

ABUSE OF STATE RESOURCES FOR PARTY-POLITICAL AND ELECTORAL PURPOSES [SUMMARY]



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The document sets out a summary of the analysis entitled ‘Abuse of government resources for party-political and electoral purposes in Bulgaria’ — a one-of-a-kind study conducted by a team of researchers under project *Effective Combat against Corruption. Supporting Stakeholders in Implementing Anti-Corruption Standards*. The project is implemented by the International Foundation for Electoral Systems (IFES) and the Central and Eastern Europe Law Initiative/CEELI Institute) with partners from Bulgaria, Romania, and Montenegro with financing from the US Department of State (DoS/INL). The Bulgarian Institute for Legal Initiatives is the project partner for Bulgaria.

The unabridged analysis in Bulgarian is available: [HERE](#)

In terms of methodology, the document follows the methodological algorithm of the ‘Abuse of State Resources Research and Assessment Framework. Guidelines for the Democracy and Governance Community of Practice. (IFES, 2018) and materials of the OSCE/ODIHR, GRECO, etc. It is intended to be used as a tool for analysis of a political system based on the principle of separation of powers and checks and balances, free and fair elections, and independent institutions. For the sake of completeness, the analysis of the state of play in Bulgaria also explores elements of state capture. The main methods used are legal analysis, desk research, in-depth interviews, analysis of information available in the public domain (data analysis) and case studies.

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The opinions, findings, evaluations and proposals set out in the analysis are those of their authors and cannot in any way be interpreted or construed as expressing the opinion of the project partners or the financing organization.

The full analysis comprises the following thematic sections:

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MAIN CONCLUSIONS

The abuse of state (public) resources for party-political and electoral purposes is a **special form of corruption**. Corruption has a detrimental effect on society, but this particular form requires special vigilance because the abuse of state resources for electoral purposes distorts the level playing field for all actors seeking election. Where abuse, diversion or misuse of the advantages of power in an election becomes a norm, a case can be made that a threat is present that limits, and in certain cases suspends, the fundamental requirements for free and fair elections as a hallmark of the democratic nature of the political system. This deprives citizens of political rights.

In Bulgaria, the abuse of state resources for party-political and electoral purposes is understudied. Journalistic investigations dedicated to electoral fraud have occasionally made their way into the public domain. In the last 5-6 years, international organizations and researchers have started paying more attention to these flaws of the election mechanism as instances of abuse of public resources for electoral purposes have become more frequent and their scope has expanded. In 2015, the OSCE defined this form of abuse as the *'unlawful advantages gained by certain parties and candidates through their official position or connections to the executive branch of government with a view to influencing the election results'*.¹

The abuse of public resources with a view to influencing election results has various dimensions and manifestations, for example misappropriation of public resources allocated to different infrastructure projects, social transfers from the budget and public works procurement contracts where most payments are typically delayed and made immediately before an election as opposed to when they are really needed. Another instrument is mounting pressure on individuals and legal entities to make 'donations' against threats and/or promises of a continued pipeline of public procurement contracts and the receipt of other payments after the election; putting pressure on civil servants to act in a manner that props up and helps the ruling party to remain in power, etc. When these examples become systemic, they present a clear threat to rule of law and to the independence of law enforcement and justice administration bodies and institutions, which has a direct and strongly detrimental effect on the rights of citizens.

The national Constitution adopted on 12 July 1991 intended Bulgaria to be constituted and to develop as a modern European democracy. The exact wording used in the Constitution is a 'democratic, social State based on the rule of law'. This formula outlines the main dimensions of the 'political project' in the framework of which the rule of law aims to safeguard individual human freedom and personal achievement, the social component is intended to mitigate and prevent social inequality, uphold the right to decent minimum subsistence and achieve social fairness while the 'democratic' component serves to maintain political freedom while playing a balancing role, ensuring pluralism of thought and opinion in political life and enabling public engagement and participation in government through the initiative of active citizens².

The republican and parliamentary form of government in Bulgaria stems from the institutionalized concept of the 'common good', with fundamental and objectively justifiable values such as peace, freedom, equality and justice at its core, each having a link to the basic dimensions and aims of democratic governance, the social State and rule of law. This type of modern European state has its foundations rooted in the constitutional principles underlying the political system, such as the

¹ OSCE/ODIHR. Handbook for the Observations of Campaign Finance. 2015, p. 66

² See Bliznashki, G. Form of the State, Saint Clement Ohridski Publishing, Sofia, 1999, p. 40.

sovereignty of the people (Article 1(2) and (3), rule of law (Article 5), separation of powers (Article 8) and political pluralism (Article 11(1)).

Elections are an act by which the people delegates powers to its elected representatives to exercise State authority on its behalf. In free and fair elections, the sovereign votes on the political alternatives presented to it and unambiguously endorses or rejects the proposed trajectory along which the country is to develop. As a result of elections parliamentary majorities form and take responsibility for the governance of the country, drawing legitimacy for taking action 'in the name of the people'. In a democratic environment, elections are the foundation for the legitimacy of political power.

In the constitutional sense, the **people can be regarded as an electoral corps**, which includes all Bulgarian citizens capable of political action. In the context of popular sovereignty, general elections clearly and unambiguously assume the features of a mandate, i.e. the powers vested in members of parliament flow from the stated will of voters, which endorse one political platform over another. It thus follows that the majority in the National Assembly has a duty to achieve the goals which the political party that wins the election has proclaimed during the election campaign on the strength of winning the popular vote and therefore a mandate to govern, with the members of Parliament from the majority supporting its political line.

In a constitutional democracy an election is the means through which citizens capable of political action express their will as to who is to represent them in Parliament. **Elections do not transform political representatives into a source of power³. Elections do not deprive the people of its sovereignty.** The act of casting a vote is an expression of popular sovereignty. As a natural consequence, parliamentary rule becomes a constitutionally defined strife between political parties vying for gaining control of government and exercising public authority.

The Constitution envisages mechanisms for the transfer of power from the sovereign (the people or citizens capable of political action) to specific individuals (empowered individuals exercising public authority or members of collective (collegiate) bodies, called public officials in the broadest sense of the word) who are typically representatives of political parties and exercise public authority with the assistance of administrative services (officials called civil servants or public officials in the narrow sense of the word). Because of this complex 'transfer' process a question arises as to the degree to which power resources are used by the incumbents in the public interest without any influence from private, individual, party-political, corporate or group interests⁴.

Broadly speaking, two approaches can be taken to the study of the abuse of state resources⁵ for electoral purposes: 1) legalistic and 2) substantive. The first approach focuses on the legal framework and practice of abuse and the second places an emphasis on the practical manifestations of this abuse. The authors of this analysis have largely relied on the first approach because their aim is to study the legal framework and the way it is applied in order to give proposals for changes capable of effectively preventing and penalizing abuses of state resources for party-political and electoral purposes. The key laws and bylaws, Bulgaria's obligations under international treaties and the effectiveness of their

³ Stoychev, S. Constitutional Law, 5th supplemented edition, Ciela Publishing, Sofia, 2002, pp. 302–303.

⁴ The private interests of a person typically include any benefit for the person concerned or their family, relatives, friends and associates or other parties from companies or organizations, including the political parties with which the person is affiliated or has political ties to. Private interest also extends to any encumbrance, be in financial or in the form of an obligation, attaching to the public official, their family or an organization affiliated with them.

⁵ In literature a distinction is made between state and public resources. For the purpose of the analysis, the authors have used the concepts interchangeably insofar as the deficiencies of the system of separation of powers and checks and balances in Bulgaria allow the government to intervene in the decisions on how de facto independent public institutions spend public resources. The approaches, where they exist, to defining public resources, public funds, etc. have also been examined in the analysis.

application have been examined. An analysis of the environment has been conducted, which includes the general framework for public service delivery, the financing of election campaigns and political parties, the possibilities for advocacy and civic monitoring, the media and public information landscape, and the general framework for public procurement. The second part of the analysis includes an assessment of applicable regulations and case-law in the work of institutions whose powers and responsibilities extend to the prevention, investigation and application of sanctions in cases of abuse of state resources for electoral and party-political purposes.

Although specific examples have been used by way of illustration, the study of the most prominent manifestations of abuse of state resources for electoral purposes requires multifaceted expert input and significantly greater material, technical and human resources as well as cooperation between the non-governmental sector and public institutions. In this sense, this analysis should be regarded as an open invitation to discuss a problem, which the public perceives as an outstanding issue and the international community has identified as significant and highly relevant.

The authors of the analysis are fully aware that Bulgaria at present is a captured state. This belief informs both the analysis and the recommendations of the authors. We have attempted to single out ideas that can improve the environment that cannot later be used arbitrarily or as instruments for putting political entities (parties and candidates) under pressure.

The analysis of the abuse of state resources places a strong emphasis on the general framework for public service delivery in Bulgaria. **Public services are intangible goods provided by an entity under public law (the central or local government acting through their respective bodies)**, the administrations under their jurisdiction or organizations established by a decision of the central government or local authorities (municipalities). Public service delivery is part of public sector management⁶, aiming to ensure the effective disbursement and utilization of material, labor, financial and intangible resources available to public institutions and their organizations with a view to achieving common goals. Public service delivery is linked to the **decentralization of financing and the delegation of responsibility for public service delivery to local authorities**. Challenges associated with decentralization—an otherwise well-functioning approach—emerge on account of the gap between the funds municipalities disburse on public service delivery and their capacity to adequately finance the respective services. In effect, decentralization operates through the delegation of certain functions relating to public service delivery by the central government to local authorities. In this case, the responsibility for public service delivery in the local community lies with the central government while the actual services (education, healthcare, waste collection and disposal, etc.) are provided by the municipalities. Public service delivery decentralization has several advantages, most notably the better understanding of local authorities of the needs and preferences of local communities. They also enhance the influence of local political leaders on citizens, particularly well public services delivery is adequately arranged; increase the responsibility of local representatives before voters; ensure possibilities for greater engagement of citizens in local government and strengthen the democratic process while continually improving the range and quality of public service delivery.

⁶ Organizational management has three elements. The first element is the governing entity, which comprises the persons who represent public institutions or the heads of the organizations or enterprises which apply the best methods to influence the work of the civil servants and employees of the administration or the relevant institution or organization. The second element is the governed entity, which encompasses the societal relations that emerge in the course or in relation to the activity of the persons who represent the institutions or the heads of public organizations or enterprises. The third element is the process of governance, which comprises the following stages: data gathering, processing of input data, handover of processed data and information to the governing bodies and receiving feedback.

The review of the administrative services listed in the Administrative Register shows that a **significant number of administrative services are provided by central government bodies and the respective administrations under their jurisdiction.**

Which administrative department provides the services	Number of services
Services provided by the administration of the central government	2 111 ⁷
Services provided by administrative services at provincial level	157 ⁸
Services provided by municipal administrations	21 ⁹
Services provided by specialist territorial administrations	151 ¹⁰
Services provided by all administrations	3 ¹¹
Total services provided by all administrations	2 443

A strong emphasis has been placed on the **general framework for election campaign financing in Bulgaria**, which is governed by the rules laid down in the Electoral Code. The Political Parties Act, the State Budget Act, the Accountancy Act and several other laws and bylaws are also relevant to political party financing and spending both during and outside election campaigns.

Statutory powers to enforce and monitor compliance with the provisions and limitations on political party financing are vested in the National Audit Office. The NAO keeps a public register of all political entities registered to participate in the respective type of election. The register is updated at the beginning of each election campaign and kept until the next election of the same kind. **The powers vested in the National Audit Office are limited to performing ex-post documentary checks. The NAO does not monitor compliance with the law on an ongoing basis during election campaigns.** This is due to the fact that the NAO does not have investigative powers — its principal function and responsibility by law is to audit public spending.

The Political Parties Act does not define the categories of expenditure that are essential to the functioning and activity of political parties. This ‘gap’ leaves a wide margin of discretion as to the expenditure political parties are able to lawfully incur (for example trips to exotic destinations, expensive gifts to their leaders, cigars, etc.)¹² The **main weakness of the financial control performed by the National Audit Office** of the activity of political parties is that checks are performed on an ex-post basis and primarily on the basis of documents. This is to a large degree due to the lack of clear rules and provisions in the Political Parties Act and cannot be attributed to the standard of work of the National Audit Office. The fact that the chairperson and the board of the National Audit Office are appointed by the National Assembly weakens the independence of the institution. This is so because the Parliament determines the NAO’s *modus operandi*, on the one hand, while also electing its

⁷ Administrative register https://iisda.government.bg/adm_services/services/from_central_administrations [27.9.2020]

⁸ Administrative register https://iisda.government.bg/adm_services/services/from_special_territorial_administrations [27.9.2020]

⁹ Administrative register https://iisda.government.bg/adm_services/services/from_regional_administrations [27.9.2020]

¹⁰ Administrative register https://iisda.government.bg/adm_services/services/from_municipality_administrations [27.9.2020]

¹¹ Administrative register https://iisda.government.bg/adm_services/services/from_all_administrations [27.9.2020]

¹² Mediapool. Volen Siderov on the beach in Havana to study ‘colonialism’ [11.12.2013] <https://www.mediapool.bg/volen-siderov-na-plazh-v-havana-za-da-izsledva-kolonializma-...news214546.html>

president and board members. In addition, by the law the National Audit Office reports only to the national Parliament.

Political parties are also required to draw up annual financial statements. (Article 34(1) of the PPA). The financial statements for the previous calendar year are subject to independent financial audit and certification by an independent financial auditor. (Article 34(2) of the PPA). At the same time, the financial statements of political parties raise a number of concerns, including in relation to their audit and certification by financial auditors. For example, there is no requirement for rotation of the auditors responsible for auditing political parties. As a result, the same auditor can certify the financial statements of the same political parties for years. Likewise, there are no special requirements for the audits performed by independent financial auditors on political parties. The problem is compounded by the lack of guidelines or standards published by a government institution and no information is available as to whether statutory auditors receive special training. The problem has been singled out by GRECO's report on the third evaluation round, which states that the recommendation for enhancing the standards for independent financial audit and extensive cooperation in the professional community has not been fully implemented¹³.

In his response to an enquiry submitted by BILL under the Access to Public Information Act to the Commission for Public Oversight of Statutory Auditors of 5.2.2019, the Chairperson of the Commission stated the following: *'There are no forms of cooperation between the National Audit Office and the Commission for Public Oversight of Statutory Auditors for the purpose of enhancing the standard of auditing political parties and election campaigns because the Commission is a specialist government body, which performs regulatory and oversight functions vis-a-vis the professional activity of statutory auditors, the activity of the Institute of Chartered Accountants, in the cases envisaged in the Independent Financial Audit Act, and the activity of audit committees of enterprises of public interest. The Commission does not have statutory powers relating to the audits performed on political parties and election campaigns nor does it have any functions or responsibilities relating to the development and enhancing the standards that apply to the audits of political parties and election campaigns. The reply received from the Commission for Public Oversight of Statutory Auditors further makes it clear that the institution is not involved in training or information activities relating to the audit of political parties and election campaigns. It is more specifically noted that: 'The training of the statutory auditors entered into the register kept in accordance with Article 20 of the Statutory Financial Auditors Act is within the remit of competence of the Institute of Chartered Accountants.'*

Regarding **citizen control, monitoring and public participation in the processed relating to the financing of political parties and election campaigns**, the authors note that oversight is limited to a handful of civil society organizations.

The political environment has polarized the role of the civil society sector in the public domain, which compounds the multiple obstacles civil society organizations encounter in their work. A campaign aiming to smear and stigmatize non-governmental organizations is led by politicians.

The issue of political party financing is occasionally raised (typically in the context of approaching elections) but rhetoric from all segments of the political spectrum to date has had a strong populist bias without doing anything to address the underlying issues.

The institutions are also failing to take effective action to increase transparency and the authors have noted that **no information is available about cases of abuse of public resources reported to the**

¹³ GRECO. Third Evaluation Round. Theme II. 1 October 2010 and GRECO. Addendum to the Second Compliance Report February 2016

competent institutions. Institutions can set a good example by publishing in their reports (or via another communication channel) information about the cases of alleged abuse of public resources reported to them and the action taken in those cases.

The analysis highlights the **media environment and the problems relating to media independence**, which affects the way in which violations of the Election Code and the electoral process are reported. The authors of the analysis have found that only a handful of journalists have attended specialist training on reporting elections.

A major part of the analysis is dedicated to the lack of clear legislation and case-law on the restrictions for companies to which public procurement contracts are awarded and the recipients of other government grants to engage in political activity. Bulgarian legislation expressly prohibits the direct involvement of any corporate structures (enterprises, not-for-profit organizations) in political party building and, therefore, in the game of politics. Thus, all legal entities, including those to which public procurement contracts have been awarded or grants from public funds have been given are prohibited from being directly involved in politics understood as participation in elections.

However, the situation is different when it comes to natural persons to whom public procurement contracts have been awarded, whether or not in consortiums with legal entities, and with natural persons in their capacity as members of the managing or supervisory boards of legal entities. **The general presumption of the lawmaker is that there is no barrier to such persons becoming involved and participating in political life in their capacity as citizens in parallel to pursuing their business in a personal capacity or through a legal entity.** There are several exceptions to this general principle.

A broad interpretation of the definitions of conflict of interest and benefit laid down in Article 54 of the Law on Countering Corruption and Confiscation of Unlawfully Acquired Property Act (LCCCUAP) warrants the conclusion that a conflict of interest may arise for natural persons linked by virtue of their membership of a political party, which has nominated the head of the contracting authority in a public procurement tender or an official of the contracting authority, or parties not formally employed by the contracting authority but engaged in developing the specifications for the tender. In this case, the natural persons would be covered by the provision of Article 54(2) of the LCCCUAP, meaning that they would be prohibited from submitting a bid in the tender on account of a conflict of interest. **However, existing case-law does not offer examples of such broad interpretation of the provision concerned.** Furthermore, if such case-law existed it would be at odds with the basic principles underlying economic life in Bulgaria.

According to Article 52 of the LCCCUAP *‘A conflict of interest arises when a senior public official has a private interest that may influence the impartial and objective performance of the powers and duties vested in their office’*. Private interest is defined in Article 53 of the same law as *‘any interest that leads to a material or immaterial benefit for a senior public official or parties related to them, including each obligation undertaken’*. According to the law the list of senior public officials expressly includes *‘the chairpersons of political parties, which receive a subsidy from the State, their deputies and the persons who represent the political party in accordance with its Articles of Association’* (Article 6(1)(41) of the LCCCUAP). This warrants the conclusion that this category of officials and the parties directly related to them, when party members, may not take part in public procurement tenders either as individuals or in the capacity as members of the managing boards of legal entities. In a broader sense, this statutory prohibition corresponds to the prohibition of civil servants *‘holding senior office or serving in a control capacity on the board of a political party’* (Article 7(2)(7) of the Civil Service Act).

Regarding the restrictions on the financing of political activity by public contracting authorities and the lack of any provisions on the time periods for implementation of public procurement contracts in

relation to elections, the authors believe that **a possibility exists for part of the money accumulated by donors under public procurement contracts to be effectively 'invested' in the election campaign of a given political party.**

There are no provisions restricting or prohibiting the proceeds from the implementation of public procurement contracts or other public funds received to be donated to a political party. Likewise, accounting regulations also do not contain an express requirement for the disclosure of the donations by donors. However, the Political Parties Act does stipulate that political parties are obligated to keep a public register, which contains extensive information, including about the type, amount, value and purpose of each donation received (Article 29(2)(1) of the Political Parties Act. The same register contains statements from the donors in which they are required to disclose the origin of the funds donated, when the amount of the donation exceeds the minimum wage (Article 29(2)(2) of the Political Parties Act).

The second part of the analysis contains a review and assessment of the legal framework and the institutions responsible for the prevention, investigation and applying penalties in cases of abuse of public resources for party-political and electoral purposes. This warrants the conclusion that different definitions and interpretations are applied when it comes to this type of financing. Some examples of the terms used include 'public funds', 'public financing', 'public resources', 'public administrative resources', etc. Overall, **applicable legislation does not prescribe a single approach to supervision, control, and the application of penalties in cases of abuse of state resources**, including with regard to the abuse of state/public resources for party-political or electoral purposes. There is no coherence between the different laws and bylaws regarding the terms used, including at the level of definitions of state/public resources. This is not necessarily a deficiency of the legal framework because the various institutions have different powers and functions relating to the oversight and control of public funds and therefore rely on different instruments and exercise different powers. On the other hand, it indicates a lack of sufficient clarity as to the remit of competence and functions of each body.

An analysis has been conducted of the powers and level of effectiveness of the various competent institutions, including the Bulgarian Prosecution Service, the National Audit Office, the Commission for Countering Corruption and Confiscation of Unlawfully Acquired Property, the State Financial Inspection Service and various ad hoc parliamentary committees established in the wake of public scandals relating to suspected corruption, including bodies established by decrees adopted by the Council of Ministers.

The review of some of the institutions concerned in the prevention, supervision and the application of penalties in cases of abuse of state (public) resources warrants the conclusion that **the remit of their competence and powers is formally sufficient to enable corruption and the abuse of state (public) resources to be effectively countered and prevented.** The Prosecution Service is the only institution that can bring criminal charges where there is sufficient evidence that a corruption crime has been committed. However, the other institutions and bodies also have quasi-investigative functions. With regard to the effectiveness of the institutions concerned in practical terms, the authors emphasize the long-standing expert assessments of the functioning and effectiveness of the prosecution service, its independence and the need to strengthen the system of the internal inspection services under the jurisdiction of the Office of the Inspector-General of the Council of Ministers.

The accountability of the abovementioned institutions has three dimensions: 1) control on the basis of internal subordination; 2) judicial review of the decisions issued by the bodies; and 3) parliamentary oversight. **However, parliamentary oversight is ineffective, and the reports of the competent institutions tend to be perfunctory.** Debates in Parliament are either ineffectual or totally

missing, although the situation calls for close scrutiny and robust debate on whether spending corresponds to the results achieved.

An assessment of the effectiveness of the institutions tasked with the prevention and countering of abuses of state resources for party-political or electoral purposes has also been conducted. Regarding the prosecution service, the authors note that the **activity of the prosecution service has political implications** because its work involves the investigation of public officials, including senior government officials. Looking back at the track-record of the prosecution service over a period of several years, the authors find **highly publicized police raids supervised by the prosecution in the runup to elections or immediately before or on election days. However, none of these had led to convictions or the defendants were subsequently acquitted of any wrongdoing.**

Regarding the **election administration and the organization of elections**, the election board is often accused of favoritism by both stakeholders and candidates in the elections on account of the administrative action taken in certain cases, regardless of whether the organizational arrangements of the elections are concerned or the decision of the board to examine or dismiss a complaint received.

The rules governing the procedure for the election of sole or collective bodies with competence to act in cases of abuse of state resources for party-political or electoral purposes **consistently fail to provide the necessary level of public assurance that the designated and appointed public officials satisfy the requirements for independence, impartiality, professionalism, integrity, etc.** This has continually undermined and accounts for the low level of public trust in institutions and has a negative effect on the entire process of decision-making. It also has a strongly repulsive effect on citizens and civil society organizations. The main procedural problem appears to be that election procedures are conducted at the discretion of the Parliament without any input from other the other branches of government or civil society in breach of the principle of checks and balances. In order to raise the democratic standard for electing and confirming public officials, we recommend that the procedures be 'opened' to the public by separating the stage of nomination (which should be open to professional associations, civil society organizations and the academic community as well as enabling other public institutions to put forth nominations) and the stages of conducting hearings, ex-ante checks to verify the track record of the nominees and voting.

The **internal rules and regulations of the institutions** have been examined in detail.

The review of the legal framework governing the powers, responsibilities and obligations of the institutions tasked with the control and oversight of **cases of abuse of public resources for party-political and electoral purposes** revealed that this type of abuse is **not regarded as a distinct violation but rather falls within a broader framework of violations (and criminal offences), which carries a risk of broad interpretations.** The most important element of the effective prosecution of abuses of public resources for party-political / electoral purposes is the training of the officials entrusted with the investigation and countering of this form of abuse. They should be able to identify all risks (situations or administrative departments that carry a risk), have thorough knowledge of the law and be well-versed in the best methods of prevention and application of sanctions. Extensive training should be provided to all relevant internal units, which must at the same time enjoy robust guarantees for their independence).

A number of analysts believe that Bulgaria has become a captured state. This is a special state of the democratic institutional infrastructure in which the decisions adopted by control, supervisory and regulatory bodies presumed to function independently, are not in effect independent but are perceived as serving the interests of a handful of well-organized influential individuals to the detriment of public interest, As a rule, the problem which affects the entire public administration in Bulgaria is

exacerbated when it comes to senior public/governmental officials who are typically 'faithful' to the powers that be and often fail the test for professional merit and integrity.

In view of the specific context and the problems stemming from the compromised independence of public institutions in Bulgaria as well as the degree to which institutions are captured by oligarchic interests, **no examples can be given where an institution's failure to discharge its statutory powers and duties has led to any negative consequences.** This is so because as a rule institutional decisions and actions favor the ruling party and its government and acolytes while also being occasionally used as an instrument for pressure on political and ideological opponents. **Despite this, the system is capable of demonstrably exerting strong pressure on the heads of public institutions who the powers that be consider 'inconvenient'.**

The internal rules and regulations of institutions (codes of ethics, etc.) do not place a special emphasis on the abuse of state resources for party-political and electoral purposes.

The only exception in this regard is the code of ethics of the Commission on Prevention and Confiscation of Unlawfully Acquired Property. Article 11 of the cited document expressly prohibits the abuse of state resources for either personal use or in order to procure a benefit for third parties.

RECOMMENDATIONS

The analysis of the legal, judicial and institutional framework of the abuse of public resources warrants the conclusion that the topic requires further in-depth study and discussion. It is necessary that the work, organization and rules governing the functioning of the relevant institutions be improved. In this context and on the basis of the findings and conclusions relating to the prevention, investigation and application of sanctions for abuses of state resources, the authors of the analysis have drawn up the following **21 recommendations** as a basis for further professional discussion:

1. Improvement of the legal framework governing public administrative resources (Election Code, §1(18) of the Supplementary Provisions and the Methodological Guidelines adopted by the Central Electoral Commission). The definition of public administrative resources set out in §1(18) of the Supplementary Provisions of the Electoral Code is the starting point for improving the rules laid down in national law. Having conducted an analysis of the case-law on the application of the Election Code in the context of previous election campaigns (after the adoption of §1(18) of the Supplementary Provisions of the Election Code), the precision of the restrictions and prohibitions should be improved and their scope should be further expanded.
2. The inclusion in the code of ethics of civil servants of provisions on the abuse of state/public resources. The code of ethics of public servants, which was developed at the turn of the 21 century, does not set out an express prohibition for the use by public servants of public administrative resources during election campaigns. Both the Public Administration Act and the Civil Service Act, as well as code of ethics of the civil service, should be aligned to the prohibition of the use of public administrative resources during election campaigns laid down in the Election Code.
3. Aligning the body of legislation governing election campaigns (Political Parties Act, Direct Participation of Citizens in Public Governance at Central and Local Level Act, Local Authorities Act, National Audit Office Act, Countering Corruption and Confiscation of Unlawfully Acquired Property Act). The Election Code is the only statutory act, which expressly prohibits the use of public administrative resources for party political and electoral purposes. The Political Parties Act does not contain such a prohibition (where a party holds a senior position in a political party and a public office) in the period running up to elections and during election campaigns. The prohibition must also apply at local level, i.e. to local government officials (when they are not civil servants within the meaning of the Civil Service Act but are employees of the municipal administration).
4. Conducting an ex post impact assessment of the application of the provisions of the Election Code on abuse of state/public resources on the basis of relevant administrative practice and case-law.
5. Alignment to of national law to the rules laid down in the 'soft law' on abuse of public administrative resources and limitation of political corruption of the international organizations of which Bulgaria is a member.
6. Introducing more stringent standards for independent financial audit and certification of the annual financial statements of political parties through legislative amendments, improving interinstitutional cooperation and training in the professional community of auditors.

7. Development of a procedure (procedural rules) for ascertainment of abuse of public resources by the National Audit Office.
8. Strengthening the activity of the Office of the Inspector-General and the inspection services of the various institutions with a view to enhancing their competence to identify abuses of state resources for political purposes through training provided by the Public Administration Institute or together with experts from the non-governmental sector;
9. Introducing an express prohibition of abuse of office and public resources for electoral purposes to influence public perception during election campaigns into the internal rules, regulations and codes of ethics of public institutions.
10. Alignment of the approach to the introduction of a definition of public resources in national law in order to prevent conflicting interpretations.
11. Introduce a requirement for the declaration of the work of civil servants in the capacity of volunteers, regardless of whether or not using paid/unpaid leave.
12. Creating a public register to be kept by the Central Election Commission, which enables scrutiny and tracking of the media to which the political parties, candidates or initiative committees transfer the free media advertisement packages;
13. Creating a public register kept by the National Audit Office, which contains information about the sanctions imposed on political parties and candidates;
14. Strengthen the independence of the Public Financial Inspection Agency, including through its restructuring.
15. The competent institutions should public information in their reports (or via another communication channel) of the irregularities reported by citizens and the action taken in each case.
16. Ensure that the organizations on the public council to the Central Election Commission have proven experience in electoral matters. In order to achieve this, pertinent criteria should be developed, for example registration as election observers in the last election in Bulgaria), having a website, developed training materials for networks of observers, presented public reports from previous elections in which the organization participated with observers, etc.
17. Promoting and multiplying good practice through media coverage by journalists who specialize in election coverage, with input from experts from the non-governmental sector with specialist knowledge of the area, and organizing joint training events.
18. Streamline and reorganize the register of complaints and alerts kept by the Central Election Committee so that it provides information about the complaints and alerts received and the action and decisions taken in each case. In addition, introduce a functionality enabling search by key word.
19. The organizations and institutions, which keep public registers containing information relevant to the financing of political parties and campaigns should endeavor to ensure that the data contained in the register can be provided in electronic machine readable format (open data).
20. Improving the parliamentary rules of procedures and practices in regard to the appointments of the independent regulators and the parliamentary control on their activity, especially when the Assembly approves their annual reports.

21. Implementation of the principle of checks and balances of powers through creating opportunities for a broader institutional and civil participation in the procedures for nominating and electing the leadership of the independent control, regulatory and supervisory bodies, which are responsible for the detection, investigation, sanctioning and prevention of state resources for political and electoral purposes.

SELECT CASE-LAW ON ABUSE OF STATE RESOURCES IN ELECTION CAMPAIGN AND FOR BROADLY ELECTORAL PURPOSES

Annex No 3 to the annual report on activity of the Supreme Court of Cassation (SCC) and the report on the implementation of the Courts Act for 2019 set out a list of the judgments delivered in cases involving disputes concerning corruption. The cases involve crimes committed in office resulting in damaged for the respective government institution, but no information is available as to **whether the material damages or losses of earnings were in any way linked to achieving party-political/electoral goals**¹⁴. The only lawsuit that concerned abuse of state resources for electoral purposes, insofar as the act constitutes a corruption offence, is Case No 1228/2018, on the record of the Third Criminal Division, on the record of Justice Daniela Atanasova, in which charges were brought against the defendant pursuant to Article 167(4), ex-paragraph 2, sub-paragraph 2; 26(1) of the Criminal Code and Article 167(2) (2), in conjunction with Article 26(1) of the Criminal Code, against the Mayor of Uzundzhovo Village, Haskovo Municipality. The case involves a criminal offence committed by organizing and providing a benefit, in the form of property, to a third party as an incentive for that party to vote for a certain candidate, political party or coalition or to vote in a certain way in a referendum. The mayor was given a two-year prison sentence but the sentence was deferred by 4 years pursuant to Article 66(1) of the Criminal Code. The sentence also deprives the mayor from holding an elected or another public office for a period of 4 years. According to the judgment the inducement was in the amount of BGN 200 (two hundred Leva) but the court does not indicate the origin of the funds¹⁵.

The Supreme Administrative Court has adjudicated only a handful of cases under Article 168(3) of the Election Code, which prohibits the use of public administrative resources in connection with election campaigns. The legal definition of public administrative resources is as follows: *'budget funds, premises, motor vehicles, airplanes and other means of transport, equipment and other moveable and immovable property owned by the central or local government and made available to the civil service, government institutions and local authorities as well as State-owned and municipal enterprises, as well as the work of civil servants'* (§1(18) of the Supplementary Provisions of the Election Code). In Case No 388/2019 on the record of the Supreme Administrative Court (SAC) the case examines the organization of meetings of candidates of political parties, coalitions and independent candidates with voters during an election campaign at homes for the elderly and for people with disabilities without treating this as a violation of Article 168(3), which prohibits election campaigning in favor of candidates in a political race at such establishments.

In Case No 11882/2015 on the record of the SAC the court adjudicated a dispute in which the applicant alleged that the candidate for mayor in the local election in Yasen village, Pleven Province, breached the provisions of Article 168(3). The bench held as follows: *'In the case at hand, there is no evidence of the candidate in the mayoral race Yoto Dimitrov Dobrev having violated Article 168(3) of the Election Code. The photographs annexed to the petition of the applicant Radoslav Petrov Petrov as evidence show that during the election campaign the alleged actions (cutting and clearing shrubs and trees) were indeed performed. However, there is no evidence that the candidate for mayor Yoto Dimitrov Dobrev had anything to do with shrub trimming and clearing. At the time, the latter party was on leave*

¹⁴ SCC. Judgments delivered by the Supreme Court of Cassation in 2019 in cases regarding corruption crimes. 2019. <http://www.vks.bg/dela-za-korupcionni-prestaplenia-reshenia/2019.pdf>

¹⁵ SCC. Judgment No 18 of 16.9.2019 <http://www.vks.bg/dela-za-korupcionni-prestaplenia-reshenia/20190916-ndelo-1228-2018.pdf>

and the mayoral functions were discharged by a deputy. Furthermore, the photographs presented as evidence by the applicant Radoslav Petrov Petrov show only one person — a worker clearly involved in the works. Furthermore, the applicant's allegations that the shrub trimming and clearing was undertaken on the mayor's orders are unsubstantiated. On the contrary, it has been incontrovertibly established that the mayor had nothing to do with the exercise.

Since the mayor's office cannot discontinue functioning during the election campaign, undertaking activities within the remit of competence of the townhall that benefit the citizens of the agglomeration does not constitute an infringement. At the same time, there is no additional evidence whatsoever that during the election campaign the seeking mayor seeking reelection, Yoto Dimitrov Dobrev, used and/or abused public administrative resources (in the form of trimming bushes and clearing trees) during his election campaign. Due to the allegations set out in the petition being wholly unsubstantiated, the bench dismisses the application lodged by Radoslav Petrov Petrov.'

In Case No 11903/2015 on the record of the SAC the bench adjudicated a case in which the photographs used in the election flyers of a sitting mayor seeking reelection contained photographs from the mayor's office. In respect of the contested decision of the Central Election Committee, the bench found as follows: *'In the case at hand, the Central Election Commission's decision was that by using a photograph from his office in the townhall in a poster the sitting mayor seeking reelection violated the prohibition.'*

The bench concurs with this decision. The evidence annexed to the casefile (a poster used by the candidate in the mayoral race) shows the candidate photographed in his official capacity as sitting mayor in his office. The mayor's office is covered by the definition of 'public state resources' because it is a premise made available to the local government for the purpose of enabling the municipality to perform its statutory functions. The respondent denies that the photograph was taken during the election campaign — a time during which the mayor was on leave and the mayoral functions were discharged by the deputy mayor, meaning that the photograph did not constitute an infringement of the prohibition laid down in Article 168(3) of the Election Code.

The respondent does not deny that the photograph was taken in his office on the premises of the townhall. The poster contains an appeal for electoral support and the photograph it features shows a premise which according to the definition laid down by law constitutes public administrative resource. It is immaterial whether or not the photograph was taken during the election campaign. The relevant fact is that the photograph has been used as part of election promotion materials during an election campaign. The poster used in the election campaign does not specify whether the photograph was taken before the election campaign. On the contrary, the overall message is that the sitting mayor was photographed in his office specifically for the purpose of the election campaign.

This constitutes the use of public administrative resource, which has not been paid by the municipality, hence the decision of the Central Election Commission that the act constitutes an infringement of Article 168(3) of the Election Code.

In Case No 11948/2015 the SAC considered the following case: during the local election campaign a newsletter was published on the website of Dryanovo Municipality, which contained highlights from the report of the sitting mayor Ivan Nikolov on his work as mayor during his term in office in the period

2011-2015. The same material was published as a leaflet paid for from the budget of the municipality. The newsletter featured the following statement from the sitting mayor running for reelection: *‘I believe that by joining our efforts we will continue building a better and more prosperous future together for Dryanovo Municipality’*. The bench held that: *‘The cost of the printed newsletter was covered by Dryanovo Municipality, which means that the constituted an infringement of the prohibition of the use of public administrative resources within the meaning of §1(18) of the Supplementary Provisions of the Election Code. The printed newsletter also contained the abovementioned statement of the sitting mayor who was seeking reelection in Dryanovo Municipality and can therefore be construed as part of his election campaign. Furthermore, Decision No 91 of 9.10.2015 of the Municipal Election Committee of Dryanovo is in compliance with the provision laid down in Article 186(1), first sentence, of the Election Code. According to the provision in question ‘the mayor of the municipality, acting on a decision adopted by the district or municipal election committee and where necessary with assistance from the bodies of the Ministry of Internal Affairs, confiscates or removes election materials displayed or disseminated in breach of the requirements laid down in the Election Code. The contested decision adopted by the Central Election Committee is therefore correct.’*

However, the case-law of the Supreme Administrative Court under Article 168(3) should be considered solely in terms of the prohibition of the use of public administrative resources during election campaigns. The provision does not cover other cases of abuse of state resources.

In addition to judicial review and the case-law cited, administrative penalties and fines may also be imposed by the competent bodies under the Election Code.

There are no statutory or other barriers to sanctions being imposed. The main problems stem from the specificity of the methods used to capture regulatory bodies and from the persisting doubts in their independence and resilience to political pressure.