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THE REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

On Progress in Bulgaria under the Co-operation and Verification Mechanism

BULGARIA: Technical Update

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1. BENCHMARK 1: ADOPT CONSTITUTIONAL AMENDMENTS REMOVING ANY AMBIGUITY REGARDING THE INDEPENDENCE AND ACCOUNTABILITY OF THE JUDICIAL SYSTEM

In its 2007 report, the Commission found that Bulgaria had largely met this benchmark by enacting amendments to the Constitution, adopting the Judicial System Act and creating the Inspectorate to the Supreme Judicial Council. However, the Inspectorate has only just acquired operational capacity and has not yet been able to establish a sufficient track-record allowing for full assessment of its role in the system and its performance. In addition the Inspectorate does not function in a vacuum; therefore cooperation and appropriate follow-up from other institutions, especially the Supreme Judicial Council is required.

Detailed Assessment

- *The National Assembly to adopt amendments to the Bulgarian Constitution*

The necessary amendments to the Bulgarian Constitution were passed on 2 February 2007.

- *The National Assembly to make necessary changes to the Judicial System Act*

As stated in February 2008, the new Judicial System Act was adopted by the National Assembly on 24 July 2007 and entered into force on 10 August 2007.

- *The Inspectorate to be set up and functioning, first results to be published and evaluated*

The Inspectorate to the Supreme Judicial Council was established officially on 16 January 2008 by virtue of the amendment to the Bulgarian Constitution and the adoption of the new Judicial System Act in force since 10 August 2007. Internal organisational issues have been resolved¹. The Annual Programme for the Activity in 2008 and the Working Plan for 6 months have been adopted and the latter is implemented. However, the full roster of inspectors was only reached on 30 May 2008 with the appointment of the last 2 inspectors by the National Assembly following intensive political bargaining in the Parliament. Most of the vacancies in the general administration and 18 out of 23 vacancies for expert-lawyers have been filled already. Equipment, furniture and IT were delivered.

From its establishment until the end of May 2008, the Inspectorate had:

- Carried out planned inspections² resulting in 2 proposals to the Supreme Judicial Council (SJC) for applying disciplinary sanctions to magistrates. There are no decisions of the SJC on these cases.
- Concluded 455 cases on the basis of 610 signals

¹ Regulations on organisation, internal rules and methodologies for carrying out various inspections have been adopted.

² Exact number is unknown. Planned inspections are envisaged in the annual programme.

- Undertaken 3 *ex officio* inspections³, following press publications, and 4 *ex officio* inspections on cases in which decision was pronounced against the State under the Liability of the State and the Municipalities for Damage Act. .
- Examined lawsuits returned by the first instance courts to the prosecution offices. A sample analysis on the restitution of cases from Veliko Tarnovo⁴, Pleven, Gabrovo, Russe and Lovech judicial regions led to the identification of failures in the courts' practice: insufficiently thorough examination of cases at a hearing *in camera*, the frequent practice of returning cases for "insignificant omissions", substantial judgements without motivation, delayed judgments. The analysis recommended: the organisation of seminars; periodical analyses of the reasons for the return of cases⁵; and periodical inspections by the Supreme Prosecution Office of Cassation on the quality of indictment.
- not yet made proposals to competent authorities on the need for interpretative judgements or decrees in the case of contradictory jurisprudence.

Judging from the data provided, the Inspectorate currently inspects almost exclusively upon a signal or carries out planned inspections, while *ex officio* inspections are less common.

At the present time, the Inspectorate does not seem to have placed priority on corruption practices within the judiciary. Only two inspections by the end of May concerned alleged corruption⁶. In some cases (no detailed number provided) the Inspectorate has forwarded alerts to the Prosecutor General of the Republic of Bulgaria for the possible check for data about corrupt behaviour.

It is crucial that the results of the work of the Inspectorate are given the appropriate follow-up from other institutions, in particular the SJC.

³ *Ex officio* inspections are carried out on own initiative.

⁴ The analysis on cases of Veliko Tarnovo was a subject of a heated debate of the Supreme Judicial Council. The criticism focused on the report's spelling and its use of "archaic legal terms". However, some members raised some critical comments on the substance of the report: majority of decisions regarding the lawsuits quoted in the report could not lead to the conclusions which the analysis apparently attempted to make.

⁵ Analyses of the return of cases would be done jointly by courts and the prosecution offices.

⁶ Information provided by the Ministry of Justice on 12 June 2008.

2. BENCHMARK 2: ENSURE A MORE TRANSPARENT AND EFFICIENT JUDICIAL PROCESS BY ADOPTING AND IMPLEMENTING A NEW JUDICIAL SYSTEM ACT AND THE NEW CIVIL PROCEDURE CODE. REPORT ON THE IMPACT OF THESE NEW LAWS AND OF THE PENAL AND ADMINISTRATIVE PROCEDURE CODES, NOTABLY ON THE PRE- TRIAL PHASE

Overall, Bulgarian progress in improving the efficiency of judicial proceedings focuses on civil and administrative proceedings. The new Civil Procedure Code entered into force in March 2008. Therefore it is premature to report on its implementation. It will hopefully address concerns about intentional delays and introduce more procedural discipline. Monitoring systems for the penal procedure code and the administrative procedure code continue to operate with a view to ensuring the uniform application of the law. Nevertheless members of the monitoring group on the penal procedure code do not always take suggestions of practitioners sufficiently into account. Several fundamental legislative acts affecting all levels of criminal proceedings are still to be developed or enacted. The system of law- enforcement and pre-trial proceedings are just about to undergo changes, so it is premature to discuss results. With regard to criminal proceedings longstanding concerns persist and new challenges related to the overall effectiveness of the system and the roles of the participants of the pre-trial phase have emerged.

Detailed Assessment

- *Adopt the new Civil Procedure Code*

The new Civil Procedure Code (CPC) was passed by the National Assembly on 6 July 2007⁷ and entered into force from 1 March 2008. According to the Ministry of Justice, all pieces of secondary legislation pursuant the CPC have been already adopted.

The main objective of the CPC was to introduce fast and inexpensive civil proceedings. The CPC would appear to have introduced more procedural discipline and to have limited the scope for intentional delays. However, both barristers and judges have raised concerns in relation to the application of the CPC. An important practical concern is the effectiveness of cassation as a means of stimulating coherent jurisprudence in case of conflicting case-law⁸. As few courts comply with the requirement of the Judicial System Act to publish judgements, it is difficult to identify inconsistent jurisprudence and consequently lodge a cassation appeal.

The Bulgarian authorities need to ensure that all courts are obliged to publish their judgements.

Ensuring coherence of jurisprudence is particularly important, since in recent years there have been many controversial decisions, in particular of the Supreme Court – partly because of entirely new procedural legislation, partly as a result of different interpretations of the law⁹.

⁷ The Civil Procedure Code was published in the State Gazette (SG) No. 59 of 20 July 2007

⁸ Art. 280 of the CPC

⁹ Information provided by practising judges.

Concerns have emerged about whether magistrates are prepared to apply the CPC. It is expected that only at the end of this year all judges handling civil or commercial cases will have followed at least one training on the new CPC¹⁰.

More time is needed to fully assess the impact and the functioning of the CPC.

- *Adopt the new Judicial System Act reflecting the amendments to the Constitution and the recommendations of the peer review experts*

The new Judicial System Act reflecting the amendments to the Constitution and the recommendations of the peer review experts was passed on 24 July 2007¹¹.

- *Establish a monitoring system for all new codes*

Civil Procedure Code (CPC): A working group to develop criteria for monitoring of the CPC was established in February 2008 (deadline indicated in the Action Plan: November 2007). The criteria for monitoring of the implementation of the CPC have been approved by the Minister of Justice during a National Conference on 25 June 2008.. It is envisaged that the same working group should carry out monitoring and inspections on the application of the new CPC.

Administrative Procedure Code (APC): The Working group for monitoring the APC has been functioning since 1 March 2007¹². The overall conclusion of the monitoring group for the APC is rather positive on the progress after one year of the reforms of the APC.

Penal Procedure Code (PPC): The working group for monitoring the PPC has been carrying out its tasks since June 2006. According to the information received in May 2008¹³ covering the period January 2007-May 2008, the working group discussed results of thematic inspections carried out by the Inspectorate with the Minister of Justice, prepared one summary analysis of the practical application of some provisions of the PPC¹⁴ and contributed to the preparation of a draft law on amendments to the PPC. However, practitioners stated that their suggestions for concrete improvements had not been taken into consideration by the working group.

In order to create a general monitoring mechanism for the newly adopted legislation, the Minister of Justice established a working group on elaboration of the new Law on Normative Acts in May 2008. The group is supposed to develop a concept of the Law on Normative acts regulating issues including: impact assessment, required technical and EU legal standards and the supervision of the application of the normative acts. This idea is welcomed, but should not impede Bulgaria from proceeding under current law to produce concrete results in this area.

¹⁰ In 2007 there were 6 seminars to train trainers on the draft CPC attended by 128 judges, whereas in the beginning of this year 4 trainings for 240 persons from the five appellate districts in the country.

¹¹ SG No. 64/7 August 2007.

¹² Since 1 March 2007 until 31 March 2008, it carried out 2 inspections and met 11 times to discuss over the materials provided by the Ministry of State Administration and Administrative Reform, as well as by administrative courts and the Supreme Administrative Court.

¹³ Report on the Action Plan on the Implementation of the Benchmarks in the areas of judiciary reform, the fight against corruption and organised crime, measure 2.7.1.

¹⁴ The summarized analysis concerned provision on the reduced judicial investigation and immediate proceedings.

- *Report at regular intervals on the findings of this monitoring process, notably as regards the pre-trial phase, the execution of judgements and sentences*

As far as the Civil Procedure Code is concerned, there have not been any reports yet, whereas reports on monitoring of the Penal Procedure Code and the Administrative Procedure Code were published on the website of the Ministry of Justice in February 2008 and June 2007 respectively.

- *Amend the relevant codes and legislation if necessary*

The efficiency of the judicial system is still constrained by a structurally outdated Penal Code which dates from 1968. As the Commission pointed out in its February 2008 report, the lack of differentiation between various levels of crimes (serious crimes, misdemeanours, etc.) force the magistrates to apply the same legal and administrative procedures for serious and petty crimes. As a result delays occur and the workload of magistrates is unnecessarily heavy. Moreover, the Penal Code, although amended numerous times, does not correspond to the reality of modern crimes. Consequently, the idea of the Ministry of Justice to address finally these problems in a holistic way by developing a coherent strategy for penal policy until the end of 2008 is to be welcomed.

As far as criminal proceedings and law enforcement are concerned, some changes with regard to the roles and responsibilities of the participants of the pre-trial phase are currently under discussion.

Firstly, the new Minister of Interior has been given the task of carrying out a fundamental reform of the Ministry of Interior after a scandal involving the then Minister and top level officials who allegedly leaked confidential information and entertained contacts to organized crime. An additional factor prompting reforms was the establishment of the State Agency for National Security (SANS) which took over some of the responsibilities of the Ministry. The Ministry of Interior submitted to the Parliament amendments to the Law on the Ministry of Interior aiming at efficient reorganisation of the Ministry. As the adoption process is at an initial stage and the proposal may evolve¹⁵, the Commission is not in a position to assess it¹⁶. Reforms within the Ministry are urgently required. Official statistics demonstrate that the crime detection rate by police decreased in 2007 in comparison to two preceding years.

In addition, the Minister of Interior needs to invest more in the police force through better and demand-driven training and salaries which would attract the best candidates. This is essential for increasing public confidence in the police. Bulgarian citizens do not see progress in the work of the police (61.2% of Bulgarians consider that the work of police after the accession of Bulgaria to the EU has not improved¹⁷).

¹⁵ For example, there are currently 6 drafts on this issue in the Parliament.

¹⁶ The same is true for a draft Law on Special Intelligence Means, which is under preparation.

¹⁷ Interviewed persons needed to answer the question: "Do you consider that after Bulgaria has become an EU Member State the work of the police has improved?" 19, 9 % of those surveyed replied: "Not at all", whereas 14,3% answered "rather no". Source: "Public and Political Attitudes. Results of the national representative study conducted under the method of semi- standardized interview in the period 20-26 May 2008 by National Centre for Public Opinion Survey in Sofia (document provided by the Bulgarian government).

Secondly, there is a draft amendment to the Penal Procedure Code which *inter alia* allows for Ministry of Interior officers vested with police powers to function as police investigators (*dosnateli*) when carrying out initial and urgent actions. Under this amendment these police officers could contribute to collecting evidence which might be then presented to court. This solution could reduce an excessive workload of the police investigators (*dosnateli*) and, as such, assist the efficiency of investigation in Bulgaria. However, in order for the police officers to carry out the investigative tasks appropriately, the Ministry of Interior needs to invest in training and increasing competences¹⁸.

Thirdly, the question of the role and a place in the system for investigating magistrates (*sledovateli*) has re-emerged. Since *sledovateli* enjoy the independent status of magistrates, they cannot, according to Bulgaria, simply be dismissed or transferred to another job¹⁹. Consequently, since accession different ideas on how to handle the issue of the competences of *sledovateli* have been put forward. They have often gone in opposite directions, sometimes emerging in the form of written proposals, but never going further than that. Currently, several new options are being considered²⁰. Again, no conclusive steps have yet been taken. Any extension of the responsibilities of investigating magistrates must be seen against Bulgaria's commitment to limit the competences of investigating magistrates which was agreed prior to Bulgaria's accession.

Furthermore, the appearance of a new and powerful player- the State Agency of National Security (SANS) - has substantially changed the balance of power. It has been given a dual mandate of a security structure and of a law enforcement body. The roles and responsibilities of SANS relative to other actors in the pre-trial stage needs to be clarified and codified. Specifically, SANS should be subject to more effective parliamentary control in order to ensure democratic accountability. Sufficient controls over the agency's operations by the prosecutors, *domini litis* under the Bulgarian PPC, must be assured. Currently, the good cooperation between the SANS and the Prosecution Office can be attributed to good personal relations. For the sake of proper legal certainty, these arrangements should be set out in legislative or administrative measures, so that the pre-trial system be stable and predictable.

Although SANS, according to law, is not an investigative body *per se*, SANS very often collects evidence and carries out other investigative tasks on the basis of the delegation of investigative powers given at some stage by prosecutors. It would be advisable to clarify SANS' investigative functions in law and stop using the practice of the delegation of investigative powers. By the same token, setting out clear rules for cooperation and arrangements for cooperation mechanisms between investigation bodies is of paramount importance. Several amendments to the PPC are currently under discussion. Some are aimed at changing the mandate of investigating magistrates (*sledovateli*) and establish them in place

¹⁸ The same is true for *dosnateli*, who are often considered as lacking some trainings and experience.

¹⁹ However, please see footnote below, under point 2).

²⁰ Alternatives: 1) to transform investigating magistrates into a specialised investigators' service reporting directly to the Prosecutor General, if the Constitutional Court will find this solution constitutional. However, no question in this regard has been posed yet by the Minister of Justice to the Court; 2) to reduce the number of the *sledovateli*, dissolve their regional structures and reappoint their officers as prosecutors [NB: contrary to what the Bulgarian authorities used to claim, it seems possible to transfer *sledovateli* to the other judicial professions]. The powers of the *sledovateli* in this case would be to investigate alleged crimes with international element; 3) to entrust *sledovateli* with powers to investigate additional crimes

of police investigators as the privileged counterparts of SANS for the investigation of serious crime.

In addition, SANS still needs to establish lines and rules of cooperation with other law enforcement organisations, in particular with those within the Ministry of Interior. This could be achieved through common guidelines or instructions on the mutual relations between the Head of SANS and the Minister of Interior.

With the establishment of SANS, a deliberate overlap was created with some functions hitherto exclusively assured by the services of the Ministry of the Interior such as the operational authority over the use of special intelligence means. The discussion on the amendments to the Law on Special Intelligence Means and the Law of Interior is ongoing. There is no coherent view within the authorities on which institution should technically control special intelligence means. Neither is it clear whether it would be desirable to create an entirely new structure. In addition, several other laws must be complemented or amended following the entry into force of the Law on the SANS.

To conclude, the Bulgarian authorities repeatedly assert that they are working on numerous pieces of legislation in order to improve the efficiency of the judicial system, especially the pre-trial phase. However, it is not possible to assess progress against benchmarks on the basis of draft laws. Concrete results are needed. Fundamental concerns, about the lack of a coherent strategy for investigative system or shortcomings of the Penal Code and Penal Procedure Code have persisted for a long time. Even when the necessary laws are adopted, it will take time to translate the legislative changes into concrete results in terms of judicial performance and efficiency gains.

3. BENCHMARK 3: CONTINUE THE REFORM OF THE JUDICIARY IN ORDER TO ENHANCE PROFESSIONALISM, ACCOUNTABILITY AND EFFICIENCY. EVALUATE THE IMPACT OF THIS REFORM AND PUBLISH THE RESULTS ANNUALLY

Overall, Bulgaria has made some progress under Benchmark 3. Competitions for the entry into the judiciary are well-perceived, contrary to the appraisal of magistrates' performance. The quality of training organised by the National Institute of Justice is highly appreciated by their target group. Problems persist with regard to disciplinary proceedings; the Code of Ethics; coherent jurisprudence and the full introduction of IT in judiciary. Moreover, the Supreme Judicial Council is reluctant to assume full responsibility for judiciary reform.

Detailed assessment

- *Establish a transparent and fully functioning decision making process on disciplinary investigations by the future Inspectorate with the Supreme Judicial Council (SJC)*

The Inspectorate to the SJC as the key supervisory institution of the integrity of the judiciary has only recently started operating²¹. It is one of the bodies²² which can make proposals for the imposition of disciplinary sanctions on magistrates and on the administrative heads of judicial system bodies²³. In line with the law, a Standing Commission on disciplinary proceedings has been set up within the SJC. The Standing Commission summarizes the outcomes of the disciplinary proceedings, reports them to the SJC and makes concrete proposals for disciplinary sanctions²⁴. It is then for the Supreme Judicial Council to impose sanctions on magistrates²⁵.

The Bulgarian authorities have reported 9 proceedings against magistrates in the first five months of 2008, compared to 17 proceedings for the whole of 2007.

This can be considered as weak taking into account that there are 1821 professional judges²⁶, 1558 prosecutors²⁷ and 546 investigating magistrates²⁸ in Bulgaria. The number and character of the sanctions of the Supreme Judicial Council is limited²⁹. As far as transparency of the process is concerned, there have been some improvements. The SJC adopted a regulation on its organisation, including provisions on conducting disciplinary proceedings in November

²¹ See: Detailed assessment of the Benchmark 1.

²² On the basis of Art. 312 (1) a proposal for the imposition of sanctions can be made also by: the respective administrative head, any higher- standing administrative head, no less than 1/5 of the Supreme Judicial Council and the Minister of Justice.

²³ See: Art. 54 (6) of the Judicial System Act, promulgated in SG No. 64/7.08.2007.

²⁴ In the cases where the sanction is imposed by the administrative head, the Standing Commission makes proposals with reasoned opinion to the SJC for confirmation, revocation or amendment of the sanction applied.

²⁵ Moreover, some sanctions might be also applied by the administrative head of the magistrate punished. However, they must be notified to the SJC which can within one month uphold, repeal or modify the imposed sanction.

²⁶ The European Commission for the Efficiency of Justice (CEPEJ) (2007)

²⁷ CEPEJ (2007)

²⁸ Data provided by the Ministry of the Interior.

²⁹ According to recent information received from the Bulgarian authorities, from the beginning of 2008 SJC initiated 11 disciplinary proceedings, 6 of which have now been concluded.

2007. Furthermore, meeting records of the SJC's are public and a regularly updated register of disciplinary practice is published on the website of the SJC.

Nevertheless, the majority of Bulgarians do not perceive any improvements since the accession to the European Union³⁰

- *Ensure complete and overarching application of the Code of Ethics for magistrates, especially procedures for review, investigation and dismissal/prosecution for violations*

Debates on amending codes of ethics are still ongoing within the Supreme Judicial Council. One of the ideas currently subject to consultation is the development of a Unified Code of Ethics for all magistrates. This is contested by some practitioners who point to the distinctiveness of the three judicial professions.

With regard to awareness-raising of professional ethics among magistrates, the positive performance of the National Institute of Justice should be recognised. It is holding a series of seminars on ethical issues for both new and experienced judges, prosecutors, and investigating magistrates³¹.

- *Monitor the application of the system of competitive examination for recruitment and performance evaluation of magistrates*

The ordinance on the procedure for the appointment, promotion and transfer of judges, prosecutors and investigators was adopted by the SJC in December 2007. One month later the SJC adopted an Evaluation Methodology for the magistrates' performance. On this basis 96 magistrates to be promoted or to acquire tenured (irremovability) status were appraised by the end of May 2008. For the first five months of 2008, competitions through performance appraisal for the appointment of 220 magistrates were announced. 1200 candidates had been evaluated by 20 May 2008.

The procedures for recruitment into the judiciary seem to have been improved. Nevertheless, judges and prosecutors interviewed by the Commission complained unanimously about the performance evaluation methodology focusing excessively on quantitative, not qualitative criteria³². Unfortunately, the concrete comments and suggestions on the methodology sent by the practising magistrates to the SJC have not been taken into consideration.

Furthermore, the appointment of members of the evaluations commissions has been criticised by practising judges. The Commission on Proposals and Performance Appraisal at the SJC, which is responsible for the final evaluation of magistrates generally, bases its opinion on the number of points given to evaluated magistrates by an assisting committee for performance appraisal³³. The latter commission consists of 3 magistrates coming from the same judicial

³⁰ National Centre for Public Opinion Survey in Sofia: Public and Political attitudes, May 2008. Question: "Do you consider that after Bulgaria became an EU member the work of the judicial system improved?" Replies: 21.8%- not at all, 39.1%- rather no, 12.7%- rather yes, 1.8%- completely, 24.7% cannot estimate.

³¹ 58 magistrates were trained in judicial ethics in the 3 training courses conducted until 31 March 2008. The Programme for 2008 provides for 6 more trainings on the subject "Professional ethics and anti-corruption". Until 31 March 560 magistrates out of 800 had undergone training.

³² It is assessed by judges that only 20% of points is granted for different qualitative aspects of work (so e.g. speed is highly praised, whereas complexity of cases is often not taken into consideration).

³³ Art. 39 of the Judicial System Act.

body as the person evaluated and appointed by their administrative heads. Sometimes the evaluators are selected randomly. However, in some cases the evaluators have been chosen following a personal decision of the chairman, which should not be the case, if the system is to be objective and impartial.

- *Annually publish findings of the evaluation of the reform of the judicial system, in particular on how specific problems related to professionalism; accountability and efficiency have been addressed*

Bulgaria has not yet presented an evaluation of judicial reform. At present, the Open Society Institute carries out an independent analysis of the Programme for the implementation of the Reform of Judiciary. Its assessment will serve as a basis for proposals to be included in the new Strategy for Judiciary for the period 2008- 2013.

The results will be published on the website of the Ministry of Justice.

- *Introduce random case handling software in the Prosecution services*

The current IT architecture in the judiciary seems patchy and not integrated. Systems at the level of prosecution seem to be more advanced than at court level. There is little progress with the integration of different case management systems and with the development of a Unified Information System for Combating Crime that could produce reliable data on judiciary efficiency. EU funded projects in this area have shown substantial implementation difficulties

Separate software for the random allocation of cases in the Prosecution Office, the National Investigation Service and courts³⁴ are reported to have been introduced since 2007. The Prosecutors' Case Management System has been reportedly implemented in most offices. To date, several different case management systems are operating in parallel in courts and doubts appear whether they can be interconnected.

Access to justice by citizens and transparency of the process would be improved, if the e-justice web-portal were fully introduced and used.

- *Enhance the training on the implication of these new laws*

The National Institute of Justice adopted the 2008 Annual Programme of the NIJ for initial and continuous training of magistrates and court staff in December 2007.

The priorities in the curricula for training are the Civil Procedure Code, the Administrative Procedure Code, Ethics and Anticorruption and EU law.

The quality of training is highly appreciated by the participants as good and practice- oriented. However, not everybody is given an opportunity to follow it in practice due to heavy workload³⁵.

³⁴ Although, as the Commission has been reported, sometimes certain cases of great public interest tend to be allocated to the same judges in spite of existence of the system for random allocation of cases.

³⁵ Judges from the Sofia City Court interviewed by the Commission stated that last year they were not able to follow any course organised by NIJ due to the work overload. Exclusively thanks to their own initiative some judges and professors agreed to come once to explain new pieces of legislation. On the

4. BENCHMARK 4: CONDUCT AND REPORT ON PROFESSIONAL, NON-PARTISAN INVESTIGATIONS INTO ALLEGATIONS OF HIGH-LEVEL CORRUPTION. REPORT ON INTERNAL INSPECTIONS OF PUBLIC INSTITUTIONS AND ON THE PUBLICATION OF ASSETS OF HIGH-LEVEL OFFICIALS

High- level corruption remains a serious problem. It has not yet been effectively tackled by the administration and the judiciary. The Bulgarian authorities have not applied the law in such a way to reduce corruption in State institutions. Furthermore, organised crime is often involved in the corruption schemes, and *cliéntelisme* and the "law of silence" are all too prevalent. Despite an announced "war against corruption", the number of high- level corruption cases is negligible as a proportion of the crimes detected and effectively punished in Bulgaria. Ethical standards among lawyers need to be more strictly enforced. Furthermore, asset declarations are not fully effective due to the limitations of the checking mechanism and the serious understaffing of the National Audit Office. Serious concerns exist on the recently drafted Law on Conflict of Interests.

Detailed assessment

- *Associate Member States' experts to provide assistance and guidance as regards improving the quality of investigations and reporting on this*

Various programmes and co-operation schemes involving other Member States continue. However, problems with cooperation projects have been reported recently due to the reorganisation of the Ministry of Interior.

Recently the quality of investigations and exchange of information between Bulgarian and foreign law- enforcement bodies has been adversely affected by the reorganisation of the police forces. Cooperation between other bodies is ongoing. The Bulgarian authorities have announced numerous measures possibly having an impact on investigations, it remains to be seen how much technical assistance and advice from foreign experts will be taken on board.

- *Streamline and coordinate the institutional set-up of bodies empowered to fight corruption*

Anti-corruption efforts are coordinated by the Coordination Council on Counter - Corruption Activities. It holds meetings on a monthly basis to discuss instances of alleged corruption that have been brought to its attention or legislative initiatives.

An Action Plan to the Strategy for Transparent Governance and for Prevention and Counteraction of Corruption for 2008 was adopted by the Government on 2 April 2008.

Following suspension of the EU pre- accession funds due to financial irregularities and conflicts of interests, a new post of Deputy Prime Minister has been created for the overall supervision of the process of disbursement of EU funds.

Further change in the institutional set- up of bodies counteracting corruption was made by the establishment of the State Agency of National Security (SANS) at the end of 2007. Although the first results are encouraging, it will take time to show sustained results. The Commission has been informed that although half a year has passed since the creation of the Agency,

contrary, judges from the District Court of Pernik said that in their court there were 2-3 days available for training every 2-3 months per judge.

relations with some other state institutions have still not been clarified or settled by taking appropriate administrative measures.

Whilst some organisational measures have been taken there is a paucity of substantial results in the fight against corruption.

No institution seems to bear ultimate responsibility for the poor performance in the fight against corruption. The anti- corruption commission at the level of the Council of Ministers does not fulfil its mandate. Progress in the development and implementation of an effective national anti-corruption strategy requires a clear line of responsibility to one minister and the political authority and will to deliver measurable results. Increased participation of civil society in the policy-making process would also be a welcome step.

This downbeat assessment of the government's performance in the fight against corruption is shared by Bulgarian citizens. According to the Global Corruption Barometer 2007 (TI) 72% of Bulgarians find the government's efforts in combating corruption ineffective (whereas 15% find that they are neither ineffective, nor effective)³⁶. The corruption perception index by Transparency International shows stagnation on a low level since 2002³⁷. Particularly worrying is the level of pessimism among Bulgarians: 20.9% believe that since Bulgaria is already an EU member state, corruption will increase or dramatically increase, while 37.1% consider that EU membership will not change the level of corruption³⁸.

- *Establish administrative arrangements to safeguard whistle-blowers*

The Bulgarian authorities indicate that the protection of whistle- blowers is effectively assured by the Administrative Procedure Code which stipulates that no person shall be pursued due to the submission of a proposal or signal. It obliges public authorities and other bodies carrying out public law functions to review and resolve the proposals and signals within the statutory terms, objectively and in compliance with the law.

Furthermore some provisions on whistle- blowers were incorporated into a draft Law on Conflict of Interest³⁹.

But administrative arrangements to safeguard whistle- blowers do not yet exist and as such it is not surprising that there are no reported cases of whistle blowing. The general provision on protection of whistle blowers or persons submitting proposals is not a sufficient safeguard. In the absence of safeguards, there is a legitimate fear of reprisals.

- *Implement fully the legislation on the independence of the inspectorates in the public administration and ensure more pro-activeness in their investigative role*

On the performance of inspectorates, the Bulgarian authorities report that from the beginning of 2008 to the end of April 2008 they carried out 441 planned and 528 ad-hoc checks. If the number of checks in the following months keeps pace, the number of planned checks in 2008 will be higher than in 2007, while the number of ad- hoc checks will decrease. The number of

³⁶ Transparency International, Global Corruption Barometer 2007, p. 24

³⁷ The Corruption Perception Index for BG of Transparency International, stayed at around 4 since 2002. The EU average CPI is 6.5.

³⁸ National Centre for Public Opinion Survey provided by the Bulgarian authorities, p. 5

³⁹ For assessment of the draft Law on Conflict of Interest, see: p. 16/17

disciplinary proceedings which took place in January- April is 64. As a result, 6 employees were temporarily suspended from work, 20 were dismissed and 35 cases were referred to the Prosecution Office.

In addition, all institutions within the central administration are declared to have introduced assessment systems based on corruption risk by the end of 2007 in order to improve internal administrative control.

The Chief Inspectorate within the Council of Ministers developed a methodology for integrity tests for the central executive power. If effectively carried out, they could help in measuring the integrity of officials and streamlining anti-corruption measures.

No progress is reported on activities to stimulate more- pro-active behaviour of inspectorates in their investigative roles.

Experts suggest that the general legislative framework for the inspectorates is satisfactory. However, the administrative framework could be improved, for example a direct and stronger link between the Chief Inspectorate and inspectorates within ministries. Qualitative data on inspection methodology and the number of checks concerning corruption was not available. An impact assessment of these activities on combating corruption in Bulgaria was therefore impossible.

- *Report on the implementation of measures taken to prevent and fight influence in the investigation and prosecuting entities, in particular sustain cases of suspension/dismissal/initiation of criminal proceedings against alleged corrupt law enforcement bodies*

Numerous operational measures have been reported- mainly inspections on processing and movement of criminal cases. It is difficult to assess how useful they have been in diminishing cases of undue influence.

Bulgaria has indicated that in the first five months of 2008, 13 pre-trial proceedings were initiated against 14 persons who were either officials or protected by immunity (The figures provided for 2007 indicated that proceedings were initiated against 15 such persons, including 10 magistrates). Meanwhile in this period, 4 prosecutor's acts (so not necessarily indictments) were submitted to the court and only 1 person convicted (in 2007 there were 7 convictions, none of which involved magistrates).

Corruption-related offences of publicly elected representatives, senior officials or magistrates account for a marginal share of the total number of crimes detected and effectively punished in Bulgaria. The majority of proceedings end at an early stage of the pre-trial proceedings. Despite a declared "war against corruption", only one senior official was convicted in the first five months of 2008.

Several reports point to violations of professional integrity and ethical standards among lawyers, in particular in relation to commercial law. These shortcomings should be rigorously addressed by professional associations and by the judiciary.

Serious improvements are needed to eradicate corruption. The commitment to achieve measurable progress on corruption needs to be reinforced at the highest levels of power, law enforcement bodies and judiciary. Creation of the State Agency of National Security appears

to be a step in the right direction. It has made a good start but it remains to be seen as to whether it will in fact guarantee more efficient law enforcement in the field of corruption. The Agency is only one of the factors in the successful investigation of corruption cases by investigation bodies.

- *Ensure the establishment of a credible checking mechanism for asset declarations as well as effective sanctions in case of false or inaccurate declarations*

The Bulgarian authorities state that the mechanism for checking the assets declarations of high level state officials, which was introduced at the beginning of 2007, is effectively implemented. Lastly 5857 senior public officials were checked, but together with persons related to them the number of persons verified for 2007 exceeded 10000. All cases of discrepant assets declarations (195) and failure to submit of declarations (67) were published on the website of National Audit Office (NAO) and forwarded to the National Revenue Agency for checks according to the procedure under the Tax and Social Insurance Procedure. After the completion of checks, a selection should be made and, if necessary, audits will be assigned. No further information in this regard has been presented to the Commission.

The NAO conducted an audit of the assets of political parties. In 2007, there were 359 registered parties; in 2008, 376. In 2007, 253 parties did not submit financial reports on time; in 2008 the figure is 211. Administrative proceedings were started on 201 parties, 76 punitive ordinances and 19 warnings were issued (2007). 40 parties appealed in court, 25 were finally invited to pay. All parties represented in the National Parliament submitted declarations. In the event of failure to produce financial reports in 3 consecutive years, a party is barred from participation in national elections. If parties do not participate in elections for 5 consecutive years they can be dissolved at the request of NAO by the court. 172 parties were dissolved in 2007.

The NAO conducted a thematic audit on use and management of municipal and state property by political parties in 2007. The audit demonstrated that 40 parties had committed violations. Mayors and regional governors concerned were informed and asked to take remedial action.

As a result of insufficient personnel in the National Audit Office (500 persons, including 10 auditors on political parties), it is virtually impossible to conduct substantive audits on assets declarations (10000 persons were checked last year) and controlling finances of political parties (359 parties registered last year).

The rules governing asset declarations show several deficiencies, e.g. artworks or jewellery do not need to be declared and only amounts but not individual bank details must be declared. Moreover, it appears that in some cases the declared value of assets does not correspond to the market value, in particular with regard to real estate. The application of sanctions often does not appear to be a sufficient deterrent to prompt officials to declare their assets instead of paying a fine.

Control over the financing of political parties remains a serious problem. First of all, the NAO has no capacity to carry out on the spot- checks of parties' finances. The percentage of parties breaking the rules remains very high. This year audits prove that there is a growing tendency of receiving donations in violation of the law (e.g. from companies involved in public

tenders). 1/6 of the checked parties were found to have violated legal provisions. More than four out of five respondents in Bulgaria believe that political parties are corrupt⁴⁰.

Another measure reported by Bulgaria which is related to the transparency and quality of public life is a draft Law on the Conflict of Interests, submitted to the Parliament. It was developed in response to the suspension of the pre-accession funds by the EU following numerous financial irregularities and conflict of interests.

Unfortunately, stakeholders have not been sufficiently consulted on the draft law. For example, contrary to the requirement of the Law on Normative Acts to give at least 14 days to stakeholders for proposals or comments, only 2 days were granted to the National Audit Office (directly affected by this draft law) and 1 day to Transparency International.

In addition, concerns amounting to calls for a complete review were reported in relation to the draft law: The concept of the law was not well thought through and would create serious problems for enforcement. The definition of "conflict of interests" and the scope of law was criticised as unclear and incomplete, provisions for detecting conflicts of interests are equally criticised for being inconsequential. The implementation of the law would be difficult for reasons of enforcement capacity⁴¹.

5. BENCHMARK 5: TAKE FURTHER MEASURES TO PREVENT AND FIGHT CORRUPTION, IN PARTICULAR AT THE BORDERS AND WITHIN LOCAL GOVERNMENT

Bulgaria has successfully stepped up efforts to combat corruption within border police and has decided to close duty-free shops and duty free petrol stations which were seen as focal points for corruption and organised crime. However, concerns with regard to other vulnerable sectors such as health and education persist. In addition vote- buying during the last local elections, land swaps and political party financing give rise to serious concerns. Good financial management and control (particularly as concerns respect for public procurement rules) is essential, in particular in large infrastructure and energy projects.

Detailed assessment

- *Implement disciplinary sanctions and a policy of zero-tolerance, particularly in the Veterinary Service, customs, the Road Executive Agency and other relevant services*

Bulgaria has reported on various preventive and punitive measures undertaken to root out low-level corruption within border controls and local government.

However, neither a single regional anti-corruption strategy nor a nationwide strategy to combat low-level corruption has been developed..

With regard to diminishing corruption at the borders, the decision to close duty-free shops and petrol stations is highlighted by Bulgaria as one of its biggest achievements. It should be considered as a positive step towards reducing abuses and corruption related to the trade in excise goods.

⁴⁰ Global Corruption Barometer 2007, Transparency International, p. 9

⁴¹

In terms of punitive measures, Bulgaria has reported that a number of disciplinary cases have been brought and sanctions have been applied to the border police, customs and veterinary services. Nevertheless, their impact cannot be assessed as information is not available on the seniority of the officials. Furthermore, even though information on the forwarding of cases to the Prosecution Office has been provided, no data on its judicial follow-up has been submitted. On the other hand, investigations resulting from a conflict of interest of two officials working for the Road Infrastructure Fund led to an indictment being brought before the courts.

Reports on corrupt practices persist in vulnerable sectors such as education and health care. Although awareness raising activities have been carried out, few complaints are filed and little control exists in the monitoring of conflict of interest in public procurement.

As far as local government is concerned, several organisational measures have been implemented to improve transparency and provide better services for citizens (for example the e-government integration system, the pilot e-region integration system, and a "one-stop shop"). However, severe concerns have been raised with regard to the system of pre-electoral campaigning and voting, namely vote-buying as a means of ensuring political success in the last local elections. Last autumn, cases of vote-buying were followed by further cases during June's partial local elections, as reported Sandanski and Kazanluk⁴². The Centre for the Study of Democracy estimated that money spent buying votes exceeded BGN 200 million (more than EUR 100 million).⁴³ At the same time, only mediocre efforts at a criminal follow-up have been made in respect to the cases reported: out of 294 registered case files of vote-buying, only 17 pre-trial proceedings were initiated, and these resulted in the imposition of just one fine of BGN 1000 (slightly more than EUR 500)⁴⁴. In addition to lenient and inefficient punishment, the refusal to acknowledge the problem fully is very much of concern.

Alongside corruption in local government, there are other key areas of high corruption risk which need to be addressed: public procurement, concession-granting mechanisms which operate via the power of discretion of officials, outsourcing of public services, privatisation, public-private partnerships, land and forest swaps⁴⁵.

- *Establish electronic payment systems and a system of shifts at random for officers employed at the borders*

All eleven border checkpoints are reported to have introduced a system for the automatic calculation of roads and other fees as well as fully developed infrastructure necessary for the functioning of the "single fiche payment" principle. According to official data, at the moment the "single fiche" is fully operational in nine border checkpoints. Random shift allocation and rotation principles have been implemented within the Border Police and National Customs Agency.

⁴² According to an exit poll of the Open Society Institute carried out on the election day, 0,5% of those who voted admitted they had sold their vote. Another 2500 people said they had taken money for their vote but had not voted for the party that they had been paid to vote for. About 27 000 people, or slightly over 36% of the total 72 500 eligible voters in the Kazanluk municipality took part in the last elections.

⁴³ U.S. Department of State, Country Report on Human Rights Practice 2007, Bulgaria

⁴⁴ 200 pre-trial proceedings have been rejected

⁴⁵ "Levelling the playing field in Bulgaria: How Public and Private Institutions Can Partner for Effective Policies Targeting Grey Economy and Corruption", Centre for the Study of Democracy, May 2008, No. 15, p. 11

Measures undertaken have contributed to a decrease in corruption opportunities and to increased revenue.

- *Conduct at regular intervals audits and checks, publish the findings and ensure their follow-up*

Insufficient information has been submitted to the Commission to assess the impact of these measures.

- *Report on investigations into inexplicable wealth*

Bulgaria reports that checks into inexplicable wealth of officers of the Customs Agency⁴⁶ and the National Revenue Agency⁴⁷ were performed in 2007. No supplementary information has been provided on efforts to detect inexplicable wealth in other areas. Checks should be conducted pro-actively based on a risk assessment and should cover other vulnerable sectors.

Some further changes to the legal framework for investigations into inexplicable wealth have been announced. However, it remains to be seen whether the changes will be implemented effectively.

6. BENCHMARK 6: IMPLEMENT A STRATEGY TO FIGHT ORGANISED CRIME, FOCUSSED 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

Overall assessment of progress on the fight against organised crime suggests very little progress in real terms. The number of criminal cases related to organised crime remains low. Several mechanisms are extremely inefficient (confiscation of criminals' assets, combating money laundering). The creation of SANS is a positive step, but promising cases must be given appropriate judicial follow-up and progress must be monitored.

Detailed assessment

- *Associate Member States' experts to provide guidance and assistance as regards improving the quality of investigations and reporting on this*

Co-operation with experts from other Member States is ongoing; however it is adversely affected by the current reorganisation within the police forces.

- *Hand over an action plan to implement the strategy to fight organised crime and implement it with reports at regular intervals*

The lack of progress in translating strategic objectives into concrete actions is of concern, since only a planned process allows for well-targeted operations against organised crime groups and provides a useful tool for authorities to measure progress in this regard.

⁴⁶ No data on discrepancies found were reported.

⁴⁷ The National Revenue Agency reports that no discrepancies were found in 2007.

- *Fully implement relevant legislation on confiscation of assets of criminals*

Since 2005, the Commission for Establishing Property Acquired by Criminal Activity (CEPACA) has the mandate to identify criminal assets, impose measures for the freezing of assets (if there is a suspicion that funds have been acquired through criminal activity and no contrary proof is provided) or launch a court procedure for confiscation (all cases go through until the confiscation has taken place).

CEPACA is only able to work on cases involving at least 60.000 leva (more than 30.000 Euro), a relatively high threshold in the context of the economic situation in Bulgaria.

. Currently, there are sixty-three cases pending in the first tier of the court system, and one case has been appealed. By the end of 2008, twelve cases are expected to be finalised. Court procedures are lengthy and CEPACA is far from efficient⁴⁸.

- *Report regularly and audit internally the new and on-going investigations, indictments and convictions*

Bulgaria has submitted the following statistical data on judicial proceedings on cases related to organised crime in the first five months of 2008: 48 pre-trial proceedings instituted (101 in 2007), 30 pre-trial proceedings resolved, 20 indictments (54 in 2007), 132 persons accused (316 in 2007) and 60 convicted.

There has been an overall lack of progress in the investigation, prosecution and trial of cases related to organised crime. Only two high profile cases have seen clear progress since the Commission's last report in February⁴⁹.

All levels within the whole system of fighting organised crime seem to encounter problems.

With regard to the pre-trial phase, the deficiencies are as follows: The Ministry of Interior needs profound reform, police officers are not able to testify in court, role and responsibilities of investigating magistrates remain unclear, police investigators are understaffed, overburdened and need training. After examination of a sample of widely debated cases on organised crime and corruption within the last few years, it has to be concluded that too many cases remain on an operational or a pre-trial level.

This could be partially remedied by the effective operation of the State Agency for National Security (SANS), which has quickly acquired operational capacity and has started to deliver successfully on fighting organised crime (mainly money laundering⁵⁰ and customs). Yet, it lacks investigative powers *per se*, is not fully or effectively supervised by the Parliament and

⁴⁸ e. g. It took CEPACA 18 months in the Margin brothers case to start an inquiry after receiving information from the Prosecution Office.

⁴⁹ Case against Mr Dimitar Zhelazhkov and case against Mr Valentin Dimitrov (Sofia Heating Utility Toplofikatsia)

⁵⁰ For example, SANS has successfully and quickly investigated a money laundering chain in cooperation with foreign authorities where the whole process, from the beginning of investigations through to the assignment of investigative tasks on the case to SANS by the Prosecution in March, and finally to the arrests, took only 2,5 months.

prosecutors in the pre-trial phase⁵¹. Besides, the investigations of SANS have not yet been translated into effective judicial proceedings.

Problems are also appearing with regard to the trial phase.

The percentage of cases returned to prosecution offices by the courts has seen an increase compared to 2006⁵² (mainly in Sofia⁵³ and other big cities). This is odd given that judges themselves could remedy a substantial number of formal mistakes as they have the mandate to apply all available measures in order to secure the objective truth⁵⁴.

Moreover, adjourning proceedings due to the abuse of medical certificates proving the illness of defendants and their defence lawyers is a phenomenon which needs to be tackled. The same is true of the impossibility of having separate trials for members of an organised crime group indicted together in the event of one of them failing to appear or falling ill.

Finally, the number of convictions is low.

One possible solution to increase efficiency could be the creation of autonomous specialist units to combat corruption and organised crime within the Prosecution Office. These units would work closely with specialist investigators or SANS. Experts on complex economic, financial or other crimes could be assigned to the units to assist with pre-trial proceedings. There could also be a corresponding court structure (specialised courts with highly competent judges). Employment conditions would need to be appropriate to attract the best candidates and eliminate the risk of corruption.

- *Implement the new legislation to combat money laundering*

Notwithstanding declarations on the successful implementation of anti-money laundering legislation, numerous problems have been encountered.

Money laundering is fuelled by the unlimited cash payments and large level of investment in the country's booming construction and tourism businesses by off-shore companies, the origin of whose assets' is often difficult to trace.

The mechanism for the control of cash payments shows severe deficiencies.

Bulgarian legislation requires financial institutions to report cash transactions over BGN 30 000 to the Financial Intelligence Directorate (FID) within SANS (ex-Financial Intelligence Agency). However, the form for bank reporting, contrary to the non-banking form, does not include the actual amount of the transaction. Since over 90% of reported transactions⁵⁵ came

⁵¹ See: Benchmark 2.

⁵² In 2007, 10.39% of cases were returned, whereas in 2006, it was 8,24 %. Source: Report on the application of the law and the activities of the Prosecution Authority and the bodies of investigation in 2007 (summary provided by the Bulgarian authorities), p. 4

⁵³ Prosecutors from the Sofia City Prosecutor's Office declared that according to their assessments, 20-30% of cases, especially those concerning serious crimes attracting great public attention, are returned. They called for abolishing of referrals to the prosecutor, leaving the judges only a choice between conviction and acquittal.

⁵⁴ Art. 13 of the Penal Procedure Code.

⁵⁵ There were over 300,000 cash transactions reports over BGN 30 000 in 2007.

from banks⁵⁶, FID is unable to distinguish between transactions at the reporting threshold and those that are in considerable excess of it. This is a key impediment to determining if cash transactions merit further anti-money laundering investigation. The reporting form for banks could easily be fixed by an agreement between the Ministry of Finance and the Bulgarian National Bank.

In addition, a Memorandum of Understanding regulating mutual relations between the Ministry of Interior and SANS (whose part is FID) has not yet been signed.

Statistics also show an unsatisfactory performance in the implementation of anti-money laundering legislation.

Over the last 6 years, prosecutors have brought to court a total of only twenty-seven money laundering cases⁵⁷. As of May 2008, Bulgarian courts have issued only fourteen sentences on money laundering charges and five acquittals⁵⁸. From March 2006 to May 2008, the court ordered the confiscation of BGN 500 000, EUR 500 000 and USD 35 000⁵⁹.

Undoubtedly, the cases on money laundering present a high level of complexity which requires considerable expertise in banking, economy and finance. It might partially serve as an explanation for the low number of cases brought to court. Possible institutional solutions include the increased involvement of experts in cases, as well as training for prosecutors and investigators.

A more serious problem is the low amounts confiscated. This suggests that serious offenders are not being prosecuted.

⁵⁶ Data for 2007

⁵⁷ Numbers confirmed by Risk Monitor and the Dutch Embassy in Sofia.

⁵⁸ As above

⁵⁹ As above