 2009, the turnover in administration for 2009 is 10.9% and it is stated that the lowest value for the last several years. The total number of appointed civil servants is 5620, which is 7% of the total administration. The unoccupied vacancies in the end of 2009 are 5408, which is 6.7% of the total administration. As a result of imposed disciplinary punishments a total 103 employees of the administrations have been dismissed and a total of 973 have been retired.

The data from the Report for the Condition of the Administration in Bulgaria for 2009 show clear trends regarding the replacement of employees in executive positions. “The executive positions occupied through a selection procedure during the period are 500, which is 40.6% of the total number of all executive positions occupied through the year (37.7% for 2008, 18.3% for 2008). Thus, for a second consecutive year the share of this instrument for the appointment of servants in executive positions increases – with 7.7% for 2008, whereby the increase for 2008 compared to 2007 is more than double this figure.” The usage of the “selection procedure” instrument allows for an increase in the number of “friendly” employees. However, as a whole, the most common way for appointment is the competitive procedure. “Through a competitive procedure a total of 1720 employees (3148 for 2008, 2642 for 2007) were appointed. Amongst these, experts were 1312 (2332 for 2008) with a share of 29.9% (47% for 2008). Though a competitive procedure a total of 408 executive positions were occupied – 33.1% of the total of all occupied executive positions for the period (48.4% for 2008). Compared to the previous year, a decrease by 50% of the share of executive positions occupied in this way is registered, whereas in the previous year they increased by 91.5% compared to 2007 (816 for 2008, 426 for 2007).”

It is impossible to clearly determine what part of turnover in administration is due to the exertion of political power and influence. One can separate the mechanisms of such influence into two groups. The first group consists of mechanisms based on loopholes in legislation, which allow for the circumvention of guiding legislative regulations. The second group of mechanisms is based on psychological pressure through which inconvenient people are forced to resign and in this way to open the door for appointments based on political or family ties.

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289 An article by Darik Radio, 10 June 2011, available as of June 2011
290 Administration Act, Article 19, Paragraph 4.
During the organisation and the conduct of competitive procedures one can register a formulation of requirements which to match the pre-desired candidate. In the Report for the Condition of the Administration in Bulgaria for 2009, passed by the Council of Ministers on 6 August 2010, there is an ascertainment of the regular usage of a “loophole” within the Civil Servant Act, following Article 15, which defines the cases in which vacancies are occupied on a temporary basis for a term of 3 months and following the expiration of this term, the employees are reemployed on a permanent basis. During interviews both the internal and the external experts shared that it is difficult to quantify the share of political appointments and dismissals but admitted that these exist, but insisted that overall turnover is largely due to the personal will of employees to leave.

In as much as the law prescribes that competition commissions should be appointed by the political director of the administrative structure, and the members of the commissions should consist of his subordinates, there will always be an opportunity for the exertion of political pressure and influence over the work of the commission.

GOVERNANCE

Transparency (law)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Score: 75

An Act of Publicity of Assets of Senior Public Officials (May, 2000), an Act for the Access to Public Information (July, 2000), an Act for the Protection of Classified Information (April, 2002) have been passed. In numerous acts the legislator prescribes the creation of public registries for the information for the work of the administration in sectors of large public significance. Such registers are the administrative registry, the registry of procurements, the registry of municipal property, and the registry of Assets of Senior Public Officials amongst others. There is a lack of a normative framework to ensure the publicity and transparency of the management of public property and there are gaps in the framework regarding the control and sanctions of obligations in relation to the announcement of public information.

A registry for the declaration of assets, income and expenditure, domestically and abroad, was created through the Act of Publicity of Assets of Senior Public Officials, passed in 2000. The declaration of assets, income and expenditure of the spouse and minor children is also compulsory. The declarations are submitted no later than 1 month after inauguration, as well as no later than 1 month after leaving. The concerned persons are required to annually submit declarations of change in assets and finances, and in case there is no such change – to submit a notification. The law extends over a wide range of people in senior positions, which covers the institutions of legislative, judicial and executive authorities at central, regional and local level – the presidency, National Assembly, Supreme Courts, the Prosecutor General, and all independent supervisory and regulatory authorities. The law also applies in the state media, news agencies and other bodies.

296 Interviews with an internal and external expert conducted by the author, June 2011.
297 Act of Publicity, Article 4.
The Public Registry of the declarations of assets of senior public officials is maintained as part of the website of the National Audit Office. The declarations contain information regarding assets, including real estate, motor vehicles and other transport vehicles, cash holdings, receivables and borrowings of a value of more than 5000 BGN in local or foreign currency, securities, shares in limited companies and limited partnerships, registered shares in companies, including shares acquired through privatisation outside of the bond (mass) privatisation, income of a value of more than 2000 BGN (1500 USD) from sources different than the official salary, as well as payments and collateral for education of the concerned persons or their families, for travel or other payments with a single value of more than 500 BGN (362 USD). The accuracy of the information in the declarations is reviewed by the National Audit Office through the issuance of requests from its director towards state and local institutions responsible for documenting the respective data. The results of this review process are made public via the website of the National Audit Office. In case of inaccuracies in the declarations, as well as if a declaration is not submitted, the director of the National Audit Office notifies the director of the National Revenue Agency and the director of the “National Security” Agency. The results of their checks are also made public via the website of the National Audit Office. If a declaration is not submitted, a fine is imposed by the director of the National Audit Office.

The procedure for the announcement of public information is subject to the Act for Access to Public Information (passed in 2000, with numerous consequential amendments, the latest being from May 2011). The obligated subjects following this Act are the state authorities, their regional units and the local authorities of the Republic of Bulgaria, referred to as “the authorities”, as well as all public entities, including public legal entities, individuals and entities in relation to their activities financed through funds from the consolidated state budget and/or EU funds and/or funds provided by the EU for specific projects and programmes.

The Act defines the scope of public information by separating it into official and professional. Official information is the information, which is contained in the acts of authorities and it is publicised openly. Professional information is the information which is created, collected and archived in relation to official information and the activities of authorities. The access to it is free, but restrictions for up to 2 years are prescribed under given circumstances. These restrictions are not applied if there is a prevailing public interest in the matter. Article 15 of the Act for Access to Public Information provides an obligation for periodic publication of current public information. Such publication should explicitly contain information for the given authority’s legal powers, a list of the normative acts issues, a description of the informational resources, which are used, as well as full contact details of the unit, which is responsible for accepting applications for access to public information. Access to public information is free of charge, whereby only the costs associated with the physical provision of the information are to be paid. The Act introduces procedures and terms for the provision of public information. The procedures for access to classified information are detailed in a separate act (Act for Protection of Classified Information). There are legal gaps in relation to the control and sanctions related to the announcement of public information by the legally obligated parties. The Act for Access to Public Information defines sanctions and legal procedures for the protection of citizens’ rights only in case of a rejection of access to public

299 The fine varies from 1000 BGN (740 USD) to 1500 BGN (1111 USD), a repeated violation results in a fine from 2500 BGN (1850 USD) to 5000 BGN (3700 USD). Act of Publicity of Assets of Senior Public Officials Article 6, Paragraph 1 and 2.
300 Act for Access to Public Information, Article 3, Paragraph 1 and 2.
301 Act for Access to Public Information, Article 10.
information. There are no sanctions for institutions, which do not comply to their obligations 
for the publicising of public information following the procedures defined by the Act.
The Act for Access to Spatial Data, which prescribes the creation of a national portal for 
access to spatial data, was passed in 2010. The subject of this act is the creation, maintenance 
and usage of an infrastructure for spatial information, the provision of access to spatial data 
and the provision of services for data related to the environment or the activities which can 
influence the environment, through guaranteeing the compatibility and security of data 
transfer.
The expert evaluations of the legislation in the area of access to public information in 
Bulgaria show a large degree of compliance with the norms of the European Council’s 
Convention on Access to Official Documents. There are deficiencies surrounding the 
definitions of the terms “official secret” and “professional secret” and the regulation in this 
area is scattered in various different acts and ordinances.
The monitoring and coordination for the application of the Act for Access to Public 
Information is too anonymous. The Ministry of State Administration and Administrative 
Reform existed until July 2009 and its minister was the authority which monitored the 
compliance with the Act. After the reform in Boiko Borissov’s government and the closing 
of the MSAAR the function to control the activity of the administration is delegated to the 
“State Administration” directorate as a part of the Council of Ministers, which itself was shut 
down with an act by the Council of Ministers from February 2011.
The Act for Public Procurement prescribes publicity for the procedures which has to be 
provided through a public and electronically available registry of public procurements. The 
state policy in the area of public procurement is a responsibility of the Minister of Economics, 
Energy and Tourism. A Public Procurement Agency which is an executive agency 
subordinated to the Minister was created. The director of the agency is appointed by the 
minister. All public agents are required to submit the information detailed in the Act to the 
registry, as well as to the online edition of the State Gazette, for all their public procurements. 
Any vacancies in the public administration have to be advertised publicly. For this purpose in 
2000 an administrative registry was created.

Transparency (practice)

To what extent are the provisions on transparency in financial, human resource and 
information management in the public sector effectively implemented?

Score: 50

During recent years transparency in the work of the public administration in Bulgaria is 
improving, but there are still administrations without websites, or when present they do not 
give useful information allowing civic control or policy analysis. Also the existing 
administrative website to a large extent do not conform to the requirements for access to 
information, especially in relation to the financial resources at their disposal.
We assume that nowadays the easiest, most acceptable and fastest way for granting access to 
public information is the internet. Over the last 11 years teams Foundation "program to access

303 Rulebook of MSAAR, Article 5, Paragraph 9, Council of Ministers’ ordinance № 215 from 2005.
304 Council of Ministers’ ordinance № 30 from 2011.
305 Act for Administration, Article 61.
information” analyze practices for ensuring access to public information in Bulgaria. Table 1 shows the share of administrations of the executive power on a central, regional and municipality level which do not have websites. As visible from Table 1, their share in 2011 is increasing. 6 Municipalities are yet to find resources and time so as to create their own websites.

Table 1. Share of administrations of the executive power without internet websites in %

<table>
<thead>
<tr>
<th>Year</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>3.6</td>
</tr>
<tr>
<td>2010</td>
<td>2.3</td>
</tr>
<tr>
<td>2011</td>
<td>4.7</td>
</tr>
</tbody>
</table>

In relation to the type and quality of the information published by administrations, the experts from the Foundation estimate that only 20 websites from 593 administrative structures are in complete accordance with the Act for Access to Public Information. There is a clear tendency that the central administrations as a whole is more successful at publishing information for the power of the specific authority, the normative framework, the structure of the specific institution, etc. than the local administration. Contrariwise – municipal administrations are better at publishing the most recent information about the decisions of municipality councils and the normative framework of the municipality. There is large deficit of information on both levels in terms of the publication of the budgets of the institutions, the reports for the work of the institutions, contracts for public procurement, individual administrative act and other seemingly small, but actually very important pieces of information.

In terms of the citizens’ attitude towards the access to information, research studies show that, in 2011, 45% are already aware of the Act for Access to Public Information and the share of people who know their rights stemming from this act is increasing. Based on data from the Dutch expert Roje Fluegels in September 2009 Bulgaria was second only to the US in terms of the number of submitted applications for access to information on a per capita basis. In 2009 24694 applications were submitted, whereby most of these were from private individuals – 57%, 30.2% were from journalists and 3.5% were from NGOs. Only 57 (0.2%) applications were received from foreign citizens or individual without citizenship.

71.6% of all structures of the executive power have written-down internal rules for access to public information. In 63.9% of all structures there is clear written-down information for citizens as to how they can exercise their right to access to information. 37.7% of the administrations have not provided a designated physical space for reading the desired information. Only 34.6% of the administrative authorities of the executive power maintain an electronic registry of the applications for access to information. 66% of the structures of the central and 49% of the structures of the regional administration allow for electronic

306 All annual reports are available through the “Access to Information” Foundation’s website at http://www.aip-bg.org/publications/Годишни_доклади_за_състоянието_на_достъпа/ as of June 2011.
309 For more detailed information see the annual reports of the “Access to Information” Foundation at http://www.aip-bg.org/publications/Годишни_доклади_за_състоянието_на_достъпа/ as of June 2011.
applications for access to information. All this data suggests a definite improvement in the provision of information, compared to previous years, but are also a testimony to the need for improved practices in this area.

Based on data from the Report on Access to information in Bulgaria for 2009, there were 247 (2.3% of all submitted applications) rejected applications for access to information. The different motives for the rejections are as follows:

<table>
<thead>
<tr>
<th>Motives for the rejections</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>The desired information was already provided to the applicant during the last 6</td>
<td>10</td>
<td>6.0</td>
</tr>
<tr>
<td>The information is professional and is related to the preparation of normative acts</td>
<td>48</td>
<td>19.5</td>
</tr>
<tr>
<td>The information contains opinions and positions relating to future negotiations</td>
<td>14</td>
<td>5.6</td>
</tr>
<tr>
<td>The requested information is a professional secret</td>
<td>20</td>
<td>8.1</td>
</tr>
<tr>
<td>The requested information is a state secret</td>
<td>2</td>
<td>0.8</td>
</tr>
<tr>
<td>The requested information is a trade secret</td>
<td>12</td>
<td>4.8</td>
</tr>
<tr>
<td>The access to information concerns a third party (individual) and there is no stated approved by this third party for granting access to information</td>
<td>39</td>
<td>15.8</td>
</tr>
<tr>
<td>The access to information concerns a third party (company) and there is no stated approved by this third party for granting access to information</td>
<td>65</td>
<td>26.4</td>
</tr>
<tr>
<td>Others</td>
<td>37</td>
<td>15.0</td>
</tr>
</tbody>
</table>

The largest number of rejected applications for access to public information was registered in 2005 – 539, and the lowest – in 2008 – 181.

The internal expert shared, that there are problems with the application of the Act for Access to Public Information. These are related to the estimation of the costs for the physical provision of the information. The control over the application of the Act is too anonymous and there have been no sanctions for non-compliance. The experts from the “Access to Information” Foundation have drawn attention to these facts numerous times.

The procedures for protection of citizens’ rights to access to Public information ensure effectiveness predominantly for court procedures and rulings. In the annual reports of the “Access to Information” Foundation there are numerous examples of just court decisions. The analysis of the experts of the foundation show that the practices correspond to the legal requirements.

The information on public procurement is to a large extent shared in accordance with the requirements of the Act for Public Procurement and the Act for Access to Public Information.

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314 Interview with an external expert conducted by the author, Sofia, June 2011.


There is an internet portal dedicated to public procurement\textsuperscript{317} and it offers information on the national and EU normative framework, information on appeals and preliminary control of lawfulness, information on judicial practice, a registry of the public procurements, sample documents, methodological and practical guidance, electronic services, including online submission of documents, as well as current news for the activities of the Public Procurement Agency.

Following the requirement of the Act for Administration there is an administrative registry\textsuperscript{318}, which contains information about the normative framework, the authorities of the executive power and the structures of their administrations, vacancies in the administration, notifications for competitive procedures, regulatory regimes and acts for their application.

The registry for Publicity of Assets of Senior Public Officials is regularly updated and maintained as part of the National Audit Office’s website. All submitted declarations of assets are publicly available there, along with a list of the names of the individuals who have not submitted declarations and the results of the corresponding investigations and checks. The lists of documented inaccuracies between the declared and actual assets of individuals contain specific information about the violations and are also available online\textsuperscript{319}.

The governmental Report on the Condition of the Administration for 2009 notes some worrying trends. In 2009 “there is a considerable increase in the obliged individuals who have submitted declarations of their assets – 113, 78 of which were of individuals appointed on the basis of official legal relations (OLR) and 35 of which were individuals appointed on the basis of labour law relations (LLR). The number of OLR individuals who have not submitted declarations, compared to 2008, has more than doubled (from 32 to 78), whereby the increase in highest in the central administration (from 12 to 78). The largest numbers of employees who have not submitted declarations are from the Employment Agency – 52, Ministry of Defence – 35, Ministry of Agriculture and Food and the Regional Health Centre in Targovishte – 6 each, the Cadastre Agency – 5. The published data related to the investigations and checks of the declarations of assets is also worrying. In the reports it is noted that in 383 administrations (68% of all administrative structures) there is no established practice to review and analyse the submitted declarations. In this way a source of objective information and a strong tool in the fight against corruption remain unutilised”\textsuperscript{320}.

**Accountability (law)**

*To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?*

**Score: 75**

The legislation provides sufficient mechanisms for making employees in the Bulgarian public sector accountable. The principles of openness and publicity have been introduced in the work of the institutions responsible for the control over the legality of the work of the administration. The information on the supervisory and control activity is provided to the

\textsuperscript{317} Available at http://rop3-app1.aop.bg:7778/portal/page?_pageid=93,1&_dad=portal&_schema=PORTAL as of June 2011

\textsuperscript{318} Available at http://www1.government.bg/ras/ as of June 2011

\textsuperscript{319} The whole list of inaccuracies for 2010 can be viewed at http://www.bulnao.government.bg/files/_bg/25.01-HPORJuxReport2009-20012011-103652.xls, available as of June 2011

National Assembly but also to the general public. In most cases the access to it is ensured through the legal formulation of an obligation to maintain an electronic registry.

The employees in the public administration in Bulgaria are subject to checks and investigations given any doubt of wrongdoing and can be subjected to both disciplinary and criminal charges. Legal, administrative and inspectorial supervision have been introduced.

The administrative supervision is conducted by the respective executive authority. In the public administration an inspectorial supervision has been introduced. Some legal changes and amendments have been introduced in 2010 in relation to the control over the compliance with the Act for Administration and the Civil Servant Act. The reason for this was the closure of the Ministry of State Administration and Administrative Reform. The system for administrative control at this point in time includes the compulsory creation of inspectorates attached to the Ministries. These inspectorates are directly subordinated to the Ministers and their power extends to secondary administrators of budget funding (Article 46 of the Act for Administration). Checks for administrative violations following the Act for Administrative Violations and Punishments and violations of the Code of Conduct of employees, checks for the ascertainment of conflict of interests, as well as the obligation to evaluate the corruption risk and to propose measures for its limitation are all included in the area of competence of the inspectorates.

The Act for Administration introduces the structure of the Inspectorate General, which is part of the administration of the Council of Ministers and is directly subordinated to the Prime Minister (Article 46a). Its role is to coordinate the work of the inspectorates, to develop the state policy in the area of evaluation of the effectiveness of the work of the administration and to ensure prevention of administrative violations, conflict of interest and corruption.

Bulgarian Legislation prescribe two types of internal control institutions which to monitor the lawfulness of the administration’s actions – the disciplinary council and the inspectorate. The disciplinary council is a council of between 3 and 7 civil servants, which are appointed for a three year term\(^\text{321}\) by the corresponding appointing authority. The disciplinary council’s meeting require a full quorum and decisions are taken with a 2/3 majority. Dismissal is the toughest form of disciplinary punishment for any violations during the execution of civil service\(^\text{322}\). Any documented violations by public servants have to be reviewed by a disciplinary council.

The imposition of disciplinary punishments is the exclusive responsibility of the hiring authority (Article 6, Paragraph 2 of the Civil Servant Act). The Act defines the terms of disciplinary liability, as part of which the negligence of obligations to citizens and the non-compliance to the Code of Conduct have been explicitly included (Article 89). Disciplinary councils are created within the administrations, whereby the law specifies the conditions for their appointment, their work proceedings and their powers (Article 95 and 96 of the Civil Servant Act).

The employees in the public administration in Bulgaria can be subjected to disciplinary and criminal charges for blackmail, bribery, corruption and misuse of classified state information. The Civil Servant Act and the Labour code specify the possibilities for disciplinary prosecution of the employees in the public administration. The Penal Code of the Republic of Bulgaria specifies the areas, in which a certain action is considered a crime and is subject to criminal prosecution.

The mechanisms for the submission of processing of complaints, signals and suggestions by citizens and organisations are the subject of the Administrative Proceedings Code of the Republic of Bulgaria. There are clear rules and procedures for the contestation of administrative acts, for the review of suggestions and signals to the administrative authorities

\(^{321}\) Civil Servant Act, Article 95.
\(^{322}\) Civil Servant Act, Article 90.
as well as for the disputation in a court of law. The right of all citizens and organisations, as well as of the ombudsman, to submit suggestions and signals to the administrative authorities are acknowledged. The review of both written as well as verbal signals and suggestions, submitted either personally or through an intermediary, regardless of the medium of submission, is permissible. E-mail is also acceptable. Anonymous signals and suggestions are not reviewed.

The appeals against actions by public procurement commissioners are regulated by the Act for Public Procurement. All actions of public procurement commissioners can be appealed in front of the Commission on Protection of Competition. The decisions of the commissioners can be appealed in relation to their legality, including discrimination in the economic, financial, technical and qualification requirements in the announcement, documentation or any other document, related to the procedure (Article 120, Paragraph 1 and 2). The power of the CPC over the proceedings related to public procurement is clearly defined. The CPC’s decisions can be appealed in front of the Supreme Administrative Court.

The control over the enforcement of the Act for Public Procurement is conducted by the National Audit Office and the authorities of the Public Financial Inspection Agency (Article 123 of the Act for Public Procurement), depending on the area of competence in terms of the commissioner of the particular public procurement. The authorities perform checks and investigations, whereby the results of these are summarized in reports. In case any violations are ascertained the Public Financial Inspection Agency is obliged to notify the Public Procurement Agency. The administrative penal actions are conducted following the Administrative Proceedings Code. The Public Financial Inspection Agency is responsible for the issuance of penal acts and the Minister of Finance – for the issuance of penal provision. Following Article 8, Paragraph 15 of the Act for Protection of Competition the Commission on Protection of Competition is obliged to maintain an electronic register for the issued acts and provisions.

In principle, all institutions are obliged to provide information to the National Assembly within the framework of mechanisms for parliamentary control and the supervision of the work of the executive power by the permanent commissions of the National Assembly. In addition, the institutions and agencies of which legitimacy arises through their election by the National Assembly are obliged to present annual reports on their work. For example, the Act for Protection of Competition introduces an obligation for the Commission on Protection of Competition to prepare and present to the National Assembly an annual report of its activity by no later than May 30 of the following year (Article 14, Paragraph 1). The report is published at the Commission’s website. Following Article 19, Paragraph 2, Subparagraph 12 of the Act for Public Procurement the Public Procurement Agency prepares and publishes annual reports of its activity.

**Accountability (practice)**

To what extent do public sector employees have to report and be answerable for their actions in practice?

**Score: 50**

The generalized government information on legal offences by the employees in the public administration is part of the annual reports for the condition of the administration. For example, the 2009 report presents data on checks and investigations of potential conflict of interest and their results, as well as data on the administrative prosecution of employees in the
administrations. Depending on the type and degree of violation disciplinary charges are also imposed. Out of a total of 867 charges, 103 are dismissals.

The supervision of public procurement procedures lies within the powers of the Public Procurement Agency. The activities related to the appeals of public procurement procedures within the competency of the Commission on Protection of Competition. At the websites of both institutions one can find information on the submitted complaints, the assigned investigations and the results from these. The conclusion that the supervisory procedures are effective can be drawn.

The data on crime provided by the National Statistical Institute is available at the organization’s website. For example, the data on crimes related to bribes for 2008 and 2009 is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Conviction</th>
<th>Conditional Sentence</th>
<th>Acquittal</th>
<th>Dismissal</th>
<th>Indemnification</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>96</td>
<td>50</td>
<td>30</td>
<td>14</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>2009</td>
<td>139</td>
<td>84</td>
<td>46</td>
<td>8</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: NSI

The information on verdicts on cases related to bribe is commented on by the media as well. For example, there are publications such as: “More than 170 Bulgarian policemen were penalized for corruption in 2010,” “An ex deputy Minister of Interior receives a conditional sentence for corruption,” “Convicted for corruption amongst the next mandate’s local authorities in Ruse” amongst others.

All administrations have dedicated structures/employees which are responsible for processing complaints by citizens. Administrations with a small headcount have only a single employee responsible due to the lack of resources. At the citizens’ disposal are all legally acceptable methods and ways of submitting complaints. The annual reports for the condition of the administration include data on submitted complaints with a break-down by the type of administration. In 2009 there was an increase of 28.6% in the number of submitted applications, which can be a testimony to the effectiveness of the mechanism. However, the

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324 Ibid.

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information in these reports has to be analyzed carefully, in as much as it is based on data submitted by the administrations themselves. For example, out of 501 administrations 297 declare that they have had no complaints submitted for 2009, which is very dubious, especially considering that amongst these are the Sofia Municipality and other municipal administrations, as well as a few regional administrations, which are all administrations where there are complicated problems for citizens.\textsuperscript{332}

**Integrity (law)**

*To what extent are there provisions in place to ensure the integrity of public sector employees?*

**Score: 100**

The Legislation in Bulgaria includes rules for integrity in the work of the employees and institutions. These are to a large extent in compliance with the existing international standards and Bulgarian laws are harmonized with the European legislative norms. The Civil Servant Act obliges employees to work in accordance with law and to protect the legal rights and freedoms of citizens (Article 4). The work of the civil servant with citizens has to be based on the compliance with the legally stated terms and the satisfaction of lawful requests by citizens. The civil servant must not be rude, ill-mannered and disrespectful towards the citizens he serves (Article 20). The Act defines certain grounds for inadmissibility of occupation of a civil servant position. Article 7, Paragraph 2 restricts the appointment in a civil servant position of an individual “who would be in a hierarchical position of management and control of a spouse, of a cohabitant, of a direct or indirect relative” or an individual who is a “sole partner, unlimited partner in a partnership, a manager, trade representative, procurator, trade intermediary, liquidator or a syndical representative, a member of the management or control bodies of a company or a cooperative”. Civil servants also cannot be MPs or Municipality Council Members in the respective municipality administration. They cannot have a senior position in a political part and cannot work on the basis of a labor law relation, with exception of positions of higher education tuition. “When during the execution of the official public service one of the grounds for inadmissibility in Article 7, Paragraph 2 arises for the civil servant, they are obliged to report this to the hiring authority no later than 7 days after the emergence of these grounds” (Article 27). The civil servant is obliged to declare his assets to the hiring authority following inauguration as well as annually no later than 31 March (Article 29).

The Code of Conduct of employees in the state administration is introduced through the Civil Servant Act. It was passed by the Council of Ministers\textsuperscript{333}. Article 8 of the Code of Conduct introduces special obligations to counteract corruption and unlawful actions. Employees should not allow to be put in a state of financial dependency or other links external individuals or organizations as well as to demand or accept gifts, services, money, gains or other benefits, which can influence their professional approach to certain questions. In addition, the employee cannot accept gifts or benefits, which can be seen as a reward for services which are part of his official duties.

The Code also treats the question of conflict of interest while performing civil service (Article 12). Civil Servants have an obligation to promptly notify in case of a chance of the emergence of conflict of interest in relation to the civil servant or any related individuals, or when his

\textsuperscript{332} Ibid

\textsuperscript{333} Passed with the Council of Ministers Ordnance № 126 from 11.06.2004 published in the State Gazette Issue 53 from 22.06.2004.
relations with concerned parties may arouse suspicions around his impartiality or behavior. The use of official status as a means to the accomplishment of personal or family interests, to the participation in deals conflicting with the official position, function and duties is prohibited (Article 13, Paragraph 1 and 2).

The Act for Prevention and Detection of Conflict of Interests introduced restrictions on civil servants after they leave the public office. These restrictions do not apply to the president and vice-president, the judges of the Constitutional Court, the MPs, the Ombudsman and his deputy, the inspector general and the inspectors from the Inspectorate of the Supreme Judicial Council, the director and members of the National Audit Office, as well as the judges, public prosecutors and investigators. The restrictions are for a one year term and relate to the conclusion of labor law or other contracts for the execution of management or control duties for companies or cooperatives, for or in relation to which the public servant has in his last year of service executed regulatory, dispositive or control action or concluded contracts. In addition, the civil servant cannot own shares or be a director or a member of the management and control bodies of such companies or cooperatives (Article 21, Paragraph 1), or any of their affiliates. An individual, who occupies a public position and has in the last year of his service been part of the procedures for public procurement or procedures related to the distribution of finances from EU funds or finances provided by the EU to the Bulgarian state, cannot for a period of one year participate in or represent another individual or entity in such procedures in front of the institution, which he was originally part of (Article 22, Paragraph 1).

The Code of Conduct of the Civil Servant introduces a general prohibition for employees who have left the state administration to misuse information, which was revealed to them in relation to their former official position or the functions they executed (Article 13, Paragraph 3). In the Act for Conflict of Interest this prohibition is limited to a term of one year after leaving the official position (Article 10). Any violation of the Code of Conduct is subject to disciplinary action following the Act for the Civil Servant.

On a municipality level the practice shows that most municipalities develop their own codes of conduct of the employees with principles and norms in accordance with the national legislations. Client charters are also common.

In 2009 the Act for Prevention and Detection of Conflict of Interests which extends to all public office holders was passed. The Act introduces the term “conflict of interests”, defines the group of individuals occupying official positions on a central, regional and municipal level, and describes the procedures and terms for the declaration of conflict of interests. The Act also introduces various prohibitions which are in effect whilst an individual is occupying an official position, procedures for the ascertainment of conflict of interests, as well as sanctions for unlawful conduct. The declarations are submitted to the authority which is responsible for the hiring or election of the individuals. A permanent commission with the National Assembly was created for the elected positions on a national level and permanent commissions with the municipality councils were created for the elected positions on a municipality level. The declarations are published at the websites of the institutions in special registries.

According to the Penal Code of the Republic of Bulgaria bribery is a crime.

Based on the evaluation of an Expert Team from The Group of States against Corruption (GRECO), “the Bulgarian normative framework for incrimination provides very good tools for prosecution and adjudication of corruption”. These conclusions are naturally accompanied by concrete recommendations for the refinement of specific cases and hypotheses in view of the creation of a practice of a uniform interpretation during the

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jurisprudence process. The Bulgaria authorities have been given a deadline – 30 April 2012 – to respond to these recommendations. Based on an evaluation by experts from the TI – Bulgaria before country’s accession to the EU in 2007 “the Bulgarian Act for Public Procurement adopted all internationally acclaimed means and mechanisms for insuring a free and fair competition, equality of economic entities in public procurement and introduced larger publicity and transparency in the actions of commissioners of public procurement during the preparation, conduction, assignment and the execution of public procurement”\(^{335}\).

**Integrity (practice)**

*To what extent is the integrity of public sector employees ensured in practice?*

**Score: 50**

Regardless of the large degree of provision by legal norms, the effectiveness of detection and sanctioning of corrupt practices in the public administration do not come up to citizens' expectations. Given all uncertainties related to the measurement of real corruption, we will refer to established methodologies used globally. The data from the Global Corruption Barometer for Bulgaria for 2009 show that public administration ranks fourth amongst the sectors impacted by corruption with an index of 4.1 (Chart 2). In 2010 there is no change in the ranking of the sectors (Chart 3). However, the value of the index for the public administration falls to 3.9. During the last few years the share of people who are skeptical towards the government’s efforts to combat corruption remains still high but is decreasing. The share of citizens who prefer not to confess whether they have participated in a corruption event is increasing\(^{336}\). The citizens’ mistrust in the sense to report on corruption to the responsible authorities is also high. This is most likely a clear-minded attitude to the chances of proving corruption activities and is also motivated by the mistrust in the judicial system. In 2010 only 23% of citizens hold the opinion that the spread of corruption has decreased\(^{337}\).


The conclusions of the authors of the study on the measurement of the spread of corruption in Bulgaria for 2010 are encouraging in relation to the increase in the Bulgarian citizens’ support for the anti-corruption efforts of the government. The share of the people who regard this activity as effective has increased to 42%. The study contains worrying data “for the level of bribery by citizens in relation to key state services and structures – compared to the average levels of bribery in the other EU member countries, in Bulgaria in the sectors police (15.4%), customs (10.7%) and judicial system (10.4%) are considerably higher than the practices in other European countries” 338. The level of readiness of citizens to participate actively in the fight against corruption is considerably lower than the EU average (Chart 4). This data should motivate the initiation of an active government policy for the attraction of citizens and NGOs in the fight against corruption. On the basis of this evidence, we can conclude that despite the progress made in ensuring the integrity of public officials, serious problems remain, which reflect on the trust of Bulgarians in the main institutions in the country.

This conclusion is corroborated by the findings of another study, carried out by Transparency International in Bulgaria. According to this study, the main results of which are presented in the tables below, a significant number of representatives of the business sector (between ¼ and 1/3) are not convinced that the administration is capable of guaranteeing a sufficient degree of transparency in public procurement cases.

### Evaluation of the administration on the guarantees of transparency in the procedures for conducting public procurement

<table>
<thead>
<tr>
<th>Response</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, in most cases</td>
<td>59.8 %</td>
</tr>
<tr>
<td>Rather not</td>
<td>27.1 %</td>
</tr>
<tr>
<td>Definitely not</td>
<td>2.5 %</td>
</tr>
<tr>
<td>It is difficult to assess</td>
<td>8.5 %</td>
</tr>
</tbody>
</table>

Evaluation of business on the level of training and qualification of administration for the organization of transparent procedures for procurement.

**Do you think the administration has the necessary training and qualifications to organize transparent conducting procedures under the Public Procurement?**

<table>
<thead>
<tr>
<th>Response</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>8.2 %</td>
</tr>
<tr>
<td>Yes, but only in public institutions</td>
<td>58.5 %</td>
</tr>
<tr>
<td>No</td>
<td>32.8 %</td>
</tr>
</tbody>
</table>

Evaluation of business on the perpetrators of violations in the public procurement.

**Which of the following entities most commonly performed irregularities in public procurement?**

<table>
<thead>
<tr>
<th>Entity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministries</td>
<td>36.9 %</td>
</tr>
<tr>
<td>Government agencies</td>
<td>29.7 %</td>
</tr>
<tr>
<td>Regional administrations</td>
<td>19.5 %</td>
</tr>
<tr>
<td>Judiciary</td>
<td>10.8 %</td>
</tr>
<tr>
<td>Municipal administrations</td>
<td>45.1 %</td>
</tr>
</tbody>
</table>
The government reports on anti-corruption measures for 2009 show an improvement. The main change consists in the orientation towards broad anti-corruption campaigns and the popularization of concrete measures amongst the people\(^{339}\). In the Report for the Condition of the Administration in Bulgaria for 2009 these concrete measures are only mentioned, but not listed. In 2008 and 2009 there is a considerable increase in the submitted complaints on corruption in the public administration. In 2008 they were 9376. The total count of received signals in 2009 is 9325 (9376 in 2008). The largest share of signals are signals related to unlawful or irregular activities or lack of activity – 23.6%, followed by signals in relation to violation of internal work organization rules – 11.4%. Usually the signals in the central administration have the largest share of all – 63.3%\(^{340}\).

In Bulgaria the prevention of and fight with corruption are amongst the regularly suggested topics for education of employees. In 2009 this set of problems ranked second (behind specialized education) in terms of the total number of educated employees - 7689\(^{341}\).

As part of the policy of openness, transparency and responsibility in the work of the administration on a local level we can point to the efforts of the Ministry of Regional Development and Public Works and the National Association of Municipalities in the Republic of Bulgaria for the accession of Bulgaria to the Council of Europe Strategy for Innovation and Good Governance on a municipality level. In 2010 Bulgaria became the first country member of the Council of Europe, which created an independent commission and developed mechanisms for the application of the procedures for evaluation of good governance in municipalities and presented the first 13 labels for good governance to municipalities which have applied to the procedure\(^{342}\).

Based on the opinions of the interviewed internal and external experts, the employees in the administration generally have a good knowledge of and conform to the norms of the Code of Conduct. They however expressed skepticism towards the effectiveness of the control over the conduct of employees, especially in relation to safeguarding the prestige of the institution\(^{343}\). The governmental analyses show that in 94% of the administrations the employees are familiar with the Code of Conduct and there are control activities insuring its observation. “For violation of the Code of Conduct of the employees in the state administration there are a total of 91 different disciplinary charges, whereby the ratio of the central administration to the regional administration is almost even. The most charges are imposed in the Varna Municipality – Primorski district – 14, State Agency “State Reserve and War-Time Stocks” – 9, Sofia Municipality – Nadejda district – 6, Executive Agency


\(^{342}\) All developed documents and rules for the evaluation of the municipalities can be found at the website of the portal for decentralization at [http://self.government.bg/search/?st=%E5%F2%E8%EA%E5%F2+%E7%E0+%E4%EE%E1%F0%EE+%F3% EF%E0%E2%EB%E5%ED%E8%E5](http://self.government.bg/search/?st=%E5%F2%E8%EA%E5%F2+%E7%E0+%E4%EE%E1%F0%EE+%F3%EF%E0%E2%EB%E5%ED%E8%E5), available as of June 2011.

\(^{343}\) Interviews with an internal and external expert conducted by the author, Sofia, June 2011.
The practice of declaring, assigning and monitoring the implementation of public procurement is generally governed by the Act for Public Procurement. The Public Procurement Agency has developed standardized samples documents for the public procurement procedures. These samples are available at the website of the portal for public procurement. As a result, the documentation is necessarily checked for texts, which violate free competition or are discriminatory. The Public Procurement Agency, the Commission of Protection of Competition and the courts publish the results of checks, investigations as well as court decisions at their websites. The existing mechanisms for appeal are efficient. Regardless, there are possibilities for holding procedures, for which the conditions to which candidates should conform are created so as to match the profile of a specific predetermined candidate. In addition, the practices for appointing evaluation commissions show cases where the members of the commission are directly subordinated to the public procurement commissioner, which creates a situation in which pressure can be exerted on them.

ROLE

Public Education

*To what extent does the public sector inform and educate the public on its role in fighting corruption?*

**Score: 50**

The government is making systemic efforts to inform the general public about its anti-corruption activities and policies. Concrete cases are regularly discussed in the media. There are also educational programmes on the subject of anti-corruption for different social groups. Anti-corruption education is part of university curricula in many programmes. All institutions have published contact details for corruption signals. In the last two years there is no written-down governmental policy on combating corruption, even though this problem was originally labeled a priority for GERB’s government. As a result of the economic crisis and the institutions’ reduced budgets educational funding including for anti-corruption education is severely reduced, especially on a local level.

In the last decade in Bulgaria there have been multiple initiatives on educating different social groups in anti-corruption. These initiatives can be separated into several groups:

- NGO initiatives for educating employees in the administration
- government initiatives for educating employees in the administration
- higher education institutions’ initiatives for the inclusion of anti-corruption subjects in the curriculum of different programmes, mainly from the field of political sciences, public administration, sociology, law, economics and others

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345 http://rop3-app1.aop.bg:7778/portal/page?_pageid=93,1&_dad=portal&_schema=PORTAL available as of June 2011.
347 View as Bachelor and Master Degree programs in Political Science, Public Administration, Sofia University “St. Kliment Ohridski”, available at http://phls.uni-sofia.bg/display.php.
- public sector organization’s initiatives for popularizing the mechanisms for submitting signals on corruption through which citizen cooperation is stimulated
- educational institutions’ initiatives for the inclusion of anti-corruption topics as part of the education in the “World and Personality” subject in schools.

The educational programmes are supported by the institutions on a central but also on a local level. The Institute for Public Administration is responsible by law for the organization of the education of civil servants. It is also common to have external organizations or individuals organize and conduct the education.

In the annual reports for the condition of the administration there is data on the number of employees who have passed anti-corruption education. In 2009 there is a severe reduction of the funds provided for education, especially on a local level. This is most likely a consequence of the organizations’ reduced budgets. “Based on data reported by the administrations, the education in ethics and corruption prevention is ranked second in terms of the number of educated employees – a total of 7689 employees (17.3% of all employees who have passed education). The emphasis in these educational courses is on presenting the nature and negative consequences of corruption for society, the main forms of corruption, the methods for counteraction as well as the increase in personal commitment and responsibility of senior officials and employees to the prevention of corruption at work. Notably, the employees of the central administration have a dominant share in these educations – a total of 7136 employees of the central administration (92.8% of all employees who have passed ethics and prevention of corruption courses) with 6779 employees from the National Revenue Agency alone.”

**Cooperation with public institutions, CSOs and private agencies in preventing/addressing corruption**

*To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?*

**Score: 50**

In Bulgaria citizens can freely and openly create NGOs dealing with the problems of corruption. The only requirement is a registration in a court of law following the Act on Entities with a Non-economic Purpose. In practice there are many such NGOs but only a few are of significance. These are the Bulgarian unit of *Transparency International, Risk Monitor, The Centre for the Study of Democracy, The Institute for Public Environment Development* and others.

In relation to the execution of the governmental Strategy for Transparent Governance and the Prevention and Fight against Corruption 2006-2008 all regional administration and almost all municipality administrations have developed their own program documents on the subject. As a measure for implementation they intend tight cooperation with media and NGOs. Research by the author in the online space shows that these documents are electronically available but in most cases they do not contain specific information on conducted cooperation. As a result of the implementation of this strategy regional and municipal community councils on prevention and counteraction to corruption were created. These also included members from

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local citizen organizations\textsuperscript{349}. Unfortunately the information on the activity of these councils is limited. Only some municipalities have published online reports on the activity related to the implementation of the Strategy. For example, in the Stara Žagora municipality there is an acting community council under the name of “More Ideas for Transparency” with reports on activity available online at the municipality’s website\textsuperscript{350}.

The Bulgarian unit of Transparency International has the largest experience in cooperating in governmental initiatives in the fight against corruption – through the execution of monitoring of the transparency of the procedures for significant public procurements. One example is the procedure for the procurement of the “Trakia” freeway. The results of the monitoring are announced in specialized reports at the website of the organization\textsuperscript{351}.

\section*{Reducing Corruption Risks by Safeguarding Integrity in Public Procurement}

\textit{To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?}

\textbf{Score: 25}

The legislation in the area of public procurement is at a good level in correspondence with the existing European directives and the principles of integrity. The practices in the application of the laws and the control over them, however, are less well developed.

In terms of law, the procedures are well developed and correspond to the expectations for a fair, free competition in public procurement procedures. The mechanisms for appeal created are effective. The procedures have the necessary publicity, but the final contracts with the suppliers are not published. In the process of execution of the contracts there is sometimes renegotiation of the conditions via annexes to the contracts, which creates an impression of excessive tolerance towards some suppliers and of draining of additional funds. The financial and human resources of the Public Procurement Agency are not sufficient so as to allow for preliminary monitoring of all public procurement procedures.

The open bidding is the main procedure intended by the Act for Public Procurement, but there is also an option to apply a limited procedure, competitive dialogue and negotiation\textsuperscript{352}. In 2006 the procedure “design contest” with or without prizes for the winners\textsuperscript{353}. In certain cases it is also possible to conduct an electronic tender. The exceptions when there is the option not to apply an open procedure are strictly defined by the Act. The analyses of the Public Procurement Agency show that procurement through negotiation still has a significant presence on the public procurement market. In the 2006-2009 its share varies in the 19-22\% region which is significantly higher than the EU average\textsuperscript{354}.

\textsuperscript{349} For example in the Bourgas Municipality representatives of the Club “Journalists against Corruption – Bourgas”, Association “Bourgas’ children and youth parliament”, the Bulgarian Association for the Promotion of Citizen Initiative, etc. are part of the council – the council’s members list is available at \url{http://www.bsregion.org/Bul/Corruption/santi.htm} as of June 2011.


\textsuperscript{352} Act for Public Procurement, Article 16.

\textsuperscript{353} Act for Public Procurement, Article 16a.

\textsuperscript{354} Annual report of the Public Procurement Agency for 2009, p. 15, available as of June 2011 at \url{http://rop3-app1.aop.bg:7778/portal/page?_pageid=93,288249&_dad=portal&_schema=PORTAL}. 

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The objectivity of the procedure for the selection of suppliers is guaranteed to a very large extent. The Act requires the candidate ranking commissions to have members with professional experience and knowledge in the area of the specific procurement, as well as a qualified lawyer. In as much as this is a legal requirement, decisions of the commissioner of the public procurement for the commissions’ members composition can be appealed and one can assume that the prevailing practice is within the frames of the law. In practice, it is sometimes the case that the appointment of individuals in direct subordination to the commissioner as member of the commission leads to doubts surrounding its objectivity. In order to ensure prevention the legislator authorizes the commissioner to attract external independent experts as members of the commission, which ensures transparency of the procedure. In addition, the commissioner is bounded by law with the decisions of the commission, hence why it is in his interest to attract more external experts in order to prevent corruptive practices and favoring certain companies. The members of the commission declare a lack of personal financial or material interest, a lack of conflict of interest, as well as the lack of connections with the candidates\(^{355}\). The opening of the candidate offers is public, in the presence of the candidates, their representatives as well as representatives of the media and NGOs.

The decisions on public procurement are public. They are announced in the Public Procurement Registry which is fully functional and available online\(^{356}\).

The law defines the authorities responsible for the execution of and the control over the activities related to public procurement. The state policy in the area of public procurement is conducted by the Minister of Economics, Energy and Tourism. For this purpose the Public Procurement Agency was created and attached to the Minister. Article 19 of the Act for Public Procurement writes down the powers of the executive director of the Agency, amongst which are also functions for preliminary control of negotiation procedures without notification, as well as the obligation to approach the Commission of Protection of Competition in case of violations. The agency also creates sample notifications, sample statistical reports and information about the commissioners of public procurement as well as the design contests held. These are approved by the Minister of Economics, Energy and Tourism, published in the State Gazette and at the website of the Agency\(^{357}\). There are mechanisms for coordination and exchange of information about detected violations between the Public Procurement Agency, the Public Financial Inspection Agency, the National Audit Office and the Commission of Protection of Competition. The control over the commissioners of public procurement is delegated to the National Audit Office, for the individuals/entities within its area of competence, and to the Public Financial Inspection Agency for all other individuals/entities.

The analysis of the results from the Public Procurement Agency’s preliminary control over the negotiation procedures shows than a large part of them have been unlawfully announced. The conclusion of the Agency is not obligatory for the commissioners, but regardless of this fact 23 % of the commissioners of procedures, for which unlawfulness was ascertained, have conformed to this conclusion and has stopped the procedures\(^{358}\). The remaining procedures, in accordance with the powers of the executive director of the Public Procurement Agency, have been addressed to the National Audit Office for further control.

\(^{355}\) Act for Public Procurement, Article 35.

\(^{356}\) http://rop3-app1.aop.bg:7778/portal/page?_pageid=93,1&_dad=portal&_schema=PORTAL available as of June 2011.

\(^{357}\) The samples are available at http://rop3-app1.aop.bg:7778/portal/page?_pageid=93,472251&_dad=portal&_schema=PORTAL as of June 2011.

\(^{358}\) Annual report of the Public Procurement Agency for 2009, p. 17, available as of June 2011 at http://rop3-app1.aop.bg:7778/portal/page?_pageid=93,288249&_dad=portal&_schema=PORTAL.
All public procurement procedures’ decisions can be appealed in front of the Commission for Protection of Competition, which is an independent specialized state authority. It has 5 members, which are elected by the National Assembly on a 5 year term. The commission has an important role of first instance for appeal procedures. The Supreme Administrative Court is the second instance.

The law obliges the commissioner to send all participants in the procedure all clarifications and details provided during the acceptance of offers stage. This is also done in practice. The resources at the Agency’s disposal are public and the financial funds come from the budget. An inquiry about the capacity of the Agency for 2009 shows that the total staff positions are 65, 56 of which are civil servant positions and 9 are labor law positions. In the end of 2009 55 of these were occupied. The delegated budget of the Public Procurement Agency for 2009 is 1251951 BGN (918056 USD). The utilization of these funds by the agency is 83.72% for 2009.

Following Article 8, Paragraph 7 of the Act for Public Procurement the commissioners of public procurement are obliged to pass internal rules for public procurement, which include the processes for the planning and organization of the public procurement procedures and for the control over the execution of the concluded public procurement contracts. The Bulgarian legislation prohibits the appointment of convicted individuals in the public administration, unless these have been rehabilitated. This also holds for legal offences in the area of public procurement. A clear criminal record certificate is required for all individuals. These enforcements are also applied to the candidates in public procurement procedures. Bulgaria already has established traditions in the observation of these conditions.

Generally, however, despite the good shape of legislation in this regard, the practice does not fully correspond to the normative framework. There are numerous studies suggesting non-transparent or inefficient use of resources in public procurement. Against the background of this evidence, there cannot be very high grade on this indicator. After all, if corruption is believed to be widespread in Bulgaria, it has to have a financial dimension and an impact on public resources. Public procurement is the area on which such unwelcome impacts are supposed to be focused.

Recommendations:

- Publication of financial information of the institutions at their websites;
- Creation and application of a national methodology for evaluation of the effectiveness of the provision of public services;

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359 Act for Protection of Competition, Article 3 and 4.
361 For instance, a study carried out by the Bulgarian Business Chamber has found out that over 85% of the small firms are of the opinion that there is corruption in public procurement. Another case in point was a procurement scandal in 2008 involving the executive director of the Fund ‘The Road Infrastructure of the Republic’. This official had signed public procurement contracts with the company of his brothers. This scandal led to the introduction of a law on conflict of interest. The case is further referred to in the part on law enforcement agencies.
• National Association of Municipalities in the Republic of Bulgaria should organize annual studies and analyses of the public expenditure on a local level and these analysis should be available at the website of the Association;
• Accelerated implementation of decentralization of responsibilities and resources towards lower levels in the system of governance as well as a reform at the regional level of governance;
• Creation of an act on lobbying;
• Creation and implementation of a mechanism for transparent and targeted selection, development and retention of young and talented people in the administration;
• The government should pass a procedure for the signing and ratifying of the Council of Europe Convention on Access to Official Documents;
• Development of a normative framework which ensures publicity and transparency in the management of public property;
• Empower a clearly defined authority which to be responsible for the enforcement of the Act for Access to Public Information;
• Change the official positions responsible for the detection of violations and the sanctions following the Act for Access to Public Information, so that these are not the same as or be subordinated to or dependant on individuals who are subject to control and sanctions;
• Introduction of effective mechanisms for control and sanctions of institutions in relation to their responsibilities to publicize public information;
• Creation of a methodology and standards and unification of the internet websites of the institutions in view of facilitating the access to and use of public information by citizens and in accordance with the Act for Access to Public Information;
• Introduction of effective institutional mechanisms outside of legal court procedures for protection of citizens’ rights to access public information;
• Intensification of government policy for the inclusion of citizens and citizen organization in the fight against corruption;
• Introduction of an obligation to publish public procurement contracts;
• Intensification of the preliminary control over public procurement procedures;
• Improvement of the capacity of the Public Procurement Agency;(вж. предходния коментар)
• Limitation of negotiation procedures for public procurement.
**LAW ENFORCEMENT AGENCIES**

<table>
<thead>
<tr>
<th>Law Enforcement agencies</th>
<th>Overall Pillar Score: 45.83/100</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capacity 58.33/100</strong></td>
<td><strong>Law</strong></td>
</tr>
<tr>
<td>Resources</td>
<td>NA</td>
</tr>
<tr>
<td>Independence</td>
<td>75</td>
</tr>
<tr>
<td><strong>Governance 54.16/100</strong></td>
<td><strong>Transparency</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Accountability</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Integrity Mechanisms</strong></td>
</tr>
<tr>
<td><strong>Role 25/100</strong></td>
<td><strong>Corruption Prosecution</strong></td>
</tr>
</tbody>
</table>

**Summary**

The composite assessment of the *law-enforcement bodies* is difficult because of the fact that they include two constitutionally independent branches in the Bulgarian case – on the one hand, the prosecutorial office and the investigators (which under the Constitution are part of the judiciary) and on the other hand the police and the bodies of the Ministry of Interior (which are a part of the executive branch). Improvements in this area exist in the adoption of asset disclosure rules, and rules against conflict of interest. Further, the resources of the system as a whole are more or less satisfactory, although there is some dispute on this matter. Generally, the budgets of both the prosecutorial office and the Ministry of Interior have been prioritized by the last government, and the personnel of these institutions is rather extensive. The main weakness in this area remains the anticorruption output, which is judged by commentators and external monitoring authorities (as the EU Commission, for instance) universally as unsatisfactory. Further, there are weaknesses in the enforcement of certain rules or at least controversial interpretations of conflict of interest standards. Although the existing normative framework about the accountability of the law enforcement agencies has been improved, there are remaining problems, which are demonstrated by the large number of cases from Bulgaria before the ECHR, and concerns about the accountability of prosecutors.

**Structure and organisation**

The Bulgarian sector of law enforcement authorities includes police, prosecutors, and investigators. It is a specificity of the Bulgarian system that the prosecutors and the investigators are part of the judicial branch of power, and as such were assessed in the section of the judiciary. This is so, since organisationally and financially they are independent of the executive. Yet, as far as their activities are part of law enforcement, relevant aspects are covered in this pillar as well, and, where appropriate, references are made to the judiciary report.
The prosecutors control the legality of investigative activities: their instructions are binding for the investigative bodies. The prosecutors, according to the law and the legal doctrine in the country, lack discretion in terms of investigation and indictment: they are bound to indict if there are violations of the law. This means that they, technically, are not a policy making organ and cannot prioritise their indictments. According to the Constitution (Art. 105, 1) the Council of Ministers set the internal and foreign policies of the country. Specifically, the executive in general and the police, in particular, have broader discretionary powers in establishing priorities and allocating resources in the field of anticorruption.

The above-described system leads to a very complex relationship between the executive and the judiciary in the efforts to tackle crime and corruption. Part of law enforcement - the police and the bodies of the ministry of interior - is controlled by politically elected bodies (Council of Ministers, Minister of Interior) and part of it is formally independent – prosecutors and investigators. This system principally reduces the chances of political interference, but also makes the allocation of responsibility in designing anti-corruption and anti-crime policies somewhat problematic: coordination among all these bodies becomes an issue. The same difficulty comes across in the implementation of policies. These introductory remarks are needed in order to appreciate the complexity of giving a single score for the performance of a sector, which is internally pluralistic.

CAPACITY

Resources (practice)

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Score: 75

The Ministry of Interior has the biggest budget in the country in comparison to all other public institutions. This budget was decreased in 2010, but raised again with 5-6% in 2011. Thus the overall budget of the ministry became slightly over 1 billion BGN with an increase of 60 million in comparison to 2011. The budget is roughly equal to the budget of the military and the social security (pensions and benefits), and is almost the same as the combined budgets for public healthcare and education. Clearly, the resources for the ministry have been prioritized, which is a tradition in Bulgaria.

Of course, this information should be taken into account against the background of a generally underfunded public sector, low taxes, and falling tax returns and revenues due to the financial crisis raging since 2008. Thus, there are reports and interviews in the media by representatives of the ministry, who are commenting on the lack of funding. These comments suggest that there are seriously underfunded police stations, with very low quality of electronic equipment (if any), lack of basic supplies like stationary and, more importantly, fuel for the patrol cars, etc. How systematic this problem, it is difficult to assess, since until very recently (2008-2009), the personnel of the Ministry of Interior was classified information. Then it transpired that this personnel comprises around 60,000 people – a significant number for Bulgarian

362 http://www.focus-news.net/?id=n1542312

standards, bigger than that of the Bulgarian army.\textsuperscript{364} It needs to be mentioned that not all of these employees are involved in law enforcement per se. The Ministry of Interior provides other services as well, like fire protection, emergency help, administrative services, and others. Out of the total budget, 71.15\% are allocated for law enforcement activities.

The impressive number of the employees does not prevent problems of understaffing of specific police stations, especially in the countryside, where people regularly complain of insufficient policing. This problem has given rise to forms of vigilante and volunteer policing in some villages of the country, which in turn fuels populist political discourse for tougher law and order measures.\textsuperscript{366} It has been argued that there are problems with staffing the police in Sofia, Varna, Plovdiv and Bourgas, and of lack of funding for additional personnel, due to the cuts in the budget. Yet, in the same interview he argues that the problems with cars and fuel for them have been largely solved in 2011.\textsuperscript{367}

All in all, understaffing seems to remain a problem also due to the unattractive financial remuneration of the police. Since 2008, there have been several protests by policemen, who although deprived of the right to strike and industrial action, have come up with ingenious ways of expressing their disapproval of the personnel policies in the Ministry. For instance, the policemen gathered informally in front of the Ministry of Interior not to strike, but to “have a smoke”.\textsuperscript{368} In the already cited interview, he argued that there was a wave of people leaving the police force in 2010 due to loss of financial and social entitlements related to the job.

It is true that the police do not enjoy independence of their budget and financial privileges as the magistrates. The prosecutors and the investigators have the status of magistrates and their salaries and benefits are described under the assessment of the judiciary in this report. In comparison to the police, the salaries of both prosecutors and investigators are significantly higher.

It is difficult to come up with an indisputable conclusion and assessment of the budget of the law enforcement agencies.\textsuperscript{369} On the one hand, it is clear that their budget has become a top political priority: both the money for prosecutors and investigators, and those for the police and other related agencies is significantly higher than budget allocations for other key sectors, such as education and even healthcare. On the other hand, there are convincing reports of

\textsuperscript{364}Ibid. p. 2.

\textsuperscript{365}Consider a report by the Vraca Police stressing on the lack of investigative policemen: http://dariknews.bg/view_article.php?article_id=692354

\textsuperscript{366}Consider also a typical media report on the “lack of policemen in the streets”: http://inews.bg/%D0%98%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%86%D0%B8%D0%BB%D0%9F%D0%B0%D1%80%D0%B8%D1%82%D0%B5-%D0%BD%D0%B5-%D0%B4%D0%BE%D1%81%D1%82%D0%B8%D0%B3%D0%B0%D1%82-%D0%B7%D0%B0-%D0%B4%D0%BE%D1%81%D1%82%D0%B0%D1%82%D1%8A%D1%87%D0%BD%D0%BE-%D0%BF%D0%BE%D0%B8%D1%86%D0%B0%D0%BD%D0%B0-%D1%83%D0%BB%D0%B8%D1%86%D0%B0%D1%82%D0%B0_1_a_c.367_i.33704.html

\textsuperscript{367}Ibid.

\textsuperscript{368}This is the media report of the first event of this type in 2008.

\textsuperscript{369}For an analysis of the link between the budget of the ministry and the potential for reforms in it see an article by Jonko Grozef: http://meglenakuneva.bg/%D1%82%D0%BC%D0%BE%D0%B8-%D0%B8-%D0%BE%BF%D0%BE%BF%D0%BC%0B%D0%BC%0B%D0%BE%BF%D0%BE%BF%D0%BC%0B%D0%BC%0B%D0%BE%BF%D0%BE%BF%D0%BC%0B%D0%BC%0B%D0%BE%BF%D0%BE%BF%D0%BC%0B%D0%BC%0B%D0%BE%BF%D0%BE%BF%D0%BC%0B%D0%BC%0B%D0%BE%BF%D0%BE%BF%D0%BC%0B%D0%BC%0B%D0%BE%BF%D0%BE%BF%D0%BC%0B%D0%BC%0B%D0%BE%BF%D0%BE%BF%0D%BC%0B%0D%0A/
actual underfunding of police stations, as well as the problem of a lack of policemen despite the gigantic number of employees of the Ministry of Interior. Obviously, there are two different explanations of these facts. One is to insist on the underfunding hypothesis, and to assume that due to general underfunding of the public sector, the police still have a problem, despite being treated better than others. A more plausible explanation stresses on the inefficiency and administrative mismanagement in the governance of the police, which lead to waste of public resources, misallocation of funds, etc. On this explanation, the Ministry has sufficient staff, but it is not simply well organised as to use people where they are most needed.

These two theories have their political advocates and supporters – for the purposes of this study we cannot resolve the dispute, but since both theories point out some budgeting problems in the sector, the overall assessment cannot but reflect these problems.

Independence (law)

To what extent are law enforcement agencies independent by law?

Score: 75

The dual character of the law enforcement agencies in Bulgaria – part of them being part of the judiciary, the other part of the executive – generally strengthens their independence vis-à-vis the executive. As argued previously, there are very serious legal instruments guaranteeing the independence of public prosecutors and investigators. The role of the investigators was gradually decreased, and now investigation is done mostly by the police – the investigators, who are magistrates deal only with the most serious cases.

The following instruments (described in detail in section 3) safeguard the independence of the prosecutors and investigator:
- the tenure of a magistrate, acquired after three years in the system;
- appointments, promotion and demotion by the Supreme Judicial Council;
- remuneration defined by law and by the Supreme Judicial Council;
- financial and social benefits defined by the laws on the judiciary, and safeguarded by the general independence of the judicial budget vis-à-vis the budget of the state.

Further, there are doctrinal issues, which guarantee decision making autonomy of the prosecutors vis-à-vis the executive. The prosecutors are bound only by the law, and cannot be given instructions by the executive or any other branch of power. The prosecutorial office is hierarchically organized, however, and the internal autonomy of prosecutors is rather limited – the Prosecutor General is on top of the pyramid. In addition, as mentioned in the report on the judiciary, the prosecutors in Bulgaria lack discretionary powers in terms of indictment and prosecution: they are forced to apply always the law, and to start proceedings both for minor and more serious crimes. This lack of discretion formally restricts their possibility to formulate policies in the fight against crime and corruption, to determine priorities, etc. Their activity should be in theory independent of the government priorities in these areas.

The police, on the other hand, are a part of the executive, and in this way it is subordinated to political bodies, like the Council of Ministers, the Minister of Interior. As part of the executive it is also accountable to the Parliament. Yet, there are some forms of independence within the Ministry of Interior. There is the formal division between the professional and the

371 This theory was put forward most forcefully by the Open Society Institute in a report published in 2011. See the report athttp://www.osf.bg/downloads/File/2011_New/Cenata_na_pravosadieto_final.pdf
political leadership of the ministry: the professional being the Chief Secretary, while the Minister being the political. There are also statutory rules, which should prevent direct political intrusion in police work, and especially in investigation. These are limited forms of independence, however, and the police are generally the instrument through which governments and ruling majorities could implement their policies in the fight against crime and corruption. This does not mean that investigators and the police are not by law independent regarding individual cases: in such cases they are under the control of the prosecutors, which are independent of the executive. These relationships are regulated in the Criminal Procedure Code, Art. 54.

Due to this dual legal nature of the Bulgarian law enforcement landscape, the score should reflect both the high level of independence of the prosecutors, and the lower level of independence of the police, as an institution within the Ministry of Interior.

**Independence (practice)**

*To what extent are law enforcement agencies independent in practice?*

**Score: 25**

The practice, however, is different from the legal framework, as it seems that in reality the prosecutorial office has not become fully independent from political pressures. Problems have been different over the 20 years since the beginning of the transition. There were periods when the Prosecutor General has been in open clash with the government of the day. In the better part of the mandate of former Prosecutor General (1999-2006), for instance, the independence of the prosecutorial office reached a controversial peak and, in the view of many commentators, became unaccountable and actually uncontrollable.\(^{372}\) This situation brought attempts to impeach him or to remove him from office before the expiry of his term. These attempts proved unsuccessful, however, due to numerous constitutional and other legal guarantees of independence.

The more typical problem of the prosecutorial office in this period, however, has been its general subservience to the political branches of power in the fight against crime. Although the prosecutors are the ‘masters of the pre-trial process’ they are actually rather passive in terms of policy formulation and react to government initiatives. Their passivity is justified by their general duty to follow the law, to avoid prioritizing of their efforts, etc. So, they react to all signals coming from the police or other bodies in the same way (at least in theory).\(^{373}\) It needs to be said that this theory is sociologically implausible, however, and implicitly the prosecutors do allocate their resources differently, and do prioritise specific issues. In the typical case, they prioritise the agenda of the government of the day.\(^{374}\) In the current circumstances, a case in point is the special attention that the prosecutors pay on key for the

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\(^{372}\) Recently a British court recognized the gravity of the problems in the prosecutorial office in the mandate of former Prosecutor General (1999-2006) by refusing to extradite a person to Bulgaria. The British court was further uncertain to what extent the problematic practices have been eliminated after him. For details see http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/11/18/1207519_kak_london_ni_naloji_predpazna_kla uza/


\(^{374}\) See a discussion on the necessity of constitutional reform regarding the prosecutorial office in which the problems of prosecutorial discretion were raised: http://www.osf.bg/downloads/File/civic_convention%20-%2013_10_2004.pdf JonkoGrozev has argued that because of the unavoidable dependence on the agenda of the government, the prosecutorial office should be responsible to the executive. For a paper by him developing this argument see: http://legalworld.bg/show.php?storyid=18316

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government trials, such as the high profile *Octopus* trial against Alexey Petrov, or the trials against some former ministers of previous government, etc.\(^\text{375}\) This prioritization is understandable, and probably acceptable if carried out within limits, but it anyhow falsifies the theory of the completely independent prosecutorial office, or the dogma of lack of prosecutorial discretion or policy making opportunities.

The process of balance of the prioritization in question was launched by the new Prosecutor General (2006-) in view of the process of specialization of cases. This approach was applied for the first time in regard to the cases related to misuse of EU funds. In order to tackle such specific cases in a more efficient way, special units were set up within the Prosecution office (PO). This example of specialization is further developed for cases related to organized crime and political (high level) corruption that are investigated by special departments within the PO, which led to specialization of prosecutors, training and division of tasks. This approach was applied on a larger scale when the specialized prosecution and courts, responsible for some of the cases of high public interest, were established and became operational by the end of 2011.

The change of office in the Prosecution in 2006 was accompanied by a process of opening to the public through the appointment and training of public speakers in all Prosecution offices all over the country. This gave a positive effect to the image of the prosecution and led to increase of the transparency and accountability.

Despite the process of reform within the prosecution office (as part of the general reform of the judiciary) still attention should be paid to the issue of its independence.

Still, it needs to be reminded, however, that the Bulgarian model affords greater independence of the prosecutors vis-à-vis the executive, than a model in which they are a part of the executive. This greater degree of independence may be useful and valuable in cases of aggressive political majorities, trying to put illegitimate pressure on their opponents. Although, generally, the prosecutors follow the priorities of the government of the day, in some cases at least their independence has proven and may prove a check on political excess.

**GOVERNANCE**

**Transparency (law)**

*To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?*

**Score: 75**

As to the asset declarations of the law enforcement agencies, here we will cover the police bodies, since the prosecutors have been covered already in the section on the judiciary. Two laws are of key importance here: one is the law on the disclosure of assets, and the other – on the disclosure of conflict of interest.

The Law for Publicity of the Property of Persons Occupying High State Positions (adopted in 2000)\(^\text{376}\) demands the publicity of all assets of high officials. It requires that upon undertaking office, the high public officials file a declaration, indicating all their property, income and expenses (real estate, motor road, water and air vehicles, cash, takings and liabilities, securities, shares, income, travel, education etc. (art.4)) – both in the country and abroad (art.2). The declarations are public (art. 6(1)) and kept for 10 years.

\(^{375}\)For a recent account of the indictment in the landmark Octopus case see http://www.bnews.bg/article-38136

\(^{376}\)State Gazette №38/09.05.2000.
From 2006 the public register of these assets is available at the web-site of the Bulgarian National Audit Office (art.6 (2)). The public register is established within the auspices of the chairperson of BNAO. With the amendment from 2006, this body is also responsible for performing all the necessary actions for verifying (by requesting documents from the relevant state bodies) the submitted declarations of the high public officials. In cases of failure to submit declarations and for verified inconsistencies between those and the facts, the chairperson of BNAO is responsible for informing the Executive Director of the National Revenue Office. There are monetary sanctions for failure to submit declarations. The scope of the duty-bound persons was also increased. With the 2006 amendments to the Law on the political parties, members of the governing and controlling bodies of the political parties are also responsible for declaring to BNAO their assets, income and liabilities in the country and abroad. The political parties have to declare their donors, as well as the amount and the type of donations. They have to also send to BNAO a list of NGOs, in which members of their governing bodies participate. The senior officials in the Ministry of Interior, as well as the prosecutors are also covered by this law.

Further, the law on disclosure of conflict of interest (which is dealt at length in the integrity section) provides additional requirements for transparency. Thus, the public officials are also required to fill in declarations about incompatibilities and private interests – in general and in concrete cases (art. 12). Art 14 exhaustively lists all the circumstances that may trigger situation of conflict of interests: participation in companies, NGOs and cooperations, private entrepreneurial activities (during the office and 12 prior to the appointment), all her credits, liabilities and contracts, as well as information about the similar activities of connected to the official persons, in which he may have a private interest.

The declarations are submitted to the appointing body or commission, which keep declaration registers and publish them on their web-sites.

In addition, in the Law on the Internal Ministry there are special provisions which enforce the asset declaration mechanisms for the employees of the Ministry. Further, the Inspectorate (a directorate within the Ministry) controls the observance of the internal bylaws regarding conflict of interest and asset declarations. Finally, the law on access to information is also relevant for the presentation of the legal framework concerning the activities of law enforcement bodies. Bulgaria has in general a well-developed framework of freedom of information and active NGOs in this field. In view of the improving situation with the legal framework in this area, a high score should be given.

**Transparency (practice)**

*To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?*

**Score: 25**

The practice of transparency of the work of the Ministry of Interior will be the focus of this section. The problem in the case of the prosecutors was dealt with at length in the third section of this report. Although the legislative framework is dense and improving, important problems have emerged.

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378 For a general review of the problems of access to information in Bulgaria for 2010 see the report of the leading organization Programme Access to Information: http://store.aip-bg.org/publications/ann_rep_bg/report10.pdf
In particular, a recent scandal revealed that there is an excessive amount of wiretapping of phone calls and communication (and use of other surveillance techniques) – authorized by the Minister of Interior or senior officials at the Ministry. There is some discrepancy in the reported figures, but between 15,000 and 20,000 permissions for surveillance instruments have been issued over the last year, which is an amount larger than similar permits in much larger states, like the UK for instance. Although the process is overseen by judges – who finally approve the permission – in essence it is dictated by the Ministry and the prosecutors, while the judges only rubber stamp the executive decision. The scandal broke out when recordings and transcripts of wiretapped conversations between the Director of the Customs and senior ministers, including the Prime Minister himself, were leaked in the press. The treatment of the scandal itself raised serious problems of transparency – it was not convincingly established whether the recordings were real or not (although the Director of Customs publicly accepted them as real), it was never established who was responsible for the leaks, or how is it possible to have a breakthrough into such a high level of government communication. On top of that, the very content of the wiretapped conversations alleged improper relations between governmental officials and businessmen, which also were never conclusively investigated, confirmed or rejected.

This scandal itself raises serious transparency issues in the law enforcement area.

**Accountability (law)**

*To what extent are the reprovisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?*

**Score: 75**

The legal framework for accountability for police activities is broadly in place and it is adequate. Citizens can complain first before senior officials in the Ministry of Interior, and then to the Courts, including the ECHR. In parliamentary control the Minister of Interior has many times been called to give account for the actions of the police and other authorities. More difficult to be held accountable are the prosecutors, who are subordinated to the Prosecutor General – their individual performance is also monitored by the Inspectorate and the Supreme Judicial Council – bodies, the principles of whose work is in detailed explained in section 3.

**Accountability (practice)**

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379 Figures here are different to ascertain. For an argument that Bulgaria has a practice of massive wiretapping see: [http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/10/07/1171139_godinata_na_masovoto_slushane/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/10/07/1171139_godinata_na_masovoto_slushane/) See also the interview with a senior prosecutor where he reports the wiretapping permissions as 15,000 per year: [http://www.24chasa.bg/Article.asp?ArticleId=780959](http://www.24chasa.bg/Article.asp?ArticleId=780959) For the figure 20000 see the analysis of the opposition leader Stanishev at: [http://www.dnes.bg/politika/2011/01/26/stanishev-ne-e-smeshno-tyjno-e.109731](http://www.dnes.bg/politika/2011/01/26/stanishev-ne-e-smeshno-tyjno-e.109731) 380 See the account of the site mediapool: [http://www.mediapool.bg/%D1%82%D0%B0%D0%BD%D0%BE%D0%B2-%D0%B3%D0%B5%D0%B9%D1%82-%D0%BF%D0%BE%D0%BA%D0%BD%D0%B7%D0%B0-%D1%87%D0%B5-%D0%B2%D1%8A%D1%82%D1%80%D0%B5%D1%88%D0%BD%D0%B8%D1%8F%D1%82-%D0%BC%D0%B8%D0%BD%D0%B8%D1%81%D1%82%D1%8A%D1%80-%D0%BA%D0%BD%D0%B8%D1%80%D1%85%D1%82%D1%8B%D1%8B-%D0%B5-%D0%BD%D0%B0%D1%80%D1%83%D1%81%D0%B8%D0%BB-%D0%B7%D0%BD%D0%BE%D0%BD%D0%B0-news175520.html](http://www.mediapool.bg/%D1%82%D0%B0%D0%BD%D0%BE%D0%B2-%D0%B3%D0%B5%D0%B9%D1%82-%D0%BF%D0%BE%D0%BA%D0%BD%D0%B7%D0%B0-%D1%87%D0%B5-%D0%B2%D1%8A%D1%82%D1%80%D0%B5%D1%88%D0%BD%D0%B8%D1%8F%D1%82-%D0%BC%D0%B8%D0%BD%D0%B8%D1%81%D1%82%D1%8A%D1%80-%D0%BA%D0%BD%D0%B8%D1%80%D1%85%D1%82%D1%8B%D1%8B-%D0%B5-%D0%BD%D0%B0%D1%80%D1%83%D1%81%D0%B8%D0%BB-%D0%B7%D0%BD%D0%BE%D0%BD%D0%B0-news175520.html) See also the contextual analysis of the Capital weekly: [http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/01/14/1025637_ledena_epoha/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/01/14/1025637_ledena_epoha/)
To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

Score: 25

The practice of accountability is noticeably worse than the legal framework, however. There have been various trials about abuse of police powers. Cases against police officials in the Bulgarian legal system have proven notoriously lengthy or difficult, especially if senior officials have been implicated. Generally, insiders in the justice and home affairs system tend to fare better than outsiders. Investigation of cases involving people connected with the justice system or law enforcement has sometimes been biased. More tellingly, there is a backlog of cases from Bulgaria before the ECHR, many of which allege police violence and maltreatment. An extremely big number of the cases is on arts. 5 and 6 of the convention, which are often related to police and prosecutorial abuses of rights. This large number of cases indicates that the internal accountability mechanisms do not always function well:

Cases against Bulgaria in the ECtHR
Right to freedom and security (Art. 5) – 40%
The length of legal procedures (Art. 6) – 18%
Right to effective legal remedy (Art. 13) – 13%
Inhuman or degrading treatment (Art. 3) – 6%
Right to a fair trial (Art. 6) – 6%
Others – 17%

Finally, in a judgement of 2010, the ECHR has specifically reprimanded Bulgaria about the virtual lack of possibilities for investigation of senior prosecutors, and the Prosecutor General in particular.

Integrity (law)

To what extent is the integrity of law enforcement agencies ensured by law?

Score: 100

There are numerous legal instruments securing the integrity of the law enforcement bodies. These include conflict of interest rules, disclosure of asset information, code of conduct for the officials of the Ministry of Interior. These documents provide sufficiently dense network from a legal point of view. The Law on the Prevention and Disclosure of Conflict of Interests is one of the most recent regulations in this area. It was adopted in 2008 and entered into force from the beginning of 2009. Prior to the Law there have been numerous partial regulations for disclosing conflict of interests, spread in different pieces of legislation, such as the Penal code, the Law on Administration, the Civil Servants Act, the Ethical code of the Civil Servants, The Public Procurement Act, the Internal Rules of the Parliament, etc. What was entirely lacking was a clear institutional framework for implementing the conflict of interests provisions. The ethical codes and rules were not sufficiently instrumental in countering the

381 http://cli-bg.org/Legal_barometer_BG_1.pdf
382 Case of Kolevi v. Bulgaria (2009) Application 1108/02
383 For a short account see: http://www.bnews.bg/forum/index.php?topic=2594.0;wap2
384 Available at http://www.mvr.bg/About_Us/Codex/default.htm
emergence of conflict of interests. This has led to constant unchecked abuse of powers by high officials and civil servants.\(^{385}\)

As a result of the critiques by the European Commission and the suspension of the ISPA funding for Bulgaria and in the nervous anticipation of a very negative Monitoring report by the EC in July 2008, the Cabinet and the MPs speedily prepared two conflict-of-interest bills. In October 2008 the Law on Prevention and Disclosure of Conflicts of Interests\(^{386}\) was passed. It requires all public officials to file declaration for conflict of interests within 7 days of being elected or appointed. Conflict of interests is defined as a situation, in which ‘the person, holding public office, has private interest, which may influence the impartial and objective implementation of his office-related rights and duties.’ (art. 2. (1)) Private interest itself is defined as ‘a pecuniary or non-pecuniary profit for the office holder or connected to her persons, including all liabilities’ (art. 2(2)). The scope of the duty-bound by this law public officials is wide: the president (and his deputy), the constitutional justices, the MPs, the prime-ministers (and their deputies) and the ministers (and their deputies), the chairpersons of the Supreme Cassation and Supreme Administrative courts and the Prosecutor General, the ombudsman (and his deputy), the 28 regional governors (and their deputies), the mayors (and their deputies) of municipalities and districts, the members of the municipal councils, the members of the Supreme Judicial Council, the chairperson and the members of the National Audit Office, of the National Social Security Office and the National Health Insurance fund, the ambassadors, the judges, the prosecutors and the investigators, etc. More than 25 categories of positions are listed in art. 3(3) of the law. Art. 5 states the main requirement of incompatibility, formulated in very general terms: ‘a person holding public office position cannot hold another position or perform activities, which according to the Constitution or a special law is incompatible with her position.’

In case of presence of private interest in a particular decision, the person cannot represent the state or the municipality (art. 6), nor can she vote in favour of her private interest (art. 7(1)) or use her position to influence in favour of her private interest other bodies or persons in drafting, and adopting of decisions and in performing controlling and investigative functions (art. 7(2)).

Particularly important is art. 9, which prohibits public officials to manage public and EU funds and property, sign contracts with, as well as issue permits, certificates etc. to NGOs, companies and cooperations, in which he or connected to him persons participate as owners, members of boards, etc. This prohibition applies as well in case the circumstances above were present up to 12 months before his election/appointment.

The law also regulates the action to be undertaken in cases of conflicts of interests. The person with a disclosed private interest (or when the appointing body believes there is such a conflict) in a concrete case is removed from deciding it/performing her office-related duties. This body is responsible for deciding in each concrete case whether there is a presence of conflict.

There are conflict-of-interests restrictions after leaving office as well – the former public officials may not work for one year for companies (and their partners), with respect to which

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\(^{385}\)The trigger of the introduction of this piece of legislation was the public scandal, involving the executive director of the Fund ‘The Road Infrastructure of the Republic’. This official had signed public procurement contracts with the company of his brothers (‘Binder’ ltd and others). The damages to the country amount to 120 mln. levs (aprox. 60 mln Euros). As a result of this scandal, the European Commission stopped funding Bulgaria’s projects for the ISPA program. In January 2008 the Minister of the Finance demanded from the Inspectorate within this ministry to check the mentioned official for conflict of interests and such was established. In October 2008 the Sofia district Prosecutors’ Office indicted the official for embezzlement, for which crime the Penal code determines between 1 and 8 years prison sentence.

\(^{386}\)State Gazette 94/31.10.2008.
they were taking decisions as public officials (art.21), nor can they represent companies in public procurement bids within the departments, where they held positions. Responsible for checking for conflict of interests are the appointing or other responsible body. It is done on the basis of inquiry, triggered by ‘signals’ (including anonymous), or on its own initiative. For a wide range of highest public dignitaries and officials (such as president prime-minister, constitutional justice…), this body is the Permanent Parliamentary Committee for Fight against Corruption, Conflict of Interests and Parliamentary ethics. For others the relevant body is the Chief Inspectorate with the Council of Ministers, for the mayors and municipal councillors – the respective municipal conflict of interests commissions; for the magistrates – a commission of the SJC.

The decision for the presence of CI in cases of the highest public officials is a prerogative of the Supreme Administrative court, and for lower-ranking public officials – by the lower administrative courts. Both decisions may be appealed. The consequences of the presence of conflict of interests, when established by an effective court decision, is a reason for dismissal (unless in the Constitution there is a different provision). The private profit from situation of CI is confiscated, as well as is the salary for the period of the presence of CI. There are also administrative monetary sanctions for officials failing to submit CI declarations within the specified dead-line.

Together with the general laws on conflict of interest, there are special provisions on this issue in the Law on the Ministry of Interior. In view of this rather detailed legislation, a high score is in order.

Integrity (practice)

To what extent is the integrity of members of law enforcement agencies ensured in practice?

Score: 25

As said however, much of the existing legal framework is rather new, and there are gaps or misinterpretations in it. For instance, the understanding of conflict of interest among Bulgarian politicians may be defective on certain occasions.

An example of these misunderstandings of the conflict of interest issue took place in 2011, when it transpired that the Ministry of Interior takes donations from private actors, as a form of gratitude for the services it provides. It was even alleged that big donors of the Ministry are treated preferentially by traffic police. The Minister of Interior treated the practice as a normal way of compensating partly for the lack of public funding for the police. After the scandal broke out, measures were taken to restrict donations (in September 2011): still, however, it is possible for the Ministry to receive donations by municipalities, state bodies, state enterprises, and firms owned 100% by the state.

In view of these misunderstandings of the rule of law as an essentially public good, together with the already mentioned scandal of improprieties with wiretapping and abuse of the surveillance facilities of the state, the score on the indicator of integrity cannot be high.

ROLE

Corruption prosecution (law and practice)

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387 The controversial practice of donations and gifts for the Internal Ministry was not banned. See http://www.dnes.bg/politika/2011/09/29/otkazaha-da-zabraniat-dareniiata-v-mvr.129918
To what extent do law enforcement agencies detect and investigate corruption cases in the country?

Score: 25

Two problems need to be mentioned here, which have not been explored under other headings. First, this is the punitive orientation of Bulgarian criminal law, which increases the weight of the pretrial phase and the prosecutors. A study by the Centre for Liberal Strategies, Sofia calculated the average length of judicial proceedings in Bulgaria. With respect to criminal cases, it is the duration of the pre-trial phase which draws the attention. The accumulated duration here is 541 days, which is the overall time in the investigation and the prosecutorial offices (i.e. including the time, during which cases are sent back for further investigation). This demonstrates that the pre-trial phase accounts for the better part of the duration of a common criminal case (835 days altogether). One should not immediately jump from here to the conclusion that the pretrial phase is inefficient, because other explanations are also possible. To begin with, the duration of the pre-judicial phase should be read together with the information about the “super efficiency” of the prosecutorial office, demonstrated by the ratio between convictions and acquittals: around 80% convictions as against only around 1% acquittals of all indicted persons. When these two facts are combined, it is quite possible to conclude that in our criminal judicial system there is a “fear” of acquittals. This increases considerably the relative weight of the pre-trial phase: either the prosecutors and investigators have collected sufficient evidence for conviction, or the case is referred back to them for further investigation. It is possible that the tendency to refer cases back increases the duration of the pre-trial phase.

In order to overcome this negative practice the Prosecution Office and the Supreme Judicial council made two important analyses in view of making recommendations and improvements. The first report is about the caseload and is the basis of major structural reform to take place in early 2012. The second report and its recommendation are focused on the problem of acquittals for cases of high public interest and aims to improve the investigation, the process of gathering of proof and the cooperation among investigating authorities.

A positive step in the recent years to strengthen the process of gathering more efficient proof to support the charges brought, is the process of training of investigating officers by prosecutors which leads to increase of their capacity and better cooperation.

Secondly, excessive popular pressure, as well as pressure from the EU, has led to undesirable politicization of the work of the police. The mediatization of police work, the constant showing of police operations has had negative side effects in terms of distrust of the motives of the police (although arguably it had also positive preventive effects).

Finally, and most importantly, there is a general sense of the unsatisfactory character of the work of the law enforcement bodies in Bulgaria in fighting against corruption. A series of reports by independent bodies (both foreign and domestic) suggest that problems in this area remain. The EU Commission in its Cooperation and Verification Mechanism has focused its reports on the need for “Bulgaria to demonstrate concrete results in a comprehensive anticorruption project, to improve the system of declaring and verifying assets of public officials...to establish a network of specialized prosecutors, to adopt pro-active investigative


389 Ibid.

390 For the mediatisation of the work of the Ministry of Interior see the opinion of Nelly Ognyanova at: http://www.fmd.bg/wp-content/uploads/2011/01/mediite-i-politikata.pdf
strategies and to demonstrate a track record of sanctions for conflict of interest..." 391. Although certain progress has been made in relation to such and similar recommendations, these overall goals have not been attained. Hence, the Commission concludes that: The track record of decisions and penalties in cases related to high-level corruption, fraud and organised crime under investigation and in court does not yet provide the convincing results needed to provide effective dissuasion." Such and similar findings are corroborated by Bulgarian institutes. 392

Recommendations:

- Deepening the coordination among various bodies – especially the prosecutors and the police organs – so that efficiency in the investigation of corruption related crimes is increased;
- More transparency in the policy on the use of surveillance techniques used by the bodies of the Ministry of Interior, accompanied with a greater degree of control over this process;
- More efficient use of public resources in the Ministry of Interior so that problems of underfunding of specific activities are eliminated to achieve improvement of the functioning of MoI.
- Termination of all practices of receiving of donations by the bodies of the Ministry of Interior and full compliance with internal rules introduced in 2011 to overcome the practices of private donations.

392 For instance, see Policy Brief No. 26, November 2010 of the Centre for the Study of Democracy, Sofia, according to which Bulgaria (together with Romania and Poland) is classified as among the most vulnerable to corruption problems (both in terms of extent and institutional response to corruption) within the EU. http://www.csd.bg/artShowbg.php?id=15467
The National Assembly, the President, the Local Government Representatives and the Bulgarian Members of the European Parliament (since 2007) are elected through popular vote in Bulgaria. Within the last decade (2001-2010) nine elections were conducted. A separate Electoral Management Body, a Central Election Commission (CEC), used to be appointed with the opening of every election period, with term of office expiring with the term of office of the officials elected in the particular election. In addition every election was regulated by a separate law. And these laws tended to be modified shortly before the election. The OSCE/ODIHR Limited Election Observation Mission (LEOM) for the 2009 Parliamentary Election noted in its Final report that “The Election Law was amended about two months before the parliamentary elections without a broad consensus. The amendments included an important and controversial change to the electoral system, the introduction of single-mandate constituencies in addition to the existing multi-member constituencies. The late amendment of the law on such an important issue is not in accordance with international good practices. A similar situation occurred before the 2005 and 2006 elections.” The report also notes that “(The) late introduction of significant changes in the Election Law gave the CEC additional challenges to address in a short time, including administration of the new majoritarian elections, an electronic voting pilot project, and provision for mobile voting. Furthermore, temporary nature of the CEC and the lack of institutional continuity caused additional

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393 The overall pillar score is a simple average of the scores of the three dimensions capacity, governance and role. The dimension scores are simple averages of the respective indicator scores.

394 In 2001, 2007 and 2009 elections were held twice, respectively non-election years were 2002, 2004, 2008 and 2010.

395 As the Parliamentary elections and the MEP elections in 2009 were scheduled for 5 July and 7 June respectively two different Central Election Commissions were functioning simultaneously.

difficulties, as illustrated by the late amendments to important guidelines just prior to election day and indeed on election day itself. A lack of decisive communication between the CEC and lower level election commissions, as well as a lack of voter information on this matter, caused confusion as to whether a voter was required to take both ballots or was able to simply take one, especially since a voter was required to sign the voter list only once. The lack of clarity regarding ballot distribution could give rise to uncertainty in reconciling how many ballots were actually distributed to voters.  

The perception of mismanagement of the election day procedures culminated in a decision of the Constitutional Court to annul the result of the voting from 23 polling stations opened abroad. In fact the election result was revised, with one seat initially allocated to MRF was declared in favour of GERB.  

In line with the long standing recommendations of the OSCE/ODIHR election observation missions and with the pre-election commitments of the majority party to contribute to the establishment of a stable and sound set of legal rules for future elections, a new Electoral Code (EC) was approved by the Parliament in December 2010 (in force since 28 January 2011). According to the EC the Central Election Commission (CEC) is a permanent body with a mandate of five years.  

This assessment is hence in a somewhat tricky position, as it has to deal with a new legal framework and simultaneously may refer only to CEC past practices as regulated by previous laws. On one side most of the previous failures in the administration of the election process are either impossible or unlikely to occur within the new legal framework. On the other side there are concerns that the new rules may be applied in a way that may benefit the majority party. The presidential and local elections were carried out on 23 October. On the basis of this evidence it became clear that amendments need to be introduced to the Electoral Code. It proved too cumbersome to implement, leading to long delays in the counting of the votes. This inefficiency, unfortunately, was not accompanied by increased transparency: on the contrary, there were numerous allegations of improprieties and even manipulations. 

In the last decade the quality of the administration of the electoral process in Bulgaria significantly deteriorated. The legislation was fragmented, not cohesive and subject to frequent changes; in the absence of permanent CEC the election administration underperformed, not being able to build on previous experience and often acted as an office of the ruling majority. It will be an overstatement to blame only the election administration for the deteriorating standards of administration of the elections. The slip in standards was rather caused by a combination of a deliberate strategy of the ruling majorities though the decade to introduce brand new and soft legal provisions in the election laws with subsequent inability of the respective CEC to come up with instructions that clarify the by definition gray areas of implementation. As most important the following issues emerged: lack of control over the out

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397 Pages 7-8 of the Final report of the 2009 LEOM. 
398 Voter lists used at the polling stations where results were annulled, were found unlawful, i.e. compiled without following the formal requirements of the Law on Parliamentary elections. (Decision N2/16.02.2010). 
With an earlier decision of the Constitutional court, the election result was also modified. One of the result protocols of a polling station was mistakenly written in at the point of completion. In effect a seat switched between different multimember districts. (Decision N8, 7.10.2009) 
399 “As previously recommended in 2006, further consideration could be given to establish a permanent, professional CEC with an independent budget”, and also, “Consideration could be given to reviewing the election legislation to eliminate any inconsistencies in different legal acts regulating elections”, page 23 of the Final LEOM Report. http://www.osce.org/odihr/elections/38934.
of the country voting\textsuperscript{400}, registration of parties/coalitions\textsuperscript{401}, the application of absentee certificates\textsuperscript{402} and the increasing number of reports/evidences of vote buying, respectively the involvement of unofficial campaign budgets allocated for that purpose. The table below presents the indicator scores which summarize the assessment of the Central Election Commission in terms of its capacity, its internal governance and its role within the Bulgarian integrity system. The qualitative assessment for each indicator follows further.

**Structure and Organisation**

Bulgaria has a three-tier electoral administration consisting of the Central Election Commission (CEC), District Election Commissions (DECs) for national elections or Municipal election Commissions (MECs) for local elections respectively and Precinct Election Commissions (PECs).

The rules of appointment, the mandate and the duties of the commissions from different tiers for every type of election are detailed in the Electoral Code. The President appoints the CEC members and the chairperson. The composition of the commissions at every level is party based, i.e. parties represented in the Parliament nominate number of members equal to the share of parliamentary seats they control at the time of appointment of the commission\textsuperscript{403}. Upper level commissions further appoint the lower level commissions. The CEC is either directly administering the election process or is overseeing the performance of the lower level commissions. CEC decisions may be appealed in front of the Supreme Administrative Court.

**CAPACITY**

**Resources (practice)**

*To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?*

\textsuperscript{400} The administration of the out of the country voting is by nature of the process a shared responsibility of the MFA and the CEC. The Commission in fact refrained from involvement and approved a general instruction thus leaving to a large extent free hand of the executive to establish the election results. The number of votes cast abroad significantly increased from 21,000 in 2001 to 152,000 in 2009 and decided on the allocation of approximately seven of the 240 seats in the Parliament. Small numbers of mandates often constitute the parliamentary majorities in Bulgaria. From such a point the administration contributed to efforts aimed at engineering the result of the election.

\textsuperscript{401} In the 2009 Parliamentary elections the “Blue coalition” (historic democrat from the 90 ties) was denied registration by the CEC on the ground of not being able to submit a valid court registration certificate. For its part the court maintaining the party register, had missed to act for three months on the application of one of the parties (UDF) to register the newly elected leader of the party, so the court issued a certificate to the ousted leader. The latter in turn attempted to “sabotage” the registration and generally the participation in the elections. Finally the coalition was registered with a decision of the Supreme Administrative Court, following an appeal of the coalition against the denial of registration. The Supreme Administrative Court decided that maintenance of the party register may not be indefinitely prolonged on technical ground with detrimental effects to an interested party.

\textsuperscript{402} In 2009 Parliamentary elections every voter was allowed to vote using absentee certificate issued by the local administration responsible for the compilation of the voter lists. To prevent abuse, a nationwide register of the issued certificates was to be created by the CEC, but this register never materialized as most of the local administrations missed to submit the data required.

\textsuperscript{403} Art. 23 of the Electoral Code establishes regular CEC composition of 19 members. Actually the CEC has 21 members by exception. One of the parties (NDSV) not represented in the National Assembly has two MEP, hence is entitled to nominate one CEC member. In such a case one additional member is appointed, so the total number of CEC members is an odd figure.
Score: 50

According to the CEC Secretary the budget allocated to the administration of the elections (part of the state budget approved by the Parliament) is sufficient. Within the approved budget spending are authorised by the Minister of Finance. The CEC is not a legal entity with authorization to spend budget money. The amount of funding depends on the type of elections. 404 The election budget has slightly increased in recent years.

According to the EC all members of election commissions receive salaries only for the period of preparation and administration of elections. 405 The CEC (and the DECs) are hiring technical staff for the election period and the CEC is contracting (though a public bid) a company to compile the database with the election results per polling. In non-election period the CEC employs only three technical secretaries. Part of the technical support comes from the Parliament (maintenance of the premises and of the website of the commission).

ICEC members are not professional administrators, which imposes a divide between the more experienced ones and the “fresh men”.

An independent expert (previously CEC member for many years) confirmed the information provided by the CEC secretary. He finds also that the funding allocated to the electoral administration and the equipment at its disposal as sufficient. According to him a smaller, but professional CEC would perform much better in terms of developing the needed capacity of the institution and in terms of promoting goals related to the introduction of new election technologies such as voting on internet, developing and keeping a more reliable voter register and “real time” track of the compilation of the election results. Any such project needs several years of consistent effort to be properly designed and tested.

As pointed earlier the report of the OSCE/ODIHR LEOM for the 2009 parliamentary elections concludes that “a permanent, professional CEC with an independent budget...would be able to further clarify the role of the election administration vis-à-vis the state authorities, strengthen continuity and consistency, and allow more time for technical and organizational preparations of elections.” 406

Independence (law)

To what extent is the electoral management body independent by law?

Score: 50

The most important provision that strengthens the independence of the CEC is the five year mandate of its members provided for in the new EC. Article 25,(1), p. 6 of the initially approved EC stipulated that the term of office of a member of the CEC may be terminated at

404 26 million BGN (approximately 13 million EUR) have been allocated in the state 2011 budget for the forthcoming presidential and local elections as announced on 1 July 2011 by the Ministry of Finance. http://www.bulgaria-news.bg/category/bulgaria/politics/article/post73181.html On 1 August this budget was increased to 35 million BGN as additional infrastructure costs proved unavoidable (the number of ballot boxed needed is double the usual number in use, as separate box is needed for each of the elections administered in one election day). http://www.dnevnik.bg/bulgaria/2011/08/02/1133042_izborite_shte_struvat_35_mln_lv/?ref=rss Pending on the turnout every ballot cast will cost approximately 5 EUR. Had the scheduled election been only, the usual budget would have been smaller by some 40%, as the previous, 2007 local election budget was set at 18 million BGN.

405 The EC (art. 24) provides that the CEC members receive salaries for the period of 90 days before and 45 days after local elections. For other elections the period is 70 days before and 45 days after the election. 406 Page 23, http://www.osce.org/odihr/elections/38934
request of the party, which nominated him or her. This provision was appealed to the Constitutional Court and declared unconstitutional.\textsuperscript{407} Point 7 of the same article allows termination of the term of office of a member on the ground of systematic failure to participate in the work of the commission (“failure to attend three consecutive sittings or a total of five in a calendar year”\textsuperscript{408}) . It is the CEC that should take a decision and such a decision may be appealed at court.

Commission members are barred from involvement in campaigning; relatives may not serve at the same commission and are deemed officials under the provisions of the Criminal Code at the time of performing of their duties (Article 17 of the EC). While a party/coalition may nominate less than half of the members of a commission, two/thirds of the votes of commission members present are needed for the approval of a decision. The European Commission for Democracy Through Law (the Venice Commission) has expressed concerns that such a majority is too high and may block the work of a commission – “With members of Election Commissions being appointed by political parties, there is a risk of polarization, if not politicization of discussions in election commission with a possibility that key decisions may be blocked. It is recommended that the two-thirds majority rule be reassessed in light of the experience gained in the next elections.”\textsuperscript{409} Both the institutional and the independent experts assess the high majorities as safeguard against possible party pressures to adopt decisions favoring the governing party.\textsuperscript{410}

The EC does not ensure a balance of political parties in the appointment of chairpersons and secretaries at all levels of election commission. Article 15, paragraph 3 only requires that the chair and the secretary of any commission should not be selected among the nominees of one party. The “allocation of leadership positions among political parties with no consideration given to whether they belong to the ruling coalition may not be sufficient to dismiss perceptions of possible bias”.\textsuperscript{411}

The independent electoral expert suggested that contrary to previous legal regulations the EC is so detailed in procedural matters that leaves practically limited, if any, field for biased interpretation of the provisions.

**Independence (practice)**

*To what extent does the electoral management body function independently practice?*

**Score: 50**

The independence and impartiality of the newly established CEC failed to materialize in a couple of instances in the recent presidential and local election campaign. These included a case of two members of parliament from GERB, (parliamentary majority party) being present at the MEC, one of whom was photographed carrying a bag with sensitive election material outside the hall where the Sofia MEC was receiving election material. The CEC in a draft

\textsuperscript{407} Several provisions, including article 25, (1), p.6 were appealed to the Constitutional Court by 53 opposition MPs. The text of Decision N4/4.05.2010 and the argumentation concerning this issue is available at http://www.constcourt.bg/Pages/Document/Default.aspx?ID=1532

\textsuperscript{408} The EC may be found at http://www.venice.coe.int/docs/2011/CDL-REF(2011)008-e.pdf


\textsuperscript{410} In the current composition the majority party GERB has nominated 10 of the 21 CEC members. While one additional vote is needed for the simple majority of 11 votes, the two-third majority of 14 is by far more difficult to reach, hence more independent.

\textsuperscript{411} Point 29 of Venice Commission Report.
decision on 28 October established that the two MPs were not authorized to be present at the MEC and had no right to handle election material. However, the CEC could not reach the required two-thirds majority to adopt a formal decision establishing that the two MPs were guilty of an administrative violation. In two cases the CEC as a final appeal instance annulled the registrations of party coalitions nominating mayor candidates from the opposition. The Supreme Administrative Court upheld the CEC decisions, finding the initial registration of the coalitions was in violation of the rules set by the EC.

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In fact no instances of open or direct interference in the activities of the electoral administration of the executive or broader the ruling coalition have been recorded in the previous elections. This said it is beyond doubt that certain actions (or inaction) of the CEC in the areas of registration of participants, regulation of the voting abroad or the election day procedures themselves directly promoted the interest of the then governing coalition. It is also true that all controversial decisions were based on controversial (or vague) legal regulations or on the action of other institutions – the MFA, or the courts for instance.

In the new EC one issue of concern will serve as a test for the impartiality of the CEC – the registration of political parties for participation in parliamentary elections. Article 26, (1), p. 12 of the Code provides that “(The CEC should) refuse registration of a party where establishing that the said party has not held the meetings of the supreme body thereof as provided for in the statute more than two successive times but not less frequently than once in five years, and has not submitted the complement of the new leadership to the court for recording...”. 415 In practice the CEC is authorised for the first time to review activities of the parties and to match these to the party statutes. As all members of the CEC are party nominees such assessments may happen not to be impartial.

GOVERNANCE

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Score: 75

412 Statement of Preliminary Findings and Conclusions of the Limited Election Observation Mission of the OSCE/ODIHR , pp2-3, http://www.osce.org/odihr/84280. After the election the CEC Chairwoman stated that the case should have been investigated more thoroughly explaining she was not present at the session the case was examined and decided by the commission. http://www.mediapool.bg/случаят-с-депутатите-в-зала-

413 In both cases (the regional centers of Montana and Pleven) the acting mayors were registered as candidates in second attempt, after the legal requirements for registration of the parties nominating the candidates were met.

414 See footnotes 7 and 8 above.

415 See http://www.segabg.com/online/new/articlenew.asp?sid=2011042000040000902 Also the Venice Commission report found this regulation discriminative: “Concerning new parties: As a rule, bodies in charge of organizing and conducting the electoral process should not be granted powers over party activities that exceed what may be necessary to ensure the integrity of the process. It is not clear why the CEC would need to interfere with matters that may be reasonably perceived as internal party matters and should only come to the attention of State authorities or other entities such as the CEC in exceptional circumstances. Furthermore, while states may require political parties to meet certain obligations to be placed on a ballot in elections, the system for ballot access should not add requirements directly not connected to the elections to those requirements political parties already had to fulfil in order to get registered. Most importantly, the system for ballot access should not discriminate against new parties. Therefore, it is recommended that this provision be repealed or amended so that it does not discriminate against new parties. Point 35, page 12 of the Venice Commission Report.

The EC contains sufficient provisions regarding the transparency of activities of the election administration. All CEC decisions are publish on its website immediately after approval and are sent to the official news agency BTA, where they appear through a link (Art. 26 (1), p.22 of the EC). The DECs and the MEC are obliged to post their decision at “a place established and available to the public, in the building where they reside” (Articles 29 (2), p.2 and 33 (2) of the EC). The PECs post a copy of the result protocol in front of the premises of the polling station and distribute an excerpt of the protocol to every present authorised representative of a party or a candidate and to all observers who request such a copy (Art. 36 (1), p.8 of the EC).

In a new development the EC requires that voter lists shall be publicly available on internet. For the polling stations opened inside the country they should appear on the web pages of the municipalities (Art.54, p.4), in a format allowing every voter to check his or her entry using his or her ID number. For out of the country voting the voter lists should appear on the web page of the MFA and the respective Embassy.

Publication of the result of the election broken by polling stations, districts, municipalities, etc has been an established pattern of announcing of the results since 1991. Previously it has been done on diskettes, later on discs and in paper copy bulletins issued by the CEC. Data bases with detailed election results are available on internet for the elections held after 2003.

The Venice Commission has found that “Regarding domestic and international election observers, the OSCE/ODIHR Limited Election Observation Mission for the 2009 parliamentary elections recommended that the full scope of rights and responsibilities of observers be defined in the law. To bring the election legislation closer in line with paragraph 8 of the 1990 OSCE Copenhagen Document which provides for the presence of observers, this recommendation should be reflected in the Code at least through a requirement that the matter be specifically addressed by the CEC”. The EC does not contain a separate chapter listing detailed rights and responsibilities of observers which happen to be an integral part of the recently developed the election regulatory framework.

Both the institutional and the external expert interviewed could not recall any example of a complaint related to restrictions or impediments of the activities from any domestic or international observer or from the media representatives accredited to cover the process for many elections/years.

**Transparency (practice)**

*To what extent are reports and decisions of the electoral management body made public in practice?*

**Score: 50**

As noted in the previous section there are no serious issues regarding public access to decisions of the election commissions and to the data bases with election results. For example the schedule of operations for the elections in the autumn of 2011 was already available as of 30 July 2011.

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419 It contains 147 steps and deadlines as established by the EC, CEC Decision No 16, 8/07/2001, [http://www.cik-bg.org/](http://www.cik-bg.org/).
The OSCE/ODIHR 2009 LEOM report notes a specific pattern of misuse of the right to observe the process. "Proxy registration was used as a means of vote buying, as the registered proxies, at least in some cases, qualified for financial compensation. In addition, despite the activity and visibility of proxy registration, this did not appear to translate into a significant presence of proxies in polling stations on election day." 420 The EC failed to address this issue imposing only a limit of two accredited observers from a party/coalition or a candidate per polling station. 421 As nearly 52 000 citizens registered as candidates for mayors and councilors in the recent municipal elections in smaller municipalities the number of registered proxies reached an average of one proxy per ten received votes for the dominant parties. For the large municipalities the average number reaches overall score of one proxy per ten voters for all registered candidates. 422

As the CEC meetings are not open for public attendance, CEC spokespersons meet the media after every meeting once the election period opens, in fact on daily basis. The CEC also usually operates hot line on election day for voters, candidates, etc.

In the recent elections the CEC denied access to the records of its sittings to the public. 423 The Supreme Administrative Court upheld this decision of the CEC. Given that the Parliament, the Council of Ministers, the Constitutional court and other high level legislative, executive and judicial offices regularly publish the records of their meetings, this decision should be considered a highly controversial one.

**Accountability (law)**

*To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?*

**Score: 25**

The very concept of accountability seems to be at odds with the way the Bulgarian CEC (and lower level commissions) is defined by existing and all previous election laws. All commissions function for the period of elections only. In between elections the CEC (or MECs) meet only in case the laws and events provide for by election or to replace one elected official with the “next on the list” in the cases when proportional (list) rule apply. Commissions do not operate a separate budget, so no auditing may take place. Neither are they required to report anything else but the election outcome as noted in the final protocol. The CEC is accountable only in terms of court review over its decisions, which may be appealed in front of the Supreme Administrative Court. “The (CEC) decisions.... shall be appealable before the Supreme Administrative Court care of the Central Election Commission within 24 hours after the communication thereof. The Central Election Commission shall transmit the appeal to the Court forthwith. The Supreme Administrative Court shall examine the complaint and shall pronounce by a judgment within 24 hours after the receipt of the said appeal, sitting in public session with the appellant, the Central Election Commission and the

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420 Page 20 of the 2009 LEOM Report.
421 Article 101 of the EC
422 No nationwide statistics on the number of registered proxies is available as the MECs register the proxies. In the small municipality of Gorna Malina candidates from the GERB party list registered 107 proxies for 953 votes received, the Socialist party – 104 proxies for 796 votes etc. (own research of the author). Nearly 30 000 proxies were registered in large municipality of Varna http://www.24chasa.bg/Article.asp?ArticleId=1087405. After the elections the proxies were lining up front party headquarters to receive the payment for the “service”. http://dariknews.bg/view_article.php?article_id=799722
persons concerned being summoned. The judgment of the court shall be made public forthwith and shall be unappealable.\textsuperscript{424}

While in the general case decisions of the lower level commissions are challenged in front of the higher level commissions, some MEC decisions in local elections (especially registration of candidates) may be appealed in front of the respective Regional Administrative court. The Venice Commission report suggests that judicial review should be expended to broader areas of administrative action of inaction. “The lack of possibility for judicial review for a number of decisions of the election management bodies appears problematic. The 1990 OSCE Copenhagen Document underlines that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.” The Code of Good Practice in Electoral Matters underlines that the judicial supervision should at least apply to decisions on “right to vote, electoral registers and standing for election, the validity of candidatures, compliance with the rules governing the electoral campaign and access to the media or to party funding.” It is therefore recommended that a final appeal to a court be made available more broadly.”\textsuperscript{425}

Chapter fifteen of the EC (Administrative and penalty provisions) provides for an extensive list of punishable actions related to the administration of the election process. Members of precinct election commission may be fined in case 1) the serial number of the submitted copy of the result protocol differs from the number entered in the handover receipts, filled in at the time of delivery of the election material (which may indicate fraud attempt - fine up to 2 000 BGN or 1000 EUR); 2) Non-signing of the result protocol – fine up to 1 000 BGN or 500 EUR). In case DEC or MEC member refuses to sign the respective result protocol the maximal fine is twice as higher that the one provided for the PEC members; 3) Failure to send to the CEC a scanned copy of precinct result protocol from a polling station opened abroad shall be punished with a fine up to 2000 BGN/1000 EUR. The highest fines are prescribed for removal of election material from the premises of the polling station by an election official – up to 5 000 BGN or 2 500 EUR. As this may also indicate a fraud attempt, the case would be forwarded to the prosecutor office for further investigation under the Penal Code.\textsuperscript{426}

**Accountability (practice)**

*To what extent does the EMB have to report and be answerable for its actions in practice?*

**Score: 25**

Both the institutional and the independent experts confirmed that while the levels of the maximal fines have been considerably raised, they could not recall instances of effectively imposed fines on election officials in recent elections.

The Venice Commission for its part had concluded that “the Code does not allow election results to be disputed by voters but only by political parties, coalitions and candidates (through the institutions listed under Article 150(1) of the Constitution). These restrictions are not in accordance with good electoral practice. All candidates and voters registered in the constituency concerned must be entitled to contest the election results. The right to vote is as important in a democratic state as the right to be elected. Allowing a wide range of persons to appeal decisions concerning elections protects the legality of the elections.”\textsuperscript{427}

\textsuperscript{424} Article 26 (8) of the EC
\textsuperscript{425} Venice Commission Report, p.55, page 17.
\textsuperscript{426} The minimal monthly wage in Bulgaria is set by law to be 180 BGN or 145 EUR.
\textsuperscript{427} Venice Commission Report, p.58, page 18.
The proposed score is low as the CEC itself had decided not to allow public access to the records of its proceedings. In addition the standards of keeping of these records is entirely formal and does not allow even to identify who of the members voted for or against a decision, or how he or she argued his/her position. 428

Integrity (law)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

Score: 50

Code of Conduct for electoral officials and employees of the electoral administration has never been in use in Bulgaria in modern elections. Since every election official is a party nominee, commission members are expected to be committed to party goals and strategies. Even highest level official (CEC members) are not professionals in terms of holding professional position with a labour contract. Party leaders select nominees among most trusted party experts. After completion of a period of election, the election officials return to their regular professional duties (see footnote 13). Labour contracts of the service staff employed by the CEC, DECs and MECs are temporary. Often same persons are contracted, which allows to develop and to keep the required institutional capacity. The concept of non-partisanship is irrelevant to the very nature of the Bulgarian election administration. Top down every commission member is a party nominee. No concepts of independence, impartiality or integrity etc. have been developed in Bulgarian electoral practices outside the legal regulations, or beyond the electoral laws. The election administration is appointed for the purpose of as strict as possible implementation of these laws. Matters of dispute are brought to courts though appeals of interested parties.

The newly approved Electoral Code is haunted by the idea that every technical detail of the election process and the election day procedures should be regulated in a manner as detailed as possible. None the less it left an important part of the process, the compilation of the voter lists, within the authority of the executive. Though Article 40 (1) provides that local authorities are responsible for the compilation of the voter lists429, in fact the local offices of the Directorate General of Civil Registration and Administrative Services at the Ministry of Regional Development and Public Works extract the voter list from existing files of the civil register.

Integrity (practice)

To what extent is the integrity of the electoral management body ensured in practice?

Score: 25

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428 See copy of the records of the sitting held on 21 September, at which meeting the CEC decided against the request of the Institute for Public Environment Development to open its records in line with the provisions of the Law on Access to Public Information. http://izborenkodeks.com/ressource/view-85

429 The electoral rolls shall be compiled by the municipal administrations in the nucleated settlements where a population register is kept and shall be signed by the municipality mayor or, respectively, by the mayoralty mayor or by the lieutenant mayor, and by the municipal secretary. In the cities subdivided into boroughs, the electoral rolls shall be signed by the borough mayor and secretary.
It is impossible to adhere to standards of ethical behaviour that do not exist.
As mentioned above the composition of the election administration is based on the party representation in the parliament. To prevent possible systematic biased actions of the administration high decision making majorities are imposed. In case a biased decision occurs (it is important to note that because of the qualified majorities, it is more probable that biased decision against an interested party is likely to occur, instead of biased decision in favour of a party), the party affected is expected to seek “justice” at the courts.
The CEC acts as “collective body” with collective responsibility. The individual performance of the commission members is impossible to assess as public track of what members vote for or against is not available. As a matter of traditions CEC members rarely go public with comments on the performance of the commission. The official position of the commission is communicated by its spokes persons.
It may be concluded that in general the administration is expected to act not in line with norms and values but following strict (in the case of the new EC) rules, designed in such a way that addresses the fears of abuse of the dominant at a time party.

ROLE

Political Finance Regulation (law and practice)

Does the electoral management body effectively regulate candidate and political party finance?

Score: 25

This indicator should be added to the NAO pillar including the score for the variable. As explained in the first two paragraphs below the NAO is tasked with the overseeing of the party finance in general and the campaign budgets of the candidates in the elections. The score should be accordingly moved to the NAO pillar.

According to the EC (Chapter VI) the National Audit Office (NAO) is in charge of the control over anonymous contribution (financial or others) and ban on company (legal entity whatsoever) financial or other donations. In fact only individuals are allowed to support parties or candidates with as much as 10 000 BGN (or 5 000 EUR) with one calendar year. For every type of election campaign budget ceilings are established (art. 55 of the EC) with the restriction that “any financial resources related to election campaign in an amount exceeding BGN 1,000 shall be raised and spent by bank transfer” (art. 154 (4).

430 As curious illustration may serve the fact that all of the 10 nominated CEC members by the GERB for the newly appointed CEC will serve at the commission for the first time. The explanation is simple - GERB is a brand new parliamentary party. On the contrary, all of the nominees of the parties that are traditionally represented in the parliament have served in at least five of the last six CECs. (own assessment of the author of the report)

431 Detailed rules have been introduced including: the use of registered campaign bank accounts only for campaign payments; introduction of public register the NAO for every registered party or candidate in which the information about every campaign donation (financial contribution) shall be entered as well as non financial contributions (services and others) shall be described; details of the PR or polling agencies should be disclosed and the final financial campaign report, etc.

432 Rules concerning the campaign budgets are rather restrictive, because parties, which have received over one percent of the valid votes in the parliamentary election receive generous budget subsidy. The spending ceiling
In local election only elected councillor and mayors submit financial campaign report to local council, which in turn sends the report to the NAO for check (art. 160 of the EC). Traditionally the CEC and the MECs are involved in the campaign of candidates and parties only in terms of allocation of campaign coverage time on public media. The sequence of appearance for the opening and closing addresses of candidates or parties/coalition, schedule of the daily campaign chronicles and the format of the debates, if provided for, are responsibility of the CEC. The CEC involvement in the campaign is a routine one, practised in more less the same manner since early 1990-ties. Private electronic media, which by a large margin lead over the public National Radio and TV concerning the share of audience, are only obliged to publish in advance the rates they will charge during the campaign and these rates should be equal for all participants. As the election administration is excluded by law from monitoring the campaign budgets, I propose that this indicator be excluded from the overall score.

Election Administration (law and practice)

Does the EMB effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?

Score: 50

The CEC and its subordinate commissions are responsible for administering and/or overseeing all stages of the electoral process except the compilation of the voter lists. They register parties/candidates, oversee the campaign in the public media, prepare and administer the election day procedures (supported by the local authorities), establish the results of the elections and announce them to the public. Since 1991 every report on Bulgarian election by international observation missions has qualified the process as free and fair and indeed that is the general public perception. It is remarkable that twice, in 2001 and in 2009 the elections were won by a newly established party, hence not involved in the administration of the process at all. The procedures are also designed to be friendly to the groups of voters with special needs – polling stations for voters with disabilities open in big urban centres (access facilitated); mobile box is available for homebound voters; students may cast a ballot at the campuses and need not travel back home, every voter may be added to the voter list, unless not being able to present a valid ID, etc. Still there is an issue that poses enormous threat to the integrity of the process and that is the expending practices of vote buying or in a broader sense, of delivering of “controlled” ballots. The issue is by far broader than the framework related to the election administration strictly. Bottom line – lawmakers, who establish the rules of the game (laws, regulations, etc) are the ones who desperately sometimes need a favourable election result and would not hesitate to create conditions favourable for marginal variations in the generally sound pattern of administration of the election process, which they perceive as conducive to their better performance, i.e. higher number of votes received.

Recommendations:

for the forthcoming presidential and local elections is established at 18 million BGN for both elections combined (Art. 155 of the EC). The budget subsidy for the biggest party for this calendar year is close to 23 million BGN. All election reports published by OSCE/ODIHR since 1997 may be found at http://www.osce.org/odihr/elections/bulgaria
Consideration should be given to the establishment of professional Central Election Commission, which should operate the election budget.

It is advisable that the entire election administration is based on professional principle.

All meeting of the EMBs should be opened to the public.

No registration of established parties should be denied on formal grounds.
### OMBUDSMAN

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<thead>
<tr>
<th>Ombudsman Overall Pillar Score: 58.33/100</th>
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### Summary

The institution of Ombudsman is relatively new for Bulgaria. Its activity is well regulated by the Constitution and laws. The Ombudsman's work is ensured through sustainable but small financial resources. There is a shortage in human resources in terms of numbers, in as much as the number of submitted complaints is large (3687 in 2010, 37% more than in 2009\(^{434}\)) and the existing experts do not manage to conduct the investigations on time.

The law provides sufficient backing for the ombudsman’s independence, however there are no criteria for professionalism during the selection of the ombudsman candidates. Candidates are selected on the basis of a political nomination process by parliamentary parties and the election is conducted by a simple majority, whereby naturally the ruling party(ies) candidate wins the nomination.

The law requires the ombudsman to annually report to the Parliament. The law introduces requirements for when the report of the ombudsman has to be submitted and the type of information it contains.

The ombudsman observes the requirements of law for the presentation of a report for his activities in front of Parliament. The annual reports contain the information required by law.

The available public information provides evidence for attempts of the ombudsman to act independently from any external influences. He is not preoccupied with political activity, but the fact that the ombudsman is elected with simple majority and that he is most often the nomination of the ruling majority puts shadow of doubt over his neutrality.

The ombudsman has a well-maintained website. Information on the activities of the ombudsman is frequently published and updated. The ombudsman’s actions and appearances are reported in printed and electronic media. Annual reports of the ombudsman’s activity are published.

There are legal requirements for the declaration of conflict of interests, for publicity of assets, for the prohibition of political engagement, for the prohibition of other side activities and for confidentiality of the ombudsman.

Institutions, which have been subject to an investigation by the ombudsman’s office in relation to complaints, and have been undertake some activities to correct defects, always send detailed feedback for the actions which they have taken. No other system for tracking and evaluation of the impact of the ombudsman’s activities has been put into place and there is no system for monitoring the activities and services of the institutions, which have been investigated by the ombudsman’s office.

The table below presents the indicator scores which summarize the assessment of Ombudsman in terms of its capacity, its internal governance and its role within the integrity system. The remainder of this section presents the qualitative assessment for each indicator.

**Structure and Organisation**

The Ombudsman institution in Bulgaria was established by the Ombudsman Act, in force since January 1, 2004. The Ombudsman is independent in his/her activities. He/she shall obey only to the Constitution, the laws, and the ratified international treaties to which the Republic of Bulgaria is a party. The rules on the organization and activities of the institution are elaborated by the Ombudsman and approved by a decision of the National Assembly. The Ombudsman shall be elected by the National Assembly for a term of five years and may be re-elected for the same office only once. First elections of the Ombudsman took place only in April 2005.

**CAPACITY**

**Resources (practice)**

*To what extent does an ombudsman or its equivalent have adequate resources to achieve its goals in practice?*

**Score: 50**

The ombudsman’s budget is determined annually through the State Budget Act. During 3 of the last 5 years there has been stability in the level of funding, while during the last two years it has decreased as a result of the financial crisis (State Budget Act of the Republic of Bulgaria 2005, 2006, 2007, 2008, 2009, 2010, 2011). For the provision of the ombudsman’s activities 3.568 m BGN (2.524 m USD) for 2009, 2.660 m BGN (1.674 m USD) for 2010 and 2.278 m BGN (1.646 m USD) for 2011 are provided. The financial and technological resources of the ombudsman are at a good level and allow for the execution of tasks. The ombudsman institution does not own a building, instead there is ca. 1 m BGN (0.722 m USD) annually provided for renting a building.

In the ombudsman’s administration there are 14 people working in general administration which supports the institution’s activities as a whole and 25 people in the specialised administration, which deals with complaints from citizens. There is a shortage in human resources in terms of numbers, in as much as the number of submitted complaints is large.

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435 Expert’s evaluation - both internal and external.
436 Ombudsman’s website - [http://www.ombudsman.bg/team#teamMembers](http://www.ombudsman.bg/team#teamMembers) as of March 2011
(3687 in 2010, 37% more than in 2009\textsuperscript{437}) and the existing experts do not manage to conduct the investigations on time. The expertise of the employees is very good; however they do not have time for additional training and qualifications. Such have never been offered\textsuperscript{438}. Only half of the approved worker count is currently occupied.

**Independence (law)**

*To what extent is the ombudsman independent by law?*

**Score: 75**

The law provides sufficient backing for the ombudsman’s independence, however there are no criteria for professionalism during the selection of the ombudsman candidates. Candidates are selected on the basis of a political nomination process by parliamentary parties and the election is conducted by a simple majority, whereby naturally the ruling party(ies’) candidate wins the nomination.

The ombudsman’s institution was introduced in Bulgaria in 2004 initially through a law (the election of the first ombudsman was in May 2005) and since 2006 is constitutionally enshrined (Art. 91a)\textsuperscript{439}. The ombudsman is elected by the Parliament with a simple majority for a term of 5 years and is eligible for a single re-election (Art. 8, 9 and 10 of the Ombudsman Act) In his activities he is aided by the deputy-ombudsman (Art. 5 of the Ombudsman Act), who is also elected by the Parliament one month after the election of the ombudsman and on the basis of the ombudsman’s proposal (Art.11). The requirements for the position are higher education, high moral standards and conformity with the conditions for election of an MP (Art. 9 of the Ombudsman Act). The ombudsman has MP immunity (Art. 16 of the Ombudsman Act). His independence is guaranteed by law (Art. 3, § 1).

His activity is to be guided by the following principles: impartiality and independence; affirmation of the rule of law and of justice; judgement based on personal beliefs whether the requirements for good governance are observed (Statute book for the ombudsman’s organisation and activity). The ombudsman cannot be a member of political parties, cannot perform any other state activity, cannot perform any commercial or business activity, and cannot be part of the management or boards of commercial entities or non-profit legal entities (Art. 14 of the Ombudsman Law). The ombudsman’s remuneration is fixed at 90% of the remuneration of the Chair of Parliament (Art.18 of the Ombudsman Act). The ombudsman is fully responsible for hiring, setting remuneration, work and vacation policies and organisation of the personnel working in his administration. The premature termination of the ombudsman’s term is regulated by law (Art. 15 of the Ombudsman Act). The Ombudsman may approach the Constitutional Court with a request for declaring as unconstitutional a law which infringes human rights and freedoms\textsuperscript{440}.

**Independence (practice)**


\textsuperscript{438} Interview with an internal expert: 5 years experience in Ombudsman’s administration like expert, working with complaints, Sofia, April 2011.

\textsuperscript{439} Any constitutional amendment shall require a majority of three quarters of the votes of all Members of the National Assembly in three ballots on three different days. A bill which has received less than three quarters but more than two-thirds of the votes of all Members shall be eligible for reintroduction after not fewer than two months and not more than five months. To be passed at this new reading, the bill shall require a majority of two-thirds of the votes of all Members (Art. 155 of the Bulgarian Constitution).

\textsuperscript{440} Art. 150 (3) of the Constitution of the Republic of Bulgaria.
**To what extent is the ombudsman independent in practice?**

**Score: 50**

The available public information provides evidence for attempts of the ombudsman to act independently from any external influences. He is not preoccupied with political activity, but the fact that the ombudsman is elected with simple majority and that he is most often the nomination of the ruling majority puts shadow of doubt over his neutrality.

The interviewed internal expert[^441] shares that he is not familiar with any cases of political pressure or influence by parties, politicians or other institutions. The interviewed external expert[^442] reveals that in some actions of the ombudsman a link to specific political positions can be found. For example – the commitment of the ombudsman to the case of Michael Chorny[^443] and his prohibition of entry the Republic of Bulgaria[^444]. After the election of the new ombudsman of Bulgaria at the ombudsman’s website one can read his statements regarding his decline to respond to signals submitted by leaders of political parties[^445]. The new ombudsman appears to be more committed to asserting his independence from political actors.

**GOVERNANCE**

**Transparency (law)**

**To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsman?**

**Score: 75**

The ombudsman’s activity is public and new legal regulations for publicity and confidentiality of information have been established. There are a legal opportunities for the inclusion of the general public in support of the ombudsman’s initiatives, but there is an absence of detailed regulation of the work of consultative councils and regional councils as part of the ombudsman’s institution.

The Ombudsman Act (Art. 20, [2]) imposes restrictions over the disclosure of information which is of state, professional or business secrecy or of private nature. The law obligates the ombudsman to include information regarding the following in his report to the Parliament: received complaints, the investigation of which is completed; the cases, where the ombudsman’s intervention has had an impact; the cases, where his intervention has not had an impact, and the reasons for that; any proposals and recommendations made, as well as

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[^441]: The internal expert has 5 years experience like official in the Ombudsman administration.

[^442]: The external expert has 4 years experience like local level ombudsman, more than 5 years providing NGO monitoring over the practice in public sector.

[^443]: Michael Chorny is known oligarch of Russian origin who is a citizen of Russia, Israel and the U.S. There is great interest in the Bulgarian economy. He is a former owner of a mobile operator, football club and national newspaper. In 2000 he introduced a ban on his stay in the country for 10 years with a motive that is involved in serious international crimes and is permanently linked to the Mafia. In 2010 it was declared by Interpol for an international investigation at Spain's request for money laundering. In 2007 the Ombudsman Ginio Ganev was mentioned as an active lobbyist for the return of Michael Chorny in Bulgaria.


[^445]: E.g. the statement of the ombudsman in response to a claim by the NDSV political party, http://www.ombudsman.bg/news/1013#middleWrapper as of 05.03.2011.
whether these have been taken into account; respect of human rights and freedoms and the effectiveness of legislation in this area; an account of expenditure; a summary. This report is public (Art. 22,[2]). The report has to be presented in Parliament annually no later than 31 March (Art. 22, [1]). The ombudsman and his deputy are required to submit declarations of their and their relatives’ assets to the National Audit Office (Art. 2, [19] of the Act of publicity of assets of senior public officials). They are also required to submit declarations of conflict of interests following Art. 3 of the Conflict of Interests Act. In the Statute book for the ombudsman’s organisation and activity possibilities for the creation of consultative councils, regional councils for cooperation with municipality public intermediaries as well as for the inclusion of independent experts as consultants (Statute book, Art. 13, 14 and 15). There is a lack of thoroughly described rules for the inclusion of representatives of the public in the activities of the ombudsman institution.

### Transparency (practice)

*To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?*

**Score: 75**

The ombudsman has a well-maintained website. Information on the activities of the ombudsman is frequently published and updated. The ombudsman’s actions and appearances are reported in printed and electronic media. Annual reports of the ombudsman’s activity are published.

The annual reports of the ombudsman to Parliament are published frequently and on time at the institution’s website. The reports contain information for the problems in the work of the central and local administrations established during the investigation of citizens’ complaints, from the violation of citizen rights through the introduction of specific regulations in the regulatory framework of municipality councils, as well as for the investigations of bad and good governmental practices initiated by the ombudsman himself. The cases of ombudsman intervention in the clarification of violation of the rights of consumers of public services are published. The information is presented systematically and in accordance with the requirements of the Ombudsman Act. Periodically the ombudsman includes representatives of non-governmental organisations, of professional organisations, of local government and state institutions, as well as of representatives of the public in his initiatives, which are realised in the form of public councils. A designated part of the policy of the ombudsman institution is the cooperation with local public intermediaries, where such have been selected by local councils. Until now there is no information as to whether the new ombudsman will continue and expand on the practices for cooperation with NGOs, local public intermediaries and the general public as a whole. According to the requirements of the Law of publicity of

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446 [http://www.ombudsman.bg/](http://www.ombudsman.bg/)


448 The first public council is created in March 2005 consisting of representatives of 5 employer organisations, whereby a memorandum for cooperation for the limitation of bureaucratic hindrances to business is signed (Annual report of the ombudsman for 2005, p.41).

449 The Local self-government and local administration Act introduces a possibility (without it being a requirement) for municipality councils to elect public intermediaries (Art. 21a), whose executive powers are within the municipality borders.
assets of senior public officials the declaration of assets is submitted annually. The declaration of assets of the ombudsman is publicly available in the National Audit Office’s registry. Even though the first annual report to Parliament states that a public registry of complaints has been created (a requirement of Article 21 of the Ombudsman Act) and is expected to soon become available online, this has not been done yet. It is not clear enough exactly how decisions on complaints are made.

**Accountability (law)**

*To what extent are there provisions in place to ensure that the ombudsman has to report and be answerable for its actions?*

**Score: 75**

The law requires the ombudsman to annually report to the Parliament. The law introduces requirements for when the report of the ombudsman has to be submitted and the type of information it contains. The ombudsman is accountable to Parliament for his actions. The law obliges the ombudsman to include information regarding the following in his report to the Parliament: received complaints and, the investigation of which is completed; the cases, where the ombudsman’s intervention has had an impact; the cases, where his impact has not had an impact, and the reasons for that; any proposals and recommendations made, as well as whether these have been taken into account; respect of human rights and freedoms and the effectiveness of legislation in this area; an account of expenditure; a summary. This report is required to be made public. The report has to be presented in Parliament annually no later than 31 March. According to the working procedures of Parliament, this report is reviewed by the commissions of Parliament, which then produce a statement. The report is discussed in Parliament and a decision on the report is made. The activities of the ombudsman are not subject to judicial supervision. The ombudsman makes recommendations to institutions which have been subject of investigation for hidden practices in violation of regulations as well for violation of the rights of citizens.

**Accountability (practice)**

*To what extent does the ombudsman report and is answerable for its actions in practice?*

**Score: 75**

The ombudsman observes the requirements of law for the presentation of a report for his activities in front of Parliament. The annual reports contain the information required by law. The ombudsman presents his reports to Parliament regularly and on time. They include typologies and statistical information on the submitted complaints, the cases where the intervention of the ombudsman has been effective, the cases where the institutions to which recommendations were directed have not observed them, as well as an account of the financial

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expenditure of the institution. The disputations in parliament on the subject of the ombudsman’s reports are more of a formality.\footnote{Interview internal expert with author, Sofia, April 2011}

**Integrity (law)**

*To what extent are there provisions in place to ensure the integrity of the ombudsman?*

**Score: 50**

There are legal requirements for the declaration of conflict of interests, for publicity of assets, for the prohibition of political engagement, for the prohibition of other side activities and for confidentiality of the ombudsman.

The ombudsman’s institution is subject to the requirements of the Publicity of Assets of Senior Public Officials Act as well as the Conflict of interests Act. The ombudsman and the deputy-ombudsman are required to submit asset declarations. The Conflict of interests Act provides the legal definitions of conflict of interest, private interest and advantage, and prohibitions in the performance of public positions, where a private interest has been established. With the Publicity of Assets of Senior Public Officials Act has been created a public register of their property, which includes information about real estate, motor road, water and air vehicles, cash, receivables and payables over 5 thousand in local or foreign currency, securities, shares in limited liability companies and limited partnerships, registered shares in joint stock companies, including acquired through participation in privatization cases outside of vouchers (mass) privatization, income received from other sources beyond wages, when more than 2000 BGN (1500 USD), and made for their benefit or the benefit of their families payments for training, travel abroad or other payments to a unit cost 500 BGN (362 USD).

The position of ombudsman has not been open to public competition nor are there any post-employment restrictions in place.

There is a Code of Conduct of officials of the Ombudsman, but it has not been published.

**Integrity (practice)**

*To what extent is the integrity of the ombudsman ensured in practice?*

**Score: 50**

There is, but no published, Code of Conduct of the employees of the ombudsman institution. The application of the rules for conflict of interests is treated as a formality.

Even though there is no published Code of Conduct of the employees of the ombudsman’s administration, the internal expert stated that these obey the norms of ethical behaviour and are meticulous and polite in their work with complainants.\footnote{Interview internal expert with author, Sofia, April 2011.}

The declarations of conflict of interest of the employees are submitted annually by the Ombudsman order. There are no legal requirements and these declarations are treated as a formality. There is no supervision as to whether there is no conflict of interest during the review process of these declarations. There are even suspicions that an employee is a legal representative of complainants during court hearings.\footnote{Interview internal expert with author, Sofia, April 2011.} Such behavior is unacceptable to the administration staff of the Ombudsman, so far as it considers incorrect to use official
information for personal gain. There are no registered cases of violation of integrity. The employees have not been specially educated on the subject of the norms of ethical and integral behaviour\textsuperscript{456}.

The declaration of assets of the ombudsman is publicly available at the internet website of the National Audit Office in the Registry of senior public officials\textsuperscript{457}. Likewise, the declarations of conflict of interest of the ombudsman and his deputy are publicly available at the website of Parliament in the Registry of the Law for prevention and ascertainment of conflict of interests\textsuperscript{458}.

**ROLE**

**Investigation**

*To what extent is the ombudsman active and effective in dealing with complaints from the public?*

**Score: 50**

The ombudsman has the necessary broad powers in accordance with the law, including referral to the Constitutional court, and he utilises them in practice. Efforts are made for the professional, timely, independent and unbiased review and investigation of complaints. The approach is active as a whole, but the success of actions is limited due to the unwillingness of institutions to conform to recommendations issued to them.

The ombudsman has a permanent office and reception in Sofia. He also organises regional receptions for complaints. Complaints are submitted personally in the receptions, by mail, and also online – via e-mail or through the ombudsman’s website. In 2009 a total of 2686 complaints were submitted, from which 1196 per mail, 681 in person, and 809 electronically\textsuperscript{459}. In 2010 the number of complaints increased to 3987, 37% more than 2010\textsuperscript{460}.

Approximately one third of institutions to which recommendations were made by the ombudsman conformed to them and changed their practices\textsuperscript{461}. The external expert voiced an opinion, that the ombudsman institutions is still new for the Bulgarian reality, is lacking tradition and it is to be expected that it will have lower effectiveness\textsuperscript{462}.

The internal expert has been noted that the institutions of local government are more likely to conform to the ombudsman’s recommendations, whereas the institutions of central government pass on them without any comment\textsuperscript{463}. During the mandate of the former Ombudsman the recommendations directed to the parliament for the improvement of legislation usually remain without consequence. After the change of the Ombudsman is seen increasing success of its actions and positive reactions are recorded as the National Assembly and the Council of Ministers and other public institutions\textsuperscript{464}. The attitude of institutions

\textsuperscript{456} Interview internal expert with author, Sofia, April 2011.
\textsuperscript{458} http://parliament.bg/register/?page=decl&instit_id=5#5, as of March 2011.
\textsuperscript{459} Annual Report of the Ombudsman 2009.
\textsuperscript{460} Annual report of the ombudsman 2010.
\textsuperscript{461} Interview internal expert with author, Sofia, April 2011.
\textsuperscript{462} Interview external expert with author, Sofia, April 2011.
\textsuperscript{463} Interview internal expert with author, Sofia, April 2011.
\textsuperscript{464} Annual report of the ombudsman 2010.
towards the ombudsman is respectable⁴⁶⁵. There are no cases of refuse to provide information or delay beyond the regulated timelines for its submission. The ombudsman has never utilised his legally provided rights to apply administrative sanctions on institutions which refuse cooperation⁴⁶⁶.

Even though sociological agencies do not include the ombudsman’s institution in their studies of public opinion, as a whole there is no negative reaction in society towards the institution⁴⁶⁷. Many people still do not understand its nature however. The interest towards the ombudsman’s activities is low. There is a general impression, that he can not exert influence over the work of other institutions. Even though his actions and appearances are given publicity by the media, these do not cause major interest in the predominant part of the population. There is no long-term outreach programme for the popularisation of the ombudsman’s services and activities.

![Complaints by year](chart)

Source: Annual report of the ombudsman 2010

The number of submitted complaints to the Ombudsman by years shows an upward trend. This may be evidence of increasing prestige of the institution.

There are no regulated mechanisms for the sanctioning of institutions which refuse to conform to the ombudsman’s recommendations. There is no long-term programme for the popularisation of the institution’s services and activities.

**Promoting good practice**

*To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?*

**Score: 50**

By law the jurisdiction of the ombudsman stretches over central and local authorities and their administrations as well as providers of public services⁴⁶⁸, with the exception of Parliament, the President, the Constitutional court, the Supreme Judicial Council and the National Audit

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⁴⁶⁵ Interview internal expert with author, Sofia, April 2011.
⁴⁶⁶ Interview internal expert with author, Sofia, April 2011.
⁴⁶⁷ During the last 5 years there are no cases of public debate, excluding the annually parliamentary discussions.
⁴⁶⁸ Art. 2 of the Ombudsman Act.
Office. The law strictly defines the area of public services. These are: educational, healthcare, social, water supply, sewage, heating supply, electricity supply, postal services, telecommunication, commercial, security and safety of traffic services, as well as other similar services provided for satisfying of public needs, in relation to which administrative services can be provided. Based on data from the Ombudsman’s annual reports in the ombudsman’s office’s practice complaints about all institutions under his jurisdiction have been reviewed. No official data about any preliminary consultations conducted with the institutions under investigation in relation to submitted complaints is available. It is common practice for the ombudsman to organise public discussions with representatives of the institutions on topics relating to problems in regards to which a significant number of complaints and have been submitted. For example: a discussion on the problems of the doctor – patient relationships with the participation of the Minister of Health, representatives of medical practitioners and patient organisations as well as media, which took place on the 15 March 2011\textsuperscript{469}.

One of the major campaigns of the ombudsman is the campaign for good governance in municipalities\textsuperscript{470}. Within the campaign a national study of the work of municipality administrations as well as education of municipality administration employees in the principles of good governance has been conducted, a national index of good governance in municipalities has been created, a Handbook of good governance in municipalities has been published and distributed, a campaign for engagement with the application of the principles of good governance has been conducted amongst mayors of municipalities, whereby a protocol with the mayors of 44 municipalities has been signed. The monitoring of the application of the principles of good governance in municipalities has been organised. All initiatives of the ombudsman are published at the institution’s website.

The internal expert notes, that institutions, which have been subject to an investigation by the ombudsman’s office in relation to complaints and have conformed to the ombudsman’s recommendations always send detailed feedback for the actions which they have taken. No other system for tracking and evaluation of the impact of the ombudsman’s activities has been put into place\textsuperscript{471} and there is no system for monitoring the activities and services of the institutions, which have been investigated by the ombudsman’s office.

Recommendations:

- Development of a standardised internal procedure for working with citizen’s complaints;
- Hiring of new experts working on complaints by citizens. Introduction of an employee performance evaluation system;
- To create rules and leading criteria for the inclusion of representatives of the public in the activities of the ombudsman while insuring confidentiality;
- Make the registry complaints kept by the administration of the ombudsman available online;
- Creation of practices for wide publicity of the results of the ombudsman’s work and publicity of the debates in Parliament relating to it;
- The Code of Conduct of the employees of the ombudsman institution to be published at the ombudsman’s website;

\textsuperscript{469} http://www.ombudsman.bg/news/1117.

\textsuperscript{470} At the ombudsman’s website there is a separate section which tracks the initiatives of the ombudsman in relation to good governance in municipalities - http://www.ombudsman.bg/municipality/.

\textsuperscript{471} Interview internal expert with author, Sofia, April 2011.
• To employ members of the administration on the basis of a public official contract. The status of public official will limit their opportunities to work on the basis of other employment contracts, except as lecturers in universities. Provision of proper conduct education of the employees and creation of a system for tracking the conflict of interests during work on complaints;
• Development of an outreach programme for the popularisation of the ombudsman’s services and activities;
• Enhancing the cooperation between the Ombudsman and the public authorities;
• Improving the visibility of the Ombudsman in the public sphere.
### NATIONAL AUDIT OFFICE

<table>
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<tr>
<th>Indicator</th>
<th>Law</th>
<th>Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capacity</strong> 75/100</td>
<td>Resources</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Independence</td>
<td>75</td>
</tr>
<tr>
<td><strong>Governance</strong> 75/100</td>
<td>Transparency</td>
<td>75</td>
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<tr>
<td></td>
<td>Accountability</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>Integrity Mechanisms</td>
<td>50</td>
</tr>
<tr>
<td><strong>Role</strong> 33,33/100</td>
<td>Effective Financial Audits</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Detecting and Sanctioning Misbehaviour</td>
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<td></td>
<td>Improving Financial Management</td>
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#### Summary

The Bulgarian National Audit Office (NAO) is an important institution for independent external audit of public finance in the country. The National Audit Office Act determines the range of public bodies to be audited by the NAO. In late 2010, the Act was fundamentally amended, thus, the structure and the role of NAO developed significantly as of 2011 onwards. The present evaluation includes assessment of the new legislative regulations and the practice of the office in the last two years. Before the amendments, only budgetary entities were subject to the audits of the office. At present, its range includes companies with national or municipal participation, as well. Political parties are also subject to audits by the NAO. The table above presents the indicator scores, summarising the assessment of the Bulgarian National Audit Office in terms of its capacity, internal governance and role within the Bulgarian integrity system.

Although the NAO performs relatively well, the Office still refrains from active role in improving financial management and especially from sanctioning misbehaviour. The review of the Office’s reports show that they are rather focused on legality and compliance with accounting standards than on the expedience of financial management.\(^472\)

At the same time, numerous media publications show that the Office is actively detecting misbehaviour, but apart from approaching the competent sanctioning authorities, nothing significant is done regarding sanctioning. Moreover, when discussing newly introduced (but

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still limited) sanctioning powers to the NAO, one of its senior officials demonstrated reluctance with their appropriateness.\textsuperscript{473}

There are some regulatory shortages, as well. The integrity mechanisms provided by the newly adopted law are very limited\textsuperscript{474}. Furthermore, the ethical standards provided in the Office’s Code of Conduct are vague and the Code does not arrange for explicit procedure to prevent misconduct.\textsuperscript{475}

To sum up, the NAO is an active watchdog, but a rather barking one and not eager to bite. This is partly due to the partisan involvement in the appointment of the Office’s members before the amendments in the legislation.\textsuperscript{476} Another part of the problem is the reluctance of the Bulgarian administration at large to impose sanctions and to shift the responsibility upon the judiciary. Most of the problems were usually attributed to the imperfect or faulty legislation. Time will show if the new National Audit Office Act, adopted in 2011, has solved these problems.

**Structure and organisation**

The Bulgarian National Audit Office is an independent, budget-funded entity, comprising of President and two Vice-Presidents appointed by the National Assembly (the Bulgarian Parliament)\textsuperscript{477}. All other staff is employed under the labour regulations and the National Audit Office Act. The terms of the President and the Vice-Presidents are fixed, respectively, to 6 and 7 years. The headquarters of the NAO is based in Sofia, but it has offices all across the territory of the country. The work of the NAO is supervised by a Consultative Council comprising of the President of NAO and five members “with professional experience of at least 15 years in the field of audit, financial control, finance or accountancy”\textsuperscript{478}.

**CAPACITY**

**Resources (practice)**

*To what extent does the audit institution have adequate resources to achieve its goals in practice?*

**Score: 75**

The Supreme Audit Institution has at its disposal the necessary financial, technological and human resources\textsuperscript{479} to perform successfully its tasks.\textsuperscript{480} The Office recruits staff through competitive procedures. Applicants must possess Master’s degree and at least 3 years of relevant professional experience. The great part of the staff comprises of economist and jurists. There is considerable stability of human resources.\textsuperscript{481}

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\textsuperscript{473} Interview with a senior official within the NAO.

\textsuperscript{474} National Audit Office Act (http://www.bulnao.government.bg/index.php?p=2058&lang=en)


\textsuperscript{476} Interviews with a journalist from a leading daily newspaper, covering the work of NAO.

\textsuperscript{477} Art. 12 of the National Audit Office Act (http://www.bulnao.government.bg/index.php?p=2058&lang=en)

\textsuperscript{478} Ibid. Art. 22.

\textsuperscript{479} Global Integrity Scorecard: Bulgaria 2008, p. 96.

\textsuperscript{480} Interviews with a senior official within the NAO and a journalist from a leading daily newspaper, covering the work of NAO.

\textsuperscript{481} Interview with a senior official within the NAO.
development and training opportunities to its employees, including a special joint MA programme in auditing at the University of National and World Economy in Sofia, covered by the NAO.

Table 1. Budget of the National Audit Office (in mln EUR)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Budget</th>
<th>Budget for Salaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>10.3</td>
<td>5.5</td>
</tr>
<tr>
<td>2010</td>
<td>8.5</td>
<td>5.5</td>
</tr>
<tr>
<td>2011</td>
<td>7.7</td>
<td>5.2</td>
</tr>
</tbody>
</table>


Although there is a reduction of the financial resources of NAO for the last three years (Table 1), it is at the expense of investment costs. The budget for salaries and additional compensation of the employees in the Office remains literally the same. Interviewed experts define the availability of resources as sufficient. In practice there should be no obstacles, related to resources, before successful completion of the Office’s tasks.

Independence (law)

To what extent is there formal operational independence of the audit institution?

Score: 75

The NAO is traditionally independent. The institution is established in the Constitution. The independence of the institution is guaranteed by the National Audit Office Act. Art. 91 of the Constitution state that “[t]he National Assembly shall establish a National Audit Office to supervise the implementation of the budget.” Although the National Audit Office reports the results of its work to the National Assembly, there is no mechanism allowing influence over the institution by other state bodies. Moreover, the NAO determines its yearly programme and methods on its own. It is obliged to carry out up to five audits per year upon request by the parliament. The recruitment to the office is based on clear criteria. The President of the NAO is elected by the National Assembly for a term of 6 years, while the legislative term is 4 years which ensures to a large extent the independence of the institution. The Act does not provide restrictions on political activities of the president of the institution. However, it states that the President “…may not hold any other paid positions or perform any other paid activities except for research, teaching or activities regulated under the Copyright and Related Rights Act.” Moreover, political neutrality is key principle in the NAO’s code of conduct. After the completion of the 6 years term, the President cannot be reappointed. However, the two Vice-Presidents can be reappointed upon completion of their 7 years terms. The President and the Vice-Presidents of the institution cannot be removed without relevant justifications listed in the Act. The President, Vice-Presidents and staff of the NAO are not immune from prosecution.

482 Interviews with a senior official within the NAO and a journalist from a leading daily newspaper, covering the work of NAO.
485 Art. 15, Para. 5 of the National Audit Office Act.
Independence (practice)

To what extent is the audit institution free from external interference in the performance of its work in practice?

Score: 75

The NAO drafts its own budget, which is not a subject of control by the government.\(^{486}\) There is no evidence if this provision has been breached during the reviewed period.\(^{487}\) In this respect the Office is financially independent institution. Despite this fact, there are suspicions for the factual independence of the institution. One of the interviewed experts suggests that there was partisan involvement in the appointment of the NAO’s members in the past.\(^{488}\) This is not a surprise, given the procedure for election of the office members – they are nominated by the ruling party/coalition and elected with their votes, which implies that the former are not independent from the latter. At the same time, the President, who was appointed by the preceding majority in parliament, was appointed again by the new majority, after the adoption of the new Act in 2011.\(^{489}\) His nomination was supported by the previous opposition parties and opposed by the former majority, which appointed him in 2005.\(^{490}\) This provides arguments in favour of the political independence of the NAO.\(^{491}\) According to the new Act, the President could not be reappointed. The two present Vice-Presidents are in their first term in office and so there is no evidence of political interference via early removal from office of the heads of the NAO.

GOVERNANCE

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

Score: 75

The National Audit Office Act states that the NAO shall carry out financial and performance audits.\(^{492}\) The NAO is obliged to submit to the legislature its annual audit programme. The programme is not required to be debated in the legislature. However, the President of NAO submits to the Parliament reports of the office regarding the state budget, the budgets of the public social security fund and the public health insurance fund, as well as the budgetary expenses of the Bulgarian National Bank. The President submits also reports concerning any significant findings of the NAO. The President submits to the Parliament any other reports upon request and participates in the meetings of the parliamentary subcommittee on accountability of the public sector. The NAO is required to make publicly available all its

\(^{486}\) Art. 11 of the National Audit Office Act.
\(^{488}\) Interview with a journalist from a leading daily newspaper, covering the work of NAO.
\(^{489}\) NAO’s website (http://www.bulnao.government.bg/structures.php?p=president&lang=en)
\(^{490}\) The formal argument of the Bulgarian Socialist Party was that Mr. Dimitrov could not be reappointed, because the new Act allows him only one term. According to the majority, however, the Act does not have reverse power in that respect and the clause prohibiting reappointment of the President should be applied for mandates after the adoption of the Act.
\(^{491}\) See also Global Integrity Scorecard: Bulgaria 2008, p. 96.
\(^{492}\) Art. 5 of the National Audit Office Act.
reports except for those which contain classified data. Some deadlines exist on making the reports publicly available. However, the requirements for the public dissemination of the audit results are not clear enough.

**Transparency (practice)**

*To what extent is there transparency in the activities and decisions of the audit institution in practice?*

**Score: 100**

The work of NAO could be classified as transparent. The office prepares all the reports required by law. There is no evidence of concealment of documents which are subject of submission to the Parliament. The NAO makes public all of its reports and most of its internal documents through its website and the media.\(^493\) The review of the publicly available information shows that it is up-to-date and sufficiently detailed. The information is easily accessible via the NAO’s website, which is well maintained. However, the procedure of decision making on key issues is not clear enough.

**Accountability (law)**

*To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?*

**Score: 75**

The NAO is required by law to submit an annual report of its work to the legislature.\(^494\) There are no specific legal requirements on the content of the report. The submission of the report is due by September 30 of the year, following the reported annual period.\(^495\) The financial management of NAO is audited annually by an independent commission which is appointed by the Parliament.\(^496\) The audit report must be submitted to the Parliament, together with the annual report of NAO.

The bodies audited by NAO are entitled to make objections to the draft of the audit reports by providing additional evidence and explanations.\(^497\) However, the objections are considered only by the NAO. Therefore there is no comprehensive mechanism to ensure that the Office would respect such objections. This was the practice under the previous National Audit Office Act, as well.\(^498\)

**Accountability (practise)**

*To what extent does the SAI have to report and be answerable for its actions in practice?*

**Score: 75**

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\(^{494}\) Art. 62 of the National Audit Office Act.
\(^{495}\) Ibid.
\(^{496}\) Art. 63 of the National Audit Office Act.
\(^{497}\) Art. 45 of the National Audit Office Act.
\(^{498}\) Interview with senior official within the NAO.
The NAO provides comprehensive annual reports in due time. All of them could be downloaded from its institutional website. The reports provide summary of the audit activities of the Office, brief descriptions of all financial and performance audits conducted during the year, including findings of every audit activity and recommendations provided to the audited institutions. The reports include brief sections dedicated to the interaction with other national and international institutions, and to the institutional and administrative capacity of the Office including organizational structure, financial and human resources, as well, as publicity of the NAO activities during the year. Financial audits of the NAO take place each year. The audit commission is appointed by the Parliament and includes MPs. Its reports are promptly submitted to the National Assembly. However, there is not much debate on these reports in the legislature. Moreover, there are no consequences if the report is not approved by the National Assembly. Affected agencies can challenge audit results, but only before NAO itself, before the completion of the final audit report. Although, there is no publicly available data on how often audited institutions use this possibility, experts suggest that this is a well-functioning practice.

**Integrity (law)**

*To what extent are there mechanisms in place to ensure the integrity of the audit institution?*

**Score: 50**

Some integrity provisions exist, but they are rather superficial. The NAO has its own code of conduct, risk management strategy, and several other documents regulating the work of the office. Conflict of interest rules are included in the National Audit Office Act and in the code of conduct. However, the code does not provide any definition of conflict of interests and the NAO Act refers to the Conflict of Interest Prevention and Disclosure Act, which in turn defines only the President and the Vice-presidents as subjects of the conflict of interest regulations. Conflict of interest is defined there as “…where a public office holder has a private interest that may affect the impartial and objective execution of the official powers or duties thereof. (2) "Private interest" means any financial or non-financial benefit to a public office holder, or to any persons having close links therewith, including any obligation assumed.”

The NAO code of conduct does not cover rules on gifts and hospitality, or post-employment restrictions. The code’s basic principles include responsibility, objectivity, neutrality and integrity. In summary, the integrity mechanisms developed specifically for the NAO are limited. More comprehensive mechanisms are provided in the Conflict of Interest Prevention and Disclosure Act, which is only applicable to the members of NAO (President and Vice-presidents).

**Integrity (practice)**

*To what extent is the integrity of the audit institution ensured in practice?*

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500 Interview with senior official within the NAO.
501 Interview with senior official within the NAO.
Score: 75

While there are no comprehensive integrity regulations of the NAO’s work, no significant misconduct or suspicions of such were ever reported.\textsuperscript{504} The existing code is insufficient but in spite of it, there are high levels of ethical standards in the institution, although there is no specialized training of the staff in this respect.\textsuperscript{505} However, there is no evidence of violation of the established ethical standards.

ROLE

Effective Financial Audits

*To what extent does the audit institution provide effective audits of public expenditure?*

Score: 25

While the NAO has the authority to oversee public spending and produces regular reports, they are focused primarily on compliance with the law. In a recent interview\textsuperscript{506} the President of the Office stated “… [Suppose] you have a budget, you have certain resources with specific purpose. We generally can only verify if there is legality or not, i.e. whether these funds are used appropriately. However, effectiveness, efficiency, economy, I doubt that we could go into such judgments…” The reports are always available to the Parliament. It is common for the NAO to examine the effectiveness of internal audit within government departments. Performance audits are rarer than those for legality and regularity of financial management and accounting (Table 2). As the data shows, the largest part of the audit activities is concentrated on verification of the annual financial reports of the governmental and municipal institutions for compliance with the auditing standards. The amount of financial audits increases each ear with about 12 per cent annually. Simultaneously, the amount of performance audits has dropped significantly from 141 in 2007 to 41 in 2008. Nevertheless, this decrease is not alarming since the number in 2007 was simply oddly high. The Office conducted 65 performance audits in 2006 and 38 in 2005 respectively.\textsuperscript{507} However, the Office is actively checking public tenders for incompliance with the relevant legislation and is notifying the competent sanctioning authorities regularly. Large part of the NAO’s audit reports could be classified as comprehensive. The reports are regular and up-to-date. The reports are publicly available via the NAO’s website.\textsuperscript{508} Major audit findings are regularly publicized through the media. Although there is no much feedback if the recommendations are duly fulfilled, the decreasing number of reports on unimplemented audit recommendations indicates that the Office is improving its effectiveness. It should be mentioned though, that this number does not include non-compliance with reports sent to the sanctioning authorities, since the Office is not responsible to impose the sanctions.

| Table 2. Audit Activities of the National Audit Office (2007-2009) |
|------------------|---------|---------|---------|
| **Type** | **Annual Period** | **2007** | **2008** | **2009** |

\textsuperscript{504} Interview with a journalist from a leading daily newspaper, covering the work of NAO.
\textsuperscript{505} Interview with senior official within the NAO.
\textsuperscript{506} http://www.bulnao.government.bg/index.php?p=79
\textsuperscript{507} Audit reports of the National Audit Office for 2005 and 2006 (http://www.bulnao.government.bg/index.php?p=63)
\textsuperscript{508} Audit reports of the NAO (http://www.bulnao.government.bg/index.php?p=4).
## Detecting and Sanctioning Misbehaviour

*Does the audit institution detect and investigate misbehaviour of public officeholders?*

### Score: 50

The NAO is regularly identifying legal and other violations, as well as misbehaviour. There are a plethora of publications in the media concerning NAO’s disclosure of malpractices and legal offences in the road administration, municipal administrations, the agricultural agencies, ministries, and many more. However, the powers of the office to apply sanctions are limited and their implementation is predominantly in the competences of other agencies such as the Prosecutor’s Office, the Ministry of finance, the Public Procurement Agency, the State Financial Inspection, even OLAF. The latter limits the effectiveness of the NAO’s work. Nevertheless, according to the latest annual report of NAO, out of 82 reports of fraud of the public procurement procedures sent to the State Financial Inspection (SFI), 30 resulted in 529 cases of administrative malpractice with corresponding sanctions. The rest were still under review by the SFI upon completion of the report. The Office has the power to identify officeholders responsible for misbehaviour, although it is not an investigation agency. In its recommendations the Office may request discharge of responsible servants in the audited administration, or budgetary cuts of an agency which is not fulfilling NAO’s recommendations systematically.

## Improving Financial Management

*To what extent is the SAI effective in improving the financial management of government?*

### Score: 25

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509 Interviews with a senior official within the NAO and a journalist from a leading daily newspaper, covering the work of NAO.


Generally, the NAO’s reports are focused on findings. Most of the reports include a number of recommendations, which are predominantly more general.\textsuperscript{516} Although the NAO is entitled to keep track of the implementation of its recommendations\textsuperscript{517}, there is no comprehensive mechanism for it. The office issues reports for the implementation of its recommendations and provides information for the unimplemented ones (Table 2). The follow up aggressiveness could be classified as unsatisfactory, although, the implementation reports show that the audited agencies to a great extent act upon the NAO’s recommendations\textsuperscript{518}.

**Recommendations:**

- Legal provisions should be adopted, restricting political and other activities of the President and the two Vice-Presidents of the National Audit Office, apart from those embedded in the office’s code of conduct.
- The law should provide immunity of the President and Vice-Presidents from prosecutions resulting from the normal discharge of their duties.
- The National Audit Office Act should provide more precise requirements for the public dissemination of the audit results.
- The NAO should make clearer the procedure of decision making on key issues. Although, the NAO is obliged to report, the appeal procedure of its actions is weak. Therefore, more independent appeal mechanism should be elaborated. The office should carry out larger number of performance audits. It should use its sanctioning capacity more actively.

\textsuperscript{516} NAO’s audit reports (http://www.bulnao.government.bg/index.php?p=4)
\textsuperscript{518} Reports on accomplishments of recommendations (http://www.bulnao.government.bg/index.php?p=87)
ANTI-CORRUPTION AGENCIES

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<thead>
<tr>
<th>Indicator</th>
<th>Law</th>
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<tr>
<td>Capacity 43,75/100</td>
<td>Resources</td>
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<tr>
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<td>Independence</td>
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<td>Governance 40/100</td>
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<td>Integrity Mechanisms</td>
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<td>Role 37,5/100</td>
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<td>Investigation</td>
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*No information

Summary

Despite the existence of many structures dedicated to the fight against corruption in Bulgaria there is no authentic anti-corruption agency fitting the concept applied in this study. Among the plethora of departments, directorates and commissions both at the national and the local level the State Agency “National Security” (SANS) deserves special attention. It is an institution of durable nature and among its competences is the counteraction to high-profile political corruption, despite some experts are inclined to limit this function to counteraction of corruption used as intelligence mean by foreign secret services. Indeed, nowadays corruption is recognized as a major threat for national security in Bulgaria and thus, a priority for the Agency. However, SANS is a typical secret intelligence service and differs greatly from the model of ACA used in the NIS study. Therefore the Agency is not expected to be neither independent nor fully transparent. It has no investigative powers either. The table above presents the scores assigned to the Agency. Apart from the assessment of resources, the scores are rather low which is mainly due to the secret nature of SANS. It should be stressed however, that the assessment in this report regards the role of SANS as an anti-corruption agency only. This is not an assessment of the work of SANS as a counterintelligence secret service.

Structure and organisation

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519 Interview with external expert (former top official within the predecessor of SANS).
The State Agency “National Security” was established in 2008 as a “specialized body for counterintelligence and security and its chief responsibility is to detect, prevent and neutralize the threats to the Bulgarian national security” replacing several other agencies. It is the first special agency in the country which is regulated by law and is subject to parliamentary control. The Agency is headed by a Chairperson “appointed by force of a decree of the President of the Republic of Bulgaria, subject to a proposal by the Council of Ministers, for a term of 5 years”.

The Agency has two deputy Chairpersons directly appointed by the Cabinet for a term of 5 years upon proposal by the Chairperson. The Agency is highly centralized and subordinated to the cabinet and the Prime Minister respectively.

CAPACITY

Resources (law)

*To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?*

**Score: 75**

SANS has the full support of the State to carry out its duties, including financial and human resources, and infrastructure. The Agency proposes its own budget to the parliament and the government, which after approval becomes part of the state budget. It is not flexible and cannot be changed during the fiscal year, except for the occasions when the whole state budget is being changed, which happens very rarely. The fiscal stability of SANS is guaranteed by the State’s Budget Act adopted annually. Besides that, SANS cannot acquire further funding.

Resources (practice)

*To what extent does the ACA have adequate resources to achieve its goals in practice?*

**Score: 50**

The annual reports of SANS show that the agency has the necessary financial resources to perform its duties imposed by law, but nothing more. According to the Agency itself “…the approved, in the State Budget Act of the Republic of Bulgaria for 2011, budget of SANS covers the basic priorities for reaching optimal balance between the approved budget and the acquisition of the necessary resources for the Agency in implementation of the state’s national security defence policy”, which comes to say that despite of the scant resources they do their job well. The budget of SANS is decreasing in the last three years from about BGN 107 mln (EUR 55 mln) in 2009 to approximately BGN 85 mln (EUR 43 mln) in 2011. The decrease of the budget led to a reduction of the staff in 2010. Staff members of SANS possess the necessary academic qualifications and some of the senior staff are improving their

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520 SANS website (http://www.dans.bg/) accessed on 04/04/2011.
522 Ibid.
523 Written answers from SANS to the NIS study questions. Art. 2 of the State Agency for National Security Act.
524 Ibid.
525 Written answers from SANS to the NIS study questions.
526 SANS’s annual reports (www.dans.bg).
qualifications in PhD programmes. The Director of SANS has the full discretion over recruitment in the agency\textsuperscript{527}. Some of the newly recruited employees of SANS have to complete initial specialized training, depending on the functional specifics of the position.\textsuperscript{528} The director of the Agency is in practice appointed by the Prime Minister. The appointment is not preceded by public audition. SANS offers variety of career development and training opportunities.\textsuperscript{529} The staff fluctuation is in “normal range”\textsuperscript{530} SANS has the great potential of a secret service to effectively perform its duties. However, due to budgetary cuts the agency had to dismiss valuable staff, which reduces is capacities.\textsuperscript{531}

**Independence (law)**

*To what extent is the ACA independent by law?*

**Score: 25**

The SANS has a statute of a state agency subordinated to the Council of Ministers.\textsuperscript{532} It is established by special law and managed by a chairperson appointed by the President upon proposal of the Council of Ministers for a term of 5 years.\textsuperscript{533} The staff of SANS is depoliticized by law. No member of the agency staff could be a member of political party, trade union or any other similar organization.\textsuperscript{534} There are no legal restrictions to the reappointment of the chairperson. He is protected by law from removal without relevant justifications.\textsuperscript{535} The staff members of the Agency are not immune from prosecutions resulting from the normal discharge of their duties.

**Independence (practice)**

*To what extent is the ACA independent in practice?*

**Score: 25**

The work of SANS could be classified as non-partisan, politically impartial and to a large extent professional.\textsuperscript{536} There is no evidence of political interference in the activities of the Agency. However, there was a recent operation of SANS aimed at investigation of the authenticity of a petition submitted to the parliament by an opposition party.\textsuperscript{537} The operation was carried out upon demand of the Chairperson of the National Assembly.

Although the head of SANS is required to have extensive professional experience in the respective field and has fixed term by law, his appointment is practically under the full

\textsuperscript{527} Art. 9 of the State Agency for National Security Act.

\textsuperscript{528} Interview with external expert (former top official within the predecessor of SANS).

\textsuperscript{529} Ibid.

\textsuperscript{530} Written answers from SANS to the NIS study questions.

\textsuperscript{531} Interview with former chairman of the Parliamentary Standing Committee for Control of SANS.

\textsuperscript{532} Art. 9 of the State Agency for National Security Act.

\textsuperscript{533} Art. 8 of the State Agency for National Security Act.

\textsuperscript{534} Art. 8 and Art 45 of the State Agency for National Security Act.

\textsuperscript{535} Art. 8 of the State Agency for National Security Act.

\textsuperscript{536} Interview with external expert (former top official within the predecessor of SANS). Written answers from SANS to the NIS study questions.

discretion of the PM. For less than 4 years of operation, the Chairman was changed two times and at present the Agency has its third Chairman since its establishment in 2008.\textsuperscript{538}

In practice, in the last couple of years SANS works in close cooperation with the Prosecutor’s Office and the Ministry of Interior. The investigative powers of SANS were limited soon after its establishment\textsuperscript{539} and at present, the Agency acts at large as intelligence service.\textsuperscript{540}

**GOVERNANCE**

**Transparency (law)**

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?*

**Score: 25**

The SANS is required to submit an annual report for its work to the Council of Ministers which submits it to the National Assembly.\textsuperscript{541} The Agency is not required to make information on its activities publicly available. Moreover, SANS is a secret service and most of its documentation is classified.\textsuperscript{542}

**Transparency (practice)**

*To what extent is there transparency in the activities and decision-making processes of ACA in practice?*

**Score: 25**

The publicly available information on the activities of SANS is extremely limited and very general because most of it is classified.\textsuperscript{543} The Agency has its own website. However, the information published there is rather scant and limited to “…current events and shuffles in the agency, relevant legislation, procedures, public tenders, etc.”\textsuperscript{544}

**Accountability (law)**

*To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?*

**Score: 50**

SANS is obliged to prepare annual reports for its work and is a subject to parliamentary control. The Agency provides the same information simultaneously to the Parliament, the

\textsuperscript{538} [www.dans.bg](http://www.dans.bg)
\textsuperscript{539} Art. 4 of the State Agency for National Security Act.
\textsuperscript{541} Art. 132 of the State Agency for National Security Act.
\textsuperscript{542} Art. 6 of the State Agency for National Security Act.
\textsuperscript{543} Written answers from SANS to the NIS study questions.
\textsuperscript{544} Ibid.
President and the Council of Ministers. The parliamentary control is carried out by specialized parliamentary committee. The Chairperson and his deputies are obliged to report in person before the committee upon its request. The annual report of the Agency is due by the January 31 of the year, following the reported period. There are no requirements for the public availability of the annual reports. Reports on closed investigations of SANS could be submitted to the specialized parliamentary committee upon request. The operations of the Agency are normally classified and not available to the public. There are no provisions for protection of whistleblowers. There are no requirements for independent audit of the Agency. However, the National Audit Office is empowered carry out occasional audits of the budgetary structures including SANS. There are no specific provisions allowing the public to file complaints against the Agency. There are no special judicial review mechanisms for the work of the Agency. There is judicial review in terms of “the Chairman’s acts concerning activities regulated by special laws”, which is generally limited to the use of special intelligence means for tapping, surveillance and tracing. There are no legal provisions or practice of citizen oversight committees.

**Accountability (practice)**

*To what extent does the ACA have to report and be answerable for its actions in practice?*

**Score: 50**

The Chairperson of SANS regularly reports to the specialized parliamentary commission. The Agency regularly files the required reports. The non-classified reports are publicly accessible at the reports section of the Agency’s website. The reports mainly consist of statistical data about the work of the agency and the budget implementation. In practice, there are no whistle blowing and citizen oversight mechanisms. The judicial review mechanisms over the usage of special intelligence means are ineffective and are presently being reconsidered by a special working group appointed by the Minister of Interior.

**Integrity (law)**

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547. Ibid.
549. Interview with external expert (former top official within the predecessor of SANS).
551. Written answers from SANS to the NIS study questions.
552. Ibid.
553. See the practice of the commission and meeting agendas at: http://parliament.bg/bg/parliamentarycommittees/members/239/sittings
554. Interviews with external expert (former top official within the predecessor of SANS) and representatives of the Parliamentary Committee for Control of SANS.
557. Interview with external expert (former top official within the predecessor of SANS) and Written answers from SANS to the NIS study questions.
558. See proceedings from Round Table “Necessary Legislative Amendments of the Special Intelligence Means” held in the National Assembly (21/02/2011) (http://parliament.bg/bg/parliamentarycommittees/members/336/documents)
To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?

Score: 50

There are no integrity mechanisms provided by the legislation. SANS has a code of conduct559 but it is not publicly available and could not be assessed. From the general and brief description of the code made in the written by the Agency,560 we can conclude that it does not cover asset declarations and conflict of interest, gifts and hospitality, or post-employment. Conflict of interest is a subject of a special “… order for the implementation of the Conflict of Interests Prevention Act”561 which is not publicly available and cannot be assessed. There is no practice of integrity screening during recruitments.562

Integrity (practice)

To what extent is the integrity of members of the ACA(s) ensured in practice?

Score: No Information

Since the adoption of the Code of conduct of the Agency seven servants were administratively punished for violations of the code with different sanctions. The most severe among these that was inflicted is the discharge of one servant.563 There is no evidence if the Agency’s staff are trained regularly on integrity issues.

ROLE

Prevention

To what extent does the ACA engage in preventive activities regarding fighting corruption?

Score: 25

Regarding high-profile corruption SANS actions are mainly focused on counteraction than prevention.564 The preventive functions of the Agency are connected with its intelligence activities and information gathering.565 The Agency could provide information for specific cases of corruption if detected, to the government and the Prosecutor’s office, but it cannot take any further preventive measures. The Agency does not possess legislative initiative and does not recommend legislative reforms. It has a number of analytical units, but they are not genuine research structures.566 Part of their work is descriptive and is connected with processing of data gathered by special intelligence means. Another part consists of sectorial analysis in the field of operation of the Agency, marking trends and risks for the national

559 Written answers from SANS to the NIS study questions.
560 Ibid.
561 Ibid.
562 Interview with external expert (former top official within the predecessor of SANS).
563 Written answers from SANS to the NIS study questions.
564 Ibid.
565 Interview with external expert (former top official within the predecessor of SANS).
566 Interview with external expert, specialized in the internal security sector in Bulgaria.
security, and the possible preventive measures. However, they are classified and not publicly available. SANS is providing regular information to the legislature and the executive including on corruption issues, but it is classified.

**Education**

*To what extent does the ACA engage in educational activities regarding fighting corruption?*

**Score: NA**

SANS has no competences regarding education on fighting corruption. The Agency does not provide education to public sector regarding corruption.

**Investigation**

*To what extent does the ACA engage in investigation regarding alleged corruption?*

**Score: 50**

At present, SANS does not have investigative competences. There were some in the early stages of the development of the Agency, but they were not clearly defined and distinguished from the competences of the main law enforcement agencies, which caused institutional overlap and conflict among the law enforcement agencies. SANS has conducted several investigations of high-rank officials, including from the ruling party, suspected in political corruption, but the results are classified. Regarding corruption, SANS is much more reactive than pro-active. It has reported a number of revealed instances of high-profiled corruption (39 for the first half of 2010) to the Prosecutor’s Office. However, there are no results so far. Moreover, the Prosecutor General defined most of them as worthless before court.

**Recommendations:**

At present, there is no genuine anti-corruption agency in Bulgaria. Recently the government started a new project aimed at establishing a Centre for Prevention and Counteraction of Corruption and Organized Crime called “BORCOR”. The main task of the Centre of will be to develop decisions and measures against corruption and organized crime. Designed as a governmental think-tank, the centre will not have any repressive competences including investigative ones, but will provide education on corruption to public administrators.

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567 Ibid.
568 Written answers from SANS to the NIS study questions.
569 Ibid.
570 Interview with external expert (former top official within the predecessor of SANS).
572 http://ipsnews.net/news.asp?idnews=41989
http://www.bulfax.com/?q=node/1362233
http://news.ibox.bg/news/id_1218075560
http://www.24chasa.bg/Article.asp?ArticleId=695840
573 SANS reports (www.dans.bg)
574 Proceeding of Round table “Conception for SANS”, held at the National Assembly (05/11/2009) (http://parliament.bg/bg/parliamentarycommittees/members/239/documents)
575 Interview with the main consultant of the project.
Although not yet operational, BORCOR is designed to be a totally new institutional response to corruption and organized crime in the Bulgarian context.

If BORCOR proves as an effective policymaking institution on corruption and the capacity of law enforcement agencies is strengthened, there will be no need for a special anti-corruption agency in the country. The Bulgarian decision makers should abandon the practice of creating new and newer institutions, but should aim their efforts at improving the capacity of the existing ones. The competences of SANS regarding high-profile corruption should be limited to providing information to the relevant decision making and law enforcement institutions.
POLITICAL PARTIES

<table>
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<tr>
<th>Political Parties(^{576})</th>
<th>Overall Pillar Score: 47.91/100</th>
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<td><strong>Capacity</strong> 56.25/100</td>
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<tr>
<td>Resources</td>
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<tr>
<td>Independence</td>
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<tr>
<td><strong>Governance</strong> 50/100</td>
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Summary

After the critical parliamentary elections from 2001 the party system in Bulgaria transformed from a two-block party system (structurally resembling the two and-a-half party systems) into a multi-party system with a considerable fragmentation of the vote and respectively the representation in the parliament.\(^{577}\) The 2001 election was won by an, in fact, “non-existing” party; the winner then, the National Movement Simeon II, (NDSVI) formally registered for the election as a coalition of two marginal, but still legally existing parties. The NMSII would be formally founded as a party only after the election. In a similar vein in 2009 the parliamentary election winner “Citizens for European Development of Bulgaria” (GERB) was a party which was a “young” one, founded only in 2006 and registered as a party in December same year. Though already represented in many of the local councils (after the 2007 local elections) and in the European Parliament (after the 2007 and 2009 elections), GERB was not represented in the parliament before the 2009 parliamentary elections.

On one side the very fact that “new-born” parties are able to win elections and to form a government, qualify the environment, the parties operate in, as selectively permissive and

\(^{576}\) The overall pillar score is a simple average of the scores of the three dimensions capacity, governance and role. The dimension scores are simple averages of the respective indicator scores.

\(^{577}\) Karasimeonov, G. Bulgarian party system, p.105-122, \textit{http://library.fes.de/pdf-files/buerons/sofia/05507.pdf}

It is remarkable that the values of the volatility indices for 2001, 2005 and 2009 parliamentary election were respectively 48%, 40%, and 47%. Such values are considered extreme and mean that in 2001 and 2009 at least half of the voters choose a ballot of a party different from the one that they have voted for at the previous election. See \textit{http://janda.org/c24/Readings/Pedersen/Pedersen.htm}

The values of the Effective Number of Electoral Parties (ENEP, known also as index of fragmentation) for the same three consecutive elections was 3, 93; 5, 80 and 4, 40. In local elections the same index of the effective number of electoral parties tends to be much higher and in general is a two digit figure.

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inclusive. On the other side the pattern of frequently and dramatically changing majorities is less conducive to the emerging of stable set of accountability and integrity mechanisms. The anti-corruption vigour of the party elites of the ascending parties losses steam though the mandate, to be replaced with the anti-corruption rhetoric of a brand new established power claimer.

The funding of political parties in Bulgaria has undergone a significant development. In the 1990s the parties relied mainly on private funding and transparency rules were not enforced. Since the beginning of the new century enforcement has been gradually strengthened through the involvement of the State Audit Office in the monitoring of the financial affairs of political parties. Also, the state subsidy was significantly increased in 2009, and now public funds account for most of the funding of the political parties. Still, there are important legal omissions in this area, as well as a persistent problem with the enforcement of the legal framework.

The table below presents the indicator scores which summarize the assessment of the political parties in terms of capacity, internal governance and role within the Bulgarian integrity system. The remainder of this section presents the qualitative assessment for each indicator.

**CAPACITY**

**Resources (law)**

*To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?*

**Score: 75**

The Law on Political Parties (LPP, Chapter II - Founding, Registration and Activities of the Political Parties) provides for a two step procedure for the establishment of a political party\(^{578}\). First a steering committee of 50 voters should adopt an establishment appeal in writing and shall publish it in a national daily to start the collection of signatures for recruitment of founding members. (Art.10 of the LPP). Citizens, who join the signature collection, sign a declaration of individual membership. Within three months a constituent meeting shall be held at which at least 500 registered voters declare their support for the constituent declaration and their party membership in writing. They also elect national governing and supervisory bodies of the party and approve the stature of the party (Articles 11, 12 and 13 of the LPP).

As a second step the political party shall be registered in the register of political parties at the Sofia City Court. The elected national board members apply for registration at the Sofia City Court presenting all relevant documents, including: the constituent declaration, the list of founding members and their individual declarations, additional list of 2 500 members (the ID and address of registration required), the statute adopted and the bank account of the party. The Sofia City Court, sitting in public session, shall consider the application according to the procedure established by the Code of Civil Procedure, calling the applicants, within one month after submission of an application. The court shall render judgement within fourteen days after the hearing. (Articles 15 and 16 of the LPP). This judgement is appealable at the

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\(^{578}\) The current Law on political parties is in force since 2005. In Bulgarian it is available at [http://www.lex.bg/bg/laws/ldoc/2135501352](http://www.lex.bg/bg/laws/ldoc/2135501352); in English at [http://legislationline.org/documents/action/popup/id/15811](http://legislationline.org/documents/action/popup/id/15811)
Supreme Court of Cassation within seven days after learning of the said judgment. The Sofia City Court shall enter the political party into the register of political parties, within seven days after the entry into effect of the judgment of registration. A political party shall qualify as a legal person as from the day of entry of the said political party into the register of political parties (Article 18 of the LPP).

Political parties may establish primary units along territorial or thematic lines and on the basis of residence as well as youth, women's and other organizations. It is forbidden to operate party primary unit at workplace, at commercial corporations, cooperatives, sole traders, not-for-profit legal entities and religious institutions and also at state, regional or municipal administrations. Political parties may not establish children's and adolescents' organizations for members who have not attained the age of 18 years, or any religious and paramilitary structures (Article 20 of the LPP).

Barred from membership in political parties are: conscripts and career military personnel of the armed forces, civil servants who are employees of the Ministry of Interior, investigating magistrates, public prosecutors, judges, and members of the diplomatic service.

A political party may be dissolved upon decision of the Constitutional Court whereby the political party is declared unconstitutional or upon a decision of the Sofia City Court in case such a party has not participated in elections for National Representatives, for President or in local elections, more than five years after the registration. The Court may also dissolve a party on request of the Prosecutors Office in case it has missed to submit annual financial statement to the National Audit Office (NAO) for two consecutive years or had not held a meeting of the national management body for two consecutive times (as provided by its statute) but not less than once in five years (Article 40 of the LPP). Such a decision is appealable in front of the Supreme Court of Cassation (Article 41 of the LPP).

The legal framework pertaining to the existence and operations of political parties would probably qualify for the maximum score, had there not been an important constitutional restriction. Article 11 (4) of the Constitution bans the establishment of parties on ethnic lines: “There shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent seizure of state power.” For this reason the proposed score is 75 only.

Resources (practice)

Score: 50

To what extent do the financial resources available to political parties allow for effective political competition?

The above-mentioned constitutional ban on political parties established along ethnic divisions was bypassed in 1992 by the Constitutional Court. The Court could not reach a decision on the appeal of the Socialist party, demanding that the MRF be dissolved as a party based on representation of the Turkish minority. In 1998 a political movement Euro Roma was

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580 Of the 12 Constitutional judges six supported the appeal; five rejected the claim, while one was not present at the session. For a decision to be taken a majority of seven votes is needed. As a matter of fact the MRF represents the minority, though it is defined legally as a liberal party, aiming at protection of universal human or citizens' rights. Further in the nineties the party was integrated in the political system as important actor and between 2001 and 2009 was part of the ruling parliamentary coalitions and held several important ministerial positions. [http://www.constcourt.bg/Pages/Document/Default.aspx[ID=33](http://www.constcourt.bg/Pages/Document/Default.aspx[ID=33])
founded, which developed as an important participant in local election, receiving sufficient support to be represented in two dozens of municipal councils. With the promotion to the parliament of a nationalist party Attack in 2005 parliamentary elections ethnicity turned a stable cleavage in Bulgarian party politics.

Reports on the number of existing parties vary. In 2009 there were 330 parties entered in the Register of Political Parties of the Sofia City Court. According to the report of the NAO 148 parties submitted the 2010 annual financial report required by the PPA; 30 did not. While 20 parties and coalition registered for the 5 July 2009 parliamentary elections, as many as 67 parties and coalitions appeared on at least one of the ballots in the recent presidential and local elections held on 23 October. It is obvious that most of the legally existing parties are local. The process is highly inclusive.

Four parties and two coalitions (one is led by the Socialist party and includes seven other minor partners; the other consists of the two traditional rightwing parties and three minor allies) are represented in the parliament after the 2009 elections. Additional two parties received number of votes higher that one percent; hence qualify for annual state subsidy. These parties as noted above are entitled also to request from the local authorities the allocation of premises for rent for party clubs at lower rates. Once a party drops below the one percent election support threshold, it loses both the right to subsidy and the right to privileged property contracts.

According to the Audit Report of NAO for the calendar 2010 year (last available, published in October 2011) the total subsidy received by political parties for the said year is BGN 38,882million (EUR 20 million). A total of 18 parties receive state subsidy: seven parties receive subsidy as members of the left Coalition for Bulgaria, five as members of the rightwing Blue Coalition, four (GERB, ATAKA, LOJ and the MRF) as single parties represented in the Parliament and two parties not represented in the parliament (NMSP and the Leader party) as parties which have received more than 1 percent of the valid votes in the 2009 election. The 2010 party subsidy was cut by 10 percent as part of the budget austerity measures. The total amount of subsidy was restored for the fiscal 2011 year. So the majority party in the parliament, GERB is entitled to an annual subsidy of approximately EUR 12 million, the second largest Coalition for Bulgaria to approximately EUR 4, million, etc. For comparison it should be notes that the campaign budget ceiling for the October 2011 presidential and local election is set at BGN 10 million (EUR 5 million). Both parties announced they will not accept individual campaign donations.

**Independence (law)**

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582 P.12 of the GRECO report on the political party funding in Bulgaria; this high number includes some 200 “left over” registrations done in the nineties under the previous set of rules which were even more liberal. [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)


584 As of August 2011 parties rent 233 premises in the Municipality of Sofia. The number is rather high as a party may request space in every of the 24 Sofia boroughs. In the review process 33 rent contracts were suspended on the ground of violations of the terms of contract committed by the parties or because certain parties no longer qualify to rent public property at preferential rates. [http://www.24chasa.bg/Article.asp?ArticleId=992570](http://www.24chasa.bg/Article.asp?ArticleId=992570)


586 [http://www.focus-news.net/?id=n1566663](http://www.focus-news.net/?id=n1566663)


To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

Score: 50

Parties in Bulgaria operate freely within framework of the rules established in the Constitution and the laws. However, when interpreting the laws the courts may interfere with the activities of the parties. Courts played important role in registration of the Blue coalition for the 2009 parliamentary election. One of the parties within the coalition (The Union of Democratic Forces) had applied in March 2009 for registration of the newly elected leader, after an election in which all party members were asked to cast a vote. The Sofia Court postponed the registration of the newly elected National Council on various procedural grounds until the start of the registration for the election. Two different applications for participation in the election were submitted, one by the still legally registered leadership and one by the elected in February new leadership. The CEC refused registration to the party; the case was appealed to the Supreme Administrative Court which in fact, by the means of the appeal procedure registered the party for the election. The OSCE/ODIHR report from the Limited Election Observation Mission noted that “(The) general confidence in the impartiality of the CEC for these elections appeared to have been significantly affected by what was characterized by some OSCE/ODIHR LEOM interlocutors as a series of politicized decisions taken in May 2009, regarding the denial of registration of the opposition Blue Coalition. The CEC decision was later overruled by the Supreme Administrative Court... the Chair of the Supreme Administrative Court publicly stated that he had come under pressure regarding this case.”

Independence (practice)

To what extent are political parties free from unwarranted external interference in their activities in practice?

Score: 50

A recent controversy arose around the issue of which party should receive the subsidy for MPs, who have left the party on which list they were elected and have registered as non party or “independent” MPs. As of November 2011 as many as 22 MPs have left their initial party group, as it was established at the time of constitution of the parliament. One of the initially established parliamentary groups, the group of the Order, Law and Justice party, ceased to exist as a separate parliamentary group as it remained with less than the required 10 members. At least 12 of the independent MPs have declared support for the initially minority government of GERB thus transforming the minority 117 largest parliamentary group into a sole majority group of 129 MPs (the Parliament consists of 240 MPs). As the parliamentary

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590  The EC does not provide for “restructuring” of the composition of the parliament. New parliamentary groups may not be established; neither can MPs join a parliamentary group of choice. Once a deputy leaves his or her parliamentary group he or she shall remain independent until the end of the mandate. The issue is controversial also from financial point of view. Under the current rules each MP controls in fact annual budget subsidy of about BGN 200 000 (EUR 100 000). Affected parliamentary parties may in fact lose substantial portion of the subsidy, they are entitled to, based on the number of votes received in the election. The rules seem odd, as parties not represented in the parliament receive constant funding, while the amount of the subsidy for a parliamentary party depends on the will of the MPs of such a party.
majority has several times rejected propositions for public inquiry and public announcement of the beneficiating parties, and on the funds they are “earning”, there are frequent suggestions that this issue is an example of corruption scheme “within the law”. \(^{591}\)

It is not clear why a subsidy based on the number of votes a party or a coalition has received should be subject to “redirection”. As of November 2011 there is ongoing heated debate on this issue. \(^{592593}\)

**GOVERNANCE**

**Transparency (law)**

*To what extent are there regulations in place that require parties to make their financial information publicly available?*

**Score: 75**

The LPP prohibits that parties engage in economic activities, (“have no right to incorporate and to hold participating interests in any commercial corporations and cooperatives” (Article 22 (2)). The sources of revenue legally defined are listed as follows: membership dues; donations, legacies, devises and bequests from natural persons; interest receivable on cash deposits with banks and publishing, copyright and use of intellectual property revenues (Article 23). The donation of one natural person for a party may not exceed 10 000 BGN (5 000 EUR) per calendar year. Political parties may not receive: any anonymous donations; any funds from any commercial corporations or legal persons; any funds from religious institutions and funds from foreign governments or from foreign state-owned enterprises, foreign commercial corporations or foreign non-profit organizations (Article 23). Political parties (or coalitions), which have receive more that one percent of the valid votes in the most recent parliamentary election are entitled to annual budget subsidy (Articles 25 and 26 of the LPP). For each vote received said parties (coalitions) receive 12 BGN (the equivalent of approximately 6 EUR)\(^{594}\). These parties also qualify for state support in the form of renting

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\(^{591}\) The APP, art. 25(3) provides that “The state subsidy granted to each coalition is distributed between its participating parties in accordance with the coalition agreement. In the absence of a coalition agreement or a change in the membership of the parliamentary groups of the political parties or coalitions formed as a result of the last parliamentary elections, the state subsidy is distributed by being awarded to the political parties determined before the parliamentary elections, which have judicial registration and have formed a parliamentary group, or to political parties to which independent MPs have declared their allegiance.” It is clear that an independent MP may declare allegiance in case elected on a coalition ballot.

\(^{592}\) Defections occurred in every parliamentary group but the groups of GERB and the Socialist led Coalition for Bulgaria. At least seven of the independent MPs have stated that they have redirected the subsidy they control to the ruling party GERB. One MP has redirected the subsidy to a NGO he had registered for this purpose.

\(^{593}\) The NAO has recently (31 October) published a report on the subsidy redirection by the independent MPs for 2010 see: [http://www.dnevnik.bg/bulgaria/2011/06/22/1110601_gerb_zapazi_razpredelenieto_na_durjavnata_subsidiia_za/](http://www.dnevnik.bg/bulgaria/2011/06/22/1110601_gerb_zapazi_razpredelenieto_na_durjavnata_subsidiia_za/)

\(^{594}\) Article 27 (1) of the LPP provides that “The aggregate amount committed for subsidization of political parties and coalitions shall be fixed annually in the State Budget of the Republic of Bulgaria Act depending on
of public property (premises) at lower rates. The premises provided to political parties under this clause may not be sublet to tenants or given out for any other use, or used jointly with third parties under contract, unless this is in support of the activities of the party and the main purpose/function of the premises is preserved. Parties are obliged to maintain on their web pages a public register of all donations. Donations higher than 5,000 BGN (2500 EUR) shall be accompanied by a declaration for the origin of the fund, signed by the donor.

The Election Code (Chapter 8, Section VI) imposes strict rules for public announcement of the sources for election campaign financing. Article 157 provides that that only one registered bank account shall be used for campaign purposes. Article 158 (1) further establishes that “A single public register of the parties, coalitions of parties and nomination committees participating in the respective types of elections shall be established at the Bulgarian National Audit Office and shall be maintained until the next elections of the same type.” In the register all information on financial and non-financial contributions should be listed including: (1) the names of the contributors, the type, purpose, amount or value of the contributions made; (2) the names of the natural persons who provided gratuitous use or services in the election campaign, the period of use, the type and the description of the things provided for use, the type of the services; (3) the declarations on the origin of the financial resources contributed, the declarations on the origin of the financial resources of the candidates and of the members of the nomination; (4) the names of the sociological and advertising agencies, as well as the names of the public relations agencies hired by the parties, coalitions of parties and nomination committees. After conduct of the elections, the financial reports of the parties/candidates shall be published in the register.

The amendments to the LPP form 2009 and the newly adopted Electoral Code provide for extensive public access to the budgets that parties operate both in election and non-election years. There is one requirement in the Electoral Code which seems difficult to implement. Article 159 (4) sets that “While the election campaign is in progress, the parties, the coalitions of parties and the nomination committees shall transmit the newly received information (on donations) in hard copy and in soft copy to the Bulgarian National Audit Office for inclusion in the register.” With no deadlines for submission of the files and a relatively short campaign period of 30 days the idea of “real time” reporting seems difficult to implement.

Transparency (practice)

To what extent can the public obtain relevant financial information from political parties?

[595] Article 31 of the LPP: “The State and the municipalities shall provide, in consideration of a rental charge, premises to the political parties which have a parliamentary group or a sufficient number of National Representatives to form a parliamentary group, for performance of the activities of the said parties. (2) Premises referred to in Paragraph (1) may furthermore be provided to parties which have received more than 1 per cent of the valid votes at the latest parliamentary elections. Also Article 32 (1): “The rental charge for the premises as provided shall equal the amount of depreciation charges whereto the operating expenses, if any, shall be added.”

[596] Article 157 “Within five days after the registration thereof to run in the respective type of election, the parties, the coalitions of parties and the nomination committees shall present to the Bulgarian National Audit Office particulars of the bank account used to service the election campaign thereof.”

[597] Article 158 of the Election Code

[598] Article 159 (4) of the Election Code
Score: 25

Parties follow strictly the requirements for public release of the information on their financial condition. Otherwise they risk a deregistration procedure. 146 parties have submitted their annual financial report for 2010 at the NAO\(^{699}\). All registered candidates in the recent presidential election have opened a file within the campaign donation register maintained by the NAO.\(^{600}\)

The proposed score is only 25 for two reasons: (1) disclosure of the “redirection „of the party subsidy by the independent MPs happened late, over a year after the events related to the restructuring of the parliamentary groups, i.e. after the in fact consolidation of parliamentary majority (see footnote 18). Still the Ministry of Finance denies access to real time information concerning the allocation of the state subsidy, so information is only disclosed in the NAO annual audition reports. (2) All presidential candidates reported a total of only BGN 1, 2 million financial contributions to their campaigns. This number is unrealistically low, so the public has to wait until audit reports are published in order to attempt independent evaluation of the real campaign budgets. There are doubts that some of the financial flows were not reported.\(^{601}\)

Accountability (law)

To what extent are there provisions governing financial oversight of political parties by a designated state body?

Score: 75

All parties submit annual financial statement to the NAO by 31 March for the preceding fiscal year. By 31 October the NAO is obliged to review the statements of the parties which operate public funds, i.e. parties which receive budget subsidies or rent public properties and to publish auditing report for every party. Following the approval of the new Election Code the NAO also is auditing the financial reports of the election campaign funds of parties and candidates as explained in the section Transparency (Law) above. The NAO may not investigate irregularities in the reports. It can only notify the Prosecutors’ Office, which in turn has to investigate cases of suspected breach of the laws.

As of 2000 all high administrative position servants and holders of high public offices are obliged to declare annually their property and financial assets.\(^{602}\) The list of the high state offices is regularly updated and currently includes 6533 positions.\(^{603}\) As this high number suggests the list includes offices of the local elected authorities (mayors and local councils chairpersons), all important administrative positions in the legislative branch (courts, prosecution offices and investigators) and in the executive and legislative branch. Cases of suspected false declaration are reported to the Prosecutors’ Office, which in turn decides on further investigations. Tax Authorities are involved in “revisions” based on the annual tax declaration each citizen is supposed to submit every year.

\(^{699}\) See http://www.bulnao.government.bg/files/_bg/parties/control_2010/index2010-1.html

\(^{600}\) See http://erik.bulnao.government.bg/RegDonors/

\(^{601}\) http://www.dnevnik.bg/izbori2011/2011/11/01/1193694_dareniiata Za izborite minaha 1 mln lv spored/

\(^{602}\) Law on public announcement of the property of the holders of high state offices., available at http://www.lex.bg/bg/laws/ldoc/2134920704

\(^{603}\) 28-03-11-Spisak-ZPILZVDD-HPOReport

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The proposed score is 75 because of the pattern of “split responsibilities,” between the NAO, the Prosecutor’s Office and the National Tax Agency in the second case. Each institution follows different laws and internal regulations, which is not conducive to simple and easy affordable pattern of in timely evaluation of the possible breaches of the otherwise rather solid rules.

Accountability (practice)

*To what extent is there effective financial oversight of political parties in practice?*

**Score: 25**

The NAO strictly applies the relevant laws concerning the financial oversight of the political parties. However there is a field of non-regulated or vaguely regulated practises. These include: (1) wide spread vote buying disguised as registration of proxies to be present at the polling stations on the day of the election; (2) in fact “privatization” of party budget subsidy by the MPs, enhanced by an internal Minister of Finance regulation of technical nature; and (3) high profile cases of declared income of politicians, based on consultancy contracts, widely perceived as corruption schemes.

1. The vote buying practice is evaluated in the Pillar EMB pillar. Though no nationwide statistics on the number of registered proxies in recent Local and Presidential elections is available, the main parties registered approximately one proxy per ten votes received. Minor parties and local political groups attempted to match the main parties in this race but failing to score the expected election result decided not to honour the obligation to pay the promised rate to registered proxies. In several cases misled “proxies” protested publicly and complained to the prosecutors’ offices.604
2. The scheme of privatization of the party subsidy is presented in the Section Transparency (Law), especially footnotes 16, 17 and 18.
3. There are several cases of consultancy incomes declared by high profile politicians brought to the court. The most prominent one is of the leader of the MRF Ahmed Dogan who received BGN 1,5 million (EUR 750 000) payment for consultancy of a hydro electric power project.605 The court decided on formal; grounds Mr. Dogan’s consultancy does not fall under the definition of conflict of interests. Several other politicians, including the Minister of Interior Tzetanov, an influential GERB MP L. Ivanov and others were investigated with the same result.

The listed reasons explain why the proposed score on the dimension Accountability (Practice) is as low as 25.

Integrity (law)

*To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?*

**Score: 75**

605 Dogan was the key politician of the previously governing three party coalition. The project became known as the most expensive in the world per kilowatt installation. Mr. Dogan is philosopher by trade. He quite cynically told the press it is not of public interest whether he interested in UFOs and earns to buy one. See: [http://www.trud.bg/Article.asp?ArticleId=779811](http://www.trud.bg/Article.asp?ArticleId=779811) and [http://www.vesti.bg/index.phtml?tid=40&oid=1248266](http://www.vesti.bg/index.phtml?tid=40&oid=1248266)
The legal rules related to the internal democratic governance of the political parties are thin. The LPP provides parties that had not held a meeting of the national management body for two consecutive times (as provided by its statute) but not less than once in five years it faces possible dissolution by a court procedure, initiated by the Prosecutors office (Article 40 of the LPP).

In general, all major parties have in place comprehensive regulations on their internal democratic governance. This said it should be noted that the fragmented party system includes smaller to medium size parties, which are linked to businesses of particular entrepreneurs, who in turn are investigated, or even sentenced for varieties of criminal charges, most often for VAT fraudulent schemes.

Several parties, mainly those of the traditional right wing members of the Blue coalition, practice regularly varieties of primaries in selection of party candidates for elections, or popular vote of all members in the election of national leaders and national councils.

Integrity (practice)

*To what extent is there effective internal democratic governance of political parties in practice?*

**Score: 25**

In general, all major political parties follow democratic procedures for their leadership and candidate selection and policy-making processes.

It is important to note that within the last decade there is a general shift from ideology and policy based party appeals towards leader and popular or populist based appeals. This judgement is valid for all parties established in the last decade. The traditional left and right wing parties of the 90s still consider ideology as basic feature of the party identity. Within the new party system that emerged after the critical elections of 2001 cleavages such as ethnicity, old versus new parties and clientelistic networks gained in importance.

With the advent of more populist, leader-centered political parties, however, there has been a notable weakening of internal democracy instruments. Further, there is a low degree of professionalisation of the Bulgarian politicians, partly due to the volatility of electoral attitudes, the unstable character of the party system, and the wide-spread existence of party “nomads” – politicians often changing their party affiliations. In such circumstance the quality of internal party democracy cannot be very high.

**ROLE**

**Political Parties - Interest aggregation and representation**

*To what extent do political parties aggregate and represent relevant social interests in the political sphere?*

**Score: 50**

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606 This is the unanimous judgment of all expert interviewed.
607 See the opening paragraph and the footnote 1.
While the political party system is effective in aggregating and representing many of the social interests present in the country, several political parties are based on clientelism and narrow interests.

Since its establishment in 1990 the important Turkish minority party (MRF) has always elected the same leader – Ahmed Dogan. He publicly stated that “he is the one awarding the money portions” in the state, thus provoking strong anti-MRF sentiment before the parliamentary elections of 2009. This fuelled strong support for the nationalistic “ATAKA” party and for the winner in the elections GERB.

In a dozen of municipalities local politics is dominated by local business leader or even criminal networks linked to drugs, human trafficking and money laundering.

Mr Kovachky, the founder of the political party “LIDER” received a suspended sentence on charges of tax evasion and money laundering. The sentence is still appealed.

Though several corruption charges against former ministers are currently considered by the courts in neither of the cases the Prosecutors were successful in their pledges.

**Political Parties Anti-corruption commitment**

*To what extent do political parties give due attention to public accountability and the fight against corruption?*

**Score: 25**

While political parties are generally vocal in promoting messages against corruption and in favour of integrity, the real efforts are piecemeal and largely considered ineffective in achieving such goals.

The good illustration would be the campaign against vote buying in the recent elections. By the law every campaign message (printed or electronic) was accompanied by an acknowledgment (written or oral) indicating that selling and buying of votes is a crime. This message was repeated tens of thousands of time by various celebrities who joined the public campaign against this notorious form of political corruption and indeed the acknowledgment accompanied every campaign message. In the practical world of fierce election competition every party of importance hired as much as one proxy per ten ballots received, as the law allows the registration of two proxies per polling station for every registered candidate.

The issue is by far more complex as it involves the entire system of courts and the law enforcement institutions. In the last three years the value of TI Corruption Perception Index for Bulgaria is steadily declining. In 2010 the value of the index reached the bottom low of 3, 6 for the last decade, which puts the country on the 73 place in the world ranking. This is the worst ranking for an EU member state.

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608 “I am the instrument of power distributing the financial portions to the businesses in the state. One should be clear on this issue” he stated at a rally, pre-election speech, in the municipality of Satovcha.

http://www.trud.bg/Article.asp?ArticleId=162023 also http://www.vesti.bg/?tid=40&oid=2251531


610 The party came seventh in the 2009 elections receiving 3, 26 percent of the votes, falling slightly short of the 4 percent threshold.


612 The high profile cases include the former Minister of Defense and the former Minister of Social Affairs.

The Global Corruption Barometer for Bulgaria places on the top of the most corrupt sectors the courts followed by the political parties.\textsuperscript{614}

**Recommendations:**

- The Law on Political Parties should be amended to establish a transparent procedure for budget party subsidy allocation. The Ministry of Finance shall regularly (quarterly) release the information on the subsidy transferred to every entitled party.
- A publicly available register of the electoral parties should be maintained either by the Ministry of Justice or by Central Election Commission. The parties which meet the requirements established by the laws shall be entered in this register.
- The Electoral code should be revised to prevent effectively vote buying.
- Parties and candidates who enter an election competition should publicly declare (sign an agreement or a Code of Ethics) they will not engage in corrupt practices.

\textsuperscript{614} [http://www.transparency.bg/media/cms_page_media/16/GCB_2010_BG_FINAL.pdf](http://www.transparency.bg/media/cms_page_media/16/GCB_2010_BG_FINAL.pdf)
MEDIA

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<th>Media Overall Pillar Score: 45,83/100</th>
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<tr>
<td><strong>Indicator</strong></td>
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<td><strong>Capacity 62,5/100</strong></td>
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<td>Resources</td>
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<td>Independence</td>
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<tr>
<td><strong>Governance 33,33/100</strong></td>
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<td>Transparency</td>
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<tr>
<td>Integrity Mechanisms</td>
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<tr>
<td><strong>Role 41,66/100</strong></td>
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<tr>
<td>Investigate and expose cases of corruption practice</td>
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<td>Inform public on corruption and its impact</td>
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<td>Inform public on governance issues</td>
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Summary

The framework for free media in Bulgaria was provided by the 1991 Constitution\(^{615}\). Along with the standard protections of freedom of speech, freedom of the press, and the prohibition of censorship, paragraph 6 of the Transitory and Concluding Provisions of the Constitution stipulated that until the adoption of laws concerning the public broadcast media (the Bulgarian National Television (BNT), the Bulgarian National Radio (BNR), and the Bulgarian Telegraph Agency (BTA)), the National Assembly should exercise directly controlling and regulatory functions with regard to them. This provision served as the legal ground for the prolonged period of state intervention in the work of the public broadcast media (PBM) in the 90s. The period after the adoption of the new constitution till the end of the 90s was characterised, on the one hand, by rapid proliferation of the private press and private radio and cable TV programmes, and, on the other, by the preservation of the state monopoly in the sphere of terrestrial TV broadcasting. The strict independence of the press from the state was constitutionally recognised in a decision of the Bulgarian Constitutional Court (BCC),\(^{616}\) which did not extend to the broadcast media (henceforth BM), because of the sovereign right of the state over the radio frequencies and the special responsibilities of the state to protect the constitutional right of access to information.

\(^{616}\) BCC Decision no 7/1996, Interpretation of Articles 39, 40 and 41 of the Constitution, State Gazette no 55/1996. The full list of BCC’s media-related decisions, including all media-related legislative acts, is provided in Smilova, Smilov and Ganev, 2010.
This different status was responsible for the considerable differences in the regulatory regimes of the two types of media. Thus no special act regulates the press – rather, the general provisions of the Law on Corporations\textsuperscript{617} apply to it. For the BM, on the other hand, much stricter regulations were envisaged: currently broadcasting is regulated under the 1998 Radio and Television act\textsuperscript{618} (amended almost 30 times). There is no special Public Broadcasting act (such was adopted in 2009\textsuperscript{619}, yet was abolished entirely in early 2010\textsuperscript{620} by the next government). RTA regulates both the PBM\textsuperscript{s} and the commercial BM\textsuperscript{s} through a special independent media regulatory body – the National Council for the Radio and Television, renamed after 2001 to – Council for Electronic Media (CEM). The number of members of the CEM was 9, and they are politically appointed – 5 come from the Parliamentary quota and 4 – from that of the President of the Republic. Since 2010, the number of members was reduced to 5. Two separate regimes are introduced for the commercial BM\textsuperscript{s}: licencing (for the terrestrial BM\textsuperscript{s}) and registration (for the cable and satellite BM\textsuperscript{s}). With respect to the licencing procedure, CEM is responsible for issuing the program licence (concerning the general profile and content of the programs), while the state Communications Regulation Commission (CRC) issues the technical licence for the use of the radio frequencies.

**CAPACITY**

**Resources (law)**

*To what extent does the legal framework provide an environment conducive to a diverse independent media?*

**Score: 75**

The legal framework for free media in Bulgaria was provided by the 1991 Constitution, guaranteeing the standard protections of freedom of speech, freedom of the press, and the prohibition of censorship.

The legal framework for the operation of BM in the country does not provide for too many restrictions to set up BM entities in the country.

Excluded from applying for licenses are persons or legal entities, who are: unable to prove the source of their capital, who have been bankrupt in the last 5 years, who are included in the list of persons/entities not able to cover their bank credits, who have been refused a license for establishing a private security company, and lastly, those who have advertising included in the scope of their commercial activities.\textsuperscript{621} (This last restriction was dropped in early 2010\textsuperscript{622}) All these restrictions are reasonable and do not provide in any way an unfavourable environment for diverse and independent media. The fact that radio spectrum is a limited resource imposes strict limits upon the number of licenses to be issued – thus one needs to win a competitive bid to be granted a license. Again, this in itself would not be a problem, were the procedures for the license bids fair and impartial. Yet the fact that a politically appointed is currently responsible for running the bids does raise serious concerns for diverse and independent media in the country. One positive feature of the regulation is that a negative decision of CEM

\textsuperscript{617} State Gazette no 48/18.06.1991.

\textsuperscript{618} State Gazette no 138/24.11.1998

\textsuperscript{619} State Gazette no 37/19.05.2009.

\textsuperscript{620} State Gazette no 12/12.02.2010.

\textsuperscript{621} Art. 105 (4) of RTA.

\textsuperscript{622} State Gazette no 12/12.02.2010
(at each stage of the competition procedure, including being disqualified in the first stage) could be appealed (and often is appealed) in front of the Supreme administrative court.\textsuperscript{623}

With regard to entry into the journalistic profession, there are no strict regulations nor are there any requirements for formal education or qualification. Thus the entry is entirely open, which lead to an increase in the number of journalists and to a tough competition among them. This competition, however, has not raised the quality of the journalistic product, nor has it necessarily increased the plurality and diversity of the media, since there are wide-spread and increasing practices of self-censorship and trading with influence, to be further discussed in more detail below.

To conclude, the legal framework as a whole provided a favourable environment for diverse independent media, especially during the years of transition. The problem is not so much with the legal framework, which has been overall adequate, but with its implementation – many of the players in the field operate outside of this legal framework altogether or disregard it some of the time.\textsuperscript{624} However, after the EU accession, and especially in relation to the process of digital switchover, the legal framework itself is becoming less and less adequate – as testified by the 29 (and counting) amendments to the leading legislative act in the field – RTA, designed for the analogue era and ill serving the new digital reality. A major drawback of the current legislation, especially with respect to the print media, is the lack of effectively enforceable media ownership rules. The lack of clearly defined thresholds of media concentration is a further major flaw of the regulation of both types of media.\textsuperscript{625}

\textbf{Resources (practice)}

\textit{To what extent is there a diverse independent media providing a variety of perspectives?}

\textbf{Score: 75}

The media market in Bulgaria is characterized by a plethora of media organizations, with a hyper-concentration in the capital and a moderate proliferation outside of it. At present the press market is characterised by a high number of dailies per capita and low newspaper circulation (totalling 436 in 2009 with an overall circulation of 355 million copies). Around ½ of the newspapers are published in the capital, which enjoys 88\% of the total circulation of newspapers in the country.

There are currently two public national TV channels and 4 regional ones. Starting from 2000, there are also commercial terrestrial national TV channels. In 2006 the cable and satellite TV programmes were almost 200, not counting the numerous foreign programmes. Despite the large number of registered programmes, however, the national market for both radio and television is relatively concentrated in the programmes with national air broadcasting licence. In recent years data on advertising revenues indicate that these national media are facing growing competition from electronic media broadcast through cable or satellite, or on a local basis.

Concerning radio broadcasting, as of December 2009 there were 311 licensed radio programmes, three with national coverage (two public and one commercial). There is considerable concentration of radio broadcasting in the bigger towns and hyper-concentration in the capital Sofia. There are also 18 radio networks, broadcasting in the major towns.

\textsuperscript{623} Art. 38 (1) of RTA.

\textsuperscript{624} This was the position of both media experts (one of them – a university professor in media law, the other – university professor and member of the CEM), interviewed for the report.

\textsuperscript{625} These conclusions are based on the two interviews, as well as on the comments received during the panel discussion with the experts from the advisory board.
Despite this apparent multitude and diversity of media outlets, one striking feature of the Bulgarian media is the lack of true diversity. On the one hand, there is a growing concentration of media ownership in the hands of a few major players in the field - the participation of some political parties and some related to them commercial banks in this process was pointed out as a major factor for reducing media diversity On the other hand, the media themselves, especially in recent years, started to produce tautological content, identical media formats, etc. - thus though there is an apparent diversity of content, the differences are only apparent and marginal: the content is of the same sort.

The importance of internet has grown in the domestic media market. Most print media outlets provide some or all of their content on-line free of charge, many offer breaking news. While the sales figures of national newspapers have been declining quite dramatically in the last two years, web traffic reports reveal that their online versions are becoming extremely popular among Bulgarian internet users.

The different media organizations on the whole represent the entire political spectrum, though there is a clear trend in recent years towards certain media groups covering more favourably the government than the opposition. This is true, according to some media analysts, for the outlets of the New Bulgarian Media Group. The conformism of some major commercial media outlets is explained with the importance of state funding (through state-sponsored advertising) for the survival of the media in time of economic crisis, during which advertising revenues dropped significantly.

The different social interests and groups in society are in general represented in the media, yet the way they are represented leaves much to be desired. The minorities, especially the Roma ethnic minority, however, are not adequately represented – though the group has its own local print and e-media, the circulations, the visibility and the impact of the programs are low. In terms of affordability, affordable for the poorer groups (retired, unemployed, low-skilled workers) are only the tabloids, while the more serious press is less so. The access to the cable and satellite TV and radio is wide-spread and affordable (access to cable TV have more than 80% of the population), with an average monthly fee of 10 Euros or less.

The different media outlets operate in rather diverse financial circumstances – the local and regional print media as a rule enjoy less adequate financial resources, while the central newspapers and magazines are better financially provided for. In terms of providing funding for journalistic investigations, it is a general practice to leave this to the enthusiasm and initiative of the journalists themselves, without serious backing (financial, administrative, legal…) on the part of the editorial boards. The only exception is when the investigation is seen by the editors as a weapon in the media war with competitors – in such cases the moral, financial, administrative, legal and any other support is generously provided.

The relationship between financial stability and independence of the media may in fact reversed in the case of Bulgarian media recently. The more financially marginal a media is, the more likely it is that it can allow itself to be independent. The case of Re:TV was pointed out as an example of commercial TV, which though financially very inadequately provided...
for (it went bankrupt in just a year after the start of its activities), managed to maintain a very independent editorial line.

Since there are no requirements for qualifications or special education for entry into the journalistic profession, the low professional standards should come as no surprise. The low quality of the journalistic output, partly due to the overly liberal entry into the profession, has been pointed out by the panel of journalists and media experts, interviewed for the Media Sustainability Index in 2011 (MSI 2011).

**Independence (law)**

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?*

**Score: 50**

The Constitution guarantees the right to opinion as a fundamental human and civil right, present in all forms of political liberty and a precondition for their existence. This right is guaranteed by three articles in the Constitution, covering the so-called communication rights: freedom of expression (art. 39), freedom of the press and the other mass media (art. 40 (1) 630), and the right to information (art. 41). There are strictly enumerated limits to the freedom of the media – in cases of ‘public indecency, an incitement of a forcible change of the Constitutional order, perpetration of a crime or an incitement of violence against anyone’ after a judicial act the mass media materials may be confiscated (art. 40(2)).

The right to information is protected by Art. 41: “(1) Everyone shall be entitled to seek, obtain and disseminate information.” The limits here are the rights and reputation of the others, the national security, public order, public health and morality, as well as the official and state secrets. The Constitutional Court provided in 1996 an authoritative interpretation of these three articles. 631 Partly as a result of this decision, a new Radio and Television Act was passed by the National Assembly in 1998, where the independence of broadcast media (BM) from political and economic pressure is guaranteed (Art. 8), they are granted the right to receive information from the State institutions (Art. 13), their freedom from censorship (Art. 9) is protected, etc. A special regulatory body – the National Council on the Radio and the Television (NCRT) - is to guarantee that this law is observed by the BM. The majority (5 out of 9) of its members are appointed by the Parliament. This provision was criticized 632 for ensuring the control of the National Assembly over the media, even though Art. 20, 2 declares that “in its activity, the Council is guided by public interests, defending the freedom and pluralism of speech and information and the independence of the radio and the television.”

As a result of strong advocacy campaign by CSOs 633, the Access to Public Information Act (APIA) was adopted in mid-2000. 634 Although not perfect, it provided a procedure to be followed by citizens (and journalists) to request public information. APIA does not demand from citizens to prove they have lawful interest in obtaining public information. The access to public information can only be limited when the requested information is classified (itself regulated by the Law on the Protection of Classified Information from April 2002 635) or in

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630 “The press and the other mass information media shall be free and shall not be subjected to censorship.”
632 This provision was unsuccessfully challenged in front of the Bulgarian constitutional court.
633 The Bulgarian Helsinki Committee, the Program Access to Information (AIP), the Bulgarian media coalition, organizations of journalists, lawyers and others
635 State Gazette no 43, April 30, 2002.
case of a State or other official secret, as defined by law (Art. 7 (1)). Two articles in the act (art. 18 and art.19) deal with the access of citizens to official information of the mass media. These are aimed to ensure that citizens can form their own opinion, avoiding (attempts of) manipulation and misinformation by the mass media. These provisions are a unique feature of the Bulgarian law. A further strength of the law is that it also sets clear administrative and penal procedures to be taken against administrative bodies failing to provide access to public information.

With respect to editorial independence, amendments to RTA in 2010\(^{636}\) (art.11) gave additional guarantees to freedom of expression and independence of the journalists from external and internal pressures. \(^{637}\) However, with the next amendment, the number of CEM members was reduced to 5 (appointed by the president (2) and the Parliament (3)), allowing for increased political influence in BM regulation.

The press, by contrast to the BM, is not legally regulated - with respect to its content, or otherwise. Rather, the matter is entirely left to the self-regulatory codes of conduct of the journalists. In 2004 the Ethics Code of the Bulgarian Media\(^{638}\) was signed, applicable both to the electronic media and the press. The signatories to the Code declare to respect general principles of truthfulness, transparency, non-discrimination, and respect for individual privacy and dignity. There are sections guaranteeing independence of the media from political and economic pressure/influence and regulating the relations within and between the media outlets. For the signatories to the Ethical code of the Bulgarian media\(^{639}\) there is an authoritative self-regulatory body – the National Council for Journalistic Ethics (its Press media commission more precisely) – which is responsible for enforcing the code. Yet not all media outlets are signatories to the Ethics Code and their numbers is growing. \(^{640}\) Thus a majority of the press in the country “enjoys” full freedom from regulation. This, however, does not protect or guarantee their editorial independence.

Libel and insult remain criminal offences (though the number of convictions is relatively small). In April 2011 amendments to the Penal code\(^{641}\) introduced possible incarceration (one to four years) plus fines, instead of the previous fines for journalists and writers advocating hatred, discrimination (on racial, ethnic, religious, sexual, social, marital, disability and other grounds) and violence. Media analysts, civil society watchdog organizations and international organizations opposed this move as an attempt to impose control over the media and internet and to curtail freedom of expression (by defining discrimination too widely and by imposing disproportionate sanctions even for “advocating” rather than only for “instigating” hatred and violence based on discrimination).

Censorship in the country is constitutionally prohibited (in art. 39 (2)). RTA also repeats that such practices are illegal.

\(^{636}\) State Gazette no 12/2010.

\(^{637}\) Thus the journalists may refuse to fulfill a given by the editors/media operators task if it goes against their convictions. Public critique by journalists against the media operators does not, according to these new provisions, constitute disloyalty to their employers. The creation of editorial statutes between the operators and the journalists is encouraged, where the freedom and personal responsibility of journalists is clearly defined, detailed professional–ethical codes for journalistic activity within the respective media negotiated and a body for intra-media conflict resolution - set. All these provisions concern only the BM.


\(^{640}\) The influential New Bulguaria Media Group refused to sign it (the same applies to the plethora of tabloids, the most popular print press in the country).

\(^{641}\) Art. 162, Amendments to the Penal Code, State Gazette no 33/2011.
The journalists are allowed to withhold their sources of information. This is so in virtue of the constitutional provisions (art. 40 and 41) and art. 10 of ECHR, part of our legislation (according to art. 5(4) of the Constitution). Specific texts in defense of the right of journalists to withhold their sources of information are found in RTA (art. 15). According to it, both the operators and the journalists are not required to reveal their sources, unless there is a legal proceeding by an affected person. In cases the provider of the information has explicitly asked not to be revealed as its source, the journalists are duty-bound to respect her will. A text in the APIA also protects the right of journalists not to disclose their sources, when the providers of the info have requested to remain anonymous.

There have been diverse regulatory regimes for licensing BM. Currently BM licenses are provided by two bodies –the Council for Electronic Media, an independent media regulatory body issues the content licence, while the technical license for the use of the radio frequency is issued by the Communication Regulation Commission (CRC), the telecommunications regulator, part of the public administration. The leading role in licensing the BM currently is with the CEM: it is responsible for starting the licensing procedure and running the bids. The appointment procedure for members of CEM, in which parliamentary majority and the President appoint their members without consultations with the civil society, without clear criteria and fair and open rules, is a constant source of contention, often compromising the decisions of this regulatory body.

With regard to content regulation in the media, the 1998 RTA and the 2004 Ethics Code of the Bulgarian Media contain a variety of legal provisions and self-regulatory rules, aimed to guarantee that the media content meets standards of responsibility, quality, objectivity and pluralism. All operators - public and commercial - have the obligation to include in their programmes EU-produced TV and radio content. The requirements placed on public operators are more extensive and stricter: to provide political, economic, cultural, scientific, educational and other publicly important information, guarantee access to the national and world cultural values, popularise scientific achievements, promote the Bulgarian and European cultural heritage, guarantee pluralism of opinions, enhance tolerance and mutual understanding in society, etc.\(^\text{642}\). The PBM are subject to stricter requirements in advertising as well. It is also a particular responsibility of the national public operators to inform citizens about the events of public life, and even the commercial media are duty bound to provide at least partial access to important public events to the general public.\(^\text{643}\) There are also strict rules, applying to all BM, concerning product placement, advertising in children programmes, advertising of alcohol and tobacco products and so on. The CEM monitors compliance with those rules. The press, as already pointed out, is not legally regulated with respect to its content, because of the strict constitutional ban on censorship of the press, interpreted as forbidding any regulation of its content. Such regulation is left entirely to the self-regulatory codes of conduct of the journalists and the Ethics Code of the Bulgarian Media discussed above.

**Independence (practice)**

*To what extent is the media free from unwarranted external interference in its work in practice?*

**Score: 50**

\(^{642}\) Article 6 (2) and (3) of the RTA.

\(^{643}\) Article 21(3.1) of the RTA.
The practice of the media regulator CEM has been criticized for being politically dependent since the start of its activities in 2001 (and in the guise of NCRT – since 1998). One of this body’s main prerogatives - the appointment of the general directors of the PBMs (BNT and BNR) - always draws the attention of the public and the political and media analysts. There is little doubt that this process is heavily politically dependent. The only appointment that featured professionalism as the main selection criterion was the one in 2010, when the positions were staffed after an open competition. Yet the fact that prior to the decision the number of CEM members was reduced by the new majority in Parliament from 9 to 5 raised concerns of increased political influence over the regulator (though it had been a long established practice for all new parliamentary majorities to revamp CEM by introducing new provisions in RTA, the 2010 amendments are particularly alarming since the reduction of the number of members makes them more liable to political pressures). With regard to another major prerogative of CEM – licensing of BM, the practice has again been rather controversial. Licensing of BM in the country is characterised in general by regulatory discretion and given the political appointment of members of CEM, this discretion is naturally politically-coloured.

The history of BM licensing testifies to the well-established practice of political involvement in it. After a period of regulatory vacuum, which brought about the proliferation of media outlets, operating without licences and often in breach of copyright, the 1998 RTA was to put an end to this practice, by providing clear and enforceable rules for mandatory licensing of all radio and TV operators. However, the competition for the licences was run by a state commission, directly accountable to the Cabinet. As a whole, this licensing procedure was heavily criticised by both the operators and the civil society for being non-transparent and liable to political influence. Many of the important decisions of the regulatory bodies were taken to court. The amendments to RTA in 2001 improved the licensing procedure, yet the licencing process itself was blocked for more than 5 years. The 1998 licences of the regional terrestrial operators were prolonged under unclear terms, leaving them hostage to the changing – often politically motivated - will of the body, responsible for prolonging the old licences. The ensuing uncertainty boosted the market value of the already licensed national TV operators, strengthening their dominant market position. This raised concerns of vested interests behind the blocked licencing process. After 2005, the new governing coalition pledged to “normalize” the licensing of BM. Yet it used the process of digitalization as a reason for transferring the license-related responsibilities from the independent CEM to CRC.

644 There have been two BCC decisions, which tackled this issue, one challenging the political appointment of NCRT (in 1996 RTA), the other - dismissing these concerns as misplaced (in 1998). In 2010 the European commission a monitoring on the activities of CEM, which also concluded that CEM’s political independence is not guaranteed, precisely because of its appointment rules and criteria. (http://www.168chasa.bg/Article.asp?ArticleId=800180)

645 Each new parliamentary majority dissolves the old and constitutes a new CEM, dismissing the politically disfavoured members and appointing politically more agreeable ones. This has happened in 2001 (when UDF lost to the BSP) and in 2010 (when GERB reduced the numbers of members of CEM from 9 to 5). CEM then appoints the general directors of the PBMs (and on several occasions their mandates were prematurely terminated). In addition, RTA does not set clear criteria for selecting among the candidates for the positions. The candidates present their “concepts” for the development of the two PBMs, while it is up to the members of CEM to evaluate them. The appointment decisions from 1998 to 2010 were taken in closed meetings of CEM, with a secret vote. Only in 2010 there was an open competition, with public hearings. The decisions of CEM are often appealed in the Supreme administrative court (this is the case with the last decision of CEM from 2010 for the appointment of General director of BNT, see at http://bnt.bg/bg/news/view/33774/flameCandle70x80px.swf).

646 The NCRT and CEM’s TV and radio licences decisions were constantly challenged in the Supreme administrative court SAC. Thus in 2001 the new majority re-staffed CEM, which in its turn took the licence of NOVA TV, broadcaster close to the previous government. NOVA TV appealed the decision in front of SAC - it took it two years to get its licence back and become the second commercial TV broadcaster in the country.

part of the public administration. A number of controversial bids for licenses followed, which are among the reasons for the infringement procedure against Bulgaria, started by the European Commission in early 2011. In 2010 the new governing majority restored the leading role of CEM in granting licenses, yet by reducing the number of members of CEM from 9 to 5 it tries to keep its control over the media regulator.\textsuperscript{648}

As this brief overview of the licence-related practice of the media regulator shows, political interference and dependence has been one of its major features. Concerned that the freedom of the media in the country is declining after the EU accession, the European Commission commissioned a report, monitoring the activities of CEM. The preliminary conclusions are that CEM is failing in its task to be an independent from the state media regulator.\textsuperscript{649}

Censorship is not wide-spread in the media – it is constitutionally banned, and this provision is generally observed. However, there are considerable doubts about the editorial independence of the BNT (and to a lesser extent – of BNR), which is more a result of self-censorship of the general directors and the members of the editorial boards of the PBM in the country. The reason is obvious – their dependence on the politically dependent CEM.

Self-censorship, however, is a major and further growing concern not only for the PBM (affecting both the governing bodies and the journalists there), but for the press and the commercial BM as well\textsuperscript{650}. The reasons in these cases, however, are often different – not political, but economic dependence. In an overpopulated media market with non-transparent ownership and sources of funding, in circumstances of financial crisis, falling circulations and strong competition on the advertisement market, it is usually the owners, who pressure the journalists to follow a favourable to the investors in the respective media editorial line.\textsuperscript{651}

Self-censorship is the response. Self-censorship is also the response of many media to the aggressive style of some Bulgarian politicians, who accuse the journalists of being ‘non-objective’ in covering the activities of the government when the latter ask an inconvenient question or criticize them.\textsuperscript{652} The fact that the Government is spending considerable amounts for advertising in the press and the BM may also be a source of pressure on editorial boards.\textsuperscript{653} Thus, even though harassment and intimidation of journalists is not a common and
wide-spread (if nevertheless present, especially in the local media) practice, journalists sometimes do fear to voice criticisms of government and of some businesses.\footnote{According to MSI 2010 and MSI 2011.}

Though there have been no cases of violence against journalists in 2009 and 2010, in February 2011 a bomb was planted in front of the headquarters of the newspaper Galeria (specialised in leaking of sensitive information, including on members of government), bringing material damage in an alleged attempt to intimidate its editors and journalists.

One major problem in this field is the lenience of the respective authorities (police, prosecutorial office and courts) in prosecuting crimes against journalists. There is also a lack of sensitivity in society for the threats to their civil freedoms that intimidation and crimes against journalists present.\footnote{These have been the conclusions of the two already quoted reports of MSI – for 2010 and 2011.}

Access to public information is guaranteed by law, and more and more public info is available on the internet (the parliament and the Cabinet now provide a rich info on their activities in a timely manner). Yet some public institutions quickly learned how to engage in procedural manoeuvring to delay and obstruct attempts by the media and citizens to obtain public information. The differences in the law application by different institutions are striking. While access to public info is rarely openly denied (as a result of a strong advocacy campaign by NGOs, who won a series of legal battles, establishing high standards of access to public info), the access provided is often to an inadequate info, while important info is withheld.\footnote{This was the conclusion of the panellists for the MSI 2011 report.} This effectively blocks access to significant public information. This, of course, obstructs the work of journalists, though generally there is no discrimination among different categories – both free-lancers and ones with press credentials have equal access to info.

The decision to restrict the free access to the corporate register (major business associations initiated the change, allegedly with the goal of protecting personal data), effective from 2012, may also have negative effect on the independence of the media.\footnote{http://mediapool.etaligent.net/show/?storyid=178328} The limits on publicly available information on companies in Bulgaria will make it even more difficult to disclose information on media ownership, hard to obtain even now - under the current more liberal regime.

A very important media independence-related issue was stressed during the public discussion with the experts from the advisory board of the team. It again concerned the pressure on the media, coming from political and business circles. While such pressure was always present during the entire transition period, it has grown in importance in the last 3 years of the economic crisis. The problem is that when there is no ‘fresh money’, no new investment in the media, the state and some powerful economic groups (using the media for trading in influence) become the major players in the media market. This particularly applies to the state, which through its EU structural funds-related information and publicity activities, is a major source of fresh money for the media. It was argued that each ministry - beneficiary of EU structural funds - distributes through private PR agencies between 3 and 4 mln levs for such activities. These funds are discretionally distributed, and as a rule – go to media outlets favouring the government on the condition of further favourable government coverage. These funds and the attending practices were identified by the panellists as a major source of corruption practices and for influencing the media.\footnote{The data supporting these observations were only recently published in the article in Capital weekly quoted above. http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/09/02/1149712_slon_v_medien_magazin/}
GOVERNANCE

Transparency (law)

To what extent are there provisions to ensure transparency in the activities of the media?

Score: 25

Two legal acts deal with the issue of transparency in the activities of the media: RTA and APIA. The first requires from the BM (both commercial and public) to disclose info about their activities in the required by the law cases (art. 13(3)). They have to record all their programs and keep the recordings for 3 months, and if requested by CEM – submit the necessary info if a complaint is launched by a litigant (art.14). The APIA contains a section, specially devoted to access to public information on mass media. Such public information is limited to the owners and the financial results of their media activities, the persons in the governing or controlling bodies of the media, those on the editorial boards, the journalists and on the principles and internal mechanisms used to guarantee the objectivity of the published/broadcasted information (art. 18 of APIA). However, in providing access to public info of this kind, the principle of transparency is to be balanced against that of economic freedom, of privacy, of non-disclosure of commercial secrets and of those sources, requesting to remain anonymous (art. 19).

Though most of the attention in the transition period was directed towards the PBM (because of justified concerns for its political dependence), a major concern in this period (and a pressing problem still) was media ownership. This problem is particularly pressing with regard to the press. One major feature of the press market in Bulgaria is the lack of special ownership rules and of rules guaranteeing the transparency of the press market in general. This has long been perceived as a major problem, yet it was only in September 2009, that the Union of the Publishers in Bulgaria asked the government to take active steps towards regulating ownership in the print media, the origins of investment there, media concentration, etc. In November 2010 with an amendment to the Law on mandatory deposition of copies of all printed and other works, a provision requiring editors to publish the names of the persons owning the newspapers and magazines was finally introduced. Yet, as the 2011 scandal with “Trud” and “24 hours” dailies deal (WAZ, the longtime owner of these dailies, sold its media company in Bulgaria in late 2010: it transpired though that two of the new ‘owners’ were puppets, with real players claiming their title just a couple of months after the deal) showed, this solution has its limitations. Despite the scandal, the state anti-trust commission (the Competition Commission) allowed the media market concentration ensuing from this deal.

The situation is somewhat different with respect to the BM: in this field ownership rules do exist, yet they leave much to be desired - in essence they refer to the general Bulgarian anti-trust rules. Since the Bulgarian Anti-trust Law, does not prohibit monopoly, concentration, or dominant market position per se - just the abuse of the latter, it is the independent Competition Commission which decides whether such an abuse is in place. The law also does not set strict ceilings above which a dominant position is deemed unacceptable, leaving it to the discretion of the state Competition Commission to decide.

It is indicative of the strong position of the media owners vis-a-vis the governments in the post-2001 period, that no mono-media or cross-media ownership restrictions were introduced,

\[^{659}\text{State Gazette} \text{ no 87/2010.}\]
\[^{660}\text{State Gazette} \text{ no 102/2008.}\]
\[^{661}\text{Monopolies are only allowed when determined by Law, pursuant to Article 18(4) of the Constitution.}\]
despite the trend of building quasi-monopolies (WAZ bought in 1996 the two biggest dailies and the most popular weekly in the country) and media empires (the New Bulgaria Media Group owns the biggest tabloids, some of the popular weeklies and national TV stations). The existing rules aim only at the prevention of the monopolisation of the market, and mono- and cross-media ownership are not interpreted as posing such a threat. There are no strict limits on market shares, circulation and audience shares, advertising revenue shares in the media market or on the capital shares in a media company. The unchecked concentration of non-transparent in terms of ownership media, is a major threat to the transparency of the media. The problems with transparency of media ownership and with media concentration, as well the guarantees for fair competition in the media market, are among the major challenges to be resolved by the new Audio-Visual Media Services Act, to replace the current patchwork-of-a-law (to use prof. G. Lozanov’s favourite metaphor for it) RTA, with its over 29 amendments. Yet though the working group, mandated by the GERB cabinet to propose a conception for this new law, has submitted its report to the Government already at the end of January 2011 it has not yet been discussed or introduced in Parliament.

**Transparency (practice)**

*To what extent is there transparency in the media in practice?*

**Score: 25**

Transparency in the media is one of the major concerns in the field. With respect to print media, it was only in November 2010 that regulations requesting disclosure of ownership were at all introduced. However, even in this short period after their introduction, it is already clear they are not guaranteeing effectively transparent media ownership. A case in point is the scandal, involving the owners of Media Group Bulgaria Holding (i.e. Trud and 24 dailies), who bought it from WAZ in late 2010, yet it turned out that two of the owners were just puppets, with unclear corporate interests lurking behind their backs.

Another important demonstration of the inadequacy of the current regulation in this field is the ownership of the New Bulgaria Media Group, which in the span of just a few years starting from 2007 managed to obtain the daily with the highest currently circulation (Telegraph), some influential newspapers (Politika, Express, Monitor), as well as the national TV channel. The physical owner is Irena Krasteva, the former director of the National Loto, whose son is an MP from the Turkish ethnic minority party MRF. The credit for the purchase was provided by the Corporate Commercial Bank, which prompted speculations as to who really owns the media group. More interesting is the fact that the same, relatively small bank is where ½ of the money of the Bulgarian state companies are deposited.662 This media group is criticized for always providing favourable coverage of the government – both the former and the current.663 This and other such cases demonstrate that the current regulation of media ownership does little to introduce standards of transparency in this field.

662 This information was revealed by the Finance minister on a request by the Union of publishers in Bulgaria [http://www.dnevnik.bg/pazari/2010/05/16/901692_polovinata_ot_parite_na_durjavnite_firmi_sa_v/](http://www.dnevnik.bg/pazari/2010/05/16/901692_polovinata_ot_parite_na_durjavnite_firmi_sa_v/).

663 After the elections in 2009, the media group changed its position overnight – from a vocal critic of Boyko Borisov and his party GERB, its newspapers turned into his major proponent. As their competitors from Economedia group put it – “About Boyko Borisov – only good or nothing” [http://www.capital.bg/politika_i_ikonomika/semidica/mediina_sergia/2009/08/07/767454_za_boiko_boriso_v_-_samo_dobre_il_nishto/](http://www.capital.bg/politika_i_ikonomika/semidica/mediina_sergia/2009/08/07/767454_za_boiko_boriso_v_-_samo_dobre_il_nishto/).

A series of publications against the new media empire in the newspapers of Economedia group is the reason the Anti-trust commission fined the latter for unfair competition practices and damage to the good name of a competitor. Economedia group are currently appealing the decision.
Commercial BM media ownership is regulated by RTA. There are restrictions with respect to ownership there, yet some of them – for advertising agencies to not own BM, for example, proved to have been violated by major players in the field without any consequences. In May 2010 Krassimir Guergov, the major player in the advertisement business in Bulgaria, admitted to have owned shares of BTV from the start of the activities of the first commercial national TV station in Bulgaria in 2000, which was then prohibited by RTA. BTV currently holds 62% of the media ads market in the country, obviously enjoying a dominant position there. One of the most controversial amendments to RTA in 2010 was precisely the removal of this restriction. The chair of the Parliamentary committee on media Daniel Petrova, who proposed the amendment justified the move as removing a dead letter in the law, while critics saw in this legislative move a clear case of protection of corporate interests, leading to a dangerous horizontal concentration and increasing vertical integration in the media market.

Neither the print nor the commercial BM readily provide information on their internal staff, editorial policies and reporting practices. It is with great difficulties, that ownership of the media is traced with the help of the Commercial register, and from 2012 when the access to the register will become more restricted, the access to this vital info will be further inhibited. It was a rare victory in the field that in 2010 the Union of Publishers managed to obtain info from the Ministry of Finance as to where the state companies hold their deposits – as it turned out, ½ of the money of the state firms are deposited in the mentioned above investor in the New Bulgaria Media Group - the Corporate Commercial Bank. This fact may explain why there was a change in the editorial line of the editions of the group after the change in government. Another well-kept secret are the true circulation figures (in the press market) and the revenues in real terms from advertising (in the case of both types of media).

There are problems with the transparency of the PBM as well. For example, one could not find the report of the Internal Ethics Committee of BNT, in which allegations for serious financial breaches of the former directors and the board of the public TV were raised in April 2010. The report produced a scandal in the media circles, prompting an investigation. The report was leaked and published on the site of a former employee of BNT instead of on the official site of BNT. BNT and BNR had a practice of rarely disclosing info about their activities, plans for reforms (even less – posting this info on their web-sites). Though the current governing bodies of the PBM are taking active steps towards increasing the access to information about the respective media (including on their official web-sites), it is early to tell whether these steps will develop into a sustainable practice.

**Accountability (law)**
To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

**Score: 50**

The press is entirely unregulated by the state at present – there is no state Press council to look at its activities and guarantee they are answerable to the public. The matter is left entirely to the Penal code, where there are provisions against libel and defamation, as well as provisions prohibiting discrimination and hate speech.

In 2004 the Ethics code of the Bulgarian Media was signed and a Committee for overseeing the compliance of the press with it – established within the framework of the NGO “Council for Journalistic ethics”.

With respect to the BM CEM is the relevant media regulatory body, with extensive prerogatives to oversee the activities of both PBM and the commercial PM. It has a mandate to appoint the directors and the managing boards of BNT and BNR, to supervise the activities of BNT and BNR (as well as of all other BM in the country) for compliance with the requirements of RTA - including those concerning content regulations, ownership disclosure, organization, etc. BNT and BNR file annual reports on their activities with CEM.

The National Audit Office also supervises the financial activities of both PBM and CEM itself.

There is a right of reply, regulated by RTA – all BM are required to keep for 3 months recordings of all their programs and submit them to CEM on request, if a complaint is launched. They have to provide all other necessary info to CEM (short of disclosing the sources of their info, if its provider prefers to remain anonymous) in case of litigations. The BM are required to correct any erroneous info on a timely manner, in a clearly noticeable way. The same provisions exist in the Ethics code of the Bulgarian media, and thus apply to the press as well (with the important caveat, however, that far from all media outlets in the country are signatories to it).

**Accountability (practice)**

*To what extent can media outlets be held accountable in practice?*

**Score: 25**

CEM throughout its activity since 2001 has been constantly accused not only of politically dependent decisions but of failure to exercise effectively its mandate and provide reliable guarantees for the accountability of BM. This was confirmed by a report of the State Audit Office, which checked CEM’s activities for 2007-2008 and concluded that the media regulatory body is not independent and its control over the licensed and registered TV and radio operators was ineffective. For the whole period just 14 (out of a total of 560) programs were checked, and though violations of the licenses were established, no sanctions or other administrative measures were taken.

The NGO “Council for Journalistic Ethics” (with its two sub-committees – on the press and on the electronic media) has also been criticized for being ineffective and passive in its activities in enforcing the self-regulatory Code of Media Ethics;

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or twice a year, and very rarely decide to start a procedure on their own initiative. The number of decisions of both commissions is indeed low (below 20), despite the numerous violations of the ethics code by its signatories.

The PBM have their own ethics committees, yet there are no official reports neither on their activities, nor - until recently - on the activities of BNT and BNR themselves. The reports of BNT are currently published on its web-site, and CEM reviews them. It is not clear what happens, if CEM is critical of the reports: there is a legislative gap here.

The commercial BM or the press do not have effective internal media ethics councils. The institution of media ombudsman is not introduced in Bulgarian media either.

The right of reply is usually granted, yet less so by the regional and local media. The reply is often published in a non-visible manner.

Both the print and the major BM of national coverage have their blogs and forums, which are especially active in the case of the central print media. BNT also uses its forums to communicate with its audience. How effectively used these channels are, is difficult to evaluate, since there are no quantitative data available on this matter.

**Integrity Mechanisms (law)**

To what extent are there provisions in place to ensure the integrity of media employees?

**Score: 50**

There are provisions both in the Constitution, the RTA and the Penal code, aiming to legally ensure the integrity of media employees. The right to freedom of expression and the freedom of opinion cannot be exercised to the detriment of the rights and the good name of the others (art. 39(2) of the Constitution). The defamation and libel clauses, as well as the provisions against discriminatory and hate speech in the Penal code also serve this purpose. The RTA contains provisions, delineating the principles to be observed by both the commercial and public BM (art. 10 of RTA) and among them are media integrity requirements.

In addition to the legal regulation, the 2004 Ethics Code of the Bulgarian Media provides clear self-regulatory rules, aimed at strengthening of the integrity of the media in the country. However, as already stressed, the code is voluntary, and the number of signatories to it – limited. There are virtually no individual code of ethics in the media – or if there are, they have no visibility and effectiveness, since they are not enforced (the media, apart from PBM, have no internal ethics committees).

**Integrity Mechanisms (practice)**

To what extent is the integrity of media employees ensured in practice?

**Score: 25**

The standards of integrity in Bulgarian media leave much to be desired. This is the lowest scoring indicator in MSI 2010 and MSI 2011, and the trend is downward.

The low standards of journalistic and ethical integrity in the media in the country are most apparent in the case of the tabloids and some regional and local print media outlets, yet is a

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676 http://bnt.bg/bg/productions/about/76/po_sveta_i_u_nas.
general trend. Tabloids (but not only) explicitly refuse to sign the Ethics code of the Bulgarian media and do not have internal editorial ethical codes, nor do they have ethics committees. It has to be noted, however, that after a scandal, involving the late media analyst Vassa Gancheva in May 2011 (she was revealed as accepting payment for favourably covering a particular TV program in her critical commentary in the most popular tabloid Weekend), the position of the tabloid was that they do not accept such practices and as a result – her contract with the tabloid was terminated.

The liberal entry into the profession does not contribute to raising the ethical standards there, nor is the financial crisis allowing the owners to invest in media literacy education for their employees. The low standards affect not only the journalists, but the owners and editors of local and regional press outlets and BM – they often fall easy victim to corporate pressures – coming from both legitimate and illegitimate business circles. Often the right to reply is not well-exercised in these media, leaving their publics exposed to one-sided, unobjective, manipulated information.

Trading in influence is a growing practice among Bulgarian journalists. According to the report for 2010 on human rights in Bulgaria of the US State Department, trading in influence is one of the major sources of concern for the independence of the media in the country. According to our internal interviewee, who quoted the results of a research conducting by him and his colleagues, up to 50% of the Bulgarian journalists accept payment ‘under the table’ for their publications and materials. It is a practice among Bulgarian journalists to accept trips, covered by companies, on whose activities and products they report. There is a lack of sensitivity among majority of journalists and editors, that accepting such “gifts” is an unacceptable form of trading with influence.

The time pressure, the work overload and the inadequate financial resources of some media outlets are among the reasons quoted for often not relying on multiple sources of reporting. These, together with the corporate pressure (exerted by the owners, their political and business friends) are among the main reasons for some journalists to often not report on both sides of an issue. As stressed by our interviewees, this practice is more common in the regional and local outlets, though is present in the central media as well: the trend towards tabloidization of the mainstream media spreads such practices to parts of the so-called serious press.

ROLE

678 http://www.capital.bg/biznes/media_i_reklama/2009/10/09/797531_predatelstvoto_na_mediite/?sp=2#storystart


680 This is stressed by the panelists in MSI reports for 2010 and 2011, at http://www.irex.org/resource/bulgaria-media-sustainability-index-msi.


682 http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154417.htm

683 The journalist and economis Yordan Mateev is one of the recently growing number of journalists who openly speak on this topic, see his article “Corruption and journalism”, available at http://e-vestnik.bg/11214.

684 Alexei Lazarov, vice-editor-in chief of Capital weekly and member of the Press ethics committee, provides the evidence: advertiser offered to advertise in Economedia newspapers on condition of positive coverage, and was surprised when the editors refused to accept this offer, while another advertiser withdrew their advertisements after negative coverage of one of its owners.

Investigate and expose cases of corruption practice

To what extent is the media active and successful in investigating and exposing cases of corruption?

Score: 25

Investigative journalism is weak in the media’s work in the country. Though there are some investigative journalists and programs, they often deal with minor issues, or do not go too deep into the problems, especially when there is a risk of affecting interests of the media owners, of their political and business friends. The investigative journalism programs of the PBM are a case in point – dealing mainly with low-profile cases, with little public resonance. The politicians from the governing majorities are rarely investigated, nor are their business circles. This is also true of some of the commercial BM and the press, who often prefer to address their critiques to the previous governments, providing media comfort to those in power.

To the extent investigative journalism is developed, and to the extent it targets high profile corruption, conflict of interests, etc, it often is within the framework of “media wars” between media competitors. In such cases investigative journalists receive all the necessary support – financial, administrative, legal, etc. - from the editorial boards. In other cases, their employers turn a blind eye, and leave the journalists to defend themselves alone, even in legal battles, in which they are accused of defamation, libel, etc. In general, investigative journalism is viewed with suspicion among the guild, the journalists practicing it are considered “trouble makers” and are often pushed to the margins of the profession, enjoying very low prestige and no support – this is how our interviewee expressed his views on the issue.

The case of the media war of Economedia group v. the New Bulgarian Media Group in 2009/2010 and the investigations against the latter by the journalists of Capital weekly might be a case, may support the above position. This “war” between competitors might be one of the reasons the state Anti-trust commission fined Economedia for its publications on the rival media group and its investor – the Corporate Commercial Bank at the end of 2010. The decision of the state Anti-trust commission was criticized by human rights CSOs for setting a dangerous precedent “creating unhealthy environment and a threat for the media in the country.”

Two recent decisions of ECtHR from April 2011 are an important new development in this field. They are the first cases in which ECtHR convicts Bulgaria for violations of art.10

Both our interviewees expressed this opinion. Margarita Mihneva, a prominent Bulgarian investigative journalist, who has been sued and dismissed from work on a number of occasions, takes a stronger position. According to her, “In Bulgaria there is no investigative journalism”, available at http://www.econ.bg/news/article174245.html.

An overview article on this negative trend was published by Kapital weekly in October 2009, under the telling title “The Betrayal of the Media” http://www.capital.bg/biznes/media_i_reklama/2009/10/09/797531_predatelstvoto_na_mediite/?sp=2#storystart.

This was the opinion of our “internal” interviewee, media expert and member of the regulator CEM.


The first case is Kasabova v. Bulgaria - http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/d4722af60f3c0fdbe125787100343c72?OpenDocument;
Inform public on corruption and its impact

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

Score: 50

Corruption is among the main topics in the media currently (and has been so since early 2000s). There is hardly a news bulletin or a commentary program, where the issue is not covered, with long reports on corruption allegations, which are rarely proven later in court. The overrepresentation of corruption in the media may be counter-productive: firstly, rather than raising the awareness of citizens and educating them to be vigilant and non-complacent towards such social practices, it may breed cynicism and complacency, and secondly, it is amenable to political uses by populist political players. Despite the over-representation in the media of the topic of corruption, there is a scarcity of educational TV and radio programs, teaching the public how to recognize and adequately react to corrupt practices.

Inform public on governance issues

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Score: 50

Covering politics and governance issues are another major part of media work in the country. Politics is present in the morning programs of the major national TV channels, often turning off segments of the public, apathetic to the issues of politics and public policies. However, this ever-presence of the political topics does not contribute to their quality coverage. TV

and the second - Bozhkov v. Bulgaria

691 The lawyer of one of the Bulgarian journalist, Alexander Kashumov commented that these cases may set a positive precedent and have beneficial effect for the freedom of expression and of the press in the country, see http://www.desant.net/show-news/22157/.


One of the authors, Daniel Smilov, motivates the need for further research on the judicial system in Bulgaria with the cynicism the over-representation of corruption breeds, thereby undermining its successful reform. The discrepancy between perceived and actual corruption is well documented in the 2007 report by the Centre for the Study of Democracy, Anti-corruption reforms in Bulgaria: key results and risks, available at http://www.csd.bg/artShow.php?id=8559.

693 The media expert Orlin Spassov describes the new relationship between the media and politics in the last two years as a “condition of permanent political campaign,” with negative effects on the quality and the political independence of the media. See his “The Media and Politics: the Downfall of the Fourth Power?” in The Media
programs and articles in the press are often turning into uncritical channels, in which politicians convey their messages to the public in conditions of “media comfort”. There is also a trend of low quality reporting on the activities of Parliament, the Cabinet, and other high public offices, in part due to the tabloidization and the trend towards turning the media into “infotainment” - a hybrid between entertainment and a source of information. For example, it is sometimes difficult for the public to understand when a draft law is only being discussed by the Council of Ministers or by the respective Standing committee, whether it is being voted on its first reading in Plenary sessions in Parliament, or has been finally adopted. The facts are often presented in vague terms, with no sufficient clarity on important details, with a focus on the shocking, eye catching topics.

The ‘niche reporting’ (the so-called ‘resorna journalistika’), where journalists specialise in reporting on only one state institution or policy area, may look like a remedy for this negative trend: the quality reporting requires special knowledge and experience. However, in acquiring this special knowledge, the niche journalists develop strong personal ties with the objects of their reports, sometimes losing their own impartiality in the process. This may be one of the routes for the media becoming ‘mouthpieces’ of the respective politicians, public officials and institutions.

**Recommendations:**

- Discontinuation of the practice of pre-term termination of the CEM’s mandate by each new government;
- A separate civil-society quota in determining its members should be introduced, and all other politically appointed members should be widely agreed upon;
- Its financial independence from the state should be guaranteed – through financing it via a state-independent Radio and TV fund;
- Improving the quality of journalistic education, as well as including media literacy programs in the general course of secondary education. More corruption-related educational programs should be produced;
- Crimes against journalists should be effectively prosecuted;
- The self-regulatory bodies in the sector may develop a system for evaluating quality of the media, which may be used for labelling the media products and communicating to the public which media outlets produce reliable, well-researched and documented content.

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This danger was pointed out by the ‘internal’ expert, interviewed for this report.
CIVIL SOCIETY

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<th>Civil Society Overall Pillar Score: 52.08/100</th>
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Summary

Bulgaria is a country with a civil society sector actively involved in anticorruption activities: there are a number of influential organisations working in this area. Notwithstanding this fact, there are several remaining problems in the area, which include limited funding (especially private), a risk of overtaking of the NGO sector by civil servants and politicians using administrative resources, a generally low level of transparency of funding matters, remaining suspicions of conflict of interest, low administrative capacity. The CSOs – or at least some of them – could still function as a check to the government, as a source of new ideas and initiatives: yet, there are more and more questions about the responsibility and accountability of the NGOs for policies they sponsor.

CAPACITY

Resources (law)

To what extent does the legal framework provide an environment conducive to civil society?

Score: 75

The right to association is constitutionally protected (art. 44 of the 1991 Bulgarian Constitution). The associations may pursue diverse goals, yet cannot perform political activities or pursue political goals. The Constitution also prohibits any organization with activity against the sovereignty, territorial integrity and unity of the nation, or that incites racial, national, ethnic or religious enmity, threatens the rights and freedoms of the citizens, as well as organizations with secret or militarized sections or which pursue their aims through
coercion (art. 12 (2)). These restrictions are well-defined in the relevant legal texts and do not leave much discretion to the judges.

In January 1, 2001 a special Legal Entities with Not for Profit Purposes Act\(^697\) entered into force, which distinguished public from private benefit organisations and in detail regulated the rights and obligations of the former, leaving the latter largely unregulated. In general, the public benefit CSOs have to follow strict rules on transparency and public accountability: their finances have to be reported and may be audited (when their turnover exceeds 1 mln lev per annum); they submit public annual activity reports, etc. Both types of organizations have to be registered in a district court, yet only the public benefit ones also need to register in a special Central Registry of NGOs, run by the Ministry of Justice.\(^698\) The activities of this registry, however, are subject to serious critique - it is often slow and inefficient, and it does not monitor CSOs.\(^699\) After the registration, the organizations submit their annual financial activity reports, which are public and are in principle available at the web-page of the Registry (they often appear there with significant delays). The registered organizations may in principle receive donations (with tax breaks), use credits and benefit from other preferential measures etc., as well as apply for direct state or municipal financial support - when such are introduced in the domestic legislation (art. 4 of the Law).

The predominant majority of all CSOs in the country are public benefit ones (92-94% in the 2006-2008 period).\(^700\) The registration procedures are relatively simple and easy to follow (special legal advice is usually not needed to prepare the documents and submit them in the district courts). The judges are usually well-prepared and cooperative. The appeal against the court decision should be filed within 7 days of notification and is heard by the district Court of appeals, whose decision may be further appealed in front of the High Court of Appeals. Its decision is final. This final decision does not mean a new procedure for registration of the respective organization may not be started. The registration-related expenses are moderate – between 150 and 200 levs (approx. 100 Euro), the necessary documents – a limited number and not difficult to prepare, the procedure itself is fast. The law also allows for the existence of un-registered, informal organizations of the citizens.\(^701\)

The CSOs in Bulgaria are free to organize advocacy campaigns and to criticize the government, provided these are not part of a political campaign, aimed at winning elections. There are some provisions in the tax laws, which favor the public benefit CSOs.\(^702\) All taxpayers may deduct from their taxable income donations, made to registered public benefit organisations (for individuals up to 5% and for companies up to 10% of the tax base). CSOs

\(^697\) State Gazette no 81/ October 6, 2000.


registered with the Central register also do not pay inheritance and donation municipal tax; all CSOs do not pay VAT for those of their campaigns and activities, which are directly related with their proclaimed goals; the income from non-economic activities of all CSOs is tax-exempt. Despite the existence of such provisions, these are not sufficient to guarantee favourable financial environment for the activities of CSOs in Bulgaria.

Resources (practice)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

Score: 25

The general trend of the post-accession period for withdrawal of foreign donors, coupled with the effects of the economic crises and the problems with EU funds absorption, had adverse effect on the financial viability of the CSOs in Bulgaria. This is clearly demonstrated by the scores for the financial viability of the sector, given by the NGO sustainability indices for 2008 and 2009 – 4.1 and 4.4 respectively (the latter is the worst result for this indicator since 2001). The year 2009 was described as a year of survival rather than development for the CSOs in the country.

The further withdrawal of foreign donors is also a significant factor, since in 2008 some 40% of the revenues of CSOs still came from foreign donors (which is itself a significant drop, compared to the pre-EU accession rates – then some 75% of the funding of the sector came from foreign donors). The financial crisis on its part also led to a sudden decrease in donations (which amounted to around 15% of the revenues in 2008 to NGOs - a decrease of between 30 to 50 percent, based on data from community foundations). Another contributing factor are the problems connected to EU funding in Bulgaria. The EU Civil Society Development Program was cancelled at the end of 2008, leaving a number of NGOs without funding in 2009, while the EU OPAC did not announce a single grant competition for NGOs in 2009, compared to more than $28 million provided the previous year. In addition, those NGOs that managed to get EU funding are faced with serious liquidity problems as these programs require NGOs to first cover their costs and then receive reimbursement. Given the administrative capacity problems with management the EU funds in Bulgaria and the attending this problems payment delays, this left many local NGOs inactive (they had EU funding as their sole financial support).

The situation with state funding for NGOs is also difficult. While 2008 saw an increase of state funding to a certain extent, this support was still minimal, and often itself led to serious

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704 Ibid.
706 According to data of the Bulgarian Donors’ Forum.
707 NGO sustainability index 2009, USAID.
708 Ibid.
709 Ibid.
710 Comment of a member of the advisory committee, representative of a local NGO in Bulgaria.
problems. One of the problems identified was conflict of interests – it was estimated that ¾ of MPs and the cabinet ministers and more than 90% of the municipal mayors were members of boards of NGOs at the end of 2008; The influx of EU-funds money for the sector also contributed to this virtual take-over of the civil society by economic and political powers, sometimes with questionable reputation. In addition, the major part of state funding is in the form of direct subsidies to traditionally supported by the state organizations, and just a small part is distributed on a competitive basis as grants. For 2010 it is less than 1.5% of the state support for the CSO sector, compared to 17% in 2005, when the competitive distribution of state grants was introduced. The direct subsidy is distributed in a non-transparent manner, without monitoring for spending and evaluation of effectiveness. And even the competition-based grants are distributed without clear criteria or strict requirements for the qualifications of the members of the selection committee, and there is virtually no monitoring of the results achieved by the funded NGOs.

A crucial distinction between the centre and the periphery with respect to capacity (and as a consequence - the role of the sector) was noted by the CSO experts on the Advisory board of our NIS-TI team. They argued that the further away from the centre one goes, the less are the resources (both financial and human) of the CSOs, the lower – their transparency, and the less significant – their influence in decision-making. Importantly, a particularly negative impact of EU structural funds was identified at the local level. According to this source, there is hardly a municipality in the country, which does not complain these EU programs liquidate their local CSOs.

Further, there is no mechanism for distributing state funds to NGOs at the local level, nor do the EU operational programs in general reach the local level (yet when they reach it, the effect is hardly more positive, as noted above). The only support local authorities provide to NGOs is in-kind support such as office space.

Diversification of funding is underdeveloped: project-oriented organizations do not target corporate and private donations, while donations-relying organizations do not in general apply for grants.

In terms of human resources, the situation in the sector is also difficult. The score of 30.6 (out of 100), is comparatively low, which means that staffing is problematic for CSOs. A high percentage of organisations work with volunteers, and their percentage is significantly higher than the number of permanent staff. Even though this is a positive trend, the use of volunteers in the work of CSOs in Bulgaria is still underdeveloped: only now it is starting to emerge as a practice, and there is yet no legal framework for it.

Employment in the sector is unstable and with a variable workload (due to problematic funding of the sector): large percentage of the staff work under temporary contracts and for multiple organisations - since most CSOs in the country are project-based. In 2006 37% of


713 Ibid.

714 NGO Sustainability Index 2009.


716 Civil society sustainability index (CSI) 2010.

717 BCNL’s Bulgaria country report on “Volunteering across Europe”.

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NGOs had no permanent staff and in 40% of cases, where there were permanent staff, the organizations maintained between one and four employees.\textsuperscript{718}

In 2008 some 36% of the revenues in the sector came from economic, profit-generating activities. Since there are no preferential tax and other policies towards the CSO’s economic (not directly related to their main activities sphere of activity – for the latter there are, albeit limited, preferential policies)\textsuperscript{,} and given the depth of the economic crisis, it could not compensate for the shortages of other sources of funding recently. A drastic growth of both the share of economic activity, and its amounts is identified between 2000 and 2008: from 9% to 36% of the revenues in the sector came from it, and it grew 12 times in absolute terms. 2008 was the first year when the revenues from economic activity were more than those from competitive project-based grants. Yet since data were not quoted for the financial crisis-stricken 2009 and 2010, this trend is difficult to confirm. Moreover, the growth of the economic activity is a mixed blessing for CSOs, as well demonstrated by the quoted report. Majority of CSOs, which are expert-based, have a well-trained, experienced and skilled in project-management staff: this allows for some migration from the non-governmental sector to the consultancy, private sectors and particularly to political parties. Particularly during the 90s, the sector employed very well-educated, with good qualifications, competent staff.\textsuperscript{719} The concentration of well-trained, with high qualification staff in some of the central CSOs is even higher than in similar sectors in the public administration. There, the sustainability of the human resources is high.\textsuperscript{720}

However, these observations concern only a handful of well established, central CSOs and think-tanks. Employment in the sector as whole proves to be rather unsustainable, and some of the local and less well-established organisations fail to retain their well-trained and specialised staff.

As a conclusion, it should be stressed that most of the problems with the legal environment for CSO activity in the country are due to the poor implementation of laws and the generally low level of administrative capacity in various institutions.\textsuperscript{721} The legal practice of the administrative courts, registering the CSOs, is not unified and is often contradictory (some courts ask for certificates showing that NGO board members have no convictions on their records, even though such a certificate is not legally required).\textsuperscript{722} In terms of low administrative capacity as an impediment to CSOs activity, the (mis-)management of the EU Structural Funds is a paramount example: in some cases the procedures were changed several times during the program implementation, or program administrators required organizations to provide documents beyond the program requirements, which brought delays, confusion and liquidity problems for the CSOs.\textsuperscript{723} A further impediment involves the Central Registry for public benefit CSOs with the Ministry of Justice: its activity was constantly criticized for ineffectiveness, mis-management and lack of transparency – which undermines its public role.

**Independence (law)**

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?*

\textsuperscript{718}Civicus CSI 2008-2010.

\textsuperscript{719}According to our internal interviewee, an executive director of one of the leading Sofia-based CSOs in the country.

\textsuperscript{720}Ibid.

\textsuperscript{721}NGO sustainability index 2010

\textsuperscript{722}Ibid.

\textsuperscript{723}Ibid.
Score: 75

The citizens in BG are allowed to form and engage in groups regardless of political ideology, religion or objectives – they may register associations and foundations under the Non-profit Entities Act, they may register their churches, religious organizations and religious communities under the Religions Act and they may form political parties and coalitions under the Political Parties Act. After a preliminary approval by the relevant church, it is also possible to register a CSO, aiming to popularize and promote the respective religion – yet these may not have activities amounting to publicly practicing religion. Citizens may also choose to form informal, altogether non-registered organizations.

The permissible grounds for state interfering with CSOs objectives and activities are reasonable and clearly stated in the Constitution. There are no provisions stipulating state membership on CSOs boards or mandatory state attendance at CSOs meetings. To avoid conflict of interests, public officials are required to declare when they are members of the board of a CSO, participating in a tender procedure, for which the public official is responsible. In the Conflict of Interests Act, which entered into force in 2009724 there are also strict restrictions as to membership in CSOs boards of high public officials. Yet the creation of the so-called PONGOs (politically owned NGOs) is still possible, since the provisions in this law do not cover all civil servants (just the high public officials) and does not affect the members of the municipal bodies (after an amendment to the Act in early 2009).

Independence (practice)

To what extent can civil society exist and function without undue external interference?

Score: 50

CSOs do not experience direct threats to their independence. The dependence comes indirectly, through reliance on state funding. Further, in the EU accession years the CSO sector is increasingly being “captured” by actors, related to the government and the local authorities, and even by some ‘grey’ businesses.725

The Bulgarian NGO sector has emerged and developed as donor-driven, and in that sense is subject to external influences in terms of the priorities of the donors.726 This includes the priorities of the state as a donor. This, however, does not mean according to this source, that the activities of the sector are dependent, or that there are strong external pressures. Such dependencies and pressures are present in some sub-sectors – the provision of social services is a good example. The dependency there comes from the state administration – through its financing of those activities. However, the watch-dog sub-sector and that of the think-tanks, especially the well-established CSOs in these sectors, are independent and maintain their independence vis-à-vis both the state administration and the political parties, and this is possible precisely because of relying on foreign donors. Thus generalizing over all types of CSOs with respect to their independence is not justified.

The risks of interference with the work of CSOs by state and other actors, when present, are on the whole not direct and open: no verbal or other threats to CSOs are reported. To the

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724 State Gazette no 94/ 31.10.2008, in force from January 1 2009. The name of the act was changed in 2010 – instead of “Conflict of Interests Prevention and Disclosure Act”, it is now called “Conflict of Interests Prevention and Identification Act”.


726 According to our internal interviewee, an executive director of one of the leading Sofia-based CSOs in the country.
extent one can speak of such risks, they rather come from the fact that state funding (or EU funding, which is again managed by state-sponsored agencies) goes to close to government organizations, which are often established for the sole purpose of (EU and other) funds absorption.\footnote{2011 BCNL report, available at \url{http://www.bcnl.org/bg/articles/969-оценка-на-механизма-за-разпределение-на-средства-от-бюджета-на.html}} The state grants are distributed in a non-transparent, wholly arbitrary manner, with no monitoring or evaluation mechanisms in place, without clear criteria or rules of procedure.\footnote{Ibid.} These practices open the gate for using the state grants procedure as a way for influencing the sector, as well as a source of corruption. The other risk comes from what is described as “a process of NGOs capture” by active state officials and local politicians, who utilize their state-related resources to found, fund and operate their own NGOs.\footnote{CSD 2010.}

Since high public officials may not own private firms or be members of boards of private corporations, it is claimed that they found a legitimate source of income in establishing NGOs. Data quoted in CSD’s 2010 study show that ¾ of all MPs and ministers in 2005-2009, as well as chairpersons of state agencies, and 90% of all mayors were members of CSOs’ boards at the end of 2008. PONGOs (politically owned NGOs) in Bulgaria are estimated to be between 9 and 13% of all CSOs. With the entering into force of the Conflict of Interests act in 2009 it was expected that such practices will be curbed, yet the regime was relaxed already in early 2009 with amendment to the act, excluding from its scope of application the members of the smaller municipal units and local lower public officials. Thus it did not produce the expected results.

\section*{GOVERNANCE}

\subsection*{Transparency (practice)}

\textit{To what extent is there transparency in CSOs?}

\textbf{Score: 50}

75.9\% of CSOs declare to make publicly available info on their organization and activities, including financial reports.\footnote{Civicus CSI 2008-2010.} Yet only 14.1\% publish this info on their web-sites, while more than half declare that this info is available to the public on request – i.e. can be found in their office.\footnote{Ibid.} A significant number of CSOs do not have working organizational web-sites, and few of those with such working web-sites put their activity and financial reports there. This makes it difficult to speak of meaningful transparency in the sector.

The Public Registry at the Ministry of Justice provides on-line such info on those organizations, which have submitted their reports. Yet this info is not complete (often changes in the governing bodies are not reported, the organisations’ principal activities, the annual financial statements and the periods of CSOs activity are either not stated, or are not correct) and not regularly up-dated. The Public Registry has been subject to critiques for its slowness and general ineffectiveness.\footnote{Monitoring and evaluation of the activity of the Central Registry of the Non-for-Profit Legal Entities BCNL 2010, available at \url{http://www.bcnl.org/bg/articles/933-оценка-на-дейността-на-централния-регистър-на-юлън-софия-2010.html}.} According to some critics\footnote{Ibid.}, this renders pointless the official
differentiation in the Public Registry between nonprofit organisations working for public and for private benefit. Some critics go further and claim that the existence of Public registry is useless – both on account of its ineffectiveness, and on account of the little privileges the public benefit CSOs receive on condition of their registration at this registry. It is clear that these problems with the functioning of the Public Registry hinder CSOs’ transparency. CSOs should make more effort to keep their records and allow public scrutiny of their activities. This will serve well the image of the sector, since the low visibility of CSOs activities and the opacity of their funding sources are among the main reasons for the low public image of the sector, as reported in a 2005 study. According to its results, CSOs are not considered as fulfilling citizens’ interests and their legitimacy is at stake. There has been a significant gap between CSOs’ mission statement and the citizens’ mandate. This trend is confirmed in more recent studies. In an omnibus survey, conducted by OSI-Sofia in the fall of 2009, only 22% stated they trust the sector. According to research carried out for the CIVICUS Civil Society Index in spring 2009, more than 51 percent of respondents did not know an NGO or could not point out an NGO they trust, while another 10 percent did not trust any NGO. The analysis of the NGO sustainability index identified as the reasons for this relatively low level of public image the low public trust “the lack of positive media coverage of NGOs and NGOs’ insufficient PR efforts, as well as some negative incidents, such as profit-making schemes designed as charitable activities”. Thus CSOs are the “the unknown face in the public arena”: the huge discrepancy between the self-evaluation of the sector (75.9% of the CSOs believe their activities are transparent) and its low public visibility and trust, should prompt the representatives of the sector to work for improving the transparency and the visibility of the sector and enhance the conditions for better understanding on the part of the public of its mission and activities.

**Accountability (practice)**

*To what extent are CSOs answerable to their constituencies?*

**Score: 50**

CSOs themselves again consider their internal governance and management methods democratic and transparent (93.5%). Over 90% of organisations surveyed by Civicus CSI indicated they were managed by a board of trustees, a managing board or supervisory board. Regarding the decision-making process, 33.1% of respondents claimed their organisations were run by an elected manager, with another 25.8% run by an elected board of trustees, and 20% run by an appointed director. However, in the case of Bulgaria, the presence of such structures is not yet a guarantee of an organisation’s strategic sustainability and functioning internal governance system. There is a high internal perception of democratic decision-making practices and principles in CSOs. CSI practice of values index for democratic decision-making governance 71.7 out of 100 is not matched by a similar external (by the general public) perception of democratic accountability of the sector.

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733 This was the position of two of the members of the advisory committee, experienced representatives of a local and a national CSOs. This has been the position of BCNL in its evaluation of the activity of the Registry, quoted above.

734 This position was expressed by the two members of the advisory committee, quoted above.


736 Civicus CSI 2008-2010.
In general, a positive trend within CSOs towards the development of rules and standards of work, as well as management standards can nevertheless be identified. Thus CSO representatives consider the environment in which they operate to be democratic, with only limited cases of violence or intolerance. Yet though CSOs in Bulgaria perceive themselves as being democratically accountable to their constituents, the concerns with conflict of interests and corruption suspicions raise questions about the legitimacy of CSO activities and operation, as reported by CSD in 2010. Again, the low scores of public trust in the sector, quoted in the preceding section, should come as a necessary corrective to the sometimes overblown self-perceptions and self-evaluations of the representatives of the sector. Obviously, much more needs to be done in terms of opening to the public and being more accountable than is the current practice.

**Integrity (practice)**

*To what extent is the integrity of CSOs ensured in practice?*

**Score: 50**

Civicus CSI 2008-2010 indicator for perception of values in civil society as a whole show the CSOs in the country as perceiving themselves to be promoters of the values, underpinning sustainable and mature civil society: the score is 51.3 out of 100, a relatively good result. Yet as the analysis of the authors of the index for Bulgaria shows, applying ethical standards to CSOs own work is often difficult in practice and leaves much to be desired. Thus though CSOs in Bulgaria perceive themselves as holding strong values, there are considerable issues regarding corruption that raise questions about the legitimacy of CSO activities and operation. 36.4% of the respondent CSOs in the CSI study described corruption practices in civil society as “common,” 20.2% answered they were “very common” and 34.9% saw them as “isolated cases.” Majority of CSOs expressed concern regarding the way civil society functions in Bulgaria. Dependency on government structures, misappropriation, illegal absorption of EU funds and public procurement procedures were among the examples of NGO participation in corruption schemes, quoted by the respondents. There are thus serious challenges with regards to the integrity of the civil society sector, related to conflicts of interest, rent-seeking and a lack of transparency.

Though there has been a concerted effort on the part of some central CSOs (OSI-Sofia and BCNL being the initiators) to develop a sector-wide code of ethics (drafts of a code were developed, presented and discussed, starting from the early 2000s), to this point such code has not been adopted. Thus the relatively lower Civicus CSI score for the practice of values with respect to code of conduct should come as no surprise - only 32.6% of CSOs declare to have such publicly available code of ethics.

Obviously, more efforts are necessary to set up a framework of conduct, by adopting widely respected code of ethics and a code of conduct for CSOs in the country.

**ROLE**

**Hold Government Accountable**
To what extent is civil society active and successful in holding government accountable for its actions?

Score: 50

In 2009 signs of a more positive attitude on the part of the state towards NGO participation in decision making were visible: all Council of Ministers decisions were made public and accessible online, the web-site of the Parliament was greatly improved, with more adequate info provided there (included live broadcasts of the parliamentary sessions, transcripts of discussions in the Standing committees, publication of draft laws, etc.), in a timelier manner.\(^{740}\) This allows the CSOs to monitor closely the activities of the state bodies and hold them accountable.

The already discussed Conflicts of Interest act was also intended to stop the direct involvement of politicians in the work of NGOs (politicians, high civil servants and their relatives may not serve in the management bodies of NGOs) and thus make them more independent and capable of holding the politicians accountable for their actions.

There have been some positive and negative examples of NGO-government relationships. The Ministry of Environment and Waters includes NGO representatives in working groups and holds a one-day meeting with NGOs each month. Thus the environmental NGOs are involved in a close monitoring of the activities of the government in the sector and can be claimed to effectively keep the government accountable for their activities in this sector. These organizations also work best in mobilizing the citizens for resistance towards policies, deemed unacceptable by environmental and EU standards\(^{741}\).

On the negative side, however, there has been attempts by the Ministry of Justice for the first time to withdraw the Bulgarian Helsinki Committee’s permission to inspect prisons\(^{742}\) – a negative sign of unwillingness of government to be held to account by CSOs in a critically important sphere – law and justice, a constant source of critiques against Bulgarian governments during the EU accession process and beyond.

CSOs in the country play an important role in controlling the public policies, in improving the transparency of governments (through initiatives of the watchdog organizations), and involving citizens in decision-making (through advocacy campaigns).\(^{743}\) CSOs are reasonably successful in holding government accountable. In addition, the public policies in key spheres (like protection of marginalized groups, transparency, access to public information and the protection of human rights generally) were shaped with the participation of the most active CSOs in these spheres. In terms of policy initiatives, the Access to Public Information Act from 2000 (a result of strong advocacy campaign of a group of NGOs, led by the NGO Program Access to Information) and the amendments to laws, related to access to public services for the disabled are quoted, and in terms of and concrete legislative ideas - the introduction of the flat 10% income tax.\(^{744}\)

As a whole, however, it cannot be concluded that CSOs are particularly successful in holding government accountable. As data of CSI 2008-2010 show, both the internal perception (of CSOs representatives) of influence and the external ones (by experts on the sector) show relatively low scores with regard to the indicator responsiveness (holding accountable government in dealing with corruption, unemployment and poverty, the main societal concerns for 2009): 29.6 and 35.6%, respectively. The overall score on “Perception of


\(^{741}\) NGO Sustainability Index 2010.

\(^{742}\) Ibid.

\(^{743}\) This is the opinion of our internal interviewee, an executive director of a central CSO.

\(^{744}\) According to the same source.
impact” (combining both the internal and the external perspective on the CSOs activities on a variety of influence measuring indicators) is also relatively low – 43.6 out of 100. This shows that there is a long way still to go for CSOs to prove themselves reliable guards of the public interests vis-à-vis the government.

**Policy Reform (anti-corruption)**

*To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?*

**Score: 50**

In the organisational survey for CSI 2008-2010 civil society sector’s impact on the two major social concerns - corruption and poverty/low income, scored very low and relatively equally - at 29.1 and 30.1 respectively. However, the external perception survey shows that the impact of civil society is seen as much greater with respect to resolving social issues (poverty and low income) as compared to corruption (the 45.5 versus 25.7, respectively). In any case, both 29.1 and 25.7 out of 100 are a very low result, showing that neither CSOs themselves nor the experts reviewing their activity evaluate as adequate the anti-corruption policy-reform initiatives of the sector.

However, these results should be put in a perspective and should be evaluated against the background of the relative failure of both the government and the political parties to introduce effective measures against corruption, as pointed out by our internal interviewee. In that company, CSOs have historically been much more active in formulating policies and legislative ideas on anti-corruption, and have been an active participants and a corrective to the policy proposals of the state administration. The improvements of the so-called Kushlev Law (on confiscating property acquired through criminal and illegal activity) were quoted as a good example of active involvement of CSOs in the corruption-related policy reforms. Many watch-dog CSOs were pointed out as monitoring and evaluating the corruption in society (TI-Bulgaria – monitoring of infrastructural projects and of the public financing of political parties, CSD – developing a corruption index, the Program Access to Information – in introducing standards of openness and transparency in the activities of the public administration, etc.) Many CSOs were quoted as being involved in raising public awareness about corruption campaigns.

All these good examples (and their comparative evaluation against the failure of other bodies to better serve anti-corruption purposes) cannot dramatically change the fact, that CSOs are not perceived either by themselves or by the experts as particularly successful in adequately tackling the issue, identified as one of the most serious societal concerns – corruption.

**Recommendations:**

- A better legal distinction between economic and non-economic activities of CSOs. Currently the state administration has a wide prerogative in determining in which group a CSO activity falls, often used against the better interest of the CSOs.
- A better, more clear-cut legal distinction between not-for-profit and private-interest CSOs should be drawn.

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745 Civicus CSI 2008-2010.
746 The source is our internal interviewee.
747 Ibid.
• The non-for-profit CSOs should receive more sizeable tax breaks than currently given.
• State-guaranteed funds for financing CSOs should be created, where the funding should be on competitive basis, with clear rules, as well as control and evaluation mechanisms.
• A pan-sector Ethics code should be adopted, and receiving state subsidy and tax breaks should be conditioned on conforming to its rules.
## BUSINESS SECTOR

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Law</th>
<th>Practice</th>
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<td><strong>Capacity 62.5/100</strong></td>
<td></td>
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<tr>
<td>Resources</td>
<td>75</td>
<td>50</td>
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<tr>
<td>Independence</td>
<td>75</td>
<td>50</td>
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<tr>
<td><strong>Governance 33.33/100</strong></td>
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<tr>
<td>Transparency</td>
<td>75</td>
<td>25</td>
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<tr>
<td>Accountability</td>
<td>50</td>
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<td>Integrity Mechanisms</td>
<td>25</td>
<td>0</td>
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<tr>
<td><strong>Role 25/100</strong></td>
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<td>Anti-corruption policy engagement</td>
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<td>50</td>
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<td>Support for/engagement with civil society</td>
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### Summary

The business sector in Bulgaria is faced, with the exception of existing integrity mechanisms, with a relatively good framework of rules and laws with respect to ensuring integrity of the actors involved. However, the practices in implementing and enforcing this framework leave a lot to be desired and in general do not create conditions favoring people with integrity and sanctioning people involved in more dubious actions. This is especially true for internal integrity mechanisms in the Bulgarian companies. At the same time, while claiming anti-corruption policy engagement and putting corruption consistently among the major problems to be addressed by political and policy actions, Bulgarian businesses rarely leave the realm of rhetoric in this respect and are very passive in engaging or supporting civil society efforts in fighting corruption.

### CAPACITY

#### Resources (law)

*To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?*

**Score: 75**
The present complex of laws governing the formation of businesses in Bulgaria has been in place since the beginning of transition. It has undergone numerous changes over the years, with some aspects experiencing faster transformation than others.

Generally, the formal laws allow an easy formation of new businesses. There are four required procedures, which follow a logical sequence, take about 18 days, and cost a relatively small amount. The first procedure is to actually make and record the decision to start the new business and to notarize the signatures of the people representing the business. The second is to open a bank account belonging to the new business, with the required by law paid-in capital being the symbolic amount of 2 BGN (Bulgarian Lev, 2 BGN ≈ 1 Euro). The third is to register with the Commercial Register, where the documents obtained in the first two steps are annexed to a standard application form. The last procedure is registering for paying VAT. This step is also relatively simple, requiring submission of the documents already generated in the process. For smaller business, with annual sales below 50,000 BGN, this step is optional.

There are only two legal limitations to current operations of businesses: they can perform only legal activities (i.e. cannot engage in illegal ones), and they are limited to the activities explicitly listed in their own statutes.

With respect to winding down (voluntary closure) of businesses the Commercial Law allows for a well-defined procedure, where once the business declares its desire to close down it enters into a liquidation procedure and after all creditors are paid, the rest is divided among the owners.

With respect to involuntary closure of businesses (bankruptcy), the legally required procedures in Bulgaria are relatively complicated and slow. There are several court hearings – at least one to establish non-payment of obligations, one to establish insolvency and appoint a caretaker management, one after the formation of committee of creditors to accept the new management, and possibly several to approve plans for sanitizing the business, or, alternatively, the procedures for sales of assets.

Bulgarian law provides for a strong protection of property rights and of contract enforcement, starting at the constitutional level. These rights include intellectual property rights, which have also been elaborated as a part of the process of Bulgaria’s joining the EU. Additional legal guarantees of individual property rights stem from Bulgaria’s membership in the frameworks of EU’s acquis communautaire, and the Convention on Human Rights.

In general, the laws regulating the starting, operation and closing down businesses in Bulgaria are clear and easy to apply, with the possible exception of the bankruptcy regulations, whose court procedures are relatively complicated.

**Resources (practice)**

*To what extent are individual businesses able in practice to form and operate effectively?*

**Score: 50**

In practice, it is relatively easy to start a business in Bulgaria. The actual execution of the 4 legally required steps takes about 18 days and costs a very small percentage (about 1.5%) of average annual per capita income. The first two steps of incorporating the business and

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749 Ibid.
opening a bank account take at most 2 days and cost, depending on notary and banking fees, up to 20 BGN. Registration with the Commercial register can be done on paper (for 160 BGN), or online (for 110 BGN), and takes about 4 days. Registration for VAT is longest (about 12 days), but is free of charge. These procedures are effectively enforced and depend mostly on the initiative of the business itself, from where on are mostly automatic. There are two exceptions to their easy implementation, which are not common but do happen. The first are constantly recurring logistical problems with the online operation of the Commercial Register, which can be dysfunctional for several days in a row.\footnote{Source: the problems of the Commercial Register are continuously covered by the Bulgarian business press. These types of problems have also been reported by individual businesspeople in interviews.} This has an adverse effect not so much on the starting of new businesses, but on the ordinary operation of existing ones, which tend to use the Register for important document turnover, especially with declaring taxes. The second exception is the possibility that VAT registration may require more time than expected, and may lead to heavier requirements for document submission of the registering authority has questions about the new business.\footnote{Source: interviews with individual Bulgarian business people; publications in the press.}

Operating a business in Bulgaria is more complicated in practice than on paper in respect to relations with state authorities. This is mostly due to complications with the communication with the tax authorities. While tax rates on businesses in Bulgaria are relatively low and the tax base is relatively uncomplicated, the practice in Bulgaria is such that compliance is costly. The average Bulgarian business makes 17 payments a year, and used 616 work hours just to service the tax payments.\footnote{Ibid., pp. 55-56.}

The practical application of the rules for closing down businesses, especially through bankruptcy, is also problematic. In the case of Bulgaria, this takes on average 3.3 years, costs about 9% of the residual value of the business, and leads to a final recovery rate on the part of creditors of 31%.\footnote{Ibid., p. 71}

In general, the practical side of starting, operating and closing down businesses in Bulgaria indicates that this involves moderate expenditure of time and financial resources.

**Independence (law)**

*To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?*

**Score: 75**

Bulgaria has a specific law aiming at making business independent from external, especially governmental, interference: the Limitation of Administrative Regulation and Control over Economic Activity Act (2003). The goal of the act is to simplify the relationship between business and the government by introducing three changes. First, 39 specific business activities are subject to licensing and permission regimes, and only acts of Parliament can introduce new regimes. Second, the act introduces requirements for "silent consent" on the part of the administration and "one-stop shopping" for the provision of administrative services to businesses. Third, the act obligates Parliament to perform rigorous impact assessments of future legislation.

The legal procedures for establishment of a new business decrease the possibility of external interference to a minimum. There are more such possibilities with respect to current operations of businesses, especially with respect to checks by tax authorities.
Despite the legal limit on the central government to introduce licensing and permit regimes, there are such opportunities for local governments, and on many occasions they have used them. More than 1000 such regimes have been identified in the past.\textsuperscript{754} All such regimes, as well as all decisions and acts of the executive powers, are subject to judicial review. This is guaranteed by the Constitution and its significant review powers.

The overall assessment is that the legal safeguards to prevent unwarranted external interference in private businesses exist, but due to the necessity of some of these safeguards to go through courts with respective time delays there are some loopholes.

**Independence (practice)**

*To what extent is the business sector free from unwarranted external interference in its work in practice?*

**Score: 50**

In reality, the boundary between the state in its regulatory and public services providing roles and the private businesses is not very clear and many opportunities for government interference with the normal activity of businesses exist and are exploited. While judicial reviews over acts of the executive do exist, and the necessity of such reviews is regularly upheld by the Constitutional Court, the necessity to go through courts may involves significant time costs. This means that the administration does have the ability to interfere in practice, making the businesses choose between accepting the interference or the implicit costs of going to court.

The most common forms of trespassing this boundary are favoritism of specific businesses over others, solicitation of unofficial payments from businesses to administrative or government officials, and abuse of the public procurement procedures.\textsuperscript{755}

Over the terms of the last two governments an increasing number of cases have obtained public exposure, in which senior politicians or government officials have obtained “consultancy” fees whose size is to the tune of tens to hundreds of times the country’s average annual salary.\textsuperscript{756} It is highly likely that such fees represent methods on the part of companies to purchase influence through the political and government establishments, leading to distortions in the playing field for business. Another major example of favoritism was a scandal which broke in 2009 about the practices of the road agency (a major spender of public money) under which, in a stark conflict of interest, firms owned by the brothers of the head of the agency obtained large contracts. As a result of the ensuing investigation by the European Union, whose funds were also involved, found such serious indications for favoritism and dubious practices that most EU funding for Bulgaria was suspended.\textsuperscript{757}

\textsuperscript{754} Speech by Minster Petar Dimitrov at the discussion of the Better Regulation Programme 2008-2009, held at the Council of Ministers on March 17, 2008.

\textsuperscript{755} Source: Centre for the Study of Democracy, Corruption Assessment Reports, various years 1999-2009. Accessible through \url{http://www.csd.bg/artShowbg.php?id=1340}. Various monitoring reports by Transparency without Borders with respect to large procurement and privatization procedures accessible through \url{http://www.transparency.bg/bg/publications/}. A general study concentrating on procurement is Transparency without Borders, “Corrupt practices in public procurement in Bulgaria”, available at \url{http://www.transparency.bg/media/publications/Book_Public%20Procurement_2007.pdf}. All these findings have been confirmed by interview respondents.

\textsuperscript{756} Many of these cases have been widely reported by Bulgarian media. A simple search for “consultancy fees”, “consultancy income” or “consultancy contracts” at one of the major Bulgarian online media – dnevnik.bg – yields several dozen reports, of which more than a dozen involve different cases of politicians in power.


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The cases in which government or administration officials solicit payments from businesses seem to involve lower level officials, and numerous examples exist as reported by Bulgarian media at the national and the regional levels. The ones which are exposed to the public are usually the ones which end in arrest, which happens when the respective businesspeople decide to contact the police about the extortion. Their number over the recent years indicates two things about the phenomenon. First, it must be a very common practice if so many occurrences make it to the surface. Second, it is likely that businesses are becoming less tolerant than before to such extortions and tend to react.

Given the fact that public procurement spendings amount to about 9% of national income per year over the recent years, the ability of the state to influence businesses through this channel is very serious. The amount is coupled with the consistent finding that public procurement procedures are considered to be the most corrupt of all interactions of Bulgarian businesses with the state.

A very specific example of an attempt on the part of the state to resolve its problems at the expense of specific businesses in 2010 was the decision to nationalize the personal retirement account of two specific categories of workers without the consent of either the workers or the pension funds. Immediately this decision was opposed by various representatives of businesses and of civil society, with arguments which included the claim that this is in violation of specific constitutional provisions and of the rule of law in general. Ultimately the government implemented a strongly scaled-down version of the initial plan, but was still declared unconstitutional. Thus in effect the government subverted the rule of law to achieve its goals at the expense of a sector of private business.

The overall assessment is that there is occasional outside interference in the work of the private business sector, which does create some, albeit not very significant, consequences for the firms.

**GOVERNANCE**

**Transparency (law)**

*To what extent are there provisions to ensure transparency in the activities of the business sector?*

**Score: 75**

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758 These cases seem to involve mostly tax officials – from the top tax official in the country (http://www.dnevnik.bg/bulgaria/2011/01/25/1031020_bivshiiat_danuchen_1_poluchi_4_godini_zatvor/) to local low level tax officials (http://www.dnevnik.bg/morski/2010/11/04/987661_danuchen_inspektor_be_zadurjan_s_podkup_vuv_varna/), - prosecutors (http://www.dnevnik.bg/bulgaria/2011/05/13/1088810_prokurorut_ot_pleven_hvanat_s_podkup_beshe_osuden_na/), and investigators (http://www.dnevnik.bg/bulgaria/2011/07/07/1120058_sledovatel_beshe_globen_s_3000 lv_za_vzimane_na_podkup/). These concrete cases, coming from a single media outlet, are among dozens of other reported in different media.


760 A most recent confirmation of this finding can be found in the latest annual survey of the Bulgarian Industrial Association „2010 г. през погледа на бизнеса“ (”2010 through the eyes of the business”), where 66% of respondents declare corrupt practices in public procurement. A summary of findings is available at www.bia-bg.com. It is also discussed further in the Public Sector pillar report.

As a member of the EU, accounting standards and practices in Bulgaria have to be in compliance of the union’s law, the *acquis communautaire*, in this area. As of the present, the legislative compliance in the country is complete. The EU law endorses and thus requires the adherence to a large portion of the International Financial Reporting Standards, but allows member states some discretion as to which companies within the country will have to comply completely with those standards, and which companies may follow national accounting standards. Based on a detailed World Bank study of accounting and auditing rules and practices in Bulgaria, the legal framework in this area seems relatively clear. The EU endorsed IFRS are obligatory for all companies, which fulfill whichever of three thresholds: assets larger than BGN 8 million (EUR 4 million), annual sales bigger than BGN 15 million (EUR 7.7 million), or more than 250 employees. These thresholds apply regardless of whether the companies are joint stock or not, or whether they are listed or not. The EU endorsed IFRS are also obligatory for all companies which issue securities which are offered publicly or are to be held by financial intermediaries, regardless of whether these companies surpass the above thresholds or not. The same is true for all banks, insurance companies, companies for additional social security and the funds managed by them. In all these cases, annual audits are required, and they are publicly available, first, with the Commercial Register, and then with the respective supervisory body – the Financial Supervision Commission and the Bulgarian Stock Exchange for all listed companies, the Financial Supervision Commission for insurers and additional social security companies and their funds, and the Bulgarian National Bank for banks. Companies, which are both smaller than all the thresholds and also do not have to comply with EU endorsed IFRS, can choose between applying the EU endorsed IFRS, or applying the Bulgarian National Financial Reporting Standards for Small and Medium-Sized Enterprises, which have been drawn by the Ministry of Finance in compliance with EU directives on financial reporting by individual companies and by business groups. The national standard is mostly identical with the EU endorsed IFRS with the following groups of exceptions: a small groups of the international standards are absent from the national standards; another group of national standards are similar, but somewhat different than the corresponding international standards; and for a larger third group the standards are the same, but the disclosure requirements under the national methodology are lower than under the international. Regardless of what businesses choose, an independent annual audit is required, and is also publicly available with the Commercial Register. The above requirements for independent and publicly available annual audits are waived for the smallest types of businesses. This is possible for companies with fulfill all three of the following requirements: assets smaller than BGN 1.5 million (EUR 770 thousand), annual sales less than BGN 2.5 million (EUR 1.3 million), and less than 50 employees. These micro businesses are allowed to apply a simplified form for financial reporting and are not legally required to undergo annual independent audits. The auditing profession in Bulgaria is organized by the Institute of Certified Public Accountants of Bulgaria. It has adopted its own code of conduct, and has developed the respective bodies to implement the code. Given the relatively severe penalties for accountants and auditors in the Accountancy Law and the Audit Law, the overall framework for financial reporting and auditing for the companies which fall within its range is very strict. However, given the size of the Bulgarian economy, the thresholds below which public audits are not required are relatively high, so that many enterprises can use the simple form and do not have to comply. On the other hand, even though their number may be relatively high, these

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763 Information about its structure, rules and activities can be found at http://www.ides.bg/Institution.aspx.
enterprises comprise a very small portion of the overall economic activity. It can be said that a very large share of overall economic activity in Bulgaria is subject to strict rules of financial reporting and publicly available auditing. In general, disclosure rules facing Bulgarian businesses are rather comprehensive, especially with respect to financial reporting.

**Transparency (practice)**

*To what extent is there transparency in the business sector in practice?*

**Score: 25**

While on paper the level of transparency of Bulgarian businesses to the public is quite high, the actual level of transparency is much lower. For instance, the general public is not aware of the actual owners of many Bulgarian companies. The most transparent companies in this respect are the ones listed with the stock exchange and the financial intermediaries, where full disclosure is required and *de facto* achieved. All other companies have the capacity, if they desire to do so, to in practice hide their ultimate owners from the public.

With respect to people who perform the day-to-day management, the level of public transparency of businesses is higher due to the public access to the Commercial Register. There the names of the members of the executive and of supervisory boards can be found. At present it is being discussed whether access to the Commercial Register should become paid – if it happens, such a change will in practice decrease this type of transparency by raising the costs of obtaining information.

With respect to actual compliance with the financial reporting standards, the accounting compliance gap analysis performed by the World Bank indicates a relatively long list of gaps, with respect to a number of standards (10) they were more serious, but there were also a number of less significant gaps. Important gaps were identified also in the cases of financial institutions’ reports studied, despite the fact that they are under the strictest regime and their reports are monitored not only by the general National Revenue Agency, but also by the ministry of finance and by independent supervisory bodies. A number of problems were also found with the statements under the National standard. In general it is found that, while no company can afford to not submit financial statements, what is submitted may have serious deficiencies.

In terms of audit practices, it was found that on too many occasions the audit reports referred only to the national standards, due to the fact that a large number of statements are compliant with the national standards and to a lesser extend with the EU endorsed IFRS. Thus the auditing profession seems to be setting the bar at the lower, national, standard, rather than at the higher international ones.

It is important to note that many of the deficiencies found may be due to changes in the international and national standards themselves. When reporting standards change, it takes a while for companies to restructure their internal accounting and reporting organization and logistics until they reach full compliance, and in the meantime compliance cannot be complete for natural reasons. Since both the international standards have been actively changing since at least the beginning of this century (in relation to well known global accounting and auditing scandals) and the national standards have also changed in several

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765 World Bank, op. cit..
766 Source: personal inference and informal inquiries with accounting specialists on the speed of implementation of changes in accounting standards.
steps, some of the accounting and auditing gaps may indicate not so much a lack of transparency, as a need for time and stability of rules. However, regardless of whether it is due to companies misreporting, or to the environment of quickly changing and unstable rules, actual financial transparency of businesses in Bulgaria at present is not very high.

**Accountability (law)**

*To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?*

**Score: 50**

The general legal framework for corporate governance in Bulgaria is relatively comprehensive and in many respects follows international good regulatory practice. A major plus in this respect is considered to be the adoption of a National Code of Corporate Governance in 2007, which later was adopted by the Stock Exchange in 2009 and became part of its regulatory framework. Investor, and specifically minority shareholder, rights are well provided for, and shareholders are enabled to share in the profits and to file suits. The laws are clear with respect to reporting requirements imposed on company management, and there are adequate provisions promoting the interests of other stakeholders such as employees and creditors, but at the same time there are no requirements for maintenance of “social” balance sheets or for the maintenance of specific relations with the various stakeholders. Importantly, whistle-blowing provisions are only beginning to be established in Bulgaria and the legal framework in this respect is not well developed. The laws and the corporate governance code do provide for the structure and responsibilities of the corporate governing bodies, and their members’ composition, duties and remuneration are well addressed. However, a major problem is that the role of the supervisory boards remains relatively poorly defined. This is a major flaw in the framework, which allows for various, unclear and inconsistent practices. A related complicating factor is that the legal framework lacks a requirement for institutional investors to disclose their voting strategies and practices. This adds another level of uncertainty and unpredictability of the companies’ governance practices for other stakeholders. Other weaknesses of the regulatory framework include a relative understaffing of the main supervisory body in the sector – the Financial Supervision Commission - which is combined with a lack of separate stock market oversight so that this duty is also with the commission. On the positive side, the Central Depository and the Commercial Register are two administrative bodies which improve information disclosure and thus contribute to the strength of the corporate governance legal framework. The rules governing the oversight in the business sector in Bulgaria are generally in place, but some important gaps remain.

**Accountability (practice)**

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769 World Bank, op. cit.

770 This is not the case with the Bulgarian National Bank which has sufficient resources to supervise all aspects of the banking sector.
To what extent is there effective corporate governance in companies in practice?

Score: 25

Corporate governance is one of the weakest aspects of the Bulgarian business reality. This is empirically illustrated by the fact that in both available internationally reputable competitiveness rankings the indicators for this aspect of the business environment are among the worst of all Bulgarian indicators. The 2011 edition of IMD’s World Competitiveness Yearbook\textsuperscript{771} shows that the “business effectiveness” group of indicators is the one in which Bulgaria lags the most relative to the other countries studied, and specifically it ranks 56\textsuperscript{th} out of 59 countries in terms of business governance practices. The Global Competitiveness Report of the World Economic Forum also indicates\textsuperscript{772} that Bulgaria ranks 111\textsuperscript{th} in efficacy of corporate boards and 124\textsuperscript{th} in actual protection of minority shareholder interests, out of 139 countries studied.

The World Bank review of corporate governance\textsuperscript{773} finds that the role of supervisory boards is not well developed in practice, and do not manage to play their envisaged role in overseeing major decision, providing guidance and implement controls. Appointment procedures to the boards do not follow good practices, and conflicts of interest are very common among Bulgarian companies, especially within holding groups and are regularly not reported by directors and managers.

An additional weakness in the corporate governance structure in Bulgaria is the fact that the court system does not seem to provide guidance and clarification. They have failed to establish the effective meaning of terms such as “good faith”, “fully informed basis”, “due diligence”. Courts are also found to be a problematic link in the enforcement of the legal framework, even though the Bulgarian National Bank and the Financial Supervision Commission have clear and well delineated powers which they have the reputation of enforcing reasonably well.\textsuperscript{774}

In general, corporate management in Bulgaria has to answer about its decisions to board, shareholders, and society at large only to a limited extent.

Integrity mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

Score: 25

There are three major national business organizations, encompassing a practically all Bulgarian businesses larger than micro-enterprises. These are the Confederation of Employers and Industrialists in Bulgaria (CEIBG\textsuperscript{775}), the Bulgarian Chamber of Commerce and Industry (BCCI\textsuperscript{776}), and the Bulgarian Industrial Association (BIA\textsuperscript{777}). The statutes of all three


\textsuperscript{774} Ibid.

\textsuperscript{775} \url{http://ceibg.bg/index.php}.

\textsuperscript{776} \url{http://www.bcci.bg/index.htm}. 

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organizations include mentions of ethical behavior on the part of their members. This relates mostly to requirements for fair competitive practices and prompt submission of information. However, the only one which has a separate code of ethics is the BCCI. In all cases, including the existing single ethics code, there is no direct tackling of issues of corruption, and there are no mandatory anti-corruption measures required. It is indicative, that there are no sanctions for following unacceptable practices – even the sole existing written code does not foresee any penalties for non-compliance. The existing business-generated normative documents allow for anti-corruption interpretation only indirectly – by the possibility to treat corrupt practices as a breach of fair competition and treatment between members of the business community.

The National Corporate Governance Board recommends that supervisory and management boards of Bulgarian companies adopt explicit codes of ethics and conduct. However, in 2008 it was found that an insignificant proportion of even the largest companies had adopted and published such codes. Neither the state regulatory framework, nor internal company regulations provide for whistle-blowing mechanisms and procedures. Thus large corporations do not have internal anti-corruption regulations and do not have respective internal mechanisms and bodies designated for dealing with this aspect of their activities. There are only several existing legal norms with respect to the anti-corruption integrity of businesses in Bulgaria. First, bribery is criminalized for both giver and taker, and there is an envisaged possibility for either side to alleviate punishment by cooperating with the investigation and the prosecution of the other side. The existing legislation envisages serious punishments in such cases. However, criminal responsibility is strictly personal. The issue of corporate liability in cases of proven bribery is tackled in the Law on Administrative Offences and Sanctions, but this development is relatively recent and the framework is still not well developed.

Bulgaria is party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The March 2011 review of Bulgaria’s progress in compliance with the Convention indicates that Bulgaria complies with many of the normative requirements, but that serious deficiencies in the framework still remain. The last example of existing normative base for business integrity is the affiliation of many Bulgarian companies with large international business groups which have already more or less well developed internal integrity normative frameworks. Many Bulgarian companies, especially large ones, are owned by such groups. In these cases the existing integrity frameworks of the parent companies also apply to the Bulgarian members of the group. The existing mechanisms to ensure the integrity of the actors in the business sector in Bulgaria are patchy and at present can have only a limited role.

779 Ibid.
781 Ibid., p. 5.
782 The most important aspects of punishing bribery are regulated in articles 301-307 of the Penal Code and articles 83a-f of the Law on Administrative Offences and Sanctions.
784 Ibid., p. 4.
785 These include, for example, all electrical distribution companies, almost the whole beer producing sector, many banks and some firms in the manufacturing sector.
Integrity mechanisms (practice)

To what extent is the integrity of those working in the business sector ensured in practice?

Score: 0

As scant as the public or private normative basis for business integrity is in Bulgaria, the practical application of integrity requirements is even more difficult to discern. With small exceptions, Bulgarian companies do not have internal integrity regulations, except in protecting themselves from potential conflicts of interest and opportunism of employees, and respective practices are not followed. These small exceptions, as already mentioned, include daughter companies of larger multinational business groups, where such mechanisms and their enforcement is imported from abroad. A confirmation that in some cases these requirements are followed can be found in the frequent complaints by such foreign-owned companies’ representatives that their non-engagement in corrupt practices creates a discernible competitive disadvantage for them within the country. Conflict of interest, as well as whistle-blowing, legislation and enforcement is a relatively recent development in Bulgaria. In both cases, the high level of ownership concentration in Bulgarian companies translates into a relative lack of observance of these standards in practice.786

An extended search through business organizations’ documentation, as well as information from interviews with representatives of these organizations results in finding no publicly available blacklist of companies which have been found to engage in practices which breach integrity standards, and the number of Bulgarian companies and business organizations which have signed integrity pacts787 is negligible.

At the same time, when cases are proven, the general penal provisions for both domestic and foreign bribery do apply. The number of cases of bribery which have ended with actual sentences has increased from 35 in 2004 to 130 in 2009, the last year with detailed data.788 Non-detailed data for 2010, as well as the OECD monitoring visit covering the first half of 2010789 indicate a further increase for the year as a whole. At least one of the sentences has been for a case of foreign bribery.790

In general, actions on the part of the business sector in Bulgaria to ensure the integrity of those active in it are negligible and there are no tangible enforcement efforts to impose the existing framework of rules in this respect, as limited as it is.

ROLE

Anti-corruption policy engagement

To what extent is the business sector active in engaging the domestic government on anti-corruption?

787 Such as, for example, the UN Global Compact. Data on companies signed the Compact available at [http://www.unglobalcompact.org/](http://www.unglobalcompact.org/).
789 OECD, op. cit., Annex 5, p. 50.
790 Ibid., Executive Summary, p. 4.
All three major Bulgarian business organizations\textsuperscript{791} declare high priority for the issues of corruption and for the fight against it. Since all of them are regular and active members of the national tripartite commission\textsuperscript{792}, they are in a position to raise policy issues, to propose measures and to defend positions. Given that corruption is consistently among the top concerns of Bulgarian businesses, they often use this forum to apply pressure on the government to deal with corruption.\textsuperscript{793}

Most concretely this pressure can be traced in the various proposals on the part of business organizations with respect to proposed changes in the Public Procurement Law. As already mentioned, public procurement is one of the areas in which businesses declare that they face most significant and regular problems with corruption. For this reason they, through the tripartite commission or other means of communication, continuously propose changes in the respective legislation, with fighting corruption being among the usual motivations.

The number of Bulgarian companies subscribing to the UN Global Compact is 25\textsuperscript{794}, which is a very small proportion of businesses in the country. Of the larger business organizations, the only member is BIA. This venue for engagement in the fight against corruption at the policy level is not yet popular with Bulgarian businesses.

In general, Bulgarian businesses do claim that they perceive corruption as a problem and that the fight against it is on their agenda, yet their engagement in these issues cannot be seen as a major priority.\textsuperscript{795}

**Support for/engagement with civil society**

*To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?*

**Score: 0**

There are two main and publicly established civil society initiatives for studying and fighting corruption in Bulgaria: Transparency without Borders (the Transparency International branch in Bulgaria), and Coalition 2000 (a coalition of a number of non-government organizations and scholars aimed at combating corruption). None of their projects have been financed or supported by Bulgarian businesses, with the exception of occasional participation by business people and representatives of the business community in events organized by the two civil society groups. Implicitly, businesses also do have an input in their products by relatively ready and active participation in the surveys conducted by both.

A check with the present and past activities of the major business associations indicates that there is only one project which is indirectly related to the area of corruption, and has the

\textsuperscript{791} CEIBG, BCCI, and BIA.

\textsuperscript{792} With the official name National Council for Tripartite Cooperation, this commission is a consultative body consisting of representatives of the government, the major nationally representative employer organizations, and the major nationally representative employee organizations. It is firmly established in the Bulgarian policy-making process and many laws demand consultations through the commission before bills and policies can be officially adopted.

\textsuperscript{793} Source: various press releases by BCCI and BIA released in connection with the activities of the tripartite commission.

\textsuperscript{794} As of June 30, 2011.

\textsuperscript{795} Sources: official documents of CEIBG, BCCI, BIA, Transparency International Corruption Perception Index for Bulgaria, various years,. Interviews with representatives of Bulgarian business.
potential to involve civil society organizations. It is financed through the European Social Fund through the national “Human Resource Development” operating program, and is realized by the BCCI with the goal to increase awareness and intolerance towards the grey economy practices in the country. Inasmuch as the grey economy is much more susceptible to the use of corrupt practices and the application of corruption pressures, opposing the grey economy inevitably involves the development of measures and proposals related to fighting corruption.

An extensive search among both civil society organizations and business organizations in Bulgaria indicates that there are no instances of financial support on the part of businesses for initiatives on the part of civil society to combat corruption. So far, support on the part of businesses or business organizations for such initiatives takes almost exclusively the form of devoting time and efforts to be partners of such initiatives, or to participate in corresponding public events.

In general, the business sector in Bulgaria does not engage with or provide support to civil society in tackling corruption, except for some very limited direct involvements.

Recommendations:

By far the weakest area of Bulgarian business with respect to the indicators evaluated here is the area of business integrity in terms of both law and practice. Therefore it is precisely this area which offers the broadest set of recommendations which can be expected to have a significant effect. A set of recommendations for further improvements ensuring further improvements includes:

- Work with the major business organizations in the country to elaborate general ethical and specific anti-corruption codes as well as elaboration of such codes by separate companies, especially the larger ones.
- Introduction of a legal requirement for companies who participate in public contracts to have such codes as a prerequisite for participation. This can be done both at the national and the EU level.
- Whistleblowing legislation needs to be enhanced.
- Further improvements in the regulation of conflict of interest are needed.
- Companies should be encouraged to appoint chief compliance officers with respective powers.
- Companies found to engage in bribery and other unethical practices should be publicly blacklisted.
- Business organizations should include among their training courses and topics the issues of ethics and integrity with respective company policies and practices.
- Legislation related to corporate governance needs to make the definition of the role of supervisory boards clearer.
- Company liability for engaging in unethical business behavior should be strengthened.