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Post-monitoring dialogue with Bulgaria

Report¹

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Co-rapporteurs: Mr Frank SCHWABE, Germany, Socialists, Democrats and Greens Group, and Mr Zsolt NÉMETH, Hungary, Group of the European People's Party

Summary

The Monitoring Committee recognises the substantial progress made by Bulgaria since the adoption of the last post-monitoring dialogue report in 2013. Bulgaria has introduced legislation concerning the judiciary and the fight against corruption which, with several exceptions, fully complies with Council of Europe standards. It has also addressed a number of outstanding concerns formulated by the Parliamentary Assembly and other Council of Europe monitoring mechanisms.

However, the question of the sustainability and irreversibility of the reforms, as well as efficiency of measures aimed at combating high-level corruption, remain dependent upon proper implementation of the legislation.

The Monitoring Committee proposes to continue a post-monitoring dialogue with Bulgaria and to assess, in June 2020, the progress made in the following areas: the judiciary, combating high-level corruption, the media, human rights of minorities, combating hate speech and violence against women.

1. Reference to committee: [Resolution 1115 \(1997\)](#).



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A. Draft resolution²

1. Bulgaria joined the Council of Europe in 1992. It was subject to the full monitoring procedure until 2000. 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 post-monitoring dialogue on a number of outstanding concerns and on any other issue arising from the obligations incumbent upon every State of the Council of Europe under Article 3 of the Statute of the Council of Europe (ETS No. 1) with regard to democracy, the rule of law and human rights.
2. Furthermore, the Assembly refers to its [Resolution 1915 \(2013\)](#) on post-monitoring dialogue with Bulgaria, in which it recognised the important progress achieved by Bulgaria in terms of the crucial reforms and legislative framework put in place since the closure of the monitoring procedure, and in particular since Bulgaria's accession to the European Union in 2007, as confirmed by the annual European Commission reports prepared under the Co-operation and Verification Mechanism.
3. The Assembly commends the Bulgarian authorities for demonstrating their sustained political will and commitment to achieve the full accomplishment of their obligations, as confirmed by their continued co-operation with Council of Europe monitoring mechanisms, legal experts and the European Commission for Democracy through Law (Venice Commission).
4. The Assembly welcomes Bulgaria's substantial progress towards establishing judicial independence, in line with the Assembly's recommendations. Overall, the reforms of 2015-2018 to the Judicial System Act and subsequent regulations with regard to the functioning of the Supreme Judicial Council and the judiciary as a whole have constituted a major step towards full accomplishment of Bulgaria's commitments and obligations in this field.
5. The division of the Supreme Judicial Council into chambers of judges and prosecutors independently exercising appointment and disciplinary powers with regard to the judges, prosecutors and investigating magistrates has addressed long-standing concerns formulated by the Assembly and the Venice Commission.
6. The procedure of election of members of the Supreme Judicial Council has been significantly improved in line with Assembly recommendations. The Assembly notes with satisfaction that since its election in 2017, the Supreme Judicial Council has appointed a number of heads of judicial bodies following a transparent procedure and not giving rise to controversy.
7. The Assembly's long-standing concerns relating to the deficiencies in the system of appraisals and career development of magistrates were addressed by the adoption by the Supreme Judicial Council, in 2016, of the Regulation of the Indicators, the Methodology and the Procedure for Appraisal of a Judge, Chairperson and Deputy Chairperson of a Court and, in 2017, of the Regulation of the Competitions of the Magistrates and on the Election of Administrative Heads in Judicial Bodies.
8. The Assembly notes with satisfaction that its recommendations relating to the distribution of the workload and the question of delays have been dealt with in a satisfactory way by the establishment of 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 the workload. Complementary measures introduced to redistribute the workload of the busiest courts, including the Court of Sofia, are also to be commended.
9. The Assembly commends the authorities for the establishment of the Supreme Judicial Council Inspectorate tasked with increasing accountability of the judiciary and, in particular, with the prevention of corruption within the judiciary, and disciplinary proceedings.
10. The Assembly recognises that the 2017 amendments to the Criminal Procedure Code and the Criminal Code have, in general, been in line with the Assembly's recommendations and notes with satisfaction that they addressed the delays in criminal proceedings and enabled better enforcement of sentences.
11. With regard to high-level corruption and organised crime, the Assembly welcomes the adoption by the Bulgarian Parliament, in January 2018, of a new Anti-corruption and Forfeiture of Assets Act, in line with its earlier recommendations. The law establishes a new unified anti-corruption agency which is in charge of verifying the absence of conflicts of interest and the private assets of high officials, investigating allegations of corruption, establishing safeguards for the prevention of corruption and setting up procedures for the seizure and confiscation of illicit assets.

2. Draft resolution adopted unanimously by the committee on 16 May 2019.

12. The Assembly notes with satisfaction that the recommendations of the Group of States against Corruption (GRECO) concerning incrimination have been implemented satisfactorily. Moreover, it welcomes the fact that Bulgaria has invested considerable resources in the training and awareness-raising of a large number of judges, prosecutors and law-enforcement officers on issues pertaining to bribery and trading in influence and the criminalisation of non-material advantages.

13. Furthermore, the Parliament of Bulgaria is to be commended for the introduction of specific measures to fight corruption at parliamentary level, which follow GRECO's recommendations; in particular the parliamentary Rules of Procedure were amended in 2016 with a view to ensuring transparency in the legislative process.

14. With regard to the Electoral Code, the Assembly welcomes the series of amendments introduced between 2014 and 2016 which addressed a number of concerns formulated by the Venice Commission in 2013 and 2014, improving, *inter alia*, campaign finance provisions and their oversight, voter registration and provisions on media coverage.

15. The Assembly recognises the progress accomplished in Bulgaria with regard to the implementation of judgments of the European Court of Human Rights in connection with the excessive length of judicial proceedings and the lack of effective remedy in that regard. Progress has also been noted in implementing the groups of cases relating to poor conditions of detention and to ill-treatment by law-enforcement officials.

16. The Assembly commends Bulgaria for the adoption, following the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), of amendments to the Law on Executing Punishments and Arrests in 2017. The changes addressed material conditions, regimes, early release and judicial control over the prison administration; furthermore, the Assembly recognises that significant progress has been made in recent years to improve prison conditions.

17. With regard to the Roma minority, the Assembly acknowledges that a number of programmes, strategies and action plans have been adopted in recent years to improve the situation of Roma, including the National Roma Integration Strategy (2012-2020) which resulted, *inter alia*, in an increase in the number of Roma with higher education, including university education.

18. While the overall progress in the fulfilment of Bulgaria's commitments and obligations is not questioned, a number of outstanding concerns still exist, in particular:

18.1. in the field of the judiciary:

18.1.1. although the reform of the structure and functioning of the Supreme Judicial Council has addressed the majority of the Assembly's concerns, its composition does not fully comply with Committee of Ministers Recommendation CM/Rec(2010)12 on "Judges: independence, efficiency and responsibilities", which specifies that "not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary". In the present Supreme Judicial Council, judges chosen by their peers constitute six out of 25 members. This parameter raises some concern as the plenary Supreme Judicial Council still keeps some important powers vis-à-vis the judiciary;

18.1.2. the degree to which prosecutors, and the Prosecutor General in particular, are still involved in the governance of judges within the Supreme Judicial Council is perceived by the Venice Commission as a concern;

18.1.3. the Assembly's long-standing recommendation concerning the abolition or shortening of the five-year probationary period for judges has not been addressed;

18.1.4. some concerns have been raised about the extensive disciplinary powers of the Inspectorate to the Supreme Judicial Council, particularly in the light of the present method of election of its members. Regrettably, the Venice Commission's recommendations for the nomination and dismissal of inspectors and on the division of competences between the Inspectorate and the Supreme Judicial Council have not been followed;

18.1.5. important legislative initiatives are not subject to broad public debate and all stakeholders are not sufficiently consulted. It should be stressed that the sustainability and irreversibility of reforms lies, *inter alia*, in a properly conducted legislative process involving all stakeholders and broad public debate;

18.2. with regard to high-level corruption:

18.2.1. while the establishment of a new unified anti-corruption agency constitutes a positive development, a key challenge will be to effectively manage the broad remit of its responsibilities, including prevention, investigation and assets forfeiture. The final criteria of its efficiency will be the number of cases brought to the courts and number of convictions delivered. The ongoing investigation into the scandal of purchases of luxury properties at favourable prices by senior politicians and officials may be perceived as a litmus paper test of the authorities' sincerity in combating corruption;

18.2.2. GRECO's recommendation to establish clear, objective and transparent criteria with regard to supplementary remuneration within the judiciary has not been fulfilled. There is still a worrying practice whereby court presidents use their discretion in awarding year-end bonuses to judges under their responsibility and allegations that this has been used to secure loyalties in the courts;

18.3. with regard to media:

18.3.1. the situation concerning media freedom in Bulgaria has been deteriorating systematically over recent years, the main concerns being concentration of ownership and lack of transparency, political interference in the media, State influence over media outlets exerted through the advertising budgets of European Union operational programmes and intimidation of and violence against journalists. The Assembly regrets the lack of appropriate data on media ownership. The Assembly commends the adoption of appropriate legislation on transparency of media ownership which reflects Committee of Ministers Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership. Violence against journalists must be met with decisive, prompt condemnation and thorough investigation by the Bulgarian authorities;

18.4. with regard to human rights:

18.4.1. while the Assembly welcomes the important changes to the Penal Code of 16 January 2019 and notes that according to the CPT there has been a slight improvement with regard to the treatment of people in police custody, especially as regards the severity of alleged ill-treatment since 2015, it regrets, however, the absence of any real progress in the application of safeguards against ill-treatment, namely the right to notify detention to a third party, the right of access to a lawyer and to a doctor and the right to be informed about the above-mentioned rights;

18.4.2. racist and intolerant hate speech in political discourse targeting Roma, Muslims, Jews, Turks and Macedonians continues to be a serious problem in Bulgaria. Serious efforts need to be made on the part of the Bulgarian authorities to systematically and unconditionally condemn hate speech, including by following the recommendations of the latest report of the European Commission against Racism and Intolerance (ECRI) on Bulgaria;

18.4.3. despite the Bulgarian authorities' efforts, the situation of the Roma population has not tangibly improved. Roma representatives are excluded from the democratic process, they do not make use of any democratic instruments already in place and are not present at any level of the decision-making processes. There is no meaningful dialogue between the Roma representatives and the authorities. Their material and social situation is in general very poor and discrimination in the labour market remains an obstacle for integration. The recent flare-up of inter-ethnic violence by ethnic Bulgarians against Roma in Gabrovo, which included the demolition and setting on fire of houses belonging to Roma, exemplifies the magnitude of this problem;

18.4.4. the Macedonian minority is not recognised by the Bulgarian authorities as such due to the strict application of formal criteria, although this group has repeatedly expressed its wish to benefit from the protection of the Framework Convention for the Protection of National Minorities (ETS No. 157);

18.4.5. Bulgaria has signed (in 2016) but not yet ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (STCE No. 210, "Istanbul Convention"), which is deeply regrettable. While the recently adopted amendments to the Penal Code providing for additional legal protection against domestic violence and violence against women constitute a step in the right direction, they must be followed by the provision of adequate resources, including in the fields of education and prevention, as well as psychological support, which would enable real protection of victims.

19. In conclusion, the Assembly recognises that Bulgaria has made substantial progress since the adoption of the last report on the post-monitoring dialogue in 2013. It has partly introduced legislation which, with several exceptions, complies with Council of Europe standards and has addressed several concerns formulated by the Assembly and other Council of Europe monitoring mechanisms. However, the question of sustainability and irreversibility of the reforms as well as efficiency of measures aimed at combating high-level corruption remain subject to proper implementation of the legislation.

20. Regrettably, due to a period of political instability from 2013 to 2016 and repeated elections, a number of reforms were the subject of hasty legislative procedure in 2016 and 2017 without proper consultation or involvement of all stakeholders. It remains to be seen whether they will bring about sustainable improvements. The present political situation, marked, since February 2019, by the boycott of the parliament by the Bulgarian Socialist Party (BSP) may have a negative impact on progress and may weaken democratic processes in the country.

21. The Assembly notes that in order to ensure sustainability and irreversibility of reforms, some steps, including, where relevant, legislative changes, still need to be undertaken.

22. Against this background, the Assembly resolves to continue a post-monitoring dialogue with Bulgaria and to assess, in June 2020, the progress made in the following areas:

22.1. the judiciary: Bulgaria should demonstrate that the remarkable steps taken towards a better judicial system are sustainable and effective;

22.2. high-level corruption: the new anti-corruption agency started operating just a few months ago. In the next months, tangible progress in the fight against high-level corruption needs to be seen. This has so far not been visible;

22.3. the media: a main challenge is the transparency of media ownership. Bulgaria has to take legislative steps to guarantee this transparency;

22.4. human rights of minorities: Bulgaria must improve the integration of Roma and other minority groups. The rights of refugees have to be fully respected according to European standards;

22.5. hate speech: hate speech should not be a matter of political discussion. Members of the government especially have a particular obligation in this respect;

22.6. violence against women: the Assembly calls on Bulgaria to make every possible effort to ratify the Istanbul Convention.

B. Explanatory memorandum by Mr Frank Schwabe and Mr Zsolt Németh, co-rapporteurs

1. Introduction

1. Bulgaria became a member of the Council of Europe in 1992. It was subject to the monitoring procedure *sensu stricto* until 2000. In [Resolution 1211 \(2000\)](#) on the honouring of obligations and commitments by Bulgaria, the Parliamentary Assembly decided to close the full monitoring procedure and to open a post-monitoring dialogue with the Bulgarian authorities “on the issues referred to in paragraph 4 [of [Resolution 1211 \(2000\)](#)] or any other issues arising from the obligations of Bulgaria as a member State of the Council of Europe”.

2. Since then, only two reports on the progress made by Bulgaria have been submitted by the Monitoring Committee: in 2010 and 2013.³ The current co-rapporteurs, Frank Schwabe and Zsolt Németh, were appointed in 2015 and 2016 respectively. We carried out three fact-finding visits to Sofia: in 2015, 2016 and 2018. Furthermore, during two visits to Brussels (in 2017 and 2019) we met the officials responsible for the Co-operation and Verification Mechanism within the European Commission. We also participated in Parliamentary Assembly’s presidential and parliamentary election observation missions in 2016 and 2017 respectively. We presented to the committee two written information reports on the findings of our fact-finding visits in 2015 and 2016.⁴

3. In 2007, Bulgaria became a member of the European Union. Upon Bulgaria’s accession, the European Commission established a mechanism called the Co-operation and Verification Mechanism (CVM) with a view to addressing outstanding concerns, notably in the areas of the judiciary, corruption and organised crime. So far, 12 yearly reports have been published, the last one was adopted on 13 November 2018. We have used the findings of successive CVM reports in the present report. Moreover, in 2016, five prosecutors from European Union member States, aided by the Structural Reform Support Service (SRSS) prepared an independent analysis of the structural and functional model of the Prosecutor’s Office and an analysis of its independence. We acquainted ourselves with the findings of this analysis.

4. Successive elections, including the presidential election in 2016 and parliamentary elections in 2017 were observed by the Parliamentary Assembly. The respective reports⁵ prepared by the ad hoc committees were submitted to and debated in the Assembly. In the present report we used the findings of these observation teams.

5. In the current report we also relied on the legal opinions provided by the European Commission for Democracy through Law (Venice Commission) on the Judicial System Act (adopted in October 2017)⁶ and on Amendments to the Electoral Code (adopted in June 2017)⁷ following the Monitoring Committee’s requests. Furthermore, we used the Report on judicial independence and impartiality in the Council of Europe member States prepared by the Bureau of the Consultative Council of European Judges (CCJE) following the proposal of the Secretary General of the Council of Europe.

6. We also took into account 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. In particular we based ourselves on the report on Bulgaria prepared by the Council of Europe Commissioner for Human Rights,⁸ the Fourth Evaluation Round and Compliance Report prepared by the Group of States against Corruption (GRECO),⁹ the Second Evaluation Round Report by the Group of Experts on Action against Trafficking in Human Beings (GRETA),¹⁰ the Third Opinion on Bulgaria adopted by the Advisory Committee on the Framework Convention for the Protection of National Minorities,¹¹ as well as the Fourth Report submitted by Bulgaria¹² and the Resolution of the Committee of Ministers on the implementation of the Framework Convention for the Protection of National Minorities by Bulgaria.¹³ We also acquainted ourselves with the report of the European Commission against Racism and Intolerance (ECRI) on Bulgaria in the

3. [Doc. 12187](#) and [Doc. 13085](#).

4. [AS/Mon \(2015\) 27 declassified](#) and [AS/Mon \(2016\) 28 declassified](#).

5. [AS/Bur/BUL \(2017\) 02](#).

6. [CDL-AD\(2017\)018](#).

7. [CDL-AD\(2017\)016](#).

8. [CommDH\(2015\)12](#).

9. [GRECO RC4\(2017\)9](#).

10. [GRETA\(2015\)32](#).

11. [ACFC/OP/III\(2014\)001](#).

12. [ACFC/SR/IV\(2017\)006](#).

13. [CM/ResCMN\(2018\)2](#).

framework of the fifth monitoring cycle¹⁴ and ECRI's conclusions on the implementation of the recommendations in respect of Bulgaria subject to interim follow-up¹⁵ as well as with the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).¹⁶

7. During our visits, we met the highest representatives of the legislative, executive and judicial authorities of the country, including the President, Speaker of Parliament, Prime Minister and all relevant ministers, leaders of parliamentary political groups, the Prosecutor General and the President of the Supreme Court. These meetings created an excellent opportunity for conducting political dialogue. At the same time, we devoted a lot of time to exchanges of views with representatives of civil society whose expertise and first-hand experience largely contributed to our understanding of the situation on the ground.

8. We believe that the information gathered from such a variety of sources has enabled us to prepare an objective and well balanced report in which we endeavour to assess the progress accomplished by Bulgaria with regard to the functioning of democratic institutions, and in particular to what extent the reforms undertaken by the authorities have addressed the concerns expressed by the Assembly in its past resolutions, whether the reform process is sustainable and irreversible and whether it is sufficiently entrenched in Bulgarian politics.

9. The preliminary draft report was submitted to the Monitoring Committee at its meeting on 23 January 2019 and, by the committee's decision, sent to the Bulgarian authorities for their comments. We received the comments on 27 April 2019 and took them into account in the revised version.

10. Last but not least, we would like to extend our gratitude to the Bulgarian parliamentary delegation to the Parliamentary Assembly and to its Secretariat for an excellent co-operation and organisation of our visits to the country as well as the help in contacting and collecting information from different authorities.

2. Political context

11. Since the last debate on Bulgaria in the Assembly, in 2013, the country has undergone a period of political instability. In February 2013, the then Prime Minister Boyko Borisov, the leader of the centre-right GERB party, resigned after 14 people had been injured in clashes with police at anti-austerity protests. A caretaker cabinet headed by Marin Raikov was appointed by the then President Plevneliev and tasked with organising early parliamentary elections. In the elections held in May 2013, GERB narrowly beat the Bulgarian Socialist Party (BSP) but fell short of a majority. The Socialists provided parliamentary support for a technocratic government headed by Plamen Oresharski.

12. In June and July 2013, the country was shaken by massive protests, first over the appointment of a controversial media mogul, Delyan Peevski, to head the national security, and when the appointment was reversed by the parliament, over official corruption. The protests culminated in a blockade of parliament and clashes with the police.

13. In July 2014, Prime Minister Plamen Oresharski stepped down, paving the way for a snap election. In October 2014, an inconclusive early election produced a parliament divided between eight parties. In November 2014, Boyko Borisov formed a coalition government including GERB and a centre-right Reformist Bloc.

14. On 6 November 2016, the first round of the most recent presidential election was held. The two candidates, who qualified to go through to the second round, Mr Rumen Radev representing the BSP, and Ms Tsetska Tsacheva representing the governing majority, received respectively 25.4% and 21.97% of the votes. On 13 November 2016, in a run-off, Mr Radev received 59.3% (2 063 032 votes) and Ms Tsacheva 36.1% (1 256 485). The option "neither of them" received 4.47%. The turnout was 50.44%.

15. The Parliamentary Assembly's ad hoc committee on the observation of the presidential election in Bulgaria concluded that the election was well administered and that fundamental freedoms were respected. The campaign was competitive and increased public confidence in the electoral procedure.

14. CRI(2014)36.

15. CRI(2017)22.

16. CPT/Inf(2018)15.

16. The 2016 presidential election was held alongside a referendum on changes to the electoral system and political party funding. The referendum was a result of a petition initiated by a television show presenter and was signed by over 600 000 people (the minimum required for holding a referendum in Bulgaria is 400 000).

17. In July 2016, the Constitutional Court of Bulgaria had unanimously rejected three out of six proposed questions of the referendum. They concerned: 1) whether to introduce online voting in elections and referendums; 2) whether to reduce the number of members of parliament from 240 to 120; 3) whether to introduce the election of the heads of regional directorates of the Ministry of the Interior through a majoritarian electoral system requiring an absolute majority at the end of two rounds. The Constitutional Court rejected the question of reducing the number of members of the National Assembly on the grounds that such a decision was within the competence of a Grand National Assembly.

18. The three questions that remained for the 6 November referendum were on the introduction of a majoritarian system to elect members of parliament; the introduction of compulsory voting; and the reduction of the State subsidies for political parties and coalitions to 1 lev (approximately 50 euro cents) per valid vote.

19. On 13 November 2016, Prime Minister Borisov, the leader of the GERB party which supported Ms Tsacheva, resigned. A caretaker government was formed. The newly elected President's term of office began on 22 January 2017, and two days later President Radev dissolved the National Assembly and called early parliamentary elections.

20. The early parliamentary elections took place on 26 March 2017. Five parties and coalitions passed the 4% threshold: Citizens for European Development of Bulgaria, GERB – 95 seats (32,65 %); the Socialist Party – 80 seats (27,2%); the Patriotic Front – 27 seats (9.07 %); the Movement for Rights and Freedoms – 26 seats (8.99%); Volya (Will) – 12 seats (4.15 %votes). The “traditional” right wing parties, Union of Democratic Forces (UDF), Democrats for a Strong Bulgaria (DSB) and the Reformist Bloc did not pass the threshold. Voter turnout was 54.07%

21. The Assembly observation delegation concluded that the voters could make a free choice on polling day. Voting was generally well organised, despite some procedural shortcomings noted during counting.

22. A new government, composed of the GERB and the Patriotic Front (UP) and led by Mr Boyko Borissov (who became Prime Minister for the third time), came into office in May 2017.

23. Political dynamics have been determined by the efforts of a ruling coalition (GERB and UP) to reach and preserve consensus on policy issues and by the confrontation between GERB and the BSP. President Radev has added another aspect to this confrontation, adopting a much more proactive and political approach than his predecessor, actively monitoring the legislative process and exercising his power of veto.

24. Regrettably, since February 2019, the opposition BSP has been boycotting the work of the parliament. The changes initiated by the government and introduced by the parliament in February 2019, including the tightening of the preferential voting system, have led to these domestic political tensions. The BSP has withdrawn from the parliament and the unity of the government coalition has broken down. On 18 February 2019, the Bulgarian Prime Minister declared that he would make efforts to restore the original preferential voting limits but his statement did not change the position of the BSP. These developments may have a negative impact on progress and may weaken democratic processes in the country;

25. In the first half of 2018, Bulgaria assured the rotating Presidency of the Council of the European Union. It formulated four priority areas for its presidency: strengthening co-operation and stimulating development with the Western Balkans; stability and security with a focus on migration and border controls; the future of Europe and young people with an emphasis on economic growth and social cohesion; and the digital economy as a single digital market.

26. A major development in Bulgaria's foreign policy was the signature of the Treaty of Friendship, Good-neighbourliness and Co-operation with “the former Yugoslav Republic of Macedonia” which constituted a break-through and a successful end to 18 years of negotiations.

27. The Bulgarian authorities have been asking for membership in the Schengen Area since Bulgaria's accession to the European Union in 2007. According to the European Commission, the country fulfils the technical requirements expected. The country's readiness for Schengen membership has been confirmed by the Conclusions of the European Council.

28. Bulgaria has the lowest gross domestic product (GDP) per capita in the European Union, and Bulgarians have the lowest median earning in the European Union. The result is mass emigration of Bulgarians, especially those with good education and professional skills, in search of better opportunities in other countries. According to official data, 17% of Bulgarian school students choose to continue university abroad and they usually stay there.

3. Outstanding concerns identified in the last report

29. In the last report on Bulgaria, debated in January 2013, the Assembly welcomed the substantial progress made by the country towards the fulfilment of its remaining obligations. It also noted with satisfaction that the Bulgarian authorities had demonstrated a sustained political will and commitment to fully honour their obligations and commitments resulting from membership in the Council of Europe.

30. At the same time, the Assembly noted that despite important progress in terms of the legislative framework and the crucial reforms put in place, more measures needed to be taken, in particular with regard to the independence of the judiciary and the fight against corruption. Other areas of concern including abuses by law-enforcement officials, the independence of the media and, more generally, abuses of human rights were also mentioned.

31. In the following chapters, we will come back to these outstanding concerns identified in the last report and we will assess the progress made since then.

3.1. Functioning of the judiciary

32. The last report on Bulgaria submitted by the Monitoring Committee to the Assembly, in 2013, recognised that substantial progress had been made in the area of the judiciary with respect to its independence since the previous debate, in 2010. However, it also identified a number of outstanding concerns, including different aspects of the functioning and composition of the Supreme Judicial Council (SJC), and the Inspectorate, appointments to high-level judicial posts and reform of the Penal Code.

33. The judicial reform strategy was adopted by the government in office in 2014 and was endorsed by a broad majority in the parliament in 2015. It was planned to be completed in 2020. It remains an overarching framework for the continuation of the judicial reform process in Bulgaria. It is clear, however, that political instability in the country between 2013 and 2017 affected its capacity for reform in a negative way. While we do not question the current government's commitment to continuing in the right direction, its determination to proceed quickly with legislation, raises justified concerns about the quality of the process itself as well as about the outcome.

34. According to the criticism that we heard during our visit from civil society, important legislative initiatives are not subject to broad public debate and all stakeholders are not sufficiently consulted. The underlying risks of hasty proceedings are well illustrated by the follow-up to the parliamentary initiative of July 2017, when a package of draft amendments to the Judicial System Act (JSA) was submitted without prior consultations or public debate. The proposals gave rise to widespread criticism as potentially undermining judicial independence. While some of the most criticised amendments (notably those which would have restricted the access of professional associations of magistrates to foreign funding) were ultimately withdrawn, some other, no less controversial amendments, were adopted including those which introduced obligatory suspension of any magistrate being put under criminal investigation without right to appeal or requiring magistrates to declare their membership of professional associations.¹⁷ In October 2017, the parliament adopted further amendments addressing some concerns with respect to the amendments adopted in July. Regrettably, also these amendments tabled by individual parliamentarians had not been subject to public debate or consultations.

35. Another example are the amendments to the Administrative Procedure Code adopted in a hasty manner in mid-2018, despite criticism from civil society raising concerns over access to justice and overruling the Presidential veto. They have since been referred to the Constitutional Court for review of their compliance with the Constitution.¹⁸

17. In their comments, the Bulgarian authorities stressed that in Article 230 paragraphs 1 and 2 of the JSA there was a clear distinction between the types of offences for which the magistrate can be charged. Obligatory suspension was only envisaged for intentional offences prosecuted by public indictment and in other cases it was optional. There were also safeguards against violation of rights of suspended magistrates.

36. We express our strong conviction that the sustainability and irreversibility of reforms lies in, *inter alia*, a properly conducted legislative process involving all stakeholders and broad public debate. Circumventing these preparatory stages of the reform may result not only in low quality laws but also create a climate of uncertainty and lack of ownership. In addition, saving time is illusory as demonstrated above.

37. That said, we have to acknowledge that, overall, recent reforms have contributed to undeniable progress in the field of the judiciary and have addressed the majority of concerns identified in [Resolution 1915 \(2013\)](#) on post-monitoring dialogue with Bulgaria, thus improving the independence of the judiciary. As a result of amendments to the JSA in 2015 and 2016, a key Assembly recommendation was accomplished: the SJC was divided into judges and prosecutors' chambers (or colleges), independently exercising appointment and disciplinary powers with regard to the judges, prosecutors and investigating magistrates.

38. In consequence, the Plenary SJC was stripped of most of its appointing, disciplining and removal powers, which, in accordance with the Venice Commission recommendations went to the respective chambers. This was considered by the Venice Commission to be an essential step forward towards judicial independence.¹⁹ In particular, the Venice Commission welcomed the fact that judicial appointments, with the exception of the Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court and the Prosecutor General, are made by the respective chambers of the SJC.

39. However, in its opinion, the Venice Commission regretted that the reform did not aim at full compliance with Committee of Ministers Recommendation CM/Rec(2010)12 on "Judges: independence, efficiency and responsibilities", which states that "not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with the respect of pluralism inside the judiciary". Indeed, the current composition of the SJC still does not correspond to this parameter as judges elected by their peers are in a minority in the Plenary: they have only six votes out of 25. Even in the Judicial Chamber, judges elected by their peers represent less than half of all members: out of 14 members of the chamber six are elected by judges, six are elected by the Assembly and two are *ex officio* members.

40. The proportion of judges elected by their peers as compared to the total number of members of the SJC is important because even if the Plenary SJC has far fewer powers than before, it still keeps some important powers vis-à-vis the judiciary. For example, it can propose candidates for the positions of the Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court (for appointment by the President) and it can remove elected judicial members.

41. In its latest opinion on the composition of the SJC,²⁰ the Venice Commission also raised a concern relating to the degree in which prosecutors, and the Prosecutor General in particular, are still involved in the governance of judges within the SJC. This could be remedied, according to the Venice Commission, in various ways. For example, the Judicial Chamber could receive some of the powers of the Plenary in respect of judges (in particular the power to appoint/remove two chief judges and to remove elected judicial members). Alternatively, these decisions could be taken by a "double majority" of the elected judicial members and all members of the SJC.²¹

42. Therefore, the recommendation concerning the composition of the SJC still remains valid.²²

43. As a result of the reform, the procedure of election of members of the SJC has been significantly improved in line with Assembly recommendations. A key improvement under the new procedures is that the 11 members of the judicial quota are directly elected by judges and prosecutors, according to the "one magistrate – one vote" principle. Furthermore, the election of the 11-member parliamentary quota followed a new rule of two-thirds majority in the parliament, reflecting our recommendation based on the Venice Commission's opinion.

18. In their comments, the Bulgarian authorities pointed out that the drafts of normative acts submitted by the Minister of Justice strictly observed the statutory legal order for public discussion. According to Article 26, paragraphs 2, 3 and 4 of the Law on Normative Acts, public consultations are integrated in the process of drafting; the deadline for proposals and comments is minimum 30 days, which in exceptional cases may be shortened to 14 days. All stakeholders are invited to participate at an early stage in the preparation of the future legislative initiative, drafts are also discussed at the Council on the application of the updated strategy for continuation of the judicial system reform.

19. [CDL-AD\(2017\)018](#).

20. *Ibid.*

21. The Bulgarian authorities have underlined that the plenary sitting of the SJC included 14 representatives of the Chamber of Judges and 11 of the Chamber of Prosecutors, the vote of the Prosecutor General being exactly equal to other votes, which limits the influence of prosecutors over judges. Moreover, major issues concerning judges are dealt by the Chamber of Judges.

22. It is also one of the recommendations of the GRECO report on Bulgaria.

44. The elections to the judicial quota were completed by June 2017. The introduction of an electronic voting system enabled a very high participation rate and the final outcome, according to our interlocutors, was generally regarded as representing a fair result reflecting the preferences of the entire body of magistrates. The election of the parliamentary quota in the National Assembly was completed in September 2017. Thanks to the requirement of a two-thirds majority, successful candidates were elected by a wide range of parliamentarians including opposition parties. Nominations were made in June 2017 allowing for public debate on 18 candidatures.

45. During our visit, we nevertheless heard some criticism from civil society concerning this part of the procedure. Firstly, there was the impression that the outcome had been predetermined through prior agreements between the main political parties and did not reflect objective consideration of candidates' merits. Secondly, we were told that the public hearing in the parliament's Legal Affairs Committee did not allow sufficient time for addressing all questions to candidates and that critical questions raised by representatives of civil society were not examined. These questions were published on the parliament's website in compliance with the law.

46. However, the election procedure as a whole marked a significant improvement as compared to the election of the previous SJC in 2012 and took into account the Assembly's recommendations. The newly elected SJC took office on 3 October 2017.

47. One of the main functions of the SJC is the appointment of heads of courts and prosecutors' offices. Under the 2016 reform, general assemblies within each court were given the competence to nominate candidates for the heads' positions while the final decision belonged to the Judicial Chamber of the SJC. However, the Judicial Chamber may also consider self-nominated candidates or candidates proposed by the Ministry of Justice. Given earlier reservations on the composition of the SJC, as well as the Venice Commission's recommendation that general assemblies of judges should have the exclusive power to nominate candidates for subsequent approval by the Judicial Chamber, this provision remains problematic. The SJC also selects nominees for the three highest offices in the Bulgarian judiciary, the Presidents of the two Supreme Courts and the Prosecutor General and they are then subject to endorsement by the President.

48. One of the first tasks of the new SJC was the election of the President of the Supreme Administrative Court. The procedure was launched in July 2017 and the vote took place in the outgoing SJC in September 2017. A candidate was selected in compliance with a new more transparent procedure introduced by the amendments to the Judicial System Act in 2016. However, the President, who should endorse the appointment, decided to wait for the newly elected SJC to take office. On 19 October 2017, the new SJC confirmed the candidate with a large majority.

49. Since then, the SJC has appointed a number of heads of judicial bodies which seem not to have given rise to major controversies. Each appointment follows the same transparent procedure, including a public hearing, the requirement for candidates to submit a concept paper on the objectives that they would like to pursue in the post, as well as a declaration of private property and interests. Voting records are now public. This level of transparency is designed to allow for public scrutiny and comparison between the merits of different candidates and marks a clear difference as compared to the situation under the previous SJC.

50. In March 2018, a procedure on the appointment of a new head of the Sofia City Court failed to produce a result due to a divided vote within the Judicial Chamber of the SJC. A second procedure is ongoing with two candidates for the post. Another ongoing procedure seeks to fill the post of the head of the Specialised Court for Organised Crime. Other competitions are in preparation starting with the Supreme Court of Cassation and cascading downwards so as to ultimately reach all levels of the judiciary. This is also an important step forward compared to the previous practice of long-term secondments used as an alternative to or circumvention of official promotion of judges.

51. Unfortunately, another long-standing recommendation concerning the abolition or shortening of the five-year probationary period for judges has not been addressed. A similar recommendation has been made by GRECO in the Fourth Evaluation Round Report. During our meeting in the Ministry of Justice, we were told that this question was governed by the Constitution²³ so it could not be dealt with by the amendments to the JSA in 2016. We reiterate, however, that probationary periods raise in principle serious difficulties for judicial independence. If they are foreseen in the law, they should not be longer than needed to assess a judge's competence.

23. Article 129, paragraph 3.

52. At the same time, we were glad to note that another of the Assembly's concerns relating to the deficiencies in the system of assessing the performance of judges, the lack of clear and consistent standards for performance assessment and other problems relating to the career development of magistrates has been addressed by the 2016 amendments. As a result, the Plenary SJC, acting on a proposal by the Chamber of Judges, has adopted the Regulation on the Indicators, the Methodology and the Procedure for Appraisal of a Judge, Chairperson and Deputy Chairperson of a Court. This procedure aims to improve the appraisal of judges before they acquire life tenure, which includes indicators and standards concerning compliance of judges with the Code of Ethical Behaviour. The indicators include the additional check on asset declarations, conflicts of interest, and recusals in connection with their attestation for life tenure.

53. This was completed by the adoption by the Plenary SJC, in 2017, of the Regulation on the Competitions for Magistrates and on the Election of Administrative Heads in Judicial Bodies. This specifies the indicators and methodology required to perform an appraisal of judges, prosecutors and investigating magistrates. All forms of appraisal of judges are performed solely by the Appraisal and Competition Committee to the Judges' Chamber of the SJC. The Assembly's concerns relating to judicial appointments and appraisals have thus been addressed. As mentioned above, judicial appointments are made by the respective chambers of the SJC. Moreover, the Venice Commission welcomed the objective criteria and built-in majority of judicial nominees on the competition commissions.

54. The question of judicial appointments and appraisals is linked to the efficiency of the judiciary and judicial practice which was a matter of concern in the previous report on Bulgaria. The last resolution addressed the question of delays in issuing the motivation of decisions and recommended the establishment of 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 the workload. We note with satisfaction that these recommendations have been implemented satisfactorily.

55. In December 2015, the SJC adopted the Rules for Assessing the Workload of the Judges, which came into effect in April 2016. They provide for objective indicators of the legal and factual complexity of court cases and establish the mode to determine the individual workload and limits of the normal workload of judges. The "System for Calculating of the Workload of Judges" was established on the basis of these Rules. The System is integrated into the "Centralised System for Distribution of Cases". In both systems, the absence of human interference is ensured both in the process of random allocation of cases and in the process of reporting on individual workload. We welcome this development, which allows for a fair and equitable allocation of cases.

56. As a complementary measure, the SJC has undertaken efforts, in co-operation with the European Commission's Structural Reform Support Service to redistribute the workload of the busiest courts, mainly in Sofia, to other courts. This has already resulted in concrete amendments recently adopted in the parliament. Alongside these legislative initiatives, the SJC has also recently launched several procedures for the transfer of judicial posts to the major courts in Sofia.²⁴

57. This brings us to another concern expressed by the Assembly and relating to the accountability of the judiciary, and more specifically disciplinary proceedings, which has been addressed in a satisfactory way. In 2016, the Judicial Chamber of the SJC approved the Rules for the Organisation and Activities of the Ethics Commissions in Courts. In case of breach of the Code of Ethics, the ethic commission should notify the bodies authorised to initiate proceedings (the court president, the superior administrative head, the SJC Inspectorate and the Minister of Justice) as well as the Judicial Chamber of the SJC. According to the amendments, the latter has the power to impose disciplinary sanctions against judges.

58. Following the amendments to the SJA introduced in 2015, a subsidiary organ of the SJC, the Inspectorate to the Supreme Judicial Council (ISJC or Inspectorate), received stronger powers in areas such as integrity, verification of declarations of interest and of private assets of magistrates as well as verification of cases where integrity of magistrates has been put into question. The Inspectorate's role was also strengthened with regard to disciplinary proceedings. The Inspectorate is competent to examine virtually every aspect of activities of courts, prosecution offices, individual judges and prosecutors, including internal organisation and working arrangements, consistency of the jurisprudence, financial situation of magistrates, their assets, their behaviour in the private sphere, etc.

59. Before the new law came into force, in October 2016, the Monitoring Committee requested the opinion of the Venice Commission. In its opinion,²⁵ the Venice Commission expressed the view that the current increased powers of the Inspectorate may represent a danger for the independence of the judiciary. Even if

24. COM(2018)850final.

25. [CDL-AD\(2017\)018](#).

the formal decision-making power remains with the SJC, entrusting the Inspectorate with so many new functions, which are often overlapping with the functions of the SJC, may result in shifting the real power away from the SJC.

60. In this context, the method of election of members of the Inspectorate (the Inspector General and 10 ordinary inspectors) is of crucial importance. All members of the Inspectorate are elected by the parliament with a two-thirds majority. While in theory a need for compromise within the parliament should lead to the election of neutral figures, in the Bulgarian context all reservations evoked with regard to the election of the parliamentary quota of the SJC apply also here. Our interlocutors from civil society complained that political bargaining has as a result that each inspector is likely to have some political obligations vis-à-vis one or another party.²⁶

61. The Venice Commission Opinion makes concrete recommendations on the procedures for the nomination and dismissal of inspectors and on the division of competence between the Inspectorate and the SJC. It also recommends further clarifying the rules on inspection and disciplinary proceedings.

62. In response, the Bulgarian authorities in co-operation with the European Commission's Structural Reform Support Service, have elaborated a project aimed at further development of the Inspectorate's capacity to deal with integrity issues among magistrates. The project, implemented by the Council of Europe, was launched at the end of 2018, to be completed in 2019.

63. In the meantime, the Inspectorate has taken up its new tasks. Since 1 January 2017, all magistrates have to submit a declaration of their assets and interests. In addition to information on property and assets, declarations should contain details on participation in commercial entities, management and control bodies of commercial entities and non-profit legal entities, any contracts with persons carrying out activities in a field related to a magistrate's official duties. The declaration has to be submitted within one month of taking up office, annually before 15 May, within one month of leaving office and within one month of the expiry of one year after leaving office. The Inspectorate has received and published interest and assets declarations for more than 4 000 magistrates covered by the new rules. Proceedings have been launched against magistrates who have not submitted their declarations.

64. The Inspectorate has been provided with additional resources to verify analyses of conflicts of interest and personal assets of magistrates. It has direct access to the electronic databases of central and local government authorities, the judicial authorities and other institutions, and can request additional information from these bodies which have to reply within a month. In addition, the Inspectorate may require disclosure of data covered by bank and insurance secrecy as well as tax and social-insurance information.

65. The Inspectorate runs online public registers for online alerts on cases of conflict of interest or false declarations or any other alleged corruption behaviour on the part of magistrates. It has also received a number of alerts on the work of magistrates, but only a few have led to an investigation because the information was incomplete. The Inspectorate cannot act on anonymous alerts or alerts which do not provide sufficiently concrete information. In terms of its own follow-up, the Inspectorate can invite the magistrate concerned for an interview, but they are not legally obliged to turn up, and, more generally, it has limited investigatory powers. As a result, only a very small percentage of received alerts has resulted in the opening of an inspection and the identification of irregularities. Even fewer gave rise to disciplinary proceedings.

66. During our visit, we heard criticism from civil society regarding capacities of the Inspectorate's efficiency with respect to the verification of conflict of interest. It also appears that the current system of alerts has not proved efficient so far.

67. The recent amendments have also introduced the provision which obliges the SJC to publish an annual report on the autonomy and transparency of judicial practice and its own practice. The report is a subject of public debate. This new measure addresses the Assembly's recommendation.

68. In conclusion, we recognise that the 2015-2016 amendments to the SJA and other regulations concerning the functioning of the SJC have constituted a major step towards Bulgaria fully respecting its commitments and obligations.

69. With regard to the Prosecutor General, in its latest Opinion, the Venice Commission raised the question of accountability. It stated that in order to increase accountability, the JSA should develop a procedure allowing for effective and independent investigation into alleged misconduct of the Prosecutor General.

26. The Bulgarian authorities, in their comments, pointed out that the method of election complies with a recommendation of the Venice Commission contained in its Opinion No. 816/2015.

Furthermore, functions and powers of the prosecution service outside the criminal law sphere should be seriously curtailed. Finally, suspension of judges under investigation should be subject to an effective control by the Judicial Chamber of the SJC.

70. With regard to the latter we were told at the Ministry of Justice that further amendments had been subsequently adopted in October 2017 to give the SJC some discretion to decide on the merits in cases not involving offences related to the official responsibilities of the magistrates as well as to provide for appeal at the Supreme Administrative Court.

71. At the meeting with the Prosecutor General during our last visit to Bulgaria, we were informed about an independent analysis of the structural and functional model of the Prosecutor's Office conducted in 2016 by five independent European Union experts, prosecutors from the Germany, the Netherlands, Spain and the United Kingdom under the aegis of the Structural Reform Support Service at the request of the Bulgarian authorities. During their seven visits to the country, the international experts interviewed more than 200 people, including magistrates, police officers, attorneys-at-law, investigative journalists and representatives of civil society. They produced a report containing a number of recommendations for judicial practice at the Prosecutor's Office, courts, SJC, Inspectorate and Ministry of Justice. As a follow-up action, in 2017, the Prosecutor General published an Action Plan to Implement the Recommendations Contained in the Independent Analysis of the Prosecutor's Office. A roadmap has been drawn up with the Ministry of Justice.

72. According to the Prosecutor General, implementation of the recommendations has greatly advanced. Following amendments to the JSA, every six months the Prosecutor General presents a summary on the initiation, progress, and closure of files to the prosecutors' chamber of the SJC, to the Inspectorate and to the Ministry of Justice. Furthermore, the Prosecutor General submits an annual report to the Plenary SJC regarding the implementation of the law and judicial practice at the Prosecutor's Office and the investigating authorities. The SJC hears the Prosecutor General and council members may ask questions in writing, sent by citizens, institutions and non-governmental organisations (NGOs) in relation to reports. The report is published on the website of the Prosecutor's Office. It is also submitted by the SJC to the parliament. The Prosecutor General is heard by the Committee on Legal Affairs every three months. In the Prosecutor General's opinion all these measures have increased the accountability of the PG.

73. We were also told that the issue of procedures for accountability of most senior positions in the magistracy, including a serving Prosecutor General, in the event of serious allegations of wrongdoing or criminal acts is under consideration in the working group operating under the Ministry of Justice tasked with the preparation of proposals for legislative amendments to the Criminal Code and the Criminal Procedure Code (see paragraph 83 below).

74. Finally, we were informed that out of concern for transparency and accountability, the Ministry of Justice has been publishing every six months, since the beginning of 2017, a report on the progress on the implementation of the judicial reform strategy. Before being published, drafts are subject to consultation and discussion with the participation of representatives of the institutions involved in the implementation of the strategy, as well as professional and non-governmental organisations. To this end, a special consultative body, called the Judicial Reform Council has been established under the Ministry of Justice. These mechanisms constitute useful complements to formal stakeholder consultations on new legislative initiatives.

75. The European Union CVM report published in November 2018 positively assessed the progress made in the judicial reform process, in particular with regard to the election and functioning of the Supreme Judicial Council and the Inspectorate. In the conclusions, the European Commission stated that it expected to conclude the CVM process for Bulgaria before the end of this Commission's mandate provided that the positive trend in Bulgaria is maintained.

76. Representatives of civil society whom we met during our visit were more cautious in their assessment. While admitting undeniable progress and improvements towards the independence of the judiciary they stressed that it was too early to evaluate the full impact of reforms and implementation of new laws.

77. The foregoing critical remarks are confirmed by the results of the Eurobarometer poll, which showed that in 2017, as many as 74% of Bulgarians tended not to trust the national justice and legal system and only 18% have confidence in it. This is the lowest score in the European Union.

3.2. Legal framework

78. In the last report on Bulgaria, the Assembly urged the Bulgarian authorities to complete the work on a new penal code, in full co-operation with Council of Europe legal experts. The then existing legal framework, and in particular certain provisions of the Criminal Procedure Code and the Criminal Code, constituted obstacles for judicial authorities in ensuring effective investigation and prosecution of high-level corruption and organised crime.

79. In 2016, a package of draft amendments to the Criminal Procedure Code was prepared by the Ministry of Justice with the support of the Prosecutor's Office and other parts of the judiciary, but as a result of the subsequent internal political developments, they were not taken further in the framework of the legislative process. In June 2017, a newly formed government of Prime Minister Borissov submitted the amendments to parliament, which quickly, in July 2017, proceeded with their adoption.

80. The new provisions addressed delays in criminal proceedings, notably by limiting the ability of courts to refer cases back to the Prosecutor's Office on formal grounds. Another important change is the transfer of high-level corruption cases to the jurisdiction of the Specialised Court and Prosecutor's Office on Organised Crime. We will examine this more closely in the next sub-chapter. The amendments also included other measures aimed at ensuring better enforcement of sentences, shorter deadlines and more flexibility in the length of pretrial investigations in complex cases.

81. In general, the changes are in line with earlier recommendations. However, civil society and some parts of the judiciary have criticised the rapid pace of the legislative process which had not allowed for a proper public debate at that stage. According to them, some of the amendments raised concern. For example, the acceleration of procedures and limitations on courts' ability to send cases back to the prosecution might lead to unwarranted acquittals as new deadlines may be sometimes unrealistic.

82. The adopted modifications are now in force. The specialised prosecution has also received additional resources to deal with additional workload. In terms of impact, a larger number of referrals at the early stage of the procedure can be observed. While it may reflect a more cautious approach of judges, it should be counterbalanced by a faster pace of proceedings once the preliminary stage is completed. It is expected that the positive results of the amendments will be seen in a few months.

83. A range of additional areas for possible legislative changes to the Criminal Procedure Code and the Criminal Code, contained in a document called Concept of Penal Policy, are under consideration in working groups under the Ministry of Justice established in 2017. It has been drawn up in co-operation with Dutch experts.

84. The issues under consideration with regard to the Criminal Procedure Code include *ex ante* checks and regulations carried out by investigators prior to formal pretrial investigations, authorisation of special investigatory measures, the role of witnesses in pretrial investigations, the possible investigative powers of the State Agency for National Security under the Criminal Procedure Code and others.

85. With regard to the Criminal Code, a number of issues are subject to consideration. They include the possible extension of abuse of office offences to cover the private sector and the need to prove damages resulting from abuse of office.

86. During the visit, we were informed that alongside the work of the Ministry of Justice in this respect, the Prosecutor's Office had also engaged in the preparation of draft amendments concerning key provisions of the CPC governing the criteria for bringing cases to court and the content and format of indictment.

87. It is clear that a comprehensive legal framework for penal policy is a long-term process which requires multiple level analysis, consultations and public debate, and we should not insist on speeding up the process and work of different stakeholders. We commend the Bulgarian authorities for their co-operation and responsiveness to the legal experts of the Council of Europe, and we also express our satisfaction at their commitment to introducing targeted amendments to improve the investigation and prosecution of high-level corruption and organised crime.

3.3. High-level corruption and organised crime

88. The fight against corruption is the area in which until recently the least progress has been made since the last debate in the Assembly, compared to other fields. High-level corruption has been consistently considered as a major problem in Bulgaria, as confirmed by the specialised agencies of the Council of Europe, in particular GRECO, by the European Union in its successive CVM reports, and by other international organisations.

89. In its 2017 Corruption Perception Index, Transparency International ranked Bulgaria 71 out of 180 countries with a score of 43 on a scale from 0 (highly corrupt) to 100 (very clean) as compared to 41 in 2016. The World Bank's Worldwide Governance Indicators place Bulgaria's "Control of corruption" in the 51.4 percentile in 2017. While it shows a slight improvement over the previous year, it is still much worse than the 2004 and 2005 scores.

90. According to the 2017 Special Eurobarometer on Corruption report, 87 % of Bulgarians believe there is corruption in national public institutions, which marks a rise of 5 % as compared to 2016. Furthermore, the poll showed that 83 % believe that high-level cases of corruption are not pursued sufficiently.

91. There has been greater visibility in recent years of high-level corruption scandals, including, in 2017, the "Tzumgate" case (unofficial meeting between the Prosecutor General and businessmen involving threats and seeking favourable treatment in a number of commercial lawsuits), the "Sudzhukgate" scandal involving a former GERB MP who used his influence to bypass food safety regulations, eliminate competitive companies, and persuade the prosecution against investigating a manslaughter case); the "Military Hospital" case involving a health minister accused of irregular procurement procedures, and bankruptcy of the Corporate Commercial Bank, involving a high-ranking official from the Bulgarian National Bank. Although the prosecution has initiated investigations in all these cases, there have been no convictions so far. On a more positive note, it seems that thanks to greater media coverage, parties have become less tolerant towards its members implicated in scandals and do not try to cover them up.

92. Some concerns relating to the judicial system are easily identifiable in the difficulties faced in the fight against corruption and they have been the subject of Assembly recommendations in the area of judicial independence. In the previous chapters we dealt with specific questions on the role of the Supreme Judicial Council as guarantor of the independence of judges. A new structure of the SJC, its composition, its appointment of members, its powers, the introduction of a distinct and transparent procedure for a rigorous and in-depth evaluation of the qualifications, integrity, ability and efficiency of a judge for the purpose of acquiring life tenure, and elaboration of objective and transparent criteria for appraisals and promotions, increased powers of the Inspectorate including verification of declarations on assets and non-conflict – all these positive measures addressing our earlier recommendations have contributed to the fight against corruption. These measures were also recommended by GRECO in its Fourth Evaluation Round report on Bulgaria and considered as implemented satisfactorily in the 2017 Compliance report.

93. Regrettably, some issues with regard to judicial independence and the potential impact on the fight against corruption have not been addressed: these include GRECO's recommendation that the application of supplementary remuneration within the judiciary be subject to clear, objective and transparent criteria. In its evaluation report, GRECO referred to a worrying practice whereby court presidents used their discretion in awarding year-end bonuses to judges under their responsibility and to allegations that this had been used to secure loyalties in courts.

94. The second category of concerns with direct relevance to the fight against corruption relates to the instruments provided by the CC and CPC. We have referred to the changes in the penal policy in more general terms in the previous sub-chapter; here we would like to focus on more specific issues. In the last report on Bulgaria, the Assembly called on the authorities to implement the recommendations made by GRECO, in particular with regard to the clear incrimination of bribery and trading in influence; broader interpretation of the concept of undue advantage, and implementation and use of the potential of the Law on Forfeiture in Favour of the State of Illegally Acquired Assets adopted in 2012.

95. In its two Compliance reports and an addendum on Bulgaria in the framework of the Third Evaluation Round,²⁷ GRECO acknowledged that the recommendation concerning incrimination had been implemented satisfactorily. In September 2015, the parliament adopted the amendments to the CC which provide for explicit criminalisation of both passive and active bribery and trading in influence where the advantage is intended for a third party. Furthermore, they introduce criminalisation of bribery of foreign arbitrators.

27. Greco RC-III(2012)14E, Greco RC-III(2014)12E and Greco RC-III(2015)10E.

96. We welcome the fact that Bulgaria has invested considerable resources in training and raising the awareness of a large number of judges, prosecutors and law-enforcement officers on issues pertaining to the bribery and trading in influence and the criminalisation of non-material advantages. We were also informed during our visit that the Prosecutor General's Office had adopted a Unified Catalogue of Corruption Crimes in line with existing definitions of corruption in international legal instruments. It is a reference for statistical reporting and analytical data which the PG is obliged to publish periodically (see paragraphs 69 and 70).

97. In January 2018, the parliament adopted a new Anti-Corruption and Forfeiture of Assets Act in line with earlier recommendations. Our interlocutors during official meetings insisted that the new law puts in place a comprehensive reform of the legislative framework for the prevention of conflicts of interest, illicit enrichment and corruption.

98. The new law also established a new unified anti-corruption agency – Anti-Corruption and Forfeiture of Assets Commission – in charge of verifying conflicts of interest and private assets of high-level officials, investigating allegations of corruption among such officials, establishing safeguards for the prevention of corruption and setting up procedures for the seizure and confiscation of illicit assets. This addressed another recommendation formulated by the Assembly in the previous report calling on the Bulgarian authorities to establish independent institutions in the area of anti-corruption 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

99. The new agency is based on a merger of five already existing institutions, including the commission for illegal forfeiture of assets, and has taken over their staff and resources. It is competent to assist the prosecution in investigations of alleged high-level corruption. While it does not have independent powers of criminal investigation, it has extensive competence to carry out surveillance and intelligence measures within its remit. It is responsible for the verification of personal interest and assets declaration of about 15 000 high-level officials, including ministers, mayors and key civil servants. It is also the main agency responsible for the seizure and confiscation of illicit assets. The law provides that it will be accountable before the parliament and will publish an annual report.

100. At the same time, by means of an ordinance adopted in June 2018, the government has updated and clarified the legal framework for the internal inspectorates of the State administration, including new increased powers regarding the verification of interest and asset declarations for public employees. The amendment to the Law on Public Administration was adopted in October 2017. The new rules also provide for a stronger co-ordination role of the chief inspectorate under the Prime Minister's office and for clearer rules for the work and qualifications of inspectors. Additional human and material resources have been allocated to inspectorates.

101. During our visit, the agency was already fully operational and all our interlocutors from the Ministry of the Interior, the Ministry of Justice and the Prosecutor's Office seemed confident that it will constitute a major step in the fight against corruption. We also noted, however, some criticism from civil society concerning weak protection of whistle-blowers as well as the fact that the management of the agency was to be elected by a simple majority in the parliament which might lead to politicisation. The law was vetoed by President Radev before being overruled by the parliament. The President's argument was that the bill would not be effective enough and might be used to persecute political opponents.²⁸

102. A key challenge for the new agency will be to effectively manage the broad remit of its responsibilities, including prevention, activities linked to investigation and the forfeiture of assets. The ultimate criteria of its efficiency will be its final decisions in high-level corruption cases and a number of convictions. In 2016, the Prosecutor's Office carried out a review of completed corruption cases in order to identify obstacles to successful prosecution. In conclusion, some measures have been undertaken and legislative proposals have been formulated.

103. During our visit we were informed that in the first half of 2018, a significant number of high-level officials including one minister, two deputy ministers and several mayors had been charged with corruption offences. A member of parliament, three ministers, two deputy ministers and several mayors were indicted in court. A number of cases have resulted in convictions, including six cases involving mayors. Furthermore, a number of large-scale investigations were underway.

28. In their comments, the Bulgarian authorities pointed out that the new Anti-Corruption Law provides for additional opportunities for people issuing the alert and greater protection than under previous legislation.

104. This brings us to a more general question of a mechanism for public reporting on progress in high-level corruption cases. Bulgaria established, in 2017, a mechanism for public reporting on progress in high-level organised crime cases which are in the public domain. A positive development in this respect was the establishment of a public website at the Supreme Court of Cassation presenting information on ongoing court proceedings. The General Prosecutor has to report on investigations and indictments and the Supreme Court of Cassation and Ministry of Justice on convictions and enforcement of sentences.

105. We also look forward to the concrete outcome of the discussions carried out in working groups under the Ministry of Justice (see paragraph 83) addressing other issues in the penal policy relevant for high-level corruption. In 2018, they reached conclusions on a number of questions which it has been decided did not necessitate a legislative follow-up and could be addressed by means of administrative measures. They included, for example, the content and format of indictments or involvement of management in decisions on concrete cases within the Prosecutor's Office.

106. There are still ongoing deliberations on a number of crucial issues such as the threshold for initiation of pretrial proceedings and use of preliminary inquiries. As mentioned above, the question of accountability of the Prosecutor General is also under discussion and we are confident that proposed solutions will address the Venice Commission's concerns formulated in document CDL-AD(2018)018.

107. Finally, the Assembly recommended in 2013 that the authorities 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. We already touched upon the issue of judicial procedures and amendments to the CPC and CC in more general terms in chapter 3.2. We also mentioned an analysis of the structural and functional model of the Prosecutor's Office by the European prosecutors and the follow-up given to their recommendations (see paragraphs 71-72).

108. Finally, during our visit in the parliament, we were informed of specific measures aimed at the fight against corruption at parliamentary level. Following GRECO's recommendation, in October 2016, the parliamentary Rules of Procedure were amended with a view to ensuring effective transparency of the legislative process and enhancing interaction with civil society and other interested parties. The amendments introduced specific sanctions for breaches of ethical rules and established a procedure for their imposition.

109. In order to raise awareness of the ethical rules, the parliamentary Committee on Anti-Corruption, Conflicts of Interest and Parliamentary Ethics is obliged to give advisory opinions to MPs on the implementation of ethical standards of conduct. Any individual or legal person can file a complaint with the committee or report an infringement. The decisions linked to disciplinary proceedings against an MP are published in the parliamentary Public Registry. Of course, MPs are also covered by the mandate of the Anti-Corruption and Forfeiture of Assets Commission.

110. With regard to the fight against organised crime, consecutive CVM reports have noted significant progress. This was confirmed during our visits at the Ministry of the Interior where we received relevant statistical data on trafficking and smuggling. Here again, the authorities are to be commended for the establishment of a system providing transparency on the reporting of progress in organised crime. Concerning corruption in general, including at local level and borders, according to CVM and GRECO reports, Bulgaria has taken steps to address earlier recommendations.

111. According to GRECO's most recent report of July 2017, Bulgaria has implemented 12 out of 19 recommendations addressed to the authorities and noted a significant progress. The most recent CVM report also commends Bulgaria for the progress made over the last year in the field of corruption and expects that the monitoring procedure will be closed before the end of the current Commission's mandate.

112. Basing ourselves on all this information, we believe that important progress has been made in the fight against corruption in the last year. The new anti-corruption law and other improvements of the legal and administrative framework for the investigation and prosecution of corruption provide all the necessary tools to law enforcement and now it is important to show concrete results and build a solid track record. We hope that transparency and accountability, which seem now to be integrated in the work of all stakeholders, will contribute to further progress in this area.

3.4. Media

113. Bulgaria has the worst press freedom status in the European Union. In 2018, Reporters without Borders (RWB) ranked Bulgaria 111th (out of 180 countries) in the world. Countries such as Ghana, Mongolia or Kyrgyzstan are ahead of Bulgaria. The situation has been deteriorating systematically over recent years as illustrated by earlier rankings: in 2010 Bulgaria was 70th, in 2011 – 80th and in 2017 – 109th.

114. One of the main concerns and obstacles to press freedom in Bulgaria is concentration of ownership and lack of transparency. Bulgarian legislation does not provide for specific thresholds in order to prevent a high degree of ownership concentration. Insufficient data on media ownership and market shares do not allow for an accurate evaluation of the actual state of cross-media concentration in the national market.

115. According to Reporters without Borders, 80% of print media are regrouped in the New Bulgarian Media Group which is controlled by one person, politician and businessman Delyan Peevski. His newspapers are mainly pro-government. The Group is also the main stakeholder of the only press distribution company.

116. Radio and television stations need a licence from the Council of Electronic Media (CEM), an independent body with a budget approved by the parliament. Several international organisations and studies have criticised the arbitrariness of the issuing of licenses by CEM.²⁹ The appointment of members of the regulatory authority for commercial and public broadcasting is entirely political and shared between the President and the parliament. There was a lack of transparency in the appointment of the General Director of the Bulgarian National Television (BNT) and then in other appointments in lower management.³⁰

117. The existing laws against political interference in the media do not explicitly forbid politicians to own outlets. At the same time the legislation does not adequately protect independent editorial policies.

118. In its last resolution on the post-monitoring dialogue in Bulgaria adopted in 2013, the Assembly called on the authorities to adopt legislation obliging the broadcast media to disclose the names of their actual owners, as had been already the case for the print media. The relevant law was adopted on 1 November 2018. However, civil society points out that laws dealing with transparency of media ownership are not, or only partially implemented. The current system of registration does not ensure transparency as most outlets are registered under offshore companies, anonymous companies or proxies.

119. In March 2018, the Committee of Ministers adopted Resolution CM/Rec(2018)1 on media pluralism and transparency of media ownership, which updates standards to ensure a pluralist media landscape, transparency of media ownership, diversity of media content and inclusiveness in public service media. It sets standards which, we hope, Bulgaria will include in its future legislation.

120. According to the Association of European Journalists, another serious problem of the media environment in Bulgaria is State influence over media outlets, exerted through the advertising budgets of European Union operational programmes in exchange for favourable media coverage. Over the past few years, the economic crisis has reduced sales and advertising making all media more and more dependent on State support. The government's allocation of European Union funding to certain media outlets is conducted with a complete lack of transparency, without competition and without applying the law on public procurements.

121. In a television interview, a Deputy Prime Minister threatened to cut all European financing to the BTV media group and the Nova broadcasting group (the largest privately-owned TV stations in Bulgaria), accusing them of manipulating public opinion and misrepresenting the authorities' actions.³¹

122. However, the core problem is the intimidation and use of the prosecution as an instrument of pressure. Undue pressure on journalists results in self-censorship. The threats and pressure to which journalists are subjected from small, local media are of particular concern.

123. In October 2017, a lawmaker from the ruling coalition and a Deputy Prime Minister intimidated the same journalist in two separate interviews by implying that he would share the fate of his former partner, dismissed earlier that month after a series of political attacks. Protests in defence of the journalist have forced the lawmaker to resign, and the Deputy Prime Minister to make a statement, but unfortunately this is not an isolated case.

124. In recent years, there have been reported several cases of direct political interference in media. The most flagrant example was that of investigative journalist, Dilyana Gaytadzhieva, who had been directly threatened and after publishing her findings, she was made redundant without further explanation.

29. In their comments, the Bulgarian authorities argued that the criticism had been unfounded as the competition procedure envisaged by the Radio and Television Act publicly disclosed evaluation criteria and the final decisions are subject to a judicial review and constitute sufficient safeguards for transparency and fairness of the whole process.

30. The Bulgarian authorities have argued that this appointment followed a fully transparent procedure outlined in Decision No. RD-05-159/2016 of the Council of Electronic Media.

31. Freedom House, Bulgaria Country Report 2017.

125. According to a survey conducted by the Association of European Journalists (AEJ), over two thirds of the 200 Bulgarian journalists interviewed admit that most of the interference comes from politicians, and 92% indicate that interferences are common and widespread.

126. Such a situation affects the quality of public debate. It also impacts on judicial independence resulting from targeted attacks on judges in some media and difficulties in finding effective redress. More generally, a poor media environment does not privilege accountability of those in power.

127. On the other hand, we consider unfounded protests concerning another emblematic case. In September 2018, two journalists were detained for a few hours by the police. They had been trying to make a film about the burning of documents relating to corruption (misuse of European funds). The story gained international exposure. We raised this question with the Minister of Justice and the Deputy Minister of the Interior. They both assured us that the detention was a result of miscommunication; the journalists had not informed the local police of their planned presence. Otherwise, co-operation with these two journalists and the media they represented had always been very good. A representative of the Association of European Journalists whom we met later, confirmed this explanation.

128. Furthermore, violence against journalists is on the rise, such as the attack on Khristo Geshov, producer of the television programme "On Target". Another journalist Georgi Ezekiev of Zov News recorded threats that he had received; investigations have been opened in both cases. In 2017, 10 cases of intimidation were registered by the AEJ. We noted with satisfaction the reaction by Prime Minister Borissov who commented publicly that "the bullies must be punished with the full force of the law".

129. In the most recent tragic development, in October 2018, an investigative journalist, Victoria Marinova, was brutally murdered.³² On 7 December 2018, we received a letter from the Chairperson of the Bulgarian Delegation providing us with updated information on the progress of an investigation into the murder and the ongoing judicial procedure. The enforcement authorities had identified a suspect on the basis of DNA tests and other evidence as being a 21-year-old Bulgarian citizen who in the meantime had moved to Germany. The German Court granted a request for extradition. Currently, the suspect is undergoing psychiatric exams and the Court hearing will take place within four months. The Bulgarian authorities assume that the assault has a criminal basis.

130. The Bulgarian authorities should comply with provisions of Committee of Ministers Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors.

131. On a positive note, a long-standing recommendation of the Assembly concerning decriminalisation of defamation has been fulfilled and a relevant provision has been included in the Penal Code.

3.5. Electoral Code

132. The series of amendments introduced to the Electoral Code between 2014 and 2016 improved a number of concerns raised by the Venice Commission in its earlier opinions issued in 2013 and 2014. This was recognised in the most recent Venice Commission Opinion on the Electoral Code adopted in June 2017.³³ The amendments improved, *inter alia*, campaign finance provisions and their oversight, voter registration and provisions on media coverage during the campaign.

133. However, a number of issues remained unaddressed. Furthermore, certain amendments introduced between 2014 and 2016 raised some concern.

134. The Venice Commission's 2017 opinion contained the following recommendations: improving voter registration and the compilation of voter lists; reducing restrictions of suffrage rights for citizens serving prison terms regardless of the severity of the crimes committed; ensuring the right of Bulgarian citizens holding dual citizenship to stand for elections; reconsidering the restrictive conditions for election observers; harmonising various deadlines of the electoral process, including deadlines regulating complaints and appeals procedures and allowing the use of minority languages in the election campaign.

135. Furthermore, the opinion recommended that a broad public consultation process be held and any changes to the Electoral Code be introduced well in advance of elections.

32. On 8 October 2018, we issued a statement calling on the Bulgarian authorities to carry out an exhaustive inquiry and bring the perpetrators to justice.

33. Joint Opinion of the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) on amendments to the Electoral Code, CDL-AD(2017)016.

3.6. Human rights issues

3.6.1. Implementation of judgments of the European Court of Human Rights

136. Since its accession to the Council of Europe, Bulgaria has lost more than 80 cases on inhuman and degrading treatment before the European Court of Human Rights (“the Court”) including cases concerning a lack of a fair trial and some instances of torture. By comparison, the Czech Republic, which has a larger population than Bulgaria, has lost only two such cases.

137. In 2017, following the Court’s rulings, Bulgaria had to pay €641 535 in indemnities – roughly 12 times more than Germany and 15% more than the previous year.³⁴

138. Bulgaria has one of the largest shares of unimplemented Court judgments. In [Resolution 2075 \(2015\)](#) on the implementation of judgments of the European Court of Human Rights, the Assembly pointed out that it was one of nine States which had the highest number of non-implemented judgments, including certain particularly important judgments awaiting implementation for over five years and revealing structural problems.

139. Bulgaria is one of four countries (along with Turkey, Romania and Georgia) where increased supervision has been implemented, with 7% of the total number of cases placed under increased supervision. Main problems concern excessive length of judicial proceedings and the lack of an effective remedy in this regard, poor conditions of detention and ill-treatment by law-enforcement officials, expulsion of foreigners in violation of their rights for family life as well as ineffectiveness of criminal investigations.

140. According to the statistics of the Committee of Ministers on supervision of the execution of judgments, as at December 2017, as many as 207 and as at December 2018 as many as 208 cases against Bulgaria were pending before the Committee of Ministers. However, these numbers had decreased compared to the previous years.

141. In 2015, the Court identified a systemic problem concerning the effective investigation of crime in Bulgaria, based on a large number of cases reaching the Court over previous years.

142. In reaction, in 2016, the Prosecutor’s Office conducted an analysis of the existing case law on Bulgaria. It identified a number of legislative and administrative deficiencies and formulated recommendations with a view to remedying the situation. This analysis was made publicly available on the website of the Prosecutor’s Office. In 2017, it published a roadmap which included an analysis of case law on judicial review of prosecutorial decisions to terminate criminal investigations, the designation of specialised prosecutors and investigators to deal with complaints of excessive use of force by law-enforcement officers and revision of internal control within the Prosecutor’s Office.

143. Many of the identified issues were already discussed in the above chapters. In addition to possible legislative initiatives, a number of administrative measures were introduced. Training for prosecutors on effective investigations has been launched. Moreover, in June 2018, a working group was set up to explore ways to enhance co-operation between the Ministry of Justice and the Prosecutor’s Office with regard to the follow-up to future judgments of the European Court of Human Rights regarding shortcomings in the effective investigation of crimes in Bulgaria. Finally, the statistical reporting by the Prosecutor’s Office has been revised in such a way as to include cases of *ex ante* checks and pretrial proceedings with respect to alleged violence by law-enforcement officers and employees of penitentiary and detention facilities. Any rulings pronounced by the Court are to be published on the website of the Ministry of Justice with annotated comments by the Prosecutor’s Office.

144. The most recent report on the implementation of judgments of the European Court of Human Rights by the Assembly’s Committee on Legal Affairs and Human Rights,³⁵ debated in June 2017, recognised progress accomplished in Bulgaria in connection with the problem of excessive length of judicial proceedings and the lack of an effective remedy in that regard. In September 2015 and in February 2017, following measures introduced in the Bulgarian Criminal Procedure Code, the Committee of Ministers closed respectively 56 and 34 cases. Some progress has also been noted in implementing the groups of cases relating to poor conditions of detention (*Kehayov* group of cases and *Neshkov* and others pilot judgment) and to ill-treatment by law-enforcement officers (*Velikova* group) (see next sub-chapter).

34. As the Bulgarian authorities have rightly pointed out in their comments, in 2018, Germany paid €1 131 472 in indemnities while for Bulgaria the respective figure was €747 161. We agree that our comparison might have been misleading.

35. [Doc. 14340](#).

3.6.2. People in detention

145. Prison conditions in Bulgaria have been problematic with systemic police abuse and poor material conditions, as revealed by CPT reports in 2015.³⁶

146. During our last visit, we received extensive information on measures introduced to improve the situation both in prisons, which remain under responsibility of the Ministry of Justice, and in police stations administered by the Ministry of the Interior.

147. In response to criticism from the CPT, in January 2017 the parliament adopted amendments to the Law on Executing Punishments and Arrests. The changes addressed living conditions, regime, early release and judicial control over the prison administration.³⁷

148. Material conditions vary greatly between different detention centres, but, in general, some improvements have been noted. Large-scale renovations of prisons have been possible, also thanks to the Norwegian grants assigned specifically for this purpose. The current capacity of prisons in Bulgaria, based on CPT standards, is 8 500 places and there are at present 5 000 inmates. As for custodial arrest, the respective figures are 1 500 and 860. The authorities intend to build a new prison with a training centre for prison staff.

149. The European Court of Human Rights has acknowledged the significant progress made in recent years to improve prison conditions and in two recent cases the Court concluded that there had been no violation.

150. With regard to the treatment of people in police custody, according to the most recent statement of the CPT, issued in 2018, there has been a slight improvement especially as regards the severity of alleged ill-treatment since the last visit in 2015. The CPT regretted the absence of any real progress in the application of safeguards against ill-treatment, namely the right to notify one's detention to a third party, the right of access to a lawyer and to a doctor and the right to be informed about the above- mentioned rights.

3.6.3. Minority groups

151. 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 and 49 000 (0.7%) declared themselves as others (Russians, Armenians, Macedonians, Vlachs, Greeks, Ukrainians and Jews).³⁸

152. Non-governmental sources estimate that the Roma population is much higher than the official figures and oscillates around 700 000. At a meeting with a Roma representative during our visit, the number of 1 million was mentioned. We were told by the authorities that this discrepancy with the census results from the fact that many Roma identify themselves as Bulgarians or Turks.

153. Bulgaria ratified the Framework Convention for the Protection of National Minorities in 1999 and since then its implementation has been the subject of four reports of the monitoring mechanism of the Convention. The relevant structures, as well as legislative and administrative framework, have been put in place and as they were already analysed in the report of our predecessor in 2013, we will not come back to this question.

154. During our visit, we met representatives of civil society dealing with minority issues, including representatives of Roma and Macedonians. We would like to raise here several concerns which they shared with us.

155. On a more general level, we were told that racist and intolerant hate speech in political discourse continues to be a serious problem in Bulgaria. The main targets of hate speech are Roma, Muslims, Jews, Turks and Macedonians. In the last report on Bulgaria, the Assembly called on the Bulgarian authorities to 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. Regrettably, we learnt that the situation has not improved in this respect. We call again on the authorities to follow the detailed recommendations of ECRI included in its fifth monitoring cycle report on Bulgaria.³⁹

36. CPT/Inf(2015)36.

37. In their comments, the Bulgarian authorities referred to the statement by the President of the CPT made during the meeting of the Committee of Ministers on 13-15 March 2018, during which he had mentioned Bulgaria as an example of the successful reform of the penitentiary system carried out after 2014.

38. As the reply to the question about ethnicity was not obligatory in the 2011 census, 10% of respondents chose not to respond to it.

39. In their comments, the Bulgarian authorities referred to a number of measures that had been undertaken to combat hate speech and hate crimes.

156. The Roma population constitutes the most numerous minority group in Bulgaria. There is an important concentration of Roma in the north-western part of the country (approximately 300 000 people). According to our interlocutors, their situation has deteriorated over recent years. Roma representatives have been excluded from the democratic process and they are not present at any level of the decision-making process. They do not make use of any political instruments.

157. Their material and social situation is, in general, very poor. Some 200 000 families are affected by housing problems. One can speak about a parallel society – in areas inhabited by Roma, the State, its institutions and agents are invisible. This vicious circle of social exclusion and discrimination results in growing impoverishment and massive emigration. Approximately 30% to 40% of young Roma leave for other countries of the European Union, in particular Germany.

158. Our interlocutor told us that his association representing Roma is trying to establish a meaningful dialogue with the authorities and help the Roma population to take advantage of political instruments which are already in place. He recognised important progress in the area of education: approximately 90% have basic education and approximately 60% to 70 % complete secondary education. Discrimination at the labour market remains however an obstacle to further integration. He regretted that textbooks had not been updated with a view to reflecting Roma history and culture, and that Roma people are not employed as teachers.

159. The most recent incidents in the village of Gabrovo, last April, where violence against the Roma population, triggered by widely circulated footage showing men identified as Roma allegedly instigating a fight at a store, lasted for several days and resulted in 80% of Gabrovo's 600 Roma population fleeing the village, is an illustration of the problem in the country.

160. Another concern relates to the Macedonian minority, which is not recognised by the Bulgarian authorities as such due to strict application of formal criteria, although this group has repeatedly expressed its wish to benefit from the protection of the Framework Convention. As a result, there is no Macedonian representative on the Commission for Minorities. Macedonians are not included in any programmes concerning ethnic communities and do not receive any type of assistance from the State for the conservation and development of their culture and identity. There is no Macedonian language or history in schools. No Macedonian organisation or party has been registered. Our interlocutors claimed that there was discrimination against members of their community.

161. We raised all these questions with the authorities. We were told that a number of programmes, strategies and action plans had been adopted in recent years to improve the situation of the Roma, including the National Roma Integration Strategy (2012-2020). This was followed by work with regions and municipalities to create strategies specific to each region in Bulgaria. The number of Roma who had achieved a higher level of education, including university education, had increased. Initiatives such as the employment of health and labour mediators had also proved positive.

162. In its most recent resolution on the implementation of the Framework Convention in Bulgaria, adopted in 2018, the Committee of Ministers noted a number of positive developments. The Commission for Protection against Discrimination continues to deal with individual complaints of racial and ethnic discrimination under the "Protection Against Discrimination Act" and has expanded its network of regional representatives. Its annual budget has been increased.

163. A range of provisions relevant to the protection of the cultural rights of people belonging to minorities exists and the authorities are currently engaged in a welcome process of drawing up a national cultural strategy, including the promotion of cultural diversity as a specific operational objective. The authorities have issued an open invitation to NGOs to participate in this process.

164. Ten minutes of television and three hours of medium-wave radio programming in Turkish continue to be broadcast daily. Mother tongue teaching continues to be provided in Turkish, Armenian, Arabic, Greek, Hebrew and Romani. The number of pupils studying Romani has significantly increased in recent years. Textbooks and exercise books have been created with a view to promoting Romani history and folklore.

165. People belonging to minorities continue to be represented in political parties in the parliament. In regions where ethnic communities live in substantial numbers, they are also Mayors and members of locally elected bodies. The National Council for Coordination on Ethnic and Integration Issues (NCCEI), which is the main mechanism for ensuring participation of representatives of ethnic minorities through consultation and co-ordination, includes many NGOs and the authorities have indicated that they are open to including other NGOs.

166. The resolution also noted some issues of concern. No consultations or discussions have been organised by the Bulgarian authorities on the protection offered by the Framework Convention with some persons identifying themselves as belonging to national minorities, who, according to the Bulgarian authorities, do not meet certain criteria but who have repeatedly expressed an interest in the extension of the Framework Convention to them.

167. According to the official data, about 10% of the complaints received by the Commission for Protection against Discrimination concern issues relating to race or ethnicity.

168. Cases of incitement to intolerance and racism have been reported. There is still no special provision in the Criminal Code making racist motivation an aggravating circumstance.⁴⁰

3.6.4. Refugees and asylum seekers

169. Bulgaria ratified the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol in 1993. It has introduced a legislative and administrative framework with respect to reception and asylum procedures. Being at a crossroads of migratory movements along the south-eastern border of the European Union, the country experienced a sharp increase in arrivals of migrants following the conflict in Syria. In 2015 and 2016, up to 15 000 people crossed the border with Turkey compared to an average of 1 000 in the previous years.

170. Since then, the numbers of refugees and asylum seekers have considerably dropped. We were told at the Ministry of the Interior that 3 700 applications for asylum were submitted in 2017. As many as 804 people were granted refugee status and 900 subsidiary protection.⁴¹ It was partly due to the government's decision to build a temporary fence along part of its border with Turkey as well as to the deployment of 600 staff of the European Border and Coast Guard Agency (Frontex).

171. Our interlocutors from civil society complained about shortcomings in asylum and refugee policy and practices. We would like to insist on the benefits of programmes supporting whole communities receiving refugees which allows hostility towards newcomers to be eliminated and enables sustainable development. We were also told that there were not enough language courses, which hampered proper integration processes.⁴²

172. Concerns relating to asylum seekers and irregular migrants were the subject of the last visit to Bulgaria by the Commissioner for Human Rights of the Council of Europe,⁴³ who also formulated concrete recommendations with a view to improving the situation, so we will not dwell on these issues here. We refer all those interested to the Commissioner's report.

173. In their comments, the Bulgarian authorities informed us about the recent positive, in their view, developments with regard to asylum and refugee policies and practices, which concern in particular legal aid offered to asylum applicants, identification of people from vulnerable groups seeking international protection and provision of appropriate support, and social and cultural integration.

3.6.5. Women's rights

174. The question of ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention") has created a very heated debate in Bulgarian society. It was signed by Bulgaria on 21 April 2016. On 8 February 2018, prior to the ratification by the National Assembly, 75 members of the Assembly (mainly from the Socialist Group), asked the Constitutional Court for a ruling on its conformity with the Bulgarian Constitution. They claimed that the Istanbul Convention introduced concepts of "socially constructed roles", "stereotyped roles" and the term "gender", and that these opened the possibility for same-sex marriages.

40. In their comments, the Bulgarian authorities pointed out that even if there is no specific provision in the Criminal Code, Article 54 obliges judges to take into account the degree of public danger of the offence, and as practice shows, they systematically consider racist motives as an aggravating circumstance.

41. We were told that the exact number of refugees and asylum seekers is difficult to evaluate as many of those who are granted status head for other European Union countries, in particular Germany and Scandinavian countries.

42. According to the comments received from the Bulgarian authorities, the registration centres of the State Agency for Refugees organise language courses and training is provided at all times during the status determination procedure. At the same time, children are integrated into the Bulgarian education system and are provided with additional Bulgarian language courses.

43. See CommDH(2015)12.

175. In its ruling delivered on 27 July 2018, the Bulgarian Constitutional Court declared the Istanbul Convention unconstitutional. The decision was taken by 8 votes to 4. The Court pointed out that despite its undeniable positive aspects, the Convention was internally contradictory, and this contradiction created duality therein. Thus, the meaning of some of its provisions went beyond the Convention's stated purposes and its title.⁴⁴ In particular, the Court found the use of the term "women" as a subject of protection inconsistent, while at the same time the legal definitions included the term "gender".

176. At our meeting with representatives of the ruling GERB party, they insisted that they had been in favour of the ratification. In the light of the Constitutional Court's decision, they decided to draw up a set of legislative amendments to the Criminal Code and the Criminal Procedure Code as well as the Law on Execution of Penalties and Detention in Custody, reinforcing the protection of the victims of violence including domestic violence. The amendments were under preparation during our visit. While they regretted the non-ratification of the Istanbul Convention, they considered that thanks to the debate the adoption of the law on combating violence against women has become realistic.

177. The representatives of women's non-governmental organisations whom we also met during the visit had a different view on the outcome of the debate, which they saw in a much more negative way. Firstly, according to them, the debate raised a lot of emotions and false arguments and hate speech were used. It resulted in open hostility towards the lesbian, gay, bisexual and transgender (LGBT) community, and the closure of some LGBT associations.

178. Another negative consequence of the Constitutional Court's ruling will be the absence of comprehensive legislation protecting women, which is a matter of urgency in Bulgaria. At present, the situation of victims of violence is dramatic and despite all efforts of civil society, without proper State policies and funding, it will not improve. There are regions with no reception centres, where psychological and material assistance are not available.

179. Our interlocutors from civil society were quite sceptical about the prospects for adoption of a law on preventing and combating violence against women. They regretted not being associated in any way in the preparation. We were told that there were no ongoing consultations on the subject. We hope that the legislation will nevertheless be adopted. It is obviously very much needed.

180. In their comments, the Bulgarian authorities pointed out that the proposed amendments had been registered – in accordance to Article 76 of the Rules of Organisation and Procedure of the National Assembly – in the public register and on 24 October 2018 published on the official website of the Assembly with a deadline for comments until 22 November 2018. Seven NGOs had submitted their opinions. Furthermore, the amendments were discussed in the context of an inter-agency working group at the Ministry of Justice with the participation of representatives of nine NGOs and of civil society.

181. On 7 February 2019, the law amending and supplementing the Penal Code was adopted by the Bulgarian Parliament.

4. Conclusions

182. In conclusion, we recognise that Bulgaria has made substantial progress since the adoption of the last report on the post-monitoring dialogue in 2013. It has partly introduced legislation which, with several exceptions, complies with Council of Europe standards and has addressed several concerns formulated by the Assembly and other Council of Europe monitoring mechanisms. However, the question of sustainability and irreversibility of the reforms as well as efficiency of measures aimed at combating high-level corruption remain subject to proper implementation of the legislation.

183. Regrettably, due to a period of political instability between 2013 and 2016, and repeated elections, a number of reforms have been subject to hasty legislative procedure in 2016 and 2017, without proper consultation or involvement of all stakeholders. It remains to be seen whether they will bring about sustainable improvements. The present political situation marked, since February 2019, by the boycott of the parliament by the opposition Bulgarian Socialist Party may have a negative impact on progress and may weaken democratic processes in the country.

184. The Assembly notes that in order to ensure sustainability and irreversibility of reforms, some steps including, where relevant, legislative changes, still need to be undertaken.

44. Judgment No. 13 (*State Gazette* No. 65, 7 August 2018).