



# JUDICIAL REFORM REVIEW

BULGARIA  
VOLUME IV  
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# JUDICIAL REFORM REVIEW

for

## BULGARIA

*February 2013*

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## VOLUME IV



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## Introduction

The Judicial Reform Review (JRR) is an instrument developed by the American Bar Association Rule of Law Initiative (ABA ROLI). Its purpose is to assess a host of factors that are relevant to judicial reform in emerging democracies. At a time when legal and judicial reform efforts are receiving more attention than in the past the JRR is an appropriate and important assessment mechanism. It will enable the ABA, the organisations financing its work, and the emerging democracies themselves to better target judicial reform programs and monitor progress towards establishing accountable, effective and independent judiciaries.

The ABA has embarked on this project with the understanding that no uniform agreement on all particulars involved in judicial reform currently exists. In particular, it acknowledges that there are differences in legal culture that may lend greater or lesser relevance to certain issues in a specific context. However, having worked in the area for more than ten years, ABA has concluded that each of the thirty factors examined herein can have a strong impact on the process of judicial reform. Hence the examination of these factors forms a basis for the structuring of technical assistance programmes and for the assessment of important elements of the reform process.

The technical nature of the JRR as an assessment instrument distinguishes it from other independent assessment tools that are similar in nature, such as the U.S. State Department's *Human Rights Report* and the Freedom House *Nations in Transit* report. This assessment does *not* provide narrative commentary on the overall state-of-play of the judicial system in a country. Rather it identifies specific conditions, legal provisions and mechanisms that are inherent to the judicial system of a country and examines how well these correlate to specific reform criteria at the time of assessment. Furthermore, the analytic process does not conform to the standard for a scientific statistical survey. The JRR is first and foremost a legal enquiry that draws upon a diverse pool of information that describes a country's legal system.

## Assessing Reform Efforts

Assessing the progress achieved by a country in judicial reform is fraught with challenges. No single criterion considered on a stand-alone basis will adequately reflect the state-of-play of reform and many commonly considered factors will be difficult to quantify. For example, the key concept of an independent judicial system has inherently qualitative connotations that cannot be measured by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judicial system's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in earlier efforts to measure judicial independence:

- (1) the reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

*Id.* at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his “judicial effectiveness score”, Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).

The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries’ courts, placing such dependent courts as Brazil’s ahead of Costa Rica’s, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology, which consisted of polling 84 social scientists regarding Latin American courts, dismissed as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: “[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy.” Larkins, *supra*, at 616.

## Methodology

The ABA has sought to address these issues and criticisms by including both subjective and objective criteria and by basing examined criteria on certain fundamental international standards, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary* and the Council of Europe Recommendation R(94)12 ‘On the Independence, Efficiency and Role of Judges’ and *European Charter on the Statute for Judges*. Reference has also been made to a Concept Paper on Judicial Independence drawn up by ABA/CEELI and the criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these standards, the ABA compiled a series of 30 statements setting out factors that facilitate the development of an accountable, effective and independent judiciary. To assist assessors in the evaluation of these factors, ABA drew up a corresponding commentary citing the basis for each statement and discussing its importance. A particular effort was made to avoid giving greater weight to American as opposed to European concepts of judicial structure and function. Thus, certain factors are included that an American and a European judge may to a certain degree find unfamiliar, hence the importance of understanding that the underlying intention was to capture the best that advanced judicial traditions have to offer. Furthermore, the ABA reviewed each factor in light of the experience it has gained over the last ten years and concluded that each factor may have significance for the judicial reform process. Consequently, even where some factors are not universally recognised as basic elements, the ABA has determined that their evaluation is useful and justified from a programme perspective. The incorporated factors are relevant to the quality, education, and diversity of judges; jurisdictional competence and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judicial system.

The question of whether to employ a “scoring” mechanism was one of the most difficult and controversial aspects of this project and the ABA debated internally whether one should be used at all. Between 1999 and 2001 various scoring mechanisms were tested. Following a spirited discussion with members of the ABA Executive and Advisory Boards and with external experts a decision was made to refrain from applying an overall scoring mechanism to measure the progress achieved in the efforts of each country to reform its judicial system so as to make it absolutely clear that the JRI is not intended as a comprehensive assessment of any given judicial system.

Notwithstanding this general conclusion, the ABA has further determined that qualitative evaluations could be made in respect of specific factors. Accordingly, each factor or statement is assigned one of three values: *positive*, *neutral*, or *negative*. The values concerned reflect only the relationship of a particular statement to the judicial system of a country. Where a statement strongly corresponds to the reality in the country under examination, the country will receive a “positive” score for the relevant statement. However, if the statement is not at all representative of the conditions in the country, it will be rated as “negative”. If the prevailing conditions in the country correspond in some but not in ways a “neutral” value will be assigned. Cf. Cohen, *The Chinese Communist Party and ‘Judicial Independence’: 1949–59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judicial system to one that is completely subservient”). Again, as noted above, the ABA has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticism, it has determined that such an attempt would be counterproductive.

Instead, the results of the 30 separate evaluations have been collated in a standardized format in each JRR country assessment. Following each factor, an assessed correlation and a description of the basis for this conclusion are given. In addition, a more in-depth analysis is included, detailing the various issues involved. This method of cataloguing facilitates data incorporation into a database and allows end users to easily compare and juxtapose the performance of different countries in specific areas and — as JRRs are updated — within a given country over time.

The second and subsequent JRR will be conducted with several purposes in mind. Firstly, an updated report on the judiciaries of Central and Eastern Europe and Eurasia will be drawn up that will highlight significant legal, judicial, and even political developments in the respective countries and their impact on judicial accountability, effectiveness, and independence. The extent to which shortcomings identified by the first JRI assessments have been addressed by state authorities, members of the judicial system and others will also be identified. Periodic implementation of the JRI assessment process will record those areas where judicial independence has regressed, and in particular areas where reform efforts have stalled and have had little or no impact whilst showcasing success stories and improvements in judicial reform at the same time. Finally, by conducting JRR assessments on a regular basis, the ABA will continue to serve as a source of timely information and analysis of the state of judicial independence and reform in emerging democracies and countries in transit.

The overall report structure of the second and of subsequent JRR reports and the methodology used will remain unchanged to allow an accurate historical analysis and reliable comparisons to be made over time. However, the lessons learned have resulted in a refined assessment enquiry designed to enhance uniformity and detail in data collection. Part of this refinement includes the development of a more structured and detailed assessment enquiry that will guide the collection and reporting of data.



The second and subsequent JRR reports will set out an evaluation of all thirty JRR factors. The process will involve an examination of all laws, statutory instruments and provisions, as well as other sources of reliable information about the organization and functioning of the judicial system and will again rely on the key informant interview process, i.e. on the perspective of several dozen or more judges, lawyers, law professors, NGO leaders and journalists who have know-how and insight into the functioning of the judicial system. When conducting the second and subsequent assessments, particular attention will be given to those factors, which received a negative value in prior JRR assessments.

Each factor will again be assigned a correlation value of positive, neutral or negative as a part of the second and subsequent implementation of the JRR. In addition, reports on the second and all subsequent rounds will further identify the nature of the changes that have occurred in the correlation or trend since the previous assessment. This trend will be indicated in the Table of Factor Correlations that appears in the introductory part of the JRR report. It will also be noted in the textbox setting out the conclusions relating to each factor in the standardized JRR template. The following symbols will be used: ↑ (upward trend; improvement); ↓ (downward trend; regress); and ↔ (no change; little or no impact).

Social scientists could argue that some of the assessment criteria would best be ascertained through public opinion polls or more in-depth interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, the ABA has decided to structure the questions so that they can be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists and external observers with detailed knowledge of the judicial system. Overall, the JRR is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather objective information and conduct the interviews necessary to assess each factor.

One of the purposes of the JRR assessment process is to help the ABA — and its financing and partner organizations — determine the effectiveness of their judicial reform programs and help them target future assistance. Naturally, many issues raised (such as judicial salaries and undue external influences), cannot necessarily be addressed directly and effectively by external technical assistance providers. The ABA also recognizes that those areas of judicial reform that can be thus addressed, i.e. judicial training, may not be the most important ones. Having a cadre of judges educated to the highest standard does not in itself guarantee an accountable, effective, or independent judicial system; yet, every judicial system does need well-trained magistrates. Moreover, the nexus between outside assistance and a country's judicial system may be tenuous at best: building a truly competent judicial system requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable so that progressive elements may better focus reform efforts. The ABA offers this instrument as a constructive step in this direction and welcomes constructive feedback.

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## **Assessment Team**

The Bulgarian 2013 JRR analysis assessment team was lead by Bilyana Gyaurova-Wegertseder and Hristo Ivanov. Todor Dotchev, Assistans Professor Yanka Tyankova, PhD, Ekaterina Baksanova, Yoanna Mikova, Nedyalka Grozeva and Boryana Hristova also participated in the research and preparation of the factors. BILI implemented the 2013 JRR in partnership with ABA ROLI and especially Simon Conté and Olga Ruda.

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F O U N D A T I O N  

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Фондация Америка за България

## Executive Summary

### Brief Overview of Results

Out of the thirty factors analyzed in the 2013 assessment for Bulgaria the correlations determined for three showed an improvement over the period 2004–2006 with no decline registered in another three factors. Thus thirteen factors received the highest score. In the report fifteen factors received neutral correlations. Only two factors continue to carry negative scores, the most significant of which is Factor 20 relating to the independence of judicial decision-making and the confidence of legal professionals and of the general public in the judicial system. These conclusions indicate that a lot of work remains to be done, although the analyses of some of the factors reveal encouraging signs of progress and awareness of the need for further improvement. The correlations for 16 factors were below positive in both 2004 and 2006 and insufficient efforts have been made in the last six years to achieve a tangible improvement. The desire to put in place specific procedures and the implementation of the 2010 STRATEGY FOR JUDICIAL SYSTEM REFORM CONTINUATION are reasons for optimism; at the same time, as a counterbalance and a cause for concern, neither has an in-depth reform been comprehensively achieved nor has it become fully operational after more than 20 years under a democratic constitution.

Four additional factors (10 – Budgetary Input, 15 – Objective Judicial Advancement Criteria, 17 – Removal from Office and Liability of Judges for Breach of Disciplinary Rules, and 18 – Case Assignment), which the assessment methodology did not originally feature, have been included following an analysis of the specific recommendations relating to each factor. The authors of the 2013 JRR have decided that the inclusion of these recommendations is necessary given the nature of the factors concerned, specially their importance for judicial independence. The recommendations are based on the conducted interviews but they also draw on BILI's previous experience and partnership with other organizations working in the area of justice and legal reform.

In the long period following the publication of the 2006 JRI, and despite the largely positive trend of newly enacted legislation and the changes in a number of areas of the Bulgarian judicial system, a conclusion that improvement in many aspects has gained sufficient momentum and now meets expectations in light of the results achieved so far would not be entirely warranted.

To a certain degree the factor framework underlying the JRR corresponds to the methodology and correspondingly reflects the conclusions set out in the reports under the Cooperation and Verification Mechanism (hereinafter CVR). In any case it supplements and broadens the analytical scope of judicial reform analysis. More information about the CVR is to be found in the Bulgaria Background section of the JRR.

### Positive Aspects Identified in the 2013 Bulgaria JRR

- The **National Institute of Justice (NIJ)**, notably its **initial training program for junior judges and prosecutors**, has growing significance and elicits positive feedback from magistrates. The NIJ has been strengthening its capacity by curriculum and methodology improvement and the application of novel interactive teaching methods. The performance of recent NIJ graduates receives excellent evaluations, which demonstrates that the work of the Institute conforms to a high standard. Efforts in the area of continuing legal education need to be further stepped up to ensure that all judges have access to sufficient and above all accessible additional training in the form of

courses, workshops etc. that conform to a similarly high standard. Along with this, more thought should be given to the possibilities to broaden the scope of NIJ activity to allow the Institute to evolve into an analytical and research centre that supports the work of the Supreme Judicial Council (SJC) hence that of individual courts and prosecution offices;

- In 2010, the Council of Ministers adopted a Strategy for Judiciary Reform Continuation in the context of Bulgaria's EU membership, which has received full support at the political and professional level alike. The Strategy has also been positively evaluated and welcomed by the European Commission and is referenced in several CVM reports. The previously adopted strategies were short-term in nature and did not succeed in shaping in-depth reform. This is the first Strategy that outlines a long-term plan for the continuation of reform whose application, along with the monitoring mechanisms set in place, will have a significant contribution to the positive development of the judicial system and will foster sustainable change;
- In general, the adoption of a uniform Code of Ethics of Bulgarian Magistrates is a positive development. However, it is offset by treating a breach of the ethical rules and standards stipulated in the Code as a breach of disciplinary rules. Thus in cases of infringements of the Code disciplinary proceedings are opened and disciplinary sanctions levied against offending magistrates contrary to European practice and tradition in this regard;
- The adoption of rules of procedure that conform to the standard for public disclosure of the credentials of candidates, conducting open hearings and the possibility for participation of members of the general public in the election of senior officials in the judicial system demonstrate willingness to address the criticism expressed by the European Commission in CVM reports and those voiced by the professional community and by civil society. This new approach to elections and appointments to high-ranking positions should be seen as a positive development not only because an attempt has been made to ensure greater transparency of the procedure but also because it encourages the active involvement of citizens and their organizations;
- The publication of the annual agenda of the SJC with scheduled activities and events in many of the essential areas of judicial governance is an important step towards the opening of the Council to the public and magistrates. It can also be construed as a public statement of responsibility, commitment and willingness to engage in dialogue. Making full use of this approach may equip the SJC with valuable ideas for future reforms. The success of this step will be further evaluated in the future;
- The establishment of an Inspection Service under the jurisdiction of the SJC and its work in the last six years is a positive sign in itself. The powers vested in the Inspection Service include conducting different inspections on judicial bodies, which would help reveal their deficiencies and contribute to streamlining and ensuring greater compliance with disciplinary rules in their functioning. The manner in which Inspection Service carries out its duties, however, has demonstrated a need for improvement, which should be traced in the future;
- Likewise, the work of the Bulgarian Judges Association and the emergence of other professional organizations of magistrates should be seen as positive developments. The typically conservative judicial community has become notably more active by expressing opinion and making statements on key issues with implications for the state-of-play of the judicial system and on recent events. This demonstrates willingness to participate in and contribute to the reform process.

## Major Concerns Identified in the 2013 Bulgaria JRR

- As in the period covered by the 2006 JRI study, the Bulgarian judicial system still suffers from a strong **public perception that judgments are often based on different forms of undue influence**. In several cases charges have been brought against

magistrates for bribery and dereliction of duties. Although few and far between, these cases have fuelled persistent concern due to the failure on the part of the competent bodies to investigate the alleged offences and the possibility to use the accusations as a tool to control the implicated magistrates.

- The **strategic planning, vision and long-term direction in which the judicial system will develop** remain problematic. The SJC is the main body tasked with the protection of judicial independence and the implementation of reforms that enhance its recognition and contribute to its preservation. The work done to date lacks any perceivable depth, particularly in the area of judicial independence. The development and implementation of strategies calls for a comprehensive and visionary approach.
- The **performance evaluation** and disciplinary proceedings against magistrates remain ineffective. The lack of transparent and consistent **disciplinary practice** of the SJC and the Supreme Administrative Court (SAC), which reviews the legality of SJC decisions, has been discussed on many occasions.
- The ineffectiveness and lack of transparency remain inherent features of the procedures for career advancement of magistrates. This is directly linked to secondment, which is often used as a means to fill vacancies by circumventing the principle of competition whilst being a partial solution to the problems, which some courts with excessive case loads encounter. This generates instability and insecurity within the judicial system and acts as a vehicle for undue influence over seconded magistrates. The situation is compounded by the fact that decisions about secondment are solely within the remit of competence of court presidents;
- The concerns regarding the lawful application of the principle of random case assignment remain. Automatic case assignment software is used throughout the judicial system in line with the relevant principle. Courts have adopted and apply internal rules in this respect. Nevertheless, some uncertainty persists as to the extent to which the principle is consistently observed and the possibilities for tampering with the software;
- Case delays remain the major problem mainly due to the unbalanced case load of individual courts and to inadequate infrastructure security. The workload of individual judges does not reflect the quality of their work and the timely accomplishment of judicial duties. The SJC and magistrates should join efforts to establish standard case weights. The first steps to this end have already been made with the amendments to the JSA proposed by the Council of Ministers, which are to be discussed by the Parliament<sup>1</sup>.

### Other Concerns Identified in the 2013 Bulgaria JRR

- The procedures for the election of court presidents and SJC members remain a source of concern. Despite the last series of amendments to the JSA they are still not sufficiently transparent and objective. They pre-appointment hearings are conducted within very short intervals, which do not allow the interested parties to become acquainted with the nominees and their governance concepts. The vetting procedure is superficial and inadequate. There is no requirement for a detailed justification of nominations or for conducting public hearings (concerning the election of SJC members). The publicity demonstrated, particularly at the time of electing new SJC members in the autumn of 2012, did not in any way add to the transparency of the election and created an impression of underhand dealing;
- The end of 2012 was marked by a number of scandals over top appointments in and outside the judicial system (the appointment of a justice of the Constitutional Court). This was a telling example that amply demonstrated main problem, which the bodies

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<sup>1</sup> The text of the amendments may be found on the National Assembly official website: <http://www.parliament.bg/bg/bills/ID/14290>.

responsible for appointments/election face – the seemingly impossible task of complying with the high standard for the integrity of nominees and the lack of transparency and public participation. Doubts of political brokering were amongst the main reasons for the criticism voiced by the European Commission and by civil society alike. Hence it follows that efforts should turn to overcoming these deficiencies and to following an established, transparent and reliable election procedure. This means that there should be no tolerance to any attempts at nepotism that give rise to doubts as to the integrity of the nominees;

- Another concern is the lack of publicity and transparency in the disbursement of the budget of the judicial system. The SJC must apply a transparent financial reporting system. The implementation of such a system will raise trust in the work of the body responsible for the governance of the affairs of the judicial system and that of individual magistrates alike.

## Bulgaria Background

### Legal Context

The Republic of Bulgaria is a parliamentary democracy governed by a parliament (the *Narodno Sabranie* or National Assembly), a president, a council of ministers, a prime minister, judicial system, local officials and a Constitutional Court.

Legislative powers rest with the 240 members of the National Assembly elected for a term of four years. The Speaker of the National Assembly proposes the agenda for each session of Parliament. In addition to its power to legislate, the Assembly has special powers to enact the state budget; establish tax rates; declare war and ratify treaties; schedule presidential elections; appoint and dismiss the Prime Minister; and, on a motion of the Prime Minister, appoint members of the Council of Ministers. Prior to being enacted draft legislation requires two rounds of votes of the Assembly. Following a vote of no confidence in the government, which requires a majority of the votes of MPs, the government must resign. Legislative initiative belongs to each member of the National Assembly and of the Council of Ministers.

Formally the President, who is the Head of State, has limited powers in domestic affairs. He represents the State in international relations and is the commander-in-chief of the armed forces. He appoints army high command and ambassadors. When Bulgaria is under imminent threat, he may declare war if the National Assembly is not in session. He may veto enacted laws but that veto may be overturned by a vote of more than half of the Members of Parliament. The President appoints the chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court, and the Prosecutor General on a motion of the Supreme Judicial Council. The President is elected for a term of five years. They may serve in office for up to two terms.

The Council of Ministers acts as a cabinet. It is composed of a Prime Minister, Deputy Prime Ministers and Ministers. While the Prime Minister has overall responsibility for the work of the government, the Council of Ministers is tasked with the implementation of the country's domestic and foreign policy, ensuring public order and national security, and governing the affairs of the public administration and the armed forces. Amongst other things, the Council draws up the state budget and submits it to the National Assembly for approval. Like the Council itself, individual ministers may issue regulations in their respective areas of competence.

The judicial system comprises judges, prosecutors and investigating police officers who have magistrate rank. All courts have corresponding prosecution offices in the respective judicial districts. Prosecutors ultimately report to the Prosecutor General through the prosecutorial hierarchy. They conduct investigations; file criminal charges; oversee the enforcement of penalties for criminal offences and of other sanctions; and take part in civil and administrative proceedings as required by law. Investigators conduct investigations in the cases envisaged by law. While certain budgetary, oversight and administrative functions are discharged jointly with or under the oversight of the Ministry of Justice [hereinafter MOJ], the judicial system is largely overseen by the Supreme Judicial Council [hereinafter SJC], composed of judges, prosecutors, investigators, some of whom are appointed by the National Assembly. The Constitutional Court, which is not a part of the judicial system, rules on constitutional issues.



Provincial governors who are responsible for the implementation of the policy of the central government at provincial level are appointed by the Council of Ministers. At the local level, municipal councils and mayors are elected every four years.

A Grand National Assembly, composed of 400 elected representatives, may be convened upon a vote of two-thirds of the National Assembly. The Grand National Assembly may create enact a constitution, designate changes to the country's territory and pass constitutional amendments affecting the structure of the Establishment or the form of government. Less sweeping amendments to the Constitution may be approved by a qualified majority (in certain circumstances two-thirds) of the votes of MPs.

The provisions of the Constitution apply directly and do not require the enactment of any implementing laws. Treaties ratified in accordance with the relevant procedure also apply directly and supersede domestic legislation.

Because of the frequent and rapid amendments to legislation enacted during the period in which the on-site interviews were conducted and the report was being drafted, the assessment team decided to generally incorporate all laws and amendments officially adopted on or before February 28, 2013, and specifically mention the relevant changes in force as of 2012<sup>1</sup>.

By way of clarification, this report uses the English terms (i) "attorney" to refer to an *advokat* who has been admitted to the bar association and is entitled to practice law on a regular and independent basis for multiple clients, (ii) "lawyer" to describe a *jurist* who has completed his/her legal education and post-graduate internship and taken his/her final MOJ examination to attain this title, and thus includes all members of the legal profession such as magistrates, attorneys, in-house counsel and notaries, (iii) "chamber" to mean a college, department or section within a court, which may be further split into "divisions," and (iv) "chairperson" to refer to the chief judge and administrative manager of a court or of a chamber within a court.

## History of the Judicial System

A Communist-led government came to power in Bulgaria following the end of World War II. People's tribunals were established by the communists and used to eliminate thousands of opponents of the new regime. Many non-communist judges, prosecutors, investigators, and law professors were purged or killed. The judicial council, which advised the MOJ on personnel issues, was abolished; the concept of an independent judicial system was rejected; and the Communist Party took full control of judicial appointments. The courts were seen as part of the larger effort to consolidate and support a socialist system. To promote the communist ethos, comrades' courts were later introduced in all enterprises. Most judges, especially high-level court judges, were members of the Communist Party. Generally, Communist Party members, especially party leaders, were beyond the reach of the courts and essentially operated above the law.

After the fall of the communist regime in 1989, a Grand National Assembly crafted a new Constitution in 1991 setting in motion a sweeping process of changes to Bulgarian legislation. The CONSTITUTION OF THE REPUBLIC OF BULGARIA, adopted Jul. 13, 1991, STATE GAZETTE

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<sup>1</sup> In the middle of 2012 there have been amendments to the Judicial System Act (JSA), as well as in other relevant legislation. However, as these changes have only recently been enacted, the assessment team could not evaluate their practical impact.

[hereinafter SG] No. 56 (July 13, 1991), *last amended* Feb. 2007 [hereinafter CONSTITUTION]. The JUDICIAL SYSTEM ACT, *promulgated in* SG No. 59 (July 22, 1994), *abrogated* [hereinafter JSA], the basic statute that governs the courts and the judicial system, was enacted three years later. At present a new JSA, *promulgated in* SG No. 64 (Aug. 7, 2006), *last amended* Feb. 21, 2013, is in effect

The government had addressed many of the concerns pertaining to the judicial system, preparing an action plan, a related strategy and a series of legislative amendments. There had been multiple revisions to the JSA and the Constitution intended to address various reform issues, though some changes have had the unintended consequence of slowing the reform. After the Constitution was adopted in 1991, control over the budget, administration and facilities of the judicial system passed from and to the SJC and the MOJ on statutory grounds, comprising decisions of the Constitutional Court and recent constitutional amendments. These shifts have not only impeded the smooth execution of important operational tasks but also obscured the roles of these entities in the governance, strategic planning and direction of the judicial system as a whole.

In this regard, a common concern expressed by numerous interviewees was that there seems to be insufficient emphasis on centralized coordination, strategic planning and general direction towards reform in the judicial system in general. The SJC would be the logical constitutional entity tasked with this responsibility and it certainly takes care of various aspects at irregular intervals whilst tending to focus on narrow and immediate concerns rather than long-range strategic issues. The SJC typically meets once a week and so do its committees; special meetings also take place to handle other matters. While the SJC has an administrative staff that has grown in number and is organized into directorates, its employees seem preoccupied with immediate tasks and lack the time, experience and professional skills to generate, evaluate and institute coordinated, wide-ranging strategic initiatives. It would therefore seem worthwhile for the leadership of the judicial system and other reform-oriented groups and individuals to consider a better organizational model for the SJC than the currently existing one.

The MOJ also has expert potential and staff that can support these initiatives. However, it would be better for responsibility and oversight to continue to rest with the judicial system in order to preserve its independence and keep a system of proper checks and balances in place. In some countries, a judges association might serve as a catalyst for strategic reform, but the Bulgarian Judges Association lacks the funding, resources and staff to carry out this function. However, it has recently become more active in proposing decisions for the problems that the judicial system currently faces.

## Coordination and Verification Mechanism

Pursuant to its Decision of 13 December 2006 the European Commission has begun to implement a Coordination and Verification Mechanism<sup>1</sup> [hereinafter the CVM] for Bulgaria and Romania. Its purpose is to monitor and assess (through six-monthly reports of the Commission to the European Council and the European Parliament) against six specific benchmarks for Bulgaria and four for Romania, in regard to judicial reform, fight against organized crime and corruption. For Bulgaria these benchmarks are: (1) Adopt constitutional amendments removing any ambiguity regarding the independence and accountability of the

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<sup>1</sup> Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime. Brussels, 13/XII/2006 C (2006) 6570 final.

judicial system; (2) Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on the impact of these new laws and of the penal and administrative procedure codes, notably on the pre-trial phase; (3) Continue the reform of the judicial system in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually; (4) Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high-level officials; (5) Take further measures to prevent and fight corruption, in particular at the borders and within local government; (6) Implement a strategy to fight organized crime, focusing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas.

From a methodological perspective the reports are drawn up by a group of experts from the European Commission through regular meetings with representatives of the Bulgarian government, government agencies and the judicial authorities. Specialist NGOs and stories reported in the press and media investigations can also influence the report. Each month the respective institutions covered by the CVM report their activities according to the progress achieved in the implementation of the Commission's recommendations. The Minister of Justice chairs an interinstitutional council whose members include the Ministers of Interior and Foreign Affairs, the Minister of Finance and the Head of the National Security Agency. The Council approves a statement on progress, which is adopted by a decision of the Council of Ministers and sent to the country's European partners.

Reports under the CVM dwell in the area between politics and law as they address the mutual work of the government (in the field of combating organized crime and corruption and judicial reform) and the activities of the judicial system. The Mechanism for Cooperation and Verification is an inter-institutional mechanism that subsumes the government of the Republic of Bulgaria and the European Commission and aims to achieve synchronization of the Bulgarian judiciary and domestic law with European standards.

The mechanism covers the time period from Bulgaria's accession to the EU as a full Member State to the cumulative fulfillment of the six indicators. By the third year of membership, in accordance with the country's Accession Treaty, six safeguard measures could be triggered and, as far as justice is concerned, they could mean a failure to recognise court judgments and European arrest warrants issued by Bulgaria.

By July 2012, when the Commission published its report covering the period 2007–2012, progress reports had been submitted by the Commission to the European Council and to the European Parliament twice a year – in February and July<sup>1</sup>. It is customary to consider that the February report contains technical information and an update on the activities carried out by the institutions, their progress and evaluation, and the July report includes a political assessment of the overall progress of reforms as well as recommendations for specific actions. As of July 2012 the Commission had published 11 reports on Bulgaria's progress. Following the publication of the five-year report, the Commission decided to announce its next report in December 2013 by which it effectively prolonged the implementation of the CVR. Meanwhile, in February 2013 the Commission made oral supplements to its previous report, making use of a specific instrument of the Mechanism. Their aim is to bring current events, for example top appointments in the judiciary, into a clear focus. The next oral supplement is expected in July 2013.

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<sup>1</sup> All reports are available at <http://ec.europa.eu/cvm/> (in Bulgarian and English; last retrieved February, 2013).

## Structure of Courts

### *Courts of General Jurisdiction*

In 1998, Bulgaria instituted a three-tier court system for civil and criminal cases. This system is composed of: trial courts, which may be either regional (municipal) or provincial (district); interim appellate courts, either district courts or courts of appeal; Specialized Criminal Court and Appellate Specialized Criminal Court and the Supreme Court of Cassation [hereinafter SCC]. Regional court judgments may be appealed before the relevant district court and, ultimately, before the SCC. If the original trial takes place at a district court, the judgments are reviewable by the relevant court of appeal, and ultimately by the SCC. Specialized Criminal Court judgments may be appealed to the Appellate Specialized Criminal Court. The second instance is, in effect, a second trial court. Original trial court judgments may be appealed on any ground. The 2008 Civil Procedure Code, *promulgated in* SG No. 59 (July 20, 2007), *last amended* Feb. 15, 2013 [hereinafter Civ. Proc. Code] however, limits the admissibility of evidence and contentions before the court of appeal. Such evidence may be allowed only if it is new or newly-found. Cassation review in the SCC is more limited in scope, focusing on compliance with the law. The new procedural code, however, turns the cassation review into a facultative one by introducing criteria based on which the cassation court rules on the admissibility of the appeal in cassation.

As of December 31, 2013, there were 2 184 sitting judges in Bulgarian courts.

**Regional courts**, the lowest level trial courts, handle all trials, which by law are not expressly referred to another court (e.g. the district courts). As at 31 December 2012 there were 113 such courts with 917 judges sitting in them<sup>1</sup>. The civil and criminal cases they hear are typically adjudicated by one judge, although crimes carrying longer sentences may be heard by one or two judges and up to three jurors. The judgments of regional courts may be appealed before the district courts.

**District courts** function as both first and second instance courts. There are 28 district courts in Bulgaria, including the Sofia City Court whose jurisdiction covers the capital city. District courts are typically divided into criminal, civil and commercial chambers. Following the 2006 reform, the former administrative chambers at the district courts were replaced with the newly established administrative courts. The structure of administrative courts functions at district (provincial) level and they review cases as first instance and at the level of appeals in cassation, reviewing compliance with the provisions of the law<sup>2</sup>. Acting as first instance courts, they hear certain civil and commercial cases where the claim exceeds 25,000 BGN (US\$ 17,184<sup>3</sup>) on civil and commercial cases and 50,000 BGN (US\$ 34,369) on real property disputes as well as aggravated criminal cases. First instance civil and commercial cases are decided by a single judge; criminal cases may be heard by one or two judges along with as many as three jurors, depending on the gravity of the offence. The first instance judgments of the district courts may be appealed before the courts of appeal, and, if necessary, to the SCC. District courts also hear appeals against regional court judgments in three-judge panels. In all, excluding the judges in the newly established specialized criminal court (see below), as at 31 December 2011 there were 701 judges sitting in district courts in Bulgaria.

<sup>1</sup> According to data of the National Audit Office *available at* <http://register.bulnao.government.bg/2011y/index.html> (in Bulgarian).

<sup>2</sup> See JSA art. 63.

<sup>3</sup> All dollar figures used in this report are based on the prevailing currency conversion rate during the assessment visit of 1.60 leva = \$1.00 US.

There are also five **military courts**, which operate at the level of district courts and try cases involving military personnel as courts of first instance. The military courts have 34 judges, including the ones sitting on the Military Court of Appeal, which is discussed below.

The **Specialised Criminal Court** established in the beginning of 2011 following legislative reform, which stipulated its status and jurisdiction, is a special case<sup>1</sup>. According to the newly enacted provisions it has its headquarters in Sofia and operates as a district court. However, it is competent to review cases falling within its jurisdiction from the entire country and abroad. Generally, it hears the cases in panels of one judge and two jurors, except where the law prescribes otherwise. The court may hear proceedings on the formation of and participation in organized criminal groups or ones relating to crimes ordered by these groups and has a wide jurisdiction, which is not limited to a particular branch of law, which has spurred discussion and resulted in projects on further amendments.

**Courts of appeal** hear appeals from trials that originate in district courts. The courts of appeal sit in three-judge panels and have civil, commercial, and criminal chambers. There are seven courts of appeal, including one which hears appeals against the judgments of lower military courts and of the newly established Specialised Criminal Court of Appeal, the latter functioning as second instance of the Specialized Criminal Court; as at 31 December 2011 the five civilian courts, excluding the Specialised Criminal Court, have a total of 122 judges. The judgments of the courts of appeal may in turn be appealed before the SCC.

The **Supreme Court of Cassation** [hereinafter SCC], the third and highest instance with 101 judges<sup>2</sup>, hears appeals from the district courts, when they act as second-tier appeal courts, and from the courts of appeal. According to the current Civ. Proc. Code appeal in cassation is not allowed in cases where the claim do not exceed BGN 5,000 – in civil matters, and BGN 10,000 – in criminal matters (see Article 280(2) as amended in SG No. 100 (Dec. 21, 2010)). It replaces the former provisions obligating the SCC to review each and every claim. The SCC is divided into civil, commercial and criminal chambers, and appeals in cassation are heard by panels of three judges. The SCC may not rule on constitutional matters. Where such matters arise, it can suspend proceedings in a case and refer the matter in hand to the Constitutional Court. Relevant civil, commercial or criminal chambers of the SCC, sitting in plenary, issue interpretive rulings to ensure the uniform and precise application of the law by lower courts.

### **Administrative Law**

Challenges to administrative acts may first be made to the government body making the act and then to the superior administrative body. Certain penal decrees imposed by administrative bodies may be appealed before a regional court in first instance and thereafter to the administrative courts in cassation and the highest instance. Court appeals against individual acts (tax determinations and other administrative decisions directed at specific persons or entities) and bylaws (secondary legislation) of municipal councils and lower-ranking government agencies are filed with the administrative courts. **Administrative courts**, acting as a first instance, hear claims involving individual acts (such as tax determinations)

<sup>1</sup> See JSA, Section VIa, *promulgated in* SG No. 1 (Jan. 4, 2011), *effective* Jan. 4, 2011, and Criminal Procedure Code, the same amendments to which led to the establishment of the Appellate Specialized Criminal Court.

<sup>2</sup> According to information published on the official website of the court [www.vks.bg](http://www.vks.bg).

issued by lower level government agencies and officials. They are also competent to hear all administrative cases with the exception of those for which the law prescribes a review by the Supreme Administrative Court. The proceedings are conducted by a single judge panel in compliance with the provisions of the law and their districts overlap with the judicial districts of provincial courts.

Their decisions may be appealed before the **Supreme Administrative Court** [hereinafter SAC], a body having 82<sup>1</sup> sitting judges, without going through a court of appeal. The SAC hears appeals from administrative courts in three-judge panels, and further appeals may be taken on a cassation basis to five-judge panels of the SAC.

Initial appeals of administrative acts issued by senior executive officials or government agencies are made directly to the SAC. In the case of administrative acts other than bylaws, the cases are decided by three-judge panels as courts of first instance and are then reviewable in cassation by five-judge panels of the SAC. Appeals of secondary legislation are heard directly by five-judge panels and are not subject to further appeal.

Like the SCC, the chambers of the SAC issue interpretive rulings to rectify incorrect or contradictory rulings of lower judicial bodies. The SAC also may refer constitutional matters to the Constitutional Court.

### **Constitutional Law**

The **Constitutional Court**, a body consisting of 12 judges, is not part of the judicial system. Nevertheless, it does have the power of judicial review, gives binding interpretations of the Constitution, rules on the compliance of legislation and international treaties with the Constitution, settles disputes concerning the legal powers of the different branches of government, acts as trial court for Presidential impeachments, and considers legal challenges to parliamentary and presidential elections. Constitutional issues arising in a case may generally be referred to the Court only by the SCC, the SAC, or the Prosecutor General. Lower court judges presented with what they believe to be a constitutional issue must notify the SCC or the SAC, which may refer the matter to the Constitutional Court. Similarly, prosecutors and investigators presented with constitutional issues notify the Prosecutor General, who may refer the issue to the Constitutional Court. The President, the Council of Ministers, the SCC, the SAC, the Prosecutor General, or one-fifth of the members of the National Assembly may also bring more abstract or general constitutional matters, which have not arisen within a particular case, before the Court. Pursuant to an amendment of the Constitution, the State Ombudsman may also refer a legislative act of the National Assembly that allegedly violates citizens' rights and freedoms to the Court for constitutional review.

### **Judicial Administration**

The Constitution vests general powers over the courts in the **Supreme Judicial Council** (SJC). The SJC is composed of 25 members, including the SCC and SAC presidents and the Prosecutor General as *ex officio* members. Half of the remaining positions are filled by candidates elected by the National Assembly. The other half are elected by the magistrates themselves, with six chosen by judges, four by prosecutors, and one by investigators. SJC members must have at least 15 years of professional experience as lawyers. They serve five-year terms and may serve a second term but not immediately following their first term in office. The Minister of Justice chairs the SJC meetings but does not have the right to vote.

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<sup>1</sup> According to the Court President Annual Report on the work of the Court in 2011 available on its website <http://www.sac.government.bg/home.nsf/vPagesLookup/Âîëëää%202011~bg?OpenDocument> (in Bulgarian)



The procedure for the election of SJC members from the Parliament quota was amended with the series of legislative amendments enacted in 2012. The National Assembly will henceforth elect the new SJC members before the term of appointment of the previous members has ended. The candidates for election may be nominated by Members of Parliament.

According to the amendments each candidate must present to the relevant Committee a written concept concerning his/her work as SJC member as well a statement of disclosure of their assets. To ensure greater publicity and transparency of the election, the concept and statement must be published on the website of the National Assembly.

Non-governmental organizations, universities and scientific organizations are given the opportunity to submit opinions and questions about the candidates, which are also published online. The Committee responsible for the election conducts a hearing of all candidates and drafts a report on their professional merit and integrity.

Members from the judicial system quota are elected at separate general delegate meetings of judges, prosecutors and investigators in a ratio 1 delegate per 5 magistrates. The magistrates may nominate candidates for SJC members at the general meetings of judges, prosecutors and investigators, restively. Similar to the election procedure at the National Assembly, all nominations, along with reasoned opinions on the candidates' concepts and other requisite documents, must be published on the SJC website. NGOs may submit opinions and questions, and candidates must be heard by the delegate meetings. Delegate meetings are public and should be broadcast in real-time on the website of the SJC.

The SJC nominates the presidents of the SCC and the SAC and the Prosecutor General. The President, who formally endorses the appointments of these judicial leaders, may not reject a second nomination of the same individual. The SJC also determines the number and geographic jurisdiction of courts; decides the number of magistrates; determines their pay; appoints, promotes, demotes and dismisses magistrates in the cases envisaged by law; approves the ethics code of judges; handles magistrate disciplinary matters; lifts magistrates' immunity; submits the draft budget of the judicial system to the Council of Ministers and administers the judicial budget; coordinates magistrate training and further training; and makes tenure decisions involving magistrates.

Following a new constitutional amendment, the MOJ has regained a role in some of these functions, including proposing the draft judicial system budget and submitting it to the SJC; managing the property of the judiciary; making proposals for appointment, promotion, taking disciplinary action, and other career decisions concerning magistrates; and making arrangements for the further training of magistrates.

With an amendment of the constitutional provisions in 2007<sup>1</sup> a new body of the judicial system was established, namely the Inspection Service to the SJŇ. Its main function is to oversee judicial bodies without interfering with their independence by exercising its powers independently and acting in compliance with the law. The Inspection Service is headed by an Inspector General elected for a period of 5 years and 10 inspectors with a mandate of four years whose election is entrusted to the members of the National Assembly voting with a majority of two thirds of the MPs. The requirements and procedure for their appointment and dismissal and those for the functioning of the Inspection Service are stipulated in detail in the JSA. See sec. III, Articles 40–60. The Inspection Service may carry out in-

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<sup>1</sup> New Article 132a, SG No. 12 (Feb. 6, 2007) of the Constitution.

spections both according to annually planned themes and courts and on an *ad hoc* basis, acting on information received from citizens, legal persons or national bodies and institutions, including judges. On the basis of the findings of conducted inspections reports are compiled containing recommendations and proposals to other state bodies or competent bodies of the judicial system as the case may be.

The amendments enacted in 2012 also concern the procedure for the election of an Inspector General and inspectors of the service under the jurisdiction of the SJC. Similar to the election of SJC, nominees must present written concepts and disclose their assets; these documents are published online on the websites of the National Assembly and the Inspection Service. Questions and opinions from NGOs are also published. Nominees must be heard by the committee responsible for the election, which is required to draft a report.

## Conditions of Service

### *Qualifying Requirements*

Judges must be Bulgarian citizens who: (i) have graduated from law school; (ii) completed a six-month internship in the judicial system; (iii) have not been convicted of a public prosecutable offence; (iv) possess “the required moral integrity and professional merit” ascertained by reference to the Code of Conduct of Bulgarian magistrates; (v) have not been dismissed on disciplinary grounds from the position of an elected SJC member for misconduct that impairs the reputation of the judicial system; and (vi) do not suffer from a mental illness. Those seeking judgeships out of law school serve as junior judges for two years before being appointed as full members of the bench. Lawyers with a minimum of three years’ experience as prosecutors, investigators, attorneys or a variety of other official legal positions may be appointed directly to the bench, without first serving as a junior judge. Individuals may also be appointed directly to higher positions in the court system following longer service in the legal system within or outside of the judicial system. Lawyers with “high professional standing and moral integrity” and at least 15 years of professional experience are eligible to serve as judges on the Constitutional Court.

### *Appointment and Tenure*

As previously noted, judges are appointed by the SJC. Junior judges (entry-level position) are appointed on the basis of a competition following the completion of nine-month obligatory training course at the National Institute of Justice and passing an examination at the end of the course. In the case of direct appointment of judges on the basis of service as lawyers for at least three years, following legislative amendments in the JSA<sup>1</sup> the practice of higher court presidents in the same judicial district making proposals on initial appointments was amended. A requirement for holding centralised competitions was introduced. Such competitions are to be held at least once a year – a provision that effectively barred access to the judicial system by means of circumventing competitions. The SJC determines the vacancies in courts that are to be filled by initial appointment by drawing lots but their number cannot exceed 20 percent of the total number of vacancies in each tier of the judicial system. Currently, though, no similar or equivalent requirement for a nine-month initial training at the NIJ for directly appointed judges has been introduced.

After completing five years of service (including the time, if any, as junior judges) and obtaining a positive evaluation from the SJC, judges become “irremovable” until their retire-

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<sup>1</sup> JSA art. 178(1), *amended*, SG No. 33 (April 30, 2009).



ment at the age of 65, resignation or dismissal from office. A judge may solely be dismissed for a serious criminal offence, systematic and actual inability to perform the duties of their office for more than one year, a grave breach or systemic dereliction of official duties or conduct that impairs the reputation of the judicial system.

The 12 judges of the Constitutional Court are appointed as follows: four are appointed by the National Assembly; four are appointed the President, and the remaining four – jointly by the SCC and the SAC. Constitutional Court judges are appointed for a non-renewable term of nine years. They may be removed only if they are imprisoned for a premeditated criminal offence; are unable to discharge their duties for more than one year; or assume certain incompatible offices (in business or another profession or are elected to office).

### ***Training***

The National Institute of Justice [hereinafter NIJ], a government-funded body operating under the supervision of the SJC and its own Managing Board, offers a nine-month initial training program for the candidates for junior judges appointed to the bench (and other junior magistrates). Training takes place at the NIJ. Having completed the programme, junior judges must sit an examination before a committee, which consists of judges and prosecutors determined by the SJC, and obtain a minimum grade of 4.50. Junior judges are appointed to district courts, and junior prosecutors – to regional prosecution offices, for a term of two years. At the end of the two-year period junior judges and junior prosecutors are appointed as judges/prosecutors without competition. Where there are no vacancies in a judicial district, they are offered a position in another.

Those magistrates who were directly appointed should participate in obligatory training courses during the first year after taking office.

The NIJ also offers continuing legal education [hereinafter CLE] seminars for judges and other magistrates and some courts discuss recent cases and other developments at the general meetings of judges, which take place at regular intervals.

The SJC might decide that certain courses are obligatory for judges, prosecutors, magistrates and court clerks in cases of promotion, court president appointment and specialization.

## Bulgaria JRR 2013 Analysis

Overall, Bulgaria's progress in legal reform continues to move forward, albeit slowly, with indications of some growth achieved as compared to the level of reform described in the 2006 JRI. However, there have been some delays and particular difficulties in the areas of responsibility for strategic planning, the governance of the judicial system and the development and application of efficient procedures for performance evaluation and career advancement. IT integration in courts is also lagging behind. The continuing development of the NIJ and its initial training program, along with the new forms of training, the acceleration in computerization, and the more detailed procedure for consideration of complaints against magistrates, are encouraging signs. Nevertheless, the judicial system continues to encounter structural obstacles, technical equipment and facilities remain inadequate, and the public perception of corruption and undue influence persists. It should be noted that the correlations and conclusions set out in the 2013 JRR have greater weight when viewed in relation to the relevant analysis and in comparison to those set out in the 2006 JRI.

BILI perceives the current analysis as a part of its continuing efforts to monitor and evaluate judicial reform in Bulgaria, and in this regard will welcome further information and comments that will help us include more detailed recommendations in future JRRs.

### Table of Factor Correlations

Judicial Reform Review Factor		Correlation 2006	Correlation 2013	Trend
<b>I. Quality, Education, and Diversity</b>				
Factor 1	Judicial Qualification and Preparation	Neutral	Positive	↑
Factor 2	Selection/Appointment Process	Neutral	Neutral	↔
Factor 3	Continuing Legal Education	Neutral	Neutral	↔
Factor 4	Minority and Gender Representation	Neutral	Neutral	↔
<b>II. Judicial Powers</b>				
Factor 5	Judicial Review of Legislation	Positive	Positive	↔
Factor 6	Judicial Oversight of Administrative Practice	Positive	Positive	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Positive	Positive	↔
Factor 8	System of Appellate Review	Neutral	Neutral	↔
Factor 9	Contempt/Subpoena/Enforcement	Neutral	Neutral	↔
<b>III. Financial Resources</b>				
Factor 10	Budgetary Input	Positive	Positive	↔
Factor 11	Adequacy of Judicial Salaries	Positive	Positive	↔
Factor 12	Judicial Buildings	Neutral	Neutral	↔
Factor 13	Judicial Security	Neutral	Neutral	↔

IV. Structural Safeguards				
Factor 14	Guaranteed Tenure	Positive	Positive	↔
Factor 15	Objective Judicial Advancement Criteria	Neutral	Neutral	↔
Factor 16	Judicial Immunity for Official Actions	Positive	Positive	↔
Factor 17	Removal and Discipline of Judges	Neutral	Neutral	↔
Factor 18	Case Assignment	Neutral	Neutral	↔
Factor 19	Judicial Associations	Neutral	Neutral	↔
V. Accountability and Transparency				
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔
Factor 21	Code of Ethics	Neutral	Neutral	↔
Factor 22	Judicial Conduct Complaint Process	Neutral	Positive	↑
Factor 23	Public and Media Access to Proceedings	Positive	Positive	↔
Factor 24	Publication of Judicial Decisions	Neutral	Neutral	↔
Factor 25	Maintenance of Trial Records	Negative	Negative	↔
VI. Efficiency				
Factor 26	Court Support Staff	Neutral	Neutral	↔
Factor 27	Judicial Positions	Positive	Positive	↔
Factor 28	Case Filing and Tracking Systems	Neutral	Neutral	↔
Factor 29	Computers and Office Equipment	Neutral	Positive	↑
Factor 30	Distribution and Indexing of Current Law	Positive	Positive	↔

## I. Quality, Education, and Diversity

### Factor 1: Judicial Qualification and Preparation

*Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without any cost to the judge) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.*

Conclusion	Correlation: Positive	Trend: ↑
Judges are required to have formal university-level legal training, but its quality remains debatable, and legal education reforms are ongoing. Junior judges must sit a competition to attend the mandatory initial training program at the National Institute of Justice [hereinafter NIJ]. The training provided by the NIJ has a practical bias and it is considered one of the major achievements in the field of judicial training. External candidates with specified length of prior legal experience may also be appointed. They are also required to sit a competition but there is no requirement for the completion of an obligatory training programme.		

#### Analysis/Background:

Bulgaria's latest Judicial Reform Strategy acknowledges that the development of the judicial system depends on the state of its human resources and therefore aims at ensuring that justice in Bulgaria will be administered by highly-skilled specialists with high morals and adequate motivation. See STRATEGY FOR JUDICIAL REFORM CONTINUATION FOLLOWING BULGARIA'S ACCESSION TO THE EUROPEAN UNION (*adopted by Council of Ministers of Bulgaria, Jun. 23, 2010, Section 3*), also *available at* <http://www.justice.government.bg/new/Pages/Ministry/Default.aspx?evntid=26079> [hereinafter JUDICIAL REFORM STRATEGY].

To be eligible for an appointment as judge, an individual must be a citizen of Bulgaria who meets the following requirements: (1) has been awarded a university-level degree in law; (2) has completed obligatory post-graduate professional internship in the judicial system and obtained a valid license to practice law (which includes taking a bar examination); (3) has not been sentenced to imprisonment for a premeditated criminal offence, notwithstanding rehabilitation; (4) has the necessary moral integrity and professional merit determined by reference to the applicable Code of Ethics of Magistrates; (5) is not an elected member of the SJC who has been removed from office through disciplinary process on the grounds of impairing the prestige of the judicial system; and (6) does not suffer from a mental illness. See JSA, Article 162(1)(3) and (5), *adopted* Aug. 7, 2007, *last amended* SG No. 17 (Feb. 21, 2013).

Higher legal education in Bulgaria as a specific branch of higher education is governed by the Higher Education Act, *promulgated* SG No. 112 (Dec. 27, 1995), *last amended* SG No. 15 (Feb. 15, 2013), which sets out the rights and obligations of tertiary institutions. The Council of Ministers is responsible for setting the government requirements for earning degrees in the fields of regulated professions. *Id.* Article 9(3). The National Agency for Assessment and Accreditation [hereinafter NAAA] continues to be charged with granting accreditation to higher education institutions and exercising periodic post-accreditation control as well as supervising academic programs (including those of law schools) in a wide range of areas to ensure they meet the standards established by law. *Id.* Articles 75–83;

see also generally NAAA RULES OF PROCEDURE, *promulgated* SG No. 19 (Mar. 1, 2005), *last amended* SG No. 103 (Dec. 28, 2012).

At present there are nine law schools in Bulgaria, including six public and three private. Specific requirements for these institutions, including admission rules and procedures, mandatory and elective courses, and minimum required credits, are governed by the Council of Ministers Decree laying down the Single State Requirements for Obtaining a Higher Education in Law and the Professional Qualification of a Lawyer, *adopted by* Council of Ministers Decree No. 75 *issued* Apr. 5, 1996, *last amended* SG No. 79 (Oct. 6, 2009) [hereinafter Legal Education Ordinance]. The duration of a law program must be at least 10 semesters, with no fewer than 3,500 hours (see art 6(1)), and must include instruction in 19 specified disciplines (see Article 7(2)). After their second year, law students must attend internships that consist of at least a 14-day internship per year with local administration or judicial bodies, with placement organized by the university in coordination with the MOJ. *Id.* Article 10(1). Students also have an opportunity to participate in optional legal clinics that may be established by law schools. *Id.* Article 10a. After completing the coursework, students must take a state written and oral examination and, if successful, they receive a Master's degree in law, and the professional qualification of a lawyer.

Finally, as a prior condition for obtaining a license to practice law, law graduates must complete a six-month practical internship as legal trainees and pass a theoretical and practical bar examination administered by the MOJ. See JSA Article 294(1). The increased length of the internship from three to six months is viewed as an element of a positive trend towards extension of the practical training of future lawyers.

Despite several improvements over the past several years, a common understanding persists that neither was higher legal education in Bulgaria reformed sufficiently comprehensively with the overriding aim of improving its quality nor was it amongst the priority areas in judicial reform during transition years. Significant problems accumulated over the years have had a direct impact on the initial quality of human resources that the Bulgarian judicial system relies on, in terms both of qualification and moral values. The prevailing opinion among respondents is that the traditional internships and the bar examination are insufficient to fill the gaps in the legal training of young lawyers and to help establish a high nationwide entry standard for access to the legal profession.

These perceptions are supported by the results of the first rating of the law schools in Bulgaria published by the BILI in May 2010<sup>1</sup>, which ranks law schools in accordance with three categories: academic environment, material and administrative environment, and career prospects. See BILI, *RATING OF LEGAL EDUCATION IN BULGARIA 2010*, *available at* [http://preview.bili-bg.org/cdir/bili-bg.org/files/BILI\\_Law\\_Schools\\_Rating\\_Final\\_ENG.pdf](http://preview.bili-bg.org/cdir/bili-bg.org/files/BILI_Law_Schools_Rating_Final_ENG.pdf). The large number of law schools in Bulgaria resulted neither in establishing a competitive environment nor in a significant improvement in the quality of the training on offer. The same academic staff teach in all, or in most, law schools and do not provide instruction at the level that meets the students' needs, as students do not have an opportunity to participate in the development of law school curricula. As a result, new law graduates do not have the basic practical skills they need to practice the legal profession. Students are given the opportunity to enroll in legal clinics aimed at providing practical experience through participation in lectures, simulations and actual work with clients according to a program designed by the respective faculty of law. At this stage, however, they are established on a random

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<sup>1</sup> The development and implementation of an objective evaluation mechanism based on internationally established good practices represents an attempt to make a more profound and full picture of the legal training system in Bulgaria.

basis and rather as an exception from the mainly theoretical courses. See LEGAL EDUCATION ORDINANCE Article 10a, *new, adopted* SG No. 69 (Aug. 23, 2005).

In a notable development, the Judicial Reform Strategy contains a separate section on legal education, which sets out a series of measures intended to form a part of an upcoming comprehensive reform of legal education, aimed at bringing higher legal education in line with European standards and the needs of the modern justice system. See JUDICIAL REFORM STRATEGY, Ch. 3.1. To a certain extent, this makes up for the absence of sustainable policies and vision for reform in this area. Many of the actions envisioned by the Strategy take into account the recommendations of representatives of the academic community, magistrates and NGOs received during a June 2010 public discussion initiated by the MOJ. Some of the significant measures proposed include: introducing uniform government criteria for admission, graduation, and end-term examinations for all law schools; introducing a uniform anonymous state law examination ensuring impartial, objective and fair mechanism for evaluation of students' overall knowledge; providing more opportunities and raising the standard of practical training during the period of academic study; and optimizing the format, length and efficiency of academic internships.

Any candidate with a valid license to practice law may apply for the position of a junior magistrate. A candidate may be appointed as junior judge, provided he/she satisfies all legal requirements, passes a national competition for participation in the initial training program carried out by the NIJ and takes the examinations at the end of the NIJ program. Following this a graduate may be appointed for a term of two year (which may be extended by six months by SJC)<sup>1</sup>. See JSA Article 238.

Some of the latest amendments to the JSA (SG No. 32 (Apr. 19, 2011), *effective* Jan. 1, 2012) have resulted in several improvements in the NIJ mandatory initial training program for junior magistrates. The program duration was extended from six to nine months, and the training must now be completed prior to appointment rather than upon taking office. *Id.* Article 238. This is aimed at encouraging prospective magistrates to devote greater effort to the process of training. Trainees receive a monthly allowance from the NIJ, amounting to 70% of a junior judge's base salary – a reduction from a full junior judge salary provided for prior to amendments. They do not pay tuition fees for their schooling but are required to cover their own room and board during their stay in Sofia.

The NIJ initial training program consists of modules on civil law and procedure, criminal law and procedure, and some general disciplines including constitutional law, ethics and corruption, psychology etc. The underlying approach is based on the rationale that prospective junior judge already have adequate grounding in theoretical subjects. Thus the program is focused on acquiring practical knowledge and professional skills, developing greater familiarity with areas of immediate relevance to the work of future judges (including their rights and duties, ethical rules, media relations, and associated disciplines such as psychology, forensic science and accounting); obtaining exposure to the working environment in the judicial system; and creating a team spirit and fostering collegiate relations among the three branches of magistrates. Additionally, given their special relevance in Bulgaria today, the NIJ programs cover subjects related to EU law and the Convention for the Protection of Human Rights and Fundamental Freedoms, *in effect* in Bulgaria since Sept. 7, 1992, SG No. 66 (Aug. 14, 1992), *last amended* SG No. 38 (May 21, 2010) [hereinafter the ECHR].

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<sup>1</sup> Prior to the JSA amendments, SG No. 32 (Apr. 19, 2011), the term of work as a junior judge was three years.

Following the amendments to the JSA, prospective junior judges are also required to sit a final examination at the end of the training program and obtain a grade of at least 4.5 on a 6-point scale. See JSA Article 238, *amended* SG No. 32 (Apr. 19, 2011). The exam is administered by a special committee of judges and prosecutors selected by the SJC. See JSA Article 258a(1). Successful completion of the training program, including the exam, is counted towards meeting the internship requirement. On the other hand, candidates who fail two consecutive examinations will not be eligible for appointment and will be required to reimburse the full tuition fee and monthly allowance to the NIJ. See JSA Article 258a(4). The latter provision also applies to candidates who refuse to accept the offer of appointment without valid justification.

Between 2007 and 2011 the NIJ conducted 926 courses in total, instructing 24,152 participants (judges, prosecutors, investigators, judicial officers, officers of the MJ/Mol etc). These numbers include: obligatory initial education, direct and distant courses and training of the judicial administration. Since the launch of the initial training program in 2005, the NIJ has been training one class of junior magistrates per year. According to the NIJ, the class of 2007 included 30 junior judges and 39 junior prosecutors, the class of 2008 consisted of 16 junior judges, and the class of 2009 graduated 33 junior judges and 27 junior prosecutors. In 2010, 33 junior judges and 27 junior prosecutors participated in the courses, and in 2011 their number was 43 and 47, respectively.

Following the completion of the initial training until assuming office, a junior judge still receives methodical assistance by the NIJ. Effective January 2012, the initial appointment term has been reduced from three years to two, which the SJC may extend by an additional six months.

During this period, that period, the judge reviews real trial proceedings on an equal footing with his colleagues but cannot take his/her turn as reporting judge for the panel. An important role for the development of his/her professional skills and knowledge has the “supervising judge” (mentoring judge) elected by the general meeting of the respective district court and appointed by an order of the court president. *Id.* Article 242. The supervising judge enters into a contract with the NIJ and he/she undertakes to give reports on the work of the junior judge every three months, and every 6 months an assessment based on certain criteria specified by the NIJ shall be made. To foster the exchange of experience and the improvement of the work of the supervising judges, the NIJ organizes meetings of the supervising judges. The respondents find the role of the supervising judge important and useful for the professional development of the junior judge. Nevertheless, some of the respondents shared that the NIJ must put additional efforts to the coordination and organization of the work of the supervising judges and as regards the criteria for assessment of junior judges. The amended JSA provides that the SJC approves a Regulation on the activity of the supervising judges and prosecutors. See JSA Article 242, SG No. 1 (Jan. 1, 2011), *effective* Jan. 4, 2011.

After the expiry of the two-year period the junior judge is appointed to the position of a judge at a regional court without new competition being held. *Id.* Article 243.

The focused work of the NIJ (of 2005), in its part regarding the initial training of junior magistrates, is considered to have entirely positive effects by all respondents. The initial training program for junior judges and the subsequent changes therein are considered a positive model proven in practice, which is subject of permanent improvement. For the purpose of its improvement the new reforms of the legislation envisaged also the following changes: extension of the training period from 6 months to 9 months, ranking of junior magistrates after completion of the training at the NIJ in order to motivate them to put more efforts dur-



ing the course of training at the NIJ, etc. It is still the case that except for the junior judges, no other newly appointed judges are required to go through the NIJ's training.

The JSA still allows regional court judges to be appointed directly by the SJC after three years of legal service without serving as junior judges. In this case, however, there are no requirements for the judges to complete the nine-month initial training program at the NIJ. The amendments in the JSA, however, introduced the requirement for holding national competitions for such magistrates in order to sever access the judicial system by means of circumventing competition. *Id.* Article 176.

District court judges can be directly appointed if they have eight years of legal experience whilst the corresponding requirement for judges in courts is a length of service of nine years, respectively 12 years for SCC/SAC judges. *Id.* Article 164. With a service record of at least 10 years of which at least five years as a judge, prosecutor or an investigating magistrate in criminal cases may request to be appointed as judge at the Specialised Criminal Court or as prosecutor at the Specialised Prosecution Service. Respectively, in order to receive an appointment at the Appellate Specialized Court or Prosecution Service a service record of at least 12 years is required out of which at least 8 as a criminal judge, prosecutor or investigator. See JSA Article 164(3) and (6)<sup>1</sup>. For this purpose, legal service includes not only magistrate or even attorney experience but also work as a police investigator for the Ministry of the Interior [hereinafter MOI] or an equivalent position at the Ministry of Defence. *Id.* Judges thus appointed are immediately placed in service on the bench with no specialist training, orientation, mentoring or oversight by supervising judge.

Nevertheless judges, prosecutors and investigators who are directly appointed for the first time at regional or district level in the judicial system must complete an initial training course. See JSA Article 259. The course is obligatory and must be completed in the first year following appointment. Its length must be at least 10 days. See Article 40 RULES ON THE ADMINISTRATION OF NIJ, *effective* Sept. 21, 2007. This ensures a possibility to conduct seminars lasting from here to five days on a regular basis. Since 2007 the number of trained judges and prosecutors is the following: 2007–2008 – 23 judges and 33 prosecutors; 2009 – 9 judges and 14 prosecutors, and for 2010 – 10 judges and 8 prosecutors.

The NIJ offers several five-day programs geared to the initial training of directly appointed regional and district court judges but these are not offered sufficiently frequently, their duration is limited, available places and subject matter are also limited, and they do not provide anything remotely comparable to the junior judge training programme. Moreover, since these newly appointed judges handle full caseloads, they typically find it difficult to take several days off to participate in the specialist workshops. While some of these judges are doubtlessly competent, knowledgeable and motivated, others are not highly regarded in terms of their ability to adjudicate cases expediently and confidently, the adequacy of their courtroom conduct is questioned, oversight of their work is often lacking and doubts persist as to whether they share the values of judicial ethics.

<sup>1</sup> *New*, SG No. 1 (Jan. 4, 2011), *effective from* Jan. 4, 2011, declared unconstitutional with Ruling No. 10 of the Constitutional court pertaining to the words "judge or prosecutor who", SG No. 93 of Nov. 25, 2011.



## Factor 2: Selection/Appointment Process

*Judges are appointed on the basis of objective criteria, such as taking an exam, performance in law school, other training, experience, professionalism and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.*

Conclusion	Correlation: Neutral	Trend: ↔
<p>All new judges are now appointed by way of national competition. The introduction of an obligatory national competition is considered an effective mechanism that limits subjectivity factor in the process of selecting and appointing judges. One concern, though, is that the competition focuses almost exclusively on academic merit at the expense of other important qualities. Judges coming from outside the judicial system are also appointed on the basis of a national competition but they are not required to complete initial training that is similar to the training of junior magistrates. The staff policy generally continues to be criticised as regards its objectivity and the possibilities for undue influence. Hence, stronger guarantees for transparency, clear criteria and their equitable application are required. This is especially relevant to the appointments to senior positions where a genuine competitive environment, publicity and motivation have to be ensured to guarantee that the persons elected have convincingly proven their merit during the selection process by demonstrating their professionalism and ability to adhere to the highest standard of professional conduct.</p>		

### Analysis/Background:

The legal status of judges is regulated by Chapter Seven of the **Constitution of the Republic of Bulgaria** and by the JSA. The main body responsible for the administration and management of human resources in the judicial system is the **Supreme Judicial Council**. The SJC determines the composition of and the work arrangements in the judicial system. The SJC has exclusive powers with respect to the selection and professional development of judges, prosecutors and investigators, including their appointment, promotion, demotion, secondment and removal from office, performance evaluation and tenure acquisition, skills training and determination of the level of pay. As a result of the 2011 amendments to the JSA the SJC is now obligated to open and keep a service file for every judge, prosecutor and investigator containing a full set of documents relating to their appointment and discharge from office, the outcome of inspections conducted in relation to received complaints, incentives – distinctions received and sanctions imposed, statement of incompatibility etc. See JSA Article 30a, *effective* Jan. 4, 2011.

The SJC is also responsible for the organization and holding of competitions for the appointment of judges. See JSA Article 30(1) item 4.

To be eligible for appointment as a judge an individual must be a Bulgarian citizen who meets the following requirements:

- holds a university degree in law;
- has completed the requisite post-graduate internship in the judicial system and obtained a license to practice law;
- has not been sentenced to imprisonment for a premeditated criminal offence, notwithstanding rehabilitation; does not suffer from a mental illness;
- has “the necessary moral integrity and professional merit” determined by reference to the Code of Conduct of Bulgarian magistrates;

- is not an elected member of the Supreme Judicial Council who has been removed from office on disciplinary grounds due to conduct that impairs the reputation of the judicial system.

National competitions are conducted for appointment to offices in the judicial system, including those of junior judges, junior prosecutors as well as for the purposes of initial appointment in the judicial system. See JSA Article 176. In pursuance of its obligation to organize and conduct competitions, the SJC adopted Rules of Procedure for Holding Competitions and for the Election of Administrative Heads of Judicial Bodies, *adopted* by a SJC Decision set out in Record of Proceedings No. 39 of Nov. 28, 2011, *supplemented* by SJC decision under Record of Proceedings No 1 of Jan. 12, 2012 (*abrogated*).

As noted above in the section relating to Factor 1, judges are appointed as junior judges following a competition conducted in accordance with the requirements of Article 176 of the JSA. Following a series of amendments, the JSA currently in force provides that all appointments are to be made by competition, including initial appointments. See JSA Article 176(1)(2). The Supreme Judicial Council reserves, by drawing lots, 20 percent of the total number of available vacancies in courts and prosecution services for the judges and prosecutors appointed by competition and receiving their initial appointment in the judicial system. Competitions must be held at least once a year pursuant to a resolution of the SJC published in the SG, in one daily newspaper and on the website of the SJC, which lists the number, type and location of available vacancies, and the date, time, and venue where the competition will take place. The competition consists of a written and an oral examination, marks being given on a six-point scale. The competition is conducted by a five-member committee appointed by the SJC for each branch of the magistracy separately. In order to ensure greater anonymity, 10 mock cases are prepared in advance for the written examination and one of them is drawn on the day of examination. The candidates who receive a grade of at least a 4.50 are allowed to sit the oral examination. See Chapter IX, Section II of the JSA. The first stage of the competition is a four-hour written examination on a mock case, which is graded anonymously on a six-point scale. Grading is done by two independent members of the competition committee and if their scores are more than one point apart, the final score is determined by a third assessor (another member of the competition committee). Admitted candidates sit an oral examination, which is conducted as an interview, in which three legal topics are discussed. Candidates are given an opportunity to present their professional history and personal background during the interview. It is not clear whether a specific methodology is applied for examination, assessment and documentation of the personal history of candidates or each of the committee members has the freedom to make a determination this at their own discretion – which would strengthen the impression of a possible different treatment. The scores obtained during the oral exam are determined by all committee members using the six-point scale mentioned above. Candidates are then ranked by their combined scores for the position for which they applied, with ties broken by recourse to the candidates' law school state examinations grade point average. Appointments are made by the SJC in the resulting order of rank. Unsuccessful competitors may challenge the results before the SJC and may appeal the SJC decision to the SAC. See JSA Article 187, *last amended* SG No. 32 (Apr. 19, 2011), *effective* Jan. 1, 2012. Prior to the 2011 amendments of the JSA the newly appointed junior judges had to undergo training at the NIJ following their appointment. However, for the purposes of increasing the motivation of candidates for magistrate positions during the training their rating and appointment takes place after they complete the nine-month training programme and receive a grade, which is not lower than 4.50. See JSA Article 238, *amended* SG No. 32 (Apr. 19, 2011), *effective* Jan. 1, 2012. Immediately after the end of their training they continue to serve as members of three-judge district court panels until, in most cases, they complete two years as junior judges and become regional court judges.

The first national competition for aspiring magistrates was conducted twice in 2002. The 2007 competition attracted 380 candidates for 20 junior judge positions. In 2008, no competitions for junior magistrates took place. In 2009, the number of candidates in the competition conducted by the SJC increased to 662 for 32 junior judge vacancies. In 2010, at the junior judges competition there were 1 062 candidates for 42 announced vacancies.

The national competition for junior judges has been widely recognised as a positive development, replacing the pre-2002 process whereby court presidents hand-picked judges for their courts without a clear procedure and sound criteria being place. Naturally, competitions have attracted some criticism according to which there is still room for subjective appraisal on the part of the competition committee members. Several respondents pointed out that an indirect indication of this are the differences between the scores received in the competition and the results from the initial training and examinations passed at the NIJ after completion of the nine-month initial training. These suspicions, however, were not properly proven by contestation of the conducted competitions and submission of relevant evidence. Nevertheless, they served as an important indication for the direction in which efforts should be focused in order to maintain trust in the integrity of competitions. The doubts are mainly focused on the safeguards against unauthorized prior disclosure of examination material and the manner in which the oral part of the exam is conducted. The prevailing opinion, however, is that the junior judge competitions are conducted at a very high level designed to test the ability of applicants and that there is an ongoing trend towards raising requirements even further.

Another problem is that in light of the relatively long intervals between competitions and the subsequent periods of training of junior magistrates the present appointment system is cumbersome and does not allow existing judge vacancies to be filled sufficiently flexibly. Complaints are often voiced that this results in an unbalanced workload of the judges at that there are the courts where vacancies remain unfilled for long periods. Some of the respondents have commented that a possible solution to this problem can be sought in the decentralization of competitions so that the needs of the different courts are better served. The same respondents, however, expressed concerns in respect of the objectivity of eventual local competitions with a view to the risk of facing strong pressure at local level. Concerns were also expressed in respect of the ability to maintain a uniform evaluation standard. The prevailing opinions rather support the recommendation for better planning and co-ordination on the part of the SJC in order to ensure more flexible scheduling of competitions so that vacant positions can be filled.

The absence of strategic planning in conducting competitions on the part of the SJC is often serves as an excuse for the secondment of judges from other courts. For example, judges from other towns are seconded on a large scale in order to fill the vacancies in Sofia. The decisions on the secondment of magistrates are made at the sole discretion of the respective court presidents and, given the absence of clear criteria and procedure for secondment, the decision making underlying the choice of those to be seconded and the place to which they are to be seconded remains unclear. Many respondents expressed the opinion that the overuse of secondment, especially as regards Sofia courts, results in bypassing the principle of competition, which ultimately leaves the impression that seconded judges have been pre-approved. The principal concern with appointments, though, is not that the transfers of judges may have a negative impact on the administration of justice, but that they can be, and allegedly sometimes are, based on subjective, personal preferences or political considerations. Some respondents, including a seconded judge, pointed out that the lasting status of a seconded judge and the scheduling of competitions at irregular intervals may put a seconded judge in a position of dependence *vis-à-vis* court presidents.

As explained in the section relating to Factor 1, judges can still enter the judicial system under the terms of the initial appointment envisaged in Article 76(1)(2) of the JSA. This remains a persisting concern. The introduction of national competitions for aspiring judges limited significantly the possibilities to bypass competition. The main problem associated with this type of appointment is that the judges concerned are neither required to complete initial training at the NIJ nor a district court internship as junior judge or work under the guidance of a supervising judge. Irrespective of the qualifications of lawyers appointed under this procedure, the absence of initial training and supervision means that the appointees will have to learn the specifics of the procedural role of a judge, prosecutor respectively, on the job. The respondents generally accept this opportunity enables lawyers who have pursued careers outside the judicial system to be appointed to the bench and bring their experience and point of view to the judicial system. Support for direct appointments comes mainly from regional and district courts and it is not well regarded by superior courts.

The Judicial Reform Strategy places an emphasis on human resources development, which is expected to address a number of deficiencies in this area. Amendments to the JSA were introduced guaranteeing more incentives for a more proactive pursuit of career opportunities. Similarly, the procedures for selection and appointment have been improved. A recommendation has also been made by the European Commission in this respect, notably: “to adopt amendments in JSA aiming at improvement of training, assessment and appointment in judicial system”. See REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON PROGRESS IN BULGARIA UNDER THE CO-OPERATION AND VERIFICATION MECHANISM, BRUSSELS, JULY 20, 2010.

Some of the cases that shattered public confidence in the judicial system in the elapsed period specifically related to appointments and, in particular, to the election to senior offices in the judicial system. These cases amply demonstrate that regardless of the significant progress achieved by introducing the principle of competitions, setting in place a sufficiently transparent staff policy that is entirely based on objective criteria remains amongst the main challenges for the Bulgarian judicial system. The higher public sensitivity to this issue<sup>1</sup> makes it even more necessary to continue and step up the efforts to conduct fair and meritorious competitions for the initial appointment of magistrates. The critical level of public mistrust calls for vigorous measures that ensure optimal guarantees for competitive and transparent procedures for the selection and appointment to high-ranking positions in the judicial system. Regaining trust and confidence in Bulgarian justice is contingent upon satisfying public expectations that the incumbents of senior offices in the judicial system are elected meritoriously and following a thorough and transparent examination of their morals and integrity and, in any case, after any doubts of underhand dealing and political influence have been dispelled. Many respondents confirmed the need for detailed justification of all nominations, publication of detailed professional resumes and disclosure of all relevant particulars sufficiently long before an election to enable a public discussion. The respondents repeatedly emphasized the need to conduct genuine hearings to ensure that all issues of concern for the public be raised and addressed and that the decisions depend on the outcome of the appraisal of competing governance visions and personal merit.

Following the enactment of the amendments to the JSA in January 2011, a more detailed procedure for the election of the administrative managers of courts was developed. The Su-

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<sup>1</sup> The more and more frequently expressed suggestions for introduction of direct election of judges in Bulgaria are an indicator thereof. Having in mind that these ideas are considered quite exotic in Europe, such suggestions should be taken as a clear indication of the feeling of deficiency of the judiciary staff policy legitimacy.

preme Judicial Council was obligated to publish all vacancies on its webpage, along with detailed curricula vitae of the candidates and a concept detailing the work they intend to do as administrative managers. The names of the approved nominees and of those whose applications were rejected, along with reasoned statements of setting out the reasons for the rejection, must be announced not later than 14 days before the scheduled date of election. The JSA supplements of 2012 provide for non-for-profit public interest legal entities, universities and scientific organizations to have the opportunity to present opinions about the nominated prospective SJC members, which may include questions to be put to them. The proposed questions and opinions must also be published on the SJC website. The election procedure has to be conducted in the form of an interview providing that the evaluation takes into account the latest performance evaluation of the nominee and their professional views on the position. See JSA Articles 194a and 194b. In addition to satisfying the requirements for a specified length of service, the appointment as administrative manager carries a requirement for each nominee to have a positive overall grade from his last performance evaluation of at least “good” or “very good” as well as a reasoned opinion of the Ethics Committee on their moral integrity and professional merit. See JSA Article 169(1). After the 2011 amendments Article 201 of the JSA stipulates the criteria for appointment to a senior office, to wit: ability to work in a team and to delegate tasks within a team; ability to make correct management decisions; following a line of conduct that enhances the reputation of the judicial system; and having the necessary skills to communicate with other government bodies, citizens and legal entities.

The interview is conducted by a competition committee whose members are appointed randomly at a public session by the SJC. The rules for the specific competition procedures and the determination of the composition of the committee in each are to be determined by the SJC, which adopts a dedicated ordinance. See JSA Article 194c, *effective* Jan. 4, 2011, *declared unconstitutional* with Decision No 10 of the Constitutional Court, SG No 93 (Nov. 25, 2011). The abovementioned decision casted doubts on the conduct of competitions with the argument that the SJC is not competent to adopt regulations such as Ordinances and it provoked serious concerns that the career development of magistrates would be threatened. In order to avoid the complete blocking of the competition procedure the SJC made a controversial decision with unclear and unpredictable consequences, which intended to rename the Ordinance laying down the rules on conducting competitions for promotion, appointment and secondment within the judicial system into “Rules”.

### Factor 3: Continuing Legal Education

*Judges must complete, at regular intervals and without any cost to them, professionally designed continuing legal training courses in subject areas that are generally determined by the judges with a view to keeping abreast of development and changes in the law.*

Conclusion	Correlation: Neutral	Trend: ↔
<p>CLE is currently not obligatory for judges and is not taken into account for the purposes of the five-year tenure determination and career advancement. However, the NIJ makes continual efforts to improve the quality and the volume of its CLE programmes by updating and expanding the training curriculum, introducing new forms of training, incl. distance learning, attracting international experts as lectures etc. The courses are provided without any charge and sitting judges have significant input into the selection of training topics. Besides these positive developments the NIJ needs to further improve its planning and become more flexible in including of new disciplines in order to be able to adequately respond to the needs of the magistrates. The results of NIJ efforts will gain even greater significance if continuing education is introduced as a compulsory part of judicial training.</p>		

#### Analysis/Background:

In addition to the obligatory initial training for prospective junior judges and prosecutors, the NIJ, as a matter of its principal responsibility, “maintains and improves the professional knowledge and skills of judges” as provided by law. See JSA Article 249(1)(1) and (2). Following the amendments to the Constitution in 2007, the Minister of Justice is obligated to “pay a role in the arrangements designed to upgrade the skills and knowledge of judges, prosecutors and investigating magistrates”. See CONSTITUTION, Article 130a(4). The JSA further stipulates that responsibility is delegated to district and appellate court presidents for “making the necessary organisational arrangements for improvement of the skills and knowledge” of the judges in the courts whose affairs they administer.

Bulgarian judges are currently not required to participate in CLE training to improve or maintain their professional skills. However, they may do so as this is one of their rights expressly envisaged by law. Article 261 of the JSA allows the SJC to determine that “specific courses are obligatory for judges” but only in cases of promotion, appointment as administrative manager or pursuing a specialisation. This provision also means that the SJC has effectively introduced a requirement for the obligatory training of prosecutors and judges following their promotion from a Regional to a District Prosecution Service. The SJC decision has been implemented by the NIJ from the beginning of 2009. Article 30b(3)7 of the former JSA (abrogated, SG No. 64 (Aug. 7, 2007) explicitly stipulated that “participation in training courses and programs, scientific conferences etc.” was to be taken into consideration for the purposes of evaluating judges for irremovability and for their promotion in rank or position. Current legislation does not envisage such a criterion. Thus in 2011 an SJC Methodology was adopted establishing the standards and procedures for evaluation of rank and file and senior magistrates on the basis of a new set of general and specific criteria. See METHODOLOGY FOR THE EVALUATION OF JUDGES, PROSECUTORS, INVESTIGATORS, ADMINISTRATIVE HEADS AND DEPUTY ADMINISTRATIVE MANAGERS adopted by the SJC Decision set out in RECORD OF PROCEEDINGS No 39 of Nov. 28, 2011 [hereinafter EVALUATION METHODOLOGY]. Neither the Evaluation Methodology nor the previous evaluation rules acknowledge the enrolment of magistrates in various forms of post-graduate training, unless such enrolment was obliga-



tory. In comparison, the only other legal profession explicitly envisaged in the Constitution – that of the attorney, requires the completion of continuing legal training of at least 4 academic hours per year. See REGULATION No 4/9 JANUARY 2006 ON ATTORNEYS TRAINING AND QUALIFICATION, adopted by a Supreme Bar Council Decision of Dec. 20, 2005, *promulgated* SG No. 5 (Jan. 17, 2006).

According to the JSA all training programs should be endorsed by the Management Board of the NIJ, acting on a proposal of the Director and following consultation with the SJC. See JSA Article 257(1). The actual development of the curriculum, along with the planning of training courses, is delegated to the Program Council, which is an advisory board of the NIJ. In the last three years the Council has experimented with different needs assessment methods, such as surveys and questionnaires, in order to collect first-hand feedback and topic suggestions from judges. The Council evaluates the organized trainings, updates their content, and modifies them in accordance with the needs and recommendations submitted from the participated judges on annual basis. Each year in December a calendar of training events for the next year is published and magistrates are invited to sign up for the courses listed. Nevertheless, many respondents express concerns about the limited time period available for application before having most classes filled with participants. Moreover, the respondents have the impression that the selection rules are often disregarded or at least are not being applied equitably. In addition, some of the interviewees voiced an opinion that the process of including new disciplines in the training curricula is very rigid and time consuming, hence the need for the NIJ to work harder to improve the above mentioned procedures and streamline its resources in order to be able to respond adequately to the needs of the magistrates.

The training seminars are conducted on centralized and regional level. The centralized trainings, which follow a long-term program developed by the Institute, take place in NIJ's head office in Sofia. Responsibility for their overall planning and implementation is born by NIJ's staff and experts. On the other side, the Regional program for trainings covers all district courts and prosecution offices, including the six largest regional courts in the country. Depending on the particular training needs and interests, each court could apply for financial, expert, and technical support for organizing an on-site one-time training on a selected topic. The Regional program is highly acclaimed by the respondents as it makes long-distance traveling and interruption of daily life and work performance unnecessary. However, the number of regional trainings organized is highly dependent on the courts administration initiative and the annual budget, allocated for the program. In 2009 the number of the centralized trainings offered by NIJ was 85 and was attended by 678 judges. In comparison, on a regional level 41 trainings were implemented and 1 101 judges were attending.

In conjunction with a Bulgarian-Spanish Twinning project, in 2007 NIJ introduced a new form of CLE– distance learning education. The first pilot course on “The rights of the defendant in the criminal proceedings” was carried out in partnership with the Spanish Judicial Council. Following a supplement made to Article 249 of JSA in 2009, NIJ has established a Training and Informational Center, which organizes the distance learning for magistrates and court clerks. An online distance learning platform was developed and made available to all magistrates after registration. Some courses require a one-time presence meeting at the beginning of the course, where others do not. However, the tendency is towards dropping off the presence meeting entirely. The duration of the courses differ – from 1 to 5 months. The non-presence courses have no limitation as for participants' number – the single act of registration guarantees the participant access to the online educational materials and forums. Although the distance learning advantages have already become widely acknowledged by the audience, this form of continuing legal education is still less preferred. In 2010 NIJ carried out 13 distance learning courses, ten of which were exclusively targeted at Bulgarian judges. Altogether, around 214 participants, out of which 123 judges partici-

pated in the distance learning courses in 2010. In 2011 the number of courses and participants was almost doubled and there were 20 organized courses with a total of 614 enrolled, out of them 253 were judges. Another important initiative of the Learning and Information Center at the NIJ, is the so called Extranet<sup>1</sup>. It is a system for collection and exchange of information among active magistrates. The system is being upgraded and is viewed as a very useful tool especially with regard to EU law.

### Number of trainings per types and number of participants, organized by the NIJ in the 2007–2012 period

Year	Central trainings		Regional trainings		Distance trainings	
	Number of trainings	Number of judges	Number of trainings trained	Number of judges	Number of trainings trained	Number of judges trained
<b>2007</b>	125	1,832	63	740	1	16
<b>2008</b>	138	1,786	36	829	0	0
<b>2009</b>	147	1,655	38	1,101	4	75
<b>2010</b>	149	2,133	60	1,330	12	99
<b>2011</b>	107	1,430	80	1,510	20	253
<b>2012</b>	91	1,147	73	1,247	24	196

Source: NIJ

There are three subject areas of continuing legal education that NIJ's program covers: national legislation trainings, EU law trainings, and interdisciplinary trainings. The national legislation trainings curriculum is primarily designed to keep the magistrates informed and updated on topical issues of the domestic law and judicial practice. The judges are offered training modules on civil, commercial, administrative, and criminal law and procedures. Besides, the respondents have noted that NIJ is adjusting its training program in accordance with the EU Commission's recommendations for further specialization of the Bulgarian judicial system on selected topics and problematic areas such as organized crime and corruption. Other accents in the training curriculum are the seminars on cyber crimes, environmental crimes, money laundering, healthcare frauds, traffic of cultural valuables, etc.

<sup>1</sup> <http://extranet.nij.bg/> (in Bulgarian only).



## National legislation trainings in NIJ, 2007–2012

Year	Number of trainings	Number of participants	Number of Bulgarian lectures	Number of International lectures
2007	96	1,699	82	0
2008	81	2,417	77	6
2009	81	2,378	104	0
2010	101	2,794	183	41
2011	111	1,253	120	1
2012	92	2,753	190	7

Source: NIJ. Data on central and regional courses is included, as well as interdisciplinary courses in 2011.

NIJ has elaborated sustainable EU law programs, aiming at compensating for the lack of initial EU law training of many of the active magistrates, as well as at following the EU legislation dynamics. There is a basic course in EU law, which is a prerequisite for participation in the specialized seminars. The basic course is an introduction to the EU law, covering the normative and institutional framework of the Union. The specialized program is focusing the attention on particular EU law aspects, such as “Judicial Cooperation in Criminal Matters in EU”, “Judicial Cooperation in Civil Law Matters in EU”, “Intellectual Property Rights in EU”, etc. Furthermore, in cooperation with international and civic sector partners, NIJ has developed another series of specialized training modules, covering the text of the European Convention for Protection on Human Rights and Fundamental Freedoms. The number of EU law training seminars is gradually growing over the years – 32 in 2007, 35 in 2008, and 44 in 2009. Oftentimes lectures and experts from abroad are invited to provide trainings (in 2009 out of 60 lectures, 25 have been from outside Bulgaria). Unfortunately, none of them was part of the Regional training program.

## European law qualification courses in NIJ, 2007–2012

Year	Number of trainings	Number of participants	Number of Bulgarian lectures	Number of International lectures
2007	32	807	26	15
2008	35	957	34	6
2009	44	1,280	35	25
2010	24	838	62	22
2011	28	992	58	12
2012	19	693	30	23

Source: NIJ

A recent positive step undertaken by NIJ was the adoption of a Program for Implementation of the Judicial Reform Strategy for the Period 2011–2012<sup>1</sup> in October 2010, *available at* <http://nij.bg/Articles/Articles.aspx?lang=en-US&pageid=498&archive=true>. The document

<sup>1</sup> <http://nij.bg/Articles/Articles.aspx?lang=en-US&pageid=498&archive=true>.

complements and further develops the priorities laid down in section 2.7 of the Judicial Reform Strategy: “Unfolding the potential of the National Institute of Justice”, outlining the ways and means to achieving them.

Acting in accordance with the priorities set in the Program, in 2010 NIJ established an “Interdisciplinary Training” unit. The newly established Unit is aimed at developing and organizing trainings, which should guarantee advanced knowledge to the magistrates on various topics outside the legal studies, but relevant to the good performance of the Bulgarian judicial system in general. Among the selected interdisciplinary training topics for the first year of operation of the Unit are: economics and accounting, psychology and relations with the media, court ethics and anticorruption.

NIJ is a state-funded body. See JSA, Article 251. For 2007 the budget allocated to the NIJ was 2,188,000 BG BGN (US\$ 1,572,386). See 2007 STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT, *promulgated in* SG No. 108 (Dec. 29, 2006). During the following 2 years there was a tendency to increasing budgets up to 3,027,200 BG BGN (\$US 2,175,462) in 2009. See 2009 STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT, *promulgated in* SG No. 110 (Dec. 30, 2008). In the context of the financial crisis though, in 2010, NIJ’s budget shrunk by approximately 15% in comparison with the previous year. Outside GOVERNMENT funding, the NIJ relies on international assistance for the implementation of some of its CLE projects.

Regrettably, the lack of adequate funding may lead to a considerable reduction of the positive effects of the reforms already implemented and may cause a delay in the realization of those planned. However, despite the tight budgets, it has to be noted that NIJ has shown great willingness to follow the high standards and priorities set in the JUDICIAL REFORM STRATEGY and to work towards unfolding its potential capacity.

#### Factor 4: Minority and Gender Representation

***Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judicial system generally.***

Conclusion	Correlation: Neutral	Trend: ↔
Bulgaria does not maintain records on the ethnicity or religious identity of the persons occupying positions in the judicial system, as this is considered discriminatory treatment vis-à-vis such persons. The results from most interviews demonstrate that the majority of judges are women. However, women are not as well represented in senior positions at the highest levels of the judicial system.		

#### Analysis/Background:

According to Article 6 of the Constitution “[a]ll citizens shall be equal before the law. Violation of neither rights nor any privileges shall be permitted on the basis of race, nationality, ethnic identity, sex, origin, religion, education, beliefs, political affiliation, personal and social status, or property status.” In 2003, the National Assembly passed the Protection against Discrimination Act, *promulgated in* SG No. 86 (Sep. 30, 2003), *last amended* SG No. 58 (July 31, 2012), *effective* Aug. 1, 2012. It contains a general bar on direct or indirect discrimination on the basis of (among other things) gender or ethnicity (see Article 4), requires equal standards of evaluation, promotion and access to training (see Articles 14–

15), and encourages hiring aimed at balancing workforces by gender and ethnicity (see Article 24).

Article 8(2) of the JSA provides that no limitation of rights or any privileges based on race, nationality, ethnicity, sex, origin, religion, education, etc., shall be allowed in recruitment for the positions at judicial system bodies.

In the specific case of the magistracy, performance evaluation must be “conducted in compliance with the principles of the rule of law, equity, objectivity and transparency”. See Article 3 of METHODOLOGY FOR EVALUATION.

According to the official 2001 census, 9.4% of the Bulgarian population identified themselves as ethnic Turks, while another 4.7% called themselves Roma. See National Statistical Institute, POPULATION AT 1/3/01 BY DISTRICTS AND ETHNIC GROUPS, *available at* <http://www.nsi.bg/Census/Ethnos.htm> (in Bulgarian). According to the last census conducted in 2011, approximately 4.8% of the respondents who answered the voluntary question about their ethnicity, defined themselves as Roma, and another 8.8% declared Turkish origin. See National Statistical Institute, 2011 CENSUS RESULTS, POPULATION, *available at* [http://www.nsi.bg/census2011/PDOCS2/Census2011final\\_en.pdf](http://www.nsi.bg/census2011/PDOCS2/Census2011final_en.pdf).

As there are no official statistics regarding the numbers of Turkish and Roma ethnic minority on the bench, the information obtained is anecdotal. The general view was that there are few minority judges, with those of Turkish descent better represented than Roma, especially in certain regions. In neither case are their shares in the judicial system remotely close to their proportions in the general population. Many persons believe that poverty, low level of school attendance, and other impediments deprive Roma children of adequate primary and secondary education, and thus do not properly prepare them for a university education, which is a prerequisite for meeting the requirements for appointment to the judicial system. Moreover, there appear to be no special projects or other methods provided for by governmental units or universities to attract and promote young Roma persons for higher education and professional careers. One source did report, however, that there were several Roma students attending a major law school in the country, so there is hope of improved representation of this ethnic group among judge candidates in the future. As regards two other considerably smaller traditional minorities – the Armenians and the Jews, the prevailing opinion is that even if they are not represented on a pro rata basis among judges, their presence is clearly perceptible.

Gender appears to be a different story entirely, as by all accounts women constitute a majority of the judges in Bulgaria. Indeed, data shows that female judges constitute the majority of judges in Bulgaria outnumbering their male colleagues in a ratio of approximately 2:1. This statistics could be compared to the data provided at the time of 2004 JRI, which revealed that two-thirds of all judges were women, and that their share was actually higher in the upper tiers of the judicial system.

## Gender representation of magistrates for the period 2007–2012

Year	Number of male judges	Number of female judges	Ration of female to male judges
2007	733	1,421	1.94
2008	746	1,433	1.92
2009	749	1,460	1.95
2010	748	1,463	1.96
2011	724	1,457	2.01
2012	723	1,461	2.02

Source: SJC

The gender ratio in favour of women judges is even more perceptible at the newly established administrative courts, where according to the statistics presented by the SJC, the judge positions are occupied by 192 women and 64 men. Women are better represented even in the high courts. As of 2010 136 women and 38 men are appointed to the positions of high court judges.

No official statistics exist as regards the gender proportion in the leadership positions at the highest levels of the judicial system, but there has been some progress in the recent years, as evident from the general review of court websites. As compared to previous JRIs women held roughly 46% of the court chairperson positions at the regional and district court levels, but none of these positions at the court of appeals or SCC/SAC levels. As of Jan. 1, 2006 women held 63 of a total of 153 court chairperson positions (41%), including four chairperson positions at the courts of appeal, and nine in district courts. In 2010, the chairperson positions at the five courts of appeal in the country were held by 2 women and 3 men respectively. It should be noted that court president of the newly established Appellate Specialized Criminal Court is a woman.

The present membership of the SJC is female dominated with 9 men and 13 women sitting on the board. The proportional gender representation at the level of this key body is an example for equal treatment of men and women at the highest levels of the judicial system. In addition, it is worth noting that the chairperson positions at the SCC, SAC and the Prosecutor General's position, three of the highest positions in the judicial system, are currently occupied by men.

## II. Judicial Powers

### Factor 5: Judicial Review of Legislation

***A judicial body has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.***

Conclusion	Correlation: Positive	Trend: ↔
<p>The Constitutional Court in which powers are vested to determine whether a law and other decisions of the Parliament and the President are constitutional. The constitutional justices are highly regarded lawyers whose judgments are duly enforced. Concerns have been raised by the low workload of the Constitutional Court, mostly due to the restricted constitutional framework and the lack of initiative among the authorities authorized to refer to it. The passivity of the supreme courts and the Ombudsman seems to deprive citizens of the otherwise limited possibility of indirect referral to the Court.</p>		

#### Analysis / Background:

The Constitutional Court (CC) is the guardian of the Constitution. The twelve constitutional justices defend the rule of law by compulsory interpretations of the provisions laid down in the basic law and conducting reviews of constitutionality, mostly of legislation adopted by the National Assembly. The CC also oversees the compliance of domestic legislation with the international law and settles jurisdictional disputes between the supreme bodies of the State. See CONSTITUTION Article 149. The Constitutional Court is independent from the executive, legislative and judicial branches. It has its own constitutional place within the system of state authorities, determining its political nature in respect of the judicial system and its judicial nature in respect of the executive and legislative branches. The independence of the members of the CC is institutionally guaranteed by a quota based principle of election of its members (the National Assembly, the President and a joint general meeting of the judges of the SCC and the SAC elect each one third of the judges) and the introduction of a 9-year tenure, which is unprecedented within the system of public authorities. See CONSTITUTION Article 147(2). The Constitution limits its requirements to the candidate constitutional judges to “high professional and moral qualities” and minimum fifteen years of legal practice, the former experience as a judge remaining only a wish. The present composition of the CC comprises 7 former judges and 5 university lecturers, which is probably normal to a certain extent. The status of a constitutional judge is incompatible with state or public office, political affiliation or the practicing of paid professional activity. See CONSTITUTION Article 147(5).

The independence of the CC is further guaranteed by its financial independence and the independent status of its judges. The CC has its own independent budget, which forms a part of the consolidated state budget. The CC submits to the Minister of Finance its draft-budget accompanied by a report and estimates specifying the amount of the separate expenses. Any possible controversy is resolved by the Council of Ministers. See STATE BUDGET STRUCTURE ACT Articles 17–18. In 2010 the budget of the CC was 1,892,000 leva and in 2011 it was 1,992,000 leva. The Chairperson of the CC receives remuneration equal to the average mean of the one of the President of the Republic of Bulgaria and the Chairperson of the National Assembly. The other judges receive 90% of the remuneration of their chairperson. All judges enjoy the status of Chairperson of the National Assembly. See CONSTITUTIONAL COURT ACT Article 10, *promulgated* SG No. 67 (Aug. 16, 1991), *last amended* SG

No. 50 (July 3, 2012) [hereinafter CCA]. After expiration of their tenure, constitutional judges are entitled to pension, regardless of their age.

The CC may not act on its own initiative and exerts its power on the initiative of at least one fifth of the Members of the Parliament, the President, the Council of Ministers, the SCC, the SAC and the Prosecutor General. Unlike other legal systems, general courts do not have the right to discuss the constitutionality of the laws applied by them nor may they petition the CC for determinations of constitutionality. Only the two supreme courts may do so where any doubts arise and they are to suspend proceedings under the relevant case. See CONSTITUTION Article 150. Individual citizens are not entitled to a direct constitutional claim as they can only hope that any of the empowered subjects will move a request about the law that in their opinion contradicts to the Constitution. After the constitutional amendment of 2006, the ombudsman can also refer to the CC if in doubt about unconstitutionality of law, which violates the rights and freedoms of citizens. However, as it seems, the experts' anticipations that the latter would actively use his powers did not come true. Nineteen cases have been heard on initiative of the ombudsman<sup>1</sup>. The supreme judges do not either seem to use sufficiently their ability to initiate constitutional cases, regardless of the increasing number and repeating, in terms of grounds, judgments against Bulgaria of the European Court of Human Rights exactly with respect to cases heard by the same judges.

The CC alone decides whether an issue referred to it falls within its competence, its acts being final and binding upon all state authorities and persons. See CCA Articles 13–14. In pursuance of its principal powers, the CC makes binding abstract interpretations of the Constitution or rules on specific legal provisions and their compliance with the basic law. In this respect, the CC seems to have gone beyond the constitutional justice model thus established, by its probably most popular judgment – No 3/2003<sup>2</sup>. By wider interpretation including many specific examples of changes in the form of state organization and government, the CC seems to have left the territory of the negative legislator<sup>3</sup>. Raising exceptionally high its requirements in respect of the institutional reform of the judicial system, the CC has turned from a guardian of the Constitution into a defender of the judiciary<sup>4</sup>. And if then this judgment would probably appear to be justified given the current dynamics of the relations between the executive, legislative and judicial branch, a decade later the judicial reform seems to remain hostage of interpretations of the Constitution going beyond the necessary dosage of legislation-making on the part of the CC. And yet, in the recent years the CC seems to have taken a turn from the road it chose in 2003, as it allowed the MOJ to preserve the constitutional powers in respect of staffing and management of the property of the judiciary. See JUDGMENTS OF THE CC No 8/2006 AND No 8/2007. Judgment No 5/2009 also allowed internal, although peripheral, restructuring in the judiciary system – the “alleged” change in the form of government still not being found.

<sup>1</sup> The information concerning the number of cases is citing the official website of the Constitutional Court.

<sup>2</sup> From the standpoint of the ideologist of the modern constitutional justice Hans Kelzen, the Constitutional Court should, at least in theory, act as a “negative” legislator. In this capacity, the Constitutional Court is authorized to determine what the law cannot prescribe – unlike the “positive” legislator, the National Assembly – which determines what is in fact prescribed by the law.

<sup>3</sup> Dissenting opinion under Judgement of the CC No. 8/2007 also expresses concerns about the presence of, “judicial pro-activity” – even though sporadic – characterized by unacceptable in its essence positive legislative activity, where a judgement of the CC would turn from interpretative one into a legal act. Observers also express similar concerns in respect of Judgement No. 13/2010, whereby CC in practice satisfies a request of a group of members of the parliament for the creation of “positive” legislation.

<sup>4</sup> The only case where the CC declared a provision of the Constitution itself as unconstitutional concerns the independence of the judicial branch and in particular, the ability of the National Assembly to remove from office the so called “three big” in the judiciary.

Generally, the trend is towards preservation of the overall good attitude to the work done by the Constitutional Court on the part of representatives of the three branches, the legal community and the NGO sector. However, doubts in the effectiveness of the current format of the court are shared more and more frequently. The concerns are related in particular to “wasting” of probably the most qualitative legal capacity in the country by the limitation of the judicial practice to about 10 cases per year (2007: 11; 2008: 6; 2009: 11; 2010: 15). That is exactly what makes more and more experts to support the idea for the introduction of an individual constitutional appeal. The JUDICIAL REFORM STRATEGY also provides for the commencement of a discussion on this issue, See JUDICIAL REFORM STRATEGY , item 4.5.3. As discussed hereinafter in Factor 7, such a reform would not only improve the negative judicial image of the country but would also use significantly more effectively the resource of the CC. The judgments of the CC are not always free of doubts about certain politicization either. Some of the observers relate the voting on certain cases to the background of the appointments of the separate judges. In 2009 a judgment of the CC, concerning the election system seemed to be based on quite political grounds, especially in the context of the forthcoming parliamentary elections. See JUDGMENT No 1/2009 UNDER CONSTITUTIONAL CASE No 5/2009.

And still, both the institution and the individual judges enjoy respect and their judgments are enforced. Some commentators decline that the CC returns “vigorously” back on the stage of the constitutional justice, showing decisiveness to render “unpopular” judgments. In the 2010 autumn the CC stepped forward with 2 judgments of key importance for the legal society<sup>23</sup> regarding disputable amendments to the Criminal Procedure Code and long-time criticized restrictions on the enforcement against state institutions under the Civil Procedure Code. In both cases the court based its judgments on the stronger public interest, even though to a certain extent on account of the rights of the separate individual. In 2011 another CC decision raised criticism declaring unconstitutional lustration texts of the DIPLOMATIC SERVICE ACT, which prohibit the occupation by ex-collaborators to the State security service of diplomatic positions. See JUDGMENT No 11/ NOV. 22, 2011 IN CONSTITUTIONAL CASE No 8/2011.

## Factor 6: Judicial Oversight of Administrative Practice

***The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.***

Conclusion	Correlation: Positive	Trend: ↔
<p>The oversight of administrative acts is entrusted to the Supreme Administrative Court and the recently created system of administrative courts. The general opinion is that the system of administrative justice works well and is ahead of civil justice in many aspects. In the same time, the jurisdiction over administrative cases is not designed as effectively as it could be, there being excessive caseload for the supreme judges and free capacity of the newly created courts. The frequent failure of administration to comply with the judicial acts and the lack of possibility to take out a writ of execution against a state authority in practice deprives citizens of effective enforcement of the court judgment.</p>		

<sup>24</sup> See JUDGMENTS No. 10/ SEPT. 28, 2010, and No. 15/ DEC. 28, 2010.



## Analysis / Background:

The power to review the legality of acts and actions of administrative bodies is vested by the Constitution in courts. Especially, natural persons and legal entities are explicitly allowed to appeal against all administrative acts that affect them, except as otherwise explicitly provided for by law. See CONSTITUTION Article 120. Supreme judicial supervision as to the accurate and equal application of the laws in administrative justice is implemented by the Supreme Administrative Court (although some of the respondents allege that the SAC does not have an appropriate set of tools for the exercising of this power, being in this respect behind the SCC). The SAC is also competent to resolve disputes as to the legality of acts of the Council of Ministers and of the individual government ministers, as well as of other acts specified by law. *Id.* Article 125.

The system of administrative justice in Bulgaria was seriously reformed in 2007 by the entry into force of new procedural legislation and, probably more importantly, the creation at a district level of a system of administrative courts. Three basic legal acts govern the judicial oversight of the operation of administrative authorities. In the first place, the JSA lays down the general structural framework of administrative courts. Administrative courts introduced by the 2006 reform, which replaced administrative departments in district courts, hear in their capacity of a court of first instance or court of cassation instance such cases as provided for in the law. See JSA Article 63. An administrative court, as a court of first instance has jurisdiction over all administrative cases, except for those that according to the law fall within the jurisdiction of the SAC. Administrative courts hear cases in a panel of one judge, unless otherwise provided for the by a law, as their judicial districts coincide with the judicial districts of the district courts. See JSA Articles 89–90. SAC has jurisdiction over the entire territory of the country, as its seat is in Sofia. See JSA Article 116. The judges in the SAC are currently allocated to two chambers and eight departments in order to achieve a better specialization in the matters of administrative law. The SAC sits for sessions in panels of three judges, unless where otherwise provided for in a law (the Administrative Procedure Code, *promulgated* SG No. 30 (April 11, 2006), *effective* July 12, 2006, *last amended* SG No. 77 (Oct. 9, 2012), *effective* Oct. 9, 2012 [hereinafter referred to as ADMIN. PROC. CODE] provides for panels of 5 or 7 judges, as well). The general meetings of the chambers render interpretative judgments in the field of administrative justice, and also in case of contradictory or incorrect practice in the interpretation and application of the law. See JSA Articles 118–120. A request for an interpretative judgment may be made by the chairperson of the Supreme Court of Cassation, the chairperson of the Supreme Administrative Court, the Prosecutor General, the Minister of Justice, the Ombudsman or the chairperson of the Supreme Judicial Council. *Id.* Articles 124–125. Interpretative judgments are binding upon the judicial and executive authorities, the local administration and all authorities issuing administrative acts. *Id.* Article 130(2).

The second principal legal act in the field of administrative justice is the Admin. Proc. Code, which replaced the formerly effective Supreme Administrative Court Act and Administrative Procedure Act. The Admin. Proc. Code regulates the issue, disputing and enforcement of individual administrative acts, as well as the judicial disputing of secondary legislation; it also regulates the enforcement of administrative and judicial acts under administrative cases. See ADMIN. PROC. CODE Article 1. The code is not applicable to acts of the National Assembly and the President (falling within the jurisdiction of the CC), as well as to acts used to exercise a legislative initiative. *Id.* Article 2. As noted hereinabove, the administrative courts have jurisdiction over all administrative cases except for those falling within the jurisdiction of the SAC. The latter, on its part, hears appeals against secondary legislation; appeals against acts of the Council of Ministers, the prime minister and his deputies and ministers; appeals against resolutions of the SJC; cassation appeals and protects against judgments of a court of first instance; application for the set-aside of final judicial acts; as

well as appeals against other acts specified in a law. As a general rule, the judicial procedures under the APC comprise two instances, except when otherwise provided for by a law. *Id.* Article 131. The grounds for disputing administrative acts are listed in details in the law and include: lack of competence, failure to comply with the prescribed form, material violation of the rules of administrative procedure, contradiction to the substantive law or non-conformity with the purpose of the law. The Admin. Proc. Code provides for an opportunity to collect new evidence in the first court instance as far as it is admissible under the rules of the CIV. PROC. CODE. See ADMIN. PROC. CODE Article 171(2). Eligible to dispute administrative acts are natural persons or legal entities whose rights, freedoms or legal interests have been violated or endangered or in respect of whom respective obligations arise. See ADMIN. PROC. CODE Articles 146–147. There could be certain disputes about the provisions vesting the right to appeal against acts of secondary legislation. The provision of Article 186 vests this right only in persons whose rights, freedoms or legal interests are or may be affected. This provision served as a ground in 2006 for the Ombudsman of the Republic of Bulgaria to file a request to the CC for the declaring thereof as unconstitutional due to its being contradictory to the principle of rule of law and being harmful for the fundamental right of protection. The Supreme Bar Council, as well as human rights organizations stood up for the ombudsman's opinion. However, in the end, the CC found no contradiction to the Constitution and rejected the request<sup>1</sup>. A recent report<sup>2</sup> of Bulgarian Lawyers for Human Rights still criticizes such a legislative solution. According to the human rights defenders although it is obvious that in certain cases the dismissal of the judicial procedure due to the lack of legal interest of appellant results in direct harming of the appellant's rights and legal interests by the enforcement of the act itself, Article 6, item 1 of the ECHR is not applied. In the beginning of 2010, upon a request of the prosecutor general, the general meeting of the chambers in the SAC rendered an interpretative judgment, according to which non-profit legal entities may dispute acts of secondary legislation in the presence of legal interest substantiated by the subject of activity thereof and the objectives they were established to achieve<sup>3</sup>.

A judgment of a court of first instance may be fully or partly appealed against by a cassation appeal. The case is to be heard by a panel of three judges of the SAC, where a judgment of an administrative court is appealed against and by a panel of five judges, whenever the appealed judgment is rendered by a panel of three judges of the SAC acting as a court of first instance. See ADMIN. PROC. CODE Article 217. The SAC may also sit in a panel of seven judges in the hypothesis of set-aside of a final judicial act. *Id.* Article 243.

The last legal act in this matter is the Administrative Violations and Sanctions Act, *promulgated* SG No. 92 (Nov. 28, 1969), *last amended* SG No. 77 (Oct. 9, 2012) [hereinafter ADMIN. VIOL. & SANC. ACT]. Admin. Viol. & Sanc. Act provides the required guarantees for protection of the rights and legal interests of citizens and organizations in the imposition of administrative punishments and their enforcement. Punishments are appealed against before the regional court, within the region of which the violation was committed or completed, and as regards violations committed abroad – before the Sofia Regional Court. See ADMIN. VIOL. & SANC. ACT Article 59. After the reform in administrative justice of 2006, the judgments of the lower court are already subject to cassation appeal before the respective administrative court. See ADMIN. VIOL. & SANC. ACT Article 63.

<sup>1</sup> See JUDGMENTS OF THE CC No. 5/ APRIL 17, 2007, promulgated in SG No. 35 (April 27, 2007).

<sup>2</sup> "IMPROVEMENT OF THE GUARANTEES FOR A FAIR PROCESS IN ADMINISTRATIVE JUSTICE", a monitoring report of BLHR, 2010.

<sup>3</sup> See INTERPRETATIVE JUDGMENT OF THE SAC No. 2/ FEB. 12, 2010.

The prevailing opinion among the respondents was that the system of administrative justice generally functioned in a smooth and effective manner, especially compared to general courts. The SAC is still perceived as an institution that played an important role in the development of justice in the past 10 years. The caseload remains high and in 2009 the average number of cases per one supreme judge exceeded 260 cases and for 2010 – approx. 207 cases. In 2012 the average number of cases per judge decreased to 180 cases per judge in First chamber and 203.85 cases per judge in Second Chamber. The total number of cases heard in the SAC for 2009 was 21,681, this being an increase of 29% compared to 2006 and in 2010 their number was slightly decreased and was 16,589 cases. Furthermore, the SAC proves to be an effective corrective of the executive branch. Out of 31 cases against acts of secondary legislation in 2009 the court granted fully or partly the request for a set-aside in 78% of the cases. The “small” administrative courts, which commenced operation in 2007 also contribute to the general improvement of the system. The prevailing part of the administrative judges seems to both have a good legal training and be motivated in their work. Even though no statistics is kept on the number of prejudicial requests made by Bulgarian courts to the Court of Justice, the Sofia Administrative Court is pointed out as one of the few courts using this still unknown and complex legal method<sup>1</sup>. In 2009 administrative judges heard a total of 35,710 cases, as they resolved 67% of them within up to three months and as of 2010 there were 48,953 cases. Less than a third of all cases were appealed, as the regularity of 72% of the appealed acts was confirmed by the court of higher instance for 2009. Administrative courts are generally perceived as being modern and ahead of the trends of justice in Bulgaria.

The Admin. Proc. Code on its part does not have the anticipated effect in respect of decrease of the number of cases in the SAC thereby providing the judges with more time to work on the achievement of a uniform case-law. The main reason identified for this is the Constitutionally determined jurisdiction of the SAC, as well as many special laws, according to which it is namely this court that acts as a court of first instance (more than 60 as alleged by experts in this field). The excessive caseload of supreme judges<sup>2</sup> inevitably has an impact on the timely hearing of cases or brings about a delay of the process of drafting of judicial acts. The SAC Activity Report for 2008 finds that the hearing of administrative cases by the court as a court of first instance contradicts to the principles of justice. The main identified reason is its dualistic role, when it hears cases as a court of first instance and in the same time acts as a cassation instance for its own judgments. The main principle of instance based control is thereby violated. See ADMIN. PROC. CODE Article 132(2). Attention should also be paid to the concerns of supreme judges that their objectivity in cassation proceedings may be influenced by colleague relations with the judges from the same court who heard the cases at first instance. As it seems, this status quo is inherited from the early period of the transition in Bulgaria and the understanding that only a supreme court may supervise the legality of the acts of supreme administrative authorities. Well informed respondents allege that even the SJC does not agree to have its resolutions reviewed by a “small” administrative court as a court of first instance. However, to all appearances, in order to achieve relieving of the supreme judges’ caseload, legislative amendment are required, which are to allow the SAC to turn into a true cassation instance exerting oversight of the accurate and equal application of the legislation in administrative justice. A further impediment is the fact that the SAC, unlike the SCC, does not have a clearly outlined legal framework for standardization of its case-law, and in this respect the reform lags behind the one in the civil process.

<sup>1</sup> In 2009, the judges of the Sofia City Administrative Court made two such enquiries. See REPORT ON THE ACTIVITY OF THE SOFIA CITY ADMINISTRATIVE COURT FOR 2009.

<sup>2</sup> The new Admin. Proc. Code created further workload for judges since according to it panels of 7 judges may be set up in proceedings for set-aside of final judicial acts.

Although some of the respondents shared an opinion that the number of small administrative courts should be decreased to 10–12 exactly due to their smaller caseload<sup>1</sup>, many supporters of the reform explain the problem with poorly designed jurisdiction. One of the factors contributing to these judicial anomalies is also the local jurisdiction over cases, where the decisive criterion is the seat of the administrative authorities (predominantly situated in Sofia and several district cities), rather than the place of residence or seat of the appellant. Tax cases are only heard in five of the administrative courts: Sofia city, Burgas, Varna, Plovdiv and Veliko Tarnovo (under the seats of the respective territorial tax offices). As it seems, the prevailing understanding of the respondents is that this jurisdiction needs to be changed and all administrative courts should be allowed to hear such cases. Likewise, a recommendation is made to change the main criterion for local jurisdiction to the address or seat of the appellant, but not as it is now – the seat of the authority issuer of the act<sup>2</sup>.

Another problem pointed out by the respondents is the frequent failure on the part of administration to comply with the judicial acts. Since a writ of execution cannot be obtained against a public authority, citizens are in practice deprived of effective enforcement of the court judgment. References are made to cases where regardless of a series of final judgments under various aspects of one case, the relevant public authority refuses to comply with the prescription issued by the court and to perform its legal duties, referring to the discretionary powers formally vested in it by the law.

## Factor 7: Judicial Jurisdiction over Civil Liberties.

***The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.***

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
<p>The judicial system in Bulgaria has exclusive jurisdiction over cases regarding the fundamental rights and liberties as there are no extraordinary courts that can limit judicial powers in this respect. Even though our national courts refer more and more to instruments of international law for protection of fundamental rights in their judgments, concerns are raised by the trend towards permanent increase of the number of judgments against Bulgaria in the European Court of Human Rights. To all appearances, the state has still not created effective tools of the domestic law for protection of the rights conferred by the European Convention on Human Rights.</p>		

### Analysis/Background:

The Constitution guarantees to citizens a wide range of rights and liberties largely overlapping the scope of protection of the leading instrument of international law in this field – ECHR. The fundamental Constitutional guarantees are the right of “[a]nyone charged with a

<sup>1</sup> According to the Report on the Application of the Law and on the Activity of Administrative Courts in 2009, there are serious differences in terms of average caseload per administrative judge. For example, if a judge in the Sofia City Administrative Court hears more than 26 cases per month, his/her colleagues in Targovishte and Razgrad hear only 5–6 cases.

<sup>2</sup> As of the moment of drafting of the present analysis, there was a forthcoming discussion in the National Assembly of a draft act aiming exactly at a change in the local jurisdiction over administrative cases to the place of residence or seat of the appellant.

criminal offense [...] to be brought before an authority exercising judicial power within the time limit established by statute” and the vesting in the judiciary of the power to protect “the rights and legitimate interests” of citizens and legal persons. See CONSTITUTION Articles 31, 117(1). As discussed hereinafter in Factor 8, the judiciary has jurisdiction of all civil, criminal and administrative cases, and no other state authority may hear a case being heard by a court. The judicial authorities interact with the authorities of the legislative and executive branch for comprehensive and full protection of the rights of natural persons and legal entities, as the latter are entitled to judicial protection that may not be refused to them. See JSA Articles 5(3), 7(2), 61.

The dispensation of justice under criminal cases is only carried out by courts set forth in the Constitution, and no extraordinary criminal courts may be set up. See CRIMINAL PROC. CODE Article 6. Within the criminal procedure the court is a guarantor for observance of the fundamental rights and freedoms of citizens. E.g. the measures of remand bail, house arrest or remand in custody in the pre-court procedure are controlled or rendered by the respective court of first instance. See CRIMINAL PROC. CODE Articles 61–64. The court exerts similar control over imposed restrictions upon departure from the country. *Id.* Article 68. Search, seizure and seizure of correspondence are also performed by the authorization or under the control of the court. *Id.* Articles 161, 165.

Protection against illegal acts of the state administration or legal protection authorities is provided by the Liability of the State and Municipalities for Damages Act, *promulgated in* SG No. 60 (Aug. 5, 1988), *last amended* SG No. 98 (Dec. 11, 2012) [hereinafter LSMDA], which is a major domestic legal tool for protection of the rights within the meaning of the ECHR, requiring the provision of efficient means of protection before the respective national authorities of the rights and freedoms set forth in the Convention. See ECHR Article 13. Once the domestic remedies have failed those who are victims of violations of their rights or freedoms may file an appeal to the European Court of Human Rights.

The LSMDA provides for liability of the state and municipalities for damages caused to citizens and legal entities by illegal acts, actions or omissions of their authorities in relation to the performance of administrative activity. The state is also liable for damages caused to citizens by authorities of the police investigation or judicial branch in hypotheses of illegal detention, charge or sentencing for crime, using of special intelligence means. The first group of claims is heard under the procedure of the Admin. Proc. Code, and the second – under the Civil Proc. Code. In case indemnification is awarded, it should cover all property and moral damages, which are direct and immediate consequence from the tort. See LSMDA Articles 1–4. The Constitution also contains an explicit provision for liability of the state for damages caused by illegal act or actions of its authorities or entities. See CONSTITUTION Article 7. Most respondents share that there is an increasing number of cases when mostly young judges refer in their judgments directly to the provisions of the ECHR, as well as to the jurisprudence of the European Court of Human Rights. Even though the parties’ attorneys-at-law frequently draw the attention of the court to the international law and practice, such a development should be welcomed and encouraged, especially taking into account the huge workloads of many judges and the inadequate coverage of the protection of human rights in the faculties of law. As it seems, the toolbox of the LSMDA is also more and more intensely used, as some of the respondents have noted that the levels of the awarded indemnifications under the LSMDA frequently correspond to those awarded by the European Court of Human Rights. And still as it seems the fundamental principles of liability of the state for caused damages laid down in the Constitution and ECHR are not always reflected in the interpretative and cassation practice or in the policies of the government. One of the respondents pointed out as an example Interpretative judgment No. 3 of 2004 of the General Meeting of the Civil Chamber of the SCC, according to which the provision of Article 7 of the Constitution, discussed hereinabove, is a not a direct means of protection



of the citizen's rights and freedoms. It turns out that this judgment directly ignores the provision of Article 5(2) of the supreme law of the state, which provides for an immediate effect thereof. There is also a similar case, where the administrative court acting in the capacity of a cassation instance acknowledges that the ECHR is not directly applicable<sup>1</sup>. Some of the respondents regretted that the state has not created efficient domestic legal means of protection of the rights provided by the ECHR. Defenders of human rights allege that the executive branch does not have a strategy and institutional policy in respect of the judgments of the European Court of Human Rights. Even though it pays the awarded indemnifications, the government does not seem to analyze the reasons for a judgment against it or to undertake any measure for the elimination thereof. The Judicial Reform Strategy makes a step in this direction by providing for the creation of a special mechanism for summarization of case law of the European Court of Human Rights in respect of Bulgaria and for the creation of a kind of a filter, which is to decrease the number of the inadmissible appeals to the court<sup>2</sup>.

In the years since the last conduction of a JRI in 2006 Bulgaria has preserved its negative image of a country regularly sentenced for violations of the ECHR. As evident from the table below, the number of the actions brought and rendered judgments against the country shows significant increase every year, while the total value of the awarded indemnifications is permanently growing up<sup>3</sup>.

### Number of cases and verdicts against Bulgaria in the period 2007–2011

Year	Number of claims brought versus Bulgaria, communicated to the government	Number of sentencing judgments of the Rights European Court of Human against Bulgaria	Amount of the awarded compensations (BGN)
2007	127	51	607,000
2008	146	56	1,713,000
2009	158	61	3,375,000
2011	62	52	2,049,000

Source: Ministry of Justice

Bulgaria is permanently among the countries against which most judgments are pronounced in respect of violations of human rights and freedoms within the ECHR system. In 2009 and 2010 the country was ranked respectively 7<sup>th</sup> (61 sentencing judgments) and 6<sup>th</sup> (69 sentencing judgments) in the negative ranking for the largest number of sentencing judgments among the 47 countries, parties to the Convention (we are only behind countries with a long lasting negative right protection index, such as Turkey and Russia)<sup>4</sup>.

<sup>1</sup> See REPORT "IMPROVEMENT OF THE GUARANTEES FOR A FAIR PROCESS IN THE ADMINISTRATIVE JUSTICE" of Bulgarian Lawyers for Human Rights, November 2010.

<sup>2</sup> See item 4.5 of the STRATEGY – <http://www.justice.government.bg/new/Pages/Ministry/Default.aspx?evntid=26079>.

<sup>3</sup> See REPORTS OF THE ECHR (for 2011 the report is available at [http://www.echr.coe.int/Pages/home.aspx?p=echrpublications&c=#newComponent\\_1345118680892\\_pointer](http://www.echr.coe.int/Pages/home.aspx?p=echrpublications&c=#newComponent_1345118680892_pointer)).

<sup>4</sup> Reports of the European Court of Human Rights for 2009 and 2010 (preliminary data) accessible at: <http://www.echr.coe.int>.

According to statistical data about Bulgaria in the 2009–2012 period, presented by the MoJ, the tendency in the period shows an increase in the number of complaints to the Court in Strasbourg. At the same time, it shows certain decrease in the number of cases admitted and communicated to the Government. 93% of the complaints against Bulgaria have been declared inadmissible or stricken from the list, while on 7% of them decisions were enacted. The particular data by years is presented in the tables below.

### Statistics on the proceedings on complaints against Bulgaria in the 2008–2011 period

Proceedings on complaints	2008	2009	2010	2011
Complaints, assigned to a judicial panel	890	1,194	1,348	1,206
Communicated to Bulgaria for a statement	137	208	92	141
Decided, out of which:				
– declared inadmissible or stricken	434	596	525	543
– verdicts	51	61	69	52
– acquittals, friendly settlements	9	2	12	10

Source: MOJ

### Number of inadmissible complaints in the 2007–2011 period

Year	Total number of pending complaints	Explicitly inadmissible
2007	1,835	586
2008	2,229	434
2009	2,728	596
2010	3,466	525
2011	4,054	543

Source: MOJ

In the light of the above, as mentioned earlier in Factor 5, the concept of individual constitution appeal (ICA) seems to have more and more supporters. According to the latter, on the one hand the negative judicial review of the country would be improved, while, on the other hand, the exceptionally valuable resource of the Constitutional Court (former supreme judges, ministers, lecturers in law, etc.) would be used better. Furthermore, the Constitutional Court itself admits that it is possible to introduce the institute of “individual appeal” in Judgment No. 3<sup>1</sup> of 2003. The ICA and the possible judgments of the CC within this procedure would be compulsory for all state authorities, repealing legislative provisions that contradict to the Constitution or to international legal acts in the field of protection of human rights and fundamental freedoms. Unlike ICA, the presently alternative mechanism for refer-

<sup>1</sup> For a more detailed discussion of Judgement No. 3/2003 see Factor 5. According to the CC the referring to the Constitutional Court by individual citizens does not represent a change in the form of state organization, respectively such a constitutional change could also be adopted by an ordinary National Assembly.



ral of a dispute to the European Court of Human Rights is not perfectly implemented in terms of domestic law. On the one hand, the executive and legislative branch frequently do not comply with the judgments of the Strasbourg Court and do not undertake measures for repealing of the legal provisions contradicting to the Convention. On the other hand, court judgments are only obligatory in respect of the specific parties and generally do not establish a precedent as regards the future conduct of state authorities. Thereby one violation is multiplied and as a result the state is sentenced many times under similar cases. Things would not be the same, if the CC had the powers to hear cases under individual appeals of citizens and to assess their constitutionality giving them an effective comprehensive effect. Last but not least, as noted hereinabove, the amounts paid by Bulgaria as indemnifications under sentencing judgments of the European Court of Human Rights permanently increase in the last years. As it seems, a part of these funds could be used for increase of the budget and staff of the CC in view of appointment of the necessary judicial assistants, who are to support the activity of the constitutional judges in a possible future procedure under an individual constitutional claim. Apart from ensuring a fuller synchronization of the legislation and the administrative (incl. police) practices with the requirements of the Constitutions and the ECHR, the CC would assist for improvement of the image of Bulgaria as a country respecting human rights and attempting to establish rule of law.

## Factor 8: System of Appellate Review

*Judicial decisions may be reversed only through the judicial appellate process.*

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
<p>The short term of operation of the new Civil Procedure Code does not allow a full assessment of the effects of the reform relating to the system of review and appeal. However, the prevailing opinion is that cases are of a relatively long duration, and the adoption of new procedure elements relating to the exchange of papers and the drawing up a report before the first session results in unnecessary delay in the hearings before first instance courts. On the other hand, the Supreme Court of Cassation turns out to be isolated and practically deprived of one of its most important functions – to make a real summary of the case-law.</p>		

### Analysis / Background:

Courts in Bulgaria hear civil, criminal and administrative cases. Courts have an exclusive jurisdiction – cases heard by a court may not be heard by any other authority. See JSA Article 61. Extraordinary courts may not be created. See CONSTITUTION Article 119(3). Administrative judicial procedure is generally two-tier, i.e. the system allows proceedings to be brought before a court of first instance and before the supreme court, which hears appeals in cassation; the procedure may be a three-instance one only in indirect judicial oversight, when the court hears a dispute other than an administrative dispute, but makes a ruling on an administrative act in the reasoning of the judgment. The legal procedure under civil and criminal cases is three-instance: first instance procedure, appeal procedure and cassation procedure, unless otherwise provided for in a law. Generally, first instance cases, depending on the type of the case, are heard by a regional or district court, as acts rendered under these cases are respectively appealed against before a district or appellate court, which acts in its capacity of an appellate instance. The Supreme Court of Cassation on its part acts as a cassation instance for judicial acts determined by a law and hears other cases as provided for by a law.

The system of criminal process as a whole remains unchanged compared to the 2006 JRI<sup>1</sup>. The appellate instance checks the regularity of the lower court sentence fully, as the establishment of new facts is allowed and all evidence under the Crim. Proc. Code may be used. Appealing may be initiated both by the accused or by the public prosecutor, and by other parties to the process, as long as their rights and legal interests have been affected. See CRIM. PROC. CODE Articles 315, 316, 318. The appellate court may set aside a sentence and remand the case for new hearing; modify or set aside the sentence and render a new one; set aside the sentence and dismiss the criminal proceedings. See CRIM. PROC. CODE Article 334. The Court of Cassation hears appeals against the new sentences of the appellate instance as the Court of Cassation reviews only the appealed part of the sentence and may leave it in force, modify it or set it aside fully or partially while remanding the case for new hearing or dismissing the criminal proceedings. *Id.* Articles 347, 354. Some of the respondents express their concern that the Crim. Proc. Code does not allow to appeal against decrees for dismissal of criminal proceedings, which sometimes forces the affected parties to send appeals to the SJC and to its Inspection Service. Other respondents warn about the existence of the so called “perpetual” cassation, where criminal panels of the Supreme Court of Cassation remand to appellate courts cases for new hearing as the lower court judges resolve the case once again in the way that caused the remand of the case, which imposes new set-aside on the part of the SCC and new remand for a new resolution. Such hypotheses occur when the SCC and appellate courts have different concepts about the law and the application thereof. That is why a recommendation was made that upon a third return of the case to the Supreme Court, the latter should have the right to resolve it on its merits (a similar solution existed in Article 357(4) of the Crim. Proc. Code, *abrogated*, SG No 50 (May 30, 2003)).

Appellate and cassation appealing in administrative and civil process underwent a considerably deeper development. On the one hand, administrative justice, as mentioned earlier, was vested for the first time in specific administrative courts, which in certain cases may serve as a cassation instance of the general courts. Within an administrative procedure, the court of first instance acts *ex officio*, i.e. its activity is not limited to discussion of the grounds specified by the appellant, while the court of cassation acts under the conditions of the principle that the subject-matter of an action is delimited by the application initiating proceedings, as the court of cassation discusses only the defects of the lower court act pointed out in the appeal. See ADMIN. PROC. CODE Articles 168, 218. The administrative cassation procedure is focused on the right, rather than on the facts, as the court of cassation acts in most cases as an instance on the merits, and only in the hypothesis of violated judicial procedural rules – as a supervisory instance with the right to set aside. See ADMIN. PROC. CODE Articles 220, 222. The civil process was also reformed considerably as the second court instance turned into a real appellate one, and the cassation court was given vast powers to standardize the case-law and the development of law. The adversary procedure is based on a “concentration” principle, a new procedural principle expressed in precluding the making of any new statements on facts and evidentiary requests at a relatively early stage of the dispute development before the first instance. The objective to speed up and discipline the process by the introduction of a preclusion of material procedural rules is upgraded in the appellate procedure, within which the parties may only refer to newly revealed or newly occurring facts or proofs that they could not have known or referred to before the first instance. See CIV. PROC. CODE Article 266(2). Cassation appealing is also seriously limited compared to the former regime as the grounds for admissibility of a cassa-

<sup>1</sup> After the preparation of the present analysis, contradictory legislative amendments were adopted, whereby a specialized criminal court was created. See JSA art. 61, *amended* SG No. 1 (Jan. 4, 2011), *effective* Jan. 4, 2011, and CRIM. PROC. CODE, art. 411à et seq., *supplemented* SG No. 13 (Feb. 11, 2011), *effective* Aug. 12, 2011.

tion appeal are reduced to the presence of contradictory case-law, necessity of provision of the accurate application of the law and development of law. *Id.* Article 280.

A basic driver of the reform of civil judicial procedure of 2008 was the response to the long lasting critics about clumsiness of the civil process and excessive delay in the completion of cases. However, to all appearances, this effect is not fully achieved. While most respondents acknowledge that the new legal framework allowed faster hearing of cases in the appellate instance, it took place on account of the first instance procedure. The introduction of the pre-court exchange of documents between the parties, as well as the requirement for preparation of a case report by the judges, which is in its essence return of the “ex-officio” principle in the civil process, failed to achieve a considerable acceleration of the procedure<sup>1</sup>. See CIV. PROC. CODE Article 146. Opinions were expressed that the written reply is not always an appropriate institute, in particular in hypotheses of claims brought by public utility companies. Some of the respondents note that if before the amendments the first instance hearing of simpler cases in courts with smaller workloads frequently would end up within up to 2 months from the filing of the statement of claim, this period is presently increased to at least 3 months (due to the 1-month deadline for exchange of documents and the technically required time for preparation of the report under the case before the first court session). As discussed hereinafter in Factor 12, in some of the busier courts the situation is further complicated due to the lack of court rooms and the forcible postponing of sessions under the cases for months, in cases when judges fail to prepare in due time the large reports for the first session under the case. A certain concern was also shared that the acceleration of the civil process seems to be on account of justice, especially in view of the impossibility to submit omitted proofs. As it seems some of the judges try to make up for this procedural restriction by allowing omitted proofs acknowledging that the parties were subjectively unable to present them due to failing to understand the new rules.

The new Civ. Proc. Code allows cassation appealing against all judicial rulings and it results in further loading of the supreme judges, and in practice a case may find itself “covered” by tens of intermediate processes (small processes within the main process)<sup>2</sup>. Every judge of the civil and criminal chamber of the SCC participated in the hearing of about 230 newly created cases on the average in 2008 and 243 cases in 2009; the supreme judges in the commercial chamber heard about 190 cases annually in 2009. In the same time, the caseload of appellate court judges remains low (8.82 heard cases and 7.63 completed cases on the average per appellate judge), this being even lower than the level from the former issue of JRI in 2006.

There are also considerable differences in the quality of the judicial acts appealed before the appellate or cassation instance. Some of the respondents noted that judicial acts com-

<sup>1</sup> See WORLD BANK REPORTS “MAKING BUSINESS” IN BULGARIA, 2008 and 2011, examining respectively the periods immediately before the entry into force of the new Civil Procedure Code and as of the conduction of the present survey. According to the analyses, the period needed for performance of a commercial contract (including the stages of filing of the statement of claim and the serving thereof to the opposite party; judicial hearing of the dispute and entry into force of the final judgement under the dispute; and enforcement) remains unchanged – 564 days, still being way above the average period for the South-Eastern Europe and the member-states of the Organization for Economic Co-operation and Development (OECD).

<sup>2</sup> This legislative solution was changed in the end of 2010 (SG No. 100 (Dec. 21, 2010) as art. 274(4) provided for that there could be no appealing against rulings on cases, the judgements on which are not subject to cassation appeal. It should be noted that the legislator, probably due to a technical error, extremely extended the scope of this otherwise reasonable solution and instead of restricting the cassation appeal of rulings only, in practice prohibited it completely within the said hypothesis. The amendments of the end of 2010 satisfied also the long-standing request of the SCC as they increased the material interest threshold for eligibility of appellate judgments to be appealed against before the SCC from 1,000 leva to 5,000 leva for civil disputes and respectively – 10,000 leva for commercial disputes.

ing from courts in the larger district towns and cities, and notably in Sofia, are of much higher quality compared to the product of judges in other parts of the country. This circumstance is attributed to the higher competition and possibility of making a better selection of judges. As it seems, there is a certain worsening of the quality of judicial acts under criminal cases, and the main reason seems to be the appointment of a considerable number of investigators and public prosecutors as judges. It is impressive that for the period 2008–2009, the SCC confirmed a higher percentage of appellate judgments under civil cases coming from district courts compared to those from appellate courts (62.60% to 61% for 2009). However, as regards commercial cases, the trend is just the opposite. As regards criminal cases, in 2009 the SCC confirmed a higher percentage of appellate judgments coming from appellate courts (72%) compared to those from district courts (58%). The fact that almost every second act was amended or set aside implies need to take appropriate measures for improvement of the work and quality of the judicial acts of lower courts.

The cassation appeal model under the Civil Procedure Code appears to be based on two fundamental principles, faculty and selectivity, as the aim is to achieve uniform case-law that is foreseeable in time. Supporters of the reform hope that in long term it will result in decrease of the caseload of courts, as well as to strengthening of the citizen's trust in the system. However, the new cassation grounds have their opponents, as well. Some of the respondents find the refusal technique too burdening for the judges, since the preparation of a reasoned refusal for non-admission of a cassation hearing of a case requires a detailed examination of all case materials, which is much alike the cassation judgment itself in terms of work and volume. This activity further increases the caseload of supreme judges, who would have in practice – even if not admitting a case to be heard – completed a major part of the hearing on the merits. Other critics of the new legal framework consider that in practice the SCC refuses justice. This issue was even referred to the Constitutional Court, without any success though, by the ombudsman in 2009<sup>1</sup>. Other opponents point out the excessive subjectivity in the court assessment, which makes the procedure much more similar to the case law system and moves it away from the continental legal system; this legislative solution seems to be further complicated by the intense dynamics of legislative amendments, which does not allow the court to build a stable case-law. The new cassation procedure seems to contribute to delay of certain cases. Those who have more information allege that appeals filed under cases sometimes stay in the SCC more than 8–10 months before the court rules whether it would reject or admit the cases for hearing. Other critics allege that the SCC is deprived of opportunity to summarize the case-law, since it no longer reaches them; what is more – the summarization of case-law starts at a district court level.

Regardless of the existing critics for the new system of cassation appealing under civil and commercial cases, recommendations were also made for the introduction of similar cassation grounds in the administrative and criminal process for the purpose of decreasing the caseload of supreme judges and enabling supreme judges to act most of all as a court instance which summarizes case-law and guarantees the lack of contradictory court judgments.

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<sup>1</sup> See Judgement of the CC No. 4/2009, *promulgated in* SG No.47 (June 23, 2009), issued on the grounds of a request of the ombudsman for declaring the unconstitutionality of certain provisions of the new Civ. Proc. Code, incl. the provision of art. 280(1) of the Civ. Proc. Code.

## Factor 9: Contempt/Subpoena/Enforcement

***Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
Judges have adequate contempt powers, although they generally use them sporadically. The new system of serving subpoenas in the civil process, which by analogy is also applied in administrative proceedings, has failed to produce the anticipated improvements criticism. Hence it has been strongly criticised both in terms of expedience and of the procedural solutions it offers. The enforcement of civil cases still shows the long anticipated positive development but it gives rise to certain concerns due to the increasing number of pending cases of private enforcement agents and their exceptionally broad powers.		

### Analysis / Background:

Order in the courtroom is ensured by the presiding judge, who also has the power to sanction those who disturb the order under such procedure as provided for in the applicable procedural law, and his/her directives are binding on everyone present in the courtroom. See JSA Article 135. The presiding judge in the civil process is responsible for controlling order, as he/she may impose fines or send off anyone who disturbs order. Where a warning proves to be insufficiently effective, the court may send off the party or its representative for a definite period of time. See CIV. PROC. CODE Article 141. The court may sanction by fines the persons listed below when they obstruct the dispensation of justice for no valid reasons: a witness who is regularly summoned but fails to appear or declines to testify; an expert who fails to appear or declines to submit or fails to submit in due time his/her opinion; third parties who decline to submit a document or article requested by the court; an official who served a notice in an inappropriate manner, failed to properly certify the service or failed to return to the court the service receipt in due time. Within the court session itself, the court may also impose fines for disturbance of order in court session, failure to comply with court directives, insult to the court or other participants. See CIV. PROC. CODE Articles 88, 89. The sanction under the listed offences varies between BGN 50 and BGN 300, at the discretion of the court. In cases of violations obstructing the proceedings, as well as in case of repeated offence the fine amounts to BGN 100 to BGN 1,200. *Id.* Article 91. As discussed in the analysis under Factor 8, the new Civ. Proc. Code provided for a series of instruments for acceleration of the process, as a doubtlessly important element were the extended hypotheses and the increased rates of fines<sup>1</sup>. In 2009 an attempt was made for further bringing of the process under control, enabling sanctioning of a party that without a valid reason causes postponing of the case, providing an opportunity to sentence it to pay fine, as well as the costs for the new court session.

<sup>1</sup> According to the latest amendments to the JSA of January 2011, the Security Directorate General assists the judicial authorities in the summoning of persons whenever such summoning is being obstructed. Due to the practically new contents of this provision (the former one provided for assistance only in cases of criminal procedures, as well as in respect of the public enforcement agents) it is hard to comment to what extent this provision is directed, inter alia, to acceleration of the summoning in the civil procedure. In any case, such an extension of the powers of the judicial security must be welcomed, of course as long as it will not turn into an instrument for "repressions" against the summoned parties. See JSA art. 391(3).4.



Likewise the civil process, the criminal and administrative processes also suffer attempts for unreasonable delaying of the case hearing, rendering of the judicial act and the enforcement thereof. To all appearances, administrative judges experience less difficulties compared to criminal judges with respect to the bringing of the process under control and its timely conduction, mostly due to the different nature of the procedures and the interests of the parties thereto. The Admin. Proc. Code does not contain provisions for bringing of the process under control, as it contains in this respect reference to the Civ. Proc. Code. See ADMIN. PROC. CODE Article 144. The Crim. Proc. Code, on its part, sets out relatively detailed procedure for sanctioning of offenders. In cases of gross contempt, the presiding judge may impose a fine in the amount of up to five hundred leva on anyone present, and where the hearing of the case is postponed due to failure on the part of a party, witness or expert to appear for no valid reason, the fine can be up to one thousand leva. See CRIM. PROC. CODE Articles 266, 271(11). The other mechanisms for bringing under control available to the criminal judge are similar to those available to his/her civil colleague. *Id.* Articles 120(3), 149(5), 266, 267. The opinions on the necessity of mechanisms to bring under control seem to vary radically. An analysis of the reasons for postponing of cases in 2009 drawn up by the Supreme Bar Council showed that the absences of attorneys-at-law due to illness or official engagements were not among the most frequent reasons for postponing of hearing of cases. According to the Supreme Bar Council there is a considerably larger share of failure on the part of experts to appear, failure to produce expert examinations in due time, absence of jurors or sickness of the judges themselves<sup>1</sup>. In the same time, according to an analysis of the MOJ, the Crim. Proc. Code failed to provide a sufficiently effective mechanism for prevention of abuses of rights by the parties and their defence lawyers within a criminal procedure, including presentation of medical certificates and business under other court cases<sup>2</sup>. A respondent even shared that in some cases the fines imposed by the court are simply considered a part of the legal fees and the principals pay out their value as long as such delay “buys” extra time. That is how in the spring of 2010 the figure of the back-up defence lawyer was created. Pursuant to Article 94 of the Crim. Proc. Code he/she may be appointed whether another defence lawyer has been appointed by the accused, whenever it is exceptionally important for the conduction of the criminal prosecution in a reasonable time limit. Furthermore, in the hypothesis when defense is mandatory and the authorized defence lawyer fails to appear for no valid reason, although being regularly summoned, the backup defence lawyer has been granted broad rights including participation in the criminal procedure, submission of evidence, making of requests and objections and appealing against the judicial acts. See CRIM. PROC. CODE, Articles 94(6), 99. Some of the respondents expressed concern that this amendment contradicted to the rights of defense and the principle of adversary process. The Constitutional Court was referred to in the 2010 spring by a request for declaring of the institute of backup defence lawyer as unconstitutional, but found contradiction neither to the fundamental legislative act, nor to international legal acts<sup>3</sup>.

<sup>1</sup> See Å. Nedeva, *The Act Amending and Supplementing the Criminal Procedure Code in the Light of the Convention on Human Rights and Fundamental Freedoms*, the Bar Review magazine (“Advokatski Pregled”) 10–11/2009, p. 77. This observation is also confirmed by an analysis of 2009 of the postponing of court sessions under criminal cases in the Supreme Cassation Court, according to which the reasons for postponing of cases due to the absence of a defender were objective and documented. See REPORT ON THE ACTIVITY OF SCC FOR 2009.

<sup>2</sup> See REPORT ON PERFORMED INSPECTION BY THE INSPECTORS FROM THE MOJ INSPECTION SERVICE UNDER THE JSA – monitoring for the impact of the provisions of the criminal law as regards the proceedings under the Criminal Procedure Code during the first instance for certain crimes related to corruption.

<sup>3</sup> See JUDGMENT OF THE CC No.10 OF SEPT. 28, 2010, *promulgated in* SG No. 80 (Oct. 12, 2010).

As regards the service of subpoenas and communications, the staff of the respective criminal court relies on support from the services of the Ministry of Interior or the Security Directorate General at the MOJ – a circumstance that significantly facilitates the process of service. An amendment of 2010 repealed the prohibition to summon an accused by phone or fax, but human rights defenders find a contradiction to Article 6(3) of the ECHR, according to which the Convention member-states are bound to provide the accused with a sufficient period of time for the preparation of his/her defence. See CRIM. PROC. CODE Article 178.

At long last, the civil process again seems to be most impeded, especially as regards summoning and enforcement of judgments. The new Civ. Proc. Code, which entered into force in 2008 provided for significant modifications in both regimes. See CIV. PROC. CODE Articles 37–58, 404–529. The new system for summoning under the Civ. Proc. Code, regardless of the doubtless improvements seem to fail to fully achieve the aimed result and namely acceleration of the procedure. For example, the Civ. Proc. Code, like the Admin. Proc. Code, allows summoning by email. Such a solution doubtlessly accelerates, or at least the idea is to accelerate, the preparatory acts for the process itself. In the same time, the introduced complex set of exceptionally formalistic acts of summoning of the respondent fails to accelerate the process. As a general rule, a server of the court is able to serve a communication by a wide range of methods: in person to an address specified by the plaintiff, by mail, by a courier, by phone, by sticking a notice at publicly accessible places, by a public announcement, by an attorney-at-law. Upon an explicit request of the plaintiff, the court may even order that service would take place by a private enforcement agent. Those acquainted with the practice allege that given the variety of procedural options, many times the inquiry for permanent or present address of the counterparty is omitted until the very end of the process of summoning. In the same time, it is exactly the counterparty's addresses wrongly specified by the plaintiffs that seem to be the most frequent reason for excessive prolonging of the service of communications, on account of the traditional explanation for undermining of the process by the respondent party. The poorly looking picture of summoning is further supplemented by the practical complication that given all their workload, the judges are frequently forced to make inquiries themselves for the parties' addresses to manage to move the case forward. The legislative solution to serve a communication by a private (but not a public) enforcement agent is also amazing. While the reform in judicial enforcement by the introduction of the figure of the private enforcement agent doubtlessly achieved its goal to optimize the enforcement proceedings, the provision that only a private enforcement agent may be used remains a disputable solution, particularly in view of the not so rare complaints on the part of respondents about excessive expenses for the fees for service of summons. Other respondents refer to cases, when the service of the subpoena would turn out to be impossible for more than half an year. An inspection of the MOJ under a monitoring of the Civ. Proc. Code<sup>1</sup> also concludes that summoning and serving of communications are impeded due to differences between the address registration and the actual place of residence of the debtor – a circumstance typical of all types of procedures. To all appearances the irregularities in the summoning of the parties remains a reason for the delays of civil cases<sup>2</sup>.

It seems that the most disputable moment in the new regulation of summoning under the Civ. Proc. Code is the option provided for in Article 47 of the Civ. Proc. Code to serve by sticking an announcement. It is exactly this provision that the ombudsman requested in 2009 to be declared unconstitutional by the CC. The specific ground is the lack of guarantees in this mechanism of summoning that the respondent will learn at all for the attempt to

<sup>1</sup> SCHEDULED TOPICAL INSPECTION OF THE MOJ FOR MONITORING UNDER THE CIV. PROC. CODE IN THE TRAN REGIONAL COURT AND THE BREZNIK REGIONAL COURT (2009).

<sup>2</sup> MONITORING OF THE MOJ UNDER THE CIV. PROC. CODE – FIRST INSTANCE PROCEEDINGS, THE ELENA REGIONAL COURT (2009).



be served papers under the case, since he/she may fail to find the stuck notice (most frequently located at publicly available places), even if he/she lives on the address, where the notice is placed<sup>1</sup>. Although the CC finally dismissed the ombudsman's request<sup>2</sup>, the society of experts seems to have preserved lots of reserves regarding the provision in question, its procedural and actual regularity. The picture is further complicated by the factual impossibility of establishing whether the server actually visited the address to stick the notice or not.

The Private Enforcement Agents Act, *promulgated in* SG No. 43 (May 20, 2005), *last amended* SG No. 49 (June 29, 2012) [hereinafter PEAA], effective since the autumn of 2005, enabled judicial enforcement in Bulgaria by private enforcement agents (PEAs). The PEAA introduced a mixed model of judicial enforcement as it preserved the former system of public judicial enforcement services at the regional courts. The choice of a public or private enforcement agent is vested in the claimant. The reform supporters indicate that an important factor for the increase of the efficiency and quickness of enforcement is the creation of a link between the remuneration of a PEA and the final result. The new Civil Procedure Code, on its part, further optimized the procedures and the tools of the enforcement procedure by limiting the hypotheses of appealing, reforms in the sales rules, extended access to information about the debtor's property. The private enforcement system is obviously more than successful since the introduction thereof was ranked by the World Bank in 2006 among the ten most successful reforms in the world<sup>3</sup>. However, some analyzers report concerns about accumulation by PEA of pending cases and increase of the amount of uncollected receivables under the enforcement cases<sup>4</sup>.

## Statistics on the enforcement cases in the 2006–2011 period

Year	Cases initiated	Cases concluded	Sums collected (BGN)
2006	37 000	5 500	95,000,000
2007	64 000	17 200	250,000,000
2008	70 000	30 000	400,000,000
2009	110 000	29 000	365,000,000
2010	140 000	32 000	580,000,000
2011	180 000	40 000	700,000,000

Source: MOJ

On the next place, it looks like the new enforcement system leaned over backwards. If enforcement under the former Civ. Proc. Code protected to a large extent the debtor's interest, the new system extremely restricts the debtor's rights, depriving the debtor in practice of any opportunity to appeal against the acts of enforcement agents. They, on their part, seem to make use of this favourable procedural environment and they dare expand their

<sup>1</sup> See Request from the Ombudsman of the Republic of Bulgaria for establishment of unconstitutionality of certain provisions of the Civ. Proc. Code, the Bar Review magazine ("Advokatski Pregled") 6–7/2009, p. 37.

<sup>2</sup> See JUDGEMENT OF THE CC No.4 OF JUNE 16, 2009, *promulgated in* SG No. 47 (June 23, 2009).

<sup>3</sup> See WORLD BANK REPORT "MAKING BUSINESS" BULGARIA, 2006.

<sup>4</sup> See Open Society Institute report, ASSESSMENT OF THE PERFORMANCE OF THE JUDICIAL REFORM STRATEGY IN BULGARIA 2003–2008, p. 83, available at: [http://www.osf.bg/cyeds/downloads/Consolidated\\_strategy\\_reform.pdf](http://www.osf.bg/cyeds/downloads/Consolidated_strategy_reform.pdf).

powers, e.g. by acknowledging excessive attorney's fees, which is in contradiction to the principle of fairness of the process. Those more knowledgeable say that in the absence of any other sensible option, the victims are forced to file appeals to the SJC and the MOJ Inspection Service. However, the prevailing opinion is that PEA are better than their public colleagues in terms of resource, capacity and speed, there being also proposals to adopt a monistic system of private judicial enforcement.

### III. Financial Resources

#### Factor 10: Budgetary Input

*The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.*

Conclusion	Correlation: Positive	Trend: ↔
<p>Despite the impact of the economic crisis of the recent years it has been accepted that the judiciary receives sufficient budgetary funding. The problem rather lies in the way of its spending. No program budgeting which allows for the integration of the budgetary process with the strategic planning in areas such as human resources, caseload regulation, information systems introduction, performance efficiency evaluation of separate departments, has been concretely introduced. The separate departments expenditures remain too non-transparent. The SJC formally and practically preserves its lead in the preparation of a draft Judiciary budget and the subsequent control over the spending thereof. However, the authority that determines the final version and amount of the budget approved by the National Assembly remains the Council of Ministers, while the Parliament remains passive, in the process of discussing the annual reports of the judicial bodies inclusive.</p>		

#### Analysis/Background:

The Judiciary in Bulgaria has, by virtue of the Constitution, an independent budget. See CONSTITUTION Article 117(3). No other constitutionally established institution enjoys such financial independence. Furthermore, the independence of the Judiciary budget is in practice guaranteed by the provision of sufficient funds for the functioning of each judicial district and prevention of budgetary dependencies on factors outside the system. See JUDGMENT OF CC No. 4 OF APRIL 15, 2003 AND No. 4 OF OCT. 7, 2004. The responsibilities for the preparation of the independent Judiciary budget are divided, at least on a legislative basis, between the Ministry of Justice and the Supreme Judicial Council. The Minister of Justice has the responsibility to propose a judicial draft budget and submit it for a review to the SJC, together with estimates for the next two years. See CONSTITUTION Article 130à(1), JSA Articles 362–363. On its part, the SJC proposes and substantiates in details before the Council of Ministers the final judicial draft budget, and subsequently defends it before the National Assembly in the process of adoption of the state budget. See JSA Articles 30(1), 364(1), (2). The consolidated Judiciary budget consists of the budgets of the Supreme Judicial Council, of the Supreme Judicial Council Inspection Service, of the Judiciary authorities, which are legal entities, and of the National Institute of Justice. *Id.* Article 361(2). The funds for construction and overhaul of the real estates of the Judiciary, as well as the support of the judicial security are on their part included in the budget of the Ministry of Justice. *Id.* Articles 388(2), 391(2).

In practice, there is a dualistic regime of preparation of the judicial budget. Probably this condition reflects long-lasting attempts for removal of the centre of budgetary powers from the SJC to the MOJ. In 2006, the National Assembly adopted constitutional amendments, whereby it assigned to the MOJ the powers to make a draft Judiciary budget. Until 2012 there was a special unit in the MOJ – “Judiciary Budget”, which proposed to the Minister of

Justice the Judiciary budget. In addition, this specialized structure had powers in respect of the preparation of short-term and long-term program judicial budget estimates; the preparation of the Judiciary budget on the grounds of proposals of the administrative managers of the judicial authorities; and the setting of the budget in conformity with the requirements of the program budgeting. See STRUCTURAL REGULATION OF THE MOJ Article 19(1), *promulgated in* SG No. 34 (April 1, 2008), *effective* April 1, 2008. In contrast to this former regime, the new Structural Regulation of the MoJ, *adopted by* a Council of Ministers Ordinance <sup>1</sup> 152 of July 17, 2012, *promulgated in* SG <sup>1</sup> 56 (July 24, 2012), transfers the functions of this specialized department to the Finance and Budget Department, which is a part of the general administration of the Ministry. The Department has general authorities regarding the organization and fulfillment of the financial and accounting activities of the Ministry. There are no explicit provisions of authorities concerning the budget of the judiciary, however.

On its part, the Supreme Judicial Council performs its budget-related powers by the Budget and Finance Committee consisting of 5 elected members of the board itself, as well as the Finance and Budget directorate and the Budget Financing department, composed on an expert basis. The Committee, on the one hand, has powers in respect of the preparation of short-term and long-term budget estimates; draft annual Judiciary budget; as well as a draft allocation of the budgetary funds to the judicial authorities. See REGULATIONS ON THE ORGANIZATION AND FUNCTIONING OF THE SUPREME JUDICIAL COUNCIL AND ITS ADMINISTRATION Article 21. The Finance and Budget Directorate, on its part, assists the preparation, substantiation and performance of the Judiciary budget, as its main powers in their essence coincide with those of the Committee. *Id.* Article 69. The chairpersons of the court also rely on special units Financial Activity and Procurement, which develop draft annual budget of the respective court. See REGULATIONS ON ADMINISTRATION IN THE REGIONAL, DISTRICT, ADMINISTRATIVE, MILITARY AND APPELLATE COURTS, *promulgated in* SG No. 66 (Aug. 18, 2009) [hereinafter ADMINISTRATION REGULATIONS]. The prevailing opinion among the respondents was that powers regarding the Judiciary budget should be concentrated in the SJC.

To all appearances, regardless of the constitutional powers of the MOJ to prepare the Judiciary budget, the latter is still *de facto* prepared by the SJC and the division of responsibilities provided for in the Constitution and the Supreme Judicial Council is only formally complied with. This status quo is confirmed both by respondents in the course of the present survey, and by a report of the Open Society Institute<sup>1</sup>. According to the latter, despite the amendments to the legislation, the judicial authorities still send their draft budgets for the next year to the SJC. Thus, in practice, the Supreme Judicial Council preserves its key role both in the budgetary planning, and in the subsequent control over the implementation thereof.

However, this does not refer to the specific amount of the judicial budget. The letter of the law does not allow the Council of Ministers to make any amendment to the draft Judiciary budget submitted by the SJC, and the Council of Ministers is bound to submit it to National Assembly as it has been submitted to it. See STATE BUDGET STRUCTURE ACT Article 20(2). However, the government may draft an opinion on it and add such an opinion to the general notes under the draft state budget. In practice, it is exactly this opinion that turns into an alternative Judiciary budget that the National Assembly as a general rule complies with, while ignoring the financial requests and the set policies of the supreme judicial authority. The Parliament is not actively using the annual discussions of the judicial bodies' reports either, to pose questions regarding the work efficiency, priorities setting and expenditure justification.

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<sup>1</sup> OPEN SOCIETY INSTITUTE THE PRICE OF JUSTICE IN BULGARIA. ASSESSMENT OF THE DYNAMICS AND EFFICIENCY OF THE SOCIAL EXPENDITURES FOR JUSTICE AND ORDER 1998–2008. Sofia, May 2009. p. 12.

After the adoption thereof by the National Assembly, the judicial budget is to be implemented by the Supreme Judicial Council, which is also a first-level spending unit in respect of funds in it. The judicial authorities, which are legal entities, the Supreme Judicial Council Inspection Service and the National Institute of Justice are secondary spending units. See STATE BUDGET STRUCTURE ACT Article 6a(3). The SJC organizes the implementation of the judicial budget through the SJC Inspection Service, SCC, SAC, the courts, the prosecutor general and the NIJ. *Id.* Article 11(1), (2). It may in the implementation of the judicial budget, where necessary, make amendments to the budgetary expenses of the judicial authorities. See 2011 STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT Article 2(3). If until the end of the financial year the system fails to spend its own expenses or the budgetary subsidy, the funds must be returned to the national budget. So, in the end of 2009, a conflict took place between the SJC and the Minister of Finance after the council had first resolved to distribute BGN 24,000,000 in premiums (achieved as savings, incl. from vacant job positions), and subsequently the state treasury refused to transfer the money. Approximately about that same time and regardless of the existing vacant job positions, the SJC included in its budgetary request for 2010 increase of the number of job positions in the system by about 900 persons. In the end the conflict was resolved in favour of the SJC, but the overall perception was for not quite good management of the finances of the Judiciary, unused reserves in the available resources and setting of “hollow” job positions allowing the allotment of premiums.

The problem of the judiciary budget has yet another aspect, to wit: the caseload of the individual magistrate. There is, in practice, an involvement between the budgetary planning and the caseload weighing in each separate court. At present there is still no methodology, objective criteria and qualitative indexes for caseload weighing, an issue which has been spreading over the whole system and seriously influencing the work of each individual judge. Furthermore, this lack is preventing the adequate planning of the creation and close of judicial vacancies which, on its part, directly reflects upon the judiciary budget. The special Caseload Analysis and Evaluation Committee with the new SJC is working of the development of a caseload norm related to the unified human resources strategy of the judiciary.

According to the above mentioned report of the Open Society Institute, the judicial budget increased by 506% for the period 1998–2008, if for the same period the total budgetary expenses have increased by only 192%. In other words, the increase of the judicial expenses for the period is more than 2.5 times higher than the total expenses in the state budget<sup>1</sup>. In 2009 the judicial budget was increased by almost 14%. Only the financial crisis of the last two years resulted in decrease of the levels of budgetary financing down to the levels observed before the crisis period.

As evident from the table below, there is a trend towards decrease, though insignificant, of the percent ratio of the judicial to the total state budget. It is hard to assess to what an extent this process is a result from a desire of the legislator to discipline the financial management of the SJC or is imposed by purely budgetary restrictions. However, the facts is that the SJC still submits to the Council of Ministers a draft budget, which significantly exceeds both the one received for the previous year and the final judicial budget for the respective year finally approved by the National Assembly.

<sup>1</sup> See REPORT THE PRICE OF JUSTICE IN BULGARIA. ASSESSMENT OF THE DYNAMICS AND EFFICIENCY OF THE SOCIAL EXPENDITURES FOR JUSTICE AND ORDER 1998–2008. OPEN SOCIETY INSTITUTE. Sofia, May 2009, p.16.

## Judicial System Budget (in thousands)<sup>1</sup>

Year	SJC Request		Judicial Budget (budget transfers and own incomes)		Own Incomes (set)		Approved Budgetary Request of the SJC	State Budget		Share of the Judicial Budget in the State Budget
	BGN	US	BGN	US	BGN	US		BGN	US	
2007	526158.5	361670.67	313020	215163.59	50500	34712.67	59.49	14407058.0	9903119.32	2.17
2008	457298.8	314337.91	385300	264847.40	52000	35743.74	84.25	17006534.3	11689946.59	2.26
2009	512380.6	352200.00	438323	301294.33	86150	59217.76	85.54	20466088.5	14067973.94	2.14
2010	540013.6	371194.39	387705	266500.54	95000	65301.07	71.79	18916488.0	13002810.00	2.05
2011	483400.0	332279.35	387705	266500.54	105500	72518.55	80.20	18536787.6	12535597.70	2.12
2012	493982.0	332791.24	400000	269476.40	140000	94316.74	80.97	17029228.0	11472437.90	2.34

Source: SJC Administration & State Budget of the Republic of Bulgaria Act

In 2011, the Judiciary budget remains unchanged compared to 2010, as it amounts to BGN 387 705 thousand subject to the following allocation of the funds (in thousands). In 2012 the total sum of the budget equals 400 000 thousand, which constitutes an increase of 3.17%:

Judicial Authorities	2011	2012
	Amount (BGN thousands)	Amount (BGN thousands)
Supreme Judicial Council	7,711.0	12,506.0
Supreme Court of Cassation	13,946.0	13,946.0
Supreme Administrative Court	10,152.0	10,152.0
Prosecutor's Offices of the Republic of Bulgaria	154,908.0	158,908.0
Courts of the Republic of Bulgaria (incl. Administrative courts)	195,368.0	198,868.0
National Institute of Justice	2,578.0	2,578.0
Supreme Judicial Council Inspection Service	2,442.0	2,442.0
Contingencies	600.0	600.0
Total:	387,705.0	400,000.0

Source: 2011 STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT, *promulgated in SG No. 99 (Dec. 17, 2010), abrogated*; 2012 STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT, *promulgated in SG No. 99 (Dec. 16, 2011), abrogated*

<sup>1</sup> All dollar figures used in this report are based on the prevailing currency conversion rate of the Bulgarian National Bank as of Dec. 2011 (1 BGN = 1.4548 US).

Analysis show that budget of the judicial system as a percent of the GPD is not small compared to the same ratio in other European countries. For example, in 2008 Bulgaria took the first place in judicial expenditure as a GPD share of 0.7%<sup>1</sup>. In 2010 the judiciary budget as per cent of the GPD of the country was 0.54% which places Bulgaria on 5<sup>th</sup> place after Montenegro, Bosnia and Herzegovina, Slovenia and Croatia<sup>2</sup>. In general, the respondents find the judiciary budget, especially in the pre-crisis years, completely sufficient. It is noted that the problem is rather in the ineffective spending of funds. The SJC each year requests considerable increases of the budget although the judiciary has unappropriated provisions. Judicial vacancies are a typical example. In previous years they contributed to budget surplus that was used for year-end bonuses for magistrates, which practically build upon the legally set limits of remunerations. At the same time, although there are highly overloaded courts, vacancies weren't filled due to lack of periodical and well organized competitions. This example shows that the problem is not in the absolute size of the budget, but rather in the lack of strategic planning. Another example thereof is that despite the gradual increase of the judiciary budget the process of information systems integration, which would optimize justice, was never completed. At the same time, the budget of the SJC is demonstrating considerable increase.

### Budget of the SJC in the 2007–2012 period

Year	Sum of the budget (BGN thousands)
2007	3,275.0
2008	4,776.0
2009	10,191.4
2010	7,711.0
2011	7,711.0
2012	12,506.0

Source: 2007, 2008, 2009, 2010, 2011 and 2012 STATE BUDGET ACT

A positive step in this regard was the adoption by the SJC of a 2013 Annual agenda. Whether this document will turn into a mainstay of a real process of prioritizing, planning and accounting of the SJC work lies ahead. In any case, however, the problem with the lacking program budgeting implementation stays. Despite the public claims that the judiciary budget is being prepared on a program principle since 2008, those familiar with the budgeting process note that the historic method of budget prognosis based mainly on previous year expenditures, is still used in practice. This is also demonstrated by the lack of details in the planned measures and the relevant items. Another remaining issue is the lack of transparency of the actual judicial bodies expenditures, the Prosecution office and the SJC inclusive.

#### **Recommendations:**

- Actual implementation of a detailed program budgeting, in perspective – individually for each judicial body;

<sup>1</sup> See OPEN SOCIETY INSTITUTE THE PRICE OF JUSTICE IN BULGARIA. ASSESSMENT OF THE PUBLIC EXPENDITURE FOR JUSTICE AND ORDER 2009–2010. Sofia 2011, p. 37.

<sup>2</sup> According to CEPEJ data. See online at: [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf).



- Increase of budget transparency, including each body's expenditures;
- Development of the annual agenda preparation practice through its involvement with the budget planning and accounting.

## Factor 11: Adequacy of Judicial Salaries

***Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.***

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
Judicial salaries remain better than other in other public sectors. Although judicial salaries in Bulgaria fall behind the levels of those of the European judges', as well as of some practicing attorneys-at-law, this is so far not considered a demotivating factor for good lawyers to enter and stay in court service. Particular practices with the updating and formation of judicial salaries may however have a negative effect. It is necessary to guarantee that the judicial income policy would be based on solid long-term strategy for attraction and retention of good personnel and corruption prevention.		

### Analysis/Background:

It is the responsibility of the Supreme Judicial Council to fix the remuneration of the judges, prosecutors and investigators. See JSA Article 30(1).8. The basic monthly salaries of the chairpersons of the SCC and the SAC shall be 90% of the salary of the Constitutional Court chairperson. *Id.* Article 218(1). The latter's monthly salary is the arithmetic mean between the monthly salary of the President of the Republic and the chairperson of the National Assembly. The Constitutional Court judges receive 90% of their chairperson's monthly remuneration. CC Act Article 10.

The basic monthly salary of the lowest position of a magistrate will be set by law at double the average monthly salary of persons employed in the public sector. See JSA Article 218(2). According to the National Institute for Statistics, that amount as of the last quarter of 2012 was 838 leva, making the salary of a newly appointed junior judge in the 2012 fall 1,676<sup>1</sup> BGN. The salaries of the remaining members of the judiciary are to be fixed by the SJC. Within the SJC a standing Budget and Finance Committee operates, which has the power to propose rules and mechanisms for determination of the amount of the employment remunerations of the members of the Supreme Judicial Council, magistrates and the court supporting staff. The SJC adopted, by a resolution under Proceedings record No. 23 of June 3, 2009, Rules Determining the Basic Monthly Salaries of Judges, Prosecutors and Investigators. According to data submitted by the SJC, the average gross annual salary of a magistrate, as evident from the table below amounted to BGN 30,288 or BGN 2,524 per month. Compared to 2007, the average annual magistrate's salary has grown up by approximately 30% for a period of 5 years.

<sup>1</sup> NSI data: Employees and average salary during the fourth quarter of 2012. [http://www.nsi.bg/EPDOCS/EmplsSalary2012q4\\_K70DVI5.pdf](http://www.nsi.bg/EPDOCS/EmplsSalary2012q4_K70DVI5.pdf).

Year	Average gross annual salary of magistrates (BGN)	Average gross monthly salary of magistrates (BGN)
2007	25,800	2,150
2008	28,344	2,362
2009	30,288	2,524
2010	32,804	2,063
2011	33,599	2,667
2012	35,100	2,925

Source: SJC

An additional remuneration for a long service as a judge is also due on the amount of the basic monthly remuneration, which amounts to two percent for each year of employment service, but no more than 40 percent. Judges may also receive additional remuneration for overtime work on holidays and non-working days. In addition to the basic remuneration, every year, judges also receive funds to buy a toga and clothing in the amount of two average monthly salaries of a person employed in the public sector (or BGN 1,676 as of the end of 2012). The compulsory social and health insurance of judges is also on account of the judiciary budget. When released from office, judges who have more than 10 years of service receive one-off cash compensation in the amount of as many gross monthly salaries as is the number of years of service of the respective judge in the judiciary bodies, but no more than 20. Judges may also, for the period of their employment within the judiciary, use institutional housing out of the judiciary fund of buildings. See Articles 219–225. As evident from the analysis of the preceding factor, in 2010 it was approximately 61% of the judiciary budget for 2010 that was allocated for remunerations within the Judiciary. A report of the World Bank “Resourcing the Judiciary for Performance and Accountability: A Judicial Public Expenditure and Institutional Review, July 2008” also calculates that the salary expenditures were about 60% of the entire judiciary budget.

In June 2010 due to the economic crisis the SJC decreed a moratorium on judicial salaries increase. Upon the appeal of the legality of the refusal to fulfill the legal obligation of maintaining the relevant level of judicial remunerations by judges, the SAC enacted a judgment which states that: “when defining the minimum and maximum size of the basic monthly remuneration of magistrates the SJC is acting in terms of limited discretion – the provision of Article 218(1) and (2) of the JSA directly dictates the actions of the SJC and the administrative body has no authority to determine whether to take a decision to define the size of the relevant remunerations, when to take such a decision and in what way.” Despite that, the SJC indexed judicial salaries again not until 2012 and only henceforth.

The confirmed practice of year-end bonuses of judges at the end of each fiscal year played a somehow compensatory role. It has become customary (except for 2012) that the SJC through explicit decisions designate the judicial budget saved funds for such bonuses. For that purpose the SJC adopted Rules for the determination and disbursement of funds for supplementary remunerations (SJC Decision of Oct. 27, 2011 under Proceedings record No. 34). Under Article 6(1) thereof, the size of such bonuses for the individual magistrates shall be determined by the administrative head. The bonus allocation gave rise to repeated criticism of the judiciary by the Minister of Finance.

The respondents generally find the remuneration levels sufficient, at least in terms of the salaries in Bulgaria. It has been frequently mentioned that the magistrates’ salaries are the highest in the public sector. In the same time, compared to the remunerations of magis-

trates in EU, the level of the Bulgarian salaries is still behind. The problem is further intensified by the circumstance that regardless the generally big budget of the judiciary, the individual remunerations remain relatively low to serve as an effective means of prevention of the frequently alleged (or at least perceived by the public) corruption practices.

According to a report entitled “European Judicial Systems” of CEPEJ for 2010, the entry levels of judges’ remunerations in Bulgaria are the lowest amount the EU member-states, as they are at least two times lower than those in Romania, the next lowest remuneration levels country (7,227 Euro annual remuneration in Bulgaria compared to 15,667 Euro in Romania; in Slovenia, the remuneration is equal to 26,949 euro per annum). The considerably lower levels of remuneration may be explained by the generally low salaries in the country. The ratio between the judicial salaries and the average salaries in the country is 2.2 which concurs with the average for the member-states of the Council of Europe. At the same time it is far behind the values in other former socialist countries from the region – Romania (2.7), Macedonia (3.3), Serbia (4.3) and is many times lower than the levels in the leading countries in the ranking – Ireland (4.5) and Scotland (5.1).

Things look a bit bitter in terms of levels of remunerations of the judges in the supreme courts in Bulgaria: the ratio to the average salary in the country is 7.0 (the fourth highest for the EU after the United Kingdom and Ireland). In nominal values the remunerations once again are not so far behind, at least not with respect of the countries of the region (23,266 euro for Bulgaria against 20,912 for Macedonia, 33,371 for Serbia and 36,802 for Romania). And still, the salaries of the supreme judges in Bulgaria are the lowest for all EU member-states; compared to those in the United Kingdom, they are almost 10 times lower. The judicial salary purchasing power parity somewhat compensates these low levels due to the generally lower prices and cost of living. The analysis of these data shows that the levels of the judicial remunerations may be in a better ratio to the average level of national wealth, both in countries with lower income, and in the so called old, richer democracies.

Judicial salaries are a key guarantee for the attraction, retention and motivation for court work of the best possible lawyers. At the same time, it is a very important element of the corruption prevention. Despite the fact that in the last years Bulgaria manages to maintain comparatively good levels of judicial salaries related to other salaries in the budget area, there are also factors which show that salaries are not subject of an overall policy following the two priorities above.

An example thereof is the palliative practice of bonus allocation at the end of the year which reveals problems in a few directions. Firstly, the surplus used to allocate bonuses with is a sign of poor planning and judicial budget management. The funds in question are saved of items the necessity of which had been justified during the preceding fiscal period. Given that they have not been spent by purpose, however, makes the justification of funds allocation for the relevant needs in the following fiscal period to the other governmental powers harder. The seriousness of this issue becomes apparent when taking into account the fact that a traditional source of such surplus are the new judicial vacancies which have not been filled not because they are unnecessary, but rather because the relevant competitions have not been conducted. The negative impact of this practice on the public image of the judiciary is another problem. Twice already it was used by politicians as grounds for populist attacks, additionally eroding public trust, and the SJC did not respond fittingly thus defending the need of adequate judicial salaries.

The way these bonuses are allocated is also an essential problem. The decision whom and how much of a bonus to be allocated depends on the discretion of the administrative heads and creates a factor of official influence which may be misused. The hierarchical pressure

and especially such non-transparent areas of factual discretion are a source of unregulated influence in Bulgarian judiciary.

That is why it is important that the SJC continue to maintain adequate judicial salaries levels, making this a part of a overall long-term strategy for human resources development and fight against corruption. Individual judges' remuneration should be predictable and defined in a way which does not make judges dependent on administrative factors.

#### **Recommendations:**

1. Adoption of long-term judicial remuneration policy, which serves the need to attract, retain and motivate qualified personnel and acts as a guarantee against economic corruption pressure;
2. Adoption of a normative framework, guaranteeing predictability of judicial remuneration and its independence of anyone's discretion concerning the individual judge.

## **Factor 12: Judicial Buildings**

***Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
Conditions in court buildings still vary a lot throughout the country. While some buildings are designed as courts of justice or are newly-built or renovated, many buildings do not meet the needs of justice. Unfortunately, the overcrowded judges' chambers are not an exception (mostly in large cities), and this creates additional obstructions to the otherwise loaded judges in the exercising of their functions.		

#### **Analysis/Background:**

The judiciary is independent and has a stand-alone budget. See CONSTITUTION Article 117. At the same time, the principal act, by the amendment of 2006, entrusted the management of the property of the judiciary to the Minister of Justice. See Article 130a item 2; STRUCTURAL REGULATION OF THE MINISTRY OF JUSTICE Article 5. The amendment to the Constitution of 2006 resolved, at least for the time being, the long lasting disputes between the judiciary and the executive authority, incl. many times referred to the Constitutional Court, who must manage the judicial buildings. According to the JSA a main trend in the interaction between the judicial authorities and the SJC on the one hand and the executive authorities on the other hand is the implementation thereof towards management of the judicial property. See JSA Article 370(1). In accordance with the State Ownership Act, the real estate provided for the needs of the judiciary are public state property. See STATE OWNERSHIP ACT, *promulgated in* SG No. 44 of 1996, *last amended* SG No. 99 of Dec. 14, 2012. In the case, when judicial authorities are accommodated in buildings property of municipalities or of the state, they do not pay rents. See 2010 STATE BUDGET ACT Article 2(6).

In view of the powers of the Minister of Justice, special structures have been set up within his administration, which are to be in charge of the management of judicial buildings. The Budget and Finance unit is in charge of the accounting and book keeping of the real estate submitted for the needs of the judiciary; it organizes the activities related to the obligations ensuing from the ownership in the real estate used by the judiciary – taxes, fees, rents; drafts the budget in its capital expenditure (building and repair) regarding judicial real es-

tate; plans, organizes and funds the judicial real estate building and repair expenditures; draws up accounts of the capital expenses and of the support expenditures related to judicial real estates. The “Investments, Management of Property and Economic Activities” supports the Minister with the management of the real estates, rights in which have been provided to the ministry, its departments and the judicial bodies. See STRUCTURAL REGULATION OF THE MINISTRY OF JUSTICE Articles 19 and 24.

The 2006 amendment of the Constitution provoked an anticipated response from representatives of the judiciary, as the Prosecutor General made a request to the Court for interpretation of the provision of Article 130a(2) of the Constitution and the scope of the contents of the powers of the Minister of Justice to manage the property of the judiciary. Within the meaning of the judgment of the Constitutional Court “[the] management of the property of the judiciary by the minister of justice must neither impair the reputation of the judiciary nor constitute an obstacle to its normal functioning.” Hence, the constitutional justices held, the management of the property of the judiciary entrusted to the minister may neither be limited only to real estate granted by the state nor extend to all movable property, including available cash. The observance of the independence of the judiciary should also be introduced as a principle in the division of the capital expenses from expenditures earmarked for maintenance buildings. The independence of the judiciary, continue the constitutional justices, requires financial security making it impossible to place the judiciary under the influence of the executive branch by the act of granting or withholding real estate or chattels and cash amounts. Considering this, the Constitutional Court concludes that:

[the] management of the property of the judiciary by the minister of justice in accordance with Article 130a(2) of the Constitution must take into account the balance envisaged in Article 117(2) and (3) of the Constitution and extends to property whose management by the minister does not obstruct either the normal functioning of the judiciary or the efficient exercise of the functions vested in it and does not prejudice its independence in any way whatsoever.

The minister of justice makes arrangements for the management of the property of the judiciary and distributes the use of the real estate granted among to its constituent bodies and may delegate responsibility for its management to the administrative managers. The funds for construction and renovation of the buildings and the funds for liabilities arising from the ownership in the real estate – taxes, fees, rents or insurance fees are to be covered from the budget of the Ministry of Justice. See SJC Articles 387–388.

A consensus seems to exist among most of the respondents that the management of the real estates of the judiciary should be concentrated in one point. While some think that it would be more proper to vest all the management in the Ministry of Justice, most respondents express the opinion that it would be best if the management is entrusted to the SJC. At the same time, it should be noted that whoever holds the management of the properties of the judiciary (the SJC until 2006 or the Ministry of Justice afterwards), it looks like none of the administrations manages to fully cope with the management and maintenance. According to a survey of the World Bank of 2008, the major part of the buildings need repairs or reconstructions and some of the buildings are obviously unsuitable for the needs of dispensation of justice<sup>1</sup>. To a certain extent, the reason for this status is the double regime regarding the maintenance of the judicial buildings. It seems that all current repairs are on account of the budgets of the respective judicial authorities, as far as the overhauls are covered by the Ministry of Justice. However, in practice, when a repair is needed, frequently long exchange of letters begins between the respective units of the relevant authority and

<sup>1</sup> WORLD BANK REPORT RESOURCING THE JUDICIARY FOR PERFORMANCE AND ACCOUNTABILITY: A JUDICIAL PUBLIC EXPENDITURE AND INSTITUTIONAL REVIEW, July 2008.

the Ministry of Justice, as well as requests for the appointment of expert examinations and other similar bureaucratic practices which, as it seems, do not contribute to the preservation of at least decent status of the fund of buildings.

The condition and suitability of the judicial buildings and the sufficiency and adequacy of court rooms and chambers for the judges differ significantly from one court to another. To all appearances judicial buildings frequently selected on the grounds of unclear criteria, there being no national standard to be followed in adopting resolutions for accommodation of courts in new buildings. This is the reason why the condition of judicial buildings on a national scale varies widely, there being diametrically opposed examples. Some courts have wonderful new or renovated buildings designed especially for the needs of justice and ensuring sufficient court rooms and the necessary conveniences to judges and citizens. Other courts are accommodated in buildings that are fully unsuitable for the purposes of administering justice, such as former kindergartens or apartment buildings. The work conditions seem to depend on the level of the court – Regional Court, District Court, Appellate Court, SCC/SAC. And if it seems to a certain extent that it is justifiable to ensure an enhanced comfort to cassation or appellate judges, it is inadmissible to put the judges from the lower courts in a position where dispute settlement is not only a legal but a logistic challenge.

Traditionally, the situation is particularly poor in the Sofia Regional Court (SRC) – the biggest court in the country, where most of the judge chambers are inhabited by 4 judges and hundreds of case files. In 2008 World Bank experts concluded that the physical area for work that judges and the staff share is at least 2 times less as compared to the other courts. This court is a telling example of the manner in which inadequate buildings can have a strongly negative impact on many other elements in the functioning of the judiciary: the lack of space hinders the appointment of new judges irrespective of the annual increase of the court's case flow. Thus, the lack of physical space aggravates the judges' caseload situation. The government allotted two new buildings in Sofia and funds for their ongoing renovation for the needs of the SRC, and this is a positive step. It is hoped that, despite the financial hardship, the process of renovation will be completed and this court will have better working conditions as soon as possible. Unfortunately, this solution will lead to the partitioning of criminal and civil judges and will have certain negative impact on the sustainability of the professional community, which is an essential factor for creating judicial ethos at an informal level.

Other courts in the country have similar problems. Likewise, the Tran Regional Court is accommodated in a three-storey building constructed in 1946. One of the floors is used by the prosecutor's office, and a part of the third floor is used by tenants for residential needs. This situation is unlikely to facilitate the management or security of the building. On the contrary, it may result in damage or loss of court documentation<sup>1</sup>.

It is also necessary to note the complete unsuitability of most judicial buildings for access of disabled persons – not only the building entrances are not designed to allow participation of disabled persons in the court sessions, but the internal architecture itself obstructs their free passing. The problem about the lack of parking places for the users of judicial buildings seems insignificant compared to the other problems of the courts of justice.

At the same time, there are not sufficient funds for capital expenditure (construction and renovation) in the budget of the Ministry of Justice. According to information received from

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<sup>1</sup> Scheduled topical inspection of the Ministry of Justice for monitoring under the Civil Procedure Code in the Tran Regional Court and the Breznik Regional Court (2009).



the MOJ the funds earmarked for capital expenditure in the budget stood at BGN 48,975,797 in 2007, BGN 19,614,058 for 2008 and BGN 10,984,030 in 2009. In 2010 and 2011, 11,400,000 BGN were allocated for capital expenditure of the judicial bodies – Article 130a of the Constitution and JSA. In 2012 the allocated budget for capital expenses amounts to 17,374,000 BGN<sup>1</sup>. The financing from the national budget for the purposes of construction or repair of new buildings is decreased more than 4.5 times only for a period of 2 years. Bearing in mind the initially stable and serious increase and subsequent preservation of the achieved levels of judicial budget for the last 10 years, the lack of adequate financing regarding the buildings is highly distressing. Furthermore, even when taking into account the increased budget for building construction and maintenance in 2007 stemmed from the need for new buildings for the small administrative courts, it is still not clear what criterion is applied to justify the decrease in the financing in 2009 by nearly 50 percent (or more specifically by 44%) as compared to the previous year. In addition, a judicial building constructed to serve as a court is truly rare, the examples including some of the judicial buildings visited by the survey team, i.e. the Silistra Administrative Court and the Varna Regional Court.

### Factor 13: Judicial Security

***Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>There is some security presence in judicial buildings as entrances are guarded by judicial security staff and in some courts the judge chambers are separated from the common areas. However, there is still room for improvement, especially in respect of the level of equipment and financing of the judicial security. It is unclear whether adequate measures for the personal security of judges outside the court buildings are being taken. Likewise, in the previous issue of the JRI, a recommendation was made to take preventive measures instead of waiting for an accident to happen.</p>		

#### Analysis/Background:

The security of the judiciary is provided in interaction between the judicial and the executive authorities. See JSA Article 370(1).8. For this purpose a specialized security unit has been set up at the minister of justice, which is a stand-alone legal entity. See JSA Article 391. The Security Directorate General organizes and implements the security of judicial buildings; it secures the order in judicial buildings and the security of the judicial authorities in the exercising of their powers; it organizes and implements the security of magistrates and protected persons; it secures the appearance of persons by compulsory process where so warranted by a judicial authority; it escorts accused and prisoners at the bar; it assists the judicial authorities in the summoning of persons in cases, when the fulfillment of this obligation is impeded; and it even performs coordination of projects and gives opinions for the putting into operation of judicial buildings as regards security and safety. *Id.*; see also Article 3 of the STRUCTURE AND ACTIVITY REGULATION OF THE SECURITY DIRECTORATE GENERAL, *promulgated in* SG No. 60 (July 30, 2009). As a result of the 2011 JSA amendments in SG No. 1 (Jan. 1, 2011), the Minister of Justice adopts an ordinance which determines the con-

<sup>1</sup> See DECREE ON THE IMPLEMENTATION OF THE STATE BUDGET OF THE REPUBLIC OF BULGARIA IN 2010, 2011 AND 2012.



ditions and organisation of the security service. See JSA Article 391(3).3. According to MOJ's information, the budget of the Security Directorate amounted to BGN 23,061,545 in 2008 and BGN 22,034,686 in 2009. In each of the two years the staff of the Directorate exceeded 1,400 employees. Compared to the levels specified in the 2006 JRI, the increased budget of the Security Directorate is nominal (a little more than BGN 2,000,000), particularly when compared to the level of increase in the budget of the judiciary. The increase barely makes up for cumulative annual inflation without achieving anything else. At the same time, it must be pointed out that after the reform of the administrative justice in 2007 and the addition of 28 new administrative courts to the judiciary, the obligations of the judicial security showed a significant growth but it has not been reflected in the budget of the department.

The three-year budget framework of the MOJ for the period 2010–2012, a document that contains program objectives for judicial security, sets out the following priority: Introduction of order and security in the judicial buildings in the course of the judicial process and administrative service delivery to citizens and prevention of terrorist acts and attacks on the premises of courts. At the same time, the significantly reduced budget of the judicial security (approximately 30%) for the period 2010–2012, as well as the lack of sufficient equipment and facilities on site, especially in smaller courts, seems to undermine the achievement the stated objectives. The lack of technical facilities that enable comprehensive inspection of items brought into court buildings seems to seriously undermine the targeted feeling of security and prevention even of attempted attacks against judicial buildings or assaults against magistrates.

According to the three-year budget estimates of the Ministry of Justice for the period 2010–2012, as of 2010 not all judicial buildings are guarded by the specialized security unit. For example, as of 2009, 157 judicial buildings were guarded by the MOJ's employees, and about 30 – by security agencies (SOT). The plans are that the total number of the first group will gradually grow up to 183 in 2012. This extended volume of liabilities definitely requires a larger technical and human capacity. At the same time, the budget of the unit goes down as of 2010 by almost 30 percent compared to the already revised budget for 2009, and to all appearances the trend for decrease will be preserved in the years to come, as well, although in significantly lower volumes. Furthermore, at least in terms of estimates, the capital expenses for the period 2010–2012 are equal to only BGN 38 thousand. The calculation of the exact quantity of equipment that could be purchased by such amount is subject of speculations. Nevertheless one could hardly expect any serious improvement of security in judicial buildings, which given the poor equipment. The resources allocated to ensuring the physical security of magistrates increased from 6 people receiving protection in 2009 to 9 in 2012. This minimum number is hardly impressive given the total number of magistrates, which is more than 4500 as of 2010, but it should be pointed out that it is a step in the right direction.

Judges do not generally share serious concerns about their security. However, it is not clear whether this relative feeling of security is due to the good functioning of judicial security or to an inner perception of doing justice through their work. Yet the facts indicate that there have been cases in recent years when judges were involved in incidents, isolated though they may be, mostly connected to their personal cars being set on fire. In November 2012, a Sofia City Court judge was battered. And even though detailed information for the secured magistrates is confidential, there are several publicly known cases, when judges assigned with key cases were granted 24-hour police security. According to non-official data, in 2010 the number of the guarded magistrates was between 5 and 10 people. At the same time, some rank-and-file judges express a general feeling of uncertainty due to the trouble-free access to their chambers. Only 10 of the courts in Bulgaria (completely satisfactory security measures are provided by the Palace of Justice in the Sofia and the

Supreme Administrative Court) provided the so called access control, where there are separate corridors for the magistrates and any access to the judges' premises is restricted. Even though some of the other courts have office entrances for judges, they hardly serve their intended function inasmuch as after hearings citizens have practically unimpeded access to the chambers of judges. The situation is particularly hard in the Sofia Regional Court, where the criminal judges on duty meet attorneys-at-law and citizens directly in their chambers. It is unclear whether there is an overall policy of providing certain level of security for judges outside court buildings.

The findings set out in the 2006 report remain the same. There is a perceptible degree of security in judicial buildings. At the entrance of all buildings visited by the survey team there were check-points and the bigger courts with a greater workload (those in the district cities) had a metal detector frame. However, few courts have luggage scanners and the smaller courts face the need to rely on handheld detectors and staff insight and skills.

## IV. Structural Safeguards

### Factor 14: Guaranteed tenure

***Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiry of a defined term of substantial duration.***

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend ↔</b>
Guaranteed tenure is still determined as a guarantor for the independence of judges and as a main source of motivation for responsible attitude to the legal duties of magistrates and most of all, their obligation to dispense justice justly on the grounds of the law and their inner conviction. Despite that the concerns over the disciplinary process cast some shadows over the real confidence of judges in their position. The formal performance evaluation does not allow for the assessment process to give an adequate response to the question whether an individual judge is worthy of receiving tenure and to turn into a real filter ensuring the quality of human resources in the judiciary after 5-year practice.		

#### Analysis/Background:

The guaranteed tenure of magistrates was introduced by the amendment to Article 129(3) of the Constitution according to which (after the 2003 amendment) upon completion of five years of service as a judge, prosecutor or investigator and after an appraisal, by a decision of the SJC, judges, prosecutors and investigators become “irremovable”. They may only be removed upon (1) reaching the age of 65; (2) resignation; (3) final conviction and sentence imposing the punishment deprivation of liberty for an intentional crime; (4) continuous factual inability to perform his/her duties for more than a year; and (5) grave breach or systematic dereliction of official duties as well as actions damaging the reputation of the judiciary. In the beginning, the criteria for assessment of the magistrates were provided for in the repealed JSA, in Article 30b, according to which the appraisal would take into consideration the opinion of the court chairperson; information about the number, type, complexity and seriousness of the judge's cases; compliance with statutory and non-binding time periods; number of judgments upheld and repealed, and the grounds for the latter; awards and sanctions during the period under consideration; an assessment of the judge's necessary moral and professional capacity; participation in training courses, programs and scientific conferences. By the adoption of the new JSA in 2007, some amendments were made to these texts, as it was provided for that the respective magistrate would become irremovable after completion of the internship set out in Article 129(3) of the Constitution of the Republic of Bulgaria, and subject to an obtained positive complex assessment in the appraisal. See JSA Article 209(1). The internship for earning of a guaranteed tenure includes also the time served as a junior judge. See JSA Article 209(2). With the 2011 JSA amendments (SG No. 1/ Jan. 4, 2011) the same criteria for acquire of tenure are currently stipulated in the provisions of article 207.

The SJC elects a standing Committee on Proposals and Evaluation of Judges, Prosecutors and Investigators (CPE), which operates under its jurisdiction. See JSA Article 37(1). It is the authority performing also the factual appraisal of the respective magistrate and since 2011 it is divided into two separate committees – one for judges and one for prosecutors and investigators respectively. *Id.* JSA Article 37(4). Prior to the amendments proposal before it were made by the concerned judge or by no less than one fifth of the members of the

SJC while currently they are made by the interested judge or the court chairperson. *Id.* Article 38(2). In particular, as regards a proposal for appraisal for the obtaining of a guaranteed tenure, there is a provided term – it must be made within up to three months prior to the expiration of the five-year term. *Id.* Article 203(2). The proposals for resolutions for the earning of tenure are made by the standing Proposals and Evaluation of Judges, Prosecutors and Investigators Committee. The structure and work of the Committee is regulated in details in the Regulations on the Organization of the Functioning of the Supreme Judicial Council and its administration, *adopted* by the SJC, *promulgated* in SG No. 85 (Nov. 6, 2012) [hereinafter referred to as the Regulations].

The statutory rules for the evaluation of Bulgarian magistrates are amended on a regular basis. The main provisions are contained in the JSA. Besides, a Methodology for the Performance Evaluation of Judges, Prosecutors and Investigators, adopted by the SJC under Record No 2 of Jan. 11, 2008, also applied. The Methodology was abrogated by Ordinance 1 of 2009 laying down the Criteria and Procedure for Performance Evaluation of Judges, Prosecutors, Investigators, Administrative Heads and Deputy Administrative Heads, *adopted* by a resolution of the Supreme Judicial Council under Proceedings, Record No. 43 of Nov. 5, 2009, effective since Jan. 1, 2010. Ordinance 1 of 2009 was, in turn, abrogated SG, No 44 (June 10, 2011), effective June 10, 2011, and substituted with a new Ordinance 3 of May 30, 2011 for the Criteria, Methodology and Procedure for Performance Evaluation of Judges, Prosecutors, Investigators, Administrative Heads and Deputy Administrative Heads, adopted by the SJC pursuant to Article 209a JSA and SJC decision under Proceedings record No. 19 of May 30, 2011, *promulgated* SG No. 44 (June 10, 2011), effective June 10, 2011.

In a Decision No. 10 of the Constitutional court, SG No. 93 (Nov. 25, 2011), Article 209a providing that the SJC adopts the abovementioned Ordinance is declared unconstitutional on grounds that the SJC has no legal authority to adopt regulations (see Factor 2 for more detailed analysis). Ordinance 1 represented an attempt to improve the evaluation procedure, but in practice, to a large extent, it reiterated the rules from the method, which on their turn reiterated the rules from the law.

Currently the same evaluation method is provided in the provisions of Article 204a of the JSA and the Evaluation Methodology<sup>1</sup>. Subjectivism and formalism retain their leading position, and the weight ascribed to the auxiliary appraisal committees may result in the formation of cadre policies on sites.

In particular, the evaluation criteria, their quality and objectivity will be discussed in the section relating to Factor 15. The only to be mentioned here is that initially the appraisal was conducted: (1) for the purposes of earning a guaranteed tenure; (2) for the purposes of promotion or transferring to another position; (3) for the purposes of promotion in rank; (4) periodically – every 5 years from the last appraisal until reaching the age of 65; and (5) for the purposes of appointment as administrative manager or deputy administrative manager. Following the JSA amendments enacted in 2011 the JSA envisaged performance evaluation in the following circumstances: (1) earning a guaranteed tenure; (2) Periodically –every four years following the previous appraisal until reaching of 61 years of age, including the administrative managers of courts and their deputies. See JSA Article 196. The appraisal of the qualification of a judge, prosecutor or investigator is to be conducted on the grounds of general and special criteria set forth in Chapter Nine, Section IV of the JSA. As a result of the amended JSA of 2011 a distinction is made for the appraisal aimed at acquiring tenure during which due consideration should be paid to the last periodic appraisal and an overall

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<sup>1</sup> The Methodology is available at the SJC website under section "Internal regulations".

evaluation of the professional qualifications and integrity of the respective judge who reached the 5 year record of service should be made. The general criteria for the appraisal of all magistrates include *inter alia* the legal knowledge and analysis of the relevant legal facts, organisation, efficiency and discipline as well as other specific factors. *Id.* Article 198. For instance, in the course of appraisal, account is also taken of the general workload of the respective judicial district and judicial authority, as well as the workload of the judge, prosecutor or investigator being appraised, compared to the other judges, prosecutors or investigators from the same judicial authority. *Id.* Article 198(2).4.

The standing Committee is supported by auxiliary committees as well, the composition of which is determined by an order of the respective administrative manager and upon observance of the principle of random selection, however with the amendments from 2011 their role is limited to the conduct of the periodic appraisals. Currently the appraisal for acquiring of tenure is conducted only by the Proposals and Evaluation Committee, which proposes an overall grade from the appraisal not later than one month from the receipt of the appraisal proposal. See JSA Article 209(1). The law provides that the complex evaluation of the appraisal may be positive or negative. The stages of a positive complex evaluation are: (1) satisfactory; (2) good; (3) very good. See JSA Article 202, *repealed* SG No 1 (Jan. 4, 2011); *new* Article 204a, SG No. 1 (Jan. 4, 2011), effective Jan. 4, 2011.

The evaluation takes place in accordance with a points-based system with each criterion having a different weight. However it is notable that in the determination of the final mark, the Committee relies to an exceptional degree on its so called “principle decisions”, which predetermine the number of points to be given for this or that criterion. In practice, this makes senseless the essence and objectivity of the system. Furthermore, there are no clear criteria and a mechanism underlying the adoption of the respective “principle decision” by the Committee. The analysis team did not manage to find where and how the very decision for the creation of such a model has been taken. This situation results, to a certain extent, in standardization of the evaluations. Instead of the sought actual evaluation of professional and ethical qualities of the respective magistrate, just the opposite is achieved – the mark and the appraisal process itself are framed and these frames wash away the actual picture of the subject of appraisal.

It is worthy to mention that the Committee is divided for the first time into two groups – for judges and for prosecutors, although some of the respondents share that in their opinion this division is only formal and in practice appraisals are carried out by the entire committee. The Uniform Evaluation Forms also have separate parts for judges, prosecutors and investigators. The introduced separation is largely the result of criticism and scores of negative comments about the Committee activity<sup>1</sup> and the opinion that there is a need for genuine separation of the criteria for evaluation and appraisal of the work performed by judges and prosecutors due to the specifics of their rights and obligations.

The SJC webpage in internet provides access to the filled-in Uniform Evaluation Forms for judges. It is impressive that most of the expressions are conventional and filled exclusively with positive assessments and descriptions for the respective candidate. They are in alphabetical order, which makes their search and analysis harder. The analysis team did not find even a single form containing a negative finding made on the part of the administrative manager, regardless of the ground for the appraisal. A positive element is the availability itself of the forms in internet. However, it could prove worthy to think about the division thereof

<sup>1</sup> See the recommendations in REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL OF JULY 22, 2009 and more specifically, “to guarantee objective performance evaluation of all magistrates and the Supreme Judicial Council to reconsider the appointment rules and criteria”.

under courts or grounds for conduction of an appraisal, and specification of the refusals (if any) as well. Such ordering would facilitate the SJC itself in the processing of the information and in the keeping of statistics.

In 2008, the irremovable status was earned by 67 magistrates and in 2009 the SJC ruled on 192 proposals for evaluations to be conducted for the purposes of earning an irremovable status<sup>1</sup>. In 2010, the SJC ruled on 715 proposals for evaluation pending tenure. In 2011, 34 judges obtained irremovable status and in 2012 their number was 210.

All respondents were of the opinion that a judge who holds the bench for five years can be assured of earning tenure. This is proven by the statistics of the SJC – since 2006 to date there has not been a single judge to whom the guaranteed tenure has not been granted. The monitoring implemented prior to tenure is minimal. There is no difference between the disciplinary proceedings regarding the removable and irremovable magistrates.

Guaranteed tenure is determined as one of the main incentives for work and motivation for bearing of liability and performance of dispensation of justice of the proper quality and integrity. A large part of the respondents shared that the acquisition of a guaranteed tenure is a guarantee that the judge will do his job well.

Guaranteed term is also a barrier to a possible external interference and pressure in the work process and the decision-making process of the magistrate.

The highly contentious disciplinary practice of the SJC has implications for the very nature of tenure. Doubts of unequal treatment of judges in the disciplinary process and of political influence in it cast shadows over the tenure as a real guarantee for the security of judges.

The procedure for earning a guaranteed tenure has key significance for the merit of trained magistrates who enter the system. The system for career development and promotion within the court allows a freshly graduated jurist to become – almost immediately after graduating the university – a judge and to start dispensing justice. The first five years of service are particularly important for gaining professional and life experience and for the possibility, after five years have elapsed, to make a realistic assessment of the qualities of magistrate. This is why the procedure for earning a guaranteed tenure must play the role of a “sieve” that only admits assuredly capable judges of high professional, personal and moral integrity.

In connection to this, the possibility to develop a mechanism that allows a more detailed and strict evaluation of the judge upon earning a guaranteed tenure should be considered. Such an evaluation might include a thorough assessment of the personal and professional merits of the candidate and be carried out by surveying his/her colleagues, other lawyers and clients of the system. The commitment of society to the problems of the judiciary and its cadre should be given proper significance. The task of ensuring maximum publicity and transparency in conducting the appraisals will encourage a positive attitude towards the work of judges and will inescapably result in greater trust in the system. Last but not least, in the future it will protect the respective judge from possible attacks and attempts to be put under pressure.

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<sup>1</sup> The data have been provided by the SJC.



## Factor 15: Objective Judicial Advancement Criteria

***Judges advance in their careers on the basis of objective criteria such as ability, integrity, and experience***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>Although the latest amendments to the JSA have to an extent improved career advancement procedures, they cannot be described as completely objective. The criteria for promotion largely depend on conducted prior appraisals, which are primarily based on quantitative and statistical information and rarely evaluate the standard of work of a judge. There are certain good practices that can be reported such as the account taken by the contest committees during the interview of the legal sphere, on which the candidate works as of the moment of conduction of the interview and the decisions of certain contest committees to make a view of rendered acts and cases, since it provides the most comprehensive possible picture of the relevant magistrate's work.</p>		

### Analysis/Background:

Promotion is defined by the law as advancement to a higher hierarchical position in a judicial authority, which takes place by a decision of the SJC. In particular, the provision of Article 129 of the Constitution vests in the SJC the power to promote magistrates. In the meantime, the supreme law enables also the Minister of Justice to make proposals for their promotion.

Promotion takes place by a contest regulated in Section IIa of the JSA and Rules on the Procedure for Conduction of the Contests and for Election of Administrative Heads within the Judicial Bodies, *promulgated in* SG No. 99 (Dec. 16, 2011), *adopted* through a SJC resolution under Record of Proceedings No 39 (Nov. 28, 2011), *supplemented and amended* through SJC decision under Proceedings record No 1 (Jan. 12, 2012)<sup>1</sup>, which also settle the procedure for conduction of promotion and transfer contests. There is no explicit legal requirement for regularity in the conduction of the contest, such as e.g. for the junior magistrate contest, which must be held at least once annually. See JSA Article 176(2).

Guidelines for the activity of the contest committees and the SJC Administration in the conduction of an interview with the candidates participating in contests for promotion and for transferring (the Guidelines) and Criteria for the conduction of an interview and formation of the overall grade of the professional qualities possessed by the candidates for participation in the contests for promotion and for transfer in the judicial authorities (the Criteria)<sup>2</sup> are also adopted as bylaws of the SJC.

<sup>1</sup> Through a resolution under Proceedings record No.10 (March 14, 2013) the SJC adopted new Rules on the Election of Administrative Heads of Judicial Bodies pursuant to art. 167(1) paras.2–4 of the JSA. These rules revoke Section “Administrative Heads Election” of the Rules on the Procedure for Conduction of the Contest and for Election of Administrative Heads within the Judicial Bodies, *adopted* under Proceedings record No. 39 (Nov. 28, 2011), *supplemented and amended* through a SJC resolution under Proceedings record No. 1 (Jan. 12, 2012).

<sup>2</sup> The full texts of the Guidelines and the Criteria are accessible on the webpage of the Supreme Judicial Council in the “Bylaws” section.



The promotion procedure starts by a notice to the SJC from the administrative heads of the vacant positions in the respective judicial authorities except for those under Article 178(1) of the JSA<sup>1</sup>. The announcement of the vacant positions under the procedure of Article 179 of the JSA<sup>2</sup> precedes the filling up thereof after a contest to be held through an interview on practical issues related to the application of the laws. The Criteria point out that the contest does not presuppose the conduction of a theoretical examination under pre-set synopses or questions prepared in advance.

The contest is conducted by contest committees determined by the SJC separately for judges, prosecutors and investigators. Ineligible to participate in the contests committees are members of the SJC and administrative managers. Furthermore, ineligible to participate in the contest committees for judges are practicing prosecutors and investigators, analogically – practicing judges may not participate in the contest committees for prosecutors and investigators.

A candidate for a vacant position must have the respective legally established **length of legal service**, in accordance with Article 164 of the JSA. “Legal service” with respect to the above listed position is understood to be the legal service on a position or profession requiring higher legal education.

<b>Necessary Legal Service for Appointment to a Position:</b>	<b>For a judge in (the respective court):</b>
At least 3 years of legal service	Regional Court
At least 10 years of legal service, of which at least 5 as a criminal judge, prosecutor or investigator	Specialized criminal court
At least 12 years of legal service, of which at least 8 as a criminal judge, prosecutor or investigator	Appellate specialized criminal court
<i>Junior judge, who has at least two years and nine months of legal service.</i>	Regional Court
At least 8 years of legal service	District Court
At least 8 years of legal service	Administrative Court
At least 12 years of legal service Supreme Court of Cassation	Supreme Administrative Court and

The contest committee conducts the contest by an interview with the candidates on practical issues related to the application of the laws. The following is taken into account when determining the result of each candidate:

- the interview evaluation
- the results from the previously performed periodical evaluations, which serve as a basis for a *general evaluation* of the professional qualities possessed by the candidate.

<sup>1</sup> Art.178 of the JSA: (1) The Supreme Judicial Council shall determine by a draw of lots 20 per cent of the quantity of vacant positions in the courts, prosecutor's offices and investigative authorities for their filling up by a contest for initial appointment. (2) The percentages under par.1 shall be determined separately for each of the levels in the court, prosecutor's office and investigative authorities.

<sup>2</sup> The positions of junior judges and junior prosecutors and the vacant positions for initial appointment are to be announced by the Supreme Judicial Council by promulgation in State Gazette, publication in a central daily paper and on the webpage of the Supreme Judicial Council.

Competent authorities in the evaluation are the CPE (Proposals and Evaluation Committee) and the auxiliary bodies of the CPE – the auxiliary evaluation committees set up in the respective judicial authorities.

The evaluation represents an objective assessment of the professional, working and ethical qualities of the magistrates shown by them in the course of performance of the position held by them. The evaluation must guarantee equal and just opportunities for career advancement, being based on the principles of lawfulness, equality, objectivity and transparency. The evaluation criteria determine the qualification, achievements and professional suitability of the person being attested pursuant to the requirements of the specific position, to which he is appointed. They are divided into general and specific. The general ones are taken into account upon the appraisal both of judges and of prosecutors and investigators. These are:

1. Legal knowledge and skills for the implementation thereof;
2. Skill to analyse the legally relevant facts;
3. Skill for optimal work organization;
4. Expeditiousness and discipline.

The specific criteria are determined in accordance with the specificity of the judge or prosecutor or investigator, i.e. depending on the specific position. The specific criteria in the appraisal of judges are:

1. Meeting the court session schedule;
2. Skill to conduct the court session and draw up minutes.

It is important to highlight that the criteria depend on indicators<sup>1</sup>. They represent qualitative and quantitative reference points for measurement of the qualification, achievements and professional suitability of the magistrates. The indicators serve as a basis for the formation of the word findings and the mark in figures for each of the evaluation criteria.

The Guidelines for the activity of the contest committees and the SJC Administration in the conduction of an interview with the candidates are brief and mostly procedural. In this relation the committees create their own practices for conduction of the contests. Participants in the interviews shared that some of the contest committees demanded to examine three completed cases of theirs, and other committees – three of the rendered acts, on the grounds of which questions were asked.

The content of the Criteria indicates that the formation of the overall mark for the professional qualities possessed should be determined on the basis of a free conversation between the candidates and the members of the contest committees on the following specific criteria prescribed for the very interview:

1. level of general legal culture;
2. professional experience and working qualities;
3. practical knowledge of the candidates in the field of substantive and procedural law;
4. ability of the candidates to deal with legal acts, to extract the necessary information from them, to make decisions and to substantiate them;
5. attitude towards the effective legislation – the candidate's point of view concerning eventual legislative amendments;
6. way of expression;
7. results from the previously conducted periodical appraisals of the candidates.

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<sup>1</sup> For more details on the indicators for appraisal see *Methods of appraisal of a judge, prosecutor, investigator, administrative manager and a deputy of an administrative manager*, published on the webpage of the SJC in the Bylaws section.

As evident from the amendments to the JSA of Jan. 4, 2011, the SJC elects out of its members also a Professional Ethics and Prevention of Corruption Committee, the purpose of which is to make surveys, to collect the *necessary (the law does not indicate and does not distinguish what information is considered necessary and what not)* information and to draft opinions on the moral qualities possessed by the candidates in the competitions for a position in the judicial authorities. The contest committee drafts minutes for the ranking of the candidates together with a motivated opinion and sends afterwards the results from the ranking together with the entire competition documentation and a record (shorthand record) from the interview conducted by the SJC, where the Professional Ethics and Prevention of Corruption Committee makes an evaluation of the moral qualities possessed by the first three candidates for every position and drafts an opinion on each candidate on the grounds of the documents submitted by him and the documents contained in the staff file, in respect of the results from the inspections of the Inspection Service at the Supreme Judicial Council, the incentives and sanctions, reports for a violation of the rules of professional ethics of judges, prosecutors and investigators.

Every member of the committee evaluates the candidate's qualities in accordance with the six-grade system rounded to 0,25, as he writes down his marks in an individual protocol. The overall mark of the candidate represents the grade point average of the overall marks of all members of the contest committee (pursuant to the provision of Article 33(2) of the old Rules on the contests of the SJC). See RULES ON THE PROCEDURE FOR CONDUCTION OF THE CONTESTS AND FOR ELECTION OF ADMINISTRATIVE HEADS WITHIN THE JUDICIAL BODIES, *adopted* through a SJC resolution under Proceedings record No. 39 (Nov. 28, 2011), *supplemented and amended* through SJC resolution under Record of Proceedings No 1 (Jan. 12, 2012). When several candidates for a single position have the same mark, the one holding the higher position as of the moment of ranking shall prevail in the ranking. When the candidates hold the same position as well, the candidate with a higher overall mark from the state certification examinations shall prevail. Many consider this indicator irrelevant since in view of the big time distance between the two events, the marks from the state certification examinations cannot be considered providing up-to-date information.

The results from the ranking of the candidates, together with all the contest documentation and with the opinion of the Professional Ethics and Prevention of Corruption Committee are to be submitted to the CPE. CPE moves to the SJC a reasoned proposal for promotion or transfer of the candidates ranked first for the positions in the relevant judicial authorities.

As evident from data, provided by the SJC, in summary, the SJC transferred and promoted through contests via evaluation 342 magistrates; transferred and promoted through contests via interview 333 magistrates, or a total of 675 magistrates were promoted or transferred in competitions for career advancement, in the period between end of 2007 and beginning of 2012.

There are certain good practices that can be reported such as the recommendation of the CAP in the Guidelines to the committees to take into account during the interview the legal sphere, on which the candidate works as of the moment of conduction of the interview and the decisions of certain contest committees to review rendered acts and cases, since it provides the most comprehensive possible picture of the relevant magistrate's work.

Regardless the procedure thus regulated the quality evaluation of the attested magistrates' work on the grounds of statistical data and the comparison thereof is not tolerated and considered a reliable source of information, relevant to the identification of the professional qualities achieved by the candidates. E.g., in this sense the formal number of cases cannot be a prerequisite for determination of the actual workload of a judge. Promotions based on statistics can be misleading also in the evaluation of sensitive categories such as the

quality of the judicial acts, the reasoning, convincingness and ultimately – for the positive image of judges in society.

#### **Recommendations:**

- Introduction of regularity in the promotion contests and establishment of criteria for evaluation of the quality of the work of promotion candidates;
- Introduction of a requirement for the announcement of competitions, where necessary, in subject matter with a view to the establishment of equality and predictability among the candidates;
- Introduction of practical elements in candidate interviews, regarding their work as of the moment of applying;
- Introduction of clear criteria, which would distinguish promotion contests from those to transfer.

### **Factor 16: Judicial Immunity for Official Actions**

*Judges have immunity for actions taken in their official capacity.*

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend ↔</b>
<p>The Bulgarian judiciary implemented a serious reform as regards the magistrates' immunity. Once unlimited, it was reduced to the so called functional one, which only refers to actions taken in their official capacity. The increase of the number of pretrial investigations and cases against magistrates in the years comes to show that the change in the immunity brings the system under control and at the same time provides the society with a means of influence against the defects therein in terms of competence and behaviour of judges. However, it is necessary to clarify some issues regarding the pre-trial investigations against judges.</p>		

#### **Analysis/Background:**

Until the adoption of the amendments to the Constitution of 2003, magistrates had practically unlimited immunity. After the amendments, it was reduced to the so called "functional" immunity, which means that judges, prosecutors and investigators do not bear criminal and civil liability for actions taken in their official capacity. See CONSTITUTION Article 132(1). An exception is made in respect of the commitment of a general deliberate crime. Under any other circumstances, which are beyond their official duties, magistrates are subject to the general criminal and civil liability for their behaviour. By the amendments to the Constitution of 2007, the effect of the functional immunity was further reduced due to the repealing of the provision that a charge for a committed deliberate general crime could only be brought after permission from the Supreme Judicial Council. Repealed were also the provisions governing the procedure law element of this immunity, and namely the criminal immunity of magistrates.

The new JSA reflected the amendments to the Constitution and thereby regulated the possibility of waiver of the immunity in a separate Section V<sup>2</sup> Temporary Suspension of Chapter Nine Status of Judges, Prosecutors and Investigators. In the first hypothesis of Article 230(1) of the JSA, whenever a "charge has been brought against" a magistrate, "the Supreme Judicial Council shall temporarily suspend him from his position until completion of the criminal procedure". The request is to be made by the prosecutor general. The immunity may also be waived upon the commitment of a deliberate general crime in the perfor-

mance of acts in official capacity. Then the SJC may remove the magistrate from position until the completion of the criminal procedure. See JSA Article 230(2). In such case, besides the prosecutor general, the request may also be made by 1/5 of the total number of the members of the SJC. The mechanisms for overcoming of the functional immunity result in additional narrowing of its scope.

The cases against magistrates are within the jurisdiction of the Sofia City Court as the first instance. See CRIMINAL PROC. CODE Article 35(3). Regardless of the lack of an explicit reference to magistrates as persons having immunity under this article, Ruling No. 76 of Oct. 10, 2008 of the SCC explains that “the SCC finds that judges, prosecutors and investigators are persons with immunity within the context of Article 35(3) of the Criminal Procedure Code. It is absolutely doubtless that they have immunity in its aspect of lack of criminal liability, although it only refers to cases related to performance of their actions in official capacity and upon the rendering of their acts and only as far as they have not committed a general crime in this respect”.

Pretrial investigations against magistrates are being supervised by the specially established department “Inspection Service” with the Supreme Cassation Prosecutor’s Office (SCPO).

In the past almost 4 years, the number of the pretrial procedures and trials against magistrates showed an increase. In **2007**, pretrial procedures (PCP) were pursued against 31 magistrates (5 judges, 17 prosecutors and 9 investigators), of which – 10 for corruption crimes and 11 of them were completed with bills of indictment versus magistrates brought to the court (6 were for corruption crimes). In **2008** a total of 26 PCP were supervised, of them against: prosecutors – 6, judges – 7, investigators – 13. 9 indictments were submitted to court and 7 magistrates were sentenced.

In **2009** 62 pretrial procedures were supervised against 57 magistrates (20 prosecutors, 18 judges and 19 investigators). 10 indictments against magistrates were submitted, 1 pretrial procedure was stayed and 10 were dismissed. The verdicts of 5 magistrates have entered into force. 8 were acquitted. In **2010** 64 pretrial procedures were conducted against magistrates (21 judges, 30 prosecutors and 15 investigators). 5 of the 13 newly initiated procedures in 2010 were conducted against prosecutors, 3 – against judges, a 5 – against an unknown offender. in the same year 8 pretrial procedures were closed through the submission of an indictment against 8 magistrates – 4 judges, 2 prosecutors and 2 investigators. During that year 17 of the trial procedures were resolved, 8 of which through verdicts against 8 magistrates. 9 trial procedures were resolved through acquittals. In 2011 prosecutors in the Inspection Service Department with the SCPO supervised 20 pretrial procedures against magistrates. 4 of them were conducted against judges, 9 – against prosecutors (2 pretrial procedures were conducted against one prosecutor), 6 – against investigators, and 1 – against an unknown offender. 4 of those 20 supervised pretrial procedures against magistrates were resolved through a submitted indictment (2 against prosecutors and 2 against judges); 8 were dismissed – 1 against a judge, 6 against prosecutors, and 1 against an investigator. In 2011 8 magistrates were sentenced, of which: 5 prosecutors, 1 judge and 2 investigators. One judgment of acquittal was rendered – against a judge. At the end of 2011 six trials against magistrates were pending<sup>1</sup>.

The statistics on the number of pretrial procedures and submitted indictments as well as on the verdicts against magistrates was kept by the Inspection Service with the SCPO. At this moment these statistics are gathered and summarized in the reports of the Disciplin-

<sup>1</sup> The data are derived from the Annual Reports of the Prosecution’s Office of the Republic of Bulgaria for the relevant year, available at: <http://www.prb.bg/php/statdanni.php> (in Bulgarian).

ary Procedures Committee with the SJC in its capacity of high authority, responsible for the management and functioning of the judiciary. This might be assessed as a positive practice.

Both during the preparation of the last issue of the Judicial Reform Index of 2006, and now, the currently functional immunity was comparatively faintly discussed. Most of the respondents consider it adequate and guaranteeing the normal performance of the official duties. The narrowing of the scope of the functional immunity is not considered a negative development, but rather a logical consequence from the development of the reform in the system.

It should be noted, however, that the case of the unsuccessful candidacy of the former deputy chair of the SAC Veneta Markovska for a Constitutional Court justice set in a new way the question about the risks for judicial independence regarding criminal prosecution. When submitting her application in the parliamentary quota Constitutional Court justice election procedure Ms. Markovska was issued and presented to the special parliamentary committee a convictions status certificate, which made it clear that she is not being prosecuted for any offences. After Ms. Markovska was already elected and that caused a huge brawl, the Prosecution's Office suddenly announced that actually since 2011 a pretrial procedure against an unknown offender was pending, whose subject were coincidences and possible dependencies of real estate acquisitions in the form of donations by Judge Markovska's partner and her judgments. Although this investigation was not designated as directed against her, she was actually its real focus. That showed that it is possible for the pretrial services to gather intel on a judge without that being known to high state authorities, including in the context of making a decision for such an important appointment as that on a Constitutional Court post. It turns out that the Prosecution's Office and the Ministry of Interior possess obviously unlimited discretion as to when and whether to announce their suspicions of criminal activity. Such concealment may serve entirely legitimate purposes, but it could also be used for some kind of pressure on judges. The respondents shared this concern and associated it with both a former Prosecutor General's attempts to exert pressure on particular judges and the mistrust in the way the Inspection Service Department with the SCPO works. In a context of constantly escalating public and underhand debate following the Markovska case professional and civic organizations called the SJC to consider this subject, to clarify whether there is any room for concern, and proceed to establishment of practices which would prevent possible abuses. Until this moment it is not known whether these calls were addressed<sup>1</sup>.

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<sup>1</sup> After the appointment of the new Prosecutor General, an inspection of the "Inspection Service" Department was made and its personnel was changed. Violations in the case handling and material preserving, whose purpose remains unexplained, were mentioned. Unfortunately, until now there is no overall analysis of the problems in the Department's work, which would make the necessary measures to raise trust in its activity and eliminate possibilities for pressure on certain magistrates during pretrial procedures, clear.



## Factor 17: Removal and Discipline of Judges

***Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>The power to impose disciplinary sanctions on judges is vested in the SJC. The changes in the structure of the SJC and the establishment of an Inspection Service to the SJC ensure more efficient control and mechanism for imposition of disciplinary sanctions. However, the legal authorization to impose such sanctions for violation of ethical rules contradicts to established international standards. The SJC initiative to publish on its website analyses of disciplinary practice is positive, but the announced information is not complete. Despite the significant increase in the number of disciplinary proceedings initiated, showing the will and firm determination of the respective authorities, this practice should be strengthened not only because of the public pressure and expectations. Along with that unification of disciplinary practice with regards to the same violations is necessary. Its extraordinary diversity and inconsistency at the moment leave an impression of subjectivism.</p>		

### Analysis/Background:

The SJC is entitled to appoint, promote, demote, transfer and remove from office magistrates, and such proposals can be made by the Minister of Justice as well. See CONSTITUTION Articles 129(1), 130(6).1, 130a(3). While judges become “irremovable” after five years by a SJC resolution taken based on performance evaluation, removal is still permitted based on the grounds specified in Article 129(3) of the Constitution, and namely: retirement at age 65, resignation, entry into force of sentence to prison for an intentional offense, continued inability to perform one’s duties for more than a year, grave breach or systematic failure to perform official duties, as well as actions damaging the prestige of the judiciary. Article 129(3) sentence 2 of the Constitution provides for that the specified grounds shall also be applicable to the chairpersons of the SCC, SAC and the Prosecutor General. The SJC decisions for removal from office of judges are to be adopted by secret ballot. *Id.* Article 131.

The JSA further develops the grounds for removal from office specified in the Constitution, and provides for in particular: dismissal imposed as a disciplinary sanction, decision of the Supreme Judicial Council refusing the status of tenure, incompatibility with positions and activities under article 195(1) of the JSA and reinstatement in office following illegal removal thereof. *Id.* Article 165(1). Each judge can thus be removed from office before acquisition of tenure, and magistrates who have already acquired tenure can only be removed from office on the grounds of Article 129(3) of the Constitution and Article 165(1).7 of the JSA.

The proposals for removal from office are addressed to the SJC by the CPE. See JSA Article 38(1).2. In relation to the exercising of these powers, the Committee could receive proposals made by “the interested judge, prosecutor or investigator or by no less than one-fifth of the Supreme Judicial Council members. *Id.* Article 38(2). The new amendments in the JSA exclude the latter, but provide for a possibility for the chairperson of the court to make such proposals and the Minister of Justice may provide opinions thereon. *Id.* Article 38(7). Separate rules are provided for removal of the SCC and the SAC chairpersons (as well as of the Prosecutor General). Each of them is removed from office by the President upon a



proposal from the SJC. The President shall not deny an appointment or removal upon a repeated proposal. See CONSTITUTION Article 129(2).

The proposals for removal used to be discussed by the Committee and subsequently submitted for examination to the SJC accompanied by a reasoned opinion, but this provision was repealed with the 2011 amendments in the JSA. See JSA Article 38(7), *abrogated*, SG No. 1 (Jan. 4, 2011). The SJC takes decisions on the proposals by a majority of more than half of its members. See JSA Article 38(8). The interested parties may appeal the respective SJC decisions within 14 days of their notification before a three-member panel of the SAC, and the judgment of the latter shall be subject to cassation appeal before a five-member panel of the SAC. *Id.* Article 36.

The legal mechanism described above ensures an objective and independent procedure for removal from office and the judicial control exercised by the SAC serves as an important guarantee against possible abuses in this process.

The grounds and procedure for enforcement of disciplinary liability are provided for in Chapter Sixteen of the JSA. A magistrate may be subject to disciplinary liability regardless of civil, criminal or administrative penal liability. See JSA Article 307(7). The grounds for imposition of disciplinary sanctions are the disciplinary offences specified in Article 307(4) of the JSA, which include: systematic failure to observe terms provided for in procedural laws, any act or omission delaying proceedings without justification, any violation of the Code of Ethics for magistrates, any act or omission damaging the prestige of the judiciary, and failure to discharge any *other* official duties. In order to ensure that the sanctions are fair, the gravity of the offense, the form of guilt, the circumstances surrounding the offense, and the conduct of the offender, are taken into account when setting the disciplinary sanction. Article 308(1) exhaustively specifies the types of disciplinary sanctions: reprimand, censure, reduction of the basic labour remuneration by 10 to 25 percent for a term of 6 months to two years, demotion in rank or position at the same judicial system body for a period ranging from six months to three years, removal from office as administrative head or deputy administrative head, disciplinary dismissal. The administrative head is entitled to impose the lightest sanctions: reprimand and censure, while the rest of the sanctions may only be imposed by the SJC. *Id.* Article 311.

Proposals for disciplinary sanctions against a judge may be made by the following persons: the respective administrative head; any superior administrative head, the SJC Inspection Service, no less than one-fifth of the Supreme Judicial Council members, the Minister of Justice. *Id.* Article 312(1). The disciplinary defendant has the right to be heard or to provide written explanations, to receive copies of the proposal for a disciplinary sanction and the evidence attached thereto, as well as to file an objection, and to have legal defence. *Id.* Articles 313(1), 316(5), and 318(2). In addition to that, the three-member disciplinary panel shall be designated by the SJC by a draw of lots among its members. During the sessions of the said disciplinary panel the facts and circumstances surrounding the offence are made clear and the mover of the proposal and the disciplinary defendant may be heard. Within 14 days of its last hearing the disciplinary panel shall give an opinion and propose the type and amount of such sanction. *Id.* Articles 318, 319. The SJC may accept, reject or change the proposal for the imposition of a disciplinary sanction by a majority of more than half of its members and shall render a reasoned written decision. *Id.* Article 320. Although the disciplinary panel conducts hearings in closed sessions, Article 324 of the JSA requires the decisions for imposition of disciplinary sanctions entered into force to be announced by the SJC on its website<sup>1</sup>. The decisions may be subject to appeal and cassation appeal

<sup>1</sup> See <http://www.vss.justice.bg/bg/start.htm>.

before a three-member panel and a five-member panel of the SAC respectively. *Id.* Article 323.

In addition to the those provided for in the JSA, additional rules for conduction of disciplinary proceedings are set out in Articles 51–54 of the Rules of Procedure of the Supreme Judicial Council and its Administration.

One of the major problems about the disciplinary liability is the possibility to impose a disciplinary sanction for a violation of the provisions set forth in the Code of Ethical Conduct of Bulgarian Magistrates<sup>1</sup>. This possibility is at variance with Opinion No. 3 of 2001 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality<sup>2</sup> [hereinafter the CCJE OPINION], which points out that the principles of professional conduct should "be totally separate from the judges' disciplinary system". See OPINION item 49.iii. Conclusions in this respect are drawn both by Bulgarian and foreign observers<sup>3</sup>. It is recommendable to make a clearer differentiation of the grounds for imposing disciplinary sanctions and the ethical rules, which have instructive character. Similar recommendation for a clearer distinction between the ethical and disciplinary regulation is provided by the Bulgarian Judges Association<sup>4</sup>.

In addition to that, critical opinions were expressed with respect to the phrase "actions damaging the prestige of the judiciary" which may serve as a ground for removal from office and for imposition of disciplinary sanctions. As there is no sustainable practice on its implementation, known to the public, concerns are raised that there are prospects for uneven application of this provision and possibilities of abuse.

The granted discretion for imposition only of the lightest disciplinary sanctions: reprimand and censure, by the administrative head, is considered an appropriate legislative solution. Thereby the unnecessary overloading of the SJC with cases of minor importance is avoided, on the one hand, and on the other hand, guarantees are established, that significant issues related to the magistrate status (such as disciplinary dismissal) will not be within the discretion of one person only, but will be considered on the grounds of objective statutory procedure by an authority external to the respective jurisdiction. Furthermore, upon the imposition of the disciplinary sanctions reprimand and censure by the administrative head, a special mechanism is provided for to protect the magistrates from arbitrariness and biased treatment – the order of the administrative head may be confirmed, cancelled or amended by the SJC within one month as of the date of its receipt. See JSA Article 314.

Effective application of the requirements concerning the procedure on imposition of disciplinary sanctions as set out in the JSA guarantees the objective and fair conduction of the procedure by the SJC. The requirement to designate the disciplinary panel by a draw of lots ensures the impartiality of the process of clarification of the facts and circumstances surrounding the offence, provision of opinion and proposal for the type and amount of the

<sup>1</sup> Adopted on the grounds of art. 30(1).12 of the JSA and an official decision No. 21 of May 20, 2009 of the Supreme Judicial Council.

<sup>2</sup> See <https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE%282002%29OP3&Language=lanBulgarian&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3>.

<sup>3</sup> See EVALUATION OF THE IMPLEMENTATION OF THE STRATEGY FOR REFORM OF THE BULGARIAN JUDICIARY – INTERIM REPORT/ 1.12.2009, and REPORT ON THE ACT AMENDING AND SUPPLEMENTING THE JUDICIAL SYSTEM ACT, July 2010, item 8(2), CODE OF ETHICS AND DISCIPLINARY LIABILITY, TWINNING PROJECT BG – 07 – IB – JH – 07.

<sup>4</sup> See CCJE OPINION.

sanction. Another guarantee for fair implementation of the mechanism for disciplinary sanctions is the possibility of judicial appeal of the decision before the SAC.

As noted above, the SJC Inspection Service is one of the authorities entitled to make proposals for imposition of disciplinary sanctions. The Inspection Service has a significant role in this process. Its effective operation is well regarded by foreign observers. In 2009 the Inspection Service submitted to the SJC 44 proposals for imposition of disciplinary sanctions, of which 35 were in respect of judges<sup>1</sup>. Most of the identified disciplinary offences constituted “failure to perform other official duties” – a total of 27 cases, “systematic failure to observe terms provided for in procedural laws” – a total of 17 cases. “Acts or omissions delaying proceedings without justification served as a ground for a disciplinary sanction in 4 cases, and after the amendment of the law proposals for imposition of a disciplinary sanction on the same ground were made in 8 cases”. The most frequently proposed sanction is “reduction of the basic labour remuneration by 10 to 25 percent for a term of 6 months to two years”. See JSA Article 308(1).3. 35 proposals were made in this respect. The disciplinary sanction “reprimand” was proposed in 2 cases, “censure” – in 1 case, “demotion in rank or position at the same judicial system body for a period ranging from six months to three years” was proposed in 6 cases, and disciplinary dismissal – in 4 cases. In most cases the Inspection Service to the SJC proposed a specific sanction, while in some exceptional cases more than one sanction was proposed, and in one case no specific sanction was proposed leaving the final decision to the SJC<sup>2</sup>.

In all cases the SJC initiated disciplinary proceedings and rendered decisions on the proposals made. The SJC granted 10 proposals of the Inspection Service as submitted. In 19 cases the SJC decided that the persons liable to disciplinary action have committed the respective disciplinary offence, but mitigated the sanction, and in 11 cases the SJC rendered decisions rejecting the proposals of the Inspection Service. In 5 of the cases the persons liable to disciplinary action appealed the decisions of the SJC. In 2009 the number of the proposals for disciplinary sanctions submitted to the SJC by the Inspection Service has increased three times compared to 2008. In 2010 the SJC initiated 11 disciplinary proceedings against magistrates following respective proposals by the Inspection Service, 8 out of which were against judges (two were particularly against administrative leaders of regional courts). In 2011 the Inspection Service made 7 proposals for disciplinary proceedings to the SJC, 6 out of which were against actions of judges from Sofia City court. In all cases disciplinary proceedings are initiated by the SJC but it rendered decisions only on four of them as of the date of issuing the report. Thus, a serious decrease in the number of such proposals is observed in comparison to previous years.

During its four-year mandate the Inspection Service at the SJC made a total of 184 proposals for disciplinary proceedings. Out of them 78 are proposals addressed to the SJC and 106 the proposals to the administrative leaders.

The Analyses of the disciplinary practices in the various periods prepared by the standing Disciplinary Committee operating since the beginning of November 2007 show a high rate of growth of disciplinary cases. For example, in 2007 the disciplinary proceedings initiated against magistrates were only 17 (9 of them against judges), unlike 2008, where 35 proceedings were initiated (16 of them against judges), and 2009, where the number of cases

<sup>1</sup> See REPORT ON THE ACTIVITY OF THE INSPECTION SERVICE FOR 2009 and REPORT ON THE ACTIVITY OF THE INSPECTION SERVICE FOR THE WHOLE FIRST MANDATE, available at the Inspection Service's website: <http://www.inspectoratvss.bg/bg/page/16>.

<sup>2</sup> According to Interpretative Decision No. 1 of 2006 of the SAC, the Inspection Service to the SJC is not required to specify the type and amount of the disciplinary sanction in its proposal.

increased to 83 (55 of them against judges). It makes impression that the same grounds for disciplinary sanctions were specified in 2007 and 2008 – “the specified magistrates have committed offences involving failure to discharge their official duties and/or delay in performance of their official duties, as well as acts violating the standards of professional ethics and/or damaging the prestige of the judiciary”<sup>1</sup>. An increase is observed in the number of the sanctions “censure” and “reprimand” – while in 2007 a total of 22 sanctions were imposed, in 2008 their number increased to a total of 32<sup>2</sup>. The offences committed in 2009 involve failure to discharge official duties and/or delay in performance of official duties, as well as acts violating the standards of professional ethics and/or damaging the prestige of the judiciary<sup>3</sup>. As a result of the adoption of the Code of Ethical Conduct of Bulgarian Magistrates the proposals for initiation of disciplinary proceedings and imposition of disciplinary sanctions for violations of the Code have increased. According to the SJC statistics for the number of decisions for imposition of disciplinary sanctions on judges appealed before the SAC, in 2007, 2 appeals were submitted (both related to disciplinary proceedings of 2006), and subsequently dismissed, and in 2008 – 7 appeals were submitted (two of them related to disciplinary cases of 2007 and 5 of 2008), and 7 were dismissed by the SAC. In 2009, 4 appeals were submitted, two of them – by the Inspection Service. There is a slight difference in the number of cases between the statistics of the SJC and the Report of the Inspection Service to the SJC. As of 2011 there are only 15 disciplinary proceedings initiated, the predominant grounds specified for them being systemic failure to observe judicial terms as well as procedural delays without sufficient explanation. On the second place the violations of the Code of Ethics are indicated as well as the damages to the prestige of the judiciary.

The significant increase in the number of disciplinary proceedings in the recent years, to a large extent, is due to the fact that at the end of 2007 the SJC became a standing authority, as well as to the establishment of a special Disciplinary Committee. Although the sharp growth in the number of disciplinary proceedings may seem concerning at first sight, it actually shows increasingly serious attitude and will for action on the part of the SJC and the Inspection Service. On the other hand, many respondents get the impression that strict measures in respect of unethical and inefficient conduct of judges are mainly taken by the judiciary when great scandals erupt in the judicial system. Even in such cases the subsequent reactions and sanctions cannot be considered satisfactory. For example, two members of the SJC involved in a great scandal in the last year resigned from the SJC, but returned to their magistrate positions. In another case, high magistrates were removed from leadership positions, but kept their judge position.

Another very essential issue in the SJC disciplinary practice is its inconsistency with regards to the type of sanctions in correlation to the type of violation. The clearest example in this respect is the dismissal of the former chairperson of the Bulgarian Judges Association Miroslava Todorova<sup>4</sup> in July 2012. The grounds for the imposition of the most severe disciplinary sanction was the delay of the reasons on three cases. Doubts remained that the true reason for the dismissal is the consistent and sharp criticism on the part of judge Todorova of the SJC and Ministry of Interior, which culminated in a libel lawsuit against the then Minister of Interior Mr. Tsvetan Tsvetanov. These doubts were strengthened also by the fact that other judges in the same court (Sofia City Court) received lighter sanctions for

<sup>1</sup> See 2007 ANALYSIS OF THE DISCIPLINARY PRACTICE OF THE SUPREME JUDICIAL COUNCIL.

<sup>2</sup> See 2008 ANALYSIS OF THE DISCIPLINARY PRACTICE OF THE SUPREME JUDICIAL COUNCIL.

<sup>3</sup> See 2009 ANALYSIS OF THE DISCIPLINARY PRACTICE OF THE SUPREME JUDICIAL COUNCIL.

<sup>4</sup> See <http://www.mediapool.bg/vss-uvolni-predsdatelnya-na-sadiyskiya-sayuz-miroslava-todorova-news-195114.html> (in Bulgarian).

the same type of violations. Among them was the Head of the Sofia City Court who was sanctioned with a reprimand for delays on 43 cases. The dismissal of judge Todorova caused an unprecedented wave of indignation not only among civic society representatives, but also among the magistrates themselves. For the first time in modern democratic history of the country they went out to protest in front of the SJC building.

The dismissal of judge Todorova requires a detailed reconsideration of the SJC disciplinary practice and the independence of work of each particular magistrate, as well as that of the authority, charged with the administration of the judiciary. The introduction of more transparency and predictability, and proportionality with regards to the disciplinary sanctions is necessary in order to overcome the impression of subjectivism and political dependence.

As noted above, the Disciplinary Committee publishes on the SJC website a year-to-year analysis of the disciplinary practice. In addition to that, a Register of disciplinary proceedings was established, which has been fully operational since 2008. Although the information provided is detailed and accessible, and contributes to the confidence in the judiciary, it would be appropriate to include particulars of each respective offense as they would serve as guidance about the JSC determination of the conduct that should be avoided by magistrates. In this regard, the reasons for each decision should also be published in order to ensure the preventive function of the disciplinary practice and its unification and consistency. It is unacceptable that the information available includes the types of offences committed and the legal grounds for imposition of disciplinary sanctions only, and not the arguments, on which the particular decisions were based. Magistrates may use as guidance not only the particulars of the cases where disciplinary sanctions were imposed, but also of the cases, where the proposals for sanctions were rejected and acquittal decisions were rendered. Furthermore, it is recommendable to include “more extensive justification in the proposals for disciplinary sanctions”<sup>1</sup>. The minimum information provided in the Analyses of the SJC does not allow more comprehensive conclusions with respect to the disciplinary practice on different grounds, the practice in respect of the gravity of the sanctions, the ratio between ethical grounds and other disciplinary grounds, etc.<sup>2</sup>

**Recommendations:**

- Introduction of measures for the unification of SJC disciplinary practice;
- Publication of reasons to disciplinary sanctions decisions with regards to the increase of transparency and predictability;
- Publication of detailed information on cases on which no disciplinary sanctions were imposed, as well as the reasons thereto;
- Preparation and implementation of a thorough standard for the summary of the disciplinary practice.

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<sup>1</sup> See EVALUATION OF THE IMPLEMENTATION OF THE STRATEGY FOR REFORM OF THE BULGARIAN JUDICIARY – INTERIM REPORT/ 1.12.2009.

<sup>2</sup> *Id.*

## Factor 18: Case Assignment

***Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.***

Conclusion	Correlation: Neutral	Trend ↔
<p>All courts employ random case assignment systems and this systems are actually used in the daily work of the court. Guaranteeing the random assignment of cases to the whole panel of the court to hear the case is key anticorruption measure. The case assignment is also a key element of the determination of the workload of an individual judge. In the last years doubts have increased that one of the two software products for random case assignment as well as the whole system of administrative measures regarding them, would guarantee real randomness of assignment and is protected against unscrupulous interferences.</p>		

### Analysis/Background:

The principle of random case assignment was first set forth in the Bulgarian legislation in the Administration Regulations. This principle underlies also the new JSA of 2007, according to which the case assignment is carried out on the grounds of “the principle of random selection by electronic assignment in accordance with the order of their receipt. See JSA Article 9(1). Further to the manner of assignment, the law points out that “the principle of random case assignment in the courts must apply within the chambers or departments, and in the prosecutor’s office and in the investigation offices – within the departments. *Id.* Article 9(2). The received documents, on the grounds of which cases are initiated, are assigned under the principle of random selection by the administrative manager of the court or by judges determined by the latter, who initiate the case. See ADMINISTRATION REGULATIONS Article 46(1). It is possible, as an exception, that the court president “assigns to court supporting staff the performing of the technical activity of determination of the reporting judge”, and “the reporting judge may only be replaced upon a recusal or absence, the principle of random case assignment being observed”. *Id.* Article 46(2), (4). The SJC adopted also an Instruction on the organization and procedure for use of the random case assignment software in courts, which is still another step towards optimization of the use of the separate programmes.

In pursuance of the obligation for integration of the software products and thereby introduction of the principle of random case assignment, the administrative managers of the courts draw up Internal Regulations for Operation of the Random Case Assignment Software, which regulate the conditions and procedure for daily operation of the Software.

The relatively flexible legal framework of the implementation of random principle in the case assignment allows the formation of diverse practice. For example, in some courts, the cases are assigned by the judges themselves on a rotation principle and under criteria set by the administrative manager (a criterion may be, e.g. the amount of the sanction in a criminal case). In other courts, it is carried out by the chairpersons of the respective departments. In the larger courts, there are judges on duty who carry out this activity. In addition the assignment may be conducted also by a judicial clerk at the moment of intake provided the regularity of documents is adequately checked and that an option may be considered the assignment to be done in the presence of the parties which will be an important step towards strengthening transparency and public confidence in justice.



There are two software products used only for random assignment (and not for management) of the cases approved by a resolution of the SJC – minutes No 27/07.06.2006 and introduced in all courts. These are: 1) Law Choice, developed by the SJC and 2) random assignment modules to CMS, developed under a project financed by the US Agency for International Development (USAID) and EMSG, developed by a private company<sup>1</sup>. The programmes allow categorization of the cases, as for smaller courts it is only for civil and criminal cases, and in larger courts – it is separated by the introduction of various codes (for example, independent code for divorce actions). The administrative manager is enabled to add a special code depending on the needs of the court. The information generally saved by these programmes is: time; day; judge making the choice; case number; who is excluded and why; who is selected by the computer. All data are automatically saved.

In July 2009, more than a half of the judges in the Criminal Chamber of the Sofia City Court sent an open letter to the Supreme Judicial Council and to the chairperson of the Sofia City Court requesting “the adoption of effective practical measures securing the random case assignment in the criminal department of the Sofia City Court and the career development of judges in accordance with clear rules”<sup>2</sup>. The letter was provoked by the fact that certain cases of high social concern, some of them monitored by the SJC, were assigned to the same panels and the inspection made by experts failed to find the reasons for that.

Earlier this same year, the SJC imposed a summary dismissal on the chairperson of the Targovishte Regional Court exactly for failure to comply with the principle of random case assignment<sup>3</sup>. An inspection carried out by the SJC Inspection Service, which started the inspection on its own initiative, showed that all cases heard by the chairperson had not passed through the system. Information was also shared about cases when more than five cases in a row of the same attorney are heard by the same judge.

In recent years the occasions which cast doubts on the effective application of the random case assignment principle became more frequent. Random case assignment is permanently present in the media when discussing topics in the justice area. In most of the cases the emphasis is on problems with the application of the principle, as well as with the possible software manipulations leading to distortion of the principle itself and to serious consequences to the administration of justice on particular cases and in particular judicial bodies.

Back in time attempts to raise these issues were made in particular comments and statements of judges. Despite that the impression that the SJC and the administrative heads do not demonstrate any activity in their resolution remains. As pointed out, in the summer of 2009 the majority of judges in the Criminal Division of the SCC turn to the SJC with an open letter, asking for “a clear response whether the imperative requirement for random case assignment of the JSA allows for exceptions through assigning particular cases to the court president or his/ her deputy, outside the procedure of random assignment irrespective of the reasons for it”<sup>3</sup>.

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<sup>1</sup> Letter incoming No.11-06-330 of July 28, 2009.

<sup>2</sup> Judgement No. 4605 of April 8, 2010 of the SAC under administrative case No.190/2010 confirming the resolution of the SJC.

<sup>3</sup> Judges asked the SJC to reconsider the case assignment system (July 27, 2009), *available at*: [http://www.capital.bg/blogove/pravo/2009/07/29/763251\\_sudii\\_poiskaha\\_ot\\_vss\\_da\\_prerazgleda\\_sistemata\\_z/](http://www.capital.bg/blogove/pravo/2009/07/29/763251_sudii_poiskaha_ot_vss_da_prerazgleda_sistemata_z/) (in Bulgarian).



In other cases the media write about, administrative heads, normatively charged with responsibilities regarding the application of the random case assignment, are being identified with doubts in software manipulation, certain parties favouring, and general principles of jurisdiction infringement. Cases are mentioned, where court heads refer cases to certain judges without randomly assigning them<sup>1</sup>, or admit cases despite failures to fulfill orders to correct defects given by another judge<sup>2</sup>.

Media publications announced a case of “manual” assignment of some of the cases in Blagoevgrad District Court, about two thirds of which went to the same judge. This was noted by a SJC inspection as well, which points out that the analysis of the collected data “can’t convincingly and explicitly rebut the doubts that there are conditions for law administration in favour of some privileged parties and attorneys at the expense of other citizens in Blagoevgrad District Court”<sup>3</sup>. There are also cases where the investigation had shown unauthorized interference on behalf of administrative heads (the cases of the former administrative head of the Varna Administrative Court Aneliya Tsvetkova, the head of the Burgas Administrative Court Atanas Valkov, and the head of Belogradchik Regional Court Irena Ivanova<sup>4</sup>).

Publications on the way judicial panels in the SAC are constituted and its reflection on the randomness of case assignment are particularly concerning. The specifics of the current model within this court require much bigger flexibility of panels that hear case on the different stages of the proceedings. Thus actually, through the computer system only the reporting judge on the case is randomly selected while the other members of the panel are determined in a complicated and difficult to trace way by the administrative head. Additional administrative discretion and lack of transparency results from the fact that division of judges in the SAC in Chambers and Divisions and the subject matter between them is not done by the Court’s General Meeting, but rather by the administrative head. This makes the requirement for random assignment the idea of which is to guarantee impossibility of human interference in the determination of the panel to hear the case, meaningless. Besides, the system is entirely non-transparent – neither the rules, which govern the panel composition, nor the full range of orders concerning the structure of divisions and chambers and the division of subject matter – are public, and the case files don’t have the assignment records enclosed. So it remains impossible for the parties to trace how and on what grounds the panel to hear their case was composed. This non-transparency has a disastrous effect on the Court’s reputation. In the last years different publications pointed out areas, in which the SAC has hard to explain turns in its practice, and the scandal with the failed due to suspicions of abuse of power attempt of the Court’s deputy head of many years to become a Constitutional Court justice confirmed the public perceptions of irregularities.

Interviews with judges and other observers also show increase of mistrust in the random case assignment principle application and suspicions of misuse of different essence. On one hand, concerning is the lack of full guarantees as to the unpredictability of the panel that will hear and decide a case. On the other hand, with view to the significance of the

<sup>1</sup> The circus with the Plovdiv International Fair (July 15, 2011), *available at*: [http://www.capital.bg/biznes/kompanii/2011/07/15/1123918\\_panair\\_s\\_panaira/](http://www.capital.bg/biznes/kompanii/2011/07/15/1123918_panair_s_panaira/) (in Bulgarian).

<sup>2</sup> Mario Bros (Apr. 8, 2011), *available at*: [http://www.capital.bg/politika\\_i\\_ikonomika/bulgaria/2011/04/08/1072336\\_mario\\_bros/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/04/08/1072336_mario_bros/) (in Bulgarian).

<sup>3</sup> How to assume a court district in four steps (Jan. 29, 2010), *available at*: [http://www.capital.bg/politika\\_i\\_ikonomika/bulgaria/2010/01/29/850153\\_kak\\_da\\_uzurpirame\\_sudeben\\_region\\_v\\_chetiri\\_stupki/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2010/01/29/850153_kak_da_uzurpirame_sudeben_region_v_chetiri_stupki/) (in Bulgarian).

<sup>4</sup> The SJC doesn’t care about the system for (non)random case assignment (Sept. 21, 2012), [mediapool.bg](http://mediapool.bg).

case assignment system to the balancing of judicial caseloads, the fact that it does not guarantee equal caseloads and allows for nontransparent disburdening of some and overburdening of other judges, also causes concerns.

Reflecting upon these issues, in its July 18, 2012 report the EC recommended that Bulgaria “[d]efine a single, effective system of random allocation of cases for use nationwide”. In its 2013 annual agenda the SJC envisions an inspection of this kind.

The random case assignment system should be analyzed from different perspectives, as it is a complex of program, computer, administrative and other measures aiming at concurrently ensuring a few important priorities, including the impossibility that any of the parties on a case or individual inside the court know the panel to hear the case, and equal judicial caseload. The fact that random assignment is an aspect of the lawfulness of the panel should also be taken into account, and in this regard parties have important legal interest to be able to ascertain that it was done under the provisions of the law. Last but not least, beside the evaluation of the system itself, it is as important to account for the capacity of the SJC and the ISJC to exercise effective control over its application. Details aside, we shall point out the basic conclusions on each of these aspects.

In terms of applicable software, there is an essential difference between the two used products. While the CMS is valued for its acceptable level of security, including encryption and archive of all activities, the situation with Law Choice is considerably worse. The level of security of Law Choice is worryingly low as the security of files and archive encryption don’t provide adequate prevention against misuse of individuals with access to the system. In cases of failure of the administration to act in good faith, there are too many opportunities for editing of the archive, the access accounts, change of caseload coefficient for the judges participating in the allocation, which predetermines a particular judge, and all of these may leave no traces in the program archive, etc.

Next, the way court computer networks are administered is also concerning. The SJC has no unified and detailed standards regarding the software products to be used, neither the internet connectivity or connection security level. There are no standards regarding the access passwords, administrators’ rights and software decisions which might be applied to reflect any tampering with the system and its author. The requirements to court IT experts are insufficiently standardized, including recruitment competitions, qualification requirements, and especially – clear guarantees concerning the network security. At this moment these experts depend on administrative heads to a large extent.

There are also essential problems with the formal regulation of the rules for the random case assignment systems operation, the settings and modifications of the software products, the individuals who assign the cases and their qualification and responsibility. The SJC decision an extended number of these matters to be regulated through internal rules and separate orders of the administrative heads creates too many local practices which are difficult to trace and which obviously cannot be guaranteed minimum security standards. The random case assignment system archives are kept on court servers with no sufficient enough detailed standards for their encryption, security, each intervention and its author tracking guarantees. There are no unified rules for periodic archive encryption with views to preservation and possible authentication.

There is also an important issue regarding the opportunity of parties on particular cases to rest assured that the panel to hear and decide their case was determined in strict compliance with the randomness requirement. Besides being an important legal interest of parties as it constitutes an element of the legality of the panel, and potential grounds for appeal, it is also a serious potential control over the entire system of guarantees. At the present mo-

ment there are not enough guarantees that an assignment record would be enclosed with the case file, that it would be authentic, and the record's essential elements would allow each party to ascertain that the case was randomly assigned. Where such records are enclosed, they are print outs of text files which cannot be guaranteed to be authentic and corresponding to the content of the program memory, or constitute grounds to start proceedings against somebody for their content. Furthermore, assignment records don't include enough information, which allows parties to track on their own malfeasance or errors with assignment. They don't reflect neither the judges to be excluded from assignment and the reasons for exclusion nor the case load coefficient of participating judges, and the reasons for participation in assignment of the respective judges.

The assignment of cases among judges has direct influence on individual judicial caseload regulation. The caseload of judges issue has been central for years in any program, conception or platform, concerning the most important and immediately requiring resolution matters of the judiciary. The caseload reflects the work that judges need to do within their official duties. As a result of the cumulation of different factors, it turns out in a number of courts in the country that judges are forced to compromise with the quality of their judgments pressed by the prescribed terms. On the other hand, there are also courts in the country, where judges have an extremely low workload which causes serious workload irregularities. In this way the caseload entails more problems – those of quality and speed of trials. Furthermore, some share the alarming observation that excessive caseloads are used as means to “punish” of judges or create dependencies.

The SJC repeatedly tried to resolve the caseload issue through the development of an effective mechanism for its accounting. The goal is to develop a tool through which courts' and individual judges' caseload to be measured so that it could be later on regulated in a way that, on one hand, would overcome the present irregularity of caseloads between judges of different courts and, on the other hand, would provide judges with the possibility to do their work in a quality and timely manner, and thus observe the citizens' right to speedy and quality justice. After a number of projects and reports of the last years, at present a Working group with the SJC is constituted to develop medium-term human resources strategy. The primary task of the Working group is to develop caseload weighing methodology. The results of its work are to be seen.

Last but not least, the problem with the SJC and ISJC's capacity to conduct investigations is an essential one. Archives of random assignment programs are not copied to be subject to independent preservation and verification. During SJC and ISJC inspections those who conduct them rely on the IT experts of the respective court or on those prepared and maintaining the program product. No unified methodology for inspections has been adopted so as to guarantee control over all elements of security.

#### **Recommendations<sup>1</sup>:**

- Substitution of the Law Choice program product for another one, developed in compliance with the modern requirements for protection against intervention and manipulation with view to the large potential interests that depend on its lawful operation;
- Guarantee of lawfulness, randomness, and transparency in the panel constitution in the SAC;
- Uniform standards for protection, encryption, and maintenance of computer archives for the assignments done, including the preservation of copies on servers outside of the particular court's control;

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<sup>1</sup> These recommendations are based on BILI's analysis of random case assignment programs, developed upon inspections in the SCC, SCC and SAC. The full text of the report is available at: [http://www.bili-bg.org/cdir/bili-bg.org/files/BILI\\_-\\_Report&Annexes\\_-\\_RCA\\_-\\_April\\_2013.pdf](http://www.bili-bg.org/cdir/bili-bg.org/files/BILI_-_Report&Annexes_-_RCA_-_April_2013.pdf) (in Bulgarian).

- Uniform standards for architecture and maintenance of court computer systems, including access, administration rights, software products to be and not be used, system intervention tracking, tracking of individual judges' computers, internet connectivity and security, etc.
- Uniform standards for administrative rules for the random case assignment system operation, including individuals who operate it, their qualification, duties and responsibilities;
- Uniform requirements for the computer experts status, maintaining the court systems, including recruitment competition requirements, minimum competences, SJC or courts' general meetings' responsibility and accountability guarantees, qualification extension, etc.
- Unified standard for case assignment records enclosure and essential elements, including guarantees for their formatting as a document and information included, which allows parties to defend their interest of effective application of the random assignment;
- Development of the SJC and ISJC control capacity, including own computer experts, methodology for the system elements inspection, etc.

## Factor 19: Judicial Associations

***An association exists, the sole aim of which is to protect and promote the interests of the and this organization is active.***

Conclusion	Correlation: Neutral	Trend ↔
<p>Although currently the BJA is not the only professional organisation of judges, it is still considered as the leading one. In the past period the BJA became a zealous advocate of judicial independence and managed to define a series of particular factors, which restrain it. BJA's assessments and proposals are supported by domestic and international experts. The current proactive stance of some other associations of judges is a sign for the common movement within the judges' guild after years of strong political pressure and attempts for external influence.</p>		

### Analysis/Background:

Article 44 of the Constitution guarantees to citizens "the right to freedom of association". Furthermore, "[j]udges, prosecutors and investigators shall be free to form and to join organizations which defend the professional interests thereof." See JSA Article 217(1). The act introduces also an exception, and namely that such organizations "may not be members of workers' trade union federations and confederations." *Id.* Article 217(2). Currently, there are four active organisations of judges.

The Bulgarian Judges Association (the BJA) was established in its current form in 1997 as a successor of the Bulgarian Judges Union set up in 1919. Being such, the BJA is the oldest professional organization of judges in Bulgaria. Currently, its members are 1000 of a total of 2340 judges in the country. Further to the sections in Sofia, which are in the Sofia Regional Court, the Sofia District Court, the Supreme Court of Cassation and the Administrative Court, the Association also set up 8 local sections – in Gabrovo, Montana, Vratsa, Vidin, Lovech, Smolyan, Burgas and Stara Zagora. The work of the Management Board of the Association is also supported by 4 committees: financial, organizational, communication and legal-and-ethical. For the period from 2006 until now the annual membership fee has been increased from 24 to 36 BGN, and the entrance fee is 10 BGN.

Apart from this organization, there are two others: the Bulgarian Judges Association<sup>1</sup> (established in 2006 under the name Judges for United Europe Association) and the Association of the Bulgarian Administrative Judges (established in 2007). Their activity is mostly focused on the organization and conduction of various trainings for judges' qualification improvement.

Not registered as an entity itself, there also exist one informal structure called Forum of the Courts. The structure started its initial activities as a Forum of the Chairpersons of the District Courts, established during the implementation of a project, funded by the Operational Program Administrative Capacity. In the past four years the BJA implemented and participated in various projects. Currently work is being performed on only one institutional project – "Organizational Strengthening of the BJA", where it is partnering with judges' organizations from the Czech Republic and the Netherlands.

The BJA is an active element of the social life and constantly protects the independence of judges and their legal rights. The series of open letters of the association to the Supreme Judicial Council and other state institutions focus the social and media attention on some of the most topical problems of the judicial system<sup>1</sup>. In the last years, the escalating attacks by politicians from the ruling majority against the judicial system and some judges, in particular, met the strong positions of the BJA in defense of judicial independence and dignity. The association denounced the lack of good management and real reforms in the judicial system as well as the SJC's denial to protect its independence. Some of the positions of the BJA on issues such as the judicial system budget, judges' performance assessments, recruitment competitions, scandalous appointments of court administrative heads, and the attacks of the Interior minister against the judicial system, echoed in the statements of other leading NGOs in Bulgaria and in the conclusions in the EC reports. In 2011, the International Judges Association's Mission visited Bulgaria and also expressed a serious concern about judicial independence in Bulgaria in its report. In July 2012, the disciplinary dismissal of BJA's chairperson provoked a turbulent reaction. Many judges on different positions in the system and from all around the country, as well as other magistrates' associations and NGOs defined that dismissal as a politically motivated retribution for her criticism of the system. The UN International Commission of Jurists expressed great concern about the political intervention in the work of the judicial system. In its July 18, 2012 report, the EC also marked that case, recording that it questions the independence of the Court in Bulgaria. The culmination of the public reaction became the unprecedented protests of judges in front of the SJC's building, which demanded for the council's resignation.

Another substantial activity of the BJA includes the preparation and offering of tangible decisions for the judicial reform process. The Association always submits its standpoints about specific legislation initiatives with the Ministry of Justice and the Parliament. In February 2012, in cooperation with leading human rights organisations, BJA developed and submitted with the Ministry a complete package of proposals for structural changes in the judicial system model in Bulgaria, which could guarantee the independence of courts, addressing in that way the numerous international recommendation for reforms in that field. Within the campaign for elections of new members of the SJC in the autumn of 2012, the

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<sup>1</sup> Translator's note: The name of this organization in Bulgarian is "Асоциацията на съдиите в България" (Balgarska sadiiska asotsiatsiya) which in English translates exactly as the name of the biggest judges organization in Bulgaria, mentioned in the paragraph above, and whose name in Bulgarian is "Национална асоциация на съдиите в България" (Sayuz na sadiite v Bulgaria).

<sup>1</sup> See <http://www.judgesbg.com/?m=11&id=1>.

BJA significantly contributed to the increased publicity of the process, organizing open hearings for some of the candidates and announcing a platform for the work of the next SJC.

As some of the BJA's activists admit, a negative feature of the Organization's work is that it does not always manage to sufficiently include the efforts of all its members, and it also does not offer them clearly defined services. However, despite the turbulent period that the organization has gone through, the members are remarkably active during the general meetings of the Association. On the last meeting, a new and extended board of managers was elected. The fact that most of its members are new is a sound message that the BJA is far from being an organization, which represents only a small group of people. On the contrary, unlike many other organizations in Bulgaria it is capable of producing a new generation that could continue to follow its mission. Furthermore, the collection rate of the dues is rising. The new management organizes a series of junior judges meetings outside of Sofia, as well as educational events and working groups in the country. A working group which targets to develop a plan for the activation of the members of the organisation was created.

After an inactive period, the Bulgarian Judges Organization activated in 2012, by enlisting in the Ministry of Justice working groups, promulgating statements on legislation amendment drafts and some other issues. The organization also conducted a general meeting on which its name was changed. In 2012 the Forum of the Courts organized a conference where it presented a series of new administrative practices in the courts consolidated in this group.



## V. Accountability and Transparency

### Factor 20: Judicial Decisions and Improper Influence

*Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.*

Conclusion	Correlation: Negative	Trend: ↔
Despite the existing legal safeguards for judicial independence and the bona fide activity of the majority of Bulgarian judges, the public mistrust towards judicial decisions and the levels of corruption in the branch remain predominantly high. A major source of improper influence continue to be the attempts by the executive branch to exert influence as well as the presence of unregulated family, professional and social networks and connections among magistrates. Even upon the last legislative amendments in this regard, the need for improvement of the procedures for election and appointment of the SJC members from the parliamentary quota as well those of the court chairpersons and for extension of the legal framework in order to be able to encompass the cases of affiliation to opaque and secret organizations remains.		

#### Analysis/Background:

The Constitution states that the impartiality of judges in court is a guarantee for the fundamental government principle of separation of powers, which is enshrined in Article 8 of the Bulgarian Constitution. The particular model according to which this principle has been introduced in it and in the judicial practice of the Constitutional Court shall determine the structure of the other guarantees of independence. In Chapter VI of the Constitution, the independence of the court is absorbed in the independence of the judicial system, together with the other institutions integrated into it. The second sentence of paragraph two of article 117 stipulates that “in carrying out its functions, judges, jury, prosecutors and investigators are subject only to the law”; the third paragraph of that article ensures the independence of the judicial system budget. As a central institutional guarantee for the independence of the judicial system, the Constitution provides for the establishment of Supreme Judicial Council as the competent body in managing career, financial and other important issues of the system as a whole.

The 2003–2007 amendments<sup>1</sup> were aimed at increasing the accountability of the judicial system bodies with the objective to limit the negative institutional dynamics, including those related to undue influence, by strengthening the element of interaction in the separation of powers model. A SJC Inspection Service was established; the immunity was limited and the period prior to receiving tenure was prolonged. The opportunity provided for in Decision No. 8/2005 of the Constitutional Court<sup>2</sup> to highlight the role of the courts within the judicial system as “major holders of the judicial system and the single institution which exercises the public justice” was not realized and the constitutional system of safeguards against unregulated intervention continued to be applied more to the “magistrates”, understood as a

<sup>1</sup> Amendment act to the Constitution SG No. 85 (Sept. 26, 2003) and No. SG 12 (Feb. 6, 2007).

<sup>2</sup> Decision No. 8 of Sept. 1, 2005 on constitutional case No. 7 from 2005, reporting judge Lazar Gruev, *promulgated in* SG, No. 74 (Sept. 13, 2005).

single entity, rather than in terms of the specific functions and responsibilities within each of its elements in the judicial process and the administration of the judicial system.

The Statute establishing the judicial system – the JSA, develops the principle of judicial independence in several consecutive texts: in pronouncing their acts judges, prosecutors and investigators base themselves on the law and the evidence before them, perform their functions impartially, provide for openness, accessibility, transparency in their actions, remain politically neutral, apply the law accurately and uniformly. See JSA Articles 3, 4, 5(2), 6, 8(1). These principles are also reflected in the oath taken by every judge before taking office. *Id.* Article 155. Additional safeguards are provided in Article 195 of JSA which outlines a number of prohibitions on the affiliation to organizations or exercising of any such activities by judges which may have the effect of undermining their independence. According to Article 212, it is prohibited for the judge to give a preliminary opinion on the cases assigned to him and according to Article 213 he may not give any legal advice in general.

Additional guarantees for the impartiality of the court are provided by the procedural rules. Thus, the Civil Proc. Code provides for open sessions and requires that the court considers the evidence and the arguments of the parties following its inner conviction. See CIVIL PROC. CODE Articles 11, 12. Article 22 develops numerous grounds for recusal of a certain division member accompanied by a general clause covering all “other circumstances which give rise to any reasonable doubt in his impartiality.” The recusal is at the discretion of the court, upon its own initiative or upon request by any of the parties. See CIVIL PROC. CODE Articles 22, 23. The Criminal Proc. Code, on the other hand, also provides for independence of the courts, accurate and uniform application of law, equal rights of the parties, decision-making by inner conviction based on an objective, comprehensive and complete investigation of all circumstances of the case and governed by law and publicity of the hearing. See CRIMINAL PROC. CODE Articles 10, 11(2), 12(2), 14(1), 20. Article 29 provides for a detailed list of recusal grounds, accompanied by a general clause for all other circumstances creating doubts for bias or direct or indirect interest in the outcome of the case. In the Admin. Proc. Code the court independence and impartiality are also enshrined as fundamental principles. See ADMIN. PROC. CODE Article 10(1). Accessibility, publicity and transparency of information are guaranteed as well as equal rights of participation of the parties and protection of their legitimate interests. *Id.* Articles 8, 12. Once again the opportunity for recusal of the interested official is available and is accompanied by the general clause covering all “relations which raise reasonable doubts for his impartiality”. *Id.* Articles 10(2), 33. In respect of any unsettled issues related to the judicial proceedings Article 144 refers to the provisions of the Civil Proc. Code.

An important technical safeguard for courts impartiality is the requirement for random case assignment. See JSA Article 9. The existing requirement that judges must declare their income and property under the Public Disclosure of Senior Public Official’s Financial Interests Act [ hereinafter PDSPOFIA]<sup>1</sup> stipulated in JSA Article 228 as well as the declaration of incompatibility and private interests under the Conflict of Interest Prevention and Ascertainment Act [hereinafter CIPAA]<sup>2</sup> also represent a key mechanism to preventing corruption. The declarations are published on the website of the Audit office and the SJC, respectively. The declaration under PDSPOFIA should be submitted until 30 September of the current year for any property acquired in the previous year. Declarations under CIPAA (amended CIPDA) shall be submitted not later than 30 days after the election or appointment of the person. According to CIPAA Article 14 any changes in the circumstances

<sup>1</sup> *Promulgated in SG No. 38 (May 5, 2000), last amended SG No. 38 (May 18, 2012), effective Nov. 19, 2012.*

<sup>2</sup> *CONFLICT OF INTEREST PREVENTION AND ASCERTAINMENT ACT, title amended and supplemented SG No. 97 (Dec. 10, 2010), effective Dec. 10, 2010, last amended Feb. 15, 2013.*

which were declared under the law may be reflected in the declaration in a period of one month from its submission in case there are any errors or inadequacies.

In spite of this extensive system of legal safeguards for judicial independence, the public mistrust in the court institution, registered in various studies, remains high. Similarly, the concerns of international observers and analysts about the presence of undue influence in the judicial system continue to exist.

The period following 2006 JRI is saturated with various sources of tension in the management of the judicial system and its relations with other authorities. Public mistrust in the judicature and legality in the country is high and it plays an important factor in the political life. It is precisely the judicial system that has continued to be the sector with the highest index of corruption in Bulgaria since 2006. This is indicated in the data reported by the Global Corruption Barometer for Bulgaria for 2010<sup>1</sup>, a global survey on public opinion of the level of corruption in various spheres of social life, made by Transparency International. These observations are reaffirmed in the Corruption perception Index for 2010<sup>2</sup>, another instrument of Transparency International, which measures the level of political and administrative corruption in a particular country as it is perceived by business representatives and analysts from around the world, including experts from the countries surveyed. The Index of Bulgaria in the last three years had worsened and varies in the range between 3.6 and 3.8 points, revealing the increased perception of corruption in comparison to previous years.

According to data by Eurobarometer in the European attitudes towards corruption report, published in 2009, Bulgaria is reported as one of the eight Member States in which it is almost unanimously admitted that corruption represents a major problem for the country<sup>3</sup>. According to Bulgarians the most corrupt are the representatives of customs services, followed by courts and the police. Although more than one third of Europeans find that corruption is widespread exactly in these three sectors, the percentage of Bulgarians alleging that there is corruption in the judicial system and the customs is the highest (82% and 87% respectively).

In their ninth Report for Corruption Assessment<sup>4</sup> the Center for the Study of Democracy [hereinafter CSD] indicates that the highest anti-corruption expectations of the Bulgarian population are directed precisely towards the judicial system. The report leads to the conclusion that “despite the numerous positive changes in the organization and functioning of the judicial system immediately before and after the country's accession to the EU made in order to increase its accountability and effectiveness, it is still true that the results of combating corruption and organized crime remain inconclusive” and “behind the independence of investigators, prosecutors and judges in many cases we can see a political loyalty or commitment to suspicious and even criminal circles and individuals.” According to the same report, the replacement of the absolute immunity of the magistrates with a functional one has not led to the expected increase in the number of criminal proceedings against them. For example, from the beginning of 2006 until the end of 2008 there are only

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<sup>1</sup> The report is available at: [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) (in Bulgarian).

<sup>2</sup> The report is available at: [http://www.transparency.bg/media/cms\\_page\\_media/18/CPI\\_2010\\_Information\\_web%20site.pdf](http://www.transparency.bg/media/cms_page_media/18/CPI_2010_Information_web%20site.pdf) (in Bulgarian).

<sup>3</sup> The report is available at: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_325\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_325_en.pdf).

<sup>4</sup> The report Crime without penalty: Combating corruption and organized crime in Bulgaria, 2009 is available at: <http://www.csd.bg/fileSrc.php?id=20428>.

67 pre-trial proceedings initiated for all kinds of crime, out of which 30 (44.7%) concluded with a submission of indictment to court, 15 (22.3%) were terminated, and the remaining 22 (32.8%) have not been completed. Out of those submitted to court, six ended with conviction and four with acquittal having in mind that all cases of acquittal were appealed by the prosecution. The number of criminal proceedings initiated against magistrates for crimes related to corruption for the same period is even smaller: for the most typical offence, bribery, they are only 13. This, in turn, contrasts with the “ongoing admissions of senior judges for the persisting corruption influence of political and oligarchic interests on the judicial system”<sup>1</sup>.

In another report of CSD, *A Study on the Links between Organized Crime and Corruption*<sup>2</sup>, (2010) Bulgaria is listed as one of the countries in the European Union where judges abuse their powers as a result of influence exercised directly from one of the parties or by corrupt politicians<sup>3</sup>. The following are indicated as some of the most common networks in our country used by criminals for the purposes of corruption addressed at the members of the judicial system: personal and family networks (such as former classmates or alumni, a spouse lawyer acting as an intermediary in bribery, etc.); professional networks (e.g. in many Member States there are law firms acting as legal representatives in litigation who try to hire former magistrates to influence the outcome of certain cases); networks developed with the law enforcement authorities (police, customs), internal networks (e.g. in hierarchical systems, such as prosecution where pressure can be exerted on the superiors).

The presence of undue external influence on members of the judicial system is a major problem, which is similarly subject to constant criticism in the reports of the European Commission on Bulgaria's progress under the Cooperation and Verification Mechanism. For example, in the July 2008<sup>4</sup> report it is indicated that “Bulgaria has not yet been able to demonstrate that its judicial system is working effectively in this manner. Institutions and procedures look good on paper but do not produce results in practice. [...] The core problems remain and need to be addressed urgently.” The same opinion is expressed in the recommendations from February 2009<sup>5</sup>. It must be shown “through concrete cases of indictments, trials and convictions regarding high-level corruption and organized crime that the legal system is capable of implementing the laws in an independent and efficient way”. The inability to conduct an effective judicial reform and the lack of “a broad political consensus” is also reflected in the July 2009<sup>6</sup> report: “the measures taken are seen as piece-meal and as not systematically followed up at all levels” and “in the public perception, justice in Bulgaria is slow, sometimes inequitable and in some cases subject to influence and interference.” The criticism continues in March 2010<sup>7</sup>. “Allegations of serious corruption related to senior appointments in the judicial system involving members of the SJC still need to be fully exam-

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<sup>1</sup> *Id.*

<sup>2</sup> The report is available at: <http://www.csd.bg/fileSrc.php?id=20428>.

<sup>3</sup> See EXAMINING LINKS BETWEEN ORGANIZED CRIME AND CORRUPTION, p.106.

<sup>4</sup> The report is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0495:FIN:EN:HTML>.

<sup>5</sup> The report is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0069:FIN:EN:HTML>.

<sup>6</sup> The report is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0402:FIN:EN:HTML>.

<sup>7</sup> The report is available at: [http://ec.europa.eu/cvm/docs/com\\_2010\\_112\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2010_112_en.pdf).

ined” and July 2010<sup>1</sup>: “Bulgaria should improve to higher extent the accountability of the judicial system through a strict application of all legal and disciplinary means to punish corruption.”

Interestingly, the studies conducted among persons who had direct contacts with the judicial system showed significantly lower levels of mistrust in the independence and impartiality of the court compared to the perceptions of society as a whole. Thus the Index on administrative and commercial justice, issued by BILI as a result of sociological research accomplished by Alpha Research in 2010 indicates that out of those representatives of the business who were engaged in proceedings only 15% “feel there is lack of fairness” and admit they witnessed corruption<sup>2</sup> “and 10% are situated in a hesitating position in the middle of the scale which is another way to display dissatisfaction. It should be taken into consideration nevertheless that the main source of that feeling of dissatisfaction are companies who were not able to protect their interest in the proceedings. [...] The latter are also parties to the cases with highest concerns on the presence of corruption and remain with the perception their case would be decided differently in other courts around the country. It is very often that these are cases in which there was a perception for intentional delay, connections between the legal representative of the other party and the judge.” However, if the evidence for all types of problems encountered by those who resort to the court services was aggregated, the magnitude obtained as a result would be much closer to the levels of mistrust in the court integrity existing in the general public. From this perspective, it seems that corruption in the public sector has become the prevailing explanation for any irregularities in the judicial system.

The conspicuous conclusion is that the closer the acquaintance with the work of the court which citizens gain, the much more nuanced becomes the picture which reflects the bona fide activity of the majority of Bulgarian judges, whose ethics has never fallen into the focus of public attention by producing any bad news. The important thing is that bad news does not simply remain a blow on public confidence in justice, but in a way becomes an occasion for its purification, convincing citizens that the judicial system has its own resistance power.

Both in interviews and from the overview of the instances of alleged undue influence on judges which have gained media prominence since 2006, and along with the conventional economic tensions, two areas of particular concern are emerging: 1) influences (public or otherwise) coming from other branches of government and institutions, and 2) how various social networks and connections may enable corruption.

As the problems of criminal law enforcement remain an important domestic and international political issue for Bulgaria, many interviewees were concerned that judges and courts become the focus of an indiscriminate public negativism. This trend has been connected with the populist rhetoric of leading political figures in the government laying all the blame for failures of the law enforcement in particular cases on the judge in a way that is seen by many as unsupported factually and disturbingly corrosive of the democratic values of judicial impartiality and presumption of innocence. This concern is a common theme in a significant number of positions by professional organisations, human rights’ groups and Rule of Law NGOs that are announced after every such occasion. While interviewed judges typically reject the notion that this negativism is affecting their own ability to judge impartially and free of fear for public denunciations, they do recognize that it creates an environment

<sup>1</sup> The report is available at: [http://ec.europa.eu/cvm/docs/com\\_2010\\_400\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2010_400_en.pdf).

<sup>2</sup> See [http://www.bili-bg.org/cdir/bili-bg.org/files/2010\\_Index\\_of\\_Commercial\\_and\\_Administrative\\_Litigation.pdf](http://www.bili-bg.org/cdir/bili-bg.org/files/2010_Index_of_Commercial_and_Administrative_Litigation.pdf), p. 23 (in Bulgarian).

that is discernibly hostile and potentially can be influencing their colleagues. One interviewee from a mid-sized town shared that she feels pressured and would avoid in her social contacts letting people know that she is a judge.

During the interviews and also in a number of public positions by NGOs and experts the concern emerged that there are instances of closed attempts by representatives of central and local authorities to influence unduly career and other processes within the judicial branch and gain influence over key positions in the courts or the other bodies of the judicial system. The combination of more or less overt indications that the parliamentary majority considers to terminate the term of the SJC ahead of time (made quite credible by the fact that that has been the fate of the great majority of previous Councils), the inaction by the Parliament to fill-in two vacant seats in the parliamentary quota in the SJC for more than a year and then the highly controversial figures that were elected, was interpreted by many – during the interviews and publicly – as signs of the attempts to pressure the Council into being “more cooperative”. At least two of the scandalous<sup>1</sup> appointments to important administrative positions were seen to be politically influenced. It is also the case that in many of the corruption scandals involving judges from local courts the sources of undue influence appear to be with other public institutions. While it is difficult to verify these interpretations, it is important to remember that even the mere appearance of undue influence is a cause for concern and merits action, particularly if it is supported by opinions of respected experts. A consensus has emerged that the procedures for electing members of the SJC from the parliamentary quota as well as for electing court presidents should be reformed.

While legislative amendments in the judicial leadership elections were made in 2012, we could say that there is an attempt to address the European Commission criticism. Despite that, however, the impression of lack of transparency remains and requires continuing reforms in this area.

Logically, corruption and undue influence in the judicial branch seems to rely strongly on various networks and associations. In some cases family or informal personal relations that are not adequately captured by the measures to prevent conflict of interests (parents or grown-up children of the judge, partners to informal intimate liaisons) appear to have been used to hide difficult to explain assets or to act as proxies. Additional concerns are related to the continued inability of the legislator to regulate the cases where magistrates belong to secret (self-styled Masonic Lounges, Knights' Orders, brotherhoods) and opaque organisations (social and charitable clubs, hunting parties etc). It is often impossible to establish if a magistrate belongs to such group (registered or informal), what oath of loyalty has she undertaken and who else is a member of this circle. Parties to legal proceeding where the opposite party and the judge or the prosecutor may be members of the same circle of loyalty are unable to protect their interests. Concerns have been raised that such networks exercise ever stronger influence over career decisions, disciplinary and criminal procedures and particular cases have been quoted. The vogue of joining such networks is spreading considerably.

While discussed in detail in the respective factors, there are a number of weaknesses in the administration of the judicial branch that are particularly conducive to spreading of undue influence and should be at least listed:

- Career policy of SJC: its opacity, the lack of clear and objective standards creates the demoralizing impression that other factors are at play; the failure to check thoroughly the professional and personal background of the candidates fails to ensure selection of the best and the ones with unquestioned professional behaviour.

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<sup>1</sup> Criticized in the Reports of the EC.



- Disciplinary practice of SJC: its opacity, the absence of clear criteria and the appearance of inconsistent practice all contribute for the inefficiency of the disciplinary enforcement.
- Discretionary powers of court presidents: the unregulated and unmonitored discretion to second judges from one court to another and to give bonuses, as well as other powers such as the approval of secret surveillance, the sole discretion to hire and fire IT specialists for the courts turn the position of the court president into a point of pressure and source of potential influence over other judges.
- Random Distribution of Cases: various loop-holes in the software products and the institutional setting for their implementation erode the trust in the integrity of case distribution.

One positive trend that can be reported in this respect is the growing readiness of Bulgarian judges to engage in the search for problems and solutions to the ethical challenges of their guild. This can be inferred both from the interviews conducted and the public speaking. Bulgarian judges do not deny, neither personally, nor publicly the existence of serious challenges to their independence and the presence of violations by some of their colleagues. As representatives of both the guild and the professional organization they openly name series of problems in their positions and actively work to overcome them. Public authorities and the institutions of the judicial branch also admit the existence of corruption.

In the light of the above, the debate on corruption and the independence of the judicial system in the professional society and the institutions in Bulgaria seems to gain popularity. The main challenge for this debate is to be conducted in a constructive way and to bring specific sanctions and improvements in the legislation and practice which are made on the basis of a more clearly identifiable responsibility: both from the separate branches of the judicial system and among their leaders. In this sense, it is important that the specific forms of undue influence that have emerged in recent years are duly analyzed.

## Factor 21: Code of Ethics

***A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.***

Conclusion	Correlation: Neutral	Trend: ↔
<p>In 2009 the SJC adopted the Code of Ethical Conduct of Bulgarian Magistrates. Its provisions are binding upon judges, as well as upon prosecutors and investigators. Junior magistrates are required to receive training in professional ethics; series of ongoing “trainings of trainers” are also conducted on a centralized and local level. As a whole, growing attention is presently paid to the issues related to professional ethics, and the Professional Ethics and Prevention of Corruption Committee at the SJC becomes increasingly active. Even though, problems exist with the very application of the Code and the affiliation therewith by all magistrates. Some magistrates do not perceive in the same way the fact that it is generally applicable to judges, prosecutors, investigators. Furthermore, the legal permission to impose disciplinary sanctions on the grounds of violated ethical standards is at variance with international standards. There is no requirement to report unethical conduct, which is considered in some countries a violation of the professional rules of conduct.</p>		

## Analysis / Background:

Presently, the issues related to the professional ethics of judges are subject of regulation of several acts. The JSA provides for that in order to be appointed as a judge, a person is required to “have the necessary moral and professional qualities corresponding to the Code of Conduct of Bulgarian Magistrates [hereinafter Code of Ethics]. See JSA Article 162.3. Article 198(1).7 of the JSA introduces the adherence to the professional ethics rules as a criterion in the performance evaluation of magistrates, including judges. After the last amendments to the JSA, effective Jan. 4, 2011, this criterion is no longer included among the general criteria for appraisal in regards to the tenure and the periodical 4-year appraisals but it has a limited application only in case of participation in competitions for promotion, transfer or election of administrative leader of the court. The JSA also contains a requirement for the judges to “safeguard the official secrecy of information that has come to his/her knowledge in relation to their job and affect the interests of the citizens, legal entities and the state”), as well as a prohibition to express anticipatory opinions on cases that have been or have been not assigned. *Id.* Article 212. Judges are also forbidden to provide legal advice. *Id.* Article 213. Furthermore, the CIPAA was also adopted, *promulgated in* SG No. 94 (Oct. 31, 2008), *last amended* Feb. 15, 2013. The Act requires from all persons holding a public position, including judges who also have such a capacity by virtue of Article 3.20, to eliminate any declared incompatibility with their position within one month. See CIPAA Article 13. Inspection of an alleged conflict of interests is provided for, as well as sanctions and fines for violation of the law, removal from office being also possible. *Id.* Articles 23–31, 33–43a. The Civil Proc. Code furthermore contains the grounds and procedure for recusal of a judge from hearing a case. See CIVIL PROC. CODE Articles 22, 23. Similar rules are also contained in the Criminal Proc. Code and the Admin. Proc. Code. See CRIMINAL PROC. CODE Articles 29, 31; ADMIN. PROC. CODE Articles 10, 33.

Furthermore, by virtue of Article 30(1).12 of the JSA the Supreme Judicial Council “approves the Code of Ethical Conduct for judges, prosecutors and investigators”. On the grounds of this provision and Resolution No. 21 of May 20, 2009 of the Supreme Judicial Council, the SJC adopted a Code of Ethical Conduct of Bulgarian Magistrates. The latter is binding upon all judges, prosecutors, members of the SJC and inspectors from the Inspection Service to the SJC. By virtue of Article 307(4).3 of the JSA, the violation of the Code of Ethical Conduct represents a disciplinary violation, which is punishable by a disciplinary sanction. The control over the implementation of this act of secondary legislation is assigned to the standing Professional Ethics and Prevention of Corruption Committee with the SJC. Furthermore, the last section of the code sets forth the procedure for setting up of auxiliary bodies to the standing Committee – Professional Ethics Committees to be set up “to the regional courts and prosecutor’s offices in the district centers, district and appellate structures of the bodies of the judicial system, in the Supreme Court of Cassation, the Supreme Administrative Court, the Supreme Cassation Prosecutor’s Office, the Supreme Administrative Prosecutor’s Office and the National Investigatory Service.” See Section VI of the Code of Ethical Conduct. Their major task is to conduct consultations with the relevant committee with the SJC and to express opinions in relation to the application of the rules of ethical conduct. *Id.* Since Jan. 4, 2011 JSA also contains explicit provisions on the status of the Professional Ethics and Prevention of Corruption Committee as well as in regards of the composition, establishment and powers of the local committees to the respective courts. See JSA Articles 39a and 39b.

The Code of Ethical Conduct contains seven basic principles establishing the standards and outlining the frame for regulation of various aspects of the professional conduct of magistrates, including judges, and namely: independence, impartiality, justice and transparency, politeness and tolerance, honesty and decency, competence and qualification, and confidentiality. See Code of Ethical Conduct, Section I. The Code provides a definition of

each of the specified principles and along with that regulates ethical conduct rules for the implementation thereof. *Id.* Section II. As regards the latter, Section V also contains guarantees for the observance thereof.

Concerns are raised by the fact that the violation of the provisions prescribed by the Code of Ethics is a ground for the imposition of a disciplinary sanction. This practice is at variance with Opinion No. 3 of 2001 of the Consultative Council of European Judges on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality<sup>1</sup>, which points out that the principles of professional conduct should "be totally separate from the judges' disciplinary system". See OPINION item 49.iii)). Foreign observers reach similar conclusions, as well. See REPORT ON THE ACT AMENDING AND SUPPLEMENTING THE JSA, JULY 2010, item 8.2 CODE OF ETHICS AND DISCIPLINARY LIABILITY, TWINNING PROJECT BG-07-IB-JH-07. The linking of the disciplinary liability to ethical rules which are addressed and adopted by an act of secondary legislation of the SJC poses another risk, as well. The body representing the judicial system has the right to unilaterally, at its own discretion, make amendments to the Code of Ethical Conduct, which shall inevitably result in respective consequences in the regime of the disciplinary sanctions for magistrates. Furthermore, the lack of an obligation to consult magistrates about such amendments may result after all in legal uncertainty and may expose to risk the independence of the judicial system.

The respondents also confess that the legal framework of auxiliary professional ethics committees is too general and needs to be far more detailed and to set out more detailed provisions about their powers and organization. Due to the amendments in JSA, SG No. 1 (Jan. 4, 2011), an overall attempt to regulate the composition of committees is made which shall consist of three regular members and a substitute member and are elected by the general assembly of the judicial body for a period of four years without a right of re-election for another mandate but the particular procedure for their choice is not stipulated in detail. Another problem that exists, especially in smaller courts, is the small number of magistrates and the difficulty to refer to the respective committee upon the arising of an ethical problem due to the close relations among them and the mistaken concept of fellowship. Generally, local professional ethics committees not only need a more detailed legal framework, but they also need more time of operation in order to create a uniform practice and understanding as to what exactly their obligations are.

The fact that the Code of Ethics is one for all magistrates is not perceived unambiguously by judges. According to some of the respondents it is quite reasonable to have a common Code of Ethics, as it is about ethical provisions and they are equally applicable both to judges, and to prosecutors and investigators. Others are of the contrary opinion and they think that the powers of the different magistrates differ to such an extent that does not allow their mechanical bringing under a common denominator. The contradictory opinions show that the matter is still new and difficult to understand. On the other hand, a large number of judges do not see in ethics a method that may effectively serve as a protection of their rights and interests. There are several opinions that ethical rules are not needed at all, since these are unwritten provisions and the ethical conduct is a question of values and education. However, a code of ethics, which is clear, effectively applied and further developed by a stable and publicly accessible practice could outline the borders between acceptable and unacceptable conduct of a judge thus serving for their protection, and to make the punishment of violations easier.

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<sup>1</sup> See [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE%20Opinion%203\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE%20Opinion%203_EN.pdf).

However, series of positive steps have been undertaken towards the acquainting of magistrates with the professional ethics. The NIJ includes in its mandatory initial training program the subject "Professional Ethics". All junior magistrates shall thus be trained in the matter before they start their carrier, which shall lead to the formation of a new self-awareness in affiliation with the Code of Ethics. Furthermore, the SJC and the NIJ, with the assistance of the US Department of Justice conduct a series of seminars on judicial ethics for magistrates, which are delivered not only by Bulgarian, but also by US experts in the field. Until 2010, about 307 judges and prosecutors, members of the local ethics committees, are trained. Accent in the training programs are the principles of the new Code of Ethics, the procedures for establishment of violations, the SJC practice, as well as an analysis of the European practices and the experience of the United States of America. It is praiseworthy that these seminars are not concentrated in the capital only, but are also conducted locally. A larger number of judges are thus reached and they not only complete the training but they receive a certificate of trainers in professional ethics and they are able on their part to deliver their knowledge to their colleagues.

The Professional Ethics and Prevention of Corruption Committee at SJC and the Disciplinary Committee also seriously intensified their work. However, it must be noted that this process was driven by a great scandal in the last year which shook up the judicial system and which involved the names of both high magistrates and members of SJC. As a result from an inspection made by a special temporary committee, set up for this purpose, two of the members of the SJC gave their resignation. On the one hand, these actions show a will for action and irreconcilability with magistrates who damage the prestige of the judicial system, but on the other hand, they are an indicator that the system is only ready to change the status quo when driven by external factors. Therefore, it is necessary to continue the good practices and development of effective mechanisms within the judicial system, to guarantee adequate imposition of sanctions to magistrates in cases of unethical conduct.

Positive practice of the SJC in respect of professional ethics is the publication of accounts and reports related to the activity of the Committee on the website of the SJC. According to the 2009 annual report of the Professional Ethics and Prevention of Corruption Committee, the signals for violations of the ethical rules are totally 85, and according to the Analysis of the Disciplinary Practice of the SJC for 2009, the two grounds for imposition of a disciplinary sanction are "violations related to the failure to discharge official duties and/or delay in the performance of official duties, as well as acts violating the standards of professional ethics and/or damaging the prestige of the judicial system". Growth is observed in the number of cases, in which "proposal for opening of disciplinary proceedings and imposition of disciplinary sanctions are made for violations of the Code of Ethical Conduct of Bulgarian Magistrates". The grounds mentioned in the following year remain similar. However, this practice can be improved by publishing not only statistical data but also a statement of the facts and reasons to the decisions under specific cases – not only such that ended up with a disciplinary sanction, but also such where no sanction has been imposed. Thus, by specific examples, a framework shall be outlined and standards shall be established for judges to follow and to comply their conduct with.

## Factor 22: Judicial Conduct Complaint Process

*A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.*

Conclusion	Correlation: Neutral	Trend: ↑
<p>The establishment of an active standing Professional Ethics and Prevention of Corruption Committee and the creation of the SJC Inspection Service increased significantly the resources available for reviewing grievances concerning judicial conduct matched by a surge in submitted and processed complaints. Together with the overall intensification of the disciplinary practice, these trends demonstrate significant improvement in the will to address irregularities on part of the SJC and an increase in the expectations on part of the citizens. The insufficient reporting and transparency of this procedure, however does not allow going beyond the quantitative observations and analyzing the qualitative elements of these trends. An improved reporting will help realizing the full potential for public confidence building of this progress and will enable addressing concerns about the uniformity of treatment of all cases. A more inviting format for online intake of signals should be created.</p>		

### Analysis/Background

All citizens have the “right to present complaints, suggestions and petitions to the state authorities.” See CONSTITUTION Article 45. The latest amendments to the Constitution included article 91a, which officially recognized the office of the Ombudsman to “represent citizens in the protection of their rights and freedoms.” As noted under Factor 5 above, the Ombudsman has the right to refer matters to the Constitutional Court.

The general procedure on the exercise of the constitutional right to complaint is provided by the new Admin. Proc. Code which repealed the Proposals, Notes, Complaints and Applications Act of 1980, *promulgated in* SG No. 52 (July 4, 1980). See ADMIN. PROC. CODE Articles 107–125. Instead of the term “complaint” the Admin. Proc. Code uses “signal”. Both terms are used in other laws and regulations. Concerning the judicial branch, JSA and the regulations on the administration of courts and the SJC use “complaints” whereas the SJC Inspection Service in its practice uses “signals” (see below). While in the scholarship there have been attempts to distinguish the two terms it seems safe to assume that the Admin. Proc. Code rules on “signals” was intended to detail the procedure for the exercise of the right to complaint provided for by the Constitution. Accordingly, for the purpose of this analysis the two terms will be considered interchangeable.

The Admin. Proc. Code provides that signals can be filed with administrative bodies or bodies exercising public-law functions by any citizen, organization and the Ombudsman concerning abuse of powers, corruption, mismanagement of public property and other illegal or inexpedient actions or omissions affecting a public interest or an individual right or legitimate interest. See ADMIN. PROC. CODE Articles 107(1) and (4), 109. The Admin. Proc. Code allows all forms of submitting signals – written or oral, via telephone, fax or electronic mail, in complainant’s own name or through a representative. *Id.* Article 111(1).

The signals are to be filed with the bodies immediately managing or overseeing the officials or institutions charged with the alleged misconduct but copies can be forwarded to higher levels of the hierarchy. *Id.* Article 119(1). The signals have to be registered. *Id.* Article 111(2). Anonymous signals or signals concerning violations committed more than two years

ago are not to be considered. *Id.* Article 111(4). All public bodies are charged with arranging for specific admission times for receiving signals and are required to review them objectively and in accordance with the law. *Id.* Articles 110(3), 108(1). In general terms APC requires that the case is examined and clarified and that the explanations and objections of the concerned parties are considered. *Id.* art 114(1). It grants wide discretion on the body deciding on the signal on the means of proving the alleged violation. *Id.* Article 114(3). The decision on a signal has to be rendered within two months of its filing with one possible extension by a month by an upper level body. *Id.* Article 121. The decisions have to be in writing and to be motivated, they are communicated to the complainant and any other interested parties within seven day of its rendering *Id.* Article 123(1). If the alleged violation is proven immediate measures have to be taken for its discontinuation. *Id.* Article 122(1). The deciding body has to determine the particular manner and time limit of enforcement and to ensure its execution. *Id.* Article 115. All negative consequences from the violation have to be addressed and the interested parties have to be informed on their rights to compensation. *Id.* Article 125(1). If the allegations are found to be lacking basis in fact or in law or it is practically impossible to address the claims made in the signal this has to be justified in the motives of the decision. *Id.* Article 114(7). If there are indications that a crime has been committed the matter has to be referred to the prosecution. *Id.* Article 123(4). The decision on a signal is cannot be appealed and consecutive signals on a mater on which there is a decision are dismissed. *Id.* Article 124. The protections provided for by the Admin. Proc. Code include prohibitions against the official or the institution responsible for the alleged violation deciding on the signal and against prosecution for alerting the authorities of a misdemeanor. *Id.* Articles 113, 108(2).

These rules are applied to the extent that they are not derogated by the provisions of another law and the individual public bodies are enabled to provide the specifics on how the processing of signals is organized in their internal rules including adding specific requirements as to the form of the signals. *Id.* Articles 107(2), 110(1), 111(3). The prohibition against challenges of decisions on signals under Article 124(2) limits the possibilities of the courts to elaborate these general rules, to establish their exact co-relation with the constitutional right to complaint, and to examine the compliance with them of the specific sets of rules and administrative practices existing in the various institutions of the judicial system.

The JSA provides no separate procedure on complaints or express rules defining the authority with respect to complaints and signals of the different bodies within the judicial system<sup>1</sup>. Within their respective competences, signals and complaints are considered by the SJC, the Inspection Service to the SJC and the court presidents<sup>2</sup>.

After the election of the first standing SJC under the 2007 JSA amendments the Professional Ethics and Prevention of Corruption Committee [hereafter CPEPC] is established replacing the previous Complaints and Anti-Corruption committees. CPEPC is tasked with receiving signals, conducting inquiries, referring cases for inquiries to court presidents and the SJC Inspection Service, report to the SJC on the outcomes from the inquiries, inform the complainants, analyze the factors conducive to corruption and cooperate with relevant

<sup>1</sup> The January 2011 amendments, SG No. 1 (Jan. 4, 2011), require that the personal file of every judge includes the outcomes of inquiries on complaints or signals and that the moral qualities of judges applying for promotion in position are to be assessed on the basis, inter alia, the signals for violations of rules on professional ethic. See JSA arts. 30a(2), 192(4). Notably, the evaluation of the moral character of the candidates to become court presidents does not refer expressly to such material. See JSA art. 194b(2) and (3).

<sup>2</sup> Some court presidents have created rules on handling signals of their own. It is unclear how their compliance with Admin. Proc. Code or the policies of the SJC is ensured in practice.



other bodies such as the Ombudsman. See REGULATION ON THE ORGANIZATION OF THE ACTIVITY OF SJC AND ITS ADMINISTRATION, Article 23<sup>1</sup>. In 2008 an auxiliary “Civil-Expert Council” with consultative and coordination functions was established with CPEPC including representatives of the most of the leading Rule of Law NGOs. It is unclear however if this body continues to function and with what intensity. At the beginning of 2013 a Civic Council with the SJC was constituted. It unites non-governmental organizations engaged in the area of justice and judicial reform. It was created with the purpose of “guaranteeing open and effective participation of citizens and professional organizations in the development of judicial reform strategies, as well as ensuring objectivity in the monitoring thereof”. See RULES OF OPERATION OF THE CIVIC COUNCIL OF PROFESSIONAL AND NON-GOVERNMENTAL ORGANIZATIONS WITH THE SUPREME JUDICIAL COUNCIL<sup>2</sup>. This form of joint action of non-governmental organizations and the SJC is to demonstrate its potential and capability of effective functioning in the future.

Complaints to CPEPC can be filed via mail, e-mail, or by way of the special “anti-corruption mail-boxes” maintained in the courts. The SJC web-page contains an option for electronic submission of complaints, but it refers to the web page of the Prevention and Counteraction to Corruption Committee and it is unclear if the electronic form on this web-page is operational<sup>3</sup>. The web-page of the SJC also informs the potential complainants that anonymous complains are not admissible and provides a sample form for complains to be submitted via electronic or regular mail. The sample requires detailed personal information and a statement of the relevant facts. Complainants are also asked to provide a legal qualification for the alleged offence and to formulate a petition (“claim”).

CPEPC has adopted the practice of classifying the complaints into five groups:

- “General “signals” – i.e. complaints against erroneous decisions or decisions contradicting the law, where the complainants are advised to seek an appeal;
- Allegations of particular acts of corruption – these may be referred to the competent law enforcement body or SJC may initiate administrative inquiry;
- Allegations of Ethical violation, upon which administrative inquiries are conducted;
- Allegations of inconsistent practice – referred to the Supreme Cassation or Administrative court respectively, whose primary responsibility is to unify court practice within their jurisdiction;
- Complaints related to case management, court management, observance of deadlines, etc. – referred to the SJC Inspection Service.

In reviewing complaints/signals CPEPC can conduct an inquiry on its own or refer the case to the court president or the Inspection Service to the SJC

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<sup>1</sup> The January 2011 amendments, SG No. 1 (Jan. 4, 2011), included the provisions on CPEPC in the JSA thus raising the profile of the Commission. See JSA arts. 37(1), 39a.

<sup>2</sup> The Rules are available at the Civic Council section of the SJC website.

<sup>3</sup> A body in the executive, it appears to have seized any activities since 2009 (the last update of its web-page). See <http://anticorruption.government.bg> (in Bulgarian).

## Complaints filed with CPEPC (all magistrates\*)

Type/ year	2007	2008	2009	2010	2011
General	1,385	1934	998	1,856	767
Corruption acts	**	**	18	**	0
Ethical violations	**	**	85	19	16
Contradictory practice	**	**	28	11	5
Case management	**	**	168	43	34
Total filed	**	**	1,793	1,624	1,346
Total Resolved during the year	**	1,880	1,679	1,930	**

\* The Committee is competent for all magistrates and does not publish data specifically on judges.

\*\* No data in CPEPC reports.

Source: Annual Reports of the CPEPC and the SJC for 2008, 2009, 2010, and 2011<sup>1</sup>.

There is a significant number of complaints/ signals filed with the SJC and processed by CPEPC. See chart above. The numbers indicate a dramatic increase in comparison with what was reported in JRI 2006: SJC, through its Complaints Committee received and reviewed 10 complaints against judges in 2004, 33 complaints in 2005, and 13 complaints as of April 4, 2006. These numbers match the general atmosphere of discontent with court services. However, they should be viewed also as expression of expectation that SJC is capable of addressing the problems. The outcomes of the Sociological Survey Index of the administrative and commercial justice published by BILI and accomplished by Alpha Research in 2010, indicate that while the majority of the surveyed clients of Bulgarian courts report problems of various types, their general assessment of the performance of courts is not catastrophic. Notably, the evaluations by actual court clients are more balanced in comparison with the perception of the general public. This shows that the reforms and improved court management in the previous years are starting to be felt by individuals coming in direct contact with the system. It also shows that there is a significant room for improvement of the image of the courts if the fruits of the reform efforts are communicated better through increased accountability and transparency on part of SJC and its auxiliary bodies.

The available reports of CPEPC indicate a significant increase of attention to complaints by the clients of the justice system on part of the SJC. However, they do not allow for a more detailed analysis of the work of the CPEPC and it is impossible to determine if all complaints are accorded equal treatment and timely resolution and thus to appreciate if the response is adequate from the point of view of the complaining client of the system. In particular, inconsistent reference to statistics makes it impossible to evaluate how the approach to classify the complaints into five groups works in practice and if the referred complaints are addressed adequately. Also, the lack of detail in CPEPC's reports prevents the examination of the degree to which complaints are denied consideration on formalistic grounds (such as the requirement that complainants provide a legal qualification of the alleged offense or formulate a "claim"). Thus, while the evident general will to heed complaints and develop institutional mechanism for their resolution has to be underlined and welcomed, the impossibility to analyze key elements of the performance of CPEPC prevents a more positive assessment of its work.

<sup>1</sup> Available at the web-page of the SJC [www.vss.justice.bg](http://www.vss.justice.bg) (in Bulgarian).

A number of interviewed judges shared their impressions that the SJC's approach to different complaints and the ensuing procedures was not equal and in particular – that action on some complaints has been delayed without explanation. Some of the interviewees indicated that it is impossible to rule out that such cases are creating pressure (intended or not) on judges or that they are not attempts to manipulate the process to improve performance evaluations and facilitate promotion procedures. These criticisms should be viewed in the context of the relative overall opacity of SJC's disciplinary and ethical process.

Other judges shared that the complaint process has been used for smear campaigns against them with one relating how one and the same old allegation against her that surfaced years ago in a media outlet and was subject to a check by SJC that showed it to be completely baseless keeps on surfacing in multiple complaints against her. This also is a case in point that, while there will always be unfounded, abusive and malicious complaints, a more transparent complaints resolution process with well publicized outcomes would also serve to protect the reputation of well performing judges.

In conclusion, it has to be underlined that the welcomed significant surge of attention to complaints on part of the SJC's CPEPC has to be matched in the future by further increase of transparency and reporting of its work. This will allow the CPEPC to consolidate the positive effects of its efforts and to demonstrate that in reacting to the grievances of the clients of the courts but also in the way it treats individual judges, the SJC employs a clear standard which is applied equally in a fair process. Such transparency will serve well both the need to regain the confidence of the public and to protect the independence of individual judges.

Another body engaged in receiving and reviewing signals is the created with the 2007 amendments to the Constitution Inspection Service to the SJC. Its constitutional mandate is to “examine the operation of the judicial authorities” acting “on its own initiative, on the initiative of the citizens, legal persons or state bodies including judges”. See CONSTITUTION Article 132a(6) and (7). In elaboration to that mandate the JSA tasks the Inspection Service with signaling the court president and the SJC for any determined irregularities and making proposals for imposition of disciplinary sanctions to judges. See JSA Article 54(1).5 and 6.

The Inspection Service Regulation provides detailed rules on handling inquiries based on signals. See REGULATION ON THE ORGANIZATION OF THE OPERATION OF THE INSPECTION SERVICE WITH THE SUPREME JUDICIAL COUNCIL AND ON THE OPERATIONS OF THE ADMINISTRATION AND EXPERTS, *adopted by* the Inspection Service in 2009, SG No. 63 (Aug. 7, 2009), Articles 18–21. Inquiries based on signals can be initiated after complaints and motions by citizens, organizations, public institutions and magistrates. The signals have to be submitted in writing, to be signed and registered with the Inspection Service Registry. Anonymous complaints are disregarded. *Id.* Article 18(1)–(3). The Inspection Service can refer the matter to another competent body or conduct an inquiry. The scope of such inquiries can be broadened on the discretion of the Inspection Service. For all inquiries a written conclusion is issued and referred to the competent supervisor, reported to the SJC and communicated to the complaining party. The written conclusion can propose that a particular disciplinary sanction is imposed.

## Signals in the Inspection Service with the SJC (all magistrates\*)

Signals/ year	2008	2009	2010
Total Filed	1,644	1,949	1,509
Total Processed	1,534	1,812	1,656

\* The Inspection Service is competent for all magistrates and does not publish data specifically on judges

Source: Annual Reports of the Inspection Service with the SJC for 2008, 2009, 2010<sup>1</sup>

The Inspection Service has been very active in assuming its responsibilities. It has demonstrated commendable leadership in ensuring that sanctions are imposed for that established irregularities and that the practice on disciplinary sanctions by SJC is unified. As a result of inquiries on signals the Inspection Service has made 32 recommendations for disciplinary sanctioning in 2009 and 4 in 2010.

Under the Ombudsman Act, *promulgated in* SG No. 48 (May 23, 2003), *last amended* SG No. 15 (Feb. 13, 2013), citizens may also file complaints against judges with the Ombudsman when they feel their rights or freedoms have been violated. See OMBUDSMAN ACT Article 2. Complaints may be filed orally or in writing, but not anonymously, and the Ombudsman refers them to the appropriate state agency (in this case – the SJC), which has 14 days to respond. *Id.* Articles 24–28. The Ombudsman may intervene to mediate the matter, refer it to the MOJ if he/she believes a criminal violation has taken place, and undertake other actions as specified in articles 19–22. The available reports of the Ombudsman mention *grosso modo* “complaints related to the administration of justice” without distinguishing those related to the work of judges or even providing any numbers. The reports however indicate that the most often problem is delayed justice.

Another important remedy in cases where courts’ shortcomings are infringing a human right of the affected party under the ECHR<sup>2</sup> is the procedure before the European Court of Human Rights. While access to ECHR becomes available generally only after domestic remedies have been exhausted and the median length of the procedure is 6 years, the decisions of the Strasbourg Court are important as they authoritatively address systemic problems in the domestic protection of human rights. Since 1992 Bulgaria has been among the Council of Europe member states with the highest number of complaints and judgments against it per capita<sup>3</sup>. See the Table for general statistics on complaints and judgments against Bulgaria.

<sup>1</sup> Available on the web-page of the Inspection Service: [www.inspectoratvss.bg](http://www.inspectoratvss.bg) (in Bulgarian).

<sup>2</sup> CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, *signed* 1950, *entered into force* in 1953, *entered into force for Bulgaria* in 1992.

<sup>3</sup> See Analysis of statistics 2010, ECHR. Table 2 Applications allocated per Contracting State and population at p.12–60, *available at*: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

## General Statistics on Complaints and Judgments against Bulgaria

### Bulgaria Docket of ECHR 1992 – 2011<sup>1</sup>

Total number of judgments	375
Violation judgments	343
No violation judgments	19
Other judgments	13
Inadmissibility decisions	4,804
Pending applications	3,466

### 2007–2011 trends<sup>2</sup>

Applications' status/year	2007	2008	2009	2010	2011
Allocated to a judicial formation	818	890	1194	1348	1206
Declared inadmissible or struck out	586	434	596	525	543
Communicated to the Government	103	137	208	92	141
Judgments delivered	65	62	107	84	73

In 2008 the MOJ published a Concept-paper on Overcoming the Reasons for ECHR Findings against Bulgaria and Resolution of the Ensuing Problems [hereinafter the ECHR Concept-paper]. The Concept-paper offered detailed analysis of the various problem areas for Bulgaria and suggested steps to address them. The Judicial Reform Strategy incorporated the proposals of the Concept-paper and later in 2010 the MoJ was reported to have created a working group to implement them.

Judicial conduct has always been high on the radar of judicial reform priorities and the recent legislative, institutional and procedural changes present a steady policy in improving the conduct process. However, the latter needs further development especially when it comes to judges understanding the importance of their public role of serving as models for irreproachable behavior. All relevant institutions – the SJC, the Inspection Service with the SJC and the MoJ will have to better coordinate their actions and make the process more transparent in order to report not only quantitative outcomes but qualitative improvements too.

The article of the Convention most relevant to the present factor and the general ability of parties affected by shortcomings in the work of courts is Article 6 “Right to a Fair Trial”, providing minimal standards for access and administration of justice, including on the length of the procedures. For the number of findings under Article 6 against Bulgaria see the table.

<sup>1</sup> Source: “Country fact sheets: 1959–2010”, “Bulgaria”, *available at*: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

<sup>2</sup> Source (for 2007 and 2008) “Statistics for Bulgaria on 1 January 2009”, ECHR, *available at*: <http://www.echr.coe.int/Pages/home.aspx?p=home>. For 2009–2010 “Analysis of Statistics 2010”, ECHR, *available at*: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

## Violations of the Right to a Fair Trial under the Convention (Article 6) found against Bulgaria<sup>1</sup>

Violation/year*	2007	2008	2009	2010	2011	Total since 1992
Right to a fair trial (general)	6	8	11	6	2	47
Length of proceedings	19	25	21	31	21	141
Non enforcement	*	*	*	3	0	3

\* No available data for 2007, 2008, and 2009

In August 2011 ECHR held that Bulgaria had violated Article 6(1) of the Convention in two cases and prescribed a 12 month term for the implementation of the decisions and introduction of remedies in compliance with its provisions (respectively, *Dimitrov and Hamanov vs. Bulgaria* in criminal justice and *Finger vs. Bulgaria* in civil justice)<sup>2</sup>.

With the adoption of the JSA amendments measures were taken by the state which are an important step in addressing one of the most problematic areas for the clients of Bulgarian courts and would establish an effective means of compensating the ensuing damages. See JSA Chapter III, new, SG No. 50 (July 3, 2012). The new provisions regulate the consideration of petitions of citizens and legal entities against acts, actions and inactions of judicial bodies, which constitute violations of their right to timely disposition of cases. Main participants in this proceedings shall be the Inspection Service with the SJC, through which petitions are submitted, and the Minister of Justice, who in case of violations, shall determine the amount of compensations according to the European Court of Human Rights practice and shall propose a settlement with the petitioner. A 6-month term upon the respective proceedings conclusion with a final decision is provided for the submission of petitions. See Articles 60a(1) and (4), 60e, 60ç.

Since Oct. 1, 2012 a specialized unit is working with the SJC Inspection Service, which handles the petitions of citizens and legal entities. A new registry was developed where petitions are entered. In the Oct. 1, 2012 – Dec. 31, 2012 period a total of 79 petitions were filed with the Inspection Service. 40 of them were referred to the Minister of Justice. The rest were either submitted after the 6-month term, or concerned pending proceedings. On two of the petitions the specialized unit decided it was incompetent to consider them.

<sup>1</sup> Source "Violations by Article and by country", ECHR, 2010, *available at*: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

For 2007, *available at*: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

For 2008, *available at*: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

For 2009, *available at*: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

For 1992–2010, *available at*: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

<sup>2</sup> See ECHR Decision in *Dimitron and Hamanov vs. BG* (10.05.2011), *available at*: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=885172&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>, and the ECHR Decision in *Finger vs. BG* (10.05.2011), *available at*: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=885172&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.



The so established compensatory mechanism is comparatively new, functioning for 6 months only. The efficiency of its impact shall be determined in the course of its further application.

## Factor 23: Public and Media Access to Proceedings

***Courtroom proceedings are open to, and can accommodate, the public and the media***

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
The legal framework ensuring openness of judicial processes and media access to them is adequate and with some notable exceptions applied properly on a day-to-day level. However, the judicial reform imperatives, the public mistrust and the political pressure may require engaging in more sophisticated and active forms of public outreach to protect the independence of individual judge.		

### Analysis/Background:

All court sessions are to be open to the public except where otherwise provided by law. See CONSTITUTION Article 121(3). Citizens have the right to obtain information from any state body or institution on a matter of legitimate interest to them, so long as the information is not a state secret or other secret protected by law and does not affect the rights of others. *Id.* Article 41(2). The JSA provides for a general right of all citizens of access to information concerning the work of the judicial branch and requires that the judicial institutions ensure openness, accessibility and transparency of their actions. See JSA Article 5(1) and (2). Further, JSA guarantees to everyone the right to a just and public process and requires that courts hear cases in open court hearings and this principle can be limited only by law. *Id.* Articles 7(1), 132. These principles are reflected in the procedural codes. See CRIMINAL PROC. CODE Article 20; CIVIL PROC. CODE Article 11; ADMIN. PROC. CODE Articles 12(1), 144.

In criminal proceedings, hearings are held behind closed doors if needed to safeguard a state secret, protect morality or prevent the divulgence of facts pertaining to the intimate lives of citizens. See CRIMINAL PROC. CODE Article 263. It is also possible to close a hearing for testimony by a witness whose safety or whose family's safety would be at risk through public testimony, or in cases involving underage persons. *Id.* Articles 123, 141, 391. In civil matters, if the circumstances of the case make a public hearing detrimental to the public interest, involve the intimate private life of a party, concerns privileged information (such as commercial or tax secret), or due to "other important reasons" the judge on his/her own motion or at the request of a party may rule that the case, or certain aspects thereof, be heard in closed session. See CIV. PROC. CODE Article 136. The same principles apply to the administrative courts as the Admin. Proc. Code refers to the Civil Proc. Code for rules of court procedure. See ADMIN. PROC. CODE Article 144.

As noted by 2006 JRI, the practice of applying these rules is that judges rarely close a courtroom and complaints in this area continue to be seldom. However, there is one notable exception concerning the practice of hearing criminal cases involving evidence generated on the basis of administration of special surveillance techniques behind closed doors as a default. This practice is based on the interpretation that the inclusion of "information concerning administered [...] special surveillance techniques (the technical means and/or the methods of their application)" among the categories of information subject to classifica-

tion means that the evidence produced on the basis of the administered surveillance is also a state secret and hence criminal cases involving such evidence are heard behind closed doors. See ADDENDUM No. 1 TO CLASSIFIED INFORMATION ACT Part II Article 25 and item 6; CRIM. PROC. CODE Article 263(1). Apart from the contentious nature of this interpretation, concerns were shared that together with the increased use of special surveillance techniques this practice leads to limiting the public access to too many cases, including in particular the so called “cases of high public interest”. Recently, the predominant number of judges started to reject this interpretation and the largely supported position is that the much more accurate approach would be to apply the principles entrenched in the Criminal Proc. Code and Article 6 of ECHR instead of introducing additional limitations on the parties’ possibilities to protect themselves by too rigid implementation of the Classified Information Act.

The 2006 JRI reflected a process of opening up the legal process to the public and members of the media and, apart from the area of concern noted above, the institutional elements of this opening appear to have become the norm of how courts go about their cooperation with the media at a day-to-day level. In addition to the Media Strategy adopted by the SJC, individual courts maintain similar instruments of their own. Now, virtually every court has its own web page and many use them fairly actively as a tool for outreach to the media and the public (see more in Factor 24). There is no statistical data on the number of courts retaining press attaches or designating a spokesperson or a judge to liaise with journalist but these practices have become part of the normal court-media dialogue. Judges observed that at their current level of competence press attaches are most useful at routine coordination with the media and that more training and specialization was needed for them to be able to perform more sophisticated public relation functions. Interviewed reporters noted that they enjoy a generally good level of access to information on the day-to-day work of courts. They evaluate the access to actual court hearings as satisfactory subject to limitations related to the physical size of court rooms. The practice of letting cameras inside courtrooms only for the first few minutes of a hearing and then permitting them to wait immediately outside the doors of the courtroom continues and is accepted as normal.

However, some interviewed judges have opined that these forms of work with the media are insufficient to meet the challenges facing the judicial profession. As noted in Factor 20 individual judges appear increasingly willing to engage in a dialog with the public and the journalists. This is true not only concerning expressions of opinion on the general issues facing their profession but also where judges discuss their decisions in a case. In at least one case that gained prominence, a judge commented on her decision in a “high public interest” case in an interview for a national media outlet. While this may be somewhat beyond the time-honed formula that “a judge speaks only through her decision” it is not without international precedents and was generally seen by interviewees as a necessary step in balancing the strong pressure to which all judges in Bulgaria have been subjected. It also appears that the practice of direct informal contacts between judges and reporters is spreading. While we have no way of analyzing this process, it is clear that future work on court media strategies will have to address it and that both guilds should work to ensure the honoring of the respective ethical standards of each of the professions in such exchanges.

On the other side of the judicial-media relationship, the increasing specialization of journalists reporting on courts and judicial reform matters was noted by a number of interviewees. This has led to a significant improvement of the quality of both reporting and analysis. We found indications of this trend not only in central but also with several regional media outlets. Interviewees observed that this has brought about increased levels of dialogue and trust between journalists and judges and over time can help improve public legal culture

and understanding of judicial reform policies. Increased competence in reporting also shows in much more focused identification of problems in the work of courts and individual judges.

A number of interviewees underscored it is important to build on these developments and organizing training programs on judicial-media relations for both judges and journalists to increase the competence of each group in dealing with the other.

As far as the work of the SJC is concerned its meetings are to be public with the exception of cases when classified information is concerned or the imposition of a disciplinary sanction is discussed. Decisions (i.e. just the outcome) made in closed sessions are to be announced publicly. See JSA Article 33(4) and (5). The proceedings records from the SJC's meetings are available online as well as all official reports prepared by the Council and its committees. The SJC's hearings are held in a relatively small conference room just large enough for its members and key staff, so proceedings are televised and contemporaneously shown in a nearby room for the media. On one occasion at least, because of the importance of the discussed matter, the meeting was transmitted on the national television. Perhaps the next logical step is to provide online access to video streams of SJC proceedings.

While the day-to-day access to JSA meetings for the media was assessed positively by interviewees there were also criticisms. One such area was in how much information on disciplinary and ethical procedures is released (see Factors 17 and 21). Another area of criticism, both in the interviews and in the media, was the manner of electing court presidents. While meeting the formal requirements of the law, these procedures were not seen as conducted in a way to produce a result which would increase the overall trust in the judicial branch. In particular, the process was criticized for often lacking meaningful competitiveness and public scrutiny of the candidates and for the opacity of the motives for electing the winner. The means to address these concerns include collecting and publishing detailed information about the candidates (their personal status, professional track-record and intended policies) and doing so enough time before the election so as to allow for a public discussion of their merits and then conducting a meaningful public hearing during which all concerns of the public are discussed properly.

The Constitutional Court's proceedings are not open to the public except in rare instances when the Court chooses to invite oral argument, obtain expert testimony or otherwise open the session. See CONSTITUTIONAL COURT ACT Article 21. The Court considers its proceedings to be non-adversarial in nature and uses its sessions to receive the input of the reporting judge, consider the briefs of interested parties, and deliberate over the issues presented before ruling.

As a general conclusion, while the great progress in opening up of the judicial system noted in 2006 JRI concerned mostly the institutional arrangements, it seems that the process of appreciating the benefits of an active outreach has started to trickle down to the rank and file of the profession. Often, under strong pressure from the public opinion and the political discourse increasing number of individual judges appear to be coming to the realization that active engagement with the media can provide protection for their reputation and independence. If leaders of the profession, donors, training providers, policy makers and ethical regulators invest in further developing this trend it may mature in Bulgarian judges finding their collective voice in the public arena and asserting their independent role. Similar investment on the side of specializing journalists and broader civic sector stakeholders would ensure the effectiveness of the public scrutiny. The interplay between the two can be the long sought after engine for sustainable improvement of justice in Bulgaria. It will be specifically important that the structures of the judicial system – both at the level of individual courts with their arrangements for centralized media outreach and, nationally, the SJC and the supreme courts' leadership assume more effectively their respective roles

of institutionalized mouthpieces of the judicial profession. To this end, the institutions of the judicial system will have to improve their dialogue with rank and file judges and will probably need to open up and democratize the overall processes of deliberation and representation within the profession.

## Factor 24: Publication of Judicial Decisions

***Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
A positive step is the setting forth of an obligation for relatively complete publication of the judicial acts, the presence of web pages of all courts in the country, as well as the creation of a uniform portal for automatic downloading of judicial acts from these pages. However, the actual implementation of the legal requirement for public access to the judicial practice requires unification of the publication format and the search capabilities, as well as the provision of guarantees that all acts will be published and the published ones will not be removed. At this stage this has not been accomplished yet.		

### Analysis/Background:

Article 121(4) of the Constitution requires that all acts issued in the course of the administration of justice be reasoned, and article 132(3) of the JSA mandates that judges deliver these acts according to the procedure and time limits specified by law. In civil cases, the court announces its decision with the reasoning within a month of the final hearing of the case. Furthermore, the decision is subject to announcement in the public register of judicial decisions, which is freely accessible by everyone. See CIVIL PROC. CODE Article 235(5). When individual administrative acts are disputed, the court renders its decision within one month from the final hearing of the case. See ADMIN. PROC. CODE Article 172(1). If the disputing of general administrative acts is regular, it is to be announced within the same time limit by an announcement in the State Gazette and is to be published on the SAC webpage. The same procedure is followed also for a ruling suspending a case. See ADMIN. PROC. CODE Article 181. Judicial decisions declaring as null and void or repealing secondary legislation acts and which have not been appealed in due time by a cassation appeal or protest, or the appeal or protest against which have been dismissed by the court of second instance, are promulgated in the manner of promulgation of the act and take effect from the day of promulgation thereof. *Id.* Article 194.

In criminal cases, the judgment must be read in open court by the presiding judge after it is signed by all members of the panel. See CRIM. PROC. CODE Article 310(1). Even where the case must be tried behind closed doors, sentences must be announced publicly. *Id.* Article 263(4). The reasoning must be prepared within no more than 15 days after the announcement of the sentence, 30 days if the matter involves factual and legal complexity. *Id.* Article 308. The second instance court must prepare its decision together with the reasoning not later than thirty days after the court hearing to adjudicate the matter and may either summon the parties to a court hearing and announce its judgment and reasoning at that time or notify the parties that the judgment has been prepared. *Id.* Article 340. At the cassation level, the court is required to announce its judgment not later than 30 days after the court hearing to adjudicate the matter. *Id.* Article 354(4).

Decisions of the Constitutional Court, together with the reasoning, are routinely published in the official section of SG. See CONSTITUTION Article 151(2); STATE GAZETTE ACT Article 4(1).6 and .11. They are also available on the Court's website, <http://constcourt.bg>. SAC and SCC interpretive decisions and judgments are binding on all judicial and executive authorities, as the former or published annually in a bulletin issued by SCC or SAC, and interpretative judgments – in both bulletins. See JSA Articles 130 and 131). Furthermore, they are available on their web pages: <http://www.vks.bg/> and <http://www.sac.government.bg/>.

Along with that, the new JSA has set forth an obligation for all courts to publish their acts on their web pages, as the latest amendments in Article 64(1) of the JSA provide that this must take place immediately after the rendering thereof. Publication must take place in accordance with the provisions of the Personal Data Protection Act and the Protection of Classified Information Act. The publication requirement applies also to the reasoning of the acts, except for those of them that affect the civil or health status of persons. See JSA Article 64(2). The SJC further developed the legal framework by adopting a resolution under Minutes No. 42 of Oct. 29, 2009 whereby it detailed the obligations of the courts related to the publication of their acts. The latter comprise both these acts of administration of justice and those acts that terminate or obstruct the further progress of the procedure. If the act is a sentence, its operative part is to be published immediately after the announcement thereof, and the reasoning – once it has been prepared. Furthermore, judicial acts rendered under non-contentious, private civil and private criminal proceedings are not subject to publication, except for those that terminate or obstruct the further progress of the proceedings. It is also required that the names, personal ID numbers and addresses of the natural persons participating in the process be defaced. The SJC determines the major issues that the administrative heads must take into account upon the update of the Internal Regulations for the organization of the publication of judicial acts. E.g., upon the occurrence of a need of specific judgment about the publication of a certain act, the reporting judge or another judge, respectively a deputy of the administrative head is required to give an opinion on the need of the publication and the contents of the act. Besides, the administrative heads are entitled to determine the prerequisites for adoption of a decision about the removing of the data from the webpage if the hard disk space is insufficient.

Links to the web pages of all courts and the judicial acts published there are available on the SJC site <http://www.vss.justice.bg/bg/stArticle.htm>. Along with that, in 2009 a centralized web based interface for publication of judicial acts was created under the Project "Renewed Information Systems for a Better Service. Electronic Justice Legislative Framework", performed with the financial support of the Administrative Capacity Operational Programme<sup>1</sup>. The portal concept is automated publication of the judicial acts rendered under civil and criminal cases of all regional, district and appellate courts, as well as these of the SCC and SAC.

The new Judicial Administration Regulations adopted by the SJC in 2009 set forth that the parties, their representatives and attorneys must exercise their rights of access to the information in the proceedings pursuant to the procedural laws, and third parties – in the presence of legal interest stated by a reasoned written application. Inquiries for the progress of cases must be immediately provided. See REGULATIONS Article 86. The "Court Clerk's Office" Service issues copies of the papers enclosed to the files on the day of their request. Upon a written application, this Service issues court certificates, copies and extracts of papers enclosed to the files on the day of receipt of the application or on the next day, at the latest, after a permit has been issued by the reporting judge. *Id.* Article 87.

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<sup>1</sup> The site is available at: <http://legalacts.justice.bg/>.

In this respect it is worth mentioning both the attempts to improve the legal framework governing the process of publication of judicial acts and the pursuit of establishment of good practices. Presently, all courts in the country have their own web pages where they publish their acts. However, in practice, there exist different models for fulfillment of the obligation under Article 64 of the JSA. The format, in which the acts are published, is not unified. Nor is unified the approach to their finding: some courts offer lists of acts for given year distinguished under various criteria; other – capability of finding them by search by specific indicators; third – a combination of these two variants. It is particularly notable that the practice of publishing is contradictory even within a single court – in certain acts the magistrates' names are written, while in other acts – there are initials only. The requirement for publication of the reasons is not satisfied by everybody and some of the judicial acts uploaded on the web pages cannot even be opened. The period in which they are stored and are accessible is also variable. Similar conclusions were drawn up as a result from the survey made in the end of 2009 of the web pages of the courts by the workgroup under activity <sup>2V</sup> under the Project “Consultative Forum of the Regional Courts”<sup>1</sup>. According to the survey “the publication activity is not understood unambiguously and does not fully comply with the legal requirements in this respect” and puts the accent on these courts that have established good practices. The latter, even though being good, still differ from each other.

Unification of the practice is required not only in respect of the form in which publication takes place, but also in respect of the requirements for presentation of the contents of the act. An important step in this aspect is the creation of the uniform web portal <http://legalacts.justice.bg/> for the purpose of publication of the acts of all courts at one place. It would also allow unification of the capabilities for a search in the archive. Unfortunately, this resource is obviously not being adequately maintained and at this time quite less than all acts can be found there. For example, it turns out that the Burgas Appellate Court resolved only two cases in 2009 (an inquiry on the webpage of the court shows the obvious discrepancy with this fact), and the acts of the supreme courts cannot be found there.

It is important to build a system guaranteeing the actual publication of all judicial acts in accordance with the requirements of the law, thus, providing for the establishment of a monitoring mechanism and, possibly, imposition of sanctions upon failure to comply with the provisions of the law. Another significant issue is the lack of certainty that the acts once published will not be removed for technical and other reasons. The satisfaction of the legal requirement for public access to all judicial acts does not mean merely their upload for a certain (potentially short) period of time, but the guaranteeing of permanent and full access to the entire jurisprudence archive in the country.

<sup>1</sup> <http://cfrc.info/practice/%D0%B4%D0%BE%D0%B1%D1%80%D0%B8-%D0%BF%D1%80%D0%B0%D0%BA%D1%82%D0%B8%D0%BA%D0%B8-%D0%BF%D1%80%D0%B8-%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D1%83%D0%B2%D0%B0%D0%BD%D0%B5-%D0%BD%D0%B0-%D1%81%D1%8A%D0%B4>.



## Factor 25: Maintenance of Trial Records

***A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.***

<b>Conclusion</b>	<b>Correlation: Negative</b>	<b>Trend: ↔</b>
Although the practice of drawing records ensures a reasonable general level of certainty about the procedural acts, the lack of a reference audio record in most of the cases, in each courtroom, deprives the Bulgarian legislation of an important guarantee for certainty, ethical conduct and good conduction of the court hearings.		

### Analysis/Background:

An official attesting document of courtroom proceedings, which has a binding evidentiary force, referred to as the protocol, is made for all court hearings. By virtue of Article 14 of the JSA it is to be drawn up in Bulgarian. The protocol is to be drawn up by the court reporter under the dictation of the chairperson of the panel of judges and is to be signed by both of them. CIVIL PROC. CODE Article 150(2) and (4); CRIMINAL PROC. CODE Article 311(2) . The legal framework covering the process of protocol keeping does not provide for an obligation for preparation of an audio record of the court hearing – it is only an option the implementation of which depends on the available equipment and opinion of the court. CIVIL PROC. CODE Article 150(3), CRIMINAL PROC. CODE Article 311(3).

Contents of the protocol of sessions under civil cases must include: (i) the time and place of the session; (ii) the jury members; (iii) the name of the court reporter; (iv) the parties that appeared and their representatives; (v) a summary of statements, requests and speeches of the parties; (vi) the written evidence produced; (vii) the testimonies of the witnesses and the other persons under the case; and (viii) court findings and rulings. CIVIL PROC. CODE Article 150(1). It must be made available to the parties within three days from the session. From this time every participant in the process has one week to request supplementation or amendment to the protocol. If an audio record has been made, it shall only be allowed on the grounds of the audio record. The court rules on the request for amendments and supplementation after it has summoned the parties and the applicant and hears the audio record, respectively the court report's explanations. The audio record is to be kept until the expiration of the time limit for requesting of amendments and supplementation to the protocol, and if such a request is made – until the entry into force of the judgment under the case. *Id.* Articles 150–152.

As regards criminal cases, for each investigatory act and court investigatory act a protocol is drawn up at the place where such act is performed. It contains information for the date and place of the investigatory acts and the court investigatory acts; their start and end time; participants; the requests, notes and objections made; the performed acts in their order and the collected evidence. The protocol of the court session must, apart from these data, indicate: (i) the absent persons and the reasons for their failure to appear; (ii) identification data of the accused; the date on which he was served a copy of the bill of indictment or of the complaint with the order; (iii) the accused person's explanations, the witnesses' testimonies and the experts' replies; (iv) all orders of the presiding judge and court rulings; (v) the read documents and protocols, as well as the used cinema records, audio records or video records; (vi) summary of the pleadings and of the accused person's last word; (vii) the announcement of the sentence under the proper procedure and the presiding judge's explanations about the procedure and time limit for the appealing against it. Protocols

drawn up in accordance with the requirements of the Criminal Procedure Code are evidence for the performance of the relevant acts, for the procedure, under which they were performed and for the collected evidence. The parties have the right to make written requests for supplementations and amendments within three days as from the date of the protocol. See CRIMINAL PROC. CODE Articles 128–131, 311, 312.

The protocol keeping is a standard practice in many European countries, including Bulgaria. However, to a large extent this process depends on the judge's skill to reframe poorly formulated statements in a concise and understandable text while preserving the actual will of the person. Thereby, the lack of verbatim transcription of the court session may sometimes result in the composition of not quite accurate and complete protocol. For the purpose of higher accuracy and reliability of protocols, the USAID Judicial Strengthening Initiative (JSI) started as early as in 2004 a process of introduction of a system for verbatim recording of court sessions. According to the JSI final report as of 2007 the courts equipped with means of digital audio recording in the country were 31, and at the same time training for judges and staff to work with the system was ensured<sup>1</sup>. The benefits from the provided equipment are noted by all respondents. However, unfortunately, after the end of the Initiative in 2007, the SJC has not undertaken any steps for further development of the process of equipping of courtrooms with audio recording equipment and does not presently perform any policy in this aspect. This decreases the chances of keeping of fuller and free of factual mistakes protocols, which, on its part, inevitably has an impact on the quality of the court proceedings.

The practice of keeping of protocols in Bulgarian administering of justice depends a lot on the personal skills and the attitude of the presiding judge and the court reporter, and often on these of the parties' procedural representatives. It is not clear to what extent systematic care is taken of the mastering of these skills and whether there are forms of control in this respect. The lack of particular problems in respect of the protocols is due – to an equal extent – to the established practice of work with them, and to the high degree of abandoning of the principle of oral pleadings in process and the functioning of an appellate procedure as a second first instance. In this sense, the efforts for limitation of this role of the second instance must be conformed to the limitations in the certainty of the protocols kept in the absence of a reference audio record.

Part of the respondents who had to request making of amendments to a protocol, share that in the absence of an audio record, the procedure frequently depends fully on the court reporter's memories. There are cases in which due to high workloads or poor organization the protocol is not prepared within the required time limit of three days, thus its accurate amendment becomes even more uncertain. In cases when in a courtroom any of the parties or the panel of judges behaves in an unethical way and it is not properly reflected in the protocol, this would deprive the affected party of an important protection guarantee.

It would be reasonable to make the audio record during a court session compulsory because it would additionally guarantee the certainty and fairness of the process. Furthermore, the prices of audio equipment constantly decrease and the argument for the lack of funds is not essential. It is also recommendable to extend the term of storage of the audio records in view of the possibility of exercising of the powers of the SJC Inspection Service in respect of the improvement of the quality of the court sessions conduction and the ethical regulation.

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<sup>1</sup> <http://bulgaria.usaid.gov/cdir/bulgaria.usaid.gov/files/EWMI-Bulgaria-JSI-Report.pdf>.

Unlike the 2006 JRI, which points out that the right of free access to the case documents is only recognized in the Bar Act but not in the Judicial Administration Regulations, this omission has already been remedied. The new Judicial Administration Regulations refer to Article 31 of the Bar Act, which allows an attorney-at-law to exercise his/her right of access to information under the case only on the basis of an attorney's card. Nevertheless, a large part of the courts continue requesting apart from the attorney's card the submission of a power of attorney as well. Moreover, very often, an attorney who wants to copy a document from a file is required to file a written application decided on by the reporting judge. Thereby the legal entitlement of attorneys-at-law to privileged use of information under the case is violated by the establishment of local practices which result in delay and restriction of access. As regards the use of information by the parties and third parties, see the analysis of Factor 24.

## VI. Efficiency

### Factor 26: Court Support Staff

*Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.*

Conclusion	Correlation: Neutral	Trend: ↔
<p>Most of the judges do not have assistants to help them in the performance of their daily functions. The job position “judicial assistant” is opened at the supreme court, some courts of appeal and the Sofia City Court. Court clerks are normally assigned to entire courts rather than to individual judges. In the recent years after the conducted competitions and in the conditions of many candidates and strong competition, much better educated, qualified and better trained employees started work as court support staff and the way they work is focused to a greater extent on quality service to the system users.</p>		

#### Analysis/Background:

Pursuant to JSA Article 244(1) (after the 2009 amendment), law clerks are admissible in district, administrative and appellate courts, as well as in the supreme courts. The position of a *law clerk* is to be occupied by someone who satisfies all requirements for appointment as a judge (however, being not a magistrate) and who passed successfully a competition, as a law clerk is to be appointed by the administrative manager of the relevant court. After the 2011 amendments, SG No. 1 (Jan. 4, 2011), effective Jan. 4, 2011, the provisions of Article 246a–b regulate the obligations of the judicial (and prosecutor’s) assistants pertaining to their auxiliary function and the obligation to keep professional secret and observe the rules of professional ethics is envisaged. By the adoption of the new Judicial Administration Regulations the status of law clerks is regulated in more details. See REGULATIONS Chapter 2V. Their general task to “support judges in their activity” is detailed in an exemplary listing of their obligations: checking the admissibility of appeals, protests and petitions for a reversal; drafting of projects of judicial acts; summarization of the jurisprudence of the Supreme Court of Cassation and the Supreme Administrative Court; issue of opinions on cases, drafting of reports and other tasks assigned by the administrative manager. *Id.* Judges from different courts may thus rely on the assistance of persons having university-level legal training, and thereby their overloading is decreased and the case hearing is accelerated. The recruitment of law clerks does not burden the budget with high expenses for salaries; furthermore, law clerks do not have a guaranteed irreplaceable status after the expiration of a definite period of time.

According to one source, only a couple of such assistants work in each Chamber of the Supreme Court of Cassation and each of them supports 40 judges, doing mostly clerk’s work. In the 2010 report on the activity of the courts<sup>1</sup> it may be concluded that there is an increase in the number of law clerks, six out of the total work in the Civil Chamber and three in the Criminal Chamber of the court, and each of them has to provide assistance to approximately ten judges. In the Supreme Administrative Court such law clerks have been working for a much longer time and they are 15 persons (for 77 judges) as of the beginning

<sup>1</sup> Available on the website of the court at: [http://www.vks.bg/Docs/VKS\\_Doklad\\_2010.pdf](http://www.vks.bg/Docs/VKS_Doklad_2010.pdf) (in Bulgarian).

of 2010. According to the 2010 report on the activity of the court<sup>1</sup> each department has one to three law clerks (consisting approximately by 10 judges), and their role regarding the relief of judicial workloads and the overall results in the court is specifically mentioned.

While it is pointed out in the 2006 JRI that “the concept of appointing law clerks has considerable merit and may yet prove beneficial, but its present benefit is inconsequential”, some years later the work of the law clerks can be reported to have a positive impact on the better organization and functioning of the court. The large number of participants in the competitions organized in the last year at the separate courts makes it possible to select the employees with the best training, who will work effectively in the judicial system. In this relation, all respondents also note the positive effect of their work.

Prior to the SG No. 1 (Jan. 4, 2011) amendments there were *no law clerks* in the regional courts. As a result, judges had to do work that was not typical of them on the cases, the legal research, opinion drafting and many other things. Furthermore, a large number of the respondents provided reasons for the need of support of the work of the judges by law clerks, at the courts of first instance, as well. A specific solution in this respect was found by the largest court in the country – the Sofia Regional Court. In the summer of 2009 the so called Internship Program<sup>1</sup> started there. The main goal of the program is to provide students with an opportunity to gain practical legal skills and at the same time to make up for the lack of law clerks in the court. The program enjoys exceptional popularity among the legal students not only because of their direct contact with the system but also due to the fact that their work in the court is not limited to purely administrative activities only. Last but not least, this solution shows how the existing state internship can be made more useful. On the other hand, the benefit for the judges is undisputable and proves the need of the introduction of the figure of law clerks on the regional court level, as well, taking into consideration the specificities related to the caseload, the location of the court and the volume of document workflow. Since January 2011 all courts may open new vacancies for law clerks after an approval by the SJC based on the level of workload in the court. A more detailed regulation of their status is also introduced – their functions and rights and obligations pertaining to the performance of their work (keeping the secret of deliberations, prohibition on preliminary consultations with the parties, rules of professional ethics and conduct).

## Total number of law clerks in the courts

Year	Number
2008	1
2009	102
2010	142
2011	141
2012	182

Source: the SJC

<sup>1</sup> Available on the website of the court at: <http://www.sac.government.bg/home.nsf/0/780E854EE8A7D96DC2256E27002F8033?OpenDocument> (in Bulgarian).

<sup>2</sup> For more information about the program, see <http://srs.justice.bg/srs/161-%D0%A1%D1%82%D0%B0%D0%B6%D0%B0%D0%BD%D1%82%D1%81%D0%BA%D0%B0%20%D0%BF%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%B0>.

Except for court chairpersons, *judges generally do not have their own assigned secretaries or other administrative assistants*. Instead, court clerks are assigned to the court as a whole, where they assist with either general administration (budget/finance, human resources, facilities, etc.) or court operations (court reporting, intake/maintenance of case records, or summons delivery). Because of a shortage of courtrooms, court reporters may work for a number of different judges and panels over the course of a work week.

The J provisions on court clerks are set forth in Article 340 et seq.

The number of judges, as well as the number of court clerks is determined by the SJC with respect to the level of workload of the court on a proposal made by the administrative heads of bodies of the judicial system and it may increase/limit the number of new positions. See JSA Article 30(1).3 and 3a.

According to the SJC statistics, as of the end of 2012, the numbers of judges and court clerks according to the officially opened positions were, as follows:

### Number of Judges and Court Clerks

	Judges	Court Clerks	Judge/Clerk Ratio
<b>Courts</b>			
<b>Appellate<sup>(1)</sup></b>	143	205.5	1.43:1
<b>District<sup>(2)</sup></b>	668	1,496	2.23:1
<b>Administrative</b>	257	838	3.26:1
<b>Military</b>	27	79	2.92:1
<b>Regional<sup>(3)</sup></b>	904	2,962	3.27:1
<b>TOTAL:</b>	1,999	5,580.5	2.79:1

<sup>(1)</sup> The Military Court of Appeals is included with Courts of Appeals for this purpose.

<sup>(2)</sup> District courts include the Sofia City Court.

<sup>(3)</sup> Regional courts include the Sofia Regional Court.

According to the information submitted by the SJC, in the period 2007–2009 no new staff positions were opened for the appointment of magistrates. The staff issues related to the different caseload in the different bodies of the judicial system are resolved by transformation of the existing staff positions from less loaded units to such with a higher caseload. Staff positions for magistrates and court clerks were only opened in the new administrative courts.

Prior to the 2011 JSA amendments it was unclear whether the SJC had a *formula* or other standard for determining the proper number of court clerks for a given court or in relation to a certain number of judges. In result of the amendments the SJC determines their number after a proposal by the administrative leader of the court having due consideration to other factors such as the level of workload of the court. Although it is too early to make any assessment of the newly established changes it is important to take into account the variations in responsibilities at the different levels of the judicial system and diverse regions of the country. Such an approach would allow the better and more flexible use of the court



support staff in reply to the increasing workloads in the judicial system and as an alternative to the continuing tendency for frequently mechanical authorization of the significantly more expensive positions of judges.

In the past, court clerks suffered from a poor reputation among magistrates, attorneys and members of the general public in terms of their qualifications, training, motivation, efficiency and customer service attitudes. While criticism has not disappeared, the overall impression is that in the recent years, this group of public servants has become more organized and professional. This progress is attributable to various factors: the organization and development of a National Association of Court Clerks, initial and periodical training programs, the establishment of competitions for new clerk positions, etc. The interest in the profession in the recent years has become much higher, which is evident from the large number of candidates per vacancy (45–50), this being an indication of the prestige of these positions. Court clerks play an important role – they ensure integrity in the judicial system – they are the people who introduce newly appointed judges to the daily functions and obligations of the court. They are also those who contribute to the natural development of the principle of teamwork in the courts.

The NIJ is in charge of assisting for the qualification of court clerks and proposing different types of programs addressed to this group of trainees. The NIJ has the resource to provide initial training to all newly appointed court clerks and continuing training for the appointed clerks.

The number of court clerks trained by the NIJ has become significantly greater over the years. According to data of the NIJ, in 2007 29 trainings were conducted, where a total of 735 court clerks were trained. For the academic 2008, 31 training modules were organized and 767 clerks took part in them. In 2009, 36 trainings were conducted with a total number of the trained employees – 907. For 2010 and 2011 respectively 887 and 1,113 court clerks underwent training by the NIJ.

The training modules, as evident from NIJ statistics for 2009, include: work on civil and criminal cases; process of summoning; grammar and court reporting; protection of classified information; work in the Criminal Conviction Office, etc. Most of the respondents think that these modules are outdated and repeated over the years and that they do not meet the new requirements in their immediate work. The respondents consider the following training modules new and interesting: teamwork, stress-resistance and time management. They say that it is hard to find free places for these trainings. Proposals are made for preliminary discussion (needs assessment) of the preferred topics of training, which are to be suggested by the trainees rather than having repeated the same topics which are already useless.

The efforts for reforming and optimization of the work of the court administration shall continue and they should be improved by using more effective means of performance evaluation of court clerks, as well as means of encouragement or maintaining discipline. Progress has already been reported in several of these aspects and it has also been reflected in the effective acts of secondary legislation adopted in 2009: Regulations on the Administration in Regional, District, Administrative, Military and Appellate Courts, Rules on the Administration of the Supreme Administrative Court, Rules on the Administration of the Supreme Court of Cassation, Rules on the Organization of the Activity of the SJC and its Administration.

The position of a court administrator appeared on the staffing chart of the courts from 2003 – 2004. In the last two years, the number of court administrators grew higher, so that every

big court has one or two of them. The powers of court administrators are regulated in details in Article 4 of the Administration Regulations. They are also assigned functions of support of the work of the small regional courts and of the prosecutor's offices from the relevant judicial region. Court administrators are also assigned other functions related to keeping of statistical accounting, preparation of electronic information statements, etc.

### Total number of court administrators\*

Year	Number
2008	90
2009	94
2010	95
2011	88

\* Source: Data provided by the SCC updated as of 12.2011

### Factor 27: Judicial Positions

*A system exists so that new judicial positions are created as needed.*

Conclusion	Correlation: Neutral	Trend: ↔
The SJC has not increased the number of judges for a year or two now due to the reduced budget. The decrease of the judges' workload in the busiest courts is overcome by transformation and redeployment of positions from courts with less workload. Other reforms could also reduce the workload of judges without increasing the number of judges.		

#### Analysis / Background:

Under the JSA, the SJC is the authority that "determines the number of the judges [...] in all courts [...]". See JSA Article 30(1).3. This authority is, of course, limited by budgetary considerations, and is therefore strongly influenced by the actions of the Council of Ministers and especially the National Assembly in drafting and adopting the state budget, in particular in the last two years. The MOJ is on its part bound to propose the judicial system's draft budget and submit it for review to the SJC and it could also thereby exert influence (restrict or potentially assist) on the determination of the number of judges. See CONSTITUTION Article 130a(1). Procedurally, proposals on the number of judges may originate with the applicable court chairpersons, at least one-fifth of the members of the SJC, or the MOJ.

According to the data obtained from the SJC, its standard used in determining the number of judges is the average monthly caseload of one judge or the relevant court, measured on the basis of the number of completed cases. When the average caseload of a judge in one court is larger than the average caseload for other similar courts around the country, the SJC authorizes extra judge positions until the average caseload of the judges is decreased to the average levels for the country.

According to data<sup>132</sup>, submitted by the SJC, resulting from an inspection and analysis made of the statistical accounting for the period from 2006 to 2009 of the different types of courts, the resulting conclusions is that there exists a considerable difference in the number of the cases and files resolved by one magistrate in the different courts. The caseload analysis (average caseload index) shows that the courts with the highest caseload are the SCC and the SAC.

In 2009, the judges from the SCC resolved on the average 20.93 cases per month, and the judges from the SAC – 22.58 cases. The judges from the appellate courts resolved in 2009 on the average 7.4 cases per one judge per month, and in the preceding 2008 – 10.25 cases. In the newly created administrative courts, the average caseload for 2009 was 15.69 case per judge monthly, which is a minimal increase compared to 2008 when this indicator was 14.98. At district court level there is a certain decrease. While in 2008 the caseload was 21.93 cases monthly per judge, in 2009 the figure was already 15.33 cases on the average.

The table below shows judges' caseload statistics under types of courts in 2012 (groupings correspond to the 2012 Judicial Caseload Statistics, available at the SJC webpage, where data for the Sofia Regional Court and the Sofia City Court are separated):

Courts	Caseload under Payroll as of 31.12.2012				Actual Caseload as of 31.12.2012	
	No. of Cases Heard	No. of Cases Heard per Judge per Month	No. of Cases Completed	No. of Cases Completed per Judge per Month	No. of Cases Heard per Judge per Month	No. of Cases Completed per Judge per Month
Appellate Courts	15,032	6.12	12,675	5.38	6.82	6.01
Military Courts	1,576	4.81	1,472	4.46	5.16	4.77
District Courts	72,409	8.76	62,539	7.61	10.51	9.16
Regional Courts in District Centres	249,834	44.79	219,617	39.82	51.66	46
Other Regional Courts	150,378	28.61	133,328	28.61	38.12	33.85
Sofia Regional Court	145,969	87.51	111,718	66.98	146.41	112.05
Sofia City Court	49,613	30.40	34,155	20.93	50.06	34.47
Administrative Courts	59,179	14.47	44,666	11.92	17.05	13.88

Source: SJC

It would be interesting to note that there exists a significant difference between the courts in respect of the average number of completed cases per judge, as this number is relatively

<sup>1</sup> A report of the workgroup appointed by a resolution under Minutes No. 6 (Feb. 7, 2009) of the SJC with the following task: to determine the caseload indicators for the magistrates in the separate levels and units of the Judiciary in relation to the powers of the Supreme Judicial Council under art.30 par.1 item 2 and item 3 of the SJA.

small in appellate and military courts and is significantly higher in regional and district courts. Even within one type of courts one may observe significant differences. Conclusions are drawn that there is no need to open new payroll positions, but there is an extremely pressing need to restructure them within the system by transformation of positions and their transfer to courts with a higher caseload. That is why according to data of the SJC new payroll positions were not opened in 2009.

In the last several months the SJC is actively engaged in examining the caseload of judges and the possible ways of measuring and decreasing thereof. Given the increasing case-flow mostly in courts of first instance, the mechanical increase of the number of judges would not always be the best working solution for caseload. In the end of September 2010, the SJC organized an event where an in-depth debate was held on this topic and other measures were proposed, which after the implementation of the necessary legislative amendments would bring about a real decrease of the caseload. These measures shall include, in particular:

- An amendment to the Criminal Procedure Code for the purpose of decreasing the number of cases reaching the SCC;
- Amendments to the Administrative Procedure Code aiming at shifting the jurisdiction over certain administrative case from the SAC to the respective administrative courts;
- Amendments to the JSA enabling the SJC to move, upon a proposal of the administrative head – quickly and without a competition – magistrates of the same level to other units of the judicial structure, which have far higher caseload;
- Drafting of a detailed methodology with specific indicators measuring the caseload not only in terms of quantity but also in terms of quality of the cases.

Issues related to the uneven caseload of judges and the lack of a comprehensive standard of caseload were pointed out as important ones by most respondents. There is not either a defined mechanism for additional remunerations for burdened judges. A proposal is made to introduce differentiated payment of judges depending on their actual caseload.

Some courts rely upon means of alternative dispute resolution, such as arbitration and mediation, which are able to take many cases outside the judicial system. Arbitration has a long tradition and is widely accepted in Bulgaria. The mediation procedure is also regulated by a law in Bulgaria, but is still not sufficiently popular both among judges and among citizens. A special program to the Sofia Regional Court entitled “Settlement Agreements” is being implemented since 2009. This programme provides an opportunity to the parties to a case to resolve their dispute by a mediation procedure. Cases are referred to mediators by specially trained judges who explain at the very court session the advantages of the procedure<sup>1</sup>. It is necessary that similar programmes function in more courts in the country, so that they may bring about a real decrease of the considerable caseload of the judicial system.

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<sup>1</sup> For more information about the programme, see <http://www.srs.justice.bg/srs/82-%D0%9F%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%B0%20%D0%A1%D0%BF%D0%BE%D0%B3%D0%BE%D0%B4%D0%B1%D0%B8>.

## Factor 28: Case Filing and Tracking Systems

*The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.*

Conclusion	Correlation: Neutral	Trend: ?
<p>Most courts still use manual systems that contain hard copy documents as they separately record the data via the case-management programmes put in place in all courts. The general introduction and use of the electronic case-management system is reported as the best progress in this sphere of the reform in the judicial system. Nevertheless, e-summoning and electronic exchange of documents are still considered an exception rather than a part of the daily work of the court.</p>		

### Analysis/Background:

The JSA provides for that the SJC is to approve all automated information systems for the judicial authorities, as well as the procedure for their development, integration and use. See JSA Article 30(1).16.

The Bulgarian judicial system has already generally put in place **electronic case-management systems**, and it thereby reports full compliance with this indicator compared to the 2006 JRI. The electronic systems are fully installed, operational and used by trained employees in the courts. The automated control over the receipt of the case documents and the ability to electronically track down their movement results in optimized operation of the judicial administration and hence – effective hearing of the cases themselves. *Id.* Article 9(1). In the examination of the options for case filing and tracking, the following distinction must be highlighted once again. There are integrated case-management and distribution systems and separate software products used only for the distribution of cases in the courts on a random basis. As already mentioned in Factor 18, the control over the putting in place thereof is incumbent on the deputy-chairpersons or the heads of divisions in the separate courts. In pursuance of this obligation of theirs the administrative managers of most courts have drafted Internal Regulations on the Operation of the Random Case Assignment Software, which determine the conditions and procedure for operating the Software, and whereby control over the implementation thereof is carried out. Furthermore, the SJC adopted also an Instruction on the Organization and Procedure for the Use of the Software Products for Random Case Assignment in Courts, which is another step towards optimization of the use of the separate programmes.

According to an information statement submitted by the SJC, 5 different case-management software programmes are currently used, which are approved by the SJC. These are: ACMS (Automated Case Management System), developed by a project financed by the US Agency for International Development (USAID); CCMS (Court Case Management System), developed by the company Siemens under the PHARE programme; CAS (Court Administrative System), developed by Information Services PLC (most widely used), EMSG, developed by a private company. Apart from them, the case management system of the Supreme Court of Cassation operates, as well as the CCMS of the military courts, which is developed under an OPAC project and operates in 3 military courts. According to instructions of the SJC every court may choose which programme to use.

All respondents identify as a positive fact the general putting in place of the electronic case management programmes. However, it is pointed out as a negative fact that the separate

courts, even courts within one appellate region, use various programmes. As the programmes are not uniform, it results in obstacles to the trouble-free transfer of information regarding the traffic of cases among the courts of different levels. In addition, some of the programmes are obsolete software platforms that are not developed and updated any longer (EMSG), and the aggravated speed of operation of others (CCMS) is an issue for the courts with a heavier workload. The consequences for the speed of case processing are negative, and the creation of practices not to enter all data in the system obstructs the publication of judicial acts (e.g. such information is available for the Sofia Regional Court)<sup>1</sup>. The question about the achievement of uniformity of the effective programmes has been on the agenda since 2008. The SJC works on a transposition programme in order to enable data transfer between the Regional Courts, the District Courts, the Appellate Courts and the supreme courts.

Trainings of judges and court employees with respect to the operation of the programmes were held in 2008/2009 by the Ministry of State Administration. After this period on site trainings have been carried out by the court administrator of the relevant court, as well as by the National Association of Court Employees. The NIJ has not organized trainings on this matter.

Regardless of the introduction of the electronic case-management systems, presently most courts in Bulgaria still accept and store the **case documents on a hardcopy**. All incoming documents in the court are still hard copy documents, not all of them are scanned and transferred to an electronic media. Only a few courts try to keep the document circulation in an electronic form only but in this case they print the inventory books, which is quite a lot of work. Presently, the creation and maintenance of an e-file is possible via the existing electronic case-management programmes. There is no problem to scan all documents under the case and to create an electronic case. However, the implementation of this option is rather an exception than an established practice. There are problems also in the electronic summoning although all programmes except for the ACMS have the relevant functionality on a system level. A large number of the respondents were of the opinion that in the absence of a legal ground to summon electronically, its application is minimized. Furthermore certain fears exist in relation to the security and in particular the lack of guarantees related to electronic summoning. Certain courts use email for sending of messages or other secondary court-administrative activities.

However, the effective legal framework, the lack of uniform mechanisms for electronic case management, and, to a certain extent, the established traditions are still an obstacle to the transition to electronic case-pursuit in the full sense of this term.

Apart from the court case management programme, the courts use several other electronic programmes: programme for issuing of certificates of conviction record, an accounting programme, manpower and wages programme, etc.

With the SG No. 50 (July 3, 2012) JSA amendments a Central Office of Criminal Records with the Ministry of Justice was established. See JSA Article 386, *new*, SG No. 50 (July 3, 2012). It performs the duties of a central authority which exchanges information with the central authorities of other European Union member states regarding effective convictions of Bulgarian and other nationals, entered into the status of conviction registries in compli-

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<sup>1</sup> 2011 Centre for the Study of Democracy Report, funded by the European Commission, E-TOOLS FOR CRIMINAL CASE MANAGEMENT WITHIN SELECTED EU MEMBER STATES.



ance with the national legislation. To facilitate the management of activity of the Office, the MoJ creates and maintains Central Criminal Records Database<sup>1</sup>.

The amendments aim to address Bulgaria's obligation to implement two decisions which provide for the adoption of regulations regarding the organization and content of the information exchange retrieved from the Criminal Records, between the member states. These are Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information from the criminal record between Member States, and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.

Regardless of the introduced programmes, the courts still encounter a problem with the statistical data that must be submitted by 6-month court reports. There is not any special system for the needs of these reports and therefore two court employees must abandon their daily activity in order to count the cases for about 20 days every 6 months. The respondents consider this activity a loss of lot of time and obstruction to the work of the court employees. Recommendations are made for introduction of comprehensive electronic justice in the future, including as regards the statistical data and the overall reporting in the courts. A serious step in this respect was also made in the Strategy adopted by the Council of Ministers, where a separate item entitled "Information and Technological Modernization" explicitly provides for "Introduction of automated case management systems, including introduction of an electronic file starting from the first act of the procedure [...]" and "Creation of legal, programme and organizational conditions for introduction of an electronic exchange of documents, communications and procedural actions among the judicial system units and the participants in the separate proceedings"<sup>2</sup>. The IT Strategy of the Judicial Authorities for the Period 2011–2013 adopted by the SJC and the Plan-Schedule to it provides for the following: stage-by-stage integration of the automated systems, creation of an automated statistical tool-box for extraction of data from the courts, as well as the creation of a central unit for planning and development of IT to the SJC, but for the time being due to the lack of sufficient funds the measures are not bound by specific terms for the implementation thereof.

## Factor 29: Computers and Office Equipment

***The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.***

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↑</b>
Judges and court clerks generally have at their disposal sufficient number of computers and have passed the training required to operate them. Most of them do not use all the functions of the computers, and they use them mostly in relation to programs and operations necessary for the daily activities.		

<sup>1</sup> More information regarding the Central Criminal Records Office could be obtained on the MOJ official webpage, section "Central Criminal Records Office" at: <http://www.justice.government.bg/44/> (in Bulgarian).

<sup>2</sup> See item 1.6. et seq. of the Strategy at: <http://www.justice.government.bg/107/> (in Bulgarian).

## Analysis/Background:

According to SJC statistics, for 2007, the total number of computers for the courts (for judges, court clerks and for the needs of courtrooms) was 5,338. For 2008 their number increased to 6,477 units. The Professional Qualification, Information Technologies and Statistics Committee to the SJC keeps detailed statistics of the number of computers used in the courts, separately for the needs of magistrates, court clerks and these in courtrooms. For 2009 and 2010, due to budget cuts, new computers were not purchased by the SJC and therefore no statistics were kept. In this period the individual courts purchased computers with their own funds. The available equipment used in the courts is considered to be sufficient at this time. The main concerns of the respondents are related to the prospects for the next year when obsolete equipment shall have to be replaced.

No statistics were provided for the SCC, the SAC, but they presumably are at least as well computerized as the district and regional courts. The SAC, in particular, is highly regarded for its broad use of information technology.

The SJC indicated that the computers provided to the district and regional courts were used for word processing, legal research, case management, and accounting. As courts are provided with electronic case management systems, as well as with other electronic systems, as indicated in some of the factors, it could be said that computers are mostly used to operate such systems.

For the period 2007–2009, the Ministry of Justice also purchased computers, printers and other equipment for the needs of the Registry Agency, Criminal Conviction Record Offices and the courts in the country (bailiff offices) as a part of various European projects.

All computers provide Internet access. Of course, the availability of computers does not necessarily mean that the persons provided with them are trained to use them to their full extent. Several respondents share that the last trainings conducted by the Ministry of State Administration were a few years ago. Since then, the system administrator in the respective court has been training the separate clerks or judges. The introduction of new software or the frequent changes therein requires, according to some of the respondents, the conduction of more frequent trainings to ensure that they are able to use the full capacity of the respective software.

The general level of computer literacy in the courts is good, which means that the computer skills of judges and court clerks are adequate. Court IT administrators are appointed for the purpose of maintenance and operation of the respective software in the courts. They effectively assist the activity of judges and court clerks and form a part of the court administration. As part of the IT Strategy of the judicial system for 2011–2013 adopted by the SJC and the plan for its implementation it is envisaged that a standard for acquirement of IT skills by magistrates and judicial clerks has to be developed, in addition to a programme of the training course and testing on this component in the appraisals. Unfortunately, as mentioned previously in Factor 28 up to this moment the SJC does not provide any clear terms in which these measures should be implemented.

## Factor 30: Distribution and Indexing of Current Law

***A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.***

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
In all courts in the country, judges have access to electronic legal databases and the State Gazette issues that provide judges, at no cost, with all laws on a current basis and most of the important court decisions necessary for the performance of their duties. Only courts with the heaviest dockets, mainly due to lack of space, experience some difficulties utilizing these systems because several judges need to share a computer.		

### Analysis / Background:

According to SJC statistics, all courts are subscribed, at their own choice, for the electronic legal databases offered on the market in Bulgaria. They have identical contents – current versions of the domestic legislation and international agreements, as well as significant cases from the Constitutional Court, the SCC and the SAC, and occasionally from courts of appeals. Some are web-based, while others are installed and updated on site. Several of them are subscription-based systems, which require users to pay a fee to obtain unlimited access, while others are operated on a pay-as-you-go basis.

The availability of electronic legal databases in the courts provides also access to the acts and case-law of the EU, which have primary importance after the accession of Bulgaria to the EU. The existing European portals with information provided by several ministries also contain useful and current information about the European acts and case-law.

Summaries of the articles published in some legal magazines are also contained in these electronic legal databases.

Reports indicate that these databases are easily searchable and contain links to the important court decisions and provisions from other acts relevant to a particular act or article. The courts are also subscribed to the hardcopy version of the State Gazette (SG). Furthermore, the SG has its own free website (<http://dv.parliament.bg>) containing not only the titles promulgated acts but their full text, as well.

Judges have access to the best databases through their court-supplied computers at no cost, and are also able to use these services for free at home if they have personally owned computers. This allows them to work at home, an important option given their crowded offices in court buildings. Judges frequently take “a homework” (cases) to work on at home.

In addition to electronic sources, of course, there are still hard copies of the laws, as well as issues of the SG that contain new and amended laws and selected high court decisions. Hard copies are not always available for all individual judges, who may need to purchase their own copy.

Along with these databases, there is also ***an increasing number of websites*** maintained by the different courts, which provide access to their decisions, providing a means of guiding judges and attorneys in their application of the law. The creation and updating of such websites is reported as a part of the achievements in the judicial reform in view of the pub-

licity of the rendered court decision. However, these efforts are not coordinated on a state-wide basis. There are no uniform criteria for the development of the websites of the courts, which created problems in the search of information therein. System unification is currently being sought by the creation of a common webpage of the SJC, which shall have links to the websites of the separate courts.

All decisions of the respective court are published on the websites of the courts “upon observance of the requirements of the Personal Data Protection Act and the Classified Information Act. See JSA Article 64. But, once again, there are no uniform rules what decisions and which part of them should be published. Several respondents showed as an example the appealable decisions or parts of decisions moving to a higher instance. As regards them, it is not clear which court should publish the final decision. These and other problems must be resolved by common rules adopted by the SJC. Some of the courts have adopted Internal Regulations on the Organization of Publication of Decisions in Internet in an attempt to fill in the gaps in the legal framework but they have effect within the respective court and cannot therefore resolve all problems arisen in the cases when court decisions are appealed before a court of higher instance.

Due to the budgetary cuts in the last two years, there are no funds for buying legal magazines or other specialized literature. Therefore the creation and maintenance of libraries, accessible to all judges, in the respective courts turns out to be a hard task. The specialized literature donated by different ministries or institutions is accessible to all. Only the supreme courts have their own library. A library exists also in one of the district courts but it is maintained by the local bar association rather than the court.

## List of Acronyms

<b>BJA:</b>	Bulgarian Judges Association
<b>CC:</b>	Constitutional Court
<b>CCA:</b>	Constitutional Court Act
<b>CLE:</b>	Continuing Legal Education
<b>CPE:</b>	Proposals and Evaluation of Judges, Prosecutors and Investigators Committee
<b>CPEPC:</b>	Professional Ethics and Prevention of Corruption Committee
<b>EC:</b>	European Commission
<b>EU:</b>	European Union
<b>HEA:</b>	Higher Education Act
<b>JRR:</b>	Judicial Reform Review
<b>JSA:</b>	Judicial System Act
<b>Judicial Reform Strategy:</b>	Strategy to Continue the Judicial Reform in the Conditions of Full European Union Membership
<b>LPNCA:</b>	Law on Proposals, Notes, Complaints and Applications (abrogated)
<b>MOI:</b>	Ministry of the Interior
<b>MOJ:</b>	Ministry (or Minister) of Justice
<b>NAAA:</b>	National Agency for Assessment and Accreditation
<b>NIJ:</b>	National Institute of Justice
<b>PEA:</b>	Private Enforcement Agent
<b>SAC:</b>	Supreme Administrative Court
<b>SCC:</b>	Supreme Court of Cassation
<b>SG:</b>	State Gazette
<b>SJC:</b>	Supreme Judicial Council



# JUDICIAL REFORM REVIEW BULGARIA

## VOLUME IV FEBRUARY 2013

This analysis is the fourth edition of the Judicial Reform Review (JRR), which covers the period between 2006 and February 2013. Using the American Bar Association (ABA ROLI) methodology, BILL made a full legislative and institutional analysis of the changes and the progress of judicial reform in the country.

Each of the previous editions includes an assessment, arranged in a series of thirty criteria setting forth factors that facilitate an accountable, effective and over all independent judiciary. For each factor, there is a description of the basis for this conclusion and an in-depth analysis, detailing the various issues involved. Cataloguing the data in this way permits users to easily compare and contrast performance of different countries where the Review is published, in different areas, as well as the changes over time within a given country as JRRs are updated regularly.

The analysis under the 2013 Review for Bulgaria shows that for the last six years judicial reform in the country has not progressed considerably and quite a few elements of it are still awaiting implementation. And yet some progress has been made on certain aspects, but there is still a pressing need for improvement in some of the most important directions.

The large period of time allows for a detailed review of the judicial reform development from the beginning of Bulgaria's full EU membership until present times. Despite the many legislative and structural changes regarding the functioning of the judiciary, JRR does not observe serious improvements concerning the functioning and independence thereof. Of the 30 factors analyzed in the 2013 assessment for Bulgaria, the correlations determined for three factors advanced from 2006, while none of the other factors suffered a decline. In this manner the number of factors receiving the highest grade becomes thirteen. Fifteen factors received neutral correlations in this report. Only two factors continue to carry negative ratings.

The analysis leads to the conclusion that despite the efforts made in these years on behalf of the three branches as well as on the part of civil society representatives the results remain rather mediocre and superficial, and do not show the accomplishment of a sustainable in-depth reform.



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