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# Post-monitoring dialogue with Bulgaria

**Report**[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Rapporteur: Mr Luca VOLONTÈ, Italy, Group of the European People's Party

*Summary*

The Monitoring Committee welcomes the substantial progress made by Bulgaria towards the fulfilment of its remaining obligations. It also notes with satisfaction that the Bulgarian authorities have shown and continue to demonstrate a sustained political will and commitment to achieve the full accomplishment of their obligations and commitments resulting from membership of the Council of Europe and compliance with democratic standards, as confirmed by their extensive co-operation with the European Commission for Democracy through Law (Venice Commission).

However, despite important progress in terms of the legislative framework and the crucial reforms put in place, some steps still need to be taken, in particular aimed at full implementation of laws in a number of key areas with regard to the independence of the judiciary and the fight against corruption and organised crime. In conclusion, the committee proposes to continue the post-monitoring dialogue with the Bulgarian authorities.

1. Reference to committee: Resolution 1115 (1997).

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## A. Draft resolution[2]

1. The Parliamentary Assembly refers to its Resolution 1211 (2000) on the honouring of obligations and commitments by Bulgaria, in which it decided to close the monitoring procedure and to open a dialogue with the Bulgarian authorities on a number of outstanding concerns contained in the resolution, or on any other issue arising from the obligations incumbent upon every member State of the Council of Europe under Article 3 of the Statute with regard to pluralist democracy, the rule of law and human rights.

2. During the entire period of the post-monitoring dialogue, Bulgaria has continued to make substantial progress towards the fulfilment of its remaining obligations. This was confirmed by its accession, in 2007, to the European Union. Since the adoption by the Assembly of Resolution 1730 (2010) on post-monitoring dialogue with Bulgaria, the country has taken a number of important measures designed to implement the Assembly's recommendations.

3. The Assembly notes with satisfaction that the Bulgarian authorities have shown and continue to demonstrate a sustained political will and commitment to achieve the full accomplishment of their obligations and commitments resulting from membership of the Council of Europe and compliance with democratic standards, as confirmed by their extensive co-operation with the European Commission for Democracy through Law (Venice Commission).

4. The Assembly recognises important progress in terms of the legislative framework and the crucial reforms put in place since the closure of the monitoring procedure, especially since accession to the European Union. In particular, the Assembly welcomes the introduction of laws on the functioning of the judiciary, aimed at increasing its independence, accountability and transparency.

5. Successive amendments to the Judicial System Act, introduced between 2008 and 2012 in line with the Venice Commission's recommendations, particularly those concerning the introduction of a new selection and appointment procedure for the members of the Supreme Judicial Council and the Inspectorate, procedures for appointments and appraisals of magistrates, as well as measures aimed at improving judicial and investigative practice, have to a large extent created favourable conditions for the functioning of the judiciary.

6. The adoption, in 2010, of the Strategy to Continue the Judicial Reform with the objective of increasing public confidence, improving management and countering corruption in the judiciary, with the involvement of civil society and magistrates, should further contribute to the improvement of the functioning of the judiciary.

7. However, a number of concerns, including the role of the Minister of Justice in the Supreme Judicial Council, its structure and the method of appointment of its members, the probationary period of five years for new judges and the separation of and non-interference between the three judicial branches (judges, prosecutors and investigating magistrates), require further reflection and should be addressed. Regretfully, some fundamental principles, such as the independence of the judiciary, have not always been fully respected and some important appointments have not been made on the basis of merit and integrity. At the same time, it has to be acknowledged that some changes require the courage to challenge vested interests. This is also true within the judiciary itself.

8. Ensuring the effective implementation and using the full potential of the legislative framework, in particular with regard to the managerial and leading role of the Supreme Judicial Council, whose independence and integrity should remain beyond any doubt, is a necessary condition for the sustainability and irreversibility of the process. It is now crucial that the authorities, as well as the judiciary, assume full ownership of the reforms.

9. The Assembly commends the efforts that Bulgaria has made to introduce a comprehensive legislative and administrative framework and preventative measures to combat corruption and organised crime, which have been intensified since its accession to the European Union. In particular, it expresses its satisfaction at the final adoption, in 2012, of the Law on Forfeiture in favour of the State of Illegally Acquired Assets and, in 2010, of the strengthened Law on Conflict of Interests.

10. Despite progress in this field, some concerns remain only partially addressed, as confirmed by the lack of results in terms of final court rulings with regard to high profile corruption cases. This low level of efficiency can be explained to a great extent by deficiencies in investigatory procedures and by the weakness of judicial practice. While some shortcomings in the existing legislation, which have been highlighted by the Group of

2. Draft resolution adopted by the committee on 12 December 2012.

States against Corruption (GRECO) and the European Commission, should be remedied without delay, the implementation of the existing legislation and using the full potential of the tools available remain essential challenges.

11. The future adoption of the new penal code, which is currently being drawn up in co-operation with Council of Europe legal experts, should further contribute to improving the situation.

12. With regard to the implementation of decisions of the European Court of Human Rights, the Assembly notes with satisfaction that the National Assembly adopted, in September 2012, a law providing for the introduction of an obligation for the government to submit to parliament an annual report on the number and nature of judgments and information on the implementation of the Court's decisions, in accordance with the recommendations of the Parliamentary Assembly.

13. The Assembly recognises the progress made by Bulgaria in the field of combating human rights abuses by law enforcement officials, following a number of measures, including the amendment to the Interior Ministry Act, adopted in May 2012, setting up systematic human rights training for police officers and the introduction of concrete measures to eradicate impunity and the lack of accountability for abuses.

14. While commending the adoption, in 2010, of a new law obliging the print media to disclose the names of their actual owners, the Assembly stresses the need for the adoption of similar provisions for the broadcasting sector.

15. The Assembly is preoccupied by the rise in nationalist ideology and actions and by the climate of increasing hostility towards minorities, as illustrated by the aggressive conduct of the Ataca Political Party supporters towards believers in front of the Mosque in Sofia in May 2011, and the hate speech and incitement to violence against Roma in Sofia and 14 other cities in October 2011. Moreover, despite undeniable progress and efforts with regard to the rights of people belonging to minorities, a number of concerns, which have been identified by the relevant Council of Europe monitoring mechanisms, still remain and should be addressed without further delay.

16. The Assembly recalls the concerns identified by its observers during the last parliamentary elections in 2009, as well as the recommendations made by the Venice Commission in respect of the current Electoral Code, and calls on the Bulgarian authorities to address these concerns in time for the forthcoming elections in the summer of 2013.

17. In order to continue the progress and confirm the sustainability and irreversibility of the reforms in Bulgaria, the Assembly calls on the authorities to take the following measures:

17.1. With regard to the independence of the judiciary:

17.1.1. safeguard the independence of the judiciary and refrain from exerting any pressure on it;

17.1.2. review the role of the Minister of Justice in the Supreme Judicial Council and consider the introduction of a qualified majority vote in the election of the parliamentary quota of the Supreme Judicial Council;

17.1.3. shorten the length of the probationary period for new judges;

17.1.4. ensure the separation of and non-interference between the three judicial branches (judges, prosecutors and investigating magistrates) within the Supreme Judicial Council, in compliance with the Venice Commission's recommendations;

17.1.5. encourage and support the Supreme Judicial Council and the Inspectorate in their task of increasing the efficiency of the judiciary and judicial practice, particularly in the following areas:

17.1.5.1. develop a human resources strategy which would encourage professionalism, independence and integrity, notably by addressing the deficiencies in the system of appraisals, establishing a uniform and consistent mechanism for assessing the performance of judges, prosecutors and investigating magistrates and linking it with career development;

17.1.5.2. ensure consistency in sanctions, notably in cases concerning delays in issuing the motivation of decisions, and establish a single, effective system of random, nationwide allocation of cases and clear criteria for the assessment of the complexity of cases and their impact on the distribution of workload;

17.1.5.3. conduct an analysis of the deficiencies in judicial practice with a view to addressing them, develop a strategy for reducing the backlogs in publishing the motivation of decisions, and remedy loopholes in the effective implementation of court decisions, such as absconding to evade prison sentences or failure to apply financial sanctions decided by the court;

17.1.6. encourage the involvement of civil society and professional organisations in defining and monitoring further strategies for the reform of the judiciary;

17.1.7. complete the work on a new penal code, in full co-operation with Council of Europe legal experts, and ensure its implementation once adopted;

17.2. With regard to the fight against corruption and organised crime:

17.2.1. implement the recommendations made by GRECO, in particular with regard to the clear incrimination of bribery and trading in influence, ensure broader interpretation of the concept of undue advantage, and ensure full implementation and use of the potential of the Law on Forfeiture in favour of the State of Illegally Acquired Assets, adopted in May 2012;

17.2.2. review the Law on Conflict of Interest so as to ensure a more efficient application of dissuasive sanctions; revise the asset declaration and verification system with a view to increasing its efficiency as an effective instrument to detect illicit enrichment;

17.2.3. establish independent institutions in the area of anticorruption with the authority and obligation to make proposals, to intervene in a proactive way and to ensure independent monitoring in line with the European Commission's recommendations; and ensure that they have sufficient capacity to conduct complex financial investigations;

17.2.4. conduct a full analysis of the deficiencies in investigatory procedures with a view to remedying the situation and, on the basis of past experience, improve the performance of the police, the prosecution and the courts;

17.3. With regard to abuses by law enforcement officials:

17.3.1. pursue efforts to eradicate abuses by law enforcement officials by effectively implementing the measures to eliminate impunity and the lack of accountability of such abuses, in particular by ensuring proper investigations into individual cases, introducing procedural safeguards during police custody, promoting civil society monitoring and developing further training and awareness-raising measures;

17.4. With regard to the independence of the media:

17.4.1. adopt legislation obliging the broadcast media to disclose the names of their actual owners, as is now the case for the print media;

17.4.2. ensure that defamation and libel are not criminalised in the new penal code under preparation;

17.5. With regard to the rights of people belonging to national minorities:

17.5.1. systematically and unconditionally condemn hate speech against minorities, step up measures aimed at fostering tolerance and mutual respect, and encourage exemplary behaviour by political leaders;

17.5.2. ensure full implementation of all the provisions of the Framework Convention for the Protection of National Minorities (ETS No. 157), in particular those concerning the personal scope of application of the convention, in view of the non-recognition of the existence in Bulgaria of the Pomak and Macedonian minorities, and sign and ratify the European Charter for Regional or Minority Languages (ETS No. 148);

17.5.3. address the concerns identified by the Council of Europe Commissioner for Human Rights with regard to the human rights of Roma, in particular concerning forced evictions and access to social rights, including education, housing and health care;

17.5.4. give due consideration to the claims of the former prisoners of Belene Island, in accordance with the Bulgarian Act on Political and Civil Rehabilitation of Persons Repressed During the Totalitarian Regime;

17.5.5. continue to improve the rights of persons belonging to minorities as regards teaching of and in their mother language, promote knowledge of the cultural identity of minorities and foster tolerance through education.

18. The Assembly encourages the Bulgarian authorities to implement and fulfil all commitments to ensure democratic progress. It hopes its confidence that Bulgaria will continue to advance in the right direction is not misplaced. It expects the remaining concerns to be addressed democratically and in full compliance with the relevant mechanisms and procedures.

19. The Assembly expects the Bulgarian authorities to pursue their fruitful co-operation with the Venice Commission and Council of Europe legal experts with a view to remedying remaining deficiencies in existing legislation.

20. Against this background, the Assembly resolves to continue the post-monitoring dialogue with the Bulgarian authorities and, in accordance with its internal procedures, to closely follow the developments in this country.

## B. Explanatory memorandum by Mr Volontè, rapporteur

### 1. Introduction

1. Bulgaria became a member of the Council of Europe in 1992. Upon accession, the Bulgarian authorities undertook a number of specific commitments, contained in Parliamentary Assembly Opinion 161 (1992), which, together with statutory obligations, set the basis for the monitoring procedure lasting until 2000. In Resolution 1211 (2000), the Assembly decided to close the monitoring procedure and to open a post-monitoring dialogue with the Bulgarian authorities "on the issues referred to in paragraph 4 [of Resolution 1211], or any other issues arising from the obligations of Bulgaria as a member State of the Council of Europe".

2. Since then, only one report on the progress made by Bulgaria has been presented by the Monitoring Committee, in April 2010.[3] This can be explained partly by the fact that, before the revision of the Rules of Procedure of the Parliamentary Assembly in 2009,[4] there had been no formal deadline for the presentation of reports on post-monitoring dialogue. Moreover, until 2010,[5] the Chairperson of the Monitoring Committee was *ex officio* rapporteur on all countries engaged in post-monitoring dialogue. Two former chairpersons, Ms Hanne Severinsen and Mr Serhiy Holovaty, had visited Sofia and pursued the dialogue with the authorities.[6]

3. Furthermore, in 2007, Bulgaria became a full member of the European Union. The accession was preceded by an important reform process aimed at the introduction, implementation and consolidation of European standards. Important legislation was introduced under the auspices of the European Union, in co-operation with Council of Europe legal experts, and it was clear that the country was advancing in the right direction.

4. Upon Bulgaria's accession, the European Commission established a mechanism for co-operation and verification of progress in the country (CVM) in order to address specific concerns in the areas of judicial reform and the fight against corruption and organised crime. The fifth and most recent report under this mechanism was published by the European Commission in July 2012.[7] I have used the findings of successive CVM reports in the present report.

5. In order to ensure better co-ordination and co-operation between monitoring mechanisms of both Organisations, I went to the European Commission in Brussels on 23 November 2012, where I met officials responsible for the CVM. We held an interesting exchange of views on the situation in Bulgaria.

6. Successive elections, including parliamentary elections in July 2009 and the presidential election in October 2011, were observed by the Parliamentary Assembly. The respective reports prepared by the ad hoc committees to observe the elections were presented and debated in the Assembly.[8] In the present report, I have also used the conclusions of these observation teams.

7. I was appointed rapporteur on the post-monitoring dialogue with Bulgaria in June 2010. I carried out two fact-finding visits to this country: from 19 to 22 December 2011 and on 26 and 27 September 2012. The purpose of both visits was to collect information about the developments since the last debate in the Assembly and to assess not only the progress being made in the implementation of the outstanding issues as regards the obligations and commitments but also the authorities' commitment to continue the direction of the reforms and the prospects for the future.

8. I also used these opportunities to take a closer look at some concerns expressed by the international community, in particular with regard to the situation of Roma and other minorities, and some worrying developments, such as the incident provoked by the Ataka Party.

9. During the visits, I held a wide range of meetings including, on the one hand, the highest representatives of the legislative, executive and judicial authorities and, on the other, representatives of national and international civil society. I used every opportunity to listen to the latter, including during the Parliamentary Assembly's sessions in Strasbourg.

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3. See Doc. 12187 and Resolution 1730 (2010).
4. See Resolution 1698 (2009) and Doc. 12071 and addendum.
5. See Resolution 1710 (2010).
6. See documents AS/Mon (2007) 26, AS/Mon (2007)13 and AS/Mon (2010) 08.
7. See Report from the European Commission to the European Parliament and the European Council on progress in Bulgaria under the CVM – COM(2012)411 final.
8. See Docs. 12796 and 12008.

10. In the preparation of the present report, I have also used the findings and conclusions of the relevant institutions and monitoring mechanisms attached to the conventions of the Council of Europe to which Bulgaria is a party. The work of the following bodies has been taken into account: the European Court of Human Rights ("the Court"), the Committee of Ministers in its supervisory function of the execution of the Court's judgments, the Commissioner for Human Rights, the Congress of Local and Regional Authorities of the Council of Europe, the Group of States against Corruption (GRECO), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Advisory Committee on the Framework Convention for the Protection of National Minorities and the European Commission against Racism and Intolerance (ECRI).

11. My general impression is that the Bulgarian Government has shown and continues to demonstrate a sustained political will and commitment to achieve the full accomplishment of its obligations and commitments resulting from membership of the Council of Europe. Immense legislative work has been completed and some crucial reforms have been carried out.

12. The Bulgarian authorities have developed very fruitful co-operation with the European Commission for Democracy through Law (Venice Commission), which has provided its legal expertise on the most important legislative acts adopted over the last few years, including the Law on Forfeiture, numerous amendments to the Judicial System Act and the Election Code. Furthermore, the Ministry of Justice has closely co-operated with the Council of Europe's Directorate of Legal Advice and Public International Law on the penal code, currently under preparation. In its opinions, the Venice Commission has stressed the very good co-operation with the Bulgarian authorities and their receptiveness to its recommendations. During my visits, the authorities reiterated their continued intention to use the legal expertise of the Venice Commission and of the Council of Europe in general

13. In the present report, I will endeavour to assess whether the reform process is sustainable and irreversible, and in particular whether it is sufficiently entrenched in Bulgarian society and politics for the direction of reform to be maintained.

14. Last but not least, I wish to extend my gratitude to the Bulgarian parliamentary delegation to the Parliamentary Assembly and to its Secretariat for the excellent organisation of both my visits and the help they provided in collecting from the different authorities information which I needed for the preparation of the present report.

## 2. Political context

15. The last parliamentary elections took place on 5 July 2009, bringing to power a new centre-right party, Citizens for European Development of Bulgaria (GERB), established in 2006. It won 39.7% of the votes, securing 116 seats out of a total of 240 and overthrowing the former parliamentary majority led by the Bulgarian Socialist Party (BSP). Its leader, Mr Boyko Borisov, who was appointed Prime Minister, chose to form a minority government, which enjoys the support of other small right-wing parties.

16. The Parliamentary Assembly set up an ad hoc committee to observe the elections, which acted as part of an International Election Observation Mission (IEOM). The IEOM concluded that "the 5 July elections were generally in accordance with OSCE commitments and Council of Europe standards; however further efforts are necessary to ensure the integrity of the election process and increase public confidence".[9]

17. The observers noted that the elections provided voters with a broad choice in a visible and active election campaign demonstrating respect for fundamental freedoms. However, late changes to the election system, the lack of legal provisions for free airtime on public broadcasting channels for those running in the elections, insufficient rules on financial disclosure in the electoral context, as well as persistent allegations of vote-buying, negatively affected the election environment.

18. The winning party's stated priority during the electoral campaign was the fight against corruption and organised crime; two concerns which, according to the polls, are perceived by the majority of Bulgarians as the main obstacles to the economic growth and prosperity of their country and which is confirmed by the international economic institutions. GERB insisted on the fact that Bulgaria's financial aid from the European Union was cut in 2008 due to the inability of the government led by the Bulgarian Socialist Party (BSP) to fight corruption.

9. See Doc. 12008.

19. The most recent presidential election took place on 23 and 30 October 2011. It was won by the representative of the GERB party, Mr Rosen Plevneliev, who won 40.11% of votes in the first round and 52.58% in the runoff. The second major candidate, Mr Ivaylo Kalfin from the Bulgarian Socialist Party, received respectively 28.96% and 47.42%.

20. The election was observed by an ad hoc committee of the Assembly acting as part of an IEOM, which, in its conclusions,[10] made an overall positive assessment of the electoral process, but said that further reforms were needed to address concerns such as pervasive allegations of vote-buying and unsatisfactory modalities of the election's coverage in the media.

21. The victory of the ruling party's candidate confirmed the widespread support for the government's policies implemented since 2009, including for its determination and commitment to guaranteeing the rule of law and fighting corruption and organised crime.

22. Membership of the eurozone and the Schengen area remain the principle objectives of Bulgaria's European policy. In September 2011, the Dutch Government vetoed the Schengen accessions of Bulgaria and Romania, referring to insufficient results in the fight against corruption and organised crime, and the decision was postponed. The question was on the agenda of the meetings of the European Union Justice and Home Affairs Council held in Luxembourg on 25 and 26 October 2012 and in Brussels on 6 and 7 December 2012.

23. Regrettably, recent years have been marked by a rise in nationalist ideology and action. In the run-up to the last presidential election, one of the candidates for the presidential post was Mr Volen Siderov, the leader of the Bulgarian ultra-nationalist party, Ataka, who called on his supporters to demonstrate against Muslims. On 20 May 2011, his followers attacked several Muslims who had gathered for their usual Friday prayers in the main mosque in downtown Sofia, injuring some of them. It has to be stressed, however, that this incident was immediately condemned by the authorities, including Prime Minister Boyko Borisiv. The National Assembly adopted a declaration "unconditionally condemning the aggressive conduct of the Ataka Political Party in respect of believers in the centre of the capital on 20 May 2011".

24. The climate of growing hostility towards minorities was also confirmed by the violence against Roma in October 2011, a sad precedent in Bulgaria. There were violent demonstrations in Sofia and 14 other cities, including Plovdiv, Varna and Pleven. Participation was estimated at half a million, out of a population of 7.5 million. These demonstrations followed the riots in Katuniza village, which started when the inhabitants attacked a Roma family accused of the assassination of a youth.[11]

25. In the last parliamentary elections in 2009, Ataka gained 9.4% of the votes and won 21 seats, remaining the fourth largest party in Bulgaria. However, since then, 11 deputies have left the parliamentary group and it currently has only 10 members.

26. On 18 July 2012, Bulgaria was shaken by a terrorist attack against Israeli tourists, which took place at the Sarafovo Airport in Burgas and took the lives of seven people, 30 others being injured. The investigation, in close co-operation with Euro-Atlantic partners, is still ongoing. So far, this tragic event has remained an isolated act of this kind in Bulgaria.

### 3. Outstanding concerns identified in the last report

27. In the last report on the post-monitoring dialogue with Bulgaria, debated in April 2010, the Assembly welcomed the important measures taken by the authorities with a view to fulfilling the country's outstanding obligations and commitments.

28. It recognised the steady progress in the implementation of the Assembly recommendations; it also acknowledged the reform process directed towards the introduction, implementation and consolidation of European standards, which had allowed Bulgaria to join the European Union.

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10. See Doc. 12796.

11. In their comments to the present report, the authorities strongly opposed applying an ethic dimension to interpretation of the tragic events in Katuniza, which they qualified as inherently criminal. They stressed that attempts to exploit the tragedy for political purposes were strongly condemned by the political leadership. They also stressed that, according to their estimates, no more than 10 000 people took part in the rallies nationwide.

29. However, in its assessment in 2010, the Assembly considered that, in order to meet the strenuous accession deadlines, some reforms had been accomplished in haste and had proved to be insufficient and required further action. In the following chapters, I shall come back to these outstanding concerns, as identified in the last report, and assess the progress made since then.

### *3.1. Functioning of the judiciary*

30. Overall, Bulgaria has made impressive progress in terms of legislative work with regard to the functioning of the judiciary since the closure of the monitoring procedure, in particular over the last five years, following its accession to the European Union.

31. In its numerous opinions on the judicial system in Bulgaria, in particular those adopted in 1999, 2002 and 2003,[12] the Venice Commission had identified a number of concerns having a negative impact on the functioning of the judiciary and, in particular, its independence, accountability and transparency.

32. It has to be acknowledged that the Bulgarian authorities have shown receptiveness to the criticism and have invested substantial effort in remedying the deficiencies, in particular, the constitutional amendments of February 2007, aimed at improving the framework for judicial independence, its impartiality and accountability.

33. Regrettably, this was one of the rare cases when the Bulgarian authorities did not seek the expertise of the Venice Commission prior to initiating the legislative process. The Venice Commission opinion was delivered at the request of the Monitoring Committee only after the adoption of the amendments.[13] As a result, the constitutional amendments did not address several issues already identified as being problematic in earlier opinions of the Venice Commission.

34. While some of these concerns were subsequently addressed by the Bulgarian authorities through the introduction of successive amendments to the Judicial System Act adopted respectively in 2009 and 2010,[14] some outstanding problems remained unsolved and were highlighted by the CVM periodic reports and in the Assembly report of 2010.

35. In its opinion of 2008, the Venice Commission concluded that, in the context of the judicial system in Bulgaria, a number of issues with regard to the judiciary, which are generally in conformity with European standards and in line with constitutional practice in other European States, called for further improvement, as they create the risk of undue influence on the judiciary. These concerns, unaddressed before the debate on the 2010 report on Bulgaria, included the role of the Minister of Justice in the Supreme Judicial Council (SJC), the structure of the SJC and the method of appointment of its members, the “blanket” immunity of judges, the probationary period of five years for new judges, and the broad powers of the inspectors, with the risk of their interference in the administration of justice.

36. During my visits to Sofia, the question of the role of the Minister of Justice in the SJC was the subject of my discussions with many interlocutors, including the Minister herself and representatives of the judiciary and the legislature. Almost all of them stressed that the role of the Minister in the SJC should not be overestimated, as it is limited in that the Minister has the right to chair but not to vote.

37. That may be the case, but when combined with other extensive powers, such as exclusive power to propose a draft budget for the judiciary and submit it to the SJC for consideration, to make proposals for appointment, promotion, demotion, transfer and removal from office and to manage the property of the judiciary, the role of the Minister remains problematic and may compromise the independence of the judicial branch.

38. However, I should point out here that, in contrast to the Venice Commission opinion, the reports of the European Commission did not highlight the role of the Minister in the SJC as an area of concern. In the last CVM report,[15] it was stressed that, over the past five years, ministers of justice had not interfered in the issue of management and careers.

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12. CDL(1999)010, Opinion on the reform on the Judicial System Act in Bulgaria; CDL(1999)011rev, Opinion on the judicial system in the Republic of Bulgaria; CDL(2002)105, Opinion on the Judicial System Act in Bulgaria; CDL-AD(2003)016, Opinion on the constitutional amendments reforming the judicial system in Bulgaria.
13. See Opinion No. 444 (2007) on the Constitution of Bulgaria.
14. The amendments entered into force in 2011.
15. Report from the Commission to the European Parliament and the European Council on progress in Bulgaria under the CVM, document COM(2012)411 final.

39. To my satisfaction, it seems that the authorities' position in this respect has evolved recently. During my last visit in September 2012, I was told that the question of the role of the minister of justice in the SJC was the subject of further reflection. I trust that the authorities will follow the Venice Commission's recommendations in this respect.

40. The second main concern relating to the structure of the SJC was not addressed either by the 2007 constitutional amendments or any later amendments to the Judicial System Act (JSA). Eleven members (out of 25) are still elected by parliament by a simple majority of votes. As a result, in all past elections, the members were systematically elected by the respective governmental majority against the votes of the opposition.

41. According to the experts from the Venice Commission, the composition of the Council, as set out in the Supreme Council Act, is not in itself objectionable. It could work perfectly well in a settled democracy, where the administration of justice is by and large above conflict of party politics, and where the independence of the judiciary is well established. However, in the specific situation of Bulgaria, the risk of politicisation of the election procedures cannot be excluded. This concern has also been echoed by independent experts assessing the judicial reform for the European Commission.[16]

42. According to the critics, the previous selection procedures for the parliamentary quota of the SJC did not lead to appointments seen to be determined by the professionalism and integrity of the candidates. During my first visit to Sofia in 2011, I heard criticism of the July 2011 elections for vacancies in the SJC from the parliamentary quota, about the lack of transparency of the procedure and the lack of public debate on nominated candidates.

43. I discussed this question extensively with different stakeholders, including the Minister of Justice and other representatives of the executive, the Speaker of Parliament and other representatives of the legislature and, last but not least, representatives of the judiciary, including the President of the Supreme Court, the Prosecutor General and representatives of the Bulgarian Judges Association.

44. I heard a number of arguments against the introduction of a qualified majority vote in the election of the parliamentary quota. Some of them were of a formal nature: such a change would require a constitutional amendment, and it was highly unlikely that a consensus for the revision of the constitution would be reached under the present legislature. But, more importantly, my interlocutors, including those from the judiciary, did not really see the point in enacting this change.

45. I was surprised to hear the opinion expressed by many interlocutors, including the Bulgarian Judges Association, that the requirement of a two-thirds majority in parliament would result in even more undesirable political bargaining than had been witnessed in previous elections. Almost all my interlocutors seemed not to see political consensus and compromise as a positive element of the process.

46. In their view, the main focus should be on improvement of the transparency and credibility of the parliamentary quota selection and nomination procedure. Indeed, the recent efforts of the authorities and, in particular, amendments to the Judicial System Act, introduced in 2011,[17] focused on this issue. The amended law establishes strict rules for the entire nomination and selection procedure, based on public involvement and transparency and providing, among others, for public hearings of nominees.

47. The election under this new procedure coincided with my last visit in September 2012. While this development is certainly to be welcomed, I encourage the Bulgarian authorities to return to the question of the parliamentary majority required for the election of the parliamentary component. Indeed, the problem related to the simple majority vote may be well illustrated by the fact that out of five Supreme Judicial Councils since the establishment of this institution, only two have completed their full term of office. By making amendments to the Judicial System Act in the wake of elections, each new majority in parliament has terminated the term of the SJC constituted under the previous majority.

48. My interlocutors also argued that the members of the Inspectorate, which is designed as a subsidiary organ to the SJC introduced by the 2007 amendments, are elected by a two-thirds majority of the parliament, and that that is a sufficient safeguard against the politicisation of the whole institution. Indeed, the establishment of the Inspectorate and the procedure for its appointment constitute an important step towards the independence of the judiciary. I will devote more attention to this in a later part of the present report.

16. See SWD(2012)232 final.
17. Entered into force in 2012.

49. The third main concern regarding the judicial system in Bulgaria identified by the Venice Commission concerns the representation of judges, prosecutors and investigators in a single body, which is the SJC. While there is no objection to prosecutors sitting on an equal footing with judges, as happens in many countries, it is important to maintain the distinction between them and ensure that they have no mutual influence on questions of the appointment, discipline and dismissal of one another. Furthermore, as a matter of principle, the prosecution should have no involvement in the ultimate administration of justice, nor in the appointment and functioning of judges, or in the operation of the court system.

50. My interlocutors argued that the established practice is that judges constitute a majority within the SJC. Indeed, the judicial component is composed of six judges, four prosecutors and one investigator, and the parliamentary component is made up of the same proportions. However, an established practice cannot replace a constitutional guarantee. Furthermore, a situation in which a majority of judges decides on appointments and promotions of prosecutors and investigators is also undesirable.

51. It is true – as pointed out by my interlocutors in the Ministry of Justice – that the 2011 amendments to the Judicial System Act provided that the SJC Standing Committee be made up of two separate sub-committees: the sub-committee on judges and the sub-committee on prosecutors and investigators. The Standing Committee is responsible for proposals concerning the assignment and career development of judges, prosecutors and investigators, and the fact that it deliberates in distinctive sub-committees on prosecutors and judges is, in the Ministry's opinion, a sufficient safeguard of non-interference.

52. However, the Union of Judges of Bulgaria, representing approximately 50% of all judges in the country, whose representatives I met during my last visit in September 2012, considers this safeguard as being insufficient. In their opinion, setting up two sub-committees within the structure of one commission responsible for performance assessment, without any effective distinction of the powers of the SJC to decide on appointments, dismissals, promotion, demotion and disciplinary matters, fails to address the existing problems. In any case – they argued – the work of the sub-committees is superfluous as the legally binding decision is taken by the collective body. Furthermore, the Disciplinary Committee of the SJC, which has competence to propose sanctions to be levied on judges and prosecutors, is not sub-divided into two specialised sub-committees.

53. The authorities argue that, according to the constitution, the SJC is a collective body which can only make decisions by a relevant majority. Therefore, it is impossible to divide it into two chambers taking decisions separately. The legal experts of the Venice Commission see no problem in principle with a single judicial council dealing with the three separate branches of the judiciary, provided appropriate specialised committees deal with matters pertaining to the particular branches of the judicial arm so as to ensure that there is no risk of influence being brought by one branch on the other.[18]

54. With regard to the fourth concern raised by the Venice Commission, I note with satisfaction that the 2007 amendments to the constitution provided for the civil and criminal immunity of judges, prosecutors and investigating magistrates to extend only to their official acts and that, even then, their immunity does not extend to acts which constitute an indictable intentional offence. Thus, the relevant recommendation of Assembly Resolution 1730 (2010) and the Venice Commission's recommendations have been fulfilled.

55. Unfortunately, another recommendation of the Venice Commission from its 2002 opinion[19], concerning the abolition or shortening of the probationary period of three years for judges, has not been followed, and the 2007 constitutional amendments even extended it to five years. Probationary periods raise in principle serious difficulties for judicial independence, but if they are foreseen in the law, they should not be longer than is needed to assess a judge's competences.

56. This brings me to a more general concern, raised by the Union of Judges of Bulgaria and some non-governmental organisations (NGOs), about the independence of the judiciary and the risk of its politicisation. The representatives I met during my last visit pointed in particular to the deficiencies in the system of assessing the performance of judges, prosecutors and investigating magistrates, the lack of clear and consistent standards for performance assessment and other problems relating to the career development of magistrates.

57. They referred to a number of judicial appointments which lacked the necessary level of transparency and credibility, such as an important senior appointment by the SJC in November 2010. Another controversial appointment by the SJC of a chairperson of the Sofia City Court took place in May 2011, when the December

18. See CDL-AD(2008)009.
19. CDL-AD(2002)015.

amendments of the Judicial System Act were already in force. As a protest, two members of the SJC resigned and criticised the appointment decisions as being pre-determined. Recently, a controversial appointment to the Constitutional Court resulted in a political scandal before being cancelled by parliament.

58. The accountability of the judiciary was another area of serious concern. Several disciplinary cases, including the emblematic case of the dismissal of Judge Miroslava Todorova, were considered to be controversial by the Union of Judges. The lack of consistent disciplinary practice leaves considerable room for arbitrary decisions.

59. Before 2007, cases of disciplinary proceedings against magistrates were extremely rare. The abolition of the "blanket immunity" recommended by the Venice Commission was an important step on the way to increasing the accountability of the judiciary in Bulgaria. The adoption of the code of ethics in 2009 constituted the next important step forward. Between January 2007 and December 2011, as many as 179 disciplinary proceedings, based on violations of the Code of Ethics, were treated by the SJC and resulted in 137 sanctions, most of which were reprimands and warnings.

60. However, there are major concerns about disciplinary proceedings applied following transgression. Criticism concerned firstly the lack of consistency in sanctions (notably in cases concerning delays in motivation of decisions) and, secondly, some emblematic cases when no criminal proceedings against magistrates were initiated by the prosecution despite plausible signs pointing to offences. These problems remain a major factor undermining trust in the independence of the judiciary.

61. This concern is closely linked to shortcomings in judicial practice, which, until recently, remained a systemic problem of the Bulgarian judiciary, as illustrated by almost 110 unimplemented decisions of the European Court of Human Rights relating to the excessive length of judicial proceedings and lack of an effective remedy. The problem is widespread in criminal, civil and administrative cases. In May 2011, the Court issued two pilot judgments, *Dmitrov and Hamanov v. Bulgaria* and *Finger v. Bulgaria* concerning the systemic lack of effective legal remedies for unreasonably lengthy proceedings.[20]

62. The authorities argue that much has been done to address all these concerns. The Judicial System Act of 2007 has undergone numerous amendments in line with the recommendations of the Venice Commission experts. In particular, the establishment of the Inspectorate, a subsidiary organ of the SJC, already mentioned above, constituted an important step in the right direction.

63. The Inspectorate became operational in 2008 and, by December 2011, it had carried out inspections of all the judicial bodies in Bulgaria. Its reports led to improvements in the celerity of judicial proceedings and the harmonisation of judicial practice. They also resulted in a more active role for the administrative heads and improved the accountability of individual magistrates, notably through disciplinary action. The Inspectorate can act *ex officio* or based on complaints from citizens, State bodies, legal entities or judicial bodies. It has full discretion to plan its activities. The two-thirds majority requirement for its election means that it should enjoy the support of a wider spectrum of political parties represented in parliament.

64. The SJC has sought to ensure a proper follow-up to the Inspectorate's recommendations. A special commission was set up to ensure alignment of disciplinary practice. All recommendations are published on the SJC website to give visibility to the problems identified by the Inspectorate.

65. The 2009 amendments gave the Inspectorate the right to appeal disciplinary decisions of the SJC, which has given an extra control over the fairness and impartiality of disciplinary procedures.

66. In June 2010, the government adopted the Strategy to Continue the Judicial Reform. It is aimed at increasing public confidence, improving management and countering corruption in the judiciary. It was drawn up in partnership with leading non-governmental organisations and is co-ordinated with the magistrate community.

67. In the same year, new procedures were introduced for appointments and appraisals of magistrates, notably through decentralised appraisal commissions. The amended system introduces new appraisal elements, such as the scoring of magistrates' integrity and scoring by the SJC Inspectorate on the basis of inspections performed.

68. The most recent amendments of 2012 have been of particular importance for the selection of members of the SJC.

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20. See Doc. 12455, report on the implementation of judgments of the European Court of Human Rights, Committee on Legal Affairs and Human Rights.

69. A number of steps have been taken to improve judicial and investigative practice. I have already mentioned the work of the Inspectorate in this respect. Some other measures will be considered below, in the chapter on the fight against corruption and organised crime. I should also mention here the amendments to the Judicial System Act of 2012, which provided for the establishment of a legal tool within the Inspectorate, attached to the Supreme Judicial Council, for compensation for damages resulting from delays in the judicial process. This specialised unit is tasked with the consideration of complaints against lengthy proceedings and the assessment of their validity. The procedure also provides for a simplified way of obtaining compensation aligned with the levels of compensation awarded by the European Court of Human Rights in its final judgments.

70. In conclusion, the legislative framework has, to a great extent, already been put in place. What is still lacking is effective implementation of the legislation and full use of its potential.

71. The SJC has the powers needed effectively to discharge its managerial functions and to safeguard the independence and accountability of the judiciary. In particular, it is competent with regard to the organisation of the justice system, the planning and execution of the budget, human resources management, and integrity and disciplinary matters. Thus, it is well equipped to tackle existing problems such as disparities in workload, systems for appraisal and promotion, senior appointments conducted by the Council, systems for promoting ethics and integrity and the application of disciplinary measures.

72. Unfortunately, up to now, the SJC has not used its potential to the full. It has not developed a human resources strategy which would encourage independence and integrity. It faces continued criticism from the public and from within the judiciary. And yet, the appointment of highly competent judges of unquestionable integrity via transparent procedures is a necessary precondition for the successful implementation of the judicial reform.

73. The latest elections to the SJC of September 2012, conducted according to the new transparent procedure, allow for cautious optimism as to its future action, but more time is needed to assess the results.

74. Similarly, according to some, the Inspectorate's work has not had a decisive impact on remedying the outstanding problems of the judicial system. For example, it has not contributed in a significant way to such systemic problems as uneven distribution of workload across judicial bodies, wide variations in the size of judicial districts, the establishment of clear criteria for assessment of the complexity of cases and its impact on the distribution of the workload. This question is essential for the assessment of judges' efficiency, and, as a consequence, for their career prospects.

75. The foregoing critical remarks are confirmed by the results of the Eurobarometer poll, which showed that 92% of Bulgarians consider shortcomings in the judicial system to be an important issue for their country.[21] In his valuable comments on the present report, a Bulgarian member of the Monitoring Committee, Mr Yanaki Stoilov, representing the opposition in the Bulgarian Parliament, pointed to the growing feeling among the Bulgarian population that the courts are susceptible to political pressure (up from 70% in 2010 to 81% in 2012), economic pressure (up from 65% in 2010 to 77% in 2012) and pressure by criminal groups (up from 62% in 2010 to 72% in 2012).

76. In Resolution 1730 (2010), the Assembly called on the Bulgarian authorities to revise the Penal Code and the Penal Procedure Code, in consultation with the Venice Commission. CVM reports have also consistently noted that the Bulgarian criminal justice system suffers from an outdated Penal Code. The current Penal Code, which dates back to 1968, has been amended over 50 times and is considered by many practitioners to be ill-suited for modern-day crimes.

77. Work on the elaboration of a new penal code began in 2009. A draft section on general provisions was published for consultation in January 2012 and work on the specialised provisions has been pursued. The authorities have been co-operating closely with the Council of Europe, as recommended in Resolution 1730 (2010). During my last visit, it seemed clear that there was little chance of having the Penal Code adopted by the present legislature. For this to happen, it would have to be sent to parliament without further delay, whereas consultations with the Council of Europe legal experts are still underway.

21. Flash Eurobarometer poll conducted by the European Commission in Bulgaria in May 2012, see http://ec.europa.eu/public opinion/index.en.htm.

78. According to a more realistic timetable, the new penal code will only be debated and adopted by the parliament elected in the July 2013 elections. I am convinced – and this is the opinion shared by many interlocutors – that we should not insist on speeding up the work on the penal code. This legal act is too important to be adopted in a rush for political convenience. As I said, the Council of Europe experts are extensively involved in the preparation process.

79. I am confident that the future penal code will comply with European standards and in particular that it will exclude defamation and insult from the criminal sphere, as recommended in Resolution 1730 (2010).

80. The Penal Procedure Code has been identified as one of the major factors hampering the effectiveness of criminal justice in Bulgaria. In Resolution 1730 (2010), the Assembly called on the Bulgarian authorities to amend the code with a view to streamlining and enhancing the effectiveness of criminal proceedings. This was done and the amendments were adopted in 2010. Following the Court's pilot judgment concerning Bulgaria with regard to unreasonably long judicial proceedings, additional amendments to the Penal Procedure Code were introduced in November 2011. I will come back to this issue in more detail under the chapter on the execution of the Court's judgments.

81. In conclusion, it has to be recognised that progress in the area of the judiciary is undeniable and important measures have been taken since the last debate in the Assembly, in 2010. They have considerable bearing on the independence of the judiciary in Bulgaria. I also have no doubt about the authorities' commitment to continuing in the right direction and I am confident that they will ensure effective implementation of the reforms.

### *3.2. Fight against corruption and organised crime*

82. Unfortunately, some concerns relating to the judicial system are easily identifiable in the difficulties faced in the fight against corruption. In particular, high level corruption has been consistently considered as a major problem in Bulgaria. This is confirmed by the specialised agencies of the Council of Europe, by the European Union in its successive CVM reports, including the last one published in July 2012, and by other international organisations. In its 2011 Corruption Perception Index, Transparency International ranked Bulgaria 86th out of a total 183 countries, with a score of 3.3 on a scale of 0 (highly corrupt) to 10 (very clean). The Eurobarometer poll has shown that 96% of Bulgarians consider corruption to be a major problem in their country.[22] [23]

83. In economic terms, corruption significantly lowers the quality of the business environment and reduces the competitiveness of Bulgarian companies.

84. It should be recognised that the authorities visibly increased their efforts to combat corruption after Bulgaria's accession to the European Union. This was also the main declared policy goal of the parliamentary majority which came to power in 2009. Since then, Bulgaria has put in place numerous instruments to allow the prosecution of corruption-related offences, including the strengthened law on conflict of interests, adopted in November 2010, and has developed a comprehensive administrative framework and prevention measures. The new penal code, currently under preparation in co-operation with Council of Europe legal experts, will further improve the legislative framework.

85. However, further legal improvements in the criminalisation of corruption were recommended in the last report of GRECO, published in November 2010.[24] There is a need to clearly incriminate bribery and trading in influence in the various situations when the beneficiary of the undue advantage is a third person. Moreover, despite legal changes introduced in 2002, the concept of undue advantage is interpreted too narrowly in practice as implying a material benefit which has a market value.

86. Unfortunately, the results achieved demonstrate that the fight against corruption, in particular at a high level, has not been entirely successful. This low efficiency is confirmed by the lack of results in terms of final court rulings. While, in recent years, there has been some increase in the number of final convictions in cases relating to corruption in general (some 100 to 200 cases a year), there have been very few final and enforced verdicts concerning high-level corruption.

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22. CDL-AD(2002)015.
23. In his comments, Mr Stoilov drew my attention to a sociological survey conducted by Alpha Research among people who had had contact with the judiciary: between 50% and 60% believed that corruption is present in different organs of the judiciary. Furthermore, 68% considered corruption to be the biggest problem in the judiciary, 41% believed that political pressure is the biggest problem.
24. See GRECO Eval III Rep (2010) 7 E.

87. This regrettable situation can be explained, to a great extent, by two main reasons: firstly by deficiencies in investigatory procedures and, secondly, by the weakness of judicial practice.

88. With regard to the former, the main concern identified by the European Union is the lack of independent institutions in the area of anticorruption with the authority and the obligation to make proposals, to intervene in a proactive way and to ensure independent monitoring. The existing institutions are subordinated to the executive and thus have limited freedom to initiate action. They also suffer from insufficient capacity to conduct complex financial investigations. The very limited scope of investigation indictments is another problem. The analysis of some of the emblematic corruption cases by the experts of the European Commission in 2011[25] revealed serious shortcomings in the collection of evidence, the protection of witnesses and the general lack of investigation strategies, comprehensive financial investigations and securing of assets. Co-ordination within the prosecution and between the prosecution and the police was also considered unsatisfactory.

89. With a view to remedying the situation, separate units for the fight against corruption have been set up within the prosecution. In 2012, joint investigation teams, composed of magistrates and police on high-level corruption, were set up. Specialised training was provided. An internal specialised network of prosecutors for counteracting corruption was established and systematic co-operation with the European Union on technical assistance (either through bilateral or EU-funded projects) was put in place. It is too early, however, to assess the impact of these measures on the quality of investigations.

90. Judicial practice is another concern. Court practice is permissive and excessively cautious, overly attentive to procedures at the expense of delivering justice. On the other hand, many emblematic cases have suffered from procedural errors. A number of acquittals in cases involving high-level corruption, fraud and organised crime have exposed serious deficiencies in judicial practice in Bulgaria.

91. Regrettably, they have not been properly analysed or followed up by the leadership of the judiciary, the Supreme Judicial Council, the General Prosecutor and the President of the Supreme Court of Cassation. Long and unjustified delays in proceedings are also very detrimental to the process. This highly unsatisfactory situation may well be illustrated by the emblematic cases of fraud concerning European Union funds. Investigations into alleged corruption and abuse of office by magistrates have received a particularly weak response from the judiciary.

92. However, some progress in the fight against corruption can be noted. Over the last five years, Bulgaria has adopted several anti-corruption strategies and action plans and a number of different State institutions have been involved in their implementation. The much increased involvement of civil society in the fight against corruption is certainly a positive development. Over the years, civil society itself has become more engaged and better equipped to monitor the situation and send alerts.

93. As mentioned above, amendments to the Penal Procedure Code introduced in 2010 and a strict monitoring of high-level cases by the SJC have had a positive impact on judicial practice. An important step in the right direction is the reform of the judicial structures that deal with cases of organised crime. A specialised criminal court and prosecution office were established in January 2012.

94. Furthermore, since the last Assembly debate in 2010, the Bulgarian authorities have pursued plans to strengthen asset forfeiture in line with recommendations by the Council of Europe and the European Union. A new legislative act was prepared in co-operation with the Venice Commission but it was rejected by the parliament in July 2011. At the request of the Bulgarian authorities, the Venice Commission provided opinions on several drafts.

95. Finally, a revised draft Law on Forfeiture in favour of the State of Illegally Acquired Assets was adopted in May 2012. It introduced a non-conviction based civil forfeiture and thus enables the State to recover not only assets derived from criminal activities, but also all assets “illegally acquired” by a person, without requiring a criminal conviction.

96. The law in its final form was diluted in order to facilitate its passage through parliament. For this reason its effectiveness will depend to a great extent on the way it is implemented by the newly established independent Commission for Forfeiture of Unlawfully Acquired Assets.

97. The weaknesses in the public procurement system are considered to be an important source of corruption. Bulgaria improved its legislation in this field by introducing changes to the relevant law in 2011 and 2012. It is of crucial importance now that these changes are fully implemented.

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25. See COM(2011)459 final, Report on Progress in Bulgaria under CVM.

98. In November 2010, Bulgaria adopted a reinforced law on conflict of interest. Unfortunately, the commission in charge was established only in June 2011 and, for over a year, the law was not properly implemented, which led to a lack of follow-up to allegations of conflict of interest in an important case involving a senior judge in early 2011.

99. In this context, concerns must be raised regarding weaknesses in asset declarations and verification of politicians, magistrates and senior civil servants. The present system is undermined by a number of shortcomings. Firstly, the declarations cover bank accounts on 31 December each year and do not include the maximum balance or movements throughout the year. Secondly, the declared value of real estate may not correspond to the real value and is not verified. Furthermore, there is no prioritisation of checking certain categories of officials and no procedure to investigate suspicious cases. The non-married partners of the people concerned are not obliged to declare their assets. More generally, false declarations are not effectively sanctioned and discrepancies are not followed up. This is regrettable as a well-functioning asset declaration and verification system can be an effective tool to prevent corruption.

100. The fight against corruption is closely linked to the fight against organised crime and the deficiencies of the former have an inevitable impact on the latter. Organised crime continues to be an important challenge for Bulgaria. According to Europol, Bulgarian organised crime groups are active throughout Europe and "specialise" mainly in human trafficking and credit card fraud.[26]

101. In December 2011, the Group of Experts on Action against Trafficking in Human Beings (GRETA), the Council of Europe specialised body to fight trafficking, published a report on Bulgaria[27] in which it concluded that both the legal and institutional framework constitute an adequate basis for tackling the problem.

102. Here again, as in the fight against corruption, the main concerns are linked to the weaknesses of criminal investigations and in judicial practice. Controversial acquittals, frequent return of cases to prosecution by courts, and adjournments in courts for questionable reasons, such as uncorroborated absence due to illness, well illustrate these weaknesses. The limited number of final rulings is the best illustration of the problem.

103. However, a number of important cases are now on trial and should be decided by the end of 2012. A specialised court established earlier this year should contribute to the further improvement of the situation. As a result of the establishment of specialised units in prosecutors' offices, there has been important progress in terms of the decrease in the number of cases referred back from the prosecution to the police, and the reduction of the length and the increased quality of investigations.

104. Amendments to the Ministry of Interior Act of 2009 and 2010 led to important institutional changes in this Ministry with an impact on both the quality and speed of the pre-trial stage. The number of investigative police officers was substantially increased (from 2 000 to 8 000). Appropriate training was stepped up. A special independent police structure was also set up.

105. In conclusion, there is still much to be done, in particular with regard to the full implementation of the existing legislation and independent analysis of case failures. The Supreme Judicial Council will need to show a strong commitment to reform by translating the new laws into practice in order to effectively strengthen the management of judicial bodies in close co-operation with the Ministry of Justice, professional associations and civil society.

106. More specialised training is needed. It should particularly focus on improving the investigatory capacity necessary to effectively tackle corruption and organised crime, notably as regards complex economic and financial investigations.

107. In its last monitoring report, the European Commission decided not to close the monitoring procedure. It made a number of recommendations and will assess their fulfilment at the end of 2013. For its part, GRECO has addressed 20 recommendations to the authorities; their fulfilment will be assessed later this year. In their comments on the present report, the authorities informed me of a number of measures adopted recently addressing the deficiencies in the investigation procedure and to combat human trafficking. I am confident that they will contribute to an improvement in the situation in this area.

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26. In his comments, Mr Stoilov drew my attention to the fact that, according to Europol's estimates, the turnover of organised crime accounts for 5% of Bulgarian gross domestic product (GDP).
27. See GRETA(2011)19.

### *3.3. Abuses by law enforcement officials*

108. The last report on post-monitoring dialogue, presented by my predecessor in 2010, raised the question of human rights abuses by law enforcement officials, and in particular police brutality and ill-treatment, and called on the Bulgarian authorities to set up systematic human rights training, in particular at the police academy and in officers' schools, and to take concrete measures to eradicate impunity and the lack of accountability for such abuses.

109. The non-execution of 25 cases concerning deaths and ill-treatment which had occurred under the responsibility of law enforcement officials, and the subsequent lack of effective investigation into such abuses, was one of the reasons that Bulgaria was referred to as a State with "major structural problems" causing repetitive violations of the European Convention on Human Rights and "extremely worrying delays" in the implementation of the Court's decisions in Mr Pourgourides' report on this issue[28] presented by the Committee on Legal Affairs and Human Rights.

110. The *Velikova v. Bulgaria* group of cases comprises 19 cases concerning deaths and ill-treatment and the *Nachova and others v. Bulgaria* groups six cases regarding excessive use of fire-arms. In most of those cases, the State was found to have failed to conduct an effective investigation.

111. I acknowledge that a number of positive developments in this respect can be noted. Firstly, at the level of legislation, an amendment to the Interior Ministry Act on the use of weapons, adopted in May 2012, is an important step forward. It contains important provisions regulating and restricting the use of force, other implements such as batons, handcuffs and stun guns, as well as weapons.

112. A Standing Committee on Human Rights and Police Ethics has been set up in the Interior Ministry with the task, *inter alia*, of implementing and disseminating the decisions of the European Court of Human Rights. It also supervises a number of projects (such as "Civil monitoring of the police") and training programmes.

113. The Code of Ethics of Civil Servants has been adopted by the Interior Ministry; the violation of its provisions is raised to the level of a disciplinary offence. Control over the implementation of the Code is ensured by the Inspectorate and the Human Resources Directorates of the Ministry as well as the Permanent Commission on Human Rights and Police Ethics. The following data, provided by the authorities, may illustrate the efficiency of these measures: between 1 January and 15 August 2012, there were 22 complaints about unjustified use of weapons or auxiliary devices such as truncheons, handcuffs, etc., physical force or other abuses. As a result of inquiries and disciplinary proceedings, 14 employees faced various disciplinary measures.

114. Special training courses are in place for employees entitled to use force in carrying out their duties. Training is also organised at the Ministry of Justice as a part of joint European Union projects.

115. I would also like to highlight here the introduction of the amendments to the Penal Code on additional qualifying circumstances with "racist and xenophobic motives" with regard to serious crimes. Furthermore, Bulgaria has pursued police reform.

116. However, according to the Committee of Ministers of the Council of Europe, which is competent for supervising the execution of Court judgments, further progress is necessary. In particular, proper investigation of individual cases should be carried out, procedural safeguards during police custody should be ensured, civil society monitoring mechanisms should be promoted, and further training and awareness-raising measures should be developed. In their comments, the authorities stressed that, as a result of measures introduced, the number of complaints about misconduct by the police has decreased over recent years.

117. Earlier this year, the CPT published a report on its visit to Bulgaria in October 2010.[29] The CPT welcomed an instruction aiming at setting up special police rooms, equipped for full electronic recording of questioning. It recommended, however, that police officers be trained in acceptable interview techniques, the drawing up of a code of conduct of police interviews, and improvements in the screening for injuries and their reporting to the competent authorities.

28. Doc. 12455.
29. See document CPT/Inf(2012)9.

### *3.4. Implementation of judgments of the European Court of Human Rights*

118. The number of pending cases before the Committee of Ministers as of 31 December 2011 was 344 of which 228 were clone cases. When we compare this number to 2010, we can see that some improvement has been made. However, the Committee on Legal Affairs and Human Rights, in its periodic report on the implementation of judgments of the Court, included Bulgaria in a group of nine States in which major structural problems give rise to extremely worrying delays.[30]

119. The most serious problems with regard to the execution of the Court's judgments arise in three areas: deaths and ill-treatment occurring under the responsibility of law enforcement officials and the subsequent lack of effective investigation into such abuses; the excessive length of judicial proceedings and lack of an effective remedy; violations of the right to respect for family life due to deportation/orders to leave the territory.

120. The first issue was dealt with in the previous chapter. With regard to the second problem, the excessive length of judicial proceedings and lack of an effective remedy, I tackled it under the heading "Functioning of the judiciary" of the present report. The third problem will be examined in the chapter on minorities. I note with satisfaction that positive developments can be observed in all these areas of concern.

121. Furthermore, in Resolution 1730 (2010), the Parliamentary Assembly addressed a recommendation which called on the Bulgarian authorities to introduce, within the National Assembly, specific mechanisms and procedures for effective parliamentary oversight of the implementation of the judgments of the Court on the basis of regular reports by the responsible ministers.

122. I am pleased to acknowledge that, in September 2012, the National Assembly adopted a law providing for the introduction of an obligation for the government to submit to parliament an annual report on the number and nature of judgments and information on the implementation of the Court's decisions.

### *3.5. Independence of the media*

123. According to assessments by international organisations, such as Reporters Without Borders and Freedom House, over the past few years Bulgaria has seen a steady decline in the level of freedom of the media. It was ranked 70th in 2010 and 80th a year later in the press freedom index published every year by Reporters Without Borders, below Armenia (77th) or Bosnia and Herzegovina (58th).

124. Both the press and the electronic media markets are diverse. However, the problem is the centralisation of the media, controlled by few centres of power. The decline in advertising revenues in the late 2000s, as a result of the overall economic downturn which hit Bulgaria in 2009, has further contributed to the consolidation of the media market, particularly in the print press sector, as well to the recent wave of withdrawals of some foreign investors.[31]

125. The most striking case is that of the New Bulgarian Media Group, which controls several dailies and weeklies as well as cable television channels. The group's relations with the political and financial worlds are not transparent. It is alleged that public or State-controlled companies have deposited very large amounts of money in the bank which is controlled by the group. At my request, the authorities provided me with their position on these allegations. According to them, there is no evidence of any link between the money deposited and the group.

126. Both electoral campaigns, the parliamentary one in 2009 and the presidential one in 2011, highlighted structural problems of the freedom of media in Bulgaria, well illustrated by "ordered information" for sale without appropriate indication, scarce pluralism, and low transparency of the campaign media coverage. These conclusions were contained in the reports of the ad hoc committees to observe the elections and the OSCE report accompanied by recommendations.[32]

127. In October 2010, the parliament adopted a new bill obliging the print media to disclose the names of their actual owners. However, no such provisions exist for the broadcast media.

128. Although there is no official system of press subsidies in Bulgaria, indirect subsidising through State advertising is widely seen as having a negative impact on the independence of the media.

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30. See Doc. 12455.
31. See: A country report for the ERC-funded project on media and democracy in Central and Eastern Europe, Vaclav Stetka.
32. See OSCE/ODIHR Final reports on Parliamentary Elections (5 July 2009) and Presidential and Municipal elections (23-30 October 2011).

129. Public service broadcasting is seen as “State television” rather than “public television”, the main reason being the system of financing directly from the State budget instead of through the licence fee system. The relevant provision of the Radio and Television Act (1998), which clearly provides for the establishment of licence fees, has never been implemented. Its editorial independence is questioned, although the current situation cannot be compared with the early 90s, when the Head of the Bulgarian National Television and his team were changed with each change of government.

130. The appointment of members of the regulatory authority for commercial and public broadcasting, that is the Council for Electronic Media, which is, *inter alia*, responsible for issuing licences, is entirely political and is shared between the parliament and the President.

131. Insult and libel are punishable under the present Penal Code. The law provides only for financial penalties and excludes imprisonment. However, those convicted acquire a criminal record which can be a great hindrance in their professional and private life.

132. In recent judgments, *Kasabova v. Bulgaria* (Application No. 22385/03) and *Bozhkov v. Bulgaria* (Application No. 3316/04) (who were found guilty of defamation and were made to pay huge sums in compensation for their statements in articles published in the Bulgarian press and directed against four administrative experts involved in the admission procedure to specialised secondary schools in Burgas), the Court found that Bulgaria had violated Article 10 (freedom of expression and information).

133. Both Resolutions 1211 (2000) and 1730 (2010) recommended that “sanctions against journalists should be brought out of the sphere of criminal law and awards for damages limited to reasonable amounts, taking into account that journalists should abide by the principle of respect for privacy, in conformity with Article 8 of the European Convention on Human Rights”. In consequence, the Assembly called on the Bulgarian authorities to amend Articles 146 to 148 of the Penal Code to exclude defamation and insult from the criminal sphere. I am confident that the new penal code that is under preparation in co-operation with Council of Europe legal experts will comply with European standards in this field.

### *3.6. Rights of people belonging to minorities*

134. According to the 2011 census, the population of Bulgaria was 7.3 million, of whom 5.6 million (84.8%) were Bulgarians, 588 000 (8.8%) were Turks, 325 000 (4.6%) were Roma, 49 000 (0.7%) declared themselves as others (Russians, Armenians, Vlachs, Macedonians, Greeks, Ukrainians, Jews and others). Non-governmental sources estimate that there are some 700 000 Roma in Bulgaria. According to the authorities, this large discrepancy with the census results from the fact that many Roma identify themselves as Bulgarians or Turks.

135. Bulgaria ratified the Framework Convention for the Protection of National Minorities in 1999 and, since then, it is subject, as all other parties, to the monitoring mechanism of the convention. The most recent report on the implementation of the convention was published in January 2012.[33] It recognised a number of positive developments in the area of minority protection and pointed to several persisting concerns. Overall, the situation seems to be satisfactory.

136. The legal and institutional framework for the protection of minorities was established by the adoption, in 2004, of the Protection against Discrimination Act and the creation, in 2005, of a Commission for the Protection from Discrimination, responsible for the implementation of the Act.

137. The commission receives complaints from individuals, makes rulings on infringements, issues binding instructions on the application of the anti-discrimination legislation, decrees measures to be taken to terminate established infringements and applies pecuniary fines. In his 2010 report on Bulgaria,[34] the Council of Europe Commissioner for Human Rights commended the work of the commission, which, according to his assessment, is duly carrying out its protection role, and observed that civil society in Bulgaria considered the implementation of the Protection against Discrimination Act to be successful.

138. The National Council for Co-operation on Ethnic and Demographic Issues, under the responsibility of the Council of Ministers, is the main national body for the consultation and co-ordination of State policies regarding persons belonging to ethnic, religious and linguistic minorities. Numerous NGOs and minority associations are represented in the Council. Again, in his 2010 report on Bulgaria, the Commissioner for Human Rights expressed appreciation of the work of the Council. However, he recommended to the

33. See document FCNM/II(2012)001.
34. See document CommDH(2010)1.

authorities to further reflect on the membership and structure of the Council so that it allows all minorities to be represented and NGOs to be selected on the basis of clearly defined criteria, in line with good administrative practice. While in 2010 as many as 28 NGOs were represented in the Council, in 2012, they were 44. Unfortunately, until now, the Bulgarians of Macedonian origin and Bulgarian-speaking Muslims (Pomaks) are still not represented in the Council. According to the information received from the authorities, they had not filed a request for representation.

139. Co-operation between the authorities and organisations representing national minorities, notably through the National Council, has considerably developed over the last few years.

140. Persons belonging to national minorities continue to participate actively in political life in Bulgaria (The Movement for Rights and Freedoms).

141. In the last few years, the authorities have developed a number of programmes and strategies aimed at the implementation of the National Action Plan 2005-2015 on Roma Inclusion.

142. Despite all these undeniable achievements and efforts, some concerns still remain. Problems can be noted with regard to the implementation of some provisions of the Framework Convention, in particular those concerning the personal scope of application due to the non-recognition of the existence in Bulgaria of the Pomak and Macedonian minorities. However, recognition by the State as a minority is not a prerequisite to qualify for the protection of the Framework Convention and therefore the authorities should be urged to engage in a dialogue with persons belonging to groups interested in the protection offered by the Framework Convention.

143. In their comments, the authorities drew my attention to Resolution CM/ResCMN(2012)2 on the implementation of the Framework Convention for the Protection of National Minorities in Bulgaria, which recognised the inclusive approach of the Bulgarian authorities regarding the personal scope of application of the Framework Convention.

144. Furthermore, despite numerous programmes aimed at improving the socio-economic status and social inclusion of Roma, the Roma population continues to be confronted with discrimination and Roma are frequently the victims of racially motivated offences. I have already mentioned above[35] some regrettable cases of violence against Roma which took place in 2011.

145. In his last report on Bulgaria, the Commissioner for Human Rights refers to a number of concerns with regard to the human rights of Roma. Access to adequate housing is problematic for Roma who live in sub-standard conditions. Forced evictions remain a concern. Access to social rights, including health care and employment, is still unequal as compared to other sectors of the population. In this context, education is of essential importance.

146. Roma families are still victims of campaigns organised not only by private citizens but also by the authorities. For example, 30 Roma family houses in the city of Maglizh were completely destroyed by huge construction vehicles without any prior warning. In Katunitsu, a hate campaign under the slogan “Roma get out of our city”, and including acts of arson, was carried out by right-wing extremists and hooligans. In both these cases, there was no significant reaction from the authorities. Furthermore, the police department has not always acted in a significant way – such as by creating a “cordon sanitaire” to prevent an aggressive public campaign by one political party demanding the death penalty for the Sinti and Roma people. Both the administration and the police departments must show clear signs of fighting any form of racism when dealing with the large minority of Roma people. They must protect this minority according to European standards and conventions.

147. In the last resolution on Bulgaria, the Assembly called on the authorities to publicly condemn hate speech by certain political leaders against minorities and take concrete action to foster tolerance and mutual respect, encourage exemplary behaviour by political leaders in this respect and ban openly racist language.

148. I mentioned above a deplorable incident of an attack on Muslim people praying in front of the main Sofia mosque which took place in May 2011. The reaction of political leaders, including the Prime Minister and parliament, who unanimously condemned the attack, was to be commended.

35. See chapter 2, “Political context”.

149. It is also worth noting that amendments to the Penal Code adopted in April 2011 introduced possible punishment in jail from one to four years for writers and journalists who instigate hatred, discrimination and violence. In 2011, a Co-operation Memorandum was signed between the Ministry of the Interior and the OSCE/ODIHR on the issues and crimes caused by hatred. Specific training and co-operation programmes have been set up.

150. Another problem concerns the insufficient number of television and radio programmes which are currently broadcast in minority languages. Furthermore, according to the Second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on Bulgaria, the situation with regard to the use of minority languages for topographical indications and in dealings with the administrative authorities has not improved in Bulgaria since the first monitoring cycle in 2004.[36]

151. Here I would like to recall that, in its last resolution on Bulgaria, the Assembly called on the authorities to sign and ratify the European Charter for Regional or Minority Languages (ETS No. 148). This has not been done so far, but I raised the question with several interlocutors, notably in the Foreign Ministry, during my last visit and, to my great satisfaction, I learnt that talks were under way between the Ministry and the secretariat of the convention with a view to finding modalities which would enable the speedy signature and ratification of the charter by Bulgaria.

152. One of the commitments entered into by Bulgaria upon accession concerned the claims of the former prisoners of Belene Island, which should be considered in accordance with the Bulgarian Act on Political and Civil Rehabilitation of Persons Repressed during the Totalitarian Regime. For many years, the members of the Muslim minority who were forcibly placed in the Belene Island camp have sought compensation. On 11 January 2012, the Bulgarian Parliament adopted a declaration condemning the assimilation process against the Muslim minority, including the so-called “Revival Process” and urging the country’s General Prosecutor and judicial authorities to make sure that the lawsuits against the alleged masterminds of the campaign be brought to a conclusion. This should facilitate progress on issues concerning the victims of those practices. Members of this minority, who were forcibly placed in the Belene Island camp, are still seeking compensation.

153. Upon accession, the Bulgarian authorities committed themselves to quickly finding, in co-operation with the Turkish authorities, a solution for pending pension issues in respect of those who were forced to emigrate to Turkey in 1989. The agreement, signed in 1999 between Bulgaria and Turkey, is the basis for the payment of pensions. I have received detailed information on the implementation of this agreement. However, the issue of pension rights of ethnic Turks now living in Turkey as a result of the “Revival Process” remains unresolved in a number of cases, with the premiums paid and time spent in Bulgaria not being accounted for. As many victims are now elderly, finding a solution is a matter of urgency.

### *3.7. Electoral code*

154. Resolution 1730 (2010) called on the Bulgarian authorities to hold consultations with the Venice Commission with a view to revising the Electoral Code. The conclusions of the election observation mission from the Assembly during the parliamentary elections in 2009 pointed to some legal deficiencies in the electoral law, in particular concerning party financing, the use of public facilities, financial disclosure in the context of the electoral campaign, the need to introduce effective enforcement mechanisms, the need to establish a permanent Central Electoral Commission, and the need to improve access to the media. Moreover, GRECO, in its last report on Bulgaria, published in 2010, made a number of recommendations concerning legal regulations on party financing and the use of public facilities during electoral campaigns.

155. The majority of the above recommendations were taken on board in a new Election Code, adopted by parliament on 19 January 2011. In particular, specific recommendations of GRECO concerning the clear rules on fundraising events, donations, use of public means, transparency and improved accountability, reporting, control and possible sanctions were included.

156. The Venice Commission, which provided a legal opinion on the Electoral Code[37], praised its sound legal basis and high quality. It identified, however, further possible improvements in areas where public trust is much needed as sensitivities may be high. This is the case specifically with regard to the remedies available for challenging decisions and actions of election commissions and the results of elections. Furthermore, it

36. In their comments, the authorities observed that the Framework Convention does not impose an obligation on the authorities to ensure dissemination of information in minority languages through national media, but obliges them to prevent any discrimination in access to the mass media.
37. CDL-AD(2011)013.

suggested possible better legal arrangements in areas concerning minorities (such as the possibility of using a mother tongue during campaigning), provisions regulating campaigning in the media, the possibility to recount ballots and the definition of the rights and responsibilities of observers.

157. The presidential election of October 2011 was held on the basis of the new Electoral Code. This was recognised by the international observers as a clear step forward, although some concerns during the electoral campaign were still identified. They included the following questions: contestants equal access to the media and the improvement of a level playing field for all concerned; clearer distinction by the media concerning editorial and paid political advertisements; greater transparency in the work of the Central Electoral Commission; improvement of arrangements for out-of-country voting.

158. I call on the Bulgarian authorities to address these concerns in time for the forthcoming elections in the summer of 2013.

### *3.8. Local and regional democracy*

159. Bulgaria signed and ratified the European Charter of Local Self-Government (ETS No. 122) in 1995 and since then, as all other parties, has been subject to the monitoring procedure of the Council of Europe Congress of Local and Regional Authorities with regard to its implementation. The last report of the Congress was presented in September 2011.[38]

160. The Congress noted with satisfaction that Bulgaria generally complies with the provisions set out in the charter, and that local democracy has improved noticeably since the Congress' previous report in 1998. The Congress considered the level of reception of the charter in Bulgaria's domestic system as being satisfactory.

161. In Resolution 1211 (2000), the Assembly expressed the opinion that the 28 newly established districts should be given directly elected councils in accordance with the charter. This has not been done: the 28 districts or regions (*oblasts)* as they are referred to in the report of the Congress have not been given directly elected councils.

162. However, the report concludes that "consideration is being given to the development of a regional level". While the relevant laws in force comply with the principles of the European Charter on Local Self-Government, the authorities are engaged in a dialogue with the Congress on the clarification of the Bulgarian Government's regional strategies.

## 4. Conclusions

163. In the present report, I have tried to evaluate the situation in Bulgaria and key developments with regard to the fulfilment of the country's obligations and commitments and to make an analysis and overall assessment of the progress made since the opening of the post-monitoring dialogue in 2000, and in particular since the presentation of the last report on the country in 2010.

164. I welcome the progress made by Bulgaria in implementation of the Assembly's recommendations and, more generally, in the successful introduction of democratic standards in its domestic legislation. In particular, the installation of a legal framework for the legal and judicial systems and the development of tools for the fight against corruption and organised crime should be commended. The existence of impartial, independent, effective and corruption-free administrative and judicial systems is indispensable for the proper functioning of democratic institutions and the whole democratic process.

165. Progress in other crucial areas, such as eradication of abuses by law enforcement agents or the implementation of decisions of the European Court of Human Rights, is also to be noted.

166. However, some important challenges still remain. Sustained implementation is still required. The necessary sustainable and lasting improvements of the legal and judicial systems will require a committed and coherent approach by all the relevant actors and broad-based political support and resolve.

167. The Bulgarian Government has shown determination and commitment in driving the reform process. It has to be acknowledged that, at key moments, the Bulgarian authorities have demonstrated a strong political will to pursue the path of democratisation with a view to achieving lasting and sustainable reform. This unequivocal and sustained political will is necessary to successfully complete the process. I would also like to

38. See document CG(21)14.

point to the very good co-operation by the authorities with the Council of Europe and its Venice Commission, including in the framework of the post-monitoring dialogue. This may also be translated by wide support in Bulgaria to pursue the reform strategy.

168. My assessment was confirmed during the visit I made to the European Commission in Brussels, where I spoke to the officials responsible for the Co-operation and Verification Mechanism (CVM). They fully share my opinion that the sustainability and irreversibility of the reforms is now a key issue, and that the Bulgarian authorities have shown a strong political will to achieve these goals. The European Commission is following the situation in the framework of the CVM and will submit its report at the end of 2013.

169. I am confident that Bulgaria will follow the right path. In conclusion, I therefore wish to submit a proposal to terminate the post-monitoring dialogue with this country. In my capacity as rapporteur on Bulgaria, which, according to the rules I will continue for one more year, I will closely follow the developments in the country, and report back to the Monitoring Committee if necessary.