



PROSECUTORIAL REFORM INDEX

BULGARIA

VOLUME III

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Bulgarian Institute for Legal Initiatives



**PROSECUTORIAL
REFORM INDEX
FOR
BULGARIA**

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Introduction

The Prosecutorial Reform Index (PRI) is a tool developed by the American Bar Association's Rule of Law Initiative (ABA CEELI, and currently ABA ROLI). Its purpose is to assess a cross-section of factors important to prosecutorial reform in transitioning states. In an era when legal and judicial reform efforts are receiving more attention than in the past, the PRI is an appropriate and important assessment mechanism. The PRI will enable the ABA, its funders, and the local governments themselves, to better target prosecutorial reform programs and monitor progress towards establishing accountable, effective, and independent prosecutorial offices.

The ABA embarked on this project with the understanding that there is no uniform agreement on all the particulars that are involved in prosecutorial reform. There are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after working in the field on this issue for 18 years in different regions of the world, the ABA has concluded that each of the 28 factors examined herein may have a significant impact on the prosecutorial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the PRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the prosecutorial system in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's prosecutorial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The PRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's prosecutorial system.

Methodology

The ABA was able to borrow heavily from the Judicial Reform Index (JRI) and Legal Profession Reform Index (LPRI) in terms of structure and process. However, the limited research on legal reform that exists tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No.34, (Jan. 2003). Moreover, as with the JRI and LPRI, the ABA concluded that many factors related to the assessment of the prosecutorial system are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/Central European and Eurasian Law Initiative, *Judicial Reform Index: Manual for JRI Assessors* (2001).

The ABA sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental norms, such as those set out in the *United Nations Guidelines on the Role of Prosecutors*; the *International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*; *Council of Europe Recommendation R(2000)19*

'On the Role of Public Prosecution in the Criminal Justice System'; and the American Bar Association Standards for Criminal Justice: Prosecution Function.

In creating the PRI, the ABA was able to build on its experience in creating the JRI, the LPRI, and the more recent ICCPR, CEDAW, Legal Education Reform Index, and the Human Trafficking assessment tools in a number of ways¹. For example, the PRI borrowed the JRI's factor "scoring" mechanism and thus, as with the LPRI, was able to avoid the difficult internal debate that occurred with the creation of the JRI. In short, the JRI, the LPRI, and now the PRI employ factor specific qualitative evaluations. Each PRI factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of that statement to that country's regulations and practices pertaining to its prosecutorial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative". If the conditions within the country correspond in some ways but not in others, it will be given a "neutral". Like the JRI and LPRI, the PRI foregoes any attempt to provide an overall scoring of a country's reform progress since attempts at aggregate scoring based on this approach could be counterproductive².

The results of the 28 separate evaluations are collected in a standardized format in each PRI country assessment. As with the JRI and LPRI, the PRI utilizes an assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast performance of different countries in specific areas and – as PRIs are updated – within a given country over time. There are two main reasons for borrowing the JRI's and LPRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI and LPRI enabled the speedier development of the PRI. The second is uniformity. Creating uniform formats will enable the ABA eventually to cross-reference information generated by the PRI into the existing body of JRI and LPRI information. This will eventually give the ABA the ability to a much more complete picture of legal reform in target countries.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of prosecutors, judges, and defense counsel.

Sensitive to the potentially prohibitive cost and time constraints involved, the ABA decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, and outside observers with detailed knowledge of the legal system. Overall, the PRI is intended to be rapidly implemented by one or more assessors who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination against Women. The Central European and Eurasian Law Initiative [hereinafter "CEELI"] developed the CEDAW TOOL in 2001–2002.

² For more in-depth discussion on this matter, see Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605, 611 (1996).

The PRI was designed to fulfill several functions. First, local government leaders and policymakers can utilize the findings to prioritize and focus reform efforts. Second, the ABA and other rule of law assistance providers will be able to use the PRI results to design more effective programs related to improving the quality of the prosecutorial system. Third, the PRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to find information on the structure, nature, and status of the prosecutorial system in countries where the PRI is implemented. Fourth, combined with the JRI and LPRI, the PRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fifth, PRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of prosecutors in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the prosecutorial function.

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Assessment Team

The assessment process related to the 2013 PRI for Bulgaria was conducted in two parts – preliminary research and report drafting. The leader and main author of the report is Todor Kolarov. The assessment team received strong support from BILI staff in Sofia, including Bilyana Gyaurova-Wegertseder, Nedyalka Grozeva, Boryana Hristova and Tsvetomir Todorov, as well as from ABA ROLI staff in Washington, including Mary Adele Greer, and Jessie Tannenbaum. The executive summary has been drawn solely by the BILI team.

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Executive Summary

Brief Overview of the Results

The 2013 Prosecutorial Reform Index (PRI) reflects the development of the institution since the publication of the second PRI in 2010 until June 2013 (the first PRI was published in 2006). The legal framework is actual as of June 2013. The analysis contains data from the first national representative of the prosecution office sociological survey “Attitudes of prosecutors towards the reforms in the prosecution office and the criminal procedure.”³

During the reporting period the Prosecution Service has sustained the progress achieved and discussed in the 2010 PRI, which is a significant positive development against the backdrop of the general state-of-play and trends in Bulgaria. The lack of regress discussed in the 2010 PRI is a substantial achievement because it means that none of the factor correlations has deteriorated. At the same time, it should be noted that after 2010 the definite progress identified for some factors has stalled or is insufficient to merit a change in correlations, or has been neutralized by recent challenges that have emerged. The 2013 PRI acknowledges the significant progress achieved under the Continuing Legal Education (CLE) factor, which has brought about a change in the factor from ‘neutral’ to ‘positive’. It should be categorically stated that some of the factors, albeit significant to the Prosecution Service, do not depend on it either fully or partially.

As shown by the 2013 Factor Correlation Table, the correlations for seven factors are positive and neutral for eighteen. Only three factors have a negative correlation. It is these three factors that the Prosecution Service should seek to address in order to change the continuing trends identified in the 2010 PRI.

Positive Aspects Identified in the 2013 Bulgaria PRI

- Undeniable progress has been achieved in the area of **CLE**. The legislative framework has evolved and now stipulates stricter criteria for CLE. CLE opportunities are more readily available to prosecutors; the standard of training has improved; and the choice of subjects has been expanded. CLE is available from different sources, primarily the NIJ, but also from the Prosecutors’ Association and other organisations, and training courses are conducted both in Bulgaria and overseas. As compared to the findings set out in the 2010 PRI, progress has also been achieved in the development of the capacity of the NIJ and the scope of CLE topics included in the training programmes has likewise been broadened. It is also important that training takes place both in Sofia and other areas in the country and that training information is much more readily available;
- The Prosecution Service has taken on a commitment to **international co-operation with international law enforcement services and prosecution officers**. The relationship between prosecutors and judges are based on professionalism and mutual respect;

³ The study was conducted by Global Metrics Agency for social and market research on assignment by the Bulgarian Institute for Legal Initiatives Foundation. Within the study 450 surveys with prosecutors from around the country and in-depth interviews with judges, prosecutors, investigators and investigating policemen were conducted. The aim of the project was to distinguish the viewpoints of all interested in the work of the prosecution office and to study the attitudes towards reforms mainly among rank-and-file prosecutors. The results of the survey are available on the Bulgarian Institute for Legal Initiatives website www.bili-bg.org, under Publications section.

- The professional immunity of prosecutors **for actions taken in good faith in the course of carrying out their duties** is well-established and widely respected;
- The Prosecutors' Association has contributed significantly to the development of the profession and attests to **freedom of association**. It has 492 members and different committees, focusing on areas of importance for prosecutors⁴. The organisation continues to speak on behalf of prosecutors on matters of common interest;
- **The selection and recruitment criteria applied by the Prosecution Service are based on the merit of the applicants and are non-discriminatory**. There have been no reports of discrimination on the basis of gender, race, ethnicity or sexual orientation. The salaries of prosecutors are adequate and ensure the recruitment of competent professionals of proven integrity;
- **Functional analysis of the Prosecution Service**. For the first time the Prosecution Service has drawn up and published a report on its structure, organisation and activities in the period 2007–2012⁵. Also for the first time, the challenges relating to human resources, qualifications, budgetary matters, the working environment etc., which have been repeatedly singled out in the reports of NGOs and the European Commission, have been acknowledged by the Prosecution Service. The Action Plan of the Bulgarian Prosecution Service for the period 1 September 2013 – 1 March 2015 to the report is yet another positive development.

Some Concerns Identified in the 2013 Bulgaria PRI

- In 2013 **the standard of legal education** that each future prosecutor needs to satisfy remains a significant problem. Despite the strict educational and licensing requirements, legal education in Bulgaria continues to be regarded as incapable of equipping graduates with the necessary practical skills for a prosecutorial career. According to available information the main problems are the strong theoretical bias (the use of interactive teaching methods that would enable future prosecutors to acquire basic practical skills is still an exception due to the fact that they were not used as a method of instruction in the past and require more effort and a better standard of preparation on the part of tutors); the failure to embrace novel teaching methods and practices; and the attempts to preserve some deeply entrenched stratification stereotypes among the different faculties of law, which do not reflect the standard of instruction;
- Despite the development of CLE, the **training programme is not yet linked to specific newly emerging needs** and the efficiency of training interventions is not measured against actual performance. The outcome of criminal proceedings, including the share of acquittals, are not linked to a mechanism that identifies the deficiencies during the pre-trial phase, which can be addressed by organising appropriate training in a timely manner as a measure to tackle the systemic nature of the mistakes that occur;
- Prosecutors remain subjected to **improper influence in the course of carrying out the duties and responsibilities of their office**. The Prosecution Service has set in place institutional arrangements designed to shield prosecutors from improper influence and ensure respect for their freedom of action. However, according to some interviewees trading in influence (influence peddling) remains a significant problem. It has been asserted that in some cases promotion policies are not based on merit, particularly that of notorious prosecutors in charge of criminal cases whose actions

⁴ The information about the number of members of the Prosecutors' Association is provided by the Prosecutors' Association.

⁵ See Action Plan and Functional Analysis of the Bulgarian Prosecution Service, *available at* <http://www.prb.bg/main/bg/Information/4392/>.

are widely regarded as controversial. The perceived high level of corruption in Bulgaria, coupled with a perception of impunity in such cases, add up to a consensus amongst interviewees that in discharging the duties of their office prosecutors are still subjected to improper influence from political players, government bodies, parties to the proceedings, lawyers, persons associated with organised crime and nepotistic networks;

- At the same time ***there has been a conspicuous absence of any outward manifestations of standing up for the independence of individual prosecutors and prosecutors in general.*** The Prosecutors' Association has traditionally declined to express views on the structural problems of the Supreme Judicial Council, despite their prominence on the public agenda in the period 2010–2013 or on any of the gruesome and widely publicized scandals involving prosecutors, including cases of improper contacts of prosecutors in charge of high-profile cases with senior representatives of the executive branch of government and the legislature. Neither the senior officials of the Prosecution Service nor the Prosecutors' Association have expressed their position on the routine statements of the former Minister of Internal Affairs on pending criminal cases. The inaction of the Prosecution Service – individual and institutional – has created an impression of fundamental problems with strong implications for the independence of the judiciary;
- ***Prosecutorial efforts to uphold integrity and fairness in society*** remain a challenge. Despite the increase in the number of criminal investigations of corruption identified in the 2010 PRI, convictions were few and far between. The higher number of criminal prosecutions reported in 2010 and the outward manifestations of change has failed to meet public expectations of justice. Team work and skills improvement efforts are noticeable but have not yet achieved any perceptible result. The truth is that the Prosecution Service is neither single-handedly, nor mostly responsible for detecting cases of corruption. However, it is one of the most visible institutions in society and therefore carries the greatest burden in this regard. Regrettably, the optimism expressed in the 2010 PRI that a positive change was around the corner – a widely held belief at the time – has been replaced by negativity and resignation. Deploying an integrated, consistent, cross-institutional and cross-sectoral reform and its meticulous implementation in the mid-term is a *conditio sine qua non*.
- ***Functional analysis of the Prosecution Service.*** Despite the official 'acknowledgement' of existing problems, which have compounded over the years and have been criticized by both NGOs and European Union institutions, the analysis does not offer sustainable solutions and fully ignores the most significant one – the reform of the Prosecution Service. The report can be described as the starting point of a discussion of the institution's reform. Another deficiency of the document is that it fails to take into account the opinion of rank and file prosecutors who are the backbone of the Service and will be instrumental in the implementation of the reform. Furthermore, the analysis downplays the problems at the criminal investigation service after the legislative reform of 2009, which have strongly curtailed the powers of investigators and rendered hundreds of highly skilled magistrates practically jobless and having no alternative.

Bulgaria Background

Legal Context

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

Officially the head of state, the **President** 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 the high command of the army and ambassadors. When Bulgaria is under imminent threat, he may declare war. The President also participates in the process of establishing the Council of Ministers. He may veto bills, but that veto may be overridden by a vote of more than half of the members of the National Assembly. The President appoints the chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court, and the Prosecutor General on a motion by the Supreme Judicial Council. The President is elected for a five-year term and may serve only two terms.

The Council of Ministers acts as a cabinet. It is composed of the Prime Minister, Deputy Prime Ministers, and the Ministers. While the Prime Minister has overall responsibility for the operation of the government, the Council of Ministers is charged with executing the state's domestic and foreign policy, insuring the public order and national security, and exercising guidance over the civil service and the armed forces. Among other things, the Council draws up the state budget and presents it to the National Assembly. Like the Council itself, individual ministers may issue regulations in their fields of competence.

Legislative authority rests with the 240 members of the **National Assembly**, which is elected for a term of four years. Its main responsibilities are to exercise legislative power and exercise parliamentary oversight. The National Assembly's chairperson represents the National Assembly and oversees legislative proceedings. In addition to its general authority to pass laws, the Assembly is specifically directed to pass the state budget, establish tax rates, declare war, ratify treaties, schedule presidential elections, elect and dismiss the Prime Minister, and, on the motion of the Prime Minister, elect members of the Council of Ministers. Additionally, recent constitutional amendments provide that the Prosecutor General must report annually to the National Assembly. Before it becomes law, legislation requires two votes before the Assembly. Following a vote of no confidence in the government, which requires a majority of the members of the Assembly, the government must resign. The right to initiate legislation belongs to every member of the National Assembly and the Council of Ministers.

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 a new constitution, designate changes to the territory of the state, and pass constitutional amendments affecting the form of state structure or the form of government. Less sweeping amendments to the Constitution may be approved by a three-fourths (in certain circumstances two-thirds) vote of the National Assembly.

The judicial branch is composed of judges, prosecutors, and investigators, all of whom are deemed magistrates. There is a Prosecution Service at each level of the courts, and since 2009 the National Investigative Service [hereinafter NIS] and the district investigative services have been administrative components of the Prosecution Service, under the authority of the Prosecutor General. Prosecutors, who report through the prosecutorial hierarchy ultimately to the Prosecutor

General, supervise and conduct investigations, bring criminal charges, oversee the enforcement of criminal and other penalties, and take part in civil and administrative cases, as required by law.

Investigators, referred to as “investigating magistrates” by the national laws, conduct a limited number of investigations, as specified by the Judicial System Act, in cases of particular factual and legal complexity; cases for crimes committed abroad, on requests for legal aid; and cases in other circumstances, as provided for by law. Most investigations are conducted by the Ministry of Interior’s investigating police officers, and other police authorities, where provided for by the Criminal Procedure Code/ CRIMINAL PROCEDURE CODE, *adopted* Apr. 29, 2006, STATE GAZETTE [hereinafter SG] No. 86, *last amended* May 28, 2010, [hereinafter CRIM. PROC. CODE]. Police investigations are conducted under the guidance and supervision of the prosecutors.

While certain budgetary, data collection, and administrative functions are shared with, or controlled by the Ministry of Justice [hereinafter MOJ], the judiciary is largely overseen by the Supreme Judicial Council [hereinafter SJC], composed of magistrates and other members of the legal profession elected by the National Assembly and the judiciary. The Supreme Courts’ chairs, and Prosecutor General are also members of the SJC. The Minister of Justice chairs the SJC’s sessions without a right to vote. The Constitutional Court, which is not a part of the judiciary, rules on constitutional issues.

Provincial governors, who implement state policy, are appointed by the Council of Ministers. At the local level, municipal councils and mayors are elected every four years.

Co-operation and Verification Mechanism (CVM)

Pursuant to its Decision of 13 December 2006 the European Commission has begun to implement a Coordination and Verification Mechanism⁶ [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 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.

⁶ 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.

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.

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 1. 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.

History of the Prosecution Service

The first basic law in the modern history of Bulgaria – the 1979 Tarnovo Constitution – establishes the principle of separation of powers, which albeit from a modern procedural perspective may appear incomplete, was highly advanced at the time. Article 13 of the first Bulgarian Constitution established a judiciary in the country and detailed arrangements and rules were later stipulated in the 1880 Structure of Courts Act. This is the first Bulgarian law that lays down rules on the Bulgarian Prosecution Service. Its structure was strictly followed the 1864 Russian Decree on Court Institutions, which in turn borrowed heavily from the French *ministère public* model, which granted prosecutors powers to act both in criminal and civil proceedings. The 1899 Structure of Courts Act expanded the powers vested in prosecutors with the task of supervising lay judges, judicial investigators and the police. The same law introduced the hierarchical structure of subordination of the system. At this stage of the history of the judiciary the Minister of Justice played a significant role in that he was tasked with the selection and appointment of magistrates, including the prosecutors under the jurisdiction of the Supreme Court of Cassation and the appellate courts.

With minor changes this structural organisation of the judiciary survived until the military coup of 19 May 1934. In the wake of the coup all political parties were banned and the Tarnovo Constitution was practically suspended. Laws and statutes were replaced by decrees of the executive branch of government, including the Prosecution Service.

The year 1944 marked a turning point in the history of the judiciary in Bulgaria. With the end of WW II and the communists' march to power, the underlying principles of State governance were replaced. All institutions and branches of government, including the judiciary, were re-built from scratch on the basis of the Soviet model. Between December 1944 and April 1945 the so-called People's Tribunal operated – an emergency situation, which the communists used as a weapon to exact revenge on their opponents. The victims of the tribunal include scores of magistrates, including prosecutors. People's tribunals were set up in flagrant violation of the Tarnovo Constitution, which albeit suspended, had not been repealed up to this point. This happened in 1947 when Bulgaria enacted a new basic law.

Neither the 1947 Constitution nor the one enacted in 1971 features the principle of separation of powers. On the contrary, the new communist regime proclaimed the idea of unity and indivisibility of power. With the 1947 Constitution of the People's Republic of Bulgaria the figure of the Prosecutor-General came into being. The incumbent is elected by the National Assembly for a term of 5 years and reports to Parliament. The first communist constitution of Bulgaria reinforced the principle of hierarchy and undivided authority in the Prosecution Service. A rule was introduced according to which prosecutors carried out their duties and reported to their superiors who, in turn, reported to the Prosecutor-General of the People's Republic. Furthermore, according to Article 63 of the 1947 Constitution the Prosecutor-General appointed and dismissed all other prosecutors, regardless of their rank or the court in whose district they acted. The Prosecutor-General also had the right to propose new legislation. The powers vested in the prosecution service were laid down in detail in Decree No 479 of 22 March 1948, and later in the 1952 and 1960 Prosecution Service Acts.

In 1971 a new Constitution of the People's Republic of Bulgaria was adopted, which did not significantly alter the structure and organisation of the Prosecution Service. In 1980 a New Prosecution Service Act came into force whose Article 1 stipulated as follows: *'The supervision of the accurate and uniform implementation of laws by the ministries and other government institutions, local authorities, economic and public organisations, public officials and citizens shall be carried out by the Prosecutor-General of the People's Republic of Bulgaria and the lower-ranking prosecutors reporting to him'*.

A characteristic feature of the Prosecution Service during the entire 1944–1989 period is that its main task was to *'strengthen and uphold socialist legality'* in Bulgaria (Article 2 of the 1980 Judiciary Act). Another peculiarity of the period is that the concept of an independent judiciary was eradicated not only *de jure* through the principles introduced by the communist constitutions but also *de facto* by the communist power establishing total control over judicial appointment. During this period almost all prosecutors were members of the Communist party. An additional guarantee for tightening the grip over the Prosecution Service was the principle of undivided power and the centralised nature of the system.

After the fall of the communist regime in 1989, a Grand National Assembly in 1991 crafted a new Constitution, setting in motion a process of changes to the Bulgarian legislation. CONSTITUTION OF THE REPUBLIC OF BULGARIA, *adopted* Jul. 13, 1991, SG No. 56, *last amended* Feb. 2007 [hereinafter CONSTITUTION]. The provisions of the Constitution apply directly, without need of legislative implementation. Treaties appropriately ratified are also applied directly and supersede domestic legislation. A new Judicial System Act was passed three years after the adoption of the Constitution. JUDICIAL SYSTEM ACT, *adopted* Aug. 07, 2007, SG No. 64, *last amended* Dec. 29, 2009. The Judicial System Act is the basic statute that currently governs the judiciary, including the prosecution.

The Prosecution Service consists of the Prosecutor General, Supreme Prosecution Service of Cassation, Supreme Administrative Prosecution Service, National Investigation Service,

5 appellate prosecution services, the Military Appellate Prosecution Service, 28 district prosecution services with investigative and administrative departments, 5 military district prosecution services, and 113 regional prosecution services. With the amendment of the Judiciary Act, which entered into force on 4 January 2011 A specialist prosecution service and a specialist appellate prosecution service were established with jurisdiction in the entire territory of Bulgaria. As at 31 December 2012, approximately 2 341 prosecutors work in the country of whom 156 administrative managers and 156 deputy administrative managers; 1 341 prosecutors; 77 junior prosecutors; 29 heads of the investigation departments at provincial prosecution services; 538 investigating magistrates; and 44 military prosecutors⁷. The Prosecution Service is a unified and centralized entity with a strict hierarchy. Each prosecutor is subordinate to the respective superior prosecutor, and ultimately to the Prosecutor General. The superior prosecutor assures adherence to law and exercises control and leadership. He may rescind decisions of his subordinate prosecutors.

The Constitution grants general authority over the judiciary, which includes prosecutors, to the SJC. This body is composed of 25 members, including the presidents of the SCC and the SAC 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 the judges, four by the prosecutors, and one by the investigators.

SJC members must have at least 15 years of professional experience as lawyers, including at least five years as a magistrate (*i.e.*, judge, prosecutor, or investigator) or a law professor. The elected members serve five-year terms and may serve a second term, but this may not immediately follow their first term, while the *ex officio* members serve for the seven-years of their terms of office, unless they leave office earlier. The Minister of Justice chairs the SJC meetings but does not have the right to vote.

By a Constitutional Amendment in February 2007 an Inspection Service (Inspectorate) was created within the SJC, consisting of Chief Inspector and 10 inspectors, to perform functions formerly carried out by the Inspectorate of the MOJ. The Chief Inspector is elected for 5 years, and the inspectors for 4 years, by a two-thirds majority of the members of the National Assembly. They may be re-elected to their positions for not more than two consecutive mandates. CONSTITUTION art. 132a(4). The Inspectorate is empowered to oversee judicial activities, without infringing upon the independence of the judges, prosecutors, and investigators in performing their functions. Annually, the Inspectorate presents a report on its activity to the SJC and provides the public with relevant information. The terms and the procedure of election and discharge of the Inspector-General and the inspectors, as well as the Inspectorate's organization and activities are prescribed by the Judicial System Act.

In accordance with Article 129(2) of the Bulgarian Constitution the SJC nominates the presidents of the Supreme Cassation Court and the Supreme Administrative Court, as well as the Prosecutor General. The first Rules of Procedure on the selection of Presidents of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor-General were adopted by a Decision of the SJC set out in Minutes No 48 of 8 November 2012; amended and supplemented by the Decision set out in Minutes No 32 of 10 July

⁷ With the amendment of the Judiciary Act, promulgated in the State Gazette (SG) No 33 of 30 April 2009, the National Investigation Service became a unit within the structure of the Bulgarian Prosecution Service. The total headcount of prosecutors includes investigators. Source of statistical data: Functional analysis of the Bulgarian Prosecution Service, page 113, *available at* <http://www.prb.bg/main/bg/Information/download/1925/>.

2014⁸. The President appoints the nominated presidents and cannot reject a second nomination of the same individual. The SJC also determines the number and geographic jurisdiction of courts; establishes the number of magistrates; determines their pay; appoints, promotes, demotes and dismisses magistrates as provided by law; approves the ethics codes for prosecutors and judges; handles magistrate discipline; lifts magistrates' immunity; submits the draft budget for the entire judiciary to the Council of Ministers, administers the judicial budget; coordinates magistrate training and qualification; and makes tenure decisions involving magistrates. Judiciary Act, Article 30(1).

As a result of a new constitutional amendment, the MOJ has regained a role on some of these functions, including proposing the draft judicial system budget and submitting it to the SJC; managing the assets of the judicial system; making proposals for appointment, promotion, discipline, and other career decisions of magistrates; participating in the organization of magistrate qualification.

Conditions of service

Qualifications

Prosecutors must be Bulgarian citizens with no other citizenship who: (i) have a university degree in "Law"; (ii) have completed required training and been granted the right to practice law; (iii) have the necessary moral and professional qualities corresponding to the rules of professional ethics for judges, prosecutors, and investigators; (iv) have not been sentenced to incarceration for a deliberate crime, regardless of rehabilitation; (v) are not elected members of the Supreme Judicial Council who have been relieved from office on disciplinary grounds due to impairing the prestige of the judiciary; and (vi) are not suffering a mental disease. Article 162 of the Judiciary Act. Lawyers with a minimum of three years' experience may serve as prosecutors without first serving as a junior prosecutor. Individuals may also be appointed directly to higher posts in the court system following longer service in the legal profession, within or outside of the judiciary. *Id.* Article 164.

Appointment and tenure

Until the amendment of the Judiciary Act (SG No 32/2011, effective as of 19 April 2011, the SJC appoints, transfers, and promotes all prosecutors on the basis of a centralized competition that must be conducted at least twice per year for an initial appointment. Following the amendment in question the competition is conducted at least once per year and not later than two months after the date on which it was announced (Article 176(3)). In order to receive an initial appointment as junior prosecutor in the judiciary a centralised competition must be passed. The competitions for junior prosecutors are conducted once a year, following an announcement in January. The actual competition takes place in April. Out of the total number of available vacancies 20% are designated for the initial appointment of junior prosecutors by competition. Following the 2011 amendment, the vacancies in the prosecution and investigation service, other than those earmarked for initial appointees. Are announced separately for each body of the judicature and filled following a competition in the form of an interview. Competitions are conducted by examination committees appointed by the Supreme Judicial Council.

⁸ See the full text of the Rules of Procedure, available on the webpage of the Supreme Judicial Council: http://www.vss.justice.bg/bg/aktove/pravila/2014/PRAVILA_VKS_VAS_GP.pdf.

Performance evaluations are also carried out for acquiring tenure – five years after the initial appointment – on a regular basis 5 years after a previous performance evaluation until the prosecutor or administrative manager and his/her deputy has reached 61 years of age. Performance evaluation for acquiring tenure aims to give an objective assessment of the professional and organisational skills after serving as a prosecutor for a period of 5 years. Tenure evaluation also takes into account the results of the regular performance evaluations carried out. The performance of prosecutors is evaluated on the basis of the following criteria: knowledge of the law and its application; ability to analyse legally relevant facts; optimal organisational skills; expedience and discipline. Periodic performance evaluation also looks at observance of the relevant deadlines, number of acts upheld and reversed; results of the inspections carried out by the ISSJC; caseload of the respective judicial district and judicial body and individual caseload of the judge, prosecutor or investigator whose performance is evaluated as compared to that of other prosecutors working for the same body. Upon acquiring five years of experience as a prosecutor (including a junior prosecutor) and a positive performance evaluation by the SJC, prosecutors become immovable until they tender their resignation, reach the official retirement age (65 years) or are dismissed. They may be dismissed solely on the grounds of having reached the retirement age of 65 years; tendering their resignation; the entry into force of an effective prison sentence for a premeditated crime; becoming permanently incapacitated for a period of more than one year; being dismissed on disciplinary grounds by a decision of the SJC or a refusal on the part of SJC to confirm their tenure. They may also be dismissed when holding incompatible positions or being engaged in incompatible activities that are set out in detail in the JA.

Prosecutors have functional immunity, which permits liability for personal, non-official behavior or liability for official behavior where this behavior constitutes a premeditated general criminal offence.

Training

The National Institute of Justice [hereinafter NIJ], a state-funded entity operating under the supervision of the SJC and its own managing board, provides a mandatory six-month initial training program for junior prosecutors (and other junior magistrates) at the NIJ's facility.

Those prosecutors who are appointed directly based on at least three years' service as a lawyer do not go through the NIJ initial training program and, instead, are sent directly to their assigned offices. Additionally, the NIJ also offers continuing legal education [hereinafter CLE] seminars for prosecutors and other magistrates, and the Association of Prosecutors in Bulgaria also organizes periodic trainings and seminars. The SJC may determine courses that are mandatory for judges, prosecutors, investigators and court clerks seeking promotion, appointment as an administrative manager or specialisation.

Bulgaria PRI 2013 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues present, the PRI team would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and considers the relative significance of particular correlations to be a topic warranting further study. In this regard, the team invites comments and information that would enable it to develop better or more detailed responses in future PRI assessments. The ABA views the PRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

	PRI Factor	2006 Correlation	2008 Correlation	2013 Correlation	Trend
I. Qualification, Selection and Training					
Factor 1	Legal Education	Negative	Negative	Negative	↔
Factor	Continuing Legal Education	Neutral	Neutral	Positive	↑
Factor 3	Selection: Recruitment, Promotion and Transfer	Neutral	Neutral	Neutral	↔
Factor 4	Selection without Discrimination	Neutral	Positive	Positive	↑
II. Professional freedoms and guarantees					
Factor 5	Freedom of Expression	Neutral	Neutral	Neutral	↔
Factor 6	Freedom of Professional Association	Neutral	Positive	Positive	↑
Factor 7	Freedom from Improper Influence	Negative	Negative	Negative	↔
Factor 8	Freedom from Harassment and Intimidation	Neutral	Neutral	Neutral	↔
Factor 9	Professional Immunity	Positive	Positive	Positive	↔
III. Prosecutorial functions					
Factor 10	Discretionary Functions	Neutral	Neutral	Neutral	↔
Factor 11	Rights of the Accused	Neutral	Neutral	Neutral	↔
Factor 12	Victim Rights and Protection	Negative	Neutral	Neutral	↔
Factor 13	Witness Rights and Protection	Negative	Neutral	Neutral	↔
Factor 14	Public Integrity	Negative	Negative	Negative	↔
IV. Accountability and transparency					
Factor 15	Public Accountability	Negative	Neutral	Neutral	↔
Factor 16	Internal Accountability	Neutral	Neutral	Neutral	↔
Factor 17	Conflicts of Interest	Neutral	Neutral	Neutral	↔
Factor 18	Codes of Ethics	Neutral	Neutral	Neutral	↔
Factor 19	Disciplinary Proceedings	Neutral	Neutral	Neutral	↔

V. Co-operation with other institutions and parties

Factor 20	Interaction with Judges	Neutral	Positive	Positive	↔
Factor 21	Interaction with the Police and Other Investigatory Bodies	Negative	Neutral	Neutral	↔
Factor 22	Interaction with Representatives of the Accused	Negative	Neutral	Neutral	↔
Factor 23	Interaction with the Public/Media	Neutral	Neutral	Neutral	↔
Factor 24	International Co-operation	Positive	Positive	Positive	↔

VI. Funding and Resources

Factor 25	Budgetary Input	Neutral	Neutral	Neutral	↔
Factor 26	Resources and Infrastructure	Negative	Neutral	Neutral	↔
Factor 27	Efficiency	Negative	Neutral	Neutral	↔
Factor 28	Compensation and Benefits	Neutral	Positive	Positive	↔

I. Qualifications, Selection and Training

Factor 1: Legal Education

Prosecutors have the appropriate legal education and training necessary to discharge the functions of their office, and should be made aware of the ideals and ethical duties of their office, of the protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by international law.

Conclusion	Correlation: Negative	Trend ↔
<p>University-level legal education is obligatory for prosecutors and standards for law schools are strictly regulated by law, with significant mandatory coursework including criminal law. Students also must complete a practicum, pass written and oral exams, and complete an internship before being fully authorized to practice law. However, law faculties do not offer a directed study for students wishing to pursue a career in the Prosecution Service. Legal education is perceived as being generally inadequate at providing practical skills to prepare students for careers as prosecutors and specialized criminal law courses or clinics are rarely offered. Further, the quality of instruction is uneven and overly theoretical, and does not adequately prepare graduates with the practical legal skills necessary for new prosecutors.</p>		

Analysis/Legal Background:

Article 162 of the Judiciary Act, *last amended* SG No 30 of 26 March 2013, effective as of 26 March 2013, and provides that among the requirements to be eligible for appointment as a prosecutor are “graduation in law from a higher educational establishment” and “completion of the required post-graduation work experience and attainment of licensed competence to practice law.

Bulgaria’s Higher Education Act (SG No 112 of 27 December 1995, *last amended* SG No 15 of 15 February 2013 (hereinafter Higher Education Act) sets out the rights and obligations of higher education. It is the basic law on university-level education. It provides that higher education is the responsibility of both the Council of Ministers and the National Assembly. The Council of Ministers is specifically charged with setting the state requirements for earning degrees in the specialties of the regulated professions (see Article 9). The act also provides that the National Agency for Assessment and Accreditation [hereinafter NAAA] must conduct periodic evaluations of both institutions (universities) and their respective programs (law schools, among others) in a broad range of areas to ensure they satisfy the standards established by law. *Id.* Articles 11, 75–83 Tertiary education institutions cannot teach non-accredited courses or non-accredited majors in regulated occupations, including law, or issue degrees for such courses and majors.

Law school requirements for admission procedures, mandatory and elective courses and their minimum hours are contained in the Ordinance on the Unified State Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer,” *adopted by* COUNCIL OF MINISTERS DECREE No 75 *issued* Apr. 5, 1996, *last amended* Aug. 23, 2005 [hereinafter LEGAL EDUCATION ORDINANCE]. There have been no changes in this respect since the publication of the last PRI. For this reason, the requirements will not be discussed in further detail.

After the second year of study, students must participate in a practicum consisting of no less than 14 days of work in executive or judicial bodies under an MOJ coordinated program with law faculties. In a 2005 amendment to the Legal Education Ordinance, legal clinics are specifically authorized, and students participating in clinics who pass an examination may opt out of the 14-day government internship. In most cases the internships are a mere formality and offer no practical benefits to students, such as familiarizing them with day-to-day challenges experienced by practicing professionals.

There have been no changes to the requirements for obtaining a licence to practice law. After completing semestrial course work, students are required to sit a written and an oral examination before being conferred an MA in Law (*Legum Magister*) and the professional qualification 'jurist'. Following a six-month unpaid internship in the judiciary, they must sit an oral examination organised by the MoJ.

Despite these requirements, legal education is still regarded as having a strong theoretical bias. Most interviewees agree that the quality of instruction at all faculties of law is improving. Some faculties of law have embraced an approach that is better aligned to market requirements and offer both mandatory and elective courses, which are useful to the future successful careers of their graduates. Surveys are conducted and the possibilities to introduce interdisciplinary courses are discussed. On the other hand, there are faculties which have not taken any steps in this regard and continue to rely on their past glory. One of the main reasons for the inadequate standard of legal education is the absence of a serious discussion on specific measures for an overall reform. One widely acknowledged problem, with the Regulation on the Uniform Educational Requirements is trying to address, is that some faculties do not have full-time tutorial staff but rely on a high share of visiting professors, who more often than not teach at several faculties of law. This arrangement precludes face-to-face work with students outside the format of lectures, which is a highly recommended international best practice. It is also an obstacle for the development of the academic potential of the respective faculty, which closes the vicious circle in legal education and raises insurmountable barriers to a better standard of legal education in Bulgaria.

In this sense, the findings set out in the 2006 and 2010 PRIs are still valid – for the most part legal education remains highly theoretical in nature; it is non-interactive and totally lacks any practical bias that enable students to acquire practical skills on the basis of their theoretical knowledge. Some tutors with a modern outlook on education are attempting to integrate more dynamic teaching methods but they are few and far between and are not always highly regarded by their colleagues.

The findings set out in the 2010 PRI in respect of the insufficient emphasis on specialist subjects relating to criminal and human rights law or the rights of the victims and witnesses of crimes should be reiterated. As indicated in the 2006 and 2010 PRIs a lot remains to be done about the teaching of comparative and EU law, including international and European co-operation in criminal matters. The elective subjects and legal clinics which are an additional training resource through practical and written assignments that each future prosecutor needs remain too few.

The interviewees agree that the six-month internship in the judiciary following graduation from law school is a pure formality.

According to the interviewees the findings set out in the Strategy on Continuation of the Reform of the Judiciary, developed by the MoJ in 2010 (and adopted by Council of Ministers' Decision No 441 of 28 June 2010), notably that 'the practical and theoretical exams that

are largely purposeless fail to contribute to filling the gaps in the knowledge and skills of young jurists and establishing high entry requirements for access to the legal professions', remain valid.

Factor 2: Continuing Legal Education

In order to maintain and improve the highest standards of professionalism and legal expertise, prosecutors undergo continuing legal education (CLE) training. States sponsor sufficient and appropriate CLE training, which is professionally prepared on specific issues and is relevant to the prosecutors' responsibilities, taking into account new developments in the law and society.

Conclusion	Correlation: Positive	Trend ↑
The initial nine-month training of junior prosecutors and other magistrates entering the judiciary was introduced in 2012 and is expected to raise the standard of prosecutorial appointments. A programme for mentor magistrates has been set in place. Although CLE is not mandatory for prosecutors following their appointment, according to the Judiciary Act and the Rules of the NIJ, CLE is one of the criteria taken into account for the purpose of performance evaluation of prosecutors. CLE opportunities continue to be well regarded and well received, albeit not without some reservation. Overall CLE capacity must be raised so that it is able to fully meet demand.		

Analysis/Legal Background:

In accordance with Article 249(1) of the JA 'maintaining and improving qualifications' of both applicants for junior magistrates and appointed magistrates (including prosecutors) are an area of responsibility of the NIJ. The NIJ is funded from the budget of the judiciary and is a legal person governed by a Managing Board. Following the amendments to the JA of 4 January 2011 the Managing Board comprises five representatives of the SJC and two representatives of the Ministry of Justice, the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court who sit on the Board in their capacity as members of the SJC, and the Minister of Justice who sits on the Board as a representative of the MoJ. The Managing Board is chaired by the President of the SCC (see Articles 251 and 252 of the JA). The functions of the Managing Board of the NIJ include the approval of the training programmes and of the organization's budget and its submission to the SJC. The training programmes of the National Institute of Law are approved by the Managing Board on a motion of the Director, following consultations with the SJC.

In accordance with Article 259 of the JA, which stipulates that following their initial appointment in the judiciary, prosecutors must complete mandatory qualifications improvement training, and Article 40(1) of the Rules of the Structure and Organization of the NIJ and the administration under its jurisdiction, adopted by the SJC, Minutes No 28 of 12 September 2007 (SG No 76 of 21 September 2007; effective as of 21 September 2007; amended in SG No 65 of 24 August 2011), hereinafter Organisational Rules of the NIJ, when first appointed to the judiciary, during their first year in office, prosecutors must complete mandatory training to improve their qualifications with a duration of at least 15 days. The training course comprises several levels, each with a maximum duration of 5 days. The cost of tuition and attendance are covered by the NIJ.

The position 'junior prosecutor' is envisaged in the JA – a person who must satisfy all requirements for appointment and pass a centralised competition. The initial appointment is two years, which may be extended for a maximum period of 6 months by a decision of the SJC. Prior to being appointed junior prosecutors must complete induction training at the NIJ – the successor to the non-governmental organisation Centre for Magistrate Training (see Article 258 of the JA). The induction training course of junior prosecutors is nine months and commences in September of the respective year. The commencement date is determined by the Head of the NIJ. During their training junior prosecutors received 70 % of the salary of a junior prosecutor. The funds are covered by the NIJ. The trainees cover their subsistence costs from the bursary and the cost of tuition is covered by the NIJ. Part of the training of junior prosecutors is combined with that of junior judges (see Articles 258–258b of the JA and Article 35(3) to (5) of the Organisational Rules of the NIJ).

The induction training at the NIJ has significantly improved as compared to the last PRI (2010) – a process, which has been facilitated by three programmes implemented under the Administrative Capacity Operational Programme (OPAC) under which the NIJ was awarded grants. The training course covers 94 topics in the following categories: structure, organisation and legal standing of the Prosecution Service; pre-trial phase; trial phase; other rules; matters relating to substantive law and important practices. The NIJ training programme also includes topics such as ethical rules and corruption, drawing up bills of indictment and procedures for the implementation of European arrest warrants.

During the training the trainees are subject to current assessment based on their participation in training sessions and the results of their written assignments. At the end of the training period they sit a written and an oral practical exam, which are graded on the basis of a six-grade system. The exams are conducted by an examination committee appointed by the SJC, which has a chairperson and four members, including judges and prosecutors. The exam committee members may be full-time tutors at the NIJ and members of the SJC. The results of the two exams are used to arrive at a compound grade, which is the arithmetic average of the grades received in the oral and written exam. A list setting out the grades is sent to the SJC. The successful candidates must have a compound grade of at least 'Very Good 4.50'. The candidates for junior judges and prosecutors who have obtained lower grades must re-sit the exam not earlier than 1 month and not later than 2 months after the date on which the grades are published. A failure to obtain the necessary grade at the re-sit disqualifies the candidate from appointment. The National Institute of Law is responsible for the methodological guidance provided to junior judges and prosecutors after completing the induction training course and into their appointment. See Article 37 of the Organisational Rules of the NIJ.

The evaluation of the results of the induction training of junior prosecutors following the interviews is invariably high. Junior prosecutors are considered to be well-prepared for their duties, which is a quantum leap as compared to the situation before 2005.

After completing the NIJ induction training course and upon taking up their office, the administrative manager of the respective prosecution service issues an order, assigning a mentor responsible for the junior prosecutor who oversees their work and supports them in their professional development. The SJC adopts rules on the work of the mentors of junior judges and prosecutors. The NIJ organizes working meetings and training courses for mentors at the prosecution service, facilitates their work and monitors the manner in which they carry out their responsibilities. Mentorship is paid and prosecutors who act in this role receive additional remuneration in an amount determined by the Managing Board of the NIJ (see Article 54 of the Organisational Rules of the NIJ). After the end of the two-year period of initial appointment as junior prosecutor (and its possible extension for up to six months)

the prosecutors are appointed at one of the regional prosecution services (see Article 243 of the JA).

Despite the progress achieved, the NIJ mentor training programme can be further improved. To reiterate one of the findings set out in the 2010 PRI, the programme appears more efficient in smaller prosecution services where a more informal approach to work is taken and more time and a personal approach can be taken to the newly appointed junior prosecutors as compared to large prosecution services with a heavy workload.

According to Article 41(1) of the Organisational Rules of the NIJ, when prosecutors are promoted from the regional to the provincial level, judges and prosecutors must complete a mandatory training course at the NIJ to improve their qualifications. The minimum duration of the course is at least 15 days. It comprises several levels, each with a maximum duration of 5 days. The cost of attendance of the training by prosecutors is covered by the NIJ.

Following the induction training and the training referred to in Article 41(1) of the Organisational Rules of the NIJ, prosecutors are not explicitly required to attend CLE or take any other measures to maintain or improve their qualifications, although they have the right to do so free of charge. For the purposes of the performance evaluation of prosecutors due to promotion, appointment as an administrative manager or specialisation, the SJC may mandate that some courses be taken on a mandatory basis (see Articles 260–261 of the JA).

On the whole, the interviewees have shared their satisfaction with the more readily available CLE possibilities for prosecutors, the standard of training and the choice of subjects. CLE relies on a variety of sources, mostly from the NIJ, but also from the Prosecutors' Association and other organisations, and training takes place both in Bulgaria and overseas. As compared to the findings set out in the 2010 PRI there has been significant progress both in terms of the capacity of the NIJ and the scope of CLE topics. It is also important to note that training takes place both in Sofia and other areas in Bulgaria and that the dissemination of information about upcoming training events has greatly improved.

One of the acknowledged problems of the NIJ is that it does not have proper full-time staff. It functions with limited full-time personnel and relies on part-time tutors for many of its training programmes. In 2012, the NIJ conducted a competition for 2 permanent prosecutor trainers and initially did not receive a single application, which meant that the vacancy period had to be extended. The low prestige of the job requires compromise. The criteria, status and responsibilities of full-time tutors are stipulated in Articles 49 to 51 of the Organisational Rules of the NIJ. The selection procedure (open competition and launched in 2012) is governed by Article 18 of the Rules on Training Activity, which are published on the webpage of the NIJ⁹. As a result of the first project implemented under the OPAC, the NIJ developed detailed rules on the selection and recruitment of full-time tutors with the aim of improving the system set in place.

In turn, this has raised doubts as to the speed of planning and rolling out new and existing programmes and the lack of co-ordination between the different training providers, and in particular the Prosecutors' Association. However, the interviewees have shared their satisfaction with the co-ordination of efforts. The NIJ has maintained the practice of certifying and approving training courses conducted locally, outside of its premises, which we discussed in the 2010 PRI. Thus, training can be brought closer to all prosecutors in

⁹ See <http://www.nij.bg/Articles/Articles.aspx?lang=bg-BG&pageid=498>.

Bulgaria at the cost of organising them at the NIJ. The prosecutors interviewed have described this form of CLE as a success.

The problems identified in the 2010 PRI in respect of the lack of publicity in the announcement of the selection criteria for full-time tutors, which was a barrier to recruiting the most highly qualified professionals in the area, have been taken on board and efforts are being made to address them. For example, by Order No LS-323 of 10 February 2012 of the Prosecutor-General the Personnel and Training Unit of the Administrative Department was asked to conduct a survey to assess training needs and send the results to the Co-ordination of Institutional Cooperation Unit of the Co-ordination of Institutional Co-operation, Training and Public Communication Department of the Supreme Prosecution Service of Cassation, which in turn was given responsibility for the co-ordination of the training of prosecutors at other institutions and, acting in co-ordination with the Personnel and Training Unit, organise external training programmes. This has helped towards addressing another weakness identified in the 2010 PRI relating to the recommendation for the Prosecution Service to set in place a comprehensive mechanism for the development of the skills and qualifications of staff and co-ordinate all existing activities in this area. After the 2013 Functional Analysis of the Bulgarian Prosecution Service was drawn up and the Action plan for the period 1 September 2013 – 1 March 2015 was adopted, by Order LS-3414 of 15 November 2013 the new structure of the Supreme Prosecution Service of Cassation was approved. Following the restructuring, this activity became the responsibility of the Administrative Department of the Bulgarian Prosecution Service.

More can still be done to put in practice the idea about a comprehensive policy of the Prosecution Service as regards CLE and the development of a mechanism for the implementation of this policy. The magistrate mentorship programme implemented after initial appointment represents a significant step forward on the part of the Prosecution Service towards taking responsibility for magistrate development, albeit its scope currently only applies to junior prosecutors and the programme is not implemented up to a consistently high standard. It is necessary to develop appropriate forms and instruments in order to expand CLE to cover all prosecutors. Orders Nos 1774/2008 and 323/2012, which introduce and develop the idea of a register of all existing in-house and external CLE activities, and a database of the training courses and specializations of individual prosecutors and training needs have been a step in the right direction. In this sense, since the 2010 PRI the Prosecution Service has taken subsequent positive steps to establish control over the CLE process.

For the sake of comprehensiveness it should be noted that attitudes towards CLE at the NIJ are not consistently positive. Some think that the NIJ should fine-tune its training programmes so that they are better suited to the needs of prosecutors¹⁰.

Last but not least, it should also be mentioned by by Order No LS-253/2011 of the Prosecutor-General, a unit was established at the Supreme Prosecution Service of Cassation, which handles forensic investigations whose functions are defined in the abovementioned Order No 323/2012. This has effectively addressed another recommendation set out in the 2010 PRI, which helps a clearer picture emerge of the forensic and criminal trends training needs of prosecutors.

Another significant problem is the insufficient budget funds allocated to the NIJ, which for a fourth year in a row has remained at the level of 2009 (2 578 000 BGN). The NIJ is

¹⁰ *The training of magistrate mentors causes a row at the SJC*, published on 29.05.2014 in Praven Svyat: <http://legalworld.bg/36496.obuchenie-na-magistrati-nastavnici-skara-vss.html>.

attempting to compensate the shortage of funds by project and other external funding, but this creates certain risks¹¹. For more detailed information see the technical report accompanying the European Commission's report on the progress achieved by Bulgaria under the Co-operation and Verification Mechanism of July 2012¹².

Factor 3: Selection: Recruitment, Promotion and Transfer of Prosecutors

Prosecutors are recruited, promoted, and transferred through a fair and impartial procedure based on objective and transparent criteria, such as their professional qualification, abilities, performance, experience, and integrity.

While political elements may be involved, the overall system should foster the selection of qualified individuals with integrity and high professional qualifications.

Conclusion	Correlation: Neutral	Trend ↔
<p>The SJC selects prosecutors for appointment via national competitions, which include a written exam, oral interview, and review of the candidates' law school and state examination records. Promotion and transfers are awarded based on a performance evaluation encompassing both general and specific criteria. The competitions for both appointments and promotions or transfers are generally regarded as being objective yet time-consuming. Although the competitions are considered to be an improvement over the previous appointments process, some believe that the selection criteria may be overly focused on quantitative indicators that do not reflect more subjective, yet similarly important, qualities.</p>		

Analysis/Legal Background:

According to Article 129(1) of the Constitution states, that prosecutors and other magistrates are appointed by the SJC. To be eligible for appointment as a prosecutor, an individual must be a Bulgarian citizen with no other citizenship with the following qualifications: hold a higher education degree in law; has completed the internship herein provided for and obtained legal competency; has the required standard of ethics and professionalism, in compliance with the Code of Ethics for judges, prosecutors and investigators; has not been sentenced to imprisonment for a premeditated criminal offence, notwithstanding rehabilitation; is not an elected member of the SJC who has been relieved from office on disciplinary grounds due to impairing the prestige of the judiciary; Does not suffer from a mental illness. See Article 162 of the JA.

Appointments in the judiciary require passing a centralised competition. The competitions for junior prosecutors are conducted once a year – an announcement is published in

¹¹ In the last three years the increase in the number of activities, the human resources capacity enhancement and budget of the NIJ has been put on hold. This has caused the Institute to proactively seek alternative sources of funding from international doors and bi-lateral cooperation projects. An International Department was established responsible for the monitoring and facilitation of these projects. According to expectations in 2012 these alternative sources of financing will exceed the government subsidy. This created certain risks in respect of financial management and cannot be regarded as a viable long-term solution or substitution to government funding.

¹² The technical report is available at http://ec.europa.eu/cvm/docs/swd_2014_36_bg.pdf.

January and the actual competition takes place in April. The competitions for initial appointment of prosecutors are conducted at least once a year and not later than 2 months following the announcement. The planning of the appointment of junior prosecutors is a responsibility of the SJC, acting on a proposal received from the administrative managers of the bodies of the judiciary for each calendar year and may not be altered after the competition has been announced. Using a random draw system, the SJC allocated 20% of the vacancies in courts, the prosecution service and the investigation service for the magistrates who will be receiving their initial appointment. This percentage is set individually for each level of the prosecution service.

The vacancies for junior judges and prosecutors and the number of initial appointees are published by the SJC in the State Gazette, one national daily newspaper and on the webpage of the SJC. The Council holds separate competitions for each body of the judiciary and publishes its decision in the SG, one daily national newspaper and on its webpage. The competitions are conducted by an examination board consisting of a chairperson, four members and two reserve members. Depending on the number of applicants the SJC may set up more than one examination board. The competitions for junior prosecutors have an oral and a written test component and applicants are graded on a scale from 2 to 6. Applicants who have received a grade of at least 4.50 are allowed to proceed to the oral examination. The ranking of the candidates in the competition for young prosecutors is handled by the competition commission on the basis of the grades received, which is the sum of the grades received in the oral and written exam components. When two applicants receive the same grade, they are ranked on the basis of the results of their final exams at University. Similar rules apply to the ranking of candidates for initial appointment. The decisions of the SJC may be appealed within 7 days of the date on which they are announced before the Supreme Administrative Court by any interested party. The SAC hears the case sitting as a three-judge panel and its decision is final.

The competitions for promotion or transfer of prosecutors within the judiciary are conducted after the administrative managers have notified the SJC of any available vacancies. The Council announces the vacancies to be filled by competition in the form of an interview for each body of the judiciary. Competitions are conducted by a committee appointed by the SJC, which consists of a chairperson, four members and two reserve members. SJC members and administrative managers cannot sit on the examination committee. Judges and investigators cannot sit on the competition committees conducting the interviews with prosecutors. Competition committees conduct interviews with the applicants on practical issues relating to the application of the law. When determining the score of each applicant, their performance during the interview and the results of their regular performance assessments are taken into consideration on the basis of which an assessment is made of the professional merits of the candidate. The SJC adopts a decision on the promotion or transfer of judges, prosecutors or investigators on the basis of the ranking until all vacancies are filled.

The detailed rules of procedure are set out in the RULES OF PROCEDURE FOR CONDUCTING COMPETITIONS FOR JUNIOR JUDGES AND JUNIOR PROSECUTORS, INITIAL APPOINTMENT AND PROMOTION AND TRANSFER OF JUDGES, PROSECUTORS AND INVESTIGATORS, adopted by the Decision of the SJC set out in Minutes No 9 of 7 March 2013. They repealed the Rules of procedure on conducting competitions and appointing administrative managers at the bodies of the judiciary, adopted by the SJC and set out in Minutes No 39 of 28 November 2011; amended by Minutes No 1 of 12 January 2012, except for Section 'Appointment of administrative managers'; amended by Minutes No 21 of 22 May 2014 and 33 of 17 July 2014.

The vacancies for administrative managers in the bodies of the judiciary are published on the webpage of the SJC. They are filled by competition. With the adoption of new rules for

the selection of administrative manager in March 2013 a possibility was introduced for not-for-profit organisations, higher education institutions and research organisations to submit opinions to the SJC, not later than 7 days prior to the date set for the interviews, on the candidates, including questions to be asked. Another important recent development is the possibility for the magistrates from the respective body of the judiciary for which the candidate wishes to apply to invite the candidates to a hearing and then submit an opinion to the SJC. To date, this possibility has not been widely used. The procedure for the selection of administrative managers is conducted by the SJC in the form of interviews. The SCJ decision on the selection of administrative managers can be appealed before the SAC.

It should be noted that the expectations set out in the PRI 2006 and later confirmed in the 2010 PRI in respect of competition procedures have been largely met. At the time the interviewees expressed the opinion that the substitution of the former compromised practices for selection and recruitment with more objective criteria will be a positive change. The misgivings shared by others that the procedures are too inflexible and time consuming have also been confirmed. The interviewees appear unanimous in describing the initial appointment procedures as a success. On the whole, the promotion and transfer procedure is also regarded as a positive development. However, some reservations have been voiced, particularly as regards the transfer of prosecutors with an equal rank.

It should be further noted that according to the interviewees the appointments of administrative managers can at best be described as controversial. In the 2010 PRI the new procedures, which were subsequently further elaborated in the 2010 amendment of the JA, were received with hope and regarded as definite progress. Today, the interviewees are sharing misgivings according to which although the procedures for the appointment of administrative managers are public serious doubts still persist about their transparency. Some have alleged that in many cases the key appointments are decided in advance on the basis of considerations that are very different to those of a merit selection by competition.

According to the results of a national representative survey among prosecutors from regional, district and appellate prosecution offices¹³, no indisputable mechanisms for career advancement and appointment of chief prosecutors were developed within the system of the prosecution service. It's the prosecutors' impression that no conditions were created to ensure that people advance in the hierarchy solely on the basis of their personal and professional qualities. More than two thirds of the prosecutors think that those who advance in the hierarchy of the prosecution office are not those of irreproachable integrity and professional merit. A mere one fourth (24%) expressed the opposite view.

Another important topic is the one concerning performance evaluation. Mostly in this regard, the interviewees were strongly critical of performance evaluation. According to the opinions expressed, the system is flawed and counts the number of bills of indictments and appeals but ignores convictions. Furthermore, evaluation appears to be based largely on quantitative criteria without a mechanism being in place for evaluation of the standard of work of prosecutors. Opinions have been expressed that a more accurate picture would emerge if

¹³ The study was conducted by Global Metrics Agency for social and market research on assignment by the Bulgarian Institute for Legal Initiatives Foundation. Within the study 450 surveys with prosecutors from around the country and in-depth interviews with judges, prosecutors, investigators and investigating policemen were conducted. The aim of the project was to distinguish the viewpoints of all interested in the work of the prosecution office and to study the attitudes towards reforms mainly among rank-and-file prosecutors. The survey results are available at the webpage of the Bulgarian Institute for Legal Initiatives: www.bili-bg.org, section "Publications".

the statistical data about the cases lost by the Bulgarian government in Strasbourg and the prosecutors who handled those cases be taken into account as ECHR judgments single out a number of serious deficiencies in their work.

According to 56.88% of the respondents who participated in the national representative survey, performance evaluations fail to give an accurate and fair assessment of the prosecutors' work, while 40.37% answered "no" or "rather no" to the question whether they personally feel fairly assessed. By way of comparison, 36.70% of the interviewees chose the "rather yes" answer to the same question.

A continued trend from the 2010 PRI is that the interviewees are strongly critical of the evaluation of the different types of cases because their complexity and relative weight can differ significantly, which reflects on evaluation. At the time of publishing the 2010 PRI, the former SJC had taken up an initiative to redesign performance evaluation. Criticism in this regard has not let up and remains a topical issue. As indicated in the 2010 PRI caseload continues to be a serious problem. The efforts in this respect, particularly in the area of planning and resources allocation, which has resulted in striking geographical discrepancies in the number of cases handled by one prosecutor, the equipment and conditions of work, are insufficient. Measures to address this criticism were envisaged in Chapter 3 of the Strategy for Continuation of the Reform of the Judiciary, adopted by the MoJ in June 2010, whose main strategic goal was to actively manage the caseload of magistrates and improve their conditions of work on the one hand and optimise their numbers and distribution on the other hand. Despite this, as already stated, these changes have remained wishful thinking. The implementation of this task has passed on to the new SJC, and in particular its committee on judicial workload. At the time of drafting this analysis, the committee in question is working to develop a methodology for assessment of judicial workload and testing it on a pilot basis at a certain number of courts¹⁴. The Bulgarian Prosecution Service has undertaken an independent study whose results are set out in the Functional Analysis and the Action Plan thereto.

¹⁴ The topic of workload was mentioned in the concepts presented during the pre-appointment hearings of all members of the SJC.

Factor 4: Selection without Discrimination

The recruitment, promotion, and transfer of prosecutors at every level of hierarchy shall not be unfairly influenced or denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, national, social or ethnic origin, physical disabilities, or economic status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a citizen of the country concerned.

Conclusion	Correlation: Positive	Trend↑
While legal protections prohibit ethnic and gender discrimination, Bulgaria does not maintain records on the ethnicity, racial or gender composition of the Prosecution Service. Interviews reveal that although only a few prosecutors belong to ethnic minorities, nearly a majority of prosecutors are women, and at all levels of responsibility. The selection criteria for appointment in the Prosecution Service are merit-based and non-discriminatory, and interviewees did not report any incidents of gender, racial, or ethnic discrimination.		

Analysis/Legal Background

Article 6 of the Constitution provides that “[a]ll citizens shall be equal before the law. Abridgement 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.” According to Article 8 of the new Judicial System Act the laws are applied with “precision and uniformity” to all persons and with “no limitation of rights or any privileges based on race, nationality, ethnicity, sex, origin, religion, education, convictions, political affiliation, personal or social status or patrimony”. **THE PROTECTION FROM DISCRIMINATION ACT**, SG No 86 of 30 September 2003, *last amended* SG No 5 of 15 February 2013, lays down a general prohibition of direct and indirect discrimination based on (*inter alia*) gender and ethnicity, requires equal standards of evaluation, promotion and access to training, and encourages hiring aimed at balancing workforces by gender and ethnicity. See Articles 4, 14–15 and 24.

The 2001 census (which is the most recent) indicated that 8.8% of the Bulgarian population identified themselves as ethnic Turks, while another 4.8% declared themselves as Roma. See National Statistical Institute, *Population at 1/3/01 by Districts and Ethnic Groups*, available at <http://www.nsi.bg/Census/Ethnos.htm>. While respondents reported the presence of a few ethnic minorities, such as Roma, Turkish, Jewish, or Armenian, within the Prosecution Service, the Office of the Prosecutor General does not maintain statistics regarding ethnic minorities, as the gathering of such statistics would be deemed discriminatory. The selection criteria for appointment in the Prosecution Service are based solely on merit. While being an equal opportunity employer, the Prosecution Service does not appear to have specific programs to encourage the recruitment of ethnic minorities, and most respondents reacted negatively to “positive discrimination”, or affirmative action-type rules. Interviewees believed that the presence of solid guarantees to prevent discrimination against minorities is evidenced by the non-discriminatory selection criteria for appointment in the Prosecution Service, coupled with a long history of affirmative action for minorities in the Bulgarian overall educational system. It was also noted that there are ethnic minority prosecutors as well as magistrates who hold managerial positions.

Furthermore, both female and male respondents generally cited Bulgaria's reputation as a tolerant culture, noting the near equal representation of women and men within the Prosecution Service. Women appear to be active at all levels, and some respondents indicated that women were increasingly gaining access to senior supervisory positions. Currently women hold key offices in the Prosecution Service at all levels, such as deputy prosecutor general, chief inspector of the Prosecution Service's internal inspectorate, chief appellate, district and regional prosecutor, Prosecutor General's office spokesperson, etc. Similarly to PRI 2006, respondents indicate that discrimination is not tolerated, recalling an instance in which a prosecutor was sanctioned by the Prosecutor General for gender harassment. Respondents did not report any formal complaints or litigations involving gender, racial, or ethnic discrimination.

II. Professional freedoms and guarantees

Factor 5: Freedom of expression

Prosecutors, like other citizens, are entitled to freedom of expression, belief, association, and assembly. In exercising these rights, prosecutors should always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

Conclusion	Correlation: Neutral	Trend ↔
Prosecutors are restricted from making public statements on active cases and must be politically independent. While the Prosecution Service has developed a much more open and active relationship with the media, and provided prosecutors with greater freedom of expression, unfortunately, some prosecutors have acted inappropriately in expressing their views on pending cases.		

Analysis/Legal Background:

No significant changes have occurred since the publication of the 2010 PRI. While Article 39 of the Constitution provides all citizens with the right to freedom of expression, it also notes that such a right cannot be used to the detriment of the rights of others. More specifically, Section V of the Judicial System Act contains several restrictions on prosecutors' freedom of expression. Article 211(2) states that prosecutors "[s]hall be obliged to keep as official secret the information learned by them in relation to their duties and concerns the interests of the citizens, the legal persons and the state."; Additionally, Article 212 not only restricts prosecutors from expressing "preliminary opinion" on cases before them, but also on cases not assigned to them; Bulgarian prosecutors are also subject to restrictions in terms of membership of political parties because in accordance with Article 6 of the JA they must be 'politically neutral'. According to Article 198 of the Criminal Procedure Code prosecutors may grant permission for the disclosure of information about ongoing investigations.

The findings set out in the 2010 PRI should be reiterated here – according to international legal standards prosecutors have freedom to express an opinion¹⁵, but in practice there have been cases when disciplinary proceedings have nearly been opened following statements to the media by prosecutors. For this reason the provisions that restrict prosecutors' freedom of expression appear to have precedence. However, the interviewees have expressed the opinion that the freedom in question is not particularly useful as the media tend to paint prosecutors who refuse to communicate with them in a negative light.

In this sense, a well-balanced access to the media would be welcome both in terms of greater transparency and building a more realistic image of the prosecution service in the eyes of the general public. Although certain measures were taken to address the situation,

¹⁵ See Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 8, and Rec (2000) 19 of the Committee of Ministers on the role of prosecutors in the criminal justice system, Principle 6.

the public statements of prosecutors on pending cases can be appropriate and balanced¹⁶. Despite this, we should note certain surprising statements from prosecutors, including in light of highly politicized cases. In the cases in question, the prosecution service has disclosed information that presents the parties in a negative light despite the facts of the case being unknown. Recently, certain statements of the service in the context of the appointment of senior officials have raised eyebrows. There have been instances when representatives of the executive branch of government have discussed matters within the remit of competence of the prosecution service, which later had a negative impact on the work both investigating police officers and prosecutors.

According to some interviewees, young prosecutors tend to express their positions more freely whereas their more senior colleagues, particularly those due to retire soon, prefer not to voice their opinion, particularly when they would differ from the official stated position on an issue. This conclusion is warranted by the fact that the prosecution service has a highly centralised structure and such a breach in hierarchy can be seen as insubordination.

Factor 6: Freedom of Association

Public prosecutors have an effective right to freedom of professional association and assembly.

They are free to join or form local, national, or international organizations to represent their interests, to promote their professional training and to protect their status, without suffering professional disadvantage by reason of their participation or membership in an organization.

Conclusion	Correlation: Positive	Trend ↑
The Association of Prosecutors has made significant contributions to the prosecutorial profession. Over the last several years the Association has successfully been transformed into an independent and effective association, largely based on an internal review and input from prosecutors. It has different committees reflecting the needs and priorities of prosecutors. The organisation continues to speak on matters relating to the protection of the interests of the prosecutorial profession. Unfortunately, some interviewees share that the Association avoids taking up attitudes to the important issues and is inconsistent in its positions.		

Analysis/Legal Background:

Article 44 of the Constitution guarantees to citizens “the right to freedom of association”. Particularly, “... prosecutors and investigators may form and participate in organizations, protecting their professional interests¹⁷. Additionally, Article 195(4) of the JA prohibits magistrates from receiving remuneration from “state, municipal or public organizations, companies, co-operations, non-profit legal persons, natural persons, or sole entrepreneurs....”

¹⁶ *The Prosecution Service is stalling a case relating to Veneta Markovska*, published on 16.09.2013 in Sega Daily: <http://www.segabg.com/article.php?id=665907>.

¹⁷ See Article 217(2) JA.

Founded in 1997, the Prosecutors' Association (hereinafter 'the Association') remains the only national organisation of prosecutors that has real influence and commands genuine authority. It has undergone a period of major transformations as demonstrated by the decamping of the chairperson of the other professional association – the National Association of Bulgarian Prosecutors – to the Association. The National Association of Bulgarian Prosecutors continues to exist but only nominally so.

As compared to the 2010 PRI, the membership of the Association has decreased in numbers. However, this is due to the policy of the organisation of encouraging the membership of prosecutors who are actively engaged in its affairs. For this reason a rule for the automatic expulsion of members who have failed to pay their membership fee for two years was introduced. The fee in question is 35 BGN per year. Thus as at September 2014 the Prosecutors' Association had 492 members.

By a decision of the Managing Board different committees have been set up. To date, these include the training committee, the committee responsible for the publication of the specialist magazine of the Association (*Teza*), which explores various social issues. The magazine is published on a quarterly basis and contains relevant and up-to-date information of interest to prosecutors. A webpage has also been created, which contains an archive of all online publications of the Association (a newsletter and the *Teza* Magazine) as well as other relevant information. The website has a News section, which receives 500 to 600 unique hits per day. As at 1 March 2013 the website had 245 registered users.

As noted in the 2010 PRI the Education and Training Committee was set up at the end of 2007. It conducted an assessment of the training needs of prosecutors working at the different levels and in different geographical areas and founded a Training Academy, which has a spring and autumn session, with training events lasting for up to one week.

The Social Affairs Committee was set up in order to highlight and address various social problems such as housing, access to medical treatment and the conditions for the retirement of prosecutors. The Prosecutor of the year Award, which was still a concept at the time of publishing the 2010 PRI, has already been established. Its goal is to recognise the achievement of renowned members of the Association and their contribution to society. The award is given at the regular annual assemblies of the Association, which since 2009 have taken place annually in June.

The Association does not receive any government funding and relies on membership fees and other sources of funding. It is an independent organisation, which operates without interference from senior officials of the Prosecution Service. The Association has successfully applied for project financing, which has enabled it to expand the scope of its activities. It has repeatedly spoken up in defense of the interests of prosecutors in conflict situations and drafts opinions on matters relating to the Prosecution Service and on proposed legislative amendments on a regular basis¹⁸. It is an active member of the Citizens' Council to the SJC.

The Association has a reputation of an organisation that is responsive to the needs of Bulgarian prosecutors. It continues to build on its achievements to date and genuinely represents the interests of prosecutors. The gradual increase of its members is yet another evidence of the high standard of its work.

¹⁸ For more information see the webpage of the Association: <http://ecocrime.bg/home/2013-08-06-19-54-12>.

According to the results of the national representative survey 44% of respondents believe that most of the opinions expressed by the Association of Prosecutors in Bulgaria defend the position and interests of prosecutors. According to 37% those positions frequently do not reflect the views and interests of prosecutors, with 48% regarding the Association as inconsistent and occasionally failing to respond to important matters¹⁹.

Factor 7: Freedom from Improper Influence

Prosecutors are able to perform their professional functions without improper interference from prosecutorial and non-prosecutorial authorities.

Conclusion	Correlation: Negative	Trend ↔
<p>The independence of prosecutors is protected by law, while prosecutorial corruption and bribery are punishable crimes. The Prosecutor General has taken positive steps to shield prosecutors from improper interference, including enhanced respect for prosecutorial discretion, referral of corrupt prosecutors for criminal charges or disciplinary sanctions, and increased attention to ethical and conflict of interest standards. As a result, some respondents noted that the practice of bribery by parties had significantly diminished, but observers have noted that corruption remains widespread. Although the efforts of the Prosecutor General are encouraging and concrete steps have been taken to combat corruption, the overall impression is that the prosecution function is still subject to improper influence from parties, attorneys, judges, governmental authorities, organized crime, and family connections.</p>		

Analysis/Legal Background:

The primary guarantee of this principle is found in the Constitution, which states that “the judiciary shall be independent. In the performance of the functions thereof, all judges, jurors, prosecutors and investigators shall be subservient only to the law” (see Article 117(2)). The Constitution also helps to ensure prosecutorial independence by providing that the SJC’s decisions to select, promote, transfer, demote, or dismiss magistrates, including prosecutors, are taken by secret ballot (see CONSTITUTION, Article 131). Provisions protecting the independence of prosecutors are found throughout various statutes, including the Judicial System Act, which specifies that prosecutors must base their decisions upon the Constitution, “[o]n the law, and on the evidence...” Judicial System Act, Articles 2 and 3. Additionally, Article 4 of the Judicial System Act provides that prosecutors must make their decisions impartially. One finds similar provisions in the Criminal Procedure Code, which obliges prosecutors to secure the objective truth (see art. 13) and to base their decisions upon their inner conviction (see art. 14). See *also* CRIM. PROC. CODE Articles 10, 18. Other statutory acts such as the **CRIMINAL CODE**, SG No 26 of 2 April 1968; last amended SG No 17 of 21 February 2013 (hereinafter CC), and the **PREVENTION AND DETECTION OF CONFLICTS OF INTEREST ACT**, SG No 94 of 31 October 2008, last amended SG No 15 of 15 February 2013 (hereinafter PDCIA), stipulate the basic provisions on the prevention of the different forms of corruption amongst prosecutors. Other laws provide the basis for combating prosecutorial corruption. For example, the Criminal Code states that a person

¹⁹ For more information see Attitudes of prosecutors towards the reforms in the prosecution office and the criminal procedure, results of a national representative study among prosecutors of the regional, district and appellate prosecution offices, available at www.bili-bg.org at the “Publications” section.

who “entices an official of...the judicial authorities to violate his official duty in connection with the administration of justice shall be punished by deprivation of liberty for up to from one to six years.” CRIMINAL CODE Article 289. From the other side, the “official who accepts a gift or any other undue benefit, or accepts a proposal or a promise for a gift or benefit, in order to perform or fail to perform an act connected with his service, or because he has performed or failed to perform such an act, shall be punished for bribery by deprivation of liberty for one to six years” (see Article 301). Further, for bribery committed by a “person holding a responsible official position, including that of a prosecutor,...the punishment shall be...deprivation of liberty for three to ten years, fine of up to 20 000 BGN. Other punishments are also provided for (see Articles 302(1) and 304a of the CC). The PDCIA applies to all public officials, including prosecutors (see Article 3(2) PDCIA)). According to the provisions laid down therein, a public official may not represent the central or local government when they have a private interest in a particular decision. (*Ibid* Article 6). A prosecutor who violates this provision may be sanctioned by a fine of BGN 5 000 up to 7 000 and in the case of a repeat violation, a fine of BGN 7 000 up to 10 000 may be imposed (*Ibid* Article 35 PDCIA).

As noted in the 2010 PRI, in theory these provisions should enable SJC members to make personnel decision relying on their conscience without being subjected to pressure to cast their vote in a certain way as a service to one political party of another. Regrettably, the interviewees expressed the opinion that the former members of the SJC, which left office in 2012 could not be given as a positive example in this regard. Opinions on the merits of the newly appointed members of the SJC who took office in September 2012²⁰ are not different. According to the interviewees the negative finding set out in the 2010 PRI that the widespread belief that the prosecution service is susceptible to corruption and external influence due to political and economic interests of the organised crime and social ties with friends and relatives continues to be valid. Undoubtedly this has had an impact on the TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX 2012. According to the index Bulgaria brings in the rear, occupying the 75th place in the EU – only one place ahead of Greece, which in 2012 had the lowest ranking). Between 2009 and 2012 Bulgaria’s scores in absolute figures collapsed across the board – 3.8 (2009); 3.6 (2010), 3.3 (2011), with results being ranked on a scale from 1 to 10 and higher values indicating a weaker perception of corruption. The tentative expectations of a positive trend in the overall perception of the level of corruption in Bulgaria expressed in the 2010 PRI and largely due to the high number of charges brought in court by the then newly-elected Bulgarian government and the subsequent suspension of EU funding have not been justified.

Unfortunately, the 2010 PRI indicators are also confirmed by the World Corruption Barometer of Transparency International, which includes a breakdown of the perception of corruption in the different sectors and institutions. In the 2009 report, the legal system and the judiciary received a score of 4.5 out of 5, with 1 indicating total absence of corruption and 5 – very high corruption – see GLOBAL CORRUPTION BAROMETER, TRANSPARENCY INTERNATIONAL 2009. The ranking shows a slight improvement from 4.3 to 5, which is the worst result across 11 sectors. By way of comparison, political parties are a close second with 4.1. Some of the interviewees have stressed that the approach of Transparency International is based on public perception but admit that in recent years the actions and statements made by senior government officials have had a strongly detrimental impact on the reputation and prestige of the judiciary.

²⁰ NGOs: *The SJC wants money against reforms*, published on 29 July 2014 in Dnevnik Daily: http://www.dnevnik.bg/bulgaria/2014/07/29/2352748_nepravitelstveni_organizacii_vss_moje_da_iska_pari/. Two more NGO's leave the Citizens' Council of the SJC, published on 29 July 2014 in Praven Svyat: <http://www.legalworld.bg/38019.oshte-dve-organizacii-napuskat-grajdanskii-syvet-kym-vss.html>.

This warrants the conclusion that regardless of the efforts of the prosecution service to bring about a change in this regard, the scope of reform has not been sufficient to overcome the propensity to corruption. According to the interviewees, efforts in this regard have lowered but not eradicated corruption. Some express the opinion that corruption has simply become more sophisticated. The conclusions of the Centre for the Study of Democracy (CSD), which conducted a study in 2010, which is cited in the 2010 PRI, remain valid today, notably that the practice of direct bribing of prosecutors using cash or other gifts has less significance simply because of the change in the model used by organised crime and special interest business groups to influence them.

The interviewees have a strongly negative opinion of the improper influence on the work of prosecutors. Some have singled out examples of senior government officials 'advising' prosecutors on the actions to be taken in specific cases, which at the very least undermines the public perception of the institution in the eyes of the public, which by law is independent and the 'master' of the pre-trial phase. For this reason those interviewed outside of the prosecution service have expressed the opinion that the prosecution is the 'advocate' of the police, and not the leading party in the pre-trial phase. According to others this conclusion is incorrect because this development reflects the better co-operation between the Ministry of Internal Affairs (MIA) and the prosecution. Even if the latter proposition were to be accepted as credible, the answers received from some prosecutors, when asked about improper political pressure, in the spirit of the need for prosecutors to be able to resist this type of intervention and that they personally have not had any such experience because it would not have produced a result, give rise to concerns. The lack of a categorical and unambiguous answer that this type of pressure does not exist, particularly in light of the above opinions, is seen by interviewees as an implicit admission that attempts in this regard take place.

Similar conclusions emerge from the national representative survey according to which the pressure on prosecutors comes both from the top and from outside, notably from influential political and economic circles. According to prosecutors the most widespread forms of unethical and corrupt behavior include influence from higher-ranking prosecutors and abuse of power by the heads of prosecution offices, selective decisions to initiate proceedings, succumbing to pressure from influential political and economic players, etc. The share of those who have pointed out each of these forms of unethical and corrupt behavior varies. However, it should be noted that the sum of the respondents, despite the different rates, exceeds two-thirds of all interviewees.

The reasoned opinions of the Supreme Administrative Court in judgments on the removal of key prosecutors from office are even more disconcerting²¹. There are allegations that the principle of random case allocation has been breached by key figures in the prosecution service²². The adequacy of random case allocation at the prosecution service should be examined in the framework of a separate study that takes into account the specialist nature of its work. Undoubtedly, doubts have lingered, *inter alia*, in respect of attempted external influence, which may have precipitated the violation or political pressure for the removal of the prosecutors concerned. In both cases, the conclusions hardly paint a positive picture of the prosecution service. In addition, it should be noted that despite the problems relating to

²¹ *Nikolay Kokinov was susceptible to influence and willing to do favours to the government*, published on 13.12.2013 in *Praven Svyat*: <http://www.legalworld.bg/33748.nikolaj-kokinov-bil-podatliv-na-vlianie-i-uslujiv-na-vlastta.html>.

²² *Roman Vasilev lied to Sotir Tsatsarov*, published on 11.04.2013 in *Judicial Reports*: <http://judicialreports.bg/2013/04/%D1%80%D0%BE%D0%BC%D0%B0%D0%BD-%D0%B2%D0%B0%D1%81%D0%B8%D0%BB%D0%B5%D0%B2-%D0%B8%D0%B7%D0%BB%D1%8A%D0%B3%D0%B0%D0%BB-%D1%81%D0%BE%D1%82%D0%B8%D1%80-%D1%86%D0%B0%D1%86%D0%B0%D1%80%D0%BE%D0%B2/>.

random case allocation, according to the conclusion set out in the Functional Analysis of the prosecution service 'the Bulgarian Prosecution Service has set in place adequate arrangements for random case allocation of files and cases'²³ and the deficiencies are blamed on the software used. Despite the attempts to build a strict system for case assignment, cases are still sometimes assigned in deviation from the principle of random assignment, with prosecutors occasionally receiving verbal instructions from their superiors in particular cases. According to 41% of the prosecutors there are examples of breach of the random case assignment principle. According to 24% of respondents the reason therefore lies with the specialization of individual prosecutors, whereas 17% don't see any convincing explanation for this practice.

This does not mean that no action has been taken to address the problems identified. For example, the findings set out in the 2010 PRI in respect of the involvement of prosecutors in police actions have been addressed, which can be interpreted as a sign that political pressure has been exerted on the prosecution service that infringes the rights of victims. This has led to the adoption of Guidelines on co-ordination and interaction between the prosecution service and the MIA when taking urgent, initial actions in investigations (No 133 of 20 March 2012). Furthermore a draft law amending and supplementing the JA was drawn up and submitted to Parliament on 4 February 2013 by the Council of Minister, which can have a positive influence on developments in this regard. Specifically, changes were envisaged to the competition and appointment procedures, e-justice, caseload etc. However, the political developments that ensued cause the Parliament to be disbanded and precipitated early elections, which has blocked the adoption of the draft JA. From a political point of view, significant time was lost due to the lack of continuity in the approach taken by the teams led by the Ministers of Justice in the period 2009–2012.

In light of these observations and in a broader political aspect of which the prosecution service is an integral part, the conclusion discussed at the presentation by the CSD of the study Corruption and Anti-Corruption in Bulgaria, notably that despite the great number of committees and government agencies tasked with combating corruption, the Bulgarian governments fail to achieve tangible results, should be re-iterated. In connection with this in March 2013 Finland, along with Germany, officially opposed the entry of Bulgaria into the Schengen area due to problems with corruption and the inefficiency of anti-corruption efforts²⁴, a conclusion that has strong implications for the prosecution. In this sense, the newly appointed Prosecutor-General is faced up by the significant challenge and major task of curbing the negative trend of the last few years. Maybe this is the reason why one of his first steps in office was to put under close scrutiny structures, which in the past were tasked with finding solutions to and tackling this internal problem. Following the ensuing public outcry and much criticism, including on the part of the Prosecutor-General, the structure of the Inspection Service under the jurisdiction of the SPSC was reorganized²⁵.

Foregone conclusion – the SJC 'selected' Ivan Kalibatsev for President of the Plovdiv Municipal Court, published on 04.07.2013 in Judicial Reports: <http://judicialreports.bg/2013/07/%D0%BF%D1%80%D0%B5%D0%B4%D0%B8%D0%B7%D0%B2%D0%B5%D1%81%D1%82%D0%B5%D0%BD%D0%BE-%D0%B2%D1%81%D1%81-%D0%B8%D0%B7%D0%B1%D1%80%D0%B0-%D0%B8%D0%B2%D0%B0%D0%BD-%D0%BA%D0%B0%D0%BB/>.

²³ See Report on a functional analysis of the structure, procedures and organisation of the Bulgarian Prosecution Service 2007–2012, page 82

²⁴ • *120 billion lost to corruption in EU each year*, published on 06.03.2013 in EU Observer (English version): <http://euobserver.com/justice/119300>.

²⁵ For more information, see *The Inspection Service of the SPSC disbanded over allegations of serving other masters*, published on 31.01.2013 in Mediapool: <http://www.mediapool.bg/inspektoratat-na-vkp-be-razformirovan-zaradi-samneniya-za-porachkova-rabota-news202353.html>.

Public expectations and those of most interviewees are that the newly appointed SJC and the Inspection-Service to the SPSC will act in a principled and efficient manner in this regard, in light of the apparent failure of the previous SJC to meet expectations as the above developments amply demonstrate.

Factor 8: Protection from Harassment and Intimidation

Prosecutors are able to perform their professional functions in a secure environment and are entitled, together with their families, to be protected by the State.

Conclusion	Correlation: Neutral	Trend ↔
Security at most court buildings and prosecutorial offices seems generally sufficient, although security at smaller buildings could be improved. Court police are positioned at entrances to judicial buildings, and most judicial buildings have metal detectors and x-ray scanners and require entrants to show identification while prosecutors and other court personnel enter through separate, guarded entrances. However, in some buildings, there was no additional security to prevent unauthorized access to prosecutors' offices. Incidents of harassment or intimidation appear relatively isolated.		

Analysis/Legal Background:

The Criminal Code contains several provisions that protect prosecutors from harassment and intimidation. The murder of a prosecutor carries a sentence of 20 to 30 years imprisonment or a 26 life sentence; infliction of bodily injury upon a prosecutor carries a sentence of anywhere from 1 to 15 years imprisonment; and anyone using force, threats, or abuse of their authority to coerce a prosecutor is subject to 2 to 8 years of imprisonment (see CRIMINAL CODE Articles 116(2), 131(2), 143(3)).

Directorate-General 'Security', which reports to the Minister of Justice, is responsible for the protection of the bodies of the judiciary. Directorate-General Security is a legal person with head office in Sofia and is funded from the budget of the Ministry of Justice. It makes arrangements for and protects courthouses; ensures public order therein and the security of the bodies of the judiciary in discharging the functions of their office; it also provides protection and security services to judges, prosecutors and investigators in accordance with rules and procedures stipulated in a Regulation adopted by the Minister of Justice in consultation with the SJC (see Article 391 of the JA and Article 3 of the Rules on the structure and activities of Directorate-General Security, SG No 60 of 30 July 2009).

As noted in the 2010 PRI, Overall, security in Bulgarian courthouses and prosecutorial offices seemed fairly high, with a few exceptions. All judicial buildings visited by the assessment team had court police positioned at entrances, and persons entering most buildings had to pass through a metal detector and provide identification. At smaller courthouses access control is less stringent. At most courthouses, briefcases, bags and similar items were placed through scanners with conveyor belts. Most buildings had separate guarded entrances for judges, attorneys and other official court personnel, as well as their guests, who were allowed to pass without inspection upon showing identification. In order to address this problem, in some buildings access is restricted by doors, which can only be unlocked by a special key or card.

There have been rare and insignificant cases of threats or attempted threats against prosecutors, for example defendants filing false complaints, attempts at tarnishing the reputation of prosecutors in the media, etc. The interviewees have not shared any concerns about their safety. Following the establishment of the specialist prosecution service, which handles cases relating to organised crime, new arrangements were put in place – the court is housed in a separate building that is protected by sound modern security methods. In this respect, the deficiency identified in the 2010 PRI with regard to organised crime has been addressed. Given the free decision of the prosecutors working for the specialist service to join it of their own free will, the reluctance identified in the 2010 PRI of prosecutors to handle cases relating to organised crime and corruption, which present a threat to their security, is no longer valid.

This warrants the conclusion that security is at an adequate level but that additional efforts are needed to improve arrangements in small courthouses and judicial districts.

Factor 9: Professional immunity

Prosecutors have immunity for actions taken in good faith in their official capacity.

Conclusion	Correlation: Positive	Trend ↔
Prosecutors have functional immunity while conducting their official duties, unless their actions constitute an intentional indictable offense. Despite being a highly topical issue in the past, the matter has been settled and is no longer a bone of contention.		

Analysis/Legal Background:

In recent years the professional immunity of prosecutors has continued to evolve as a topic. As reflected in the 2006 and 2010 PRIs, the 2003 amendments to the Constitution limited immunity for prosecutors to “functional” immunity for their official actions, except for intentional crimes. Currently, Article 132 of the Constitution reads that, “upon exercise of judicial power, judges, prosecutors and investigators shall not incur criminal and civil liability for the official actions thereof and for the acts decreed thereby, except where what is done shall be a general indictable offence under public law.”

In 2003, prosecutorial immunity was widely discussed but is no longer a relevant issue. For this reason a conclusion is set out in the 2010 PRI that with regard to the professional immunity of prosecutors an appropriate balance between shielding prosecutors for acts taken in good faith in their professional capacity seems to have been found, while permitting prosecution and civil actions for intentional crimes and non-official acts. Nevertheless, it can be confidently asserted that in reality prosecutors do not have immunity because they only enjoy immunity from criminal prosecution for criminal offences committed negligently or private acts committed during the course of carrying out their official duties.

Reflecting the amendments to the Constitution, the new JA provides for the lifting of immunity with the relevant provisions taking up a separate Chapter (Chapter IV *Temporary removal from office*) of Title Nine ‘Status of judges, prosecutors and investigators’. According to Article 230(1) of the JA ‘when criminal charges are brought against a magistrate, the Supreme Judicial Council shall temporarily remove his/her from office at the request of the Prosecutor-General until criminal proceedings are concluded’. Immunity can also be lifted when a premeditated general indictable offence has been committed in the

course of a magistrate carrying out the duties of his/her office. In this case, the SJC may remove the magistrate from office until criminal proceedings have been concluded (see Article 230(2) of the JA). In this case, the request must be initiated by the Prosecutor-General and supported by at least 1/5 of all SJC members. The mechanisms enabling the lifting of functional immunity have further narrowed its scope.

Cases against magistrates are tried by the Sofia City Court at the first instance (see Article 35(3) of the Penal Procedure Code). Although the cited provision does not expressly include magistrates as officials with immunity, in its Injunction No 76 of 10 October 2008 the Supreme Court of Cassation held as follows: 'In the opinion of the SCC, judges, prosecutors and investigators are officials with immunity within the meaning of Article 35(3) of the PPC. They undoubtedly have immunity in the aspect of criminal non-liability, albeit solely in respect of acts committed in the course of discharging the duties of their office and their decisions, insofar as by doing so they have not committed a general indictable offence'.

In 2010, there were 30 pre-trial investigations against prosecutors. Out the ones in which proceedings were instituted in 2010, 13 are conducted against 5 prosecutors. In 2010, two pre-trial investigations were completed and charges were brought in court against 2 prosecutors. In 2011, nine pre-trial investigations against prosecutors were monitored (2 are being conducted against the same prosecutor). During the year, charges against 2 prosecutors were brought in court; 6 pre-trial investigations were terminated and 1 prosecutor was sentenced. In 2012, nineteen pre-trial proceedings were conducted against 6 prosecutors. Two of these ended with criminal charges being brought in court against prosecutors and by the end of the reporting period these were still pending in court.

Until 2 December 2013 checks and audits on the work of prosecutors were conducted by the Inspection Service of the Supreme Prosecution Service of Cassation (SPSC) – an independent department of the institution, responsible for overseeing the investigations and cases against prosecutors. In the context of the new structure of the institution, these functions are now performed by the Inspection Service Unit of the Administrative Department²⁶.

On 3 September 2013 a Specialist Interinstitutional Unit responsible for the investigations in pre-trial proceedings concerning general indictable offences committed by judges, prosecutors and investigators was established. The Unit is responsible for conducting checks within the meaning of Article 145(1)(2) and (3) of the JA – when information is available about a criminal offence conducted by a magistrate and conducting pre-trial investigations in respect of such offences. The team is led and controlled by the Prosecutor-General and the Chairperson of the State Agency for National Security (SANS) and the its daily work is supervised by a prosecutor from the Supreme Prosecution Service of Cassation²⁷.

²⁶ Report on the application of the law and the work of the Prosecution Service and investigatory bodies, page 143, *available at*: http://www.prb.bg/uploads/documents/docs_4609.pdf.

²⁷ *Ibid*, page 142.

III. Prosecutorial Functions

Factor 10: Discretionary Functions

Prosecutorial discretion, when permitted in a particular jurisdiction, is exercised ethically, independently, and free from political interference, and the criteria for such decisions are made available to the public. The prosecutor's power to waive or to discontinue proceedings for discretionary reasons is founded in law, and, if applied, sufficiently justified in writing and placed in the prosecutor's file.

Conclusion	Correlation: Neutral	Trend ↔
<p>Prosecutors reported a decrease in pressure or intervention from superiors when exercising their discretionary powers. However, while the process of empowering prosecutors to exercise their discretionary powers independently from interference by their superiors has progressed, its sustainability remains uncertain. Institutional and systemic procedures must be reinforced, resulting in a clear, stable and transparent range of each prosecutor's discretion and responsibility, and ensuring the independence of both the Prosecution Service and the individual prosecutor. Prosecutors also stated concerns with oversight tools intended to keep prosecutorial discretion in check and noted that the overly centralized structure of the Prosecution Service complicates the exercise of discretion by individual prosecutors.</p>		

Analysis/Legal Background:

It should be noted that in a manner of speaking the legislative framework is dualistic. On the one hand, according to Article 14 in taking any decision regarding the investigation or prosecution of any case, prosecutors must be properly motivated by conviction, the totality of evidence, and the law. On the other hand, according to Article 46(3) PPC the higher-ranking prosecutor and the prosecutor from a superior prosecution office may revoke or modify in writing an injunction issued by a prosecutor reporting to him/her. A higher ranking prosecutor or a prosecutor from a superior prosecution office may also revoke an injunction whereby a lower ranking prosecutor reporting to him/her has refused to institute a pre-trial investigation (see Article 213 of the PPC). The JA lays down similar provisions on the relations within the prosecution service. According to Article 136 the prosecution is a centralised body and all prosecutors are subordinate to the Prosecutor-General. Each prosecutor reports to the respective higher ranking official (see Article 136(4) of the JA).

The line managers of the prosecutors reporting to the Prosecutor-General organise and supervise their work (see Article 140 of the JA). According to Article 142 the Prosecutor-General and appellate and district prosecutors must carry out audits and control the work of lower ranking prosecutors immediately below them. Article 142(3) stipulates that every 6 months the Inspection Service of the SJC and the Minister of Justice receive up-to-date information about the number of number of cases in which proceedings have been instituted and the progress in pending ones. According to Article 143 higher ranking prosecutors may suspend and revoke the injunctions issued by the prosecutors reporting to them only in writing, which renders their execution compulsory.

Today, it can be confidently asserted that the trends identified in the 2010 PRI with regard to prosecutorial discretion at the prosecution service is a rule and that prosecutors feel free

to make decisions in respect of the cases handled and to freely participate in discussions with their superiors and colleagues. However, some deviations have been reported²⁸. The transition from the previous state-of-play is supported by the requirement for written interventions on the part of higher-ranking prosecutors. As a result, prosecutors have greater prosecutorial discretion. In practice, a refusal to open press criminal charges cannot be revoked. In this sense, whether a superior prosecutor can revoke an injunction to engage the criminal liability of an accused person, in light of the revoked powers of the Prosecutor-General, remains a point of argument. A step towards the more precise regulation is to make provisions for such interference with prosecutorial discretion in cases when a case-file is subject to special supervision arrangements. This is the essence of the adopted Guidelines on more extensive methodological support and supervision of certain criminal proceedings within the system of the prosecution service (hereinafter the *GUIDELINES*).

In order to place a case-file under special supervision, a decision is necessary on the part of the Prosecutor-General or one of his deputies in consultation with the Prosecutor-General (see Article 5 of the *GUIDELINES*). To some extent, placing a case-file under special supervision would influence the judgment of the prosecutor supervising certain cases, because these would be monitored by special prosecutors put in charge of the cases in question. However, their role is that of providing assistance rather than imposing their views, the ultimate goal being to pool expert knowledge. This is a possibility to receive methodological guidance, in other words the supervising prosecutor's role is to assist the prosecutor handling the case. It should be noted that according to the interviewees in some cases prosecutors seek guidance from superior prosecutors on their own initiative.

Prosecutorial Caseload, 2009–2012

Indicators	2009	2010	2011	2012
Total number of files	264.8 (91.5%)	258.0 (91%)	217.1 (95%)	200.2 (96.2%)
Newly instituted files	58.4 (22.1%)	57.1 (22.1%)	48.5 (22.3%)	44.6 (22.2%)
Refusals to institute pre-trial proceedings	110.3 (41.3%)	120.1 (46.6%)	73.5 (33.9%)	47.8 (23.8%)
Upheld prosecutorial acts by second instance prosecutor	8.8 (74.2%)	9.8 (74.1%)	7.9 (75.9%)	9.1 (76.8%)

Source: Unit Information and Analysis at the Administrative Department of the Prosecution Service (08.03.2013)

It should also be noted that follow-up steps have been taken to ease prosecutorial caseload and eliminate excessive the excessively formal approach identified in the 2010 PRI. These steps are aimed at addressing some of the recommendations set out in the 2010 PRI relating to the additional work prosecutors are required to do that has no bearing to their main duties. For example, the abovementioned Guidelines expressly prohibits requesting reports from superior prosecutors (see Article 16(3) of the *GUIDELINES*). Although there have been cases when this prohibition has been ignored, the idea is to promote the use of the Single Information System (SIS), which contains all necessary information. It should also be noted that the Guidelines envisage measures on the alignment of orders and instructions

²⁸ For example, in November 2012 a seconded prosecutor filed a recusal in a high-profile case. Subsequently, a check was conducted allegedly on the grounds of whether this constituted a disciplinary violation and the prosecutor in question was transferred to another prosecution office.

that are unenforceable due to overlapping, being adopted on grounds that are no longer relevant or their insignificant subject-matter.

Internal and external observers have expressed the opinion that in principle the improper influence on the part of higher-ranking prosecutors in respect of the criminal prosecution of certain individuals has decreased in principle and that restraint is the standard. This positive development is attributed to both the steps taken by the senior officials of the prosecution service and on the changes and reforms of the system. Others contend that the matter remains ambiguous, particularly in high-profile cases. According to 12% of the prosecutors interviewed for the national representative survey there are instances of inexplicable case reassignment, i.e. a prosecutor being arbitrarily removed from a case they supervise on a decision of a superior prosecutor, and the case being assigned to another prosecutor. Although this opinion is held by one in ten prosecutors, the mere hint of such practices raises concerns about the underlying motives and reasons.

The latest report under the Co-operation and Verification Mechanism contains a similar finding and calls on Bulgaria to take measures to strengthen the internal independence of prosecutors in order to safeguard the independence, objectivity and efficiency of investigations²⁹.

As noted in the comments relating to Factor 7, there are indications that external influence cannot be ruled out and that it may distort prosecutorial discretion. Unlike the 2010 PRI, prosecutors now more frequently admitted that they were aware of the problems accompanying their work and that it is their duty and responsibility not to yield to improper influence and pressure. This was stated particularly clearly when political pressure on their work was discussed. The interviewees continue to maintain that there are reasons for concern in smaller areas where the likelihood of political or economic pressure and improper contacts is higher.

However, indications to the contrary have also been given. Some rank and file prosecutors have sought the informal opinion of superior prosecutors or advice from their administrative manager, which can be used to protect their decision should any problem arise.

²⁹ Report of the European Commission and the Council on the progress of Bulgaria under the Co-operation and Verification Mechanism (COM(2012) 411 final) of 18 July 2012, page 10.

Factor 11: Rights of the Accused

Prosecutors shall be impartial in the performance of their functions and must promote equality before the law and respect for the rights of the accused.

Prosecutors shall refuse to use evidence obtained in violation of the accused's human rights.

Conclusion	Correlation: Neutral	Trend ↔
Bulgarian law affords procedural rights to the accused at all phases of criminal proceedings and prosecutors carry out their duties in accordance with the law. However, some instances of violations of the rights of the accused have also been reported. There is room for improvement in the area of supervision of investigations during the pre-trial phase.		

Analysis/Legal Background:

Any person who is part of the criminal proceeding is deemed equal before the law. The court and all pre-trial bodies are obliged to accurately and equally apply the law to all citizens. See, CRIM. PROC. CODE Article 11. The accused is afforded procedural rights at all phases of the criminal proceedings. The court, the prosecutor and investigative bodies need to ensure that the accused is informed of and has the possibility to exercise these rights. Among these is the right of defense, presumption of innocence, the right against self-incrimination (and lack of negative inference for refusing to testify or give statements), and protection against unauthorized detention. The Criminal Procedure Code enumerates the following additional rights of the accused party: "to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence; provide or refuse to provide explanations in relation to the charges against him/her; study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her; adduce evidence; take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; file appeal from acts infringing on his/her rights and legal interests, and have a defense counsel. The accused party shall have the right of his/her defense counsel to take part when investigative actions are taken, as well as in other procedural action requiring the attendance thereof, unless he has expressively made waiver of this particular right" (see Articles 15 to 17, 103(2) and (3) and 55(1) of the Criminal Procedure Code).

Although the accused may waive defense counsel in most cases, there are circumstances in which it is mandatory for the accused to have defense counsel. These circumstances include cases where the accused is a minor, suffers from severe physical or mental deficiencies, does not have a command of the Bulgarian language, is part of a multiple defendant case and one of the other parties has his/her own defense counsel, the case is before the Supreme Court of Cassation, the accused is indigent, the offense involves a punishment of at least ten years imprisonment or, inter alia, the accused is being tried *in absentia*. In all cases where the matter is to be resolved by an agreement (plea bargain) the accused must have defense counsel to effectuate the signed agreement (see Articles 381, 382, 384).

With a view to ensuring continuity between the Indexes, it should be noted that the 2010 PRI placed a special emphasis on the then latest amendments of the Criminal Procedure

Code of 28 May 2010, one of which empowers prosecutors and the courts to assign a “reserve” defense counsel, in order to diminish the possibility for unreasonable delays in criminal proceedings. The amendment’s opponents claimed its unconstitutionality on the grounds that it contradicts the principal of contractual legal representation’s priority over appointed representation through a judicial body, as well as the principal that all citizens are equal before the law. Also, alleged violations of article 6(3)(c) of the European Convention on Human Rights [hereinafter ECHR] and article 14(3)(d) of the International Covenant on Civil and Political Rights. The Constitutional Court has dismissed the alleged anti-constitutionality of the provisions in question and did not express any reservations as regard the role of reserve defense counsels.

Similarly, the Constitutional Court dismissed the anti-constitutionality of the amendment of Chapter 26 of the Criminal Procedure Code, which had enabled the accused to ask for his case to be tried in court due to unreasonable delay of the preliminary criminal proceedings instituted against him (more than two years for serious crime and more than one year for other crimes). It should be noted that the accused party may seek termination of the proceedings if charges fail to be brought against him/her within the stipulated time period. In this sense, the rights of the accused are adequately protected. Furthermore, if a case is delayed, detention measures should be lifted with 1, respectively 2 years from the commencement of the investigation, depending on the severity of the offence³⁰.

The amendments to the Liability of the Central and Local Government for Damages Act (SG No 60 of 5 August 1988; last amended in SG No 98 of 11 December 2012 (hereinafter LALCDA) should also be mentioned. According to Article 2 of the LALCDA the government is responsible for the damages sustained by citizens for violation of their right to have their case heard in reasonable time in accordance with Article 6(1) of the EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, effective in Bulgaria as from 7 September 1992 (SG No 66 of 14 August 1992; last amended SG No 38 of 21 May 2010 (hereinafter ECHR). According to Article 2b of the LALCDA the government is liable for the damages sustained by citizens. The claims are filed in accordance with the Civil Procedure Code and the court must take into account the length of the proceedings, their factual and legal complexity, the conduct of the parties and their legal or procedural representatives, the conduct of the other parties and of the competent authorities and other facts that are relevant to the adjudication of the dispute. The parties may not file claims whilst proceedings are pending, but may do after the end of the trial.

Another new provision in favour of the accused party is the amendment of the Judiciary Act (SG No 50 of 3 July 2012), which now incorporates a new Chapter 3a ‘Hearing of petitions against infringements of the right to have a case heard by a court in reasonable time’. In accordance with the chapter in question the petitions of citizens against acts, actions or inaction on the part of judiciary bodies, which infringe their rights to have their case heard in reasonable time. Petitions are filed by citizens who are parties to ongoing criminal proceedings or by accused parties, legal persons that have sustained damages or whose interests were infringed due to terminated pre-trial proceedings. This procedure enables compensation to be calculated and paid in accordance with the practice of the European Court of Human Rights (ECHR) in an amount of up to BGN 10 000. The applications are filed within a six-month period following the end of the respective proceedings by an act issued by the Inspection Service of the SJC, which is submitted to the Minister of Justice. A check is carried out on the application by a special unit within the ISSJC. The Inspector-General allocates the applications received to a team of comprising two randomly selected

³⁰ It should be noted that Chapter 26 ‘Court hearings of cases at the request of the defendant’ was re-introduced in the Criminal Procedure Code in August 2013 (SG No 71 of 13 August 2013).

experts and nominates a reported. The outcome of the check is detailed in a statement of findings, which must be drawn up within 4 months from the receipt of the application. The protocol, along with the application and any related documents is forwarded without delay to the Minister of Justice. When the right of the accused party to have their case heard in reasonable time has been breached, the Minister of Justice or a duly authorised official acting on his/her behalf determines the amount of the compensation in accordance with the practice of the ECHR and proposes that an agreement be concluded with the applicant. The process of verification of the circumstances and the decision on the application must be completed with 6 months from its receipt, which exhausts precludes the possibilities for filing claims under the LALCDA and the ECHR (see Article 60a to 60g of the JA). The semi-annual reports of the Minister of Justice demonstrate greater interest in this mechanism and its use. Whilst during the first 6 months after the amendments to the JA became effective (1 October 2012 – 31 March 2013) a total of 102 applications were received and 28 agreements were reached under which compensation of BGN 6 500 in each case was paid, in the following three months (1 April 30 June 2013) the number of applications increased to 113 of which 40 were examined and compensation in the total amount of BGN 70 500 were paid thereunder³¹. However certain issues have not been addressed, such as cases when the compensation sought exceeds BGN 10 000 and whether the mechanism set in place does not act as a barrier to seeking redress at the ECHR.

It should be noted that the former Prosecutor-General has issued Guidelines on the actions that pre-trial investigation bodies may take as regards lawyers (Guidelines No 134 of 11 April 2011). In its entirety, it demonstrates goodwill to ensure that the rights of the accused are better protected, including through better regulation of the actions that can be taken as regards their lawyers. The Guidelines expressly stipulate that the accused party must be given the possibility to use legal counsel not later than 2 hours after detention, and that a lawyer must be present during the first interview with the accused. The lawyer must be granted access to the person within 30 minutes from arrival at the location where the person has been detained.

Despite the positive developments outlined above, the interviewees have shared a number of concerns because in their opinion in recent years the prosecution service appears not to apply efficient control of the process that guarantees that the rights of the accused during pre-trial proceedings are adequately protected. The interviewees have stated highlighted that senior officials of the MIA have repeatedly made media statements that charges are to be brought against certain individuals for a crime. This is a function of the prosecutions service and these create a negative perception of the respect for the rights of the accused. According to a number of interviewees, these allegations are supported by the opinion of the European Association of Judges, a consultative body to the UN and the Council of Europe, which states that ‘despite the changes to the legal system, mentality problems are fewer. The police is strong and has little respect for the law. The prosecution service has handled a number of cases in an unsatisfactory manner and operates under significant pressure from the government’³².

In this part of the interview, respondents claim that in recent years the prosecution service has taken an approach of increasing indifference to the standard of police investigations. The AEJ report was cited again according to which senior MIA officials ‘would not tolerate any criticism of the standard of police investigations’. At the same time, the general

³¹ Citations from reports published by the Minister of Justice concerning Chapter 3a of the JA, *available on*: <https://mjs.bg/48/>.

³² The report was published on 27 April 2011 and is *available on* <http://www.judgesbg.org/?m=77&id2=392>.

assessment is that police investigations are 'below acceptable standards'. All interviewees concur in respect of this last finding concerning the work of the MIA³³. In their opinion, this warrants the conclusion that the problem is not in the need to raise the standard of work per se – this is a standing requirements – but the fact that the MIA is reluctant to recognise it.

Some interviewees have stated that the legal framework is not conducive to a proactive approach on the part of prosecutors in order to secure a high standard of police work. It is acknowledged that prosecutors find it easier to draw up a bill of indictment and press charges in court than terminate proceedings in a criminal investigation on sound grounds. This perpetrates a high level of disinterestedness on the part of some prosecutors, without any counter measures being in place due to the inefficiency of the inspection units in the judiciary and the prosecution service.

It has also been noted that the possibility available to the prosecution service under Article 64(2) of the Criminal Procedure Code – detention of an accused for a maximum period of 72 hours in order to bring them before a court of law – is interpreted in an arbitrary manner, despite the express opinion to the contrary of the ECHR in cases against Bulgaria.

Factor 12: Victim Rights and Protection

In the performance of their duties, prosecutors consider the views and concerns of victims, with due regard for the dignity, privacy, and security of the victims and their families.

Prosecutors must ensure that victims are given information regarding the legal proceedings and their rights, and are informed of major developments in the proceedings.

Conclusion	Correlation: Neutral	Trend ↔
The legal framework provides victims with a number of rights within criminal proceedings. There are legal possibilities for compensating victims under the Assistance and Financial Compensation of the Victims of Crimes Act. However, victims' rights are regarded as a formality despite their overriding importance.		

Analysis/Legal Background:

There have been no significant changes to the legislation on victims' rights and their protection in the period since the publication of the 2010 PRI. Any person who has suffered material or immaterial damages from a criminal offence is granted by the Criminal Procedure Code the procedural capacity of a victim (see CRIM. PROC. CODE Article 74). According to Article 75(3) of the Criminal Procedure Code the victim's rights arise only where he or she has expressly requested to be involved in the pre-trial proceedings and specified a Bulgarian address. According to Article 75(2) the body that institutes pre-trial proceedings must immediately advise the victim of its rights if they have indicated an

³³ In this sense, the opinions of the interviewees for the 2013 Judicial Reform Index coincide with those expressed in 2011 during the preparation of the report of the European Association of Judges according to which 'most respondents have stated that the standard of police investigations is low'.

address at which they can receive summons in Bulgaria. According to Article 75(1) victims have the following rights in pre-trial proceedings: be informed of his/her rights within the criminal proceedings; obtain protection with regard to his/her personal safety and the safety of his/her relatives; be informed of the progress of the criminal proceedings; take part in the proceedings in accordance with the provisions of this Code; file appeals with regard to the acts resulting in the termination or suspension of criminal proceedings; have a counsel. The pre-trial authorities and the court are obliged to inform the victim of the full scope of rights available at his disposal as well as allow him the opportunity to exercise these in compliance with the law (see CRIM. PROC. CODE Articles 15, 73, 227, 274).

As stated in the 2010 PRI, the law does ensure the right of the victim to take part in court proceedings in the capacity of a *private prosecutor*. Thus, the latter may appeal the decision of a prosecutor not to initiate an investigation. The victim may also appeal decisions of the prosecutor to terminate or suspend the criminal proceedings (see CRIM. PROC. CODE Articles 213, 243–244). The victim as private prosecutor may enter his or her participation by oral or written motion to the court by the beginning of the first instance court proceedings. Once constituted as a private prosecutor, the victim is allowed to uphold the accusation either along with the prosecutor or independently should the latter drop the charges (see CRIM. PROC. CODE Articles 77–78). The private prosecutor also has the following rights: “to examine the case-file and obtain the excerpts he/she needs; to produce evidence; to take part in court proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court where his or her rights and legal interests have been infringed upon” (*id.* Article 79). In accordance with the Criminal Procedure Code Article 100 and Article 23(2) of the Legal Aid Act, a counsel may be appointed to the private prosecutor at no cost assuming the victim is indigent and the interests of justice require. LEGAL AID ACT (SG No 79 of 4 October 2005; *last amended in* SG No 28 of 19 March 2013).

As compared to the 2010 PRI there have been no changes to private criminal lawsuits, where the victim can file a written complaint in a private capacity. A private complaint action may only be taken against those lesser crimes enumerated explicitly in the Criminal Code (see CRIMINAL CODE Articles 161, 175, 193a, 218c and 348b). Article 82 provides that the private complainant has the following rights: “to examine the case-file and obtain the excerpts he/she needs; to produce evidence; to take part in court proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court which infringe upon his or her rights and legal interests, and to withdraw his/her complaint.”

Similarly, there have been no changes to the possibility to victims to participate in the criminal proceedings in the capacity of a civil claimant. Thus, a civil claim of action for compensation of sustained damages might be filed in the course of the trial. The claim must be filed not later than the commencement of the court proceedings by oral or written motion. The motion must describe the nature and amount of compensable damages caused by the criminal defendant or any others who could be held liable. The victim as civil claimant has similar rights to a private prosecutor or private complainant in defending his or her claim at trial and to demand a security for the claim. The victim may appeal the decision of the court except in the instance where the proceedings are terminated. The victim may not bring a simultaneous action in civil law until criminal proceedings are concluded (see CRIM. PROC. CODE Articles 84–88).

However, the Criminal Procedure Code limits the rights of a prosecutor to join the case *ex officio* in order to protect the rights of a victim. This may only happen if the victim is a child or a physically or mentally disabled person. Article 49(1) stipulates that by way of exception, when the victim of a crime has filed a complaint but is unable to protect his/her rights and lawful interests due to being unable to function as a result of incapacitation or

dependence on the perpetrator of the crime, the prosecutor may institute criminal proceedings if the statutory period has not elapsed and no statutory impediments are present. When the victim or a minor or an underage individual, his/her legal guardian may be appointed as special representative (see Article 101 of the Criminal Procedure Code).

In those instances where the case is resolved by agreement (plea bargain) under Criminal Procedure Code Chapter 29, the victim is permitted limited rights. If the agreement is reached during pre-trial proceedings the victim is notified of the agreement by the court, “with the instruction that [he/she] can file a civil claim for immaterial damages before a civil court.” However, a victim’s written consent is required when he or she is a party (private prosecutor or civil claimant) during trial proceedings concluded by agreement. Where property damages have been caused by the crime an agreement is admissible only upon damages recovery or the provision of collateral security (see Article 381, 383 and 384 of the Criminal Procedure Code). With the amendment of the CPC (SG No 60 of 7 August 2012, effective as of 8 September 2012) plea bargains are only allowed in the cases expressly mentioned in Article 381(1) of the CPC, excluding crimes that have resulted in the death of the victim. It is yet unclear whether this legislative amendment will have a positive effect, particularly with regards to the rights of victims.

Under the Criminal Procedure Code’s victim compensation regime, the Victim Compensation Act sets forth a system for support and financial compensation provided by the State to victims of crime. **CRIME VICTIM ASSISTANCE AND FINANCIAL COMPENSATION ACT** *adopted* Jan. 1, 2007, SG No. 105, *amended* May 28, 2010 [hereinafter **VICTIM COMPENSATION ACT**]. Financial compensation under the Act is limited to victims who have suffered damages from the crimes exhaustively stipulated in Article 3 of the Law. In order to be able to seek such compensation, several conditions must be met, such as a sentence that has come into effect or other non-exculpatory circumstances must be present, such as the death of the perpetrator or expiry of the statutory liability for criminal prosecution. Victims could also receive other types of support (see Article 8 of the Victim Compensation Act).

From a practical perspective, there have been no significant changes since the publication of the 2010 PRI. Certain progress has only been achieved with regard to the right of children – the most vulnerable group of victims. The prosecution service is using the so-called ‘blue rooms’, which have been custom designed and equipped by municipalities and NGOs and used for interviewing children. The progress achieved since the 2010 PRI has the potential for further development as it is currently underutilized. The interviewees have drawn attention to a number of cases where a formalistic approach is taken to the victims of crimes. For example, it was noted that despite the legal possibility to do so, the prosecution service never files civil lawsuits seeking compensation for the victims.

Despite the inclusion of a dedicated module on victims, their standing and rights in pre-trial proceedings in the training course for junior prosecutors, which addressed one of the recommendations set out in the 2010 PRI, this is hardly sufficient vis-a-vis the needs of prosecutors and the effect of the step taken will at best become apparent in the long term. The efforts to provide training on victim related matters are sporadic at best. At smaller prosecution offices, which have daily contact with the victims of crimes, no training has been provided in any form and prosecutors readily admit that there is a lot they can learn in this regard. During the interviews they expressed their apparent concern over their readily admitted knowledge and skills in the area of working with child victims of crimes.

Factor 13: Witness Rights and Protection

Prosecutors perform their functions with due regard for the dignity, privacy, and security of the witnesses and their families.

Prosecutors ensure that witnesses are informed of their rights and conduct every encounter with witnesses fairly and objectively.

Conclusion	Correlation: Neutral	Trend ↔
<p>Prosecutors have a key role in the decision-making process with regard to witness protection. Sensitivity to witnesses' needs has substantially increased as a result of NIJ's psychological training for prosecutors. Existing state-funded witness protection programs have been increasingly and appropriately utilized. Witnesses ineligible to enroll in this program can be protected through the Criminal Procedure Code's general regime through measures of personal protection or keeping their identity secret. However, additional education of prosecutors regarding interaction with witnesses, their rights, and protection is needed.</p>		

Analysis/Legal Background:

By law witnesses can be protected by means of two procedures – the general procedure laid down in the Criminal Procedure Code and the Protection of Persons under Threat in Relation to Criminal Proceedings Act (see PERSONS UNDER THREAT IN RELATION TO CRIMINAL PROCEEDINGS ACT, SG No 103 of 23 November 2004; *last amended* SG No 82 of 16 October 2009 (WITNESS PROTECTION ACT)). According to Article 123(1) of the Criminal Prosecution Code the prosecutor, the reporting judge or the court, acting on a request of the witness or with his/her consent, may order that measures be immediately taken for their protection when there are sufficient reasons to believe that as a result of their testimony a threat has occurred or may occur for their life and health or their siblings in the descending line, spouses or other persons with whom they maintain a close relationship. Witness protection is temporary and entails physical protection by the MIA or protecting the identity of the witness. Protection measures are cancelled at the request of the person to whom they are applied or when they are no longer necessary. In order to protect the life, health or property of the witnesses from whom a written consent has been obtained, special intelligence means can be used. Within 30 days from obtaining a witness protection order in accordance with the CPC the prosecutor or the reporting judge (during the trial phase) may propose that the witness of his/her siblings in the descending line, spouse or persons with whom they maintain a close relationship be included in the witness protection programme in accordance with the WITNESS PROTECTION ACT. The law provides a possibility for special protection available to persons involved in the criminal proceedings, including witnesses, who are under threat. When the threat is related to pending criminal proceedings, this category of individuals are included in the witness protection programme and the measures applied are decided on the specific nature of the threat or the needs of the individual. On a proposal of the prosecutor or judge, the witnesses may be included in the programme also by a decision of the Council on the Protection of Persons under Threat. This is the interinstitutional body responsible for the implementation of the Witness Protection Act. The Council is headed by a Deputy Minister of Justice and its members are representatives of the Supreme Court of Cassation, the Office of the Prosecutor-General, the National Investigation Service (NIS), MIA and the State Agency for National Security (SANS) (see Article 13 of the WITNESS PROTECTION ACT). The Council on Witness Protection also decides on the termination of protection provided under the witness protection programme. Individual protection programmes that include the measures prescribed by the Council are

implemented by the Protection Bureau, which creates and maintains a database of the persons included in individual protection programmes (see Article 15(1) of the Witness Protection Act). The measures may include personal physical protection; property protection; temporary relocation to a safe house; change of the place of residence, place of work or educational institution or relocation to another detention facility as well as full identity change. Under the programme social, medical, psychological, legal and financial support may also be provided.

The Criminal Procedure Code describes the rights and obligations of witnesses during the investigation and trial. Articles 121 and 122 afford witnesses a right to not incriminate themselves or testify against their relatives of ascending and descending line, brothers, sisters, spouses or individuals with whom they live. In these cases the witness is entitled to a consultation with an attorney. The pre-trial body and/or the court cannot refuse the request for an attorney and the request shall be entered in the interrogation protocol. Special procedures for interviewing juvenile witnesses are described in Article 140 of the Criminal Procedure Code. A witness under the age 14 must be interviewed in the presence of a pedagogue or psychologist and, if necessary, also in the presence of the parent or the guardian.

In accordance of Article 33 of the Bar Act witnesses can be interviewed in respect of the circumstances relating to the appointment of a lawyer or defense counsel (see the BAR ACT, SG No 55 of 25 July 2004; last amended in SG No 97 of 7 December 2012 and Article 121(2) of the Criminal Procedure Code). The investigating body must advise witnesses of their rights and responsibilities in accordance with Article 139 of the Criminal Procedure Code. Witnesses have the right to take leave for each working day on which they are to testify and have their expenses covered. A witness who fails to appear in court or an investigation body in order to provide information or to be interviewed may be forced to do so or fined (see Article 120 of the Criminal Procedure Code).

In the period between the publishing of the 2006 ad 2010 PRIs a stable trend towards the approval of an increasing number of witness protection measures was observed. Since their number and the number of cases has reached a plateau and remains stable. These conclusions are corroborated by the information set out in the following table:

Witness protection in Bulgaria, 2006 – 2012 (Number of witnesses (per year) to whom protection was granted)

Year	Number of cases with witnesses protected under Article 123	Number of protective measures undertaken by prosecutors under Article 123	Personal physical protection	
			Keeping the witness' identity secret	Types of protective measures
2007	72	101	7	94
2008	86	136	15	121
2009	84	158	19	139
2010	111	224	7	217
2011	91	152	6	146
2012	85	142	3	139

Source: Annual reports of the Bulgarian Prosecution Service.

In 2012, witness protection measures were approved under 85 pre-trial investigations and 142 measures were ordered by prosecutors. There are 3 cases of physical protection and 139 cases of protection of the identity of a witness. Prosecutors are using the procedure provided for in the Witness Protection Act in order to ensure the protection of important witnesses and secure their testimony during the trial phase. However, as noted in the 2010 PRI information leaks are always to the detriment of witnesses, similarly to the outcome of the witness protection procedure provided for in the Criminal Procedure Code.

It has been reported that when this is necessary or requested, the court and the prosecution grant witnesses protection in accordance with the procedure laid down in the CPC. Similarly to the 2010 PRI, according to some interviewees the measures applied under this procedure are inefficient because no deterrent sanctions and measures are applied when the perpetrator of a crime violates the conditions imposed. It has been noted that if pressure is applied on a protected witness and they change their deposition, even when this has been incontrovertibly proven, the evidence cannot be used in a pending trial in which the witness has previously testified. Others point out that there is a perception that the system, particularly the provisions laid down in the special law, are underdeveloped and that the prosecution is reluctant to act proactively in order to develop and use the available measures to the fullest extent. Some interviewees have even emphasized that in some high-profile cases there have been attempts to eliminate protected witnesses.

In connection with this, the summary of the report on the application of the law and the work of the prosecution and investigation bodies in 2011 states the following: 'One of the problems identified has been the frequent change of testimony by the witnesses, which results in changes to the facts of the case established during the investigation'. According to the report, the Shumen District Prosecution Office has alleged that the change in witness testimony is due to the incapability of the service to protect witnesses in an efficient and consistent manner³⁴. According to the report, the change in witness testimony in the trial phase, which has precluded the prosecution service from proving the criminal offence in the context of the totality of evidence and its appraisal, has jeopardised 81 cases³⁵. In connection with this, the Report on the application of the law and the activities of the prosecution service and the investigative bodies in 2011 contains the following statement on cases of human trafficking: **'Unaddressed practical problems relating to the protection of the victims of human trafficking and unlawful influence on them in order to force them to change the testimony during the pre-trial and trial phase (the bold text is an editorial intervention)**'. In many cases, in the proceedings instituted in respect of international human trafficking by the competent authorities of the countries of final destination victims give detailed and logical testimonies and recognise the perpetrators to only change their initial depositions after they return to Bulgaria. In 2011, there were 3 protected witnesses under the CPC (there were 4 in 2004 and 7 in 2008), which shows that the measures aimed at protecting the identity of the witnesses to human trafficking crimes is inefficient. This finding is further reiterated in the reports of the local offices of the prosecution service. The reason is that the perpetrators know who they trafficked, when and to which countries. These are the main reasons for the continued trend towards a decrease in the number of instituted pre-trial proceedings for human trafficking committed on orders from Organised Crime Groups – in 2011 no proceedings have been instituted and in 2009 only 1 (0.74%) as compared to 4 in 2008 (1.82%) and 4 in 2007 (1.82%)³⁶.

³⁴ See Report on the application of the law by the prosecution service and the investigative bodies in 2011, page 56, available at http://www.prb.bg/uploads/documents/docs_2914.pdf.

³⁵ *Ibid*, page 52.

³⁶ See Report on the application of the law by the prosecution service and the investigative bodies in 2011, page 129, available at http://www.prb.bg/uploads/documents/docs_2915.pdf.

The interviewees concur in their positive assessment of the work of the Witness Protection Bureau and its programmes. However, some cases have been reported where the Council on the protection of persons under threat has not acted efficiently. An opinion has been shared that in some cases the measures have not been sufficient to effectively counter or eliminate the threat.

The respondents' opinions on the right of witnesses to protection differ. Some have report problems in this regard relating mostly to police investigations and the lack of adequate prosecutorial oversight. According to others pre-trial bodies, including the MIA, take adequate action and advise witnesses of their right to protection in an adequate manner. The respondents concur that protection is granted when needed. The absence of uniform guidelines for prosecutors and the police on interviewing victims and witnesses creates further obstacles in the work of these institutions. The interviewees have restated opinions already discussed in the 2010 PRI, notably that witness protection is made more difficult because Bulgaria is small in territory and because of the shortage of funds to relocate witnesses to another country.

Since the 2006 PRI there has been a significant improvement in witness protection rights and better application of the protection mechanisms envisaged by law. Despite these improvements, the interviewees express the opinion that prosecutors must be proactive in the use of protection methods. In connection with this, some of the recommendations set out in the 2010 PRI remain valid – ensure consistent application of the law throughout Bulgaria and develop and common policy and up-to-date training modules (for prosecutors, investigating police officers and police officers) in respect of their conduct towards witnesses. The above warrants the conclusion that despite improvements, no significant developments have occurred in this regard since the 2010 PRI.

Factor 14: Public integrity

Prosecutors uphold public integrity by giving due attention to the prosecution of crimes committed by public officials, particularly those involving corruption, abuse of power, grave violations of human rights, and other crimes recognized by international law.

Conclusion	Correlation: Negative	Trend ↔
Despite the increase in criminal investigations of corruption indicated in the 2010 PRI, these largely failed to generate a tangible result. The corresponding increase in trials in 2010 and the external signs of change failed to match public expectations of justice being perceptibly restored. Efforts were also made to improve team work, but still failed to translate into satisfactory results. In fairness, the prosecution service is neither the only institution nor that which bears the greatest responsibility for detecting cases of corruption. However, it is one of the most highly visible public institutions and shoulders great expectations in this regard. Regrettably, the optimism expressed in the 2010 PRI that a positive change was around the corner – a widely held belief at the time – has been replaced by negativity and resignation. Deploying an integrated, consistent, cross-institutional and cross-sectoral reform and its meticulous implementation in the mid-term is a <i>conditio sine qua non</i> .		

Analysis/Legal Background:

The 2010 PRI indicates that since 2006 more pronounced trends towards prosecuting and obtaining sentences for corruption related crimes have been observed. This group includes criminal investigations relating to the embezzlement of EU funds. According to the summary report on the number of case-files instituted and concluded by the Bulgarian Prosecution Service during the first half of 2012 (2012 semi-annual report of the Prosecution Service) in the first half of 2012 the cases relating to organised crime, financial crimes and corruption continue to increase. The analysis of available statistical data for the first half of the year, in light of developments in the last three years, indicates a sound improvement in terms of basic indicators for high-profile cases (cases instituted in respect of organised crime, corruption, money laundering, EU funds misuse and embezzlement, forgery of payment documents, tax crimes, human trafficking and drug trafficking). Their relative share of 7.5% during the reporting period as compared to the cases instituted in respect of all types of crimes has been continually increasing. Despite their greater complexity, the share of completed investigations and adjudicated high-profile cases remains approximately 50 percent. The correlation between convictions at trial court level that have come into effect and the number of persons put on trial continues to increase – 82.3% as compared to 80.1 % in the first half of 2011 and 68.9 % in 2010.

The number of high-profile cases has also been steadily rising, respectively the same holds true for the indictments brought to court and the number of convictions. However, as compared to the same period in the previous year, a slight decrease in the number of indictments brought to court as compared to the number of adjudicated cases has been noted – from 46.1 % to 45.5 %. The share of cases remanded by the court to the prosecution service has also increased (by 3.2 % to 5.1 %) but it still remains lower as compared to the total percentage of remanded cases relating to all indicted crimes³⁷.

Trends in instituted pre-trial proceedings, indictments and convicted persons for corruption crimes

	2010	2011	2012
Monitored pre-trial proceedings	16 113	16 147	16 192
New-instituted proceedings in high-profile cases (HPC)	9 938	9 654	9 408
Completed pre-trial proceedings	10 607	10 671	10 941
Prosecutorial acts brought to court	4 618	5 019	4 898
Persons put on trial	5 734	6 118	5 994
Sanctioned/convicted persons	4 114	4 828	4 750
Acquittals	113	155	208

Source: 2012 Prosecution Service Report, page 8.

The Prosecution Service Report for the first half of 2012 indicates that with regard to the outcomes of criminal proceedings instituted in high-profile cases, a continued trend towards improvement of the main indicators has been observed'. However, it is acknowledged that corruption crimes remain a 'challenge'³⁸.

³⁷ Summary report on the number of case-files instituted and concluded by the Bulgarian Prosecution Service during the first half of 2012, page 1, *available at*: http://www.prb.bg/uploads/documents/docs_2969.pdf.

³⁸ *Ibid*, page 7.

Again according to the Prosecution Service Report for the first half of 2012: 'The increase in the number of persons convicted in high-profile cases has translated in a corresponding increase by 7.8 % in the number of sanctions imposed as compared to the same period in 2011. The increase is due to the higher number of high-profile cases relating to all types of crimes, except organised crime and embezzlement of EU funds. The share of suspended sentences has also increased by 14.6 % as compared to the same period in 2011'³⁹.

Trends relating to the number of indicted and convicted persons

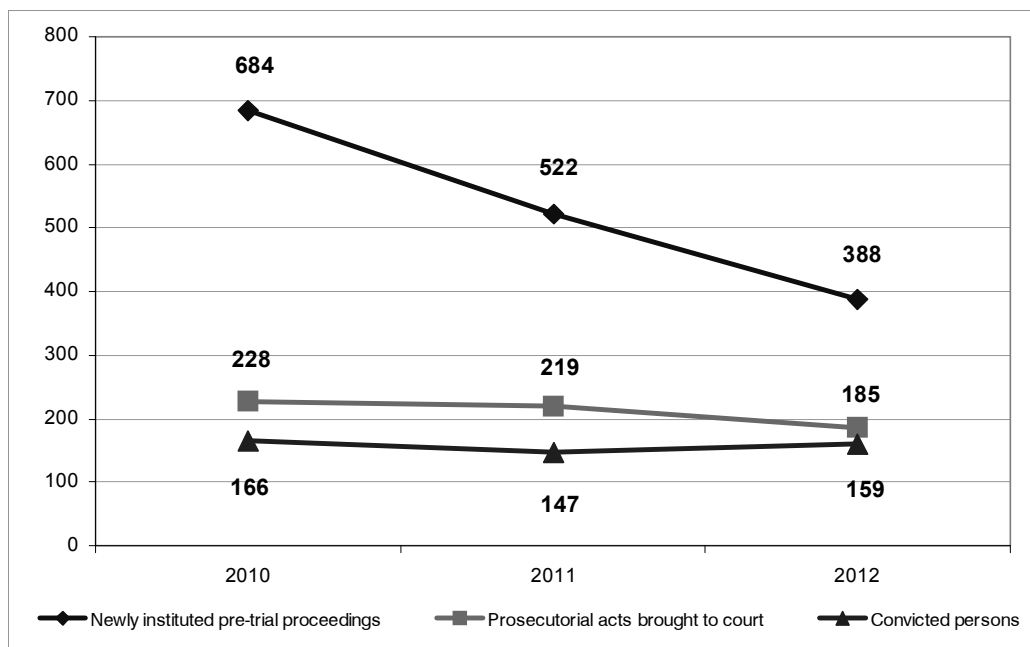
Type of cases instituted in respect of:	Indicted individuals			Convicted individuals without right to appeal		
	2010	2011	2012	2010	2011	2012
Organised crime	547	598	432	209	290	121
Corruption	338	291	240	166	147	159
Money laundering	35	45	59	18	29	27
Embezzlement of EU funds	339	199	181	225	159	143
Tax crimes	1 729	2 171	2 111	1 199	1 855	1 888
Credit cards and currency forgery	232	326	379	195	235	283
Drug trafficking	2 409	2 373	2 479	2 005	1 994	2 022
Human Trafficking	105	115	113	97	119	107
Total:	5 734	6 118	5 994	4 114	4 828	4 750

Source: Ibid, page 9.

The report of the Prosecution Service indicates a decrease in the number of supervised and newly-instituted proceedings for corruption crimes and the number of indictments brought to court. On the other hand, an increase by 24.6% of the number of convicted persons without right to appeal is also reported. There is also an increase in the number of acquittals – from 6 in 2011 to 19.

³⁹ Ibid, page 22.

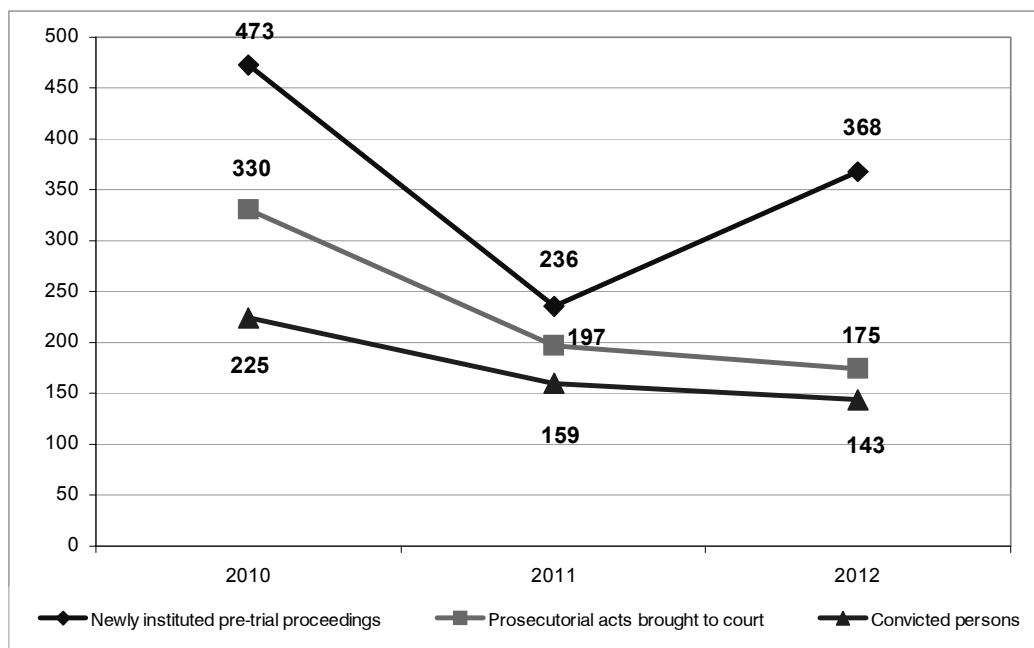
Trends in instituted pre-trial proceedings, indictments and convicted persons for corruption crimes in the last three years



Source: Department Information, Analysis and Methodological Guidance, Supreme Prosecution Service of Cassation

During the first half of 2012 as compared to the same period in the previous year, there is a trend towards an increase in the number of monitored and newly-instituted pre-trial proceedings in respect of crimes with implications for the financial interests of the EU – their number has doubled as compared to 2011. There is also a trend towards a decrease in the number of concluded pre-trial proceedings indictments brought to court and individuals put on trial.

Trends in instituted pre-trial proceedings, indictments and convicted persons for EU funds embezzlement in the last three years



Source: Department Information, Analysis and Methodological Guidance, Supreme Prosecution Service of Cassation

It should be emphasized that the Prosecution Service is investing considerable efforts to counteract corruption. The examples in this regard in 2011 and 2012 include the introduction of a system for monitoring and assistance of the work of prosecutors working in this area and the specialist profile of the Supreme Prosecution Service of Cassation where two units tasked specifically with counteracting corruption were set up in 2012. Two specialist investigation teams have been established and a new specialist network of prosecutors specializing in combating corruption crimes at all levels of the prosecution service has been created⁴⁰. This addresses one of the recommendations set out in the 2010 PRI. Despite these efforts, outcomes have fallen short of public expectations, which remain consistently high. When discussing the topic, we should also take into account the conclusions set out in the National Survey of the Propensity to Abide the Law conducted by the National Centre for the Study of Public Opinion conducted in December 2012⁴¹. The study has revealed that the prosecution service is the institution about which the respondents have the least first-hand knowledge about⁴², but at the same time a firm stereotype is rooted in the public mind according to which 'the police catches the criminals and the prosecution service and courts let them go'.

⁴⁰ See Order No 323/2010.

⁴¹ The study is available at: http://parliament.bg/pub/NCIOM/NCIOM_Pravno_Suznanie_December_2012.pdf.

⁴² According to the study at the moment 27% of the respondents do not have an opinion on the prosecution service.

In connection with this, many interviewees reiterate the opinions set out in the 2010 PRI, notably that in order to these positive trends a significant improvement in the quality of investigations, and particularly that of police investigations, and more effective sentences in high-profile cases will be needed. In this sense, the problems discussed under this factor can only be resolved through a holistic approach. On the one hand prosecutors, being the masters of the pre-trial phase, must ensure a high standard of investigative work because monitoring and guiding investigations is one of their principal responsibilities, which means that they must be more proactively advising and leading investigations. On the other hand, however, the discharge of this function should not be obstructed by external factors, including political intervention or considerations. External influence, even when in the form of a promoting prosecutors that lack critical attitude towards the work of other bodies concerned in pre-trial investigations, would not achieved the desired results. The need to improve the standard of police investigations must be recognised and tackled head-on. Maintaining the stereotype identified in the survey conducted by the NCSPo may temporarily generate short-term institutional benefits for the proponents of this view, but is strongly detrimental to the judiciary in particular and society in general. The European Commission report contains the following summary of the problems: ‘the disappointing outcomes of both the pre-trial and trial phase of proceedings in the prosecution of high-level corruption may largely be attributed to the systemic deficiencies, which affect the efficiency of the judiciary in other areas, for example the legal framework, case-law and the practice of the prosecution service and administrative control bodies’⁴³.

As regards the problems within the prosecution service, some of the interviewees outline two groups of challenges: (1) whether prosecutors are successful in raising charges and (2) whether they are successful in defending them in court. In recent years, there has been an increase in the number of such cases but they fail in court. According to some of the interviewees sometimes this happens in full knowledge of the outcome of the trial. The explanation is that this a trial and error method, which essentially seeks to establish which part of the indictment will stand in court when brought to court again. Others attribute the problem to the cases being handled by prosecutors that do not have the necessary specialist knowledge and experience to bring the trial to a successful outcome.

The 2010 PRI sets out an equivocal positive evaluation of the work of the teams now tasked with investigating organised crime and the embezzlement of EU funds. With regard to organised crime, in 2012 the establishment of the Specialist Prosecution Service was a significant new development. The 2012 Report of the Prosecution Service contains separate statistical data on the work of the Specialist Prosecution Service and the Appellate Special Prosecution Service on 1 January 2012. The former has instituted pre-trial proceedings in 61 cases of which 50 were instituted by prosecutorial order. Out of these 8 have been completed and 2 have been terminated (1 due to the act not conforming to the elements of the crime and 1 due to lack of evidence). The Specialist Prosecution Service has brought 6 indictments against 19 accused individuals charged with the commitment of 14 crimes have been brought to the Specialist Court. To date, 3 individuals have been convicted but the right to appeal has not been exhausted. In this sense, it is too early for an appraisal of the work of these new institutions. According to the interviewees there is still room for improvement of co-operation with the MIA. This is also one of the recommendations set out in the EU report on the fight against corruption, namely to use the experience gained in prior cases in order to improve the work of the police, the prosecution service and the courts⁴⁴.

⁴³ Report of the European Commission and of the Council on the progress of Bulgaria under the Co-operation and Verification Mechanism COM (2012) 411 final of 18.7.2012, page 19–20.

⁴⁴ *Ibid*, page 25.

The results in another area that has been in the focus of public attention – EU funds fraud – are inconclusive. The 2012 Prosecution Service Report indicates that during the first half of 2012, as compared to the same period in the previous year, there has been an increase in the number of monitored and newly-instituted pre-trial investigations for crimes with implications for the financial interests of the Community. The number of newly-instituted pre-trial proceedings is twice higher than in 2011. There has been a downward trend in the number of completed pre-trial investigations, indictments brought to court, and the individuals brought to trial and convicted. The number of acquittals is the same as it was during the first six months of 2011 (14), but is higher than that in 2010 (8)⁴⁵. The cited report of the European Commission published in the summer of 2012 contains recommendations about the improvement of results in the area of counteracting crimes involving EU funds. In addition, at the end of 2012 and the beginning of 2013 there were public discussions relating to the refusal of a prosecutor to appeal the trial court acquittal in a case concerning EU funds fraud. Charges were subsequently brought against the prosecutor in question due to the failure to file an appeal against the verdict delivered in the case, which was subject to special monitoring arrangements and instructions had been given to contest the judgment of the trial court⁴⁶.

Trends in instituted pre-trial proceedings, indictments and convicted individuals for crimes involving property and/or funds of the European union or granted to Bulgaria by the European union

	2012	2011	2010
Monitored pre-trial proceedings	587	549	841
Newly-instituted pre-trial proceedings	368	236	473
Concluded pre-trial proceedings	388	339	525
Indictments brought to court	175	197	330
Individuals put on trial	181	199	339
Convicted individuals			243
Convicted individuals without right to appeal	143	159	225
Acquitted individuals			17
Acquitted individuals with no possibility to appeal the verdict	15	19	11

Source: Annual reports of the Prosecution Service – section on crimes involving property and/or funds of the European Union or granted to Bulgaria by the European Union.

Although there are some indications of progress, overall the above developments warrant the conclusion that no significant changes have occurred. On the contrary, the strongly negative assessment of the level of corruption continues to persist, which is also one of the main contributing factors for the public lack of trust and disappointment with the anti-corruption measures taken by the government. This conclusion is confirmed by the findings

⁴⁵ 2012 Report of the Prosecution Service, page 26.

⁴⁶ See *The prosecutor in the SAPARD case suspected of having committed a crime*, published on 21.11.2012 in Mediapool: <http://www.mediapool.bg/obvinitel-po-provalenoto-delo-sapard-zapodozryan-v-prestaplenie-news199801.html>.

of the non-governmental organisation Transparency International, which conducted annual public opinion polls that register the strongly negative attitudes towards progress achieved in this area.

Corruption Perception Index in Bulgaria, 2006–2011

Year	Index
2006	4.0
2007	4.1
2008	3.6
2009	3.8
2010	3.6
2011	3.3

0 – extremely high level of corruption

10 – absence of corruption⁴⁷

Source: Association Transparency International

According to Transparency International ‘the value of the Corruption Perception Index for Bulgaria in 2012 is 41 points (a scoring system from 100, which indicates a very high low level of corruption, to 0, which indicated a very high level of corruption). In view of the changes to the methodology used, it should be emphasized that the results of the 2012 Corruption Perception Index cannot be mechanically compared to those for 2011 or previous years. Proper comparisons will be possible from the year 2012 onwards⁴⁸. The average value for the EU is 63.6 with Bulgaria in the last but one place before Greece, which brings in the rear.

Some of the findings set out in the 2010 PRI should be reiterated. Without dismissing the responsibility of the Prosecution Service for tackling corruption related crime, there are deficiencies that result from factors that are external to the prosecutorial system that must be addressed by other institutions. It is important to recognise that the prosecution service cannot act as an all-purpose complaints bureau and be held responsible for all irregularities and deficiencies in Bulgaria. The control bodies of the executive branch of government should take their share of the responsibility, particularly as regards prevention, and act accordingly. We concur with the stated opinion that the lack of an adequate prevention policy with regard to corruption crimes is at the very heart of the problem. Setting in place working prevention mechanisms however is unachievable if not backed up by reliable statistical data. We recall that the 2010 PRI indicates that the number of detected crimes significantly exceeds that of criminal proceedings in respect of corruption on the record of the different prosecution offices. In connection with this, the prosecution service understandably received a more positive evaluation and significant progress as demonstrated by a survey commissioned by the European Commission and conducted by

⁴⁷ Transparency International, Corruption Perception Report (2006, 2007, 2008, 2009, 2010, 2011r); available at: <http://www.transparency.bg/bg/researches/korupcionen-indeks/>.

⁴⁸ See Transparency International, 2012 Corruption Perception Index, available at http://www.transparency.bg/media/cms_page_media/143/CPI_2012_BG.pdf.

Eurobarometer in 2012⁴⁹ according to which 96% of Bulgarians perceive corruption and organised crime as a serious problem in the country. The prosecution service is a key component in building an efficient mechanism for prevention and early detection of corruption practices. In connection with this, it must adopt a proactive approach, seeking and initiating working partnerships with the other institutions tasked with tackling this difficult challenge.

⁴⁹ Flash Eurobarometer 351 [Flash Eurobarometer №351] The Cooperation and Verification Mechanism for Bulgaria and Romania (English version), *available at* http://ec.europa.eu/public_opinion/flash/fl_351_en.pdf.

IV. Accountability and transparency

Factor 15: Public accountability

In performing their professional duties and responsibilities, prosecutors periodically and publicly account for their activities as a whole.

Conclusion	Correlation: Neutral	Trend ↔
<p>The prosecution service has sustained the trend towards accountability, which includes measures to ensure transparency and access to information both as regards the general public and the media. It publishes regular reports on activities and reports to the National Assembly and the SJC. For the first time the prosecution service has drafted a Functional analysis of its work. However, these steps have done little to improve public knowledge or raise the level of trust of the public in its work. Another significant problem is that the publication of the annual reports is not linked to an accountability mechanism in respect of the areas where efforts are inadequate or lagging.</p>		

Analysis/Legal Background:

The prosecution service is an independent body of the judiciary with a number of distinct features. Article 117(2) of the Constitution provides, “The judiciary is independent. In the performance of the functions thereof, all judges, jurors, prosecutors, and investigators shall be subservient only to the law.” See CRIM. PROC. CODE Articles 10 and 14; JUDICIAL SYSTEM ACT Articles 13 and 14. The Constitution stipulates a further requirement for the prosecution service to also submit an annual report on activities to the President of the Republic, the National Assembly, the Council of Ministers and the Supreme Judicial Council (see Articles 84 and 16 of the Constitution and Article 41(1) of the JA). Being a semi-independent body composed of representatives elected by the judiciary and Parliament, the SJC has significant powers on many issues that are directly relevant to the prosecution service. These include the appointment, promotion, demotion, transfer and removal from office, imposing sanctions for disciplinary infractions, conducting performance evaluations, the promotion and transfer of prosecutors, adopting the draft budget of the judiciary and of the annual report of the Prosecutor-General (see Article 130 of the Constitution and Articles 30 and 31 of the JA). The SJC conducts investigations and imposes disciplinary sanctions on prosecutors. The Inspection Service of the SJC (ISSJC) is particularly important in this regard. Established pursuant to Article 132a of the Constitution, it has broad powers to planned and incidental inspections on the entire judiciary, including the courts, prosecution offices and investigation bodies, as well as to review complaints in regard to the work of magistrates and propose sanctions to be imposed to the SJC (see Article 154(1) of the JA).

Due to the nature of its work, the general public has little direct access to the prosecution service. This accounts for the relatively low level of awareness of the institution as demonstrated by the 2012 NCSPo survey cited above. It should also be noted that the efficiency of its work depends on striking a delicate balance in terms of the information provided to ensure that society is well informed and the efficient performance of the duties of the prosecution service. Regrettably, according to the NCSPo survey the perception of unaccountability of the institution and the stereotype that the police catch those who commit crimes but the prosecution service and courts let them go has deep roots in society. This is a paradox. On the one hand, the lack of trust in the prosecution service is 60 % and continues to increase. On the other hand, the general public continues to regard

the institution as the one called upon to tackle all problems in the country. The prosecution service is also a last resort for the protection of citizens' right – the threat 'I will file a complaint against you with the prosecution service' is an expression of this attitude.

To date, the prosecution service has not been able to take full advantage of the independence that it enjoys by law in order to strike the right balance and dispel the impression of unaccountability. However, the institution is making efforts in this regard. Access to information is now more readily available through the website of the institution. Contact details of its information centre are also published there through which citizens are able to follow the progress in the case-files on record. The new Prosecutor-General has categorically stated his commitment to further development of the achievements in the area of transparency and accountability. One of his first steps in office was to draw up a Functional analysis of the structure, procedures and organisation of the Bulgarian Prosecution Service⁵⁰. The analysis has been drawn up by a group of prosecutors and external experts pursuant to Order No LS-825 of 15 March 2013. Within the framework of the functional analysis, along with other activities, an appraisal of the following was conducted: the internal structure, applicable internal rules and regulations, including those relating to the application of the law, the organisational arrangements of work, the actions taken jointly with other institutions; staffing matters relating to the prosecutors, investigators and the administration; the caseload, taking into account the specific nature of work of first-instance prosecutorial offices and of the specialist prosecution service, the National Investigation Service, the Military Appellate Prosecution Service and the Supreme Prosecution Service of Cassation. Further analysis was conducted of the electronic systems and registers used; the equipment, financial and other resources; magistrate training to improve the knowledge of staff; international programmes and projects and public communication. As a result of this functional analysis, a number of structural and fundamental changes were implemented. Some of these were put in place by means of internal orders issued by the Prosecutor-General and related to the work of the SPSC. Others resulted in scaling down some provincial military prosecution services and optimization of resource allocation. These required the adoption of dedicated decisions by the Supreme Judicial Council.

Each prosecution office has appointed and trained a spokesperson but according to the interviewees the result of this move is controversial due to the inconsistent mandate and powers delegated to each incumbent depending on the prosecution service they work for. Although interviewees concur that the prosecution service has increased its level of transparency and is now more open to the public, the process is not yet sufficiently developed, particularly as regards transparency and accountability. In this respect the prosecution service, the prosecution service is regarded much the same as the rest of the law enforcement bodies in Bulgaria, i.e. as lacking in certain democratic prerequisites. According to some interviewees prosecutors still think that they are solely accountable to their superiors and not to society at large. Some have ventured the opinion that the reports drawn up by the prosecution service rely too heavily on indicators of no practical relevance because they fail to take into account processes that are currently unfolding. Others add that the reports contain too much statistical data, which can be confusing, with very little critical analysis of the data and corresponding conclusions. A third group of interviewees express the opinion that the reports should be drawn up through the prism of the strategic guidelines on the development of the prosecution – a document that is yet to be developed.

⁵⁰ For more information see Action Plan and Functional Analysis of the Bulgarian Prosecution Service, available at: <http://prb.bg/main/bg/Information/4392/>.

The formality of the parliamentary oversight should also be noted. The practical usefulness of the Prosecutor-General presenting an annual report to Parliament is rendered largely meaningless by the relative indifference of MPs – a trend first identified in the 2010 PRI. According to Article 141(1) of the JA the Minister of Justice and the Head of the National Investigation Service submit to the Prosecutor-General updates on the investigations conducted in pre-trial proceedings in accordance with rules and procedure determined by the Prosecutor-General. With the amendments to Article 141(2) of the JA (effective as of 4 January 2011) the appellate prosecutors and the Head of the Appellate Specialist Prosecution Service submit to the Prosecutor-General quarterly reports on the investigations under way on the record of the respective regional, provincial and military provincial prosecution services as well as the appellate specialist prosecution service. According to Article 141(4) of the JA (effective as of 1 January 2012) the rules and procedure for the provision of information about investigations conducted by investigating police officers and customs officials are determined by joint guidelines issued by the Prosecutor-General, the Minister of Internal Affairs and the Minister of Finance.

It should also be noted that some of the recommendations set out in the 2010 PRI, notably those relating to setting in place a transparent and competitive procedure for the selection of a Prosecutor-General by conducting public hearings, have been implemented. Such hearings were indeed conducted in accordance with the rules and procedure adopted by Decision No 48 of 8 November 2012⁵¹. According to the rules the SJC launches a procedure for the selection of a Prosecutor-General 6 months prior to the end of the term in office of the outgoing Prosecutor-General at the earliest and 3 (three) months prior to that date at the latest. Candidates may be nominated by at least one-fifth of the members of the SJC and by the Minister of Justice. The nominations must be reasoned and submitted in writing. Upon the receipt of each proposal the SJC must request from the Professional Ethics and Corruption Prevention Committee (PEPCPC) a reasoned opinion on the integrity and merits of the candidate. Each of the candidates must present a set of documents and a concept paper on the work of the Prosecution Service, including their reasons for applying, an analysis and evaluation of the current state of the institution, a brief description of the achievements and challenges encountered in their current position, development goals and measures for their achievement.

Within three days from the receipt of the requisite documents and the concept paper, they must be published on the website of the SJC in accordance with requirements laid down in the Personal Data Protection Act and the Protection of Classified Information Act. Magistrates and not-for-profit legal entities, higher education institutions and research organisations may submit opinions on candidates, including questions to be asked at the hearing. This possibility is used very actively, particularly by not-for-profit organisations, which closely scrutinize the procedures and the manner in which the incumbents of senior offices in the judiciary are elected⁵². The questions and opinions received by the SJC are summarized by the Legal Affairs Committee (LAC), which forwards them to the candidates. The commission sends the opinions on the integrity of the candidates to the PEPCPC and those relating to their professional merit to the Committee on proposals and performance evaluation (CPPE). The LAC makes arrangements, which enable candidates to address the questions raised and submit evidence prior to the hearing if facts or circumstances arise that require additional clarification. The hearings are chaired by the chairperson of the

⁵¹ Rules of procedure for the selection of a President of the Supreme Court of Cassation, President of the Supreme Administrative Court and Prosecutor-General, *available at*: <http://www.vss.justice.bg/bg/start.htm>.

⁵² In particular, Foundation Bulgarian Institute for Legal Initiatives is working on a project dedicated to Transparent Judicial Appointments and one of its components is creating public profiles of candidates for top appointments. For more information see www.judicialprofiles.bg.

meeting and broadcast online via the website of the SJC and by the Bulgarian National Television. During the hearing, the candidates present their concept papers and answer the questions asked by SJC members, including questions received from magistrates and not-for-profit organisations, higher education institutions, research organisations or their colleagues.

Regrettably, the procedure for the selection of a new Prosecutor-General was compromised by the manner in which the proceedings were conducted. For the first time, ballot papers were replaced by an e-voting system without being clear whether it fully satisfies the requirements for secrecy of the ballot cast stipulated by law (Article 131 of the Constitution) and whether it ensures equal treatment of all candidates. In addition, the candidates' nominations were not voted in alphabetical order but in the order in which their nominations were received.

Yet another aspect of accountability relates to the efficiency of the control exercised by the SJC and its Inspection Service. The 2006 PRI questioned the ability of the SJC to act as an efficient control instrument and in the 2010 PRI we expressed the opinion that the capacity of its administrative service has significantly improved. Regrettably, the evaluation of its work in 2013 is controversial at best. As a matter of principle, the findings relating to the accountability of the prosecution service are not optimistic. The activities of the former SJC as a collegiate body are associated with a number of highly controversial decisions, which were expressly noted in the European Commission's report under the Co-operation and Verification Mechanism. Furthermore, in its interim report of 8 February 2012 the Commission notes that the SJC should strengthen its capacity and work towards better accountability⁵³. In addition, the report contains the following finding: 'In recent months, trust in the Supreme Judicial Council as an institution was called into question'.

In connection with this, it should be further noted that the recommendations set out in the 2010 PRI on conducting an open and public procedure for the selection of a members of the SJC have been taken into account as demonstrated by the new dedicated rules. Indeed the procedure now the procedure is public and candidates are asked to present their views and a concept paper. Despite this, in its latest regular report of 18 July 2012 the European Commission notes the following: 'Concerns are now stronger because the appointment of some top magistrates by the Parliament and the SJC lacked transparency and objectivity and were tarnished by allegations of political influence'⁵⁴. In connection with this, some interviewees have conceded that although public the appointment of SJC members was not transparent. In addition, lack of confidence was expressed as to whether certain old practices would be effectively overcome so that the SJC can become efficient and genuinely impartial in overseeing the work of the prosecution service.

It must be noted that the expectations of the Inspection Service of the SJC, which has an important role vis-a-vis this function were very high. Moreover, according to the law its members should be legal professionals of proven integrity who have the necessary experience – the Inspector-General and the inspectors are appointed by Parliament with qualified majority (See Article 46 JA). These positions are open to legal professionals of proven integrity and merit. There are high occupational requirements for length of service as a guarantee for their professionalism. In addition, the inspectors must have at least 8 years

⁵³ Report of the European Commission and the Council, Interim report on the progress of Bulgaria under the Co-operation and Verification Mechanism – COM(2012) 57 final, page 5

⁵⁴ Report of the European Commission and the Council on the progress of Bulgaria under the Co-operation and Verification Mechanism – COM(2012) 411 final.

of specialist experience in the judiciary. Despite the initial positive evaluation of the work of the ISSJC, in its latest regular report the European Commission notes the following: ‘The controls carried out by the IS have a positive contribution to the improvement of discipline and accountability in the judiciary because previously no control arrangements were in place. At the same time its work was not geared towards finding solutions to the systemic deficiencies in accountability and the practices used in the judiciary. By way of example, the ISSJC has not given any recommendations for improvement of the random case allocation system or addressing significant and systemic deficiencies in the practices of courts’⁵⁵. During the first two years of its functioning, the institution established itself as an independent and efficient mechanism for examining complaints against prosecutors and the performance of the duties and responsibilities of their office. The interviewees have expressed the opinion that at present the work of the ISSJC is characterised by a degree of formalism and inertia.

Factor 16: Internal accountability

Prosecutors’ offices have a mechanism to receive and investigate allegations of wrong doing or improprieties based on written procedures and guidelines. Internal procedures and mechanisms exist to assess or monitor compliance with departmental guidelines.

Conclusion	Correlation: Neutral	Trend ↔
<p>The Inspection Service of the Prosecution has been heavily criticized after the newly elect Prosecutor-General took office and its staff was changed. An external analysis of its work has been unable to conclude that efficient internal controls were being carried out on the work of the prosecution service. Due to its strictly hierarchical nature, which is provided for in the Constitution and applicable legislation, there are very weak guarantees for the independence and prosecutorial discretion of rank and file prosecutors, although excessive control on the part of superior prosecutors has now been relaxed. An important step in this regard is the clear rules on the cases when controls are to be conducted on cases, which are set out in the Guidelines. The prosecution service has set in place a mechanism for tracking ECHR cases in which violations of human rights by Bulgarian prosecutors have been ascertained, which can be further developed.</p>		

Analysis/Legal Background:

The Prosecution Service follows a strictly hierarchical model that places prosecutorial authority completely in the hands of the Prosecutor General. Article 136(3) of the Judicial System Act provides that “[t]he Prosecution Service shall be integral and centralized. Each prosecutor shall be subordinate to an immediately superior prosecutor, and all prosecutors shall be subordinate to the Prosecutor General.” The Prosecutor General has extremely broad powers. In addition to managing the Prosecution Service, the Prosecutor General has overall responsibility for the distribution of and control over the work of every prosecutor, JUDICIAL SYSTEM ACT arts. 138 and 142, and may overturn or amend the acts of any prosecutor. *Id.* Article 139(2); *see also* CONSTITUTION Article 126(2), CRIM. PROC. CODE Article 46(4). This strict hierarchy is reinforced by the powers of supervisory

⁵⁵ Report of the European Commission and the Council on the progress of Bulgaria under the Co-operation and Verification Mechanism – COM(2012) 411 final, page 8.

prosecutors over subordinate prosecutors. Supervisors may stay or revoke the directives of their subordinates, and any written directives issued by a supervisor are binding upon the subordinate JUDICIAL SYSTEM ACT Articles 143(2), (3). This authority is also reflected in the Criminal Procedure Code Article 46. According to the revision of Article 134(2) of the JA the higher ranking prosecutor and the prosecutor from the superior prosecution service may carry out activities within the remit of competence of the subordinated prosecutors, and suspend and revoke their injunctions in writing in the cases envisaged in the law.

The 2010 PRI found that in principle higher ranking prosecutors respect the prosecutorial discretion of their subordinates and do not interfere in the decisions they make. However, the PRI 2010 also found inadequate accountability at the different levels of the service. The interviewees have noted that the abovementioned Guidelines on methodological guidance and supervision of injunctions in criminal proceedings within the system of the Bulgarian Prosecution Service are a step in the right direction and have, to an extent, contributed to overcoming the problem. However, other interviewees have emphasized that prosecutors seek verbal guidance from their superiors and administrative managers in the form of 'advice' to be used as protection should subsequent problems in the proceedings arise. Last but not least, a number of cases have come to light in which prosecutors have disregarded mandatory guidelines issued in accordance with the procedure laid down by law. This raises the question whether the established legal framework for mandatory guidelines is sufficiently clear and ambiguous or allows a measure of arbitrariness.

Most of the conclusions set out in the 2010 PRI in respect of the control between the different levels in the prosecution service remain valid. It should be noted that after taking office the newly elect Prosecutor-General has taken steps to strengthen the application of the control mechanisms set in place with regard to key prosecutors in the system.

One of the commitments of the newly elect Prosecutor General set out in the concept paper presented prior to election was to raise the efficiency of internal controls at the prosecution service. The first steps have already been taken. At the beginning of 2013, the work of the Inspection Service of the Supreme Prosecution Service of Cassation was audited. Regrettably, the findings can hardly be described as encouraging. According to the information announced by the Prosecutor-General the Inspection Service had conducted inspections against magistrates on the basis of anonymous tips, which is unlawful. In 2010, 2011 and 2012 their number was 19, 13 and 5, respectively. Another significant violation was that the Inspection Service did not apply the principle of random case allocation within the meaning of Article 9 of the JA and many of the case-files were not placed on record in accordance with the applicable procedure; checks were carried out on the basis of complaints in respect of which cases were pending before a court of law; and an electronic register was created, which was not integrated into the Single Information System. The entire staff of the Inspection Service was changed and currently it comprises 6 prosecutors, one of whom is the acting Director and effectively holds two positions.

Undoubtedly, this unit is of key importance for the efficiency of internal controls at the prosecution service. Undoubtedly, due to the nature of their functions, the controls carried out by the inspectors are incidental. For this reason, it is essential that staff members command authority and the respect of their colleagues and meet the highest integrity standard. It would appear that the opinions expressed in the 2010 PRI by interviewees, and in particular that the number of terminated case-files and the acquittals testify to the inadequate standard of work of the Inspection Service, have been validated. However, it is still too early to make a meaningful evaluation of the work of the reformed body in its current composition.

Another recommendation set out in the 2010 PRI concerning the gathering of information about the ECHR sentencing judgments against Bulgaria with implications for the work of the prosecution service have been taken on board. By Order No 1801 of 6 June 2012 of the Prosecutor-General the Criminological Investigations Unit of the Information and Analysis Department was tasked with compiling information and summarizing these cases, which are published on the website of the prosecution service. This activity aims to facilitate prosecutors in the work and is geared towards sanctioning their conduct. Although it can hardly be expected that each ECHR judgment will give rise to disciplinary proceedings and sanctioning of the responsible prosecutors, in cases of repeated and flagrant violations by the same prosecutor, maybe the outcome of the cases brought before the ECHR should be taken into account for the purposes of performance evaluation.

Factor 17: Conflicts of interest

Prosecutors are unaffected by individual interests, and avoid conflicts of interest or the appearance thereof.

Conclusion	Correlation: Neutral	Trend ↔
Despite the enacted statutes laying down adequate rules on conflicts of interest, it remains unclear to what extent they are observed and whether any enforcement measures are taken to prevent and preclude conflicts of interest. The problem is further compounded by the hierarchical structure of the prosecution service, which creates obstacles to overcoming or preventing potential conflicts of interests.		

Analysis/Legal Background:

The principal statutory act in this regard is the Prevention and Detection of Conflicts of Interests Act (SG No 94 of 31 October 2008; last amended in SG No 15 of 15 February 2013, effective as of 1 January 2014 (hereinafter Conflicts of Interest Act). The law applies to a wide range of civil servants, including the President, the Prime Minister, SJC members and all magistrates (see Article 3(2) of the Conflicts of Interest Act). If the law is applied correctly and reasonably, it could ensure sound mechanisms for the prevention of conflicts of interests in the midst of the prosecutors. However, its arbitrary interpretation could also act as a political shield or as an instrument for repression⁵⁶. Both the Criminal Procedure Code and the Code of Ethics of Bulgarian Magistrates Section IV contain specific conflict of interest guidelines, for which a prosecutor, as the other magistrates, will either be recused or disqualified, including any circumstances that would make the prosecutor biased or interested, either directly or indirectly, in the outcome of the case. See CRIM. PROC. CODE Articles 11(2), 29, 47, and 274; and Code of Ethics of Magistrates Section IV. The Code of Ethics is broader than the Criminal Procedure Code as it addresses not only a prosecutor's impartiality in a specific case, but also circumstances or conduct that would constitute a misuse of the prosecutor's position. MAGISTRATES ETHICS CODE art. 9.4.

⁵⁶ See Report of the European Commission and of the Council on the progress of Bulgaria under the Co-operation and Verification Mechanism {SWD(2014) 36 final} of 21 January 2014. According to the report „...The Commission on Prevention and Detection of Conflicts of Interest (CPDCI), which could have played a decisive roles in the prosecution of unlawful practices at all levels of the public sector, was instead embroiled in a scandal giving rise to strong suspicions of political influence, available at: http://ec.europa.eu/cvm/docs/com_2014_36_bg.pdf.

If the Conflicts of Interest Act is effectively implemented and enforced, it could be extremely useful in deterring, revealing, and punishing corruption and abuses of power by government officials, including prosecutors⁵⁷. However, the 2010 European Commission Report expresses concern that a year after implementation of this legislation “still few cases of conflict of interest have been identified or sanctioned and few signals on corruption have been sent to the prosecution.” Since then the Conflicts of Interest Act has been amended several times.

The new Chapter Va of the Conflicts of Interest Act (SG No 97 of 10 February 2010, effective as of 1 January 2010) makes provisions for the establishment of the Commission on Prevention and Detection of Conflicts of Interest (CPDCI). The Commission is an independent body tasked with detecting conflicts of interest with implications for senior public officials (see Article 22a(1) of the Conflicts of Interest Act). According to the definition set out in Article 3(2) of the CIA this includes judges, prosecutors and investigators. Since it was first established the CPDCI has drawn up 3 reports, which have been published on its website⁵⁸. The 2012 report is the only one which contains information that the CPDCI ‘has adopted a decision dismissing the allegations of conflicts of interest with implications for 6 individuals under Article 3(2) (judges, prosecutors and magistrates) of the PDCIA’. However, the information is not differentiated and it is unclear whether it refers to prosecutors, judges or investigators (see 2012 Annual report of the Commission on the Prevention and Detection of Conflicts of Interest Act), page 21⁵⁹). The other reports do not contain any information about conflicts of interests with implications for magistrates, and in particular prosecutors, and decisions confirming or dismissing alleged conflicts of interest.

It should be noted that the CPDCIA has been criticized in the regular European Commission report, which came out in the summer of 2012. According to the report ‘the evaluation of the work of the CPDCIA during the first 15 months of its work indicates that the new body has taken on the challenges and works expediently but it has not yet convincingly proven itself by convincing decisions in important cases ... the CPDCIA must demonstrate its ability to adopt soundly reasoned decisions in sensitive cases’⁶⁰.

Some interviewees have expressed the opinion that work on the actual, substantial problems relating to conflicts of interest is yet to commence. Some have noted that more attention should be given to the issue both in larger prosecution offices, which handle high-profile cases, and in smaller ones, which are practically closed units and the existing problems in their work have not been properly examined. The opinion expressed in the 2010 PRI that prosecutors do not always recuse themselves in cases with potential conflicts of interest remains valid. However, it should be noted that according to applicable legislation prosecutorial recusal may be overturned by a superior prosecution service. In light of this topic, the provision in question creates possibilities for prosecutors to be intentionally implicated in conflicts of interest purely by means of putting institutional/hierarchical pressure on them. In the case of prosecutorial recusal, the case-files are simply transferred to another prosecutor. According to Article 195(4) of the CPC with the permission of the Prosecutor-General pre-trial proceedings may be conducted in another area in order to ensure a more comprehensive investigation of a crime. This can also be done if all prosecutors in a particular office file recusals.

⁵⁷ Ibid.

⁵⁸ CPDCI website: <http://www.cpaci.bg/2011-08-03-09-38-20?limitstart=0>.

⁵⁹ The report is available at http://www.cpaci.bg/images/cpaci_annual_report_2012.pdf.

⁶⁰ Report of the European Commission and of the Council on the progress of Bulgaria under the Co-operation and Verification Mechanism – COM(2012) 411 final of 18 July 2012, page 22.

It should further be noted that the recommendation set out in the 2010 PRI for more extensive training of junior prosecutors on conflicts of interest has also been taken into account and the topic has been included in the broader module 'Professional standards'.

In conclusion, the findings set out in the PRI 2010 according to which the prevention of conflicts of interest is gaining greater significance, remain valid, although the problem will probably remain a challenge in a country where practicing legal professionals are a tightly-knit community and the system of connections, including political connections, is well established.

Factor 18: Code of Ethics

Prosecutors are bound by ethical standards of the profession, clearly aimed at delimiting what is and is not acceptable in their professional behavior.

Conclusion	Correlation: Neutral	Trend ↔
The Code of Ethics of Bulgarian Magistrates, which was drafted and approved by the SJC, provides clear and comprehensive ethical standards for all magistrates, including prosecutors. Although overall the regulation of integrity and ethical issues appears adequate, application faces challenges. Ensuring the ethical conduct of prosecutors requires longer and more extensive training on the topics at hand and, importantly, the uniform interpretation, respectively application of the applicable provisions and standards.		

Analysis/Legal Background:

The legislative framework governing the ethical requirements for prosecutors is in a state of flux. Based on Article 30(1.12) of the Judicial System Act, in May 2009 the SJC approved the Code of Ethics of Bulgarian Magistrates, which is binding upon all magistrates, including prosecutors. The Code has been adopted in compliance with the recommendations of the Committee of the Ministers of the European Council for the Status of Judges, Prosecutors and Investigators, and other relevant national and international legal instruments. A violation of the Code may be used as grounds for disciplinary charges by the SJC according to article 307(3.3) of the Judicial System Act.

THE CODE OF ETHICS OF MAGISTRATES INTRODUCES THE MAIN PRINCIPLES OF THEIR CONDUCT, which set out the framework of applicable rules. These rules are clearly and exhaustively stipulated; they include both rules of conduct for the discharge the duties of the office of prosecutors and rules that apply to their conduct in a non-professional capacity. The applicable have rules have not been amended since the 2010 PRI. The only change is the deletion, in 2011, of Section VI of the Code of Ethics on the standing committee of the SJC on anti-corruption and professional ethics due to the adoption of a separate set of rules by the SJC⁶¹. The internal rules of procedure of the Commission on Prevention of Corruption and Professional Ethics (CPCPE), adopted by a decision set out in Minutes No 45 of 12 November 2012, were subsequently amended and supplemented (Minutes No 7 of 25

⁶¹ By a decision set out in Minutes No 2/18.01.2011 the provisions of Chapter VI of the Code of Ethics of Bulgarian Magistrates are deleted and the following text is inserted: 'The establishment, organisation and activities of the professional ethics commissions in the judiciary shall be governed by dedicated rules adopted by the SJC'.

February 2013 of the CPCPE). The Commission has ten members of the SJC, who may sit on the commission on a rotation basis by a decision of the SJC after a period of 30 months has elapsed. The Commission adopts decisions by a show of hands with a simple majority of the votes of those present. In connection to examined case-files, the appointed rapporteurs may request information and opinions from the administrative managers of judiciary bodies and/or third parties and institutions and delegate responsibility for checks to be conducted and opinions drawn up by the respective administrative managers and local ethics committees. The Commission submits draft proposals of the decisions to be adopted in disciplinary proceedings by the SJC. When no decision of the SJC is required, the chairperson forwards the reply to the respective interested party.

While the overall regulation of professional ethics appears to be reasonably clear and comprehensive, challenges in implementation still exist. Many respondents complain about various violations of the rule of conduct by prosecutors that they have observed, and express their frustration that in general most of the violations remain unpunished. Some interviewees express the opinion that the application of these standards is not even-handed and that it depends on the prosecutor. This compounds the indifference to ethical issues because they are not being applied as intended. Whether the same set of ethical conduct rules should apply to judges and prosecutors, in view of their different roles in proceedings, is a separate matter.

Paragraph 2.3 of Section II lays down a prohibition to discuss pending proceedings involving judges or other parties to the proceedings outside court hearings. The interviewees have reported that similarly to the findings set out in the 2010 PRI such discussions do not appear to be an exception and that they can be construed as improper influence on the outcome of the trial or create the appearance of a conflict between the parties to the proceedings, particularly judges and prosecutors. Allegedly, this practice is a frequent occurrence particularly in smaller judicial districts but is not exclusive to them. This gives the appearance that magistrates agree that this is no in line with ethical rules but they still find arguments in respect of their usefulness to their work.

Violations of the ethical rules for the conduct of magistrates are to be reported to the CPCPE. The Commission is tasked with receiving complaints, reviewing cases and ordering that specific checks be conducted by court presidents and the Inspection Service, reporting the outcome of conducted checks to the SJC, providing information to the parties, conducting analyses of certain factors indicating corruption and facilitating the work of other bodies tasked with similar responsibilities, i.e. the Ombudsman (See Article 21 of the Rules on the organisation and activities of the SJC and its administrative service). The table below contains information about the complaints received and examined by the CPCPE in the period 2010–2012.

Complaints submitted to the Commission on Prevention of Corruption and Professional Ethics of the SKC

	2010	2011	2012
Total	1856	767	1124
Complaints relating to the institution, progress and timeliness of case-files and cases	43	34	51
Complaints relating to the inconsistent application of the law	11	5	6
Complaints relating to breaches of ethical rules	19	16	31
Complaints setting out specific allegations of corruption	<i>No data</i>	0	0

Source: CPCPE Reports for 2010, 2011 and 2012 available on the website of the CPCPE.

Although clear and detailed rules are an essential pre-requisite, they are not sufficient to ensure a high standard of ethical conduct of prosecutors. Uniform and even-handed application of the standards to all magistrates remains crucial. This is the only way to raise the level of their recognition and application by all prosecutors⁶².

The issues, related to professional ethics of Bulgarian magistrates are incorporated into the obligatory initial training of the candidates for junior prosecutors in the National Institute of Justice. It is conducted in the form of a two-day training on the topic "Review of the term "ethics", a discussion on the Code for ethical behavior of Bulgarian magistrates, discussion of practical issues." For the period in consideration 2010 – 2013 95 prosecutors have been trained.

In the course of the continuing training of magistrates, with a decision of the SJC of 04.02.2010 the National Institute of Justice together with the Professional Ethics and Prevention of Corruption Committee of the SJC were assigned to organize the training of Bulgarian judges, prosecutors and investigators in connection to the study of the new Code of ethics of Bulgarian magistrates. "Court Ethics" trainings were conducted in the five appellate regions with participants – members of the ethical committees of the judicial bodies. 124 prosecutors (41 from Sofia appellate region, 25 from Plovdiv appellate region, 25 from Varna appellate region, 15 from Bourgas appellate region, and 18 from Veliko Tarnovo appellate region) participated in the trainings.

In 2012 in collaboration with the Council of Europe, the National Institute of Justice organized a round table on the topic of "European standards regarding selection, professional advancement and disciplinary procedures in the judiciary. Review of the case law on the ECHR with accent on the provisions of art. 6 and art. 10." Bulgarian and foreign experts took part in the event and 16 prosecutors were trained.

The professional ethics issues are being discussed in the course of the distance training of magistrates as well. It was first conducted in 2012. The topic of the training is "Ethical challenges in the work of magistrates" and it is organized once in a year for a term of one month. In the 2012–2015 period 5 prosecutors were trained.

⁶² The information about training on ethics and the standards set out in the Code of Ethics of Bulgarian Magistrates is provided by the NIJ.

In connection with this, the SJC must also play a positive role through a range of initiatives such as the working forum held at the NIJ on 7 December 2012, which was dedicated to 'Disciplinary practice and raising the deterrent effect of the disciplinary sanctions imposed on Bulgarian magistrates for breaches of ethical rules'. The event was organised jointly by the Disciplinary Committee and the CPCPE.

Factor 19: Disciplinary proceedings

Prosecutors are subject to disciplinary action for violations of law, regulations, or ethical standards. Disciplinary proceedings are processed expeditiously and fairly, and the decision is subject to independent and impartial review.

Conclusion	Correlation: Neutral	Trend ↔
Prosecutors are subject to well-developed and equitable disciplinary procedures under the authority of the SJC. The revised SJC structure and creation of the SJC Inspectorate provide the potential for a more effective oversight and disciplinary mechanism. The supervising prosecutors who should possess a direct and constant view on the work of the prosecutors, have the opportunity to propose to the SJC that disciplinary measures be imposed. Unfortunately, the disciplinary practice leaves the impression of contradictiveness and lack of unified and consistent approach in the imposed disciplinary penalties.		

Analysis/Legal Background:

Authority for the demotion, transfer, and removal of magistrates is vested in the SJC (CONSTITUTION arts. 129(1) and 130(6); Judicial System Act art. 160), although the Minister of Justice is also granted the power to make such proposals (*id.* art. 130(a)(3)). While prosecutors become "irremovable" after five years by an SJC decision, removal is still permitted for various causes, including retirement at age 65, resignation, conviction of an intentional crime with a sentence of imprisonment, continued inability to perform one's duties for more than a year, or "grave breach or systematic dereliction of official duties, as well as actions damaging the prestige of the judiciary." See CONSTITUTION Article 129(3). The overall disciplinary procedures governing prosecutors are set forth in Chapter 16 of the Judicial System Act. The bases for prosecutorial discipline are enumerated in Judicial System Act article 307(4), and include, repeated failure to meet case deadlines, unjustified delays in proceedings, violations of the ethics rules, acts undermining the prestige of the judiciary, and failure to perform other official duties. While the SJC has overall authority for disciplinary proceedings, less serious punishments may be applied by prosecutorial supervisors. *Id.* Article 311(1). Supervisors may either impose a note to the prosecutor's personnel file or censure a prosecutor, although such penalties must be reported to the SJC, which retains the power to modify or overturn the sanction. *Id.* Article 314(3). Only the SJC may reduce a prosecutor's salary or demote or dismiss a prosecutor. *Id.* Article 311(2). Proposals to the SJC for sanctions may be submitted by various sources, including supervisory prosecutors, the SJC Inspectorate, a 1/5 vote of the SJC, or the Minister of Justice. *Id.* Article 312(1). Disciplinary panels have three members selected on a random basis from the members of the SJC. The prosecutor has the right to be notified of the proposed disciplinary sanction, attend the hearing and submit explanations either verbally or in writing as well as be represented by a lawyer (see Articles 316(5), 313(1) and 318(1) of the JA). The disciplinary board adopts decisions with a majority vote. The decisions proposed are adopted, rejected or modified by a majority of all members of the SJC and must be accompanied by a reasoned opinion. The decisions of the SJC may be appealed

before a three-judge panel of the Supreme Administrative Court. The judgment of that panel may be further contested before a five-judge panel of the SAC (see Articles 316, 318, 319, 320 and 323 of the JA).

The 2010 PRI found that the rules governing disciplinary proceedings are adequate and largely fair. According to the European Commission's report under the Co-operation and Verification Mechanism, published in the summer of 2012, 'disciplinary proceedings are being effectively conducted for the first time in Bulgaria'. In the same report it is noted that in the period between October 2007 and December 2011, the SJC has conducted proceedings in a total of 179 disciplinary cases. The number of punishments increased from 15 in 2008 and 24 in 2009 to 34 in 2010; in 2011 it dropped to 13 again⁶³. In 2011, the SJC conducted proceedings in 21 disciplinary cases. Work of the Inspection Service in 2011, which conducted comprehensive inspections in all judicial districts in the country, is a positive development. The controls carried out have improved discipline in the judiciary and brought about a radical change.

As noted in the 2010 PRI disciplinary proceedings may be instituted against prosecutors in respect of failure to discharge the duties of their office as set out in the CPC (see Article 307 of the JA). Since the 2010 PRI the JA was amended (SG No 1/2011, effective as of 4 January 2011) and according to Article 307(4)(3) a breach of discipline is: 'a violation of the Code of Ethics of Bulgarian Magistrates'. In such cases, the magistrate can be sanctioned by a rebuke, a reduction in their salary by 10 up to 25 percent for a period of 6 months up to 2 years, demotion to a lower grade or lower tier of the same body of the judiciary for a period of 1 up to 3 years, dismissal as administrative manager or a deputy administrative manager and removal from office on disciplinary grounds (see Article 308).

However, in recent years, practice in disciplinary proceedings has been highly controversial. This was noted in the latest regular report of the European Commission under the Co-operation and Verification Mechanism that came out in the summer of 2012. According to the report 'Practice in disciplinary proceedings is inconsistent and in many important cases it has either been impossible to make a decision or no deterrent effect has been achieved'⁶⁴. The situation failed to subsequently improve and at the beginning of 2012 the European Commission described the SJC practice in disciplinary proceedings as problematic and apparently 'lacking in consistency and clear standards'⁶⁵. According to the summary of the report published at the beginning of 2014 the SJC practice in disciplinary proceedings is 'inconsistent'. The report emphasizes that root of the problem is the lack of criteria for assessing the caseload in the different units of the judiciary. The European Commission has further noted disconcerting subjectivity in individual cases⁶⁶. According to

⁶³ Report of the European Commission and of the Council on the progress of Bulgaria under the Co-operation and Verification Mechanism.

⁶⁴ Report of the European Commission and of the Council on the progress of Bulgaria under the Co-operation and Verification Mechanism – COM(2012) 411 final of 18.7.2012, p. 6.

⁶⁵ The EC to query the SJC about ethics, disciplinary proceedings and selections published on 1 August 2014 in *Praven svyat*: <http://www.legalworld.bg/38106.ek-shte-pita-vss-za-etikata-disciplinarnata-praktika-i-izborite.html>.

⁶⁶ See Working document of the Commission's services, Bulgaria: Technical report accompanying the Report of the European Commission and of the Council to the European Parliament on the progress of Bulgaria under the Co-operation and Verification Mechanism, {COM(2014) 36 final}, page 14: 'the review of the practice in disciplinary proceedings in the period 2009 – 2013 conducted by the Supreme Judicial Council demonstrates a degree of inconsistency and shows that the problem is partly related to the absence of objective standards for assessment of the workload of the different bodies of the judiciary. The lack of such standards leaves room for subjectivity in certain cases', available at: http://ec.europa.eu/cvm/docs/swd_2014_36_bg.pdf.

the interviewees the judgments of the SAC in respect of the right of magistrates to defense in disciplinary proceedings before the SJC are controversial. It has further been stated that some of the SAC judgments call into question the entire practice of the SJC in disciplinary matters. The court has held that a magistrate in respect of which a proposal for the imposition of disciplinary sanctions has been made must be given a hearing by the disciplinary body, i.e. the SJC. Moreover, prior to voting on the sanction the ISSJC is allowed a hearing and may present new arguments against the magistrate who, at the very least, is unable to address them. Magistrates are also not informed of the SJC meeting during which their disciplinary sanction will be put to the vote. Furthermore, when the proposal for a sanction has been put forth by SJC members, they are subsequently allowed to vote on their own proposal, along with all other members of the Council. The practice of the SJC is indeed unsystematic and not based on sound criteria. This creates an impression that certain cases may be decided *intuitu personae*. It should also be noted that some interviewees have alleged that in some cases the checks conducted by the Inspection Service are highly formalistic.

Overview of the SJC practice in disciplinary proceedings 2010–2013

	2010	2011	2012	2013
Total number of proceedings instituted against prosecutors, including:	13	3	4	13
<i>On a proposal from the administrative manager</i>	9	1	3	5
<i>On a proposal of five SJC members</i>	2	0	1	4
<i>On a proposal of the ISSJC</i>	1	1	0	0
<i>On a proposal of the Prosecutor-General</i>	1	1	0	4
Disciplinary proceedings concluded with the adoption of a decision to impose the following sanction:	17	3	3	7
<i>Reprimand</i>	0	0	0	3
<i>Rebuke</i>	1	0	0	0
<i>Lowering of salary</i>	5	1	2	2
<i>Demotion in rank or position</i>	5	1	0	0
<i>Dismissal from office as administrative manager or deputy administrative manager</i>	2	0	0	1
<i>Removal from office on disciplinary grounds</i>	4	1	1	1
Disciplinary proceedings concluded with a decision not to impose a disciplinary sanction	3	1	1	0
Orders filed on record by the SJC on magistrate reprimand in accordance with Article 327 of the JA*	28	25	5	11

* Total against prosecutors and investigators at the investigation departments of provincial prosecution offices.

Source: Analysis of the SJC practice in disciplinary proceedings in the period 1 January 2010 – 31 December 2010, available on the website of the SJC; Reports of the Commission on disciplinary sanctions for 2011⁶⁷, 2012⁶⁸ and 2013⁶⁹

⁶⁷ Available at: http://vss.justice.bg/bg/commissions/disciplinary/2012/otcet-disc_pr-2011.pdf.

⁶⁸ Available at: http://vss.justice.bg/bg/practice/reports/report_kdp_2012.pdf.

⁶⁹ Available at: http://vss.justice.bg/bg/practice/reports/report_kdp_2013.pdf.

These conclusions are also supported by the results of the national survey, which clearly demonstrates that prosecutors' assessments are dominated by the opinion the disciplinary sanctions are not applied equally and create conditions for system penetration – in similar cases, for the same conduct, in some instances a sanction is imposed, whilst failing to do so in others. At the level of regional prosecution services more than two thirds of respondents share this view. Sixteen (16) % of the interviewees believe that disciplinary sanctions are used as means for arbitrary sanctioning of certain prosecutors and not as an instrument for improvement of the judicial process. These, along with other features of the environment, create a sustainable opinion of lacking fairness, objectivity and equal treatment amongst prosecutors and undermine the feeling of independence of individual prosecutor. This warrants the conclusion that there is no uniform and consistent approach towards the levying of disciplinary sanctions.

The work of the Inspection Service of the SPSC – the main unit tasked with conducting internal controls at the Bulgarian Prosecution Service also appears problematic. In addition to the regional level, similar structural units also exist within appellate prosecution services. In January 2013 the Inspection Service of the SPSC was disbanded. The reason stated by the Prosecutor-General was the destruction of documents, instituting proceedings on the basis of anonymous information and disciplinary sanctions imposed on prosecutors due to their decisions on cases during the trial phase⁷⁰. At the time, the Prosecutor-General reiterated that he did not want an Inspection Service like this⁷¹. For this reason the Functional analysis of the Bulgarian Prosecution Service sets out a number of recommendations for the Inspection Service. It is expressly mentioned that 'in order to overcome the many deficiencies and violations'⁷² a number of recommendations have been made. These include a change in the structure of the unit, according to which the current department will continue to function as an internal control unit; more active work of the new unit; greater accuracy and precision of audit work; updating and improving the precision of the Methodological Guidelines on Control in the Bulgarian Prosecution Service (published on the website of the institution on 10 June 2011) and revocation of the Methodological Guidelines on the Work of the Prosecutors of the Inspection Service Department of the SPSC (published on the website on 15 February 2011) by drafting new rules that are adequate to the functions of the unit"⁷³. The problems at the Inspection Service of the SPSC were also noted in the European Commission's report under the Co-operation and Verification Mechanism published at the beginning of 2014⁷⁴.

⁷⁰ *The Inspection Service of the SPSC disbanded over suspicions of serving other masters*, published on 31 January 2013 in Mediapool: <http://www.mediapool.bg/inspektoratat-na-vkp-be-razformirovan-zaradi-samneniya-za-porachkova-rabota-news202353.html>.

⁷¹ *Tsatsarov wants a disciplinary procedure against the Sofia appellate prosecutor*, published on 31 January 2013 in Legalworld: <http://legalworld.bg/29654.cacarov-iska-disciplinarka-sreshtu-apelativniia-prokuror-na-sofiia.html>.

⁷² See Functional analysis of the Bulgarian Prosecution Service, page 48.

⁷³ *Ibid*, page 49.

⁷⁴ See Working document of the Commission's services, Bulgaria: Technical report accompanying the Report of the European Commission and of the Council to the European Parliament on the progress of Bulgaria under the Co-operation and Verification Mechanism, {COM(2014) 36 final}, page 11: 'Following an investigation of the Inspection Service of the SPSC, which is tasked with the investigation of corruption amongst magistrates, its Head was dismissed over unlawful actions and disciplinary proceedings are currently under way. According to the Prosecutor-General a great deal of pointless inspections have been conducted and concerns that improper influence may have been exercised on magistrates was expressed', *available on*: http://ec.europa.eu/cvm/docs/swd_2014_36_bg.pdf.

V. Interaction with Criminal Justice Actors

Factor 20: Interaction with Judges

Public prosecutors safeguard the independence of the judicial and prosecutorial functions. Prosecutors treat judges with candor and respect for their office, and cooperate with them in the fair and timely administration of justice.

Conclusion	Correlation: Positive	Trend ↔
Judges and prosecutors have a professional and respectful relationship. However ex parte communications between judges and prosecutors, as well as communications in the absence of other parties to the proceedings, particularly in smaller jurisdictions, remain a concern.		

Analysis/Background:

The legal framework relevant to this factor has not undergone change since the 2010 PRI. According to Article 117 (2) of the Constitution, the judicial system is an independent branch of government that administers justice. The judicial system includes judges, prosecutors and investigators. The SJC governs the admission, promotion, demotion, transfer, discipline and removal of all judges, prosecutors, and investigators. JUDICIAL SYSTEM ACT Art. 30; CONSTITUTION Art. 129(1). It is not uncommon for prosecutors to become judges or, although less frequently, for judges to turn prosecutors. However, a judge may not be part of a trial or hearing in which he or she has acted as a prosecutor. CRIM. PROC. CODE Art. 29 (1)(3).

Chapters 4, 19, and 20 of the Criminal Procedure Code describe most of the functions of the first instance criminal court in the pre-trial and trial phases. Judges examine and rule on applications for remand measures, hear victim claims and formal complaints; they play a role in the admission of evidence, the revocation of remand measures and sentencing. The judge-rapporteur has the power to terminate trial proceedings on jurisdictional grounds or for procedural violations and to return the file to the prosecutor with his/her findings. The judge-rapporteur may also terminate the criminal proceeding if she/he finds *inter alia*, a lack of evidence or the alleged act does not constitute a crime. See Art. 249–250, CRIM. PROC. CODE.

The trend towards a reduction of the absolute number of case files returned remains stable. “With a view to establishing a permanent mechanism for the monitoring and control of returned case files and acquittals, Guidelines have been issued by the Prosecutor General to help overcome recurrent weaknesses and errors in the prosecutorial process and improve the operational organization in the prosecution service”⁷⁵. In the cases under Arts. 249–250, Crim. Proc. Code, the prosecutor has the right to contest the termination order. Judges hearing a criminal case at the trial phase may also terminate trial proceedings and return the case to the prosecutor for reasons of improper jurisdiction and violations of procedural rules, lack of evidence or if the alleged crime is not a violation of the law. *Ibid* Arts. 288–289.

⁷⁵ Guidelines, Ref. no. 154 of 28th March, 2012.

The statistics under these headings are as follows:

	2012	2011	2010
Total number of protests	2 643	2 705	2 575
Appeal protests	1 312	1 373	1 239
Appeal protests heard	581	544	559
Upheld appeal protests	26.2%	29.6%	28.4%
Rejected appeal protests	73.8%	70%	70%
Cassation protests	155	129	121
Cassation protests heard	61	No available data	No available data
Upheld cassation protests	20	36%	46.6%
Rejected cassation protests	41	64%	53.4%

* The data are quoted as percentages and absolute figures as found in the relevant reports of the Prosecution Service of the Republic of Bulgaria.

Source: Report on Law Implementation and on the Functioning of the Prosecution Service and the Investigative Authorities in 2010 (p. 66), 2011 (p. 71) and 2012 (p. 51).

The respondents are unanimous that the relations between judges and prosecutors continue to be very good, in line with the 2010 PRI which found significant improvement over the previous four years. It should be noted that as in the 2006 PRI, most interviewees reported that the relationship between judges and prosecutors is generally professional and cordial, based on mutual respect.

As indicated above, efforts should focus on raising the awareness of judges and prosecutors with respect to *ex parte* communications, involving discussions of pending cases. Such practices, even if not in substance, are still perceived as likely to be detrimental to the other parties to the proceedings. The interviewees are aware of the problem, but some of them admit to having discussed pending cases with colleagues outside the courtroom in the absence of the other parties to the proceedings. They state that every magistrate has at some point resorted to such discussions. They emphasize that this has invariably been done in the service of work. It is argued that this is particularly common in the smaller courts and prosecution offices, where all magistrates know each other very well and the relations between judges and prosecutors are particularly close. However, this is not typical only of them as respondents holding positions at the top of the judicial hierarchy agree that there is a 'sense of community' among magistrates. This is by no means a negative conclusion. Quite the contrary. Still, certain boundaries must be observed and it should be borne in mind that the MAGISTRATES' CODE OF CONDUCT expressly prohibits any *ex parte* communications.

The recurring question of achieving some degree of separation between judges and prosecutors, as well as about the place of the prosecution service, should not be bypassed either. While the present study concerns the powers and functioning of the prosecution service, any discussion of its place should take into account such issues as its accountability and its responsibilities. It is in the same spirit that the possible split of the SJC into two separate chambers should be considered too. The arguments that staff and disciplinary issues concerning judges and prosecutors should be decided solely by judges and prosecutors are pertinent. Nevertheless, there is the counterargument that the

“encapsulation” of the constituent parts of the judiciary, preventing the “view from outside”, could cause the degradation of the system.

Factor 21: Interaction with Police and Other Investigatory Agencies

In order to ensure the fairness and effectiveness of prosecutions, prosecutors cooperate with the police and other investigatory agencies in conducting the criminal investigation and preparing cases for trial, and monitor the observance of human rights by investigators.

Conclusion	Correlation: Neutral	Trend ↔
While coordination between police and prosecutors is improving, the Mol investigating police officers are still facing issues relating to inadequate training, resources, and technology. The investigation stage is widely considered the weakest part of the prosecution. Respondents point to certain trends in the dynamics of the relationship between the prosecution and the police, with attempts on the part of the latter to prevail over the former, thus contradicting the law which stipulates that the prosecutor is master of the pre-trial phase.		

Analysis/Background:

As noted above, pursuant to Article 127 of the Constitution and Article 46 of the Criminal Procedure Code the prosecutor's function in criminal proceedings is to direct and supervise the investigation of criminal acts as he/she may also carry out investigations. The investigative bodies are the National Investigation Service [hereinafter NIS] (the investigators, who pursuant to Article 136 (3) of the Judicial System Act, along with judges and prosecutors, belong to the judiciary and report to the Prosecutor-General), the Ministry of Interior officers appointed to the position of “investigating police officer”, the Customs Agency officers appointed to the position of “investigating customs inspector” and, as provided in the Criminal Procedure Code, the law enforcement agencies of the Mol and the customs bodies of the Customs Agency. See Art. 52, CRIM. PROC. CODE as amended in 2011, SG, no. 93, in force as of Jan. 1, 2012. By law, the investigative bodies operate under the guidance and supervision of a prosecutor.

Prosecutors oversee the entire investigation. According to Articles 196 and 197 of the Criminal Procedure Code, the prosecutor enjoys extensive powers with respect to the guidance and supervision of the pre-trial proceedings. The prosecutor is charged with constantly controlling the progress of the investigation and giving instructions in relation to the investigation; taking part in or performing investigative actions; removing the investigative body, where it has committed a violation of the law or is not capable of ensuring the correct conduct of the investigation; withdrawing a case from an investigative body and transferring it to another; assigning to the respective bodies of the Ministry of Interior the implementation of individual actions related to the discovery of the crime; revoking on his own motion or on the basis of a complaint by the interested individuals decrees of the investigative bodies. The prosecutor monitors the lawfulness of the investigation and his written instructions to the investigative body are binding; he undertakes investigative actions in person as necessary. The investigative bodies report to the prosecutor on the case and the progress of the investigation.

In practice, however, the relationship described in the law does not always function as envisioned. Many respondents point to a departure from the statutory provisions in recent years. They cite attempts on the part of the Mol to dominate the relations with the prosecution as prosecutors feel under pressure to temper their criticism of police work. Others state that this should be seen through the prism of the enhanced interaction and understanding between investigative police officers and prosecutors. The interviewees are convinced that the quality of police work is inadequate, not only with respect to the investigation but also with respect to crime detection. The turnover is high and the newly appointed officers are insufficiently qualified to handle crimes, in particular those of greater complexity. This situation cannot be justified solely with the huge workload of the investigative police officers as Art. 194 (3) of the Criminal Procedure Code allows for investigative activities to be delegated to police officers not belonging to the investigative bodies, i.e. given a greater flexibility, an investigative police officer could thus be relieved of some of their duties. The lawmaker has attempted to resolve this issue through the provision of Art. 194 (1), item 4 of the Criminal Procedure Code, which since 2009 allows administrative heads of prosecutor's offices to delegate cases of factual and legal complexity for investigation by an investigator. This provision has come in response to 2010 PRI criticism that the existing NIS investigative resources remain untapped due to a statutory gap. The 2013 Report on Law Implementation and on the Functioning of the Prosecution Service and the Investigative Authorities indicates that for the year in question the number of supervised pre-trial proceedings where the investigation was conducted by an investigator rose by 6 percent. In 2013 NIS conducted the investigation in 659 pre-trial proceedings with an average annual workload of 8.24 pre-trial proceedings per investigator.

The amendments in force as of January 1st, 2012, which introduced customs investigation, represent a further step towards relieving the burden of investigative police officers. However, it should be noted that the working conditions, technical equipment and remuneration of investigative police officers are not among the factors enhancing their motivation. The dual subordination of investigative police officers should not be underestimated either. They report both to their line manager and to the supervising prosecutor. It is undeniable that such dualism is riddled with problems.

The prosecution service has signed a number of joint instructions, the most recent one updating an earlier version signed with the Mol, the Ministry of Finance (MF), the Commission for the Forfeiture of Illegally Acquired Assets (CFIAA) and SANS on November 3rd, 2013. Such instructions were in existence even prior to the adoption of the above mentioned one, but they left a lot to be desired in terms of improving the interaction among the bodies. Therefore, it is still too early to assess the impact of this initiative. In respect of CFIAA, the interaction with the prosecution service was the only point of criticism levelled at its predecessor, the Commission for the Establishment of Property Acquired through Criminal Activity (CEPACA), in the EC interim report under the Cooperation and Verification Mechanism of February 8th, 2012.

Although this does not concern any investigative body, it would be apt to note at this point also the absence of effective interaction between the prosecution service and the controlling authorities. The practice of the controlling agencies of the executive overwhelming the prosecution with alerts should be discontinued. This would also require the systematic consideration of the efficiency and effectiveness of these bodies. However, such an endeavour falls outside the scope of the present analysis. Still, these agencies play a vital preventive role which is key to the functioning of the entire system, including the prosecution service.

The statistics for the first half of 2012 show that convicted and penalized persons represent 95.6 percent of the persons against whom judgements have been given. Thus the 2010 PRI

share of 96 percent remains stable. The figures seem to attest to the effective operation of police and prosecution. However, some of the respondents comment that the favourable statistics are due to non-decriminalizing a number of minor offences or low complexity offences. A commonly cited example is Art. 324 of the Criminal Procedure Code, which does not prescribe any procedural actions. In this regard it should be recalled that the prosecution has repeatedly raised the subject of decriminalization with a view to allowing prosecutors to focus on cases with a higher degree of social significance. Another factor, according to respondents is the high “success rate” of the prosecution in smaller settlements. However, it is remarked that the percentage is much lower for cases of higher factual and legal complexity and in the large prosecutor’s offices. For instance, prosecution statistics on organized crime show declining success rates.

	2012	2011	2010
Convicted and penalized persons with enforceable judgements	121	290	209
Acquitted persons with enforceable judgements	19	11	6

The legislative amendments enacted at the beginning of 2012, which resulted in the introduction of a specialized prosecution to counter organized crime, came partly in response to some of the recommendations contained in the 2010 PRI. This allowed the continuation and institutionalization of the successful practice of employing joint teams in specialized and complex investigations, which should be further developed. This is the only route to improving the quality of investigative actions and the supervision thereof, with prosecutors handling more cases while exercising the same level of supervision and authority. The 2010 PRI recommendation advising a more efficient utilization of the procedural rules set out in Chapter 31, Arts. 396–411, CRIM. PROC. CODE, as another way of improving the quality of prosecutorial supervision remains relevant. The aforesaid articles lay out litigation procedures against Mol officers, including bringing suits for human rights and domestic legislation violations. Such proceedings are within the jurisdiction of the military courts and the respective specialized prosecutor’s offices and investigators. Military courts have been criticized for a lack of transparency as well as for being beyond public control. It has been indicated that the number of police violence claims is negligible.

Police and prosecutors have made considerable progress in that respect. Still, there is a long way to go to ensure better and more effective interaction. Prosecutors should assume greater responsibility in directing investigations, while Mol investigating police officers should progressively improve their effectiveness despite the difficulties they are facing. However, significant improvements in training and resource provision are required.

Factor 22: Interaction with representatives of the accused

Public prosecutors respect the independence of the defense function. In order to ensure the fairness and effectiveness of prosecutions, prosecutors satisfy their legal and ethical obligations towards the representative of the defendant.

Conclusion	Correlation: Neutral	Trend ↔
<p>The prosecutor has the chief responsibility for ensuring the rights of defense counsel during the investigative stage. Public prosecutors in general respect the independence of the defense function and the rights of defense attorneys are protected by law. There are still claims of some failings. Counsel note that there are instances when prosecutors are not entirely impeccable in their communication with the media, releasing details about cases or presenting their side of the argument.</p>		

Analysis/Background:

The CRIMINAL PROCEDURE CODE and the ATTORNEYS BAR ACT provide the key legal provisions under this factor. The rights afforded defense attorneys are defined as inviolable. See ATTORNEYS BAR ACT, *adopted* Jun. 25, 2004, SG No. 55, *last amended* Jul. 12, 2012 [hereinafter the BAR ACT]. Both laws support the concept of equality of arms. In Article 99, the Criminal Procedure Code affords defense counsel the following rights: “[to] meet the accused party in private; to examine the case-file and obtain excerpts he/she needs; produce evidence; take part in the criminal proceedings; make requests, comments and raise objections, as well as to file appeals from acts of the court and of the bodies entrusted with the pre-trial proceedings which infringe upon the rights and legal interests of the accused party. The defense counsel shall have the right to take part in all investigative actions involving the accused party, his failure to appear not being an obstacle to their progress.” The defence counsel exercises those rights also in the course of the pre-trial proceedings. See Art. 99, CRIM. PROC. CODE.

At the discretion of the pre-trial investigation team, defense counsel may observe the investigation as it is being conducted, unless otherwise prohibited by law and where they do not obstruct the investigation. At the conclusion of the investigation the prosecutor confirms all investigative actions have been taken and approves the presentation of the entire investigation file to the accused, defense counsel and victims (and their counsel). Next, the investigative body makes the file and materials available to the defense and accused for their review. Those reviewing the file, including defense attorneys, may make written or oral requests, remarks and objections. The prosecutor rules on the requests. His/her rulings are subject to appeal to a higher level prosecutor. Where requests for additional investigation are granted, parties may attend the subsequent investigation. *Ibid.* Arts. 224, 226–230. Following review of the investigation, the defense counsel (or prosecutor) may make a proposal to draw up an agreement in cases where the crimes alleged permit agreements. *Ibid.* Art. 381.

As in the Criminal Procedure Code, Article 99, Article 31 of the BAR ACT guarantees attorneys the right of free access to pre-trial and court case files and grants them the right to make copies of any data therein. Art. 33 of the BAR ACT provides that attorney-at-law papers, files, electronic documents, computer equipment and other carriers of information shall be inviolable and shall not be subject to inspection, copying, verification or seizure. Correspondence between an attorney-at-law and his or her client, irrespective of the manner it is maintained, including electronically, shall not be subject to inspection, verification or

seizure and shall not be used as evidence. Conferences between an attorney-at-law and his or her client shall not be intercepted and recorded. Any recordings, where available, shall not be used as means of evidence and shall be subject to immediate destruction. Attorneys-at-law shall not be interrogated in their procedural capacity with regard to: their conferences and correspondence with clients; their conferences and correspondence with another attorney-at-law; the affairs of clients; facts and circumstances, of which they have become aware in relation to the provision of protection and assistance. In this respect, the aforementioned Instruction on the actions that pre-trial authorities could undertake with respect to attorneys-at-law should be recalled, in particular Art. 3, which prohibits the examination of defense counsel in any procedural capacity and Arts. 9–13 pertaining to searches of defense counsel premises and the use of special investigation means (SIM).

Before court, pre-trial bodies, administrative authorities and other services inside the country attorneys-at-law shall be placed on equal footing with judges, in terms of respect, and assistance shall be provided to them as to a judge. See Art. 29 (1) of the BAR ACT. Where an attorney-at-law's rights have been infringed, the Bar Council shall make a proposal for the institution of disciplinary proceedings against the prosecutor or for the imposition of a disciplinary sanction. See Arts. 29–30 of the BAR ACT. Disciplinary proceedings against a prosecutor could be initiated at the discretion of the Supreme Judicial Council.

It should be noted that the interviewed members of the Bar declared that the relations between them and the prosecutors were founded upon mutual respect and collegiality. Defense attorneys have the right to indicate and request the admission of new evidence. Sometimes the refusal to admit evidence is unfounded, with reasoning limited to a single sentence stating its irrelevance. In some instances this results in the inability of the prosecutor to gain an understanding of the case and thus in being “surprised” by the defense during the trial stage, which is one of the reasons for delays. However, it is pertinent to state here that the prosecutor is responsible for ensuring that the rights of the defense counsel are observed throughout the pre-trial investigation, also through the supervision exercised over the investigation. Relevant to this factor is also the criticism contained in the aforementioned views that the prosecution has become less exacting towards police actions in the pre-trial phase.

On some occasions, when handling cases of particular public interest, some prosecutors misuse their media access by releasing details about investigations, disclosing information on cases or arguing their side of the case before the media.

Factor 23: Interaction with the public/media

In their contacts with the media, and other elements of civil society, prosecutors provide appropriate and accurate information wherever possible, within their discretion.

Conclusion	Correlation: Neutral	Trend ↔
<p>The prosecution service continues its intense work with the media. Prosecutors at district and higher level, as well as the larger regional prosecutor's offices have appointed media spokespersons. Cooperation on major civil education initiatives has been established with non-governmental organizations and the media. There are still instances in which prosecutors "argue their case" before the press and make statements on cases of particular public interest, thus arousing certain public expectations. This, in turn, provokes unnecessary hostility in society not only towards the accused/defendants but also towards the prosecution service, especially when cases fail. It is essential that a balance be struck between direct communication with all the media and the provision of information solely through the filter of the Press Office of the Prosecution Service.</p>		

Analysis/Background:

The Judicial System Act obligates prosecutors to respect official secrecy. This includes information they have acquired in the course of service as well as the confidentiality of the deliberative process even after adjudication. Prosecutors may not publicly express anticipatory opinions on open cases whether assigned to them or not. See Art. 156, 211 and 212, JUDICIAL SYSTEM ACT. Article 198 of the Criminal Procedure Code prohibits, on pain of criminal penalty, divulging the content of investigation materials without the express authorization of the prosecutor or court. Article 360 of the CRIMINAL CODE imposes an obligation of official secrecy. This provision, read in combination with Art. 198 of the Criminal Procedure Code, sets limits to the disclosure of information on pending cases.

In May, 2009 the SJC adopted a CODE OF CONDUCT OF THE BULGARIAN MAGISTRATES. According to it magistrates shall not make public announcements or comments on pending procedures, thus committing themselves to a particular outcome, or create the impression of partiality or prejudice. Outside court hearings, they shall not discuss similar proceedings with the parties involved, attorneys or third parties, unless otherwise provided for by the law.

At the same time the prosecution is obliged to provide information to the public, especially in the course of criminal investigation or evidence gathering. This is not prohibited by the law and the CODE OF CONDUCT OF BULGARIAN MAGISTRATES allows the provision to the public of useful, timely, comprehensible and appropriate information, in compliance with statutory requirements. Magistrates may communicate in person or through the media the reasons for their rulings on cases of public interest. However, as prosecutors are not allowed to disclose information relating to proceedings conducted by their colleagues, the prosecution service has introduced the figure of the spokesperson. Spokespersons are specially trained prosecutors who present information in a manner that is in compliance with legal requirements.

It should be noted that the Functional Analysis sets store by public communication. It states expressly that the "Prosecution Service has not put in place a comprehensive and

consistent policy in this area”⁷⁶. It highlights the absence of standards for the various means of public communication, the excessive centralization and “the impaired communication between territorial prosecutor’s offices and the local media”⁷⁷. The following should be noted among the recommendations deriving from the Functional Analysis: **Empowering the supervising prosecutor to comment on cases (separately or jointly with the spokesperson)** as a possible solution to the lack of a swift enough response”, **Restricting the practice of impromptu interviews** with the prosecutor surrounded by dozens of reporters and bombarded with questions” and **Promoting the work of the prosecution service**. One possible means would be to organise Open Days on a regular basis...”⁷⁸ (bold text as in the original).

An issue which arose in recent years related to the release by the Mol of information on ongoing investigations without prosecutorial authorization. The new Prosecutor-General made a public announcement that he had sent a letter to Mol to request that this practice be discontinued⁷⁹. This lends credence to views voiced by the respondents that the ban on discussing proceedings without prior authorization by the prosecutor has been breached.

Despite these positive signs, some degree of departure from the announced commitment to publicity and openness in the communication with the public and the media has manifested itself in recent years. This is evidenced by the negative attitude to certain journalists whose publications contain criticism of the work of the prosecution service⁸⁰, their summoning to give statements and the demands to disclose their sources⁸¹. Furthermore, increased transparency and media access is used by some prosecutors to argue their cases in public or to release information that goes beyond what is strictly necessary and could thus hinder the investigation. In addition to damaging the reputation of defendants who are yet to be proven guilty, the public vilification of defendants creates unrealistic expectations in both the media and the public at large. When such cases are unsuccessful, it generates considerable criticism of the Prosecutors’ Office for failing to convict someone they have portrayed as a menace to society and obviously guilty. Also worrying is the fact that despite the recommendation of the Functional Analysis (see above), the prosecution service has recently made an abrupt change to its usual practice and no longer reveals the name of the supervising prosecutor. This creates considerable difficulty, especially for the defense, as lawyers are prevented from properly representing their clients and compelled to draw up generic requests.

Thus, although the prosecution continues its active interaction with the media⁸², both some earlier challenges and such that have arisen since the 2010 PRI need to be addressed. A balance should be struck between direct communication with the media and providing information exclusively through the filter of the Prosecution Service Press Office.

⁷⁶ See Functional Analysis of the Prosecution Service of RB, p. 259 and the following, *accessible at*: <http://www.prb.bg/main/bg/Information/download/1925/>.

⁷⁷ *Ibid*, p. 261.

⁷⁸ *Ibid*, p. 261

⁷⁹ *Tsatsarov gags the Mol*, published in the Trud newspaper on 23/03/2013: <http://www.trud.bg/Article.asp?ArticleId=1861118>.

⁸⁰ *The Bulgarian Watergate: Who will inspect the inspector?*, published on 05/04/2013 at Mediapool: <http://www.mediapool.bg/balgarskiyat-uotargeit-a-koi-shte-proveryava-proveryavashtiya-news204856.html>.

⁸¹ *Prosecution threatens journalist Boris Mitov after revelations implicating Roman Vasilev*, published on 05/04/2013 by News.bg: http://news.ibox.bg/news/id_1541947886.

⁸² *The prosecution will teach 80 magistrates how to communicate with the civil society*, published on 01/10/2013 at Mediapool: <http://www.mediapool.bg/prokuraturata-shte-uchi-80-magistrati-na-dialog-s-grazhdanskoto-obshtestvo-news211766.html>.

Factor 24: International cooperation

In accordance with the law and in a spirit of cooperation, prosecutors provide international assistance to the prosecutorial services of other jurisdictions.

Conclusion	Correlation: Positive	Trend ↔
Traditionally, the Prosecutors' Office puts considerable effort into responding promptly to requests for international cooperation. Bulgarian prosecutors are very well qualified to serve as EU contact points in extradition, arrest warrants, and mutual legal assistance cases.		

Analysis/Background:

Under Bulgarian law, international mutual legal assistance in most criminal matters is regulated by the Criminal Procedure Code. See articles 471–479. Extradition is governed by the EXTRADITION AND EUROPEAN ARREST WARRANT ACT, *adopted* Jun. 3, 2005, SG no. 46, *last amended* Jul. 19, 2011, SG no. 55 [hereinafter EXTRADITION AND EAW ACT]; the LAW ON THE RECOGNITION, ENFORCEMENT AND TRANSMISSION OF JUDGMENTS AND PROBATION DECISIONS WITH A VIEW TO EXERCISING SUPERVISION ON PROBATION MEASURES AND ALTERNATIVE SANCTIONS, *adopted* Mar. 25, 2012, SG no. 25, in force since Apr. 25, 2012; LAW ON THE RECOGNITION, ENFORCEMENT AND ISSUANCE OF ORDERS FOR THE FREEZING OF PROPERTY AND EVIDENCE, *adopted* Jul. 21, 2006, SG no. 59, effective as of the date of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union, Jan. 1, 2007. In the part concerned with the European Arrest Warrant, Bulgarian legislation transposes FRAMEWORK DECISION 2002/584/JHA of 2002 and the amending FRAMEWORK DECISION 2009/299/JHA; the LAW ON THE RECOGNITION, ENFORCEMENT AND TRANSMISSION OF DECISIONS ON CONFISCATION OR SEIZURE AND DECISIONS ON THE ENFORCEMENT OF FINANCIAL PENALTIES, *adopted* Feb. 23, 2010, SG no. 15, *last amended* Jul. 19, 2011, SG no. 55, transposing Framework Decision on the mutual recognition of financial penalties. Another key EU instrument regulating legal assistance provision is the CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION of 2000 (hereinafter the 2000 CONVENTION) and the Protocol to it on the exchange of information on bank accounts and banking transactions of 2001, adopted in Bulgaria pursuant to a Decision of the EU Council of Dec. 8, 2007.

While since the adoption of CONVENTION 2000 it is no longer the central authority, the Supreme Cassation Prosecution still plays a key role in international cooperation. In mutual legal assistance matters, the Supreme Cassation Prosecution Office has the following responsibilities in relation to mutual assistance in criminal matters: to establish together with other states joint investigation teams by concluding agreements with the competent authorities of participating states on the activities, duration and composition of the joint investigation team; to file requests with other states for investigation through an under-cover agent, for controlled deliveries and cross-border surveillance, ruling also on such requests by other states; to rule on the continuation or termination of cross-border surveillance pursuant to the terms and conditions of the Special Intelligence Means Act; to review and rule on requests by states for the transfer of criminal proceedings, but only in the pre-trial stage; and where criminal proceedings have been instituted in Bulgaria against the national or permanent resident of another state, to file a request for transfer of criminal proceedings to the other state. See CRIM. PROC. CODE, Articles 476, 478, and 479.

While in cases concerning EU member-states the free movement of orders for the surrender of persons is established in the EXTRADITION AND EAW ACT, foreign states' requests for

extradition or provisional arrest are routinely referred by the MoJ to the Supreme Cassation Prosecution Office. When the individual is ready to be surrendered, the International Legal Department of the Supreme Cassation Prosecution Office notifies the requesting nation. Requests for extradition of persons who have committed offences falling within the jurisdiction of the Bulgarian court are submitted by: the Prosecutor General in the case of indicted or convicted individuals with a final judgment and by the Minister of Justice in the case of a defendant following a relevant court proposal. See EXTRADITION AND EAW ACT, Chapter 3, Part I and Art. 23.

Pursuant to the LAW ON THE RECOGNITION, ENFORCEMENT AND ISSUANCE OF ORDERS FOR THE FREEZING OF PROPERTY AND EVIDENCE a request for the forfeiture of frozen assets or surrendering evidence issued by a competent Bulgarian authority (court or prosecutor) is forwarded for recognition and enforcement directly to the competent authority of the executing state, accompanied by the requisite SCP certificate. See Articles 4 (3) and 19 (2) of the LAW ON THE RECOGNITION, ENFORCEMENT AND ISSUANCE OF ORDERS FOR THE FREEZING OF PROPERTY AND EVIDENCE. These provisions correlate systematically with the provisions of the LAW ON THE RECOGNITION, ENFORCEMENT AND TRANSMISSION OF DECISIONS ON CONFISCATION OR SEIZURE AND DECISIONS ON THE ENFORCEMENT OF FINANCIAL PENALTIES, as the former act provides for the freezing and securing of evidence and property, while the latter regulates the actual enforcement of decisions on confiscating and surrendering assets and evidence. Under the second law, the prosecution is party to the proceedings. See Article 16 of the LAW ON THE RECOGNITION, ENFORCEMENT AND TRANSMISSION OF DECISIONS ON CONFISCATION OR SEIZURE AND DECISIONS ON THE ENFORCEMENT OF FINANCIAL PENALTIES.

The transmission of legal assistance requests (LAR) and the issuance of European Arrest Warrants are key elements of international cooperation. It should be noted that the Prosecutor-General has issued Instruction 5332/15.10.2008 concerning EAW enforcement. The aim is to offer guidance to prosecutors on the proper discharge of their duties under the EXTRADITION AND EAW ACT, which in itself transposes the Framework Decision on EAW. The Instruction lists the conditions for the enforcement of EAW, specifies the format and content requirements for EAWs, the procedures for outgoing and incoming requests for EAW enforcement as well as the distinctions applying when requests are received via Interpol or directly at the prosecution service. A separate section is dedicated to special EAW cases. Also highlighted is the obligation to notify the Supreme Cassation Prosecution Office, as well as some peculiarities in deferring the surrender of the requested person. This order was repealed by the new Order 1774/2014 of May 19, 2014.

International Cooperation	2012	2011	2010
MLA requests referred for enforcement	1045	541	525
MLA requests received for enforcement	509	434	512
EAW issued	235	255	177
Enforced EAW issued by other states	139 of 231	155 of 249	64 of 155

Source: Prosecution Service Annual Reports.

In the area of international cooperation the prosecution service has consistently been praised for its continuing efforts to respond promptly to requests for legal assistance and extradition. At the district level, there are 40 prosecutors appointed by Order 6880/26.10.2007 of the Prosecutor-General as EU contact points on issues relating to international legal cooperation. It would be fair to say that as a result of the training delivered, prosecutors have acquired a good understanding of cooperation mechanisms within the EU.

VI. Finances and resources

Factor 25: Budgetary Input

The state provides an adequate budget for the prosecutor's office, which is determined in consultation with representatives of the prosecutor's office.

Conclusion	Correlation: Neutral	Trend: ↔
<p>Budgeting for the judiciary and the prosecution service in particular persists as an issue. The prosecution service has some input into the budgetary process through its proposals to the MoJ. The draft budget for the judiciary is submitted to the SJC for consideration. To a large extent the problem stems from accountability and responsibility issues at the prosecution service. Logically, the absence of sound accountability would reflect negatively on the budget. The fact that, overall, the budget of the judiciary, and the prosecution service in particular, is still not drafted on a programme basis, is a separate issue.</p>		

Analysis/Background:

According to Article 117(3) of the Constitution “[t]he judiciary shall have an independent budget.” The Minister of Justice “shall propose a draft budget of the judiciary and submit it to the Supreme Judicial Council for consideration.” See Art. 130a(1) of the Constitution. The adoption of the finalized draft budget remains within the power of the SJC, pursuant to Art. 130(6), item 4 of the Constitution. In addition, the Judiciary System Act (JSA) grants the SJC the right to set the remuneration of judges, prosecutors and investigating magistrates. See Art. 30(1)(8) of the JA.

The JSA also lays down the general budget drafting procedure, including the requirement that the separate Judiciary budget shall be part of the state budget with the SJC as primary budget spending unit and the prosecution service as a secondary one. See Article 361 of the JA. The only input of the prosecution service in the budget procedure is limited to the initial participation in budget drafting within the MoJ, as the Ministry can, but is not obliged, following a 2009 amendment to Art. 362 of the JSA, to adopt the opinions and proposals regarding the draft judiciary budget received from the judicial system bodies and the Prosecutor-General. See Article 362 of the JA. Still, it should be recognized that *ex officio* the Prosecutor-General sits on the SJC, which adopts the draft budget. Here mention should be made of an Opinion of the Consultative Council of European Prosecutors at the Council of Europe (Opinion 7 on the Management of the Means of the Prosecution Services) of Nov 27, 2012, which should be taken into account when elaborating the legal and technical basis of the budgetary procedure. It highlights also the need to adopt practices to ensure proper involvement of prosecutor's offices in consultations on their funding.

Pursuant to the 2013 State Budget of the Republic of Bulgaria Act, the allocated budget of the Prosecution Service of the Republic of Bulgaria (including specialized prosecutions) amounts to 162 708 BGN out of a total of 404 000 BGN for all judiciary system bodies.

Prosecution service budget (in thousands)

	SJC Requested Prosecution Service Budget		Approved Prosecution Service Budget		% of Budget Request Cut
	BGN	USD ⁸³	BGN	USD	
2010	208 103.53	140 659.91	154 908.00	104 704.36	25.57
2011	190 141.00	128 096.28	154 908.00	104 704.36	18.53
2012	190 499.308	127 660.82	158 908.00	106 490.29	16.58

Source: 2012 Draft Budget Act of the Republic of Bulgaria (Bill No 102-01-71 of 31 October 2011, 41st National Assembly); 2011 Draft Budget Act of the Republic of Bulgaria (Bill No 002-01-81 of 1 October 2010, 41st National Assembly); 2010 Draft Budget Act of the Republic of Bulgaria (Bill No 902-01-37 of 29 October 2011, 41st National Assembly); Data of the Budget and Finance Committee of the SJC.

In this sense, the findings set out in the 2010 PRI remain unchanged. The role of the prosecution service in drafting its own budget is limited. It should be noted that the MoJ is responsible for the management of the property of the judiciary (Article 130(2) of the Bulgarian Constitution. In this sense, the role of the prosecution is partly balanced by the responsibility of the MoJ for the maintenance of courthouses and other real property.

Within this factor, we must also note that the budgeting problems in the judiciary are not solely dependent of courts or the prosecution service. The Supreme judicial council (SJC) must have the necessary competence and skills to draft budgets that can be defended before the executive branch of government. At present, the draft budgets prepared by the SJC are institutional and functional but lack a programming component. Drawing up programme budgets has strong implications for the accountability of the individual institutions in the judiciary. For this reason the 2012 Report of the Bulgarian Prosecution Service contains a reference to the SJC and further notes the following: 'In the context of the independence of the budget of the judiciary, and in particular that of the prosecution service, the involvement of the SJC would be a highly positive development'⁸⁴. The active role of the prosecution service in this process could be in the form of more detailed financial accountability and arguments for a further increase in the budget.

⁸³ Calculations are based on the average monthly rate of exchange for the US Dollar of the Bulgarian National Bank (BNB) as at December of each year. The monthly BGN/USD rates of exchange are available at: http://bnb.bg/bnbweb/groups/public/documents/bnb_download/s_monthly_exr_bg.xls.

⁸⁴ 2012 Report of the Bulgarian Prosecution Service, page 140, available at: http://prb.bg/uploads/documents/docs_3923.pdf.

Factor 26: Resources and Infrastructure

The State provides adequate funding, conditions, and resources to guarantee the proper functioning of the prosecutor's office.

Conclusion	Correlation: Neutral	Trend: ↔
<p>The Ministry of Justice is responsible for the management of the buildings and moveable property of the judiciary. This mixed status continues to create problems, particularly in larger prosecution offices. Steps appear to be taken to extend them but they are insufficient and not rapid enough. The shortage of buildings and the problems relating to the working conditions are a regular feature of the annual report of the prosecution service. Areas such as human resources are adequately funded.</p>		

Analysis/Legal Background:

As already noted in Factor 25, according to the Constitution the judiciary has an independent budget (see Article 117(3)). As noted in the 2010 PRI, the judiciary does not have complete control over its budget and resources. The SJC makes arrangements for budget spending, acting through the Prosecutor-General and the other judiciary bodies (see Article 365 of the JA). The MOJ has primary responsibility for management of the judiciary's real and movable property and funds building and repair works (see Articles 387–388 of the JA). The right of use of real property by judiciary bodies is decided by the Minister of Justice.

According to available information the budget of the prosecution service has increased in absolute terms but remains significantly lower than that necessary for the implementation of the projects notified to the SJC.

In some areas, the available budget remains inadequate, particularly overcrowded offices. The problems relating to the poor condition of courthouses, where the offices used by prosecutors are, have also failed to be addressed. These problems have already been identified in the 2010 PRI. The poor condition of the buildings is a barrier to the efficient administration of justice. The other infrastructure problems include the lack of appropriate space for archives; inadequately separated circulation for public, prisoners, witnesses and judges; and lack of secure holding space for prisoners in the courthouse waiting to go to courtrooms.

With regard to technical infrastructure there has been a notable improvement. The prosecutors can use the Single Information System (SIS), which has been rolled out at all prosecution offices and greatly facilitates prosecutorial work. Following the structural changes to the judiciary in 2009, the prosecution service has been responsible for the management of the Single Information System for Counteracting Crime (SISCC), which is still under development. The SISCC has been developed since 1997. According to the cited Functional analysis and Action Plan for the period until 2015 the completion of the SISCC is a special priority,

The information about human resources and their adequate allocation remains inconsistent. The interviewees concur that the problem is significant and that no conclusive answer can be given at present due to a number of ongoing developments at the SJC, which is currently assessing workload and due to statistics, which in some cases appears unreliable and raises doubts as to the objective nature of the data contained therein. In March 2013, the

Prosecutor-General commissioned a functional analysis and matters relating to caseload and resources allocation are one of its significant components.

These findings have been largely confirmed by the Functional Analysis of the Bulgarian Prosecution Service. According to the findings contained therein *'the current infrastructure is non-functional and raises serious doubts as regards efficiency'*. The formalistic approach followed entails a *lack of reciprocity* between the significant headcount and great number of departments and units, on the one hand, and the tasks of the prosecution service, on the other hand. The ratio between the prosecutors in charge of different units (departments and sectors) and the total number of prosecutors at the SPSC, which is 48/95, is not based on a sound rationale as it means that every other magistrate is in charge of unit (in certain cases comprising only the magistrate in question)' (the italic is an editorial intervention). Some prosecution services (i.e. the Sofia Regional Prosecution Office) have an excessively high workload and human resources need to be reallocated – the first steps in this regard were taken during the summer of 2014.

According to some additional technical staff, and in particular prosecutorial assistants, need to be hired in order to alleviate the administrative workload of prosecutors. However, it should be noted that the function of a prosecutorial assistant has failed to be established as a career path but is regarded as a step towards becoming a magistrate. One of the reasons is that prosecutorial assistants are tasked with a great number of administrative and auxiliary functions and not given an opportunity to engage in analytical work.

Factor 27: Efficiency

Prosecutors perform their functions expeditiously, in order to achieve the best possible use of available resources. Prosecutors' offices have a written organizational plan to facilitate such efficiency.

The prosecutor's office has written guidelines, principles, and criteria for the implementation of criminal justice.

Conclusion	Correlation: Neutral	Trend: ↔
While the Prosecution Service made notable progress in some areas, it continues to face challenges in achieving functional efficiency. Increasingly, however, these inefficiencies stem from external sources and changes, such as excessively formalistic procedures, an inefficiently structured penal code, unnecessary responsibility for administrative cases, and inadequate training and resources for police hampering investigations. To a large extent, however, the efficiency in the daily work of the Prosecution Service could be obtained in a sustainable way only through adequate changes in the procedural and substantive law. The institutional reform should be made in parallel with the legislative one.		

Analysis/Legal Background:

The legislative framework is indirectly rather than directly relevant to this factor. The matter concerns primarily internal accountability at the prosecution office, which is within the remit of competence of the Inspection Service of the SPSC and that of the SJC. We should also mention the legislation relating to the development of the SISCC, which should provide a single and centralised mechanism for data collection and exchange between the different

institutions and bodies in the criminal law system, notably the JA and the Regulation on the Single Information System for Counteracting Crime, adopted by Decree No 262 of 5 November 2009 (SG No 90 of 13 November 2009). Lastly, the establishment of the ISJC whose powers include conducting checks and drafting reports on different activities in the judiciary is a significant development, which may contribute to identifying inefficiencies and/or unlawful practices (see Article 132a of the Constitution and Article 54 of the JA).

The prosecution service has achieved progress in several other respects that are relevant to this factor. These include the possibility for prosecutors to use the electronic system for case tracking and management via the Single Information System (SIS). In addition, the prosecution service has access to the databases of the following institutions: the Population National Database; the Bulgarian identity Documents National Automated Fund of the MIA; the Company and Property Register of the Company Registry; the Convictions Information System and the Register kept by the Notarial Chamber of the Republic of Bulgaria. In order to improve the timeliness of the decisions adopted by prosecutors on case-files and proceedings, an Electronic Register of the Schedule for investigations, Checks, Decisions and Detentions has been introduced (Order No 525 of 22 February 2012 of the Prosecutor-General).

In addition, interinstitutional trust has increased, including in the context of the joint teams comprising representatives of different institutions and the issuance of joint guidelines on the management of cooperation. The latest guidelines (Guidelines on the rules, procedure and timeframe for co-operation between the Commission on the Confiscation of Unlawfully Acquired Property, the State Agency for National Security, the MIA, the bodies under the jurisdiction of the Ministry of Finance and the Bulgarian Prosecution Service) was signed and published on 11 March 2013, i.e. at the time of drawing up the 2013 PRI.

Improving the specialist knowledge of prosecutors continues to be a priority and with regard to high-profile cases the prosecutors monitoring the case are obligated to appear in court during the trial phase in accordance with the abovementioned Guidelines on methodological support and supervision of certain criminal proceedings within the prosecutorial system. The specialisation is progressing at territorial level. By orders of the Prosecutor-general 5 specialist networks of prosecutors were established in order to counter certain types of crimes at all levels of the prosecution service: (1) counteracting corruption crimes (Orders Nos 1444 of 8 May 2012 and 1803 of 6 June 2012); (2) counteracting crimes with implications for the interests of the EU (Order No LS-1281 of 23 April 2012); (3) counteracting crimes committed by minors and crimes conducted against minors and underage persons (Order No LS-1261 of 23 April 2012); (4) counteracting crimes against the tax, customs, excise duty, currency and credit systems of Bulgaria (Order No LS-1280 of 23 April 2012); and (5) counteracting intellectual property and computer crimes (Order No 1424 of 7 May 2012).

Efforts have been made to ease the workload of prosecutors by delegating certain non-core tasks, such as compiling reference documents. An emphasis is placed on using the SIS in such cases. For this purpose, Order No 780 of 30 March 2010 of the Prosecutor-General has been issued. In accordance with the order the provision of information for the purposes of monitoring and supervising cases by superior prosecutors is relatively limited, centralised and organised on the basis of uniform criteria. The order in question has supplemented and revoked other orders and guidelines, some of a temporary nature or overlapping with others. The newly elect Prosecutor-General has issued Order No 8818 of 15 March 2013 on the execution of the budgets of prosecution offices according to which all correspondence, unless expressly required on paper, is to be sent by e-mail. It aims to improve efficiency and confirms Order No LS-1849 of 10 June 2010 in this respect.

The overall efficiency of the prosecution service can be traced by means of comparing the following statistical data, which demonstrates that during the first six months of last year the number of indictments has decreased, which has translated into a corresponding increase in a number of dependent indicators, such as the total number of indictments plea bargains and draft injunctions on dismissal of criminal liability and its substitution by administrative liability. As indicated in the Prosecution Service report for the first 6 month of 2012, the data reveals a continuing trend of increase in the relative share of plea bargains as compared to the total number of prosecutorial acts.

Number of indictments

Year	Total number of indictments	Total number of prosecutorial acts submitted to court	Agreements	Proposals for criminal procedure' dismissal and imposing of an administrative punishment (Art.78a Penal Code)
2010	45 598	28 679	11 261	5 658
2011	46 511	28 224	13 082	5 205
2012	41 155	23 613	12 559	4 983

Source: 2012 Report of the Bulgarian Prosecution Service, page 37.

Annual number of enforced judgments

Year	Enforced convictions and other sanctions	Acquitted individuals
2010	46 609	2 085
2011	48 108	1 899
2012	44 250	2 102

Source: 2012 Report of the Bulgarian Prosecution Service

Annual number of indictments remanded by courts

Year	Indictments remanded by courts to the prosecution service	%
2010	2 491	5.5%
2011	2 627	5.6%
2012	2 122	5.2%

Source: 2012 Report of the Bulgarian Prosecution Service, page 54

The comparative analysis of the information obtained from the Bulgarian Prosecution Service and set out in the three tables above shows a decrease in all indicators. For example, the number of indictments brought to court has decreased by 11.5% (41 155 in 2012 as compared to 46 511 in 2011). A similar decrease is registered in the number of indictments, which has resulted in a lower number of persons against whom charges are brought in court – 23 613 in 2012; 28 224 in 2011; 28 679 in 2010, or a decrease by 16.4 % as compared to 2011. These figures should be interpreted through the prism of the statistical data set out below in respect of newly instituted proceedings (at appellate,

provincial and regional level) – 224 796, 246 862 and 290 258 in 2012, 2011 and 2010, respectively.

Pre-trial phase of criminal proceedings

	2010	2011	2012
Pending proceedings	216 534	202 161	184 462
Newly instituted pre-trial proceedings	146 588	139 049	128 722

Source: 2012 Report on the application of the law and the activity of the Prosecution Service and investigative bodies, page 8, available at: http://prb.bg/uploads/documents/docs_3923.pdf.

The statistical data reveals that the volume of case-files, pending proceedings and newly instituted pre-trial proceedings is decreasing, which accounts for the decrease in the data shown above. In this sense, the data appears to warrant the conclusion that there are challenges and processes under way outside of the prosecution service, notably at the bodies whose work precedes that of prosecutors. It should be recalled that the prosecution service is the master of the pre-trial phase and in this respect guiding and supervising processes is a highly relevant aspect. In connection with this, some interviewees have expressed the opinion that the decrease registered in 2012 is related to the expiry of the term of the former Prosecutor-General and the political processes and overall situation in Bulgaria. The 2013 PRI team is not in a position to either corroborate or disprove these stated views and will therefore refrain from expressing an opinion. However, they are a curious, if not exotic exception, and we feel that it is important that they be noted in the report.

In practice, the greatest problem identified by interviewees was efficiency, the cases involving great factual and legal complexity and high-profile cases. Some have suggested that prosecutorial statistics is not particularly informative and is further distorted for objective reasons. For example, the detection of certain clear criminal offences that do not need investigating *per se* (i.e. drink driving) is included.

In connection with this, some interviewees have restated the need to reform both the Criminal Code and the Criminal Procedure Code. According to prosecutors some offences must be decriminalized. Others note that the Criminal Procedure Code remains too formalistic and inefficient, i.e. the requirement for police procedure witnesses (see Article 137 of the CPC). The situation is further compounded by the great reliance on prosecutors to investigate and oversee non-criminal activities, such as the proceedings in administrative cases. This is an unnecessary duplication of functions of other government institutions competent to act in the respective areas, which detract from the focus of the prosecution service its core activity – investigating and prosecuting crime.

Most interviewees expressed the opinion that efficiency can be improved through better allocation of human resources. Similarly to the 2010 PRI, it is noted that the number of prosecutors is adequate but inefficiencies result from having to handle too many non-core tasks the lack of a sound rationale in the distribution of personnel in geographical terms and across the different levels of the service. As a rule, the caseload in smaller prosecution offices is more balanced, albeit with some exceptions. In some larger cities and in Sofia prosecutors have an excessive workload and handle both more complex criminal offences and a wide range of additional responsibilities.

Regrettably, the finding set out in the 2010 PRI, notably that some prosecutors demonstrate very low initiative both in terms of conducting investigations and during the trial phase, remains valid.

Factor 28: Compensation and other benefits

Prosecutors have reasonable compensation and benefits established by law, such as remuneration and pension, proportionate with their role in the administration of justice.

Conclusion	Correlation: Positive	Trend: ↔
Salaries and benefits for prosecutors have improved considerably in recent years, and appear sufficient to recruit and maintain a competent, professional, and ethical workforce.		

Analysis/Legal Background:

No significant developments have occurred since the 2010 PRI, except for the increase in prosecutorial salaries. In accordance with Article 30(1)(8) of the JA the salaries of magistrates are determined by the SJC. By law the salaries of junior prosecutors are equal to two times the average monthly salary in the budget sector.

The basic monthly salaries of the presidents of the SCC and the SAC, the Prosecutor General, and the Director of the National Investigation Service are set at 90% of the salary of the President of the Constitutional Court. Judicial System Act Article 218(1)⁸⁵. The remuneration of the Prosecutor General is 4 260.53 BGN. See Note № 1 below.

The basic monthly salary of the lowest position of magistrate will be set at double the average monthly salary of persons employed in the public sector. JUDICIAL SYSTEM ACT Article 218(2). The salaries of all the members of the judiciary are to be fixed by the SJC. *Id.* Article 218(3).

⁸⁵ The President of the Constitutional Court receives a monthly salary equal to the arithmetic mean of the salaries of the President of the Republic and the Speaker of Parliament (see Article 10(1) of the Constitutional Court Act). The Speaker of Parliament receives a salary that is 55% higher than the monthly salary of the members of parliament, which is equal to three average monthly salaries in the budget area (according to statistical data of the National Statistical Institute – see Articles 5 and 6(1) of the Rules on the organisation and activity of the National Assembly and the Financial and Budgetary Rules of Parliament). The President receives a monthly salary equal to “2 basic salaries of the members of parliament, calculated in accordance to article 3 of Annex 2 to the Rules on the organization and activity of the Grand National Assembly” (Decision of the Grand National Assembly Bureau of November 25, 1991). The information concerning the President's salary is submitted by the National Assembly under the Access to Public Information Act.

During the fourth trimester of 2013 the average monthly salaries of full-time civil servants were 889 BGN.

Source: *Employees and average monthly salaries full-time civil servants for the fourth trimester of 2013*, available at the webpage of the Bulgarian Statistical Institute: http://www.nsi.bg/sites/default/files/files/pressreleases/EmplsSalary2013q4_RJ3SROQ.pdf.

Basic monthly prosecutorial salaries 2010–2013

Position	2009 Monthly salary		Max. monthly salary from 1 April 2010 ⁸⁶		Max. monthly salary from 1 July 2012 ⁸⁷	
	BGN	USD	BGN	USD	BGN	USD
Deputy Prosecutor-General	2 603	1 733	90% of the salary of the Prosecutor-General		95% of the salary of the Prosecutor-General	
Prosecutor – Head of a Department at the SAC and the SPSC	2 588	1 723	2 988	2 048	3 197	2 008
Prosecutor at the SAC and SPSC	2 525	1 681	2 915	1 998	3 119	1 959
Appellate Prosecutor	2 397	1 596	2 768	1 897	2 962	1 861
Deputy Appellate Prosecutor	2 242	1 493	2 589	1 774	2 771	1 741
Prosecutor at Appellate Prosecution Service	2 121	1 413	2 450	1 679	2 622	1 647
Provincial Prosecutor	1 952	1 300	2 255	1 545	2 412	1 515
Deputy Provincial Prosecutor	1 820	1 212	2 102	1 441	2 249	1 413
Prosecutor at Provincial Prosecution Service	1 743	1 161	2 013	1 380	2 154	1 353
Regional Prosecutor	1 631	1 086	1 940	1 330	2 075	1 303
Deputy Regional Prosecutor	1 488	991	1 770	1 213	1 893	1 189
Prosecutor at Regional Prosecution Service	1 323	881	1 573	1 078	1 683	1 057
Junior Prosecutor	1 178	785	1 466	1 005	1 546	971

Source: SJC

Magistrates also receive an additional salary for continuous years of services, gaining an additional 2% to their salary for each year, not to exceed 40% (see JUDICIAL SYSTEM ACT Article 219). In addition to their regular salaries, prosecutors also receive an annual robe or other clothing allowance equivalent to two average monthly salaries of persons employed in the public sector⁸⁸, special pay for service during holidays or vacation periods, free housing or an allowance in lieu thereof, social, health and accident insurance, a lump sum payment on retirement or other removal from office (except for a criminal conviction, dereliction of duty or similar wrongdoing), compensation upon reinstatement for wrongful dismissal, travel and moving expenses when appointed to a new position requiring

⁸⁶ The calculations are based on the average monthly BGN-USD rate of exchange of the Bulgarian National Bank (BNB) as at the end of April 2010, 1 USD = 1.45906 BGN.

⁸⁷ The calculations are based on the average monthly BGN-USD rate of exchange of the Bulgarian National Bank (BNB) as at the end of July 2012, 1 USD = 1.59180 BGN.

⁸⁸ During the fourth trimester of 2013, the average monthly salaries of full-time civil servants were 889 BGN according to data of the Bulgarian Statistical Institute. See *Employment and average monthly salaries full-time civil servants for the fourth trimester of 2013*, available at the webpage of the Bulgarian Statistical Institute: http://www.nsi.bg/sites/default/files/files/pressreleases/EmplsSalary2013q4_RJ3SROQ.pdf.

relocation, and 30 days of vacation per year, plus 1 extra vacation day for every 2 years of service, not to exceed 60 days of vacation total (see JUDICIARY ACT Articles 221, 220, 223, 224, 225, 330(1)). Except in 2012, magistrates also receive the so-called 13th salary as a Christmas bonus.

Compensation for magistrates has improved greatly in recent years. The finding set out in the 2010 PRI according to which the prosecutorial profession is attractive is still valid. The number of applicants for vacancies is increasing and those sitting the competition exams demonstrate better knowledge and skills, as demonstrated by the high grades needed to qualify for a position. For example, on the last junior prosecutors competition in 2014, the last candidate to take a position received scores of “Very good 5.00” on the written exam and “Excellent 5.90” on the oral exam⁸⁹. Prosecutorial salaries, particularly in a situation of a continuing financial and economic crisis, along with the prestige of the profession, are considered an advantage. The interviewees concur that prosecutorial salaries are adequate and have not voiced any complaints in this regard.

⁸⁹ Placement of candidates for junior prosecutors in the regional prosecution offices according to the results of their performance and A final list of approved candidates for junior prosecutors, available at the SJC website.

List of Acronyms

CLE:	Continuing Legal Education
CSD:	Center for the Study of Democracy
ECHR:	European Convention of Human Rights
EU:	European Union
JA:	Judiciary Act
MIA:	Ministry of Internal Affairs
MOJ:	Ministry (or Minister) of Justice
NAAA:	National Agency for Assessment and Accreditation
NIJ:	National Institute of Justice
NIS:	National Investigation Service
OLAF:	European Anti-Fraud Office
OPDAT:	Office of Overseas Prosecutorial Development, Assistance, and Training (US Department of Justice)
OTA:	Office of Technical Assistance (US Department of Treasury)
PRI:	Prosecutorial Reform Index
SAC:	Supreme Administrative Court
SANS:	State Agency for National Security
SCC:	Supreme Court of Cassation
SG:	State Gazette
SJC:	Supreme Judicial Council
SPC:	Supreme Prosecution of Cassation
UISCC:	Unified Information System for Counteracting Crime
USAID:	United States Agency for International Development
USG:	United States Government



PROSECUTORIAL REFORM INDEX

BULGARIA VOLUME III JUNE 2013

The current issue of the Prosecutorial Reform Index for Bulgaria (PRI) is the third one and comes after the first two issues of 2006 and 2010. BILF has made a thorough legislative and institutional review of the changes and progress of the prosecutorial reform in Bulgaria, following the methodology of the American Bar Association Rule of Law Initiative (ABA ROLI). The legal frame is up-to-date as of June 2013 but the analysis contains data from 2014.

The assessment of the state of Bulgarian prosecution office is categorized in a set of twenty-eight factors reflecting those elements which facilitate the development of a responsible and effective prosecution service that operates in compliance with professional ethics standards. Each factor contains a description of the grounds for the respective conclusion and an in-depth analysis which reviews the topic in details. The systematization of data in this manner allows readers to easily compare and contrast the performance in the distinctive areas, and as the PRI is updated – to directly follow the changes over time. This time the analysis contains the results from the first nationwide representative survey of the prosecution service entitled “Attitudes of prosecutors towards the reforms in the prosecution office and criminal procedure”.

The index finds that during the reporting period the Prosecution Service has sustained the progress achieved and discussed in 2010 PRI, which is a significant positive development against the backdrop of the general state-of-play and trends in Bulgaria. At the same time, it should be noted that after 2010 the definite progress identified for some factors has stalled; is insufficient to merit a change in correlations; or has been neutralized by recent challenges that have emerged. The 2013 PRI acknowledges the significant progress achieved under the Continuing Legal Education (CLE) factor, which has brought about a change in the factor from “neutral” to “positive”. It should be categorically stated that some of the factors, albeit significant for the Prosecution Service, do not depend on it either fully or partially.

In 2013, the correlations for seven factors are positive; neutral for eighteen; with three factors having a negative correlation (Legal Education, Freedom from Improper Influence, and Public Integrity). It is these three factors that the Prosecution Service should seek to address in order to change the continuing negative trends since 2006.



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