



ABA RULE OF LAW INITIATIVE

PROSECUTORIAL REFORM INDEX

FOR

BULGARIA

June 2010

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VOLUME II

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ISBN: 978-1-61632-049-2 (paperback)
ISBN: 978-1-61632-050-8 (PDF)

Printed in the United States of America

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740 15th Street, NW, Washington, DC 20005

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Introduction

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

The ABA embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in prosecutorial reform. There are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after working in the field on this issue for 20 years in different regions of the world, the ABA has concluded that each of the 28 factors examined herein may have a significant impact on the prosecutorial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

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

Methodology

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

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

In creating the PRI, the ABA was able to build on its experience in creating the JRI, the LPRI, and the more recent ICCPR, CEDAW, Legal Education Reform Index, and the Human Trafficking



assessment tools in a number of ways.¹ For example, the PRI borrowed the JRI's factor "scoring" mechanism and thus, as with the LPRI, was able to avoid the difficult internal debate that occurred with the creation of the JRI. In short, the JRI, the LPRI, and now the PRI employ factor-specific qualitative evaluations. Each PRI factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of that statement to that country's regulations and practices pertaining to its prosecutorial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral." Like the JRI and LPRI, the PRI foregoes any attempt to provide an overall scoring of a country's reform progress since attempts at aggregate scoring based on this approach could be counterproductive.²

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

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

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

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. The Central European and Eurasian Law Initiative [hereinafter "CEELI"] developed the CEDAW TOOL in 2001-2002 and the LEGAL EDUCATION REFORM INDEX in 2006. ICCPR stands for the United Nations ("UN") International Covenant on Civil and Political Rights. CEELI developed the ICCPR ASSESSMENT TOOL in 2003. The HUMAN TRAFFICKING ASSESSMENT TOOL is based on the UN Trafficking Protocol and was developed in 2004-2005.

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

Acknowledgements

The ABA would like to thank the team that developed the concept and design of the PRI, including the project coordinators Simon Conté, Deputy Director of the ABA Rule of Law Initiative's Research and Program Development Office, and Mary Greer, the ABA Rule of Law Initiative's Senior Criminal Law Advisor, as well as a splendid team of research assistants - Jasna Dobricik, Malika Levarlet, Lada Mirzalieva, Jaspreet Saini, and Gideon Wiginton. In addition, the ABA gratefully acknowledges the contributions made to this project by a number of valued colleagues, including Wendy Patten, Carson Clements, Olga Ruda, Andreea Vesa, and Monika Jaworska.

During the year-long development process, input and critical comments were solicited from a variety of experts on prosecutorial reform matters. In particular, the ABA would like to thank the members of its PRI Expert Working Group, who helped to revise the initial PRI structure and factors: Mark Dietrich, Barry Hancock, Christopher Lehman, Martin Schönteich, Irwin Schwartz, and Raya Boncheva, as well as those submitting written comments: Wassim Harb, Woo Jung Shim, Antonia Balkanska, and Feridan Yenisy.

Assessment Team

The 2010 Bulgaria PRI assessment was conducted in two parts. An initial assessment team was led by Simon Conté, ABA ROLI Director of Research and Assessments, with the support of American attorney and rule of law expert Carl Anderson. Following significant changes to the laws and policies surrounding the prosecutorial system, a second assessment inquiry was led by Antonia Balkanska, a Bulgarian-American attorney who also contributed to the development of the PRI methodology. ABA ROLI implemented the 2010 Bulgaria PRI in partnership with the Bulgarian Institute for Legal Initiatives (BILI). The assessment team received strong support from BILI staff in Sofia, including Bilyana Wegertseher, Hristo Ivanov, and Todor Dotchev, as well as from ABA ROLI staff in Washington, including Donna Wright, Julie Garuccio, Ellen Davis, Mary Adele Greer, and Jessie Tannenbaum. ABA ROLI also gratefully acknowledges the support of Todor Kolarov and Tom Peebles of the United States Department of Justice.

The conclusions and analysis contained within this report are based on interviews conducted in Bulgaria in December 2008 and June 2010, as well as relevant information gathered through June 2010. Records of relevant authorities and a confidential list of interviewees are on file with ABA ROLI. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this assessment.

Executive Summary

Brief Overview of the Results

The 2010 Prosecutorial Reform Index (PRI) for Bulgaria reflects the positive results of significant reform efforts that have been implemented since the first PRI was published in 2006. Despite major challenges, including an overly hierarchical structure within the Prosecution Service and reports of widespread corruption within both the prosecution and Bulgarian society generally, major improvements have been made under the leadership of Prosecutor General Boris Velchev, who took office in 2006. Prosecutors have become more accountable to the public, improved relations with other criminal justice actors, strengthened the prosecutorial professional association, made increasing efforts to uphold public integrity, and taken steps to reduce improper influence on the prosecutorial function.

As illustrated in the Table of Factor Correlations below, while in 2006 Bulgaria received only two positive correlations, in 2010 six factors receive a positive correlation. Moreover, 11 factors have demonstrated an upward trend sufficient to merit an increased correlation, either from negative to neutral or from neutral to positive. While in 2006 ten factors received a negative correlation, in 2010, only three factors receive a negative correlation; the analysis of two of these three factors (Factor 7 on Freedom from Improper Influence and Factor 14 on Public Integrity) shows significant efforts being made for reform that, if continued, are likely to result in positive change. Perhaps most significantly, no factors demonstrated a downward trend between 2006 and 2010, making clear that developments in the Bulgarian prosecutorial system over the past four years have been nothing but positive.

Positive Aspects Identified in the 2010 Bulgaria PRI

- Important progress has been made since 2006 with respect to prosecutors' ***interaction with judges, police and other investigatory agencies, and representatives of the accused***. The relationship between judges and prosecutors is generally respectful and professional, and *ex parte* communications are prohibited under the new Magistrates Ethics Code. Coordination between the Prosecution Service and the police has improved, although inadequate resources and insufficient prosecutorial supervision of investigations continues to be problematic. Prosecutors increasingly respect the rights and independence of defense attorneys and respect equality of arms, although there are reports of prosecutors inappropriately leaking case details to the media in an attempt to undermine the defense.
- The Prosecution Service also continues to effectively engage in ***international cooperation with foreign law enforcement agencies and prosecution offices***. The Prosecution Service has been praised by foreign law enforcement bodies for its quick responses to requests for legal assistance and extradition, and an increasing number of prosecutorial trainings have been conducted on international cooperation.
- Prosecutors' ***professional immunity for good-faith actions taken in their official capacity*** is well-established and continues to be respected in practice.
- The Association of Prosecutors has been transformed into an ***effective and independent professional association***. Membership has nearly doubled since 2006, and the Association has expanded its board, created various commissions to better represent the needs of prosecutors, and begun to speak for prosecutors on issues affecting their interests.
- Candidates for positions in the Prosecution Service are ***selected without discrimination based on gender, ethnicity, race, or other considerations***, and women in particular are well represented in leadership positions. At the same time, ***prosecutorial salaries and***

benefits have increased and appear sufficient to recruit and maintain a competent workforce.

- Significant improvements have been made with regard to **protection of victims' and witnesses' rights**. Recent legislative changes increase protection for victims' rights, and increased prosecutorial training on witnesses' rights has led to increasing use of existing witness protection measures. The Prosecution Service has also taken major steps to **improve public accountability for prosecutorial actions** at the initiative of the Prosecutor General, by increasing transparency and access to information both for the media and the public generally. The Prosecution Service is also now required to submit annual reports to the President and National Assembly, and the Supreme Judicial Council's oversight of the Prosecution Service has been considerably strengthened.

Major Concerns Identified in the 2010 Bulgaria PRI

- The **quality of legal education for prosecutors** continues to be a major concern in 2010. Although there are strict education and licensing requirements, Bulgarian legal education is perceived as inadequate to provide practical skills to prepare students for careers as prosecutors. The quality of instruction is reportedly uneven and overly theoretical, and coursework and practical training fail to adequately prepare graduates with the legal skills necessary for new prosecutors.
- Prosecutors continue to be subjected to **improper interference with their professional functions**. Some improvements have been noted since 2006, particularly with regard to enhanced respect for prosecutorial discretion, sanctions for corrupt prosecutors, and attention to ethical considerations, and political will for reform appears to exist at many levels. However, international observers have noted little meaningful reduction in corruption, and one study found loopholes in the structure of the Prosecution Service that are exploited to improperly influence prosecutors. Despite efforts for reform, as in 2006 improper influence from parties, attorneys, judges, governmental authorities, organized crime, and family connections remains widespread.
- **Prosecutorial efforts to uphold public integrity** remain a source of concern. Despite an increasing number of prosecutions for public corruption and an ambitious strategy for judicial reform, efforts to promote public integrity lag behind public expectations and Bulgarians continue to perceive corruption as the most serious problem facing the country. Current positive trends are seen as unsustainable without institutional reform, particularly with regard to prosecutorial supervision of investigations and the prosecution of high-profile corruption cases.
- The **poor condition of many judicial buildings** is a consistent concern among prosecutors. Although resources and infrastructure have improved overall since 2006, a majority of judicial buildings require renovation or expansion, and many prosecutors work in inadequate and unproductive work environments. The information technology available to prosecutors also needs improvement.
- Overall, despite many positive trends, interviewees frequently expressed concern that **reform efforts are tied to the current Prosecutor General and may lapse when his term expires** in 2013. In order to continue the many positive trends in prosecutorial reform, it will be necessary to broaden political and institutional will for reform among all actors in the prosecutorial system and appoint a replacement who will continue the positive efforts already underway.

Bulgaria Background

Legal Context

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

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

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

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

A **Grand National Assembly**, composed of 400 elected representatives, may be convened upon a vote of two-thirds of the National Assembly. The Grand National Assembly may create a new constitution, designate changes to the territory of the state, and pass constitutional amendments affecting the form of state structure or the form of government. Less sweeping amendments to the Constitution may be approved by a three-fourths (in certain circumstances two-thirds) vote of the National Assembly.

The **judicial branch** is composed of judges, prosecutors, and investigators, all of whom are deemed magistrates. There is a Prosecution Service at each level of the courts, and since 2009 the National Investigative Service [hereinafter NIS] and the district investigative services have been administrative components of the Prosecution Service, under the authority of the Prosecutor General. Prosecutors, who report through the prosecutorial hierarchy ultimately to the Prosecutor General, supervise and conduct investigations, bring criminal charges, oversee the enforcement of criminal and other penalties, and take part in civil and administrative cases, as required by law. Investigators, referred to as "investigating magistrates" by the national laws, conduct a limited number of investigations, as specified by the Judicial System Act, in cases of particular factual



and legal complexity; cases for crimes committed abroad, on requests for legal aid; and cases in other circumstances, as provided for by law. Most investigations are conducted by the Ministry of Interior's investigating police officers, and other police authorities, where provided for by the Criminal Procedure Code/ CRIMINAL PROCEDURE CODE, *adopted* Apr. 29, 2006, STATE GAZETTE [hereinafter SG] No. 86, *last amended* May 28, 2010, [hereinafter CRIM. PROC. CODE]. Police investigations are conducted under the guidance and supervision of the prosecutors.

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

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

History of the Prosecution Service

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

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

The **Prosecution Service** consists of the Prosecutor General, Supreme Prosecution Service of Cassation, Supreme Administrative Prosecution Service, National Investigation Service, 5 appellate prosecution services, the Military Appellate Prosecution Service, 28 district prosecution services with investigative and administrative departments, 5 military district prosecution services, and 112 regional prosecution services. Approximately 1,120 prosecutors work in the country. The Prosecution Service is a unified and centralized entity with a strict hierarchy. Each prosecutor is subordinate to the respective superior prosecutor, and ultimately to the Prosecutor General. The superior prosecutor assures adherence to law and exercises control and leadership. He may rescind decisions of his subordinate prosecutors.

The Constitution grants general authority over the judiciary, which includes prosecutors, to the SJC. This body is composed of 25 members, including the presidents of the SCC and the SAC and the Prosecutor General as *ex officio* members. Half of the remaining positions are filled by candidates elected by the National Assembly. The other half are elected by the magistrates themselves, with six chosen by the judges, four by the prosecutors, and one by the investigators.

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

By a Constitutional Amendment in February 2007 an **Inspectorate** was created within the SJC, consisting of Chief Inspector and 10 inspectors, to perform functions formerly carried out by the Inspectorate of the MOJ. The Chief Inspector is elected for 5 years, and the inspectors for 4 years, by a two-thirds majority of the members of the National Assembly. They may be re-elected to their positions for not more than two consecutive mandates. CONSTITUTION art. 132a(4). The Inspectorate is empowered to oversee judicial activities, without infringing upon the independence of the judges, prosecutors, and investigators in performing their functions. Annually, the Inspectorate presents a report on its activity to the SJC and provides the public with relevant information. The terms and the procedure of election and discharge of the Chief Inspector and the inspectors, as well as the Inspectorate's organization and activities are prescribed by the Judicial System Act, See Factor 15 below.

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

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

Conditions of Service

Qualifications

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

Appointment and Tenure

Under the recent amendments to the Judicial System Act, the SJC appoints, transfers, and promotes all prosecutors on the basis of a centralized competition that must be conducted at least twice per year for an initial appointment . The competition for an appointment on a position

of a junior prosecutor, or for an initial appointment as a prosecutor, consists of both written and oral examinations. The SJC designates 20% of the number of available positions in the Prosecution Service for occupation through a competition for initial appointment. The competitions for the positions other than those designated for an initial appointment are based on an performance evaluation. The SJC's commission on proposals and performance evaluations of judges, prosecutors, and investigators evaluates the performance of every candidate satisfying the occupational requirements for the announced open position, with the exception of candidates whose performance has been evaluated within a year before the announcement of the opening. Performance evaluations are also carried out for acquiring tenure, promotion, or transfer in position, promotion in rank, appointment as an administrative head or deputy head, or on a regular basis 5 years after a previous performance evaluation, until the prosecutor has reached 60 years of age. The performance evaluation is based on general and specific criteria. The general criteria are: number, type and complexity of files and cases; compliance with terms; number of acts confirmed and repealed and the grounds therefor; presence of easy to understand and justified reasoning for the acts; outcomes of inspections carried out by the Inspectorate at the SJC; the presence of incentives and sanctions in the period to which the performance appraisal applies; and observance of professional ethics rules for judges, prosecutors, and investigators. The specific criteria are: skills for planning and adopting a structured approach at taking action in pre-trial and trial proceedings; level of implementation of written instructions and personal orders of a higher-ranked prosecutor; ability to organise the work and to direct investigation bodies and teams involved in pre-trial proceedings. The performance evaluation of an administrative head or of a deputy of an administrative head must cover in addition an evaluation of his/her fitness to occupy a leadership position. The SJC may invite for an interview a prosecutor whose work has been evaluated. An interview with the SJC is mandatory when the evaluation is negative. The SJC carries out the ranking for every position in accordance with the results of the performance evaluations and adopts a resolution for the promotion or transfer of the prosecutors following the ranking order.

After completing five years of service (including their time, if any, as junior prosecutors) and obtaining a positive evaluation by the SJC, prosecutors are granted "irremovable" status until they resign, retire at the age of 65, or are dismissed. They may only be dismissed for serious criminal activity, persistent and actual inability to perform official duties for more than one year, a grave breach or systematic dereliction of their official duties, actions damaging the judiciary's prestige, or for assuming certain incompatible offices (such as outside business or professional activity or elective office).

Finally, constitutional amendments in 2003 provide prosecutors with functional immunity, which permits liability for personal, non-official behavior, or liability for official behavior where this behavior constitutes an intentional crime of general/public nature.. However, charges may still not be brought against a prosecutor without authorization from the SJC, and SJC's authorization is also required for detaining a prosecutor, unless the prosecutor is caught in the act of committing a grave crime.

Training

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

Those prosecutors who are appointed directly based on at least three years' service as a lawyer do not go through the NIJ initial training program and, instead, are sent directly to their assigned offices. Additionally, the NIJ also offers continuing legal education [hereinafter CLE] seminars for prosecutors and other magistrates, and the Association of Prosecutors in Bulgaria also organizes periodic trainings and seminars.

Bulgaria PRI 2010 Analysis

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

Table of Factor Correlations

Prosecutorial Reform Index Factor		Correlation 2006	Correlation 2010	Trend
I. Qualifications, Selection, and Training				
Factor 1	Legal Education	Negative	Negative	↔
Factor 2	Continuing Legal Education	Neutral	Neutral	↔
Factor 3	Selection: Recruitment, Promotion, and Transfer	Neutral	Neutral	↔
Factor 4	Selection Without Discrimination	Neutral	Positive	↑
II. Professional Freedoms and Guarantees				
Factor 5	Freedom of Expression	Neutral	Neutral	↔
Factor 6	Freedom of Professional Association	Neutral	Positive	↑
Factor 7	Freedom from Improper Influence	Negative	Negative	↔
Factor 8	Protection from Harassment and Intimidation	Neutral	Neutral	↔
Factor 9	Professional Immunity	Positive	Positive	↔
III. Prosecutorial Functions				
Factor 10	Discretionary Functions	Neutral	Neutral	↔
Factor 11	Rights of the Accused	Neutral	Neutral	↔
Factor 12	Victim Rights and Protection	Negative	Neutral	↑
Factor 13	Witness Rights and Protection	Negative	Neutral	↑
Factor 14	Public Integrity	Negative	Negative	↔
IV. Accountability and Transparency				
Factor 15	Public Accountability	Negative	Neutral	↑
Factor 16	Internal Accountability	Neutral	Neutral	↔
Factor 17	Conflicts of Interest	Neutral	Neutral	↔
Factor 18	Codes of Ethics	Neutral	Neutral	↔
Factor 19	Disciplinary Proceedings	Neutral	Neutral	↔
V. Interaction with Criminal Justice Actors				
Factor 20	Interaction with Judges	Neutral	Positive	↑
Factor 21	Interaction with Police and Other Investigative Agencies	Negative	Neutral	↑
Factor 22	Interaction with Representatives of the Accused	Negative	Neutral	↑
Factor 23	Interaction with the Public/Media	Neutral	Neutral	↔
Factor 24	International Cooperation	Positive	Positive	↔

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

I. Qualifications, Selection, and Training

Factor 1: Legal Education

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

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

Analysis/Background:

Article 162 of the Judicial System Act provides that among the requirements to be eligible for appointment as a prosecutor are “graduation in law from a higher educational establishment” and “completion of the required post-graduation work experience and attainment of licensed competence to practice law.”

Bulgaria’s Higher Education Act sets out the rights and obligations of higher education. It is the basic law on university-level education. HIGHER EDUCATION ACT, *adopted* Dec. 27, 1995, SG No. 112, *last amended* Jul. 2, 2010. It provides that higher education is the responsibility of both the Council of Ministers and the National Assembly. The Council of Ministers is specifically charged with setting the state requirements for earning degrees in the specialties of the regulated professions. *Id.* art. 9. The act also provides that the National Agency for Assessment and Accreditation [hereinafter NAAA] must conduct periodic evaluations of both institutions (universities) and their respective programs (law schools, among others) in a broad range of areas to ensure they satisfy the standards established by law. *Id.* arts. 11, 75–83 (there have been a few changes in these articles but they do not affect in general the procedure of accreditation).

Law school requirements for admission procedures, mandatory and elective courses and their minimum hours are contained in the Ordinance on the Unified State Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer,” *adopted by* COUNCIL OF MINISTERS DECREE NO. 75 *issued* Apr. 5, 1996, *last amended* Aug. 23, 2005 [hereinafter LEGAL EDUCATION ORDINANCE]. This ordinance requires the law school’s program must contain at least 10 semesters, no less than 3,500 hours of instruction, and must include 19 specified disciplines with certain minimum hours for each. Mandatory courses, which make up slightly more than half of the minimum total hours needed for graduation, usually must be taught by lecturers having the status of full or associate professor in the given subject area. At least half of the total hours of instruction must be in a lecture format. Other courses may be electives (which must include six designated topics) chosen by the law school and optional subjects.

According to Article 7(2) of the Legal Education Ordinance, among the obligatory courses having relevance to the prosecution are Constitutional Law (135 hours), Penal Law (180 hours), Penal



Procedure Law (135 hours) and European Union Law (75 hours). The Legal Education Ordinance also states that criminology and criminal execution law must be included among the elective courses offered at law faculties. *Id.* art. 9(1). However, a course of directed study in law faculties for those wishing to pursue a career in the Prosecution Service is lacking.

After the second year of study, students must participate in a practicum consisting of no less than 14 days of work in executive or judicial bodies under an MOJ coordinated program with law faculties. In a 2005 amendment to the Legal Education Ordinance, legal clinics are specifically authorized, and students participating in clinics who pass an examination may opt out of the 14-day government internship.

After completing the course work, students must pass a state written and oral examination whereupon they receive a diploma with the professional qualification of “lawyer” and a master of laws degree. *Id.* arts. 10–13. Law graduates then serve an unpaid six-month practical internship in the judiciary, followed by a final oral examination administered by the MOJ. JUDICIAL SYSTEM ACT art. 294. Upon passing the examination, one is deemed competent to practice law.

Despite these requirements, legal education is still perceived as being generally inadequate in terms of providing practical skills training that prepares students for careers as prosecutors. Respondents believe there are still too many law faculties and, more importantly, that their quality is extremely uneven, with only a few law faculties being well regarded. The low level of both students’ and professors’ performance is seen as the main reason for the poor quality of education. That some law schools lack their own professional faculties and consist of only visiting and adjunct professors is also regarded as an obstacle to a high quality education

As in the 2006 Bulgaria PRI, legal education remains extremely theoretical in nature, with no mandatory practical skills training as part of the legal curriculum. Instead, classroom instruction is mostly lecture-driven, dogmatically emphasizing theoretical knowledge and legal thinking, with little to no interaction between professors and students. See AMERICAN BAR ASSOCIATION RULE OF LAW INITIATIVE, PROSECUTORIAL REFORM INDEX FOR BULGARIA, VOLUME I (June 2006) [hereinafter 2006 BULGARIA PRI]. The lectures simply repeat the information contained in the textbooks, and the seminars mirror the lectures. Students are not required to study in advance or to be prepared to discuss the subjects during lectures. Some newer professors are attempting to incorporate more dynamic teaching methodologies into their classes, but they are reportedly a very small minority. Professors hold office hours on only an irregular basis, particularly those traveling professors who teach at multiple faculties, offering limited opportunities for students to consult with their instructors.

Specialized courses relating to criminal law issues, such as human rights or the rights of victims and witnesses, are infrequent at best, and even the hypotheticals or case studies utilized in some seminars rarely, if ever, focus on criminal law issues. Some students have access to moot court activities, trial advocacy classes, or participation in law journals, but availability is extremely uneven. Even those faculties offering such opportunities do not necessarily have the capacity to provide them to all or even a majority of their students.

Optional classes and clinics, offering training in the type of practical research and writing skills needed by future prosecutors, are reportedly in short supply. Clinical programs do exist, but they are not effectively utilized, are too short in duration, are not integrated into the overall curriculum, and are not well regarded by the “traditional” members of the law faculty.

Unfortunately, the six-month required internship following law school is also not seen as a useful mechanism for acquiring practical legal skills due to poor organization of its implementation. Internship participation at the Prosecutors’ Office is not well coordinated, and appears to be viewed as largely a burden rather than as an opportunity to impress and train prospective prosecutors. Not surprisingly, participants did not report positive experiences, and their internships with the Prosecutors’ Office were not instructional.

As reported previously in the 2006 PRI, instruction in comparative and EU law is limited, as some faculties do not have pertinent scholarly articles translated into Bulgarian due to a lack of resources for translation. These key articles or texts are simply not used in those faculties.

The 2010 Ministry of Justice’s Strategy for the Continuation of the Judicial System Reform suggests several measures to improve the quality of the legal education, such as, developing of uniform state criteria for admission to, graduation of, and examination in all the law faculties; strengthening the practical approach of the law faculties’ programs and uniformity of the mandatory subjects; requiring mandatory education on the legal profession’s ethical rules and EU laws; and encouraging the real competition between law faculties. See MOJ STRATEGY FOR THE CONTINUATION OF THE JUDICIAL SYSTEM REFORM OF 2010 at para. 3.1 [hereinafter MOJ JUDICIAL REFORM STRATEGY]. If implemented appropriately, these measures will successfully address the weaknesses of the current legal education.

Factor 2: Continuing Legal Education

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

Conclusion	Correlation: Neutral	Trend ↔
<p>The NIJ’s 6-month mandatory initial training program has led to a better prepared cadre of young prosecutors. A mentoring program is in place for new prosecutors, but the effectiveness of mentoring varies by jurisdiction. There is no mandatory CLE for prosecutors subsequent to their initial training. Voluntary CLE opportunities for prosecutors continue to be well received. The overall capacity for CLE still does not meet demand, however, the MOJ has adopted a strategy to improve CLE. Finally, CLE participation is not taken into account in promotion decisions.</p>		

Analysis/Background:

Pursuant to article 249(1) of the new Judicial System Act, the NIJ is assigned the responsibility for the “training and improvement of qualification” of both junior and regular magistrates, which includes prosecutors. The NIJ is a funded from the budget of the Judiciary entity managed by a board of four representatives from the SJC and three designees of the MOJ. *Id.* arts. 251, 252. The SJC provides “resources required for the delivery of all trainings”. Following initial appointment to the judiciary, prosecutors “shall undergo a mandatory course for the improvement of qualifications.” *Id.* art. 259. Every training program is adopted by the management board of the NIJ *Id.* art. 253(2). Amendments to the Constitution made in 2007 also require the Minister of Justice to “take part in the organization of the qualification of the judges, prosecutors and investigators.” CONSTITUTION art. 130a.

The Judicial System Act provides for the position of “junior judge (prosecutor)”, an individual otherwise qualified to be a prosecutor who is appointed on the basis of a national competition for a three-year term (which may be extended by six months). *Id.* arts. 176, 240. Junior prosecutors are assigned to a regional prosecution service, but must first undertake a six-month initial training program at the NIJ, the successor to a nongovernmental organization called the Magistrates Training Center. *Id.* art. 239. As appointed junior prosecutors, these persons receive their normal salaries and benefits during their NIJ training; they do not pay tuition for their schooling but are required to cover their own housing and meals costs. For some part of their instruction, junior prosecutors join training sessions with junior judges and investigators.



The NIJ's initial 6-month training program for junior prosecutors continues to serve as one of the highlights of prosecutorial reform in Bulgaria. Graduating its first class in 2005, the NIJ curriculum for new magistrates includes the following topics:

- Civil law
- Penal law and criminal procedure law
- Ethics and corruption
- Indictment drafting
- Court room simulations
- Media relations
- Court administration
- EU arrest warrant procedure and EU law
- Human rights and human trafficking
- Courtroom observation

Helping to offset the highly theoretical legal instruction provided in university, the NIJ initial training program strongly emphasizes the development of practical professional skills and substantive knowledge directly applicable to the work of prosecutors. While only a small number of prosecutors have graduated from the initial training program, it provides a slow but steady stream of well prepared junior prosecutors into the ranks of the Prosecution Service. A wide variety of respondents found the new junior prosecutors to be much better prepared for their duties than their predecessors, although some found that additional emphasis should be paid to developing trial skills.

Following the NIJ initial training period, a junior prosecutor generally assumes a post at a regional level prosecution service. JUDICIAL SYSTEM ACT art. 242. To assist with prosecutors' transition from the NIJ, a mentoring program is in place governed by a set of rules issued by the NIJ managing board and implemented through Prosecutor General's order. According to these rules prosecutor-mentors have been assigned to junior prosecutors in each district, and when necessary in some regional prosecution services. Prosecutor-mentors may mentor not more than three junior prosecutors at the same time. Prosecutor-correspondents on the appellate level monitor and assist the mentors. Implementation of the mentoring program is supervised and coordinated by a prosecutor-coordinator from the Supreme Cassation or Administrative Office, assisted by NIJ. Prosecutors engaged in mentoring on all levels undergo specialized training, and are entitled to additional benefits. General and specific requirements are in place for these prosecutors in order to qualify for their mentoring positions. Generally, once the three year period is completed, absent a six-month extension, the "junior" status terminates and the prosecutor assumes a regional prosecutor position. *Id.* art. 243.

Unfortunately, the mentoring program, which is the only form of training provided to both junior prosecutors as well as those prosecutors transferred in, appeared to be more effective in smaller jurisdictions, which have the capacity and time to spend for less formal guidance and hands-on training. In contrast, in Sofia it was noted that the mentorship program was of limited utility, as the higher workload of prosecutors and greater percentage of new prosecutors made it impractical to implement. However, greater systemization of the mentoring program was evident through NIJ trainings for mentors.

There is no obligation for prosecutors to take CLE courses or other measures to maintain and improve professional skills and knowledge following their initial training. However, the SJC may decide that particular courses are mandatory for magistrates, including prosecutors, in the event of promotion, appointment as administrative head, or specialization. JUDICIAL SYSTEM ACT art. 261. Based on this provision, the SJC has required a mandatory course for prosecutors and judges after promotion from a regional to a district Prosecution Service. The SJC's decision has been implemented by the NIJ starting from 2009. The program for this course's implementation has been approved by the SJC. Further, prosecutors and other members of the judiciary are

entitled to participate without charge in continuing qualification courses, and their participation is to be taken into account when they are considered for promotion. NIJ Regulation arts. 35–43 *abrogated*. The SJC’s list of 10 benchmarks for evaluation of magistrates appears to suggest the importance of continuing education, “acknowledgments, qualification and educational degrees.” SJC REGULATIONS ON THE ORGANIZATION OF THE ACTIVITIES OF NATIONAL INSTITUTE OF JUSTICE arts. 31–42, *adopted* Sep. 21, 2007, SG No. 76. However, in 2009 an SJC regulation was adopted establishing the standards and procedures for evaluation of line-level and managerial-level magistrates through a new set of criteria, general and specific, that do not include the acknowledgement of the magistrates’ enrolment in various post graduation forms of education, unless the enrolment is mandatory. REGULATION 1 OF 2009 FOR THE CRITERIA AND PROCEDURE FOR THE EVALUATION OF JUDGES, PROSECUTORS, INVESTIGATORS, ADMINISTRATIVE HEADS AND DEPUTY ADMINISTRATIVE HEADS, *adopted* Nov. 4, 2009, SJC record no. 43.

Respondents provided generally positive feedback on the increasing availability of CLE training opportunities for prosecutors, on the quality of the trainings, and on the selection of topics. CLE trainings are provided through a number of sources, principally the NIJ, but also through the Association of Prosecutors, as well as through EU and U.S. entities. With the Prosecutor General’s support and encouragement, trainings were conducted not only in Bulgaria but also abroad.

Topics for CLE trainings emphasize areas both of general utility to prosecutors, such as ethics, interaction with victims and witnesses, and legal English, as well as more specialized topics, such as money laundering, computer crime, and trafficking in persons. Respondents reported that many of the trainings seemed to be designed in response to feedback and suggestions from prosecutors themselves. In particular, NIJ’s Program Council has utilized questionnaires to help plan their CLE trainings. Importantly, trainings are conducted not just centrally in Sofia but also on a regional basis, and awareness of training opportunities has been improved through a centralized notification system.

While the quantity and scope of CLE training is encouraging, some problems were noted. The first is that, despite the resources already allocated to training activities, the capacity of the NIJ and others to conduct CLE training is still too limited, particularly in light of the numerous legislative changes that directly affect the work of prosecutors. While individual opportunities for CLE training have increased, the demand for training still appears to greatly exceed the supply.

Second, while the NIJ in particular was praised for its ability to design specific courses based on prosecutors’ feedback, there is no overall plan for CLE for prosecutors and insufficient information has been collected and analyzed for such a plan to be developed. As many respondents emphasize, currently CLE planning is not based on an analysis of overall needs. Identification of needs for additional prosecutorial skills, based on an analysis of scientifically and statistically proven criminological tendencies is missing. In this regard, restoration of the criminological institute, formerly functioning as a department of the Prosecution Service, is considered a necessary step toward improved CLE’s overall quality.

Additionally, the work of the NIJ is complicated by the lack of a permanent cadre of full-time trainers. The NIJ operates with a limited training staff and - must rely for many courses on part-time trainers. The limited influence in the selection of the latter leads to a delay in the speed with which new courses can be planned and implemented. In addition, there was some concern as to the continuing lack of coordination between the various training providers, particularly with the Association of Prosecutors. In contrast, respondents express satisfaction from the successful coordination of effort which has been maintained in the process of implementation of the decentralized Training on Prosecutorial and Judicial Cooperation within EU offered by the U.S. Department of Justice (DOJ), OPDAT, in collaboration with the Prosecution Service and the NIJ. Between November 2008 and May 2009, Prosecution Service, DOJ/OPDAT and its partners organized 21 separate training sessions for 436 Bulgarian prosecutors. The trainings delivered NIJ-certified and approved training in regional venues, outside the NIJ, and have a potential to

reach every prosecutor in Bulgaria at a fraction of the cost of delivering the same training at the NIJ. Respondents from the Prosecution Service consider this form of CLE very successful and efficient and recommend that this decentralized model be utilized for delivering additional CLE training to prosecutors. .

Next, it is still unclear under what procedure and according to what criteria the trainers are retained. Most respondents express concern about the lack of publicity in the announced procedures and criteria for selection of training staff, which prevents NIJ from recruiting the best qualified experts and professionals in the field. Further, these often result in unsatisfying CLE quality. Regulatory or legislative guidelines for the recruitment procedures for NIJ training staff is recommended.

The 2010 MOJ Strategy for the Continuation of the Judicial System Reform addresses some weaknesses of the CLE currently provided by NIJ. A number of measures are proposed in this respect, such as developing of objective criteria for the evaluation of the quality of education; establishing of a flexible mechanism of the educational needs' identifying; strengthening of CLE's practical approach; building of a legal research capacity of the NIJ, etc. See MOJ JUDICIAL REFORM STRATEGY para. 2.7. Most of the respondents are hopeful that these measures will further improve the CLE for prosecutors.

Finally, while the external methods of CLE have proven effective and are well accepted by prosecutors, this does not relieve the Prosecution Service of the obligation to maintain an overall mechanism for improving its staff qualification and coordinate all ongoing educational activities in this regard. Respondents emphasize that CLE by external providers should be applied where the Prosecution Service is lacking internal resource. This is because of the fact that the best teachable tool is day-to-day practice and the best teacher is the experienced prosecutor. The Prosecution Service's resource of highly qualified prosecutors should be mobilized to provide education on daily basis, not only to the young and new prosecutors, but to all those lacking sufficient qualification and skills. A mechanism for identifying those lacking competence and ensuring that more resources are allocated to their training and education should be in place. A package of benefits and other forms of incentives should be developed to encourage prosecutors to maintain high professional standards. Accountability for incompetence and sanctions to those rejecting education and performing poorly prosecutorial duties need to be imposed. An evaluation of the Prosecution Service's overall demand for particular training should be maintained on a regular basis to further determine the planning of corresponding CLE activities. This approach will also deal with situations of overlapping, or excessive trainings that were noted by some of the respondents.

Reportedly, a concept for an overall Prosecution Service's CLE policy has not been developed, and a comprehensive mechanism for such policy's implementation is not in place. The mentoring program following initial appointment, although limited only to new prosecutors and not always diligently implemented, represents a major step of the Prosecution Service towards assuming ownership over its overall staff improvement. However, appropriate forms and tools have to be further developed to extend the ownership to CLE activities for the rest of the prosecutors. An order of the Prosecutor General of May 22, 2008 seems to be a step in this direction, establishing a registry of all ongoing external and internal CLE activities maintained by the Administrative department of the Prosecution Service. (See Prosecutor General's Order no. 1774, May 22, 2008). However, the register does not appear to go beyond monitoring and coordination of prosecutors' participation. In conclusion, positive steps have been made by the Prosecution Service toward assuming ownership of the CLE process. However most of them have been sporadic, segmented, and limited to specific groups of prosecutors.

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

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

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

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

Analysis/Background:

Article 129(1) of the Constitution states that prosecutors and other magistrates shall be appointed by the SJC. Article 130a gives the minister of justice power to make proposals for appointment of prosecutors and magistrates. To be eligible for appointment as a prosecutor, an individual must be a Bulgarian citizen with no other citizenship with the following qualifications:

- Has a higher education in the specialty area of law,
- Has undergone the internship herein provided for and obtained legal competency,
- Has the required standard of ethics and professionalism, in compliance with the Code of Ethics for judges, prosecutors and investigators. See SJC record 21 (May 20, 2009).
- Has not been sentenced to imprisonment for a deliberate criminal offence, notwithstanding rehabilitation,
- Is not an elected member of the SJC who has been relieved from office on disciplinary grounds due to impairing the prestige of the judiciary;
- Does not suffer from a mental illness.

See JUDICIAL SYSTEM ACT art. 162.

As described in Factor 2 above, nearly all prosecutors are first appointed as junior prosecutors following a competition. *Id.* arts. 162, 176, 177, 179–183, 184–186. According to a new amendment to the SJA, upon proposal of the judicial system's administrative heads for each upcoming year, the SJC identifies the available positions for junior prosecutors, which may not be transformed into positions for prosecutors after the announcement of the competition, or when vacated. The SJC is required to designate, by lottery, 20 percent of the number of available positions on each level in the Prosecution Service to be filled through a competition for initial appointment. *Id.* arts. 177–178.

The competition for initial appointments is announced by the SJC and advertised in the SG, specifying the number, type, and location of open positions, as well as the date, time, and place of the competition. The SJC selects a separate five-person (and two reserve members) competition committee for each branch of the magistracy. At least one of its members has to be a law professor. The competition committee conducts the competition with the support of the SJC administration. *Id.* art. 183; see also *Ordinance No. 1 on the Procedure and Organization of*

Contests for Appointment, Promotion and Transfer of Judges, Prosecutors and Investigators, section III, adopted Dec. 19, 2007, SG no. 2, amended Feb. 22, 2008 [hereinafter SJC ORDINANCE NO. 1]. The first part of the competition consists of a four hour written examination on a mock case, which is graded anonymously on a six-point scale. Two independent assessors grade the examination. If there is a difference of more than one point, a third assessor is appointed to determine the final grade. To proceed to the oral component of the examination one must receive a score of at least 4.5.

In the oral component three legal topics are discussed. Candidates also speak about their professional and personal attributes. Scoring is conducted by all committee members using the same six-point scale. Scores from both components are calculated and candidates are then ranked by their total scores for the position for which they have applied. Ties are broken by recourse to the candidates' law school grade point averages and state examination marks. The SJC appoints candidates based on their rank. Unsuccessful competitors may challenge the results before the SJC on grounds of legality and appeal the SJC's decision to the SAC. JUDICIAL SYSTEM ACT art. 187. As described in Factor 2, the newly appointed junior prosecutors are then assigned to the NIJ's six-month initial training program.

According to the new amendments to the Judicial System Act, the competition for other than initial appointments (promotions and transfers) is based on performance evaluation. *Id.* arts. 189–209a. The SJC's Commission on Proposals and Performance Evaluations of Judges, Prosecutors, and Investigators, assisted by performance evaluation commissions in the relevant superior prosecution services, evaluates the performance of every candidate. In this way it satisfies the requirements for the announced open position, with the exception of candidates whose performance has been evaluated a year before the announcement of the opening. As part of the ongoing evaluations, the SJC's Commission may undertake inspections for additional data collection.

The performance evaluation by all commissions is based on general and specific criteria and is carried out in accordance with SJC Ordinance No. 1. The general criteria for the performance evaluation are: number, type and complexity of files and cases; compliance with terms; number of acts confirmed and repealed, and on what grounds; presence of easy to understand and justified reasoning for the acts; outcomes of inspections carried out by the Inspectorate at the SJC; presence of incentives and sanctions in the period to which the performance appraisal refers; and observation of professional ethics rules. The specific criteria are: skills for planning and adopting a structured approach at taking action in pre-trial and trial proceedings; level of implementation of written instructions and personal orders of a higher-standing prosecutor; ability to organize the work and to direct investigation bodies and teams involved in pre-trial proceedings. The performance evaluation of an administrative head or a deputy administrative head must consist additionally of an evaluation of his/her fitness to occupy a leadership position. The SJC may request an interview with the prosecutor being evaluated. The interview with the SJC is mandatory when the evaluation is negative. The SJC carries out the ranking for every position in accordance with the results of the performance evaluations and adopts a resolution for the promotion or transfer of the prosecutors following the ranking order until filling the vacancies, after three rankings in a row.

The 2006 Bulgaria PRI reflected both the hopes and concerns for the new national competition process that had then only recently been adopted. While some respondents were pleased to see the previous selection practices, reportedly rife with nepotism and bias, replaced with more objective standards, others feared the procedures would be too unwieldy and time-consuming. The assessment team for this report found the subsequent implementation of the new appointment regime substantiates both viewpoints. On one hand, the standardized selection criteria greatly enhanced the objectivity of prosecutorial appointments, with little to no complaints of the favoritism and bias that existed previously. However, this objectivity seemed to be achieved at the cost of both efficiency, and a more reasonable degree of subjectivity in terms of taking into account work history, input from prior supervisors, and hiring managers' particular needs.

The 2009 Judicial System Act's amendments to the appointment regime seem to improve its efficiency and to deal successfully with the necessary balancing between objective and subjective criteria. While keeping the objectivity of the overall appointment process, the amendments relax the procedure for promotions/transfers by replacing the examination process in these cases with an evaluation of previous performance. The evaluation process involves a reasonable degree of subjectivism into the appointment procedure enabling the assisting evaluation commissions in the relevant superior prosecution services, when specifically authorized by the SJC's Commission, to inspect the work performance of the candidates from the lower level. The assisting commissions' obligation to inspect based on prescribed general and specific criteria, the procedure for their members' selection, and the leading role of the SJC's Commission to which the inspection reports are submitted for final consideration. While the balancing of objectivity and subjectivity seems to have been improved by the 2009 Judicial System Act's amendments, additional input is needed to avoid excessive formalism and excessively time consuming procedures.

With the above in mind, it seems that the national selection competitions are a marked improvement over prior practices, something that even the most critical respondents seem to recognize. Also, interviewees expressed positive opinions regarding the MOJ's 2010 suggestion to publicize all the procedures for magistrates' appointment and transfer, and all the hearings of SJC candidates and applicants for administrative judicial heads. See MOJ JUDICIAL REFORM STRATEGY para. 3.2. The July 2010 report of the European Commission on Bulgaria's progress views the Strategy's proposed measures for human resources development in the judiciary as promising as well. See EUROPEAN COMMISSION, REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL UNDER THE CO-OPERATION AND VERIFICATION MECHANISM OF THE EUROPEAN UNION 4 (Jul 20, 2010) [hereinafter 2010 EUROPEAN COMMISSION REPORT].

Factor 4: Selection Without Discrimination

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

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

Analysis/Background:

Article 6 of the Constitution provides that “[a]ll citizens shall be equal before the law. Abridgement of neither rights nor any privileges shall be permitted on the basis of race, nationality, ethnic identity, sex, origin, religion, education, beliefs, political affiliation, personal and social status, or property status.” According to art. 8 of the new Judicial System Act the laws are applied with “precision and uniformity” to all persons and with “no limitation of rights or any privileges based on race, nationality, ethnicity, sex, origin, religion, education, convictions, political affiliation, personal or social status or patrimony”. The Protection against Discrimination Act bans, *inter alia*, direct or indirect gender and ethnic discrimination, requires equal standards of evaluation, promotion and access to training, and encourages hiring aimed at balancing workforces by gender and ethnicity.



PROTECTION AGAINST DISCRIMINATION ACT arts. 4, 14, 15, 24, *adopted* Sep. 30, 2003, SG no. 86, *last amended* Dec. 29, 2009.. For all magistrates, performance evaluation must “guarantee equal possibilities for career development... based on the principles of rule of law, equity, objectivity and transparency.” SJC ORDINANCE No. 1 art. 6.

As reported in the 2006 Bulgaria PRI, the 2001 census (which is the most recent) indicated that 9.4% of the Bulgarian population identified themselves as ethnic Turks, while another 4.7% declared themselves Roma. See National Statistical Institute, *Population at 1/3/01 by Districts and Ethnic Groups*, available at <http://www.nsi.bg/Census/Ethnos.htm>. While respondents reported the presence of a few ethnic minorities, such as Roma, Turkish, Jewish, or Armenian, within the Prosecution Service, the Office of the Prosecutor General does not maintain statistics regarding ethnic minorities, as the gathering of such statistics would be deemed discriminatory. The selection criteria for appointment in the Prosecution Service are based solely on merit. While being an equal opportunity employer, the Prosecution Service does not appear to have specific programs to encourage the recruitment of ethnic minorities, and most respondents reacted negatively to “positive discrimination,” or affirmative action-type rules. Interviewees believed that the presence of solid guarantees to prevent discrimination against minorities is evidenced by the non-discriminatory selection criteria for appointment in the Prosecution Service, coupled with a long history of affirmative action for minorities in the Bulgarian overall educational system. It was also noted that there are ethnic minority prosecutors as well as magistrates who hold managerial positions.

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

II. Professional Freedoms and Guarantees

Factor 5: Freedom of Expression

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

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

Analysis/Background:

While Article 39 of the Constitution provides all citizens with the right to freedom of expression, it also notes that such a right cannot be used to the detriment of the rights of others. More specifically, Section V of the Judicial System Act contains several restrictions on prosecutors' freedom of expression. Article 211(2) states that prosecutors "[s]hall be obliged to keep as official secret the information learned by them in relation to their duties and concerns the interests of the citizens, the legal persons and the state." Additionally, article 212 not only restricts prosecutors from expressing "preliminary opinion" on cases before them, but also on cases not assigned to them. Taken together, prosecutors are almost completely proscribed from making public statements on any active cases. In addition to the above restrictions, article 213 of the Judicial System Act forbids prosecutors from providing legal advice.

Prosecutors in Bulgaria are also restricted from engaging in political activities, and are expected to be "politically neutral." JUDICIAL SYSTEM ACT art. 6. As magistrates, prosecutors may not be members of political parties, organizations, movements or coalitions pursuing political objectives, and may not engage in any political activities. POLITICAL PARTIES ACT, *adopted* Apr. 1, 2005, SG no. 28, *last amended* Jan. 23, 2009. However, prosecutors may attend political meetings and events so long as they do not participate.

Although international standards provide for freedom of expression for prosecutors,³ it is commonly accepted that the duty of reserve places considerable restrictions on public statements by prosecutors regarding active cases. As such, the statutory provisions restricting prosecutors' freedom of expression are guiding. While interaction with the media is explored more fully in Factor 24, it is difficult to reconcile the statutory restrictions with the Prosecution Service's greatly enhanced relations with the media, which was referenced by numerous interviewees. The conceptual underpinning for this development can be found in the Media Strategy of the Office of the Prosecutor General, which establishes a comprehensive plan for enhancing the relationship between the Prosecution Service and the media. While this relationship is discussed more fully in Factor 23, the Prosecutor General seems genuinely committed to utilizing the media as a mechanism for increased transparency and accountability.

³ See GUIDELINES ON THE ROLE OF PROSECUTORS, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September, 1990, Guideline 8, and COUNCIL OF EUROPE COMMITTEE OF MINISTERS, RECOMMENDATION REC(2000)19 ON THE ROLE OF PUBLIC PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM, Principle 6.

While media access to the activities of the Prosecution Service can be extremely helpful in increasing transparency, in some cases it was reported that information released by Prosecution Service spokespersons sought to cast defendants in an extremely negative light and publicly denigrated defendants. In a recent such case, a prosecutor’s inappropriate statement was quickly followed by a public admonishment by the Prosecutor General, followed by a disciplinary procedure in front of the SJC and a punishment. Such general practices would seem to violate the duty of prosecutors under the Judicial System Act not to release sensitive information on active cases. Steps have reportedly been taken to ensure that public statements by prosecutors on active cases are appropriate, and the Prosecution Service will hopefully find a balance between ensuring greater transparency and protecting information that may undermine a defendant’s ability to receive a fair trial.

Factor 6: Freedom of Professional Association

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

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

Conclusion	Correlation: Positive	Trend ↑
<p>The Association of Prosecutors has made significant contributions to the prosecutorial profession, although its independence was tested in the past due to constant attempts at interference from the former Prosecutor General. Over the last several years the Association has successfully been transformed into an independent and effective association, largely based on an internal review and input from prosecutors. The Association’s membership has nearly doubled since 2006, its Board has been expanded, various commissions have been created to better represent the interests of prosecutors, and the Association has started to serve as the voice for prosecutors on issues affecting their interests. Although prosecutors are free not to join a professional association or to join another association, the only other prosecutorial association, the National Union of Bulgarian Prosecutors, exists only nominally.</p>		

Analysis/Background:

Article 44 of the Constitution guarantees to citizens “the right to freedom of association.” Particularly, “judges, prosecutors and investigators may form and participate in organizations, protecting their professional interests.” JUDICIAL SYSTEM ACT art. 217(1). However, such organizations “may not participate in federations and confederations of syndicate organizations of employees.” JUDICIAL SYSTEM ACT art. 217(2). Additionally, Article 195(4) of the Judicial System Act prohibits magistrates from receiving remuneration from “state, municipal or public organizations, companies, co-operations, non-profit legal persons, natural persons, or sole entrepreneurs...” This may unintentionally prohibit prosecutors from serving on the governing boards of non-governmental organizations that are not strictly professional associations.

Founded in 1997, the Association of Prosecutors in Bulgaria [hereinafter Association] has cemented its role as the national organization representing prosecutors, and has made remarkable progress under new leadership. Previously, the Association suffered from the perception of being under the influence of the former Prosecutor General, who reportedly interfered with the operations of the Association to advance political and personal interests.

Relieved from this pressure after the change in the leadership of the Prosecution Service, the Association quickly established itself as an independent voice for prosecutors.

Acknowledging its overall lack of credibility with rank-and-file prosecutors, the Association reorganized its Board to include representatives from more regions throughout the country, and is pursuing the creation of regional associations to better serve the interests of all prosecutors. Part of the Associations' strategy was the evaluation of the needs of the members and to request their input, expectations, and suggestions for new activities through the distribution and collection of data through the distribution of a questionnaire. Additionally, the Association created four commissions to better focus its activities and to serve as mechanisms for encouraging involvement.

Various Commissions were created through a decision of the Board. The first of these, the Outreach Commission, publishes a quarterly bulletin with information and articles relating to issues affecting Bulgaria's prosecutors. Additionally, a new Association website has been created on an independent server, where copies of the Bulletin and other documents are archived and available for download, as well as information on Association activities and members. A chat forum has also been started.

The Education and Qualification Commission was created at the end of 2007. It assessed the needs for training among the prosecutors at different levels and regions. It reportedly hosted two seminars in cooperation with NIJ and established an educational academy. The academy is divided into a spring and an autumn session, with each one lasting for one week. The first session of the Academy took place in the autumn of 2008 and was dedicated to tax crimes. Additional seminars are planned, focusing on topics not currently offered by NIJ.

Building on its earlier efforts in helping to create the Rules of Professional Ethics for Prosecutors [hereinafter PROSECUTORIAL ETHICS RULES], the Association's Ethics Commission has been actively involved in reviewing the draft unified ethics rules for all magistrates, including prosecutors, which is being formulated by the SJC.

Finally, a Social Activities Commission was created to help highlight and address social concerns, such as the availability of housing, access to medical care, and retirement conditions for prosecutors. Additionally, the Association has enhanced its image by providing financial assistance to several prosecutors, including one prosecutor who gave birth to twins and another who required medical treatment. It is also considering the creation of a "Prosecutor of the Year" award to help recognize worthy members and highlight their contributions for the public.

The Association's efforts to engage its members and create activities responding to their needs have greatly improved its reputation. Numerous interviewees credited the Association with being more active, independent, and responsive. Many interviewees who identified themselves as members of the Association had joined within the past two years, reflecting that membership has increased from approximately 400 to 750, nearly doubling since 2006, which now constitutes approximately 44% of the active prosecutors in Bulgaria. Reportedly, an externally funded pilot project for full-time executive office assistance had a major role in these positive developments, though it is uncertain whether national funding will be available to continue these efforts. Also, better coordination of educational activities is recommended by some respondents.

The Association receives no governmental funding and relies entirely on its membership dues for financing. Although the Association coordinates with the Prosecutor General, where applicable, and received office space in the Palace of Justice, it now appears to be an independent organization with no external influence from the prosecution leadership. The Association has worked to protect prosecutors' interests and independence in conflict situations on multiple occasions, more recently by publicly addressing the government's failure to submit funds for the magistrates' benefits at the end of 2009, and the SJC's reaction to the allegations for corruption practices in the appointment of judicial administrative heads.

Overall, the Association appears to have successfully transformed its image from one of an organization perceived to be under the influence of the former Prosecutor General to one that is responsive to the needs of Bulgaria’s prosecutors. Its efforts are impressive, but the challenge is to build upon the initial success and establish a strong voice for prosecutors’ interests. While additional effort to strengthen the efficiency of the Association’s work is needed, its independence is not longer questioned. The independence of the prosecutors to choose a professional organization is not disputed either, although the National Union of Bulgarian Prosecutors, as an alternative of the Association, still exists only nominally. The fact that the Union has been dormant is regarded as evidence of the Association’s independence and prosecutors’ support of the Association’s activity.

Factor 7: Freedom from Improper Influence

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

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

Analysis/Background:

Numerous legislative sources protect the independence of prosecutors to perform their duties without improper interference from prosecutorial and non-prosecutorial authorities. The primary guarantee of this principle is found in the Constitution, which states that “the judiciary shall be independent. In the performance of the functions thereof, all judges, jurors, prosecutors and investigators shall be subservient only to the law.” *Id.* art. 117(2). The Constitution also helps to ensure prosecutorial independence by providing that the SJC’s decisions to select, promote, transfer, demote, or dismiss magistrates, including prosecutors, are taken by secret ballot. CONSTITUTION, art. 131. Theoretically, this should allow SJC members to vote their conscience, instead of being pressured to vote a certain way to please one party or another, although some respondents suggest this to be also a veil preventing accountability and transparency of the SJC’s work. However, it should also be noted that the Constitution grants the Minister of Justice with significant powers over magistrates, including the power to propose the “appointment, elevation, demotion, transfer and dismissal of judges, prosecutors and investigators.” CONSTITUTION, art. 130a(3).

Provisions protecting the independence of prosecutors are found throughout various statutes, including the Judicial System Act, which specifies that prosecutors must base their decisions upon the Constitution, “[o]n the law, and on the evidence....” Judicial System Act arts. 2 and 3. Additionally, Article 4 of the Judicial System Act provides that prosecutors must make their decisions impartially. One finds similar provisions in the Criminal Procedure Code, which obliges prosecutors to secure the objective truth (*see* art. 13) and to base their decisions upon their inner conviction (*see* art. 14). *See also* CRIM. PROC. CODE arts. 10, 18.

Other laws provide the basis for combating prosecutorial corruption. For example, the Criminal Code states that a person who “entices an official of...the judicial authorities to violate his official duty in connection with the administration of justice shall be punished by deprivation of liberty for up to from one to six years.” CRIMINAL CODE art. 289. From the other side, the “official who accepts a gift or any other undue benefit, or accepts a proposal or a promise for a gift or benefit, in order to perform or fail to perform an act connected with his service, or because he has performed or failed to perform such an act, shall be punished for bribery by deprivation of liberty for one to six years.” *Id.* art. 301. Further, for bribery committed by a “person holding a responsible official position, including that of a prosecutor,...the punishment shall be...deprivation of liberty for three to ten years, fine of up to 20,000 leva” (USD 12,315),⁴ and other penalties. *Id.* art. 302.1; *see also* CRIMINAL CODE art. 304a.

The ABA’s initial prosecutorial assessment for Bulgaria found that the Prosecution Service was widely perceived to be vulnerable to corruption and external influence, stemming from political and economic interests, from organized crime, and also from social connections amongst friends and family. *See* 2006 BULGARIA PRI at 19–21. The background of this finding is best described by recent quantitative assessments, which reveal that perceptions of corruption within Bulgaria overall and, in particular, in the judicial and prosecution functions remain quite high. For example, Transparency International’s CORRUPTION PERCEPTIONS INDEX [hereinafter CPI] is a composite index that draws from multiple sources assessing expert opinions of corruption over a two-year period. *See* TRANSPARENCY INTERNATIONAL AND UNIVERSITY OF PASSAU, THE METHODOLOGY OF THE CORRUPTION PERCEPTIONS INDEX 2007 (Sep. 2007). The 2007 CPI gave Bulgaria a score of 4.1 out of 10, which ranked second-last in the EU and Western Europe region, or 64th out of 180 countries. In 2008, however, Bulgaria’s score on the CPI dropped to 3.6, ranking last in the EU and Western Europe region and dropping to 72nd out of 180 countries. The 2009 score of 3.8 and an increase to 71st position out of 180 countries seems to show little progress. However, this result is encouraging and seems to reflect a positive tendency in the perceptions of the overall level of corruption within Bulgaria, according to Transparency International, due to the many indictments for corruption crimes during the first several months of the new Bulgarian government and the resulting removal of the ban on EU funds. While acknowledging the positive developments, Transparency International emphasizes that a reform to combat political corruption and organized crime is still needed. *See* TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2009 2–3.

Of greater concern is Transparency International’s GLOBAL CORRUPTION BAROMETER, which includes a breakdown of public perceptions of corruption within various sectors and institutions. In the 2007 report (*See* GLOBAL CORRUPTION BAROMETER, TRANSPARENCY INTERNATIONAL 2007), the legal system and judiciary received a score of 4.2 out of 5, with 1 representing no corruption and 5 representing extremely corrupt. *Id.* at 22. Of the 14 sectors surveyed, only political parties received such a high score, making them the two most corrupt sectors within Bulgaria, at least in terms of public perception. Additionally, 72% of respondents rated government efforts at fighting corruption as ineffective. *Id.* at 24. In the 2009 report, the legal system and judiciary are ranked as the Bulgarian institutions most affected by corruption. *See* TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION BAROMETER 2009 at 2. The scoring of the legal system and judiciary worsened, and is now rated 4.5. *Id.* While the increased perception of corruption in this sector is of great concern, it is important to emphasize that the Barometer’s respondents, when asked about their own experience engaging in corruption, report bribing the police almost twice more often than actors within the legal system and judiciary. Nineteen percent of respondents report bribing the police, compared to 10% who report bribing representatives of the legal system and judiciary.

⁴ In this report, Bulgarian lev (BGN) are converted to United States dollars (USD) at the rate of conversion at the time the interviews for this assessment were conducted (USD 1.00 = BGN 1.62)

Interviewees gave mixed reviews to developments since 2006. While many credited the Prosecutor General with a genuine desire to root out corruption within the Prosecution Service and to protect the independence of prosecutors from improper influence, some interviewees observed that not enough had changed, and that the culture of corruption and improper influence was still not forgotten. Other respondents, both within and outside the Prosecution Service, believed that the Prosecutor General's efforts had led to a significant decrease in prosecutorial corruption and improper influence. In particular, those respondents with a more positive view asserted that bribery was no longer an effective means for obtaining a favorable decision, either for or against a defendant. Unlike the past, when one could easily find attorneys acting as intermediaries between prosecutors and defense attorneys, external influence of a strictly transaction nature has, reportedly, greatly diminished.

However, an observation of the 2010 study by Center for the Study of Democracy, commissioned by the European Commission to examine the links between organized crime and corruption, concluded that the practice of direct bribery through cash transactions or other material assets diminished only due to a change in the model of interdependence between prosecutors and organized crime. See CENTER FOR THE STUDY OF DEMOCRACY, EXAMINING THE LINKS BETWEEN ORGANIZED CRIME AND CORRUPTION (2010), available at <http://www.csd.bg/fileSrc.php?id=20216> [hereinafter CSD Report]. The study on the Bulgarian situation reveals that under the new model the allegedly corrupt prosecutors "have become part of business networks and invest at local or national level and then are helped to earn maximum income from their capital. While prevented from openly operating the accumulated capital, they manage to benefit through relatives or other close connections." *Id.* 215–216. Cases recently investigated regarding senior magistrates (including prosecutors) acquiring valuable real estate officially owned by close relatives seems to prove this study's observation. Another important observation of the same study is related to the strictly hierarchical structure of the Bulgarian prosecution, coupled with extensive power ultimately concentrated in the Prosecutor General. Gaining control solely over the Prosecutor General may enable organized crime to operate through the entire Prosecution Service and cause serious disturbances in the judicial system. The study refers in this regard to practices associated with two former Prosecutor Generals. In contrast, the current prosecution leadership is regarded as attempting to change these practices. However, "despite changes at the top level of the institution and the sharp increase in prosecutors' salaries in the past 3-4 years, old ties with organized crime, in particular at the local level, are still preserved," the study concludes. *Id.*

In light of these observations, it is necessary that prosecutorial anti-corruption safeguards be designed to protect the system from improper influence, regardless of the prosecutor general's personal characteristics. Otherwise the Prosecution Service will remain vulnerable to organized crime influence through prosecutor general's replacement. In terms of safeguards, some respondents suggest that limiting prosecutorial powers may protect societal interest from abuse by corrupt prosecutors. Others remind that the several legislative changes aimed at prosecutorial competences' limitation have only weakened the Prosecution Service's ability to combat crime. Instead, improving mechanisms for prosecutors' accountability is viewed as the most effective means to prevent corruption and prosecutors' vulnerability to improper influence.

The Prosecutor General faces a daunting task in combating many years of improper influence in the Prosecution Service. As an outspoken proponent of prosecutorial independence, and by inviting greater accountability and transparency, he has raised expectations for changing what many perceived to be a corrupt institution. While he has demonstrated a willingness to pursue charges against corrupt prosecutors or refer them to the SJC for disciplinary charges, interviews revealed that the public expects further steps.

Certain structural changes provide encouraging signs that prosecutors engaging in corruption will be held accountable. The SJC has been transformed into a permanent, full-time body with an independent Inspectorate, with responsibility for investigating complaints against magistrates and recommending disciplinary action. See *generally* JUDICIAL SYSTEM ACT ch. 3. Almost simultaneously, the Prosecutor General reformed the Prosecutorial Inspectorate and focused it

on corruption by magistrates, increasing its staff from 3 prosecutors to 11. The additional capacity of both the SJC Inspectorate and the Prosecutorial Inspectorate will hopefully lead to greater accountability of prosecutors and, correspondingly, decreased corruption and influence from external sources. Enhanced respect and protections for prosecutorial discretion (see Factor 10 on Discretionary Functions below), as well as measures to increase training in and enforcement of ethical standards and conflicts of interest rules (see generally Section IV on Accountability and Transparency below) offer hope that external influences on the prosecutors will start to diminish.

Furthermore, in June 2010 the Bulgarian government adopted a new strategy for the continuation of judicial reform, which is viewed by the European Commission as a substantial and promising step in addressing “the current shortcomings” in judicial practice, including improper influence and particularly corruption in judiciary. In the July 2010 Report of the European Commission on Bulgaria’s Progress, this strategy, together with recently drafted amendments to the Judicial System Act, are considered to demonstrate “political determination to achieve a profound reform of the judiciary”. The 2009 National Anti-Corruption Strategy is also cited as promising in this regard. However, as noted by the Commission, its implementation has not yet been started. See 2010 EUROPEAN COMMISSION REPORT 3, 6, 7.

Strong political will coupled with the Prosecution Services’ dedication to fighting corrupt prosecutorial practices are very encouraging and promise to lead a successful anti-corruption reform. However, as noted in the 2006 PRI, this is likely to be a lengthy battle, requiring not just institutional measures, but also a wholesale shift in the attitudes and expectations of both prosecutors and the public.

Finally, concerns were expressed with regard to a number of recent police raids on organized crime and organized crime’s potential for political influence on prosecutors. While close supervision of police action by prosecutors is generally regarded as a positive development, biased comments and conduct of some prosecutors during that action are viewed as a sign that prosecution has been improperly influenced to serve political purposes to the detriment of defendant’s rights. A disciplinary procedure was initiated after one such action, resulting in sanctions, which may indicate that such acts are not tolerated by the SJC and the prosecution’s current leadership.

Factor 8: Protection from Harassment and Intimidation

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

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

Analysis/Background:

The Criminal Code contains several provisions that protect prosecutors from harassment and intimidation. The murder of a prosecutor carries a sentence of 20 to 30 years imprisonment or a

life sentence; infliction of bodily injury upon a prosecutor carries a sentence of anywhere from 1 to 15 years imprisonment; and anyone using force, threats, or abuse of their authority to coerce a prosecutor is subject to 2 to 8 years of imprisonment. See CRIMINAL CODE arts. 116(2), 131(2), 143(3).

The Judicial System Act vests responsibility for judicial security with the Ministry of Justice. JUDICIAL SYSTEM ACT art. 391. This includes security for all judicial system buildings; for physically protecting as necessary magistrates and witnesses; for maintaining order in court facilities; for assisting judicial authorities in both service of summonses and execution of judgments against property; for securing the appearance of persons by compulsory process where warranted by a judicial authority; and for escorting criminal defendants to court proceedings. *Id.*; see also *MOJ Regulation No. 1 on the Structure, Organization and Activities of the Guards of the Organs of the Judicial Branch (last amended in 2006)* and *Regulation No 4 from January 10, 2008, On the Rules and Norms for the Safety and Security in Design, Construction, Re-Construction, Modernization and Administration of the Sites [buildings] of the Judicial Branch* art. 36 and Appendix (Jan. 30, 2003) (providing for 1,155 persons in this security unit). According to the MOJ, the budget for this unit was BGN 16,227,911 (USD 9,991,940) in 2005 and BGN 20,026,863 (USD 12,331,100) in 2008. The MOJ reported that it has responsibility for 98 court buildings, and assigns an average of four security guards to each building. The other members of the unit handle the remaining functions described above. A total of 14 court buildings have a combined 19 metal detectors. It is unclear whether guards in the other 84 courthouses have hand-held “wands” or use other forms of search and detection procedures to inspect persons and bags entering the building.

Overall, security in Bulgarian courthouses and prosecutorial offices seemed fairly high, with a few exceptions. All judicial buildings visited by the assessment team had court police positioned at entrances, and persons entering most buildings had to pass through a metal detector and provide identification. At one smaller judicial building, there was no metal detector and the assessment team was waived through without either being searched or being asked for identification. The assessment team was informed that the court police used their discretion in determining whom to search and whom not to. At most courthouses, briefcases, bags and similar items were placed through scanners with conveyor belts. Most buildings had separate guarded entrances for judges, attorneys and other official court personnel, as well as their guests, who were allowed to pass without inspection upon showing identification. Once inside the building, there was typically little visible security in the hallways or in/outside the courtrooms. In the Palace of Justice, there was a guard at each entrance leading to the building wings housing the offices of judges, prosecutors and key administrators. In other courthouses visited by the team, there might be a similar guard post controlling access to office areas; yet in different buildings, anyone able to get through the entrance could walk into a prosecutor’s office without passing through further security. One courthouse had requested that a wall be constructed to separate the offices of judicial personnel from public areas of the building, but the extremely limited infrastructure budget for judicial buildings made this impossible.

Actual threats or intimidation towards prosecutors seem to remain fairly infrequent and minor in nature, such as false complaints lodged by defendants or slashed tires, although one prosecutor was reportedly targeted as part of a failed murder-for-hire plot by a convicted defendant seeking retribution. Most interviewees expressed confidence in the prosecutorial security provided by MOJ. However, the growing focus on organized crime and corruption seems to be generating a growing sense of caution and unease amongst prosecutors, as some interviewees indicated that they felt increasingly vulnerable. They claimed that offices are increasingly reluctant to handle sensitive cases, largely due to concerns that organized crime and corruption cases jeopardized their safety.

It appears that security is generally sufficient, although efforts should be undertaken to continue measures that further enhance security for prosecutors. While the safety of judicial buildings is generally adequate, it remains unclear whether the security for prosecutors extends outside their

offices. If prosecutors are to focus more effectively on organized crime and corruption, additional attention and resources may be needed to enhance security in both their professional and personal lives.

Factor 9: Professional Immunity

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

Conclusion	Correlation: Positive	Trend ↔
Prosecutors have immunity while conducting their official duties, unless their actions constitute an intentional indictable offense.		

Analysis/Background:

Professional immunity for prosecutors in Bulgaria has continued to evolve in recent years. Prior to 2003, prosecutors were criticized for excessively broad immunity. As reflected in the 2006 PRI, the 2003 amendments to the Constitution limited immunity for prosecutors to “functional” immunity for their official actions, except for intentional crimes. Currently, Article 132 of the Constitution reads that, “[u]pon exercise of judicial power, judges, prosecutors and investigators shall not incur criminal and civil liability for the official actions thereof and for the acts decreed thereby, except where what is done shall be an intentional offense at public law.”

As it currently stands, professional immunity for prosecutors seems to have found an appropriate balance between shielding prosecutors for acts taken in good faith in their professional capacity, while permitting prosecution and civil actions for intentional crimes and non-official acts. The assessor team did not receive information on instances in which prosecutors had successfully or unsuccessfully claimed professional immunity.

III. Prosecutorial Functions

Factor 10: Discretionary Functions

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

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

Analysis/Background:

Article 127 of the Constitution and article 46 of the Criminal Procedure Code provide that the prosecutor directs and supervises the investigation of publicly actionable criminal offenses. The prosecutor may also perform his/her own separate investigation upon review of the investigator’s work. The prosecutor is the accuser on behalf of the state. Article 242 lays out the actions a prosecutor can take following his or her receipt of a case from the investigator. These include termination, suspension, removal of procedural violations or initiation of the indictment. In taking any decision regarding the investigation or prosecution of any case, prosecutors must be properly motivated by conviction, the totality of evidence, and the law. *See* CRIM. PROC. CODE art. 14.

If the prosecutor decides not to initiate pre-trial proceedings or motions the court to suspend or terminate existing criminal proceedings, he/she is obliged to notify victims and the accused of his/her actions. *See* CRIM. PROC. CODE arts. 213, 243–244. Victims have the right to appeal the prosecutor’s decision to the upper level prosecutor or the criminal court. *See* CRIM. PROC. CODE arts. 243–244.

Supervisory prosecutors may overrule the decisions of their subordinates. Pursuant to article 46 (3) of the CRIM. PROC. CODE, “a prosecutor at a higher position and a prosecutor with a higher prosecution service may revoke in writing or amend the decrees of prosecutors directly reporting to him/her. His/her written instructions shall be binding on them. In such cases he/she may take the necessary investigative or other procedural action alone.” The Prosecutor General of the Republic of Bulgaria supervises the operation of all prosecutors and provides guidance. *Id* at (4), *see also* CONSTITUTION art. 126 (2). A supervisory or higher standing prosecutor may also repeal the decree of his/her subordinate not to institute pre-trial proceedings. Moreover, the supervising prosecutor may then order the institution of pre-trial proceedings and the commencement of an investigation. *See* CRIM. PROC. CODE art. 213.

The JUDICIAL SYSTEM ACT confirms the same type of authority in the Prosecution Service. The prosecutor is the chief of the investigation and is responsible for presenting formal criminal indictments to the court. The prosecutor must make charging decisions based on the objective,

comprehensive and complete investigation of all circumstances relevant to the case, taking the law as guidance. See CRIM. PROC. CODE art. 14. Prosecutors are independent of the court in performing their duties. See, CRIM. PROC. CODE art. 10.

The Prosecution Service is indivisible and centralized and all prosecutors and investigators are subordinated to the Prosecutor General.. *Id.* art. 136 (3). Each prosecutor is also subordinate to an immediate supervisor. *Id.* art. 136 (4). Chiefs of the subordinate offices to the Prosecutor General “organize and direct the operation of the [subordinate] offices.” *Id.* art. 140. According to article 142, the Prosecutor General and those prosecutors of the appellate and district level offices are required to conduct audits and are specifically obliged to control the work of the lower-level prosecution services. According to article 142(3), the Inspectorate at the Supreme Judicial Council and the Minister of Justice shall be provided with the summary information about the institution and progress of files. Article 143 provides that a superior prosecutor may stay or revoke the directives of subordinate prosecutors provided the stay or revocation is in writing. A supervisors’ written order is binding on the subordinate.

As noted in the 2006 PRI, the process of liberalization of the institutional climate in which individual prosecutors discharge their duties has continued and was praised by both those outside and within the Prosecution Service. Many of the prosecutors interviewed were eager to underline their sense of emancipation from the dictate of the hierarchy, which often appeared to be evolving into a genuine enfranchisement – a process that could benefit from the introduction of a more detailed institutional mission⁵ and formally institutionalized participatory procedures.

Prosecutors felt freer to engage in discussions with their superiors and colleagues while stating their sense of empowerment to make their own decisions on how to handle their cases. It was reported that the “message from the top” is that individual prosecutors acting within their full legal discretion independently “should be the rule”. This transition from a previous culture of top-down dominance has been reinforced by the requirement that interventions by superiors be only in writing. Consequently, the line prosecutors feel at greater liberty when deciding whether to bring charges on a case and, according to one of the respondents, the incidence of superiors overruling such decisions has decreased. Another indication are the instances of bringing cases of pressure by superiors to discipline. However, there are still examples that contradict this trend: while the law leaves the decision on entering into plea-bargaining agreements to the line prosecutors, there were reports that in some prosecution services the approval of a superior is required.

⁵ The Prosecution Service has been criticized as isolated from a clear and detailed policy mandate and, in turn, from sufficient support by the public and local communities. Among other factors, this has been blamed on the too literal adherence to the “principle of legality” (*i.e.* according equal priority to the prosecution of all criminalized activities). See Yonko Grozev, *Goal No. 1 – Judicial power comprising of judges only*, *Legal World Magazine* (Dec. 7, 2009) available at www.legalworld.bg/print.php?storyid=18316 (in Bulgarian).

PROSECUTORIAL CASELOADS, 2007–2009

	2007	2008	First Half of 2009
Total number of files	343,286	332,734	179,214
Newly instituted files	287,982	270,843	143,082
Resolved files	311,915 (91%)	307,546 (92.4%)	151,075 (84.3%)
Instituted pre-trial proceedings	75,844 (24%)	68,706 (20.6%)	33,033 (22%)
Denials to institute pre-trial proceedings	126,226 (40%)	126,094 (40.6%)	62,673 (41.5%)
Upheld prosecutorial acts by second instance prosecutor	12,493 (77%)	9,818 (73%)	4,318 (73%)

Source: Reports on the activity of the Prosecution Service for 2007, 2008 and the 1st 6 months of 2009, available at <http://prb.bg/php/statdanni.php>

There were individual concerns expressed during the 2008 PRI team’s visit as to potential side effects of several otherwise useful tools of oversight intended to keep prosecutorial discretion in check: the mounting number of periodic and incidental reports required by various hierarchical levels, the transparency in the work of the Inspectorate with the Supreme Cassation Prosecution, and the practice of placing cases of ‘high public interest’ under various forms of intensified scrutiny. In response to these concerns a series of Prosecutor Generals’ orders now organize and prioritize the process of required information submission. An update of the regulatory requirement has been undertaken with rescission of arcane orders and instructions no longer in force due to subject matter overlaps, lack of grounds, or incidental nature. The priority is to be given to submission by email and electronic information options. See PROSECUTOR GENERAL’S ORDERS NO. 301 (Dec. 27, 2007), NO. 283 (Oct. 10, 2008), and NO. 780 (Mar. 30, 2010). Second, procedures and protocols for the internal inspectorate’s inspections has been approved by the Prosecutor General and published on the Prosecution Service’s official website to increase the transparency in this aspect of the inspectorate’s work. See PROSECUTOR GENERAL’S ORDER NO. 1692 (May 26, 2010).

Both insiders and outsiders opined that improper hierarchical pressure for targeted prosecutions or abstaining from prosecution has decreased. In addition to the positive effect of the new leadership in the Prosecution Services, this decrease was also credited to systemic changes, such as the introduction of the random distribution of cases⁶ and the competitions for appointments and promotions.

It is difficult to assess the extent to which external pressures distort prosecutorial discretion. While individual prosecutors generally stated that they feel secure, examples of timidity in pursuing major criminal figures were cited, reportedly due to fear of retaliation. The consensus generally was that the level of corruption has decreased⁷ and if there is political pressure at work it would operate through local channels rather than downwards through the central prosecutorial

⁶ The legal framework on random case assignment principle was criticized for not accounting for the specifics of the prosecution work and for interfering with the need for specialization. To address this, prosecution services are introducing internal sub-divisions and apply random case assignment within them in accordance to their specialty. However, if such departments are too small, the mechanism could lose its effect. For an overview of the problems of the random case distribution procedures and software systems, see REPORT ON THE RANDOM DISTRIBUTION OF CASES IN IMPLEMENTATION OF THE “CONSULTATIVE FORUM OF REGIONAL COURTS” PROJECT, available at <http://www.vss.justice.bg/bg/register/rezume/report.doc> (in Bulgarian)

⁷ This however is in stark contradiction with the general public perception: as discussed in factor 7 above, Transparency International reported in its 2009 World Corruption Barometer that the Bulgarian Judiciary was perceived as the most corrupt of all social sectors and institutions.

hierarchy. However, recent disciplinary and criminal cases against prosecutors indicate that economic pressure remains a factor, and that the application of the new ethical code and rules on avoiding conflict of interest has yet to result in establishing a healthy distance between the prosecutors and their social environment, ensuring proper administration of discretion. All of these concerns were more prevalent in smaller localities where intimidation, economic and political pressure and unethical contacts seemed more likely.

Many prosecutors called for reducing the formalism required under the current Criminal Procedure Code as a means for increasing their effectiveness and discretion. Others, however, warned that the widespread calls for “simplification of procedure” can lead to sacrificing important procedural guarantees and thus compromise the interests of justice.

Interviewees noted that discretion cannot be well defined and appropriately limited without establishing clear responsibility. There seems to be a consensus that generally the trend has been towards a greater individualization of prosecutorial responsibility. To that end, the respondents underlined the importance of wider introduction of vertical prosecution, specializations and law-enforcement teams. These are seen as successful models for pooling resources and sustaining the focus on a particular important case while having a clear allocation of responsibility and motivation.

Interviewees criticized the case evaluation process for, among other things, failing to consider cases based on their complexity and work-intensity, as well as appreciating the initiative and persistence of the individual prosecutor.⁸ These complaints were addressed by the issuance of the SJC’s Ordinance 1 of 2009 Concerning The Indicators and Procedure for Performance Evaluation of Judges, Prosecutors, Investigators, Administrative Heads and Deputy Administrative Heads. As discussed in regard to the appointments procedure, the performance evaluation is now based on general and specific criteria. The indicators and criteria used for the evaluation are defined by SJC’s ordinance, including these concerning cases’ complexity and work-intensity, as well as the degree of the prosecutor’s personal contribution. See Factor 3 above.

Another criticism was related to inadequate planning and distribution of resources resulting in serious geographic disparities in the number of cases per prosecutor, access of equipment and proper work conditions. Steps to address this criticism are envisaged in the June 2010 Strategy for Continuation of the Judicial Reform adopted by the MOJ, which in chapter 3 advances as a strategic goal the proactive management of the magistrates’ work load and conditions, on the one hand, and their number and placement, on the other. To achieve this strategic goal, the government is planning on: developing a set of criteria and methodic for prosecution services’ and prosecutors’ work-load evaluation; optimization of the prosecution services’ number, and human resources’ allocation to these offices; development of standards for the prosecutors’ work conditions; and differentiation of benefits to prosecutors based on work load. These measures were cited with approval by the European Commission in its report for Bulgaria’s progress. See 2010 EUROPEAN COMMISSION REPORT. Respondents from the judicial system submitted positive comments for this part of the strategy as well.

Some respondents pointed critically to the overly centralized structure of the Prosecution Service where decisions ultimately depend on the Prosecutor General⁹. Others emphasized the need for organizing the large body of instructions, letters and other instruments by which the Prosecution Service is currently run into a coherent and stable codification. Presumably, such an office

⁸ The Supreme Judicial Council has since moved to replace the regulation on attestation.

⁹ In recent months Mr. Velchev has spoken on number of occasions of the need of reshaping the office of the Prosecutor General to function as a methodological and policy-setting post rather than the present all powerful and all responsible pinnacle of rigid pyramid of the prosecutorial hierarchy. See, e.g., Interview of Prosecutor General Velchev, *Prosecutor General Must Not Be Above the Law*, available at www.vesti.bg/?tid=40&oid=2581291 (in Bulgarian).

manual would describe in sufficient detail all internal procedures and elements of the status of the individual prosecutors specifying the scope of their discretionary powers and protecting them from arbitrary intrusions. A recent order of the Prosecutor General represents an initial step in this direction attempting to organize the extensive regulatory basis of the prosecutorial work, and rescinding a number of orders and instructions due to their temporary nature, or subject matter overlaps with more recent regulation. The same order reasonably limits the amount of information required by the senior prosecutorial levels and channels its submission. While highly appreciated, according to the respondents within the Prosecution Service, this initial attempt to facilitate prosecutors' discretionary functions must lead to a more extensive effort to develop a comprehensive codification of all relevant regulatory and methodological instruments. Hopefully such an effort will result in the sound exercise of prosecutors' discretionary function; will increase the prosecutors' confidence in exercising this function; and will contribute for its improved efficiency. Some interviewees also suggested in this respect the need for introduction of performance targets and indicators, allowing for a better planning and accounting of resources.¹⁰

Since the first PRI in 2006, substantial steps have been made toward empowering prosecutors to exercise their discretionary powers independently. While in 2008, overwhelmingly, the positive trends were described as a "change in the atmosphere" credited to the efforts and leadership of the current Prosecutor General, it was evident during the 2010 team visit that specific measures and regulatory instruments have been drafted to further the prosecutors' sound exercise of their discretionary function. Incorporation of these procedures and protocols into the structure of the Prosecution Service will further ensure their sustainability.

Factor 11: Rights of the Accused

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

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend ↔</i>
<p>Bulgarian law affords procedural rights to the accused at all phases of criminal proceedings. Recent amendments to the Criminal Procedure Code have been widely criticized as illegally limiting the rights of the accused, but many prosecutors maintain that the former procedure was weighted in favor of defendants. While generally performing their duties as established by the law, prosecutors cannot distance themselves sufficiently from a pattern of violations of some of the rights of the accused. They often fail to assert a sufficient measure of oversight over the pre-trial investigation and are not always committed to finding the objective truth in the case.</p>		

Analysis/Background:

Any person who is part of the criminal proceeding is deemed equal before the law. The court and all pre-trial bodies are obliged to accurately and equally apply the law to all citizens. See, CRIM. PROC. CODE art. 11. Furthermore, the goal of all criminal proceedings is to discover the objective

¹⁰ For more analysis, See OPEN SOCIETY INSTITUTE, THE COST OF JUSTICE IN BULGARIA, ASSESSMENT OF THE DYNAMICS AND EFFECTIVENESS OF PUBLIC EXPENDITURES ON JUSTICE AND PUBLIC ORDER 1998–2008; see also IMPLEMENTATION OF THE MOTIVATED MAGISTRATES AND JUDICIAL SERVANTS" PROJECT, available at www.vss.justice.bg/bg/register/rezume/Workload%20Assessment%20System%20FINAL.pdf (in Bulgarian)

truth while affording equality of arms before the court. Within the limits of their competence, the court, the prosecutor and investigative bodies are obligated to apply all available measures in the attainment of this goal. *Id.* arts.12, 13.

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

Although the accused may waive defense counsel in most cases, there are circumstances in which it is mandatory for the accused to have defense counsel. These circumstances include cases where the accused is a minor, suffers from severe physical or mental deficiencies, does not have a command of the Bulgarian language, is part of a multiple defendant case and one of the other parties has his/her own defense counsel, the case is before the Supreme Court of Cassation, the accused is indigent, the offense involves a punishment of at least ten years imprisonment or, *inter alia*, the accused is being tried *in absentia*. *Id.*, art. 94. In all cases where the matter is to be resolved by an agreement (plea bargain) the accused must have defense counsel to effectuate the signed agreement. *Id.* arts. 381, 382, 384.

The President, Parliamentary opposition, and the defense bar blame recent amendments to the Criminal Procedure Code for unconstitutionally limiting the rights of the accused and are in violation of the European Convention on Human Rights. See CRIM. PROC. CODE amendments of May 28, 2010. One amendment empowers prosecutors and the courts to assign a “reserve” defense counsel, in order to diminish the possibility for unreasonable delays in criminal proceedings. This assignment occurs even if the defendant has not contracted for the services of the appointed counsel. The amendment’s opponents claim its unconstitutionality on the grounds that it contradicts the principal of contractual legal representation’s priority over appointed representation through a judicial body, as well as the principal that all citizens are equal before the law. Also, alleged violations of article 6(3)(c) of the European Convention on Human Rights [hereinafter ECHR] and article 14(3)(d) of the International Covenant on Civil and Political Rights is claimed on the grounds that these international legal instruments declare the accused’s right to chose his/her defense counsel. The challenge to the amendment’s constitutionality is currently pending with Constitutional Court. The amendment is defended by the government and parliamentary majority on the grounds that it will reduce substantially the length of the criminal proceedings by preventing defendant and his/her defense counsel to delay them beyond the reasonable term defined by the ECHR.

An amendment repealing chapter 26 of the Criminal Procedure Code, which had enabled the accused to ask for his case to be tried in court due to unreasonable delay of the preliminary criminal proceedings instituted against him (more than two years for serious crime and more than one year for other crimes) is also being appealed to the Constitutional Court. The amendment’s opponents also advance arguments for inconsistency with article 5(3) of the ECHR. The government’s arguments in defense of the repeal is that it will prevent the dismissal of criminal proceedings due to a magistrates’ neglect of his duties.

Further, an amendment has been adopted to remove the prohibition on convictions based solely on information obtained through special intelligence means and the testimony of undercover officers. This amendment's constitutionality is currently being challenged in the Constitutional Court as well, on grounds that principals of an adversary proceedings leading to discovery of the objective truth are contradicted.

Other provisions of the May 2010 Criminal Procedure Code amendments, mainly concerning the use of out of court witnesses' statements, allegedly impose limitations on the rights of the accused as well. But the May 2010 amendments as a whole are regarded by prosecutors as an attempt to restore the reasonable balance between the rights of society and the accused. Prior to this reform, their perception was that procedures were heavily weighted in favor of the accused.

However, respondents outside the Prosecution Service express concern about the broad limitations on the rights of the accused as well as the removal from the Criminal Procedure Code provisions aimed at disciplining the prosecutorial and investigative authorities when they fail in their duties to protect the rights of the accused. The prosecution has several such duties in criminal proceedings: first, in publicly actionable cases it assumes, with the investigative bodies, the burden of proof to demonstrate the occurrence of a crime and the culpability of the accused. *Id.* art. 103. Second, the prosecutors are to ensure that evidences not collected in compliance with the Criminal Procedure Code terms and procedures not be used in the pre-trial or trial proceedings. *Id.* art. 105. Third, pursuant to Criminal Procedure Code articles 196 and 226 the prosecutor is to guide, supervise and participate in the investigation, constantly controlling its progress, lawfulness and timely completion, as well as remove investigator(s) when incompetent or biased, remove evidence collected that is unlawful, and assign to the relevant bodies of the Ministry of the Interior [hereinafter MOI], or the State Agency for National Security, the individual specific investigations. He or she must certify that the collection of evidence was lawful, objective, complete and comprehensive and, upon finding any evidence was unlawfully obtained, remove it and conduct his/her own investigation to obtain the truth. Finally, Article 107(3) of the Criminal Procedure Code instructs all investigative bodies to collect and verify both inculpatory and exculpatory evidence to ensure that the objective truth is obtained.

Prosecutors may be subject to disciplinary action for failure to discharge their duties as described in the Criminal Procedure Code. *See* JUDICIAL SYSTEM ACT art. 307. The disciplinary sanctions in such cases could include reprimand, censure, reduction of the basic labor remuneration by 10 to 25 percent for a term of 6 months to two years, demotion in rank or position at the same judicial system body for a term of one to three years, relief from office as administrative head or deputy of an administrative head, disciplinary relief from office. *Id.* art. 308. Under the State Responsibility Act, the accused may sue the Prosecutor General's Office for financial and psychological damages sustained due to a violation of rights' (usually related to illegal or improper detention) upon the formal termination of the pre-trial proceedings or a court finding of not guilty.

There was consensus among respondents outside the Prosecution Service that prosecutors are not as committed to finding the objective truth as much as they focus on justifying the alleged crime in the indictment. More often than not, prosecutors are said to omit or fail in discarding illegal evidence collected during the pre-trial proceedings, leaving this to the court. A serious concern has been raised by some of the respondents in relation to an existing tendency in the work of the prosecutors of not collecting exculpatory evidence.

While prosecutors should be more active in ensuring that investigations comply with law, the culture of inertia and inactiveness is reported to be still dominant.¹¹ A majority of defense

¹¹ Most recently, the European Court of Human Rights decision in *Kolevi v. Bulgaria*, No. 1108/02 (2009), has criticized the criminal justice authorities' ability to conduct an independent, objective, and effective investigation for failure to follow an obvious line of inquiry in a high profile criminal

attorneys interviewed claimed that investigating police officers lack competence and therefore violate pre-trial procedures in approximately 50% of all cases. Irregularities were said to include failure coordinate the appointment of a defense attorney or present the investigation materials to the accused, and conducting illegal searches and seizures. Collection of evidence is not conducted properly, resulting in the production of inadmissible evidence. Cases are, therefore, being sent back by the court for additional investigation in increasing numbers. Investigating police officers do lack as a rule appropriate education and training to conduct proper investigations. Following the curtailment of investigators' powers, the prosecutors' oversight responsibilities were greatly increased. In practical terms, however, according to the respondents not employed with the Prosecution Service, prosecutors generally fail to meet their new obligations to a sufficient degree. Prosecutors are said to often times fail in oversight of an investigation, or the quality of supervision, where exercised, was reported to be poor. Following the filing of the indictment, prosecutors allegedly refuse to disclose information and grant the defendant access to the file. Yet, often prosecutors give media interviews regarding the indictment in the case, thus impugning the defendant's credibility in public in the absence of a court decision. The Prosecutor General's negative reactions in such recent cases and the SJC's disciplinary procedures have not, thus far, been sufficient to prevent such behavior. A complex series of measures has to be planned and applied in order to avoid such acts in the future.

Factor 12: Victim Rights and Protection

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

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend ↑</i>
<p>Recent legislative changes grant increased rights to victims, especially at the pre-trial phase. Prosecutors' sensitivity to victim needs has improved due to trainings provided by the NIJ and NGO's. The legal mechanisms provided under the Victim Compensation Act are better utilized. Increased protection is afforded to special categories of victims, such as victims of human trafficking and organized crime. However, the development of specialized units within the Prosecution Service to provide support and protection to victims is still ongoing.</p>		

Analysis/Background:

Any person who has suffered material or immaterial damages from a criminal offence is granted by the Criminal Procedure Code the procedural capacity of a victim. See CRIM. PROC. CODE art. 74. According to article 75, the victim could avail him/herself of the following rights in the pre-trial proceedings: "be informed of his/her rights within the criminal proceedings; obtain protection with regard to his/her personal safety and the safety of his/her relatives; be informed of the progress of the criminal proceedings; take part in the proceedings in accordance with the provisions of this Code; file appeals with regard to the acts resulting in the termination or suspension of criminal proceedings; have a counsel." The victim's rights arise only where he or she has expressly requested to be involved in the pre-trial proceedings and specified a Bulgarian address.

case. As a consequence the requisite thorough, objective, and impartial analysis of all relevant elements in the case has been compromised.

The pre-trial authorities and the court are obliged to inform the victim of the full scope of rights available at his disposal as well as allow him the opportunity to exercise these in compliance with the law. See CRIM. PROC. CODE arts. 15, 73, 227, 274. Victims typically receive information regarding their rights and the progress of the pre-trial proceedings from the MOI investigating police officers or the investigators. The court appraises victims of procedural rules and rights during the trial phase. Prosecutors perceive their role vis-à-vis victim issues at the pre-trial stage as a limited one at best. This perception changes with the recent amendments to the Criminal Procedure Code that grant victim rights equal to those of the indicted.

The law does ensure the right of the victim to take part in court proceedings in the capacity of a *private prosecutor*. Thus, the latter may appeal the decision of a prosecutor not to initiate an investigation. The victim may also appeal decisions of the prosecutor to terminate or suspend the criminal proceedings. See CRIM. PROC. CODE arts. 213, 243–244. The victim as private prosecutor may enter his or her participation by oral or written motion to the court by the beginning of the first instance court proceedings. Once constituted as a private prosecutor, the victim is allowed to uphold the accusation either along with the prosecutor or independently should the latter drop the charges. See CRIM. PROC. CODE art. 77-78. The private prosecutor also has the following rights: “to examine the case-file and obtain the excerpts he/she needs; to produce evidence; to take part in court proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court where his or her rights and legal interests have been infringed upon.” *Id.* art. 79. In accordance with Criminal Procedure Code article 100 and article 23 (2) of the Legal Aid Act, a counsel may be appointed to the private prosecutor at no cost assuming the victim is indigent and the interests of justice require. LEGAL AID ACT. *Adopted* Jan. 1, 2006, SG No. 79, *last amended* Jun. 5, 2009. Otherwise, the victim must retain counsel at his or her own expense.

In cases of a private nature, the victim may bring criminal charges against a perpetrator in the capacity of a private complainant. The victim must file a written complaint with the court of first instance. See CRIM. PROC. CODE art. 80. A private complaint action may only be taken against those lesser crimes enumerated explicitly in the Criminal Code. See CRIMINAL CODE arts. 161, 175, 193a, 218c, 348b.¹² The complaint must be filed within six months of the victims’ knowledge of the occurrence of the criminal offence or within six months following notice or termination of proceedings from the prosecution. See CRIM. PROC. CODE art. 81. Article 82 provides that the private complainant has the following rights: “to examine the case-file and obtain the excerpts he/she needs; to produce evidence; to take part in court proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court which infringe upon his or her rights and legal interests, and to withdraw his/her complaint.” Both the private complainant and the accused are entitled to assistance from the MOI in the collection of information, which they themselves cannot collect. *Id.* art. 83.

Victims may also participate in the criminal proceedings in the capacity of a civil claimant. Thus, a civil claim of action for compensation of sustained damages might be filed in the course of the trial. The claim must be filed not later than the commencement of the court proceedings by oral or written motion. The motion must describe the nature and amount of compensable damages caused by the criminal defendant or any others who could be held liable. The victim as civil

¹² According to articles 48, 49, and 50 of the Criminal Procedure Code the prosecutor may join or institute criminal proceedings *ex officio* when otherwise brought by the victim if the victim is in a “helpless state or dependency upon the perpetrator of the crime, [and] cannot defend his or her rights and lawful interests.” The action must be brought in a timely manner, and in accordance with pertinent Criminal Procedure Code provisions.

claimant has similar rights to a private prosecutor or private complainant in defending his or her claim at trial and to demand a security for the claim. The victim may appeal the decision of the court except in the instance where the proceedings are terminated. The victim may not bring a simultaneous action in civil law until criminal proceedings are concluded. See CRIM. PROC. CODE arts. 84–88.

In those instances where the case is resolved by agreement (plea bargain) under Criminal Procedure Code Chapter 29, the victim is permitted limited rights. If the agreement is reached during pre-trial proceedings the victim is notified of the agreement by the court, “with the instruction that [he/she] can file a civil claim for immaterial damages before a civil court.” *Id.* art. 382(10). However, a victim’s written consent is required when he or she is a party (private prosecutor or civil claimant) during trial proceedings concluded by agreement. *Id.* art. 384. Where property damages have been caused by the crime an agreement is admissible only upon damages recovery or the provision of collateral security. *Id.* art. 381.

Under the Criminal Procedure Code’s victim compensation regime, the Victim Compensation Act sets forth a system for support and financial compensation provided by the State to victims of crime. CRIME VICTIM ASSISTANCE AND FINANCIAL COMPENSATION ACT *adopted* Jan. 1, 2007, SG No. 105, *amended* May 28, 2010 [hereinafter VICTIM COMPENSATION ACT]. The Act limits its application to victims (or deceased’s heirs) who have suffered damages from the following crimes: terrorism; deliberate homicide; deliberate serious bodily harm; sexual harassment and rape, as a result of which serious health damages have been caused; human trafficking; crimes, committed by an order or in fulfillment of a decision of an organized criminal group, as well as other serious deliberate crimes as a result of which death or serious bodily harm have been inflicted. See VICTIM COMPENSATION ACT art.3.¹³ Victims could also receive support in the form of: medical treatment in emergency situations; psychological counseling; free legal aid and practical aid. *Id.* art.8. Financial compensation is granted only upon effectuation of: a guilty verdict, including in cases tried in the defendant’s absence; a prosecutorial or court order by which criminal proceedings are discontinued with some exceptions and a prosecutorial or court order by which criminal proceedings are dismissed on the grounds of failure to identify the perpetrator of the crime. Compensation under this regime may be granted by the State if the crime victim has not been compensated in any other way. *Id.* arts. 12, 15. In addition, compensation may not be received in instances of an agreement between the prosecution and the accused. Victims are informed regarding their statutory rights by the bodies of the MOI either in writing or orally. *Id.* art. 6.

In view of victims’ safety, the Criminal Procedure Code provides for the physical protection of the latter through a court imposed restraining order, personal physical protection by MOI authorities, or identity secrecy scheme. Thus, a first instance court may prohibit the accused from directly contacting the victim. The victim must, however, first request this protection from the court, or consent to the prosecutor’s motion. The court then conducts a hearing on the motion at which the accused is also heard. The restraining order remains in effect until the conclusion of the criminal proceedings unless earlier, but only upon the request of the victim to repeal the order. Protection measures in the form of physical police protection or identity concealment may also be taken by the prosecutor or the court in the instances where in the course of the criminal proceedings the victim acquires also a witness capacity. CRIM. PROC. CODE arts. 67, 123. As explained in more detail in Factor 13 below, the Criminal Procedure Code’s victim protection regime is augmented by the Protection Act. PROTECTION OF INDIVIDUALS AT RISK IN RELATION TO CRIMINAL PROCEEDINGS ACT, *adopted* Nov. 23, 2004, SG No. 103, *last amended* Jul. 25, 2008 [hereinafter PROTECTION

¹³ Article 13 of the Victims Compensation Act stipulates that the financial compensation is in the form of a monetary sum granted by the state amounting from BGN 250 to 5,000 (USD 154 to 3,079). In the instances where the recipient of the compensation is a close relative or the person, with whom the deceased was in actual cohabitation its total amount may not exceed BGN 10,000 (USD 6,157).

ACT]. Protection program measures vary, ranging from property protection to full identity change and may be provided temporarily or permanently.

Although granted increased rights through the recent legislative changes, victims still do not receive appropriate protection in some cases. The victim is not apprised of the release of the sentenced defendant, even in cases involving sexually violent offenders and pedophiles. The victim is not consulted in the circumstance where early release is considered, despite the fact that the prosecutor is a part of the decisions affecting early release of convicted criminals. See CRIM. PROC. CODE art. 437.

Notable progress has been made with regard to prosecutors' sensitivity to victims' concerns and needs in the areas of minors, human trafficking and domestic violence. However, NGO representatives felt that prosecutors could improve their skills in dealing with victims' issues. The shortage of suitable interview facilities continues to be a serious problem, while the lack of standardized victims' interrogation instructions for both prosecutors and investigating police officers additionally hampers the efforts of the institutions.

Prosecutors receive little or no training on victims' rights and concerns. Train-the-trainer courses have been conducted by NGOs instead of state institutions, while at the same time the Prosecution Service's efforts in providing victims' related training are sporadic at best. Currently, the initial training for prosecutors at the National Institute of Justice includes no component on dealing with victims.

There are no prosecutors who specialize or focus exclusively on victim support and assistance issues, nor are there any specialized such units within the Prosecution Service. The district and regional prosecution services do not maintain departments to work with and assist victims in pending cases. Typically, if at all, the victim related work is assigned to the prosecutor who is guiding and supervising the investigation, or participates in the court procedures. Respondents suggest that the Prosecution Service use other countries' best practices in enhancing the capacity of Bulgarian prosecutors regarding victims' support and assistance issues generally, and beyond certain categories of victims. Better protection of the victims' confidential information is needed.

Factor 13: Witness Rights and Protection

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

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

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

Analysis/Background:

The legislation provides two witness protection regimes. See Supreme Administrative Court, *Instruction No 1 on the Work of and Interaction Between Preliminary Investigation Authorities*, adopted Apr. 13, 2004, SG No. 30, last amended Aug. 4, 2006 [hereinafter the Instruction]; see also PROTECTION ACT; see further REGULATION FOR THE IMPLEMENTATION OF THE PROTECTION ACT, adopted Sep. 16, 2009, SG No. 75, last amended Oct. 31, 2008 [hereinafter PROTECTION ACT REGULATION].

The Criminal Procedure Code describes the rights and obligations of witnesses during the investigation and trial. Articles 121 and 122 afford witnesses a right to not incriminate themselves or testify against their relatives of ascending and descending line, brothers, sisters, spouses or individuals with whom they live. In these cases the witness is entitled to a consultation with an attorney. The pre-trial body and/or the court cannot refuse the request for an attorney and the request shall be entered in the interrogation protocol.

Also, witnesses are not required to reveal the information they were provided within their capacity as defense counsels or attorneys. CRIM. PROC. CODE art. 121 (2). The investigating body performing the interrogation is required to warn the witness of his rights and responsibility under Criminal Procedure Code article 139. Witnesses are entitled to remuneration for the lost workday and to be reimbursed for any expenses incurred. Failure of a witness to appear before a court or investigative authority to provide information or testimony could result in the issuance of a warrant and fine. *Id.* art. 120.

Pre-trial investigation interviews are conducted by the investigator and usually occur at his/her office. See Article 112 of the Instruction. Prior to the Supreme Administrative Court's ruling of July 2006 stating that a witness may be represented by a counsel at the interview, witnesses could be interviewed without their counsel being present. See, Supreme Administrative Court of the Republic of Bulgaria, Decision No. 8210, 7/20/2006.

Special procedures for interviewing juvenile witnesses are described in article 118 of the Instruction and article 140 of the Criminal Procedure Code. A witness under the age 14 must be interviewed in the presence of a pedagogue or psychologist and, if necessary, also in the presence of the parent or the guardian. The investigator may decide that the same individuals may be present while interviewing a witness 14 to 18 years old, and may ask questions with investigators' permission. Prior to beginning the interview, the investigator shall advise the child

witness of the need to give truthful testimony, without warning him of criminal liability. See the Instruction, article 118

A witness is entitled to protection under the Criminal Procedure Code regime if as a result of his/her testimony, a real threat has arisen, or may arise to the life, health or property of this witness, or his/her ascending and descending relatives, brothers, sisters, spouse or individuals with whom he is in a particularly close relationship. CRIM. PROC. CODE art. 123(1). Protection measures can be initiated by the prosecutor, the judge-rapporteur or the court upon request from the witness or with his/hers consent. The Criminal Procedure Code envisions two types of measures: 1) personal physical protection by the authorities of the Ministry of Interior and 2) keeping the witness identity secret. The witness is provided with an identification number and the interrogation is carried out in secrecy by the pre-trial bodies or the court. The protocols are not signed by the witness, but the defendant and his counsel are given copies and they can submit questions in writing. Witnesses can be interrogated outside the territory of the country, through a video or phone conference. CRIM. PROC. CODE art. 141(1).

Reportedly, the court and Prosecution Service usually provide witness protection under the Criminal Procedure Code regime, when needed and requested. Sources within both the Prosecution Service and MOJ notice that this regime has mainly been applied on the district level due to subject matter jurisdiction limitations at the regional court level. Cases that pose a threat to witnesses are usually tried at the district level. Respondents regard the measures under this regime as ineffective when the offender violates these conditions, since there seem to be no effective sanctions imposed. Prosecutors are often criticized for failing to offer protection to witnesses not cooperating with investigation; however, when requested, such protection is generally afforded. Despite the criticism, a steady trend of increase in number of Criminal Procedure Code protective measures has been observed since the 2006 PRI assessment. This increase is presented by the following chart:

WITNESS PROTECTION IN BULGARIA, 2006–2010

Year	Number of cases with witnesses protected under art.123	Number of protective measures undertaken by prosecutors under art.123	Protection through special intelligence means under Art.123(7)	Types of protective measures	
				Personal physical protection	Keeping the witness' identity secret
2007	72	101	2	7	94
2008	86	136	0	15	121
2009	84	158	1	19	139
First 6 months of 2010	55	111	0	3	108

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

Although prosecutors are not specifically mandated to directly explain to witnesses their rights to protection, they are mandated to provide guidance and supervision to the investigation. Similarly, prosecutors are responsible for ensuring that witnesses are appropriately warned of the rights that the criminal procedure affords them. Respondents are critical of the prosecutors' poor performance under this duty in cases of conventional crime. However, this weakness is explained with the overwhelming load of cases, rather than with lack of sensitivity to witnesses' situation.

In contrast, prosecutors are viewed as being more involved in applying the witness protection regime under the Protection Act, which is limited in scope and a subsidiary to the Criminal Procedure Code's protection regime. The Protection Act is only implemented where the Criminal Procedure Code is not applicable, and its scope is limited to protection of individuals at risk in

relation to criminal proceedings. PROTECTION ACT art. 1, PROTECTION ACT REGULATION art. 2. As indicated in article 3 of the Protection Act, individuals at risk are defined as participants in criminal proceedings: witnesses, private prosecutors, civil parties, the accused, defendants, expert witnesses, certifying witnesses; convicts and individuals directly related to the first two categories, their ascendants, descendants, brothers, sisters, spouses or the individuals who are very closely related to them. When endangered in relation to a pending criminal procedure, these individuals are enrolled in a protection program consisting of measures individually tailored to fit their specific needs for protection. The measures may include: “1. Personal physical protection; 2. Property protection; 3. Provisional placement in a safe location; 4. Change in the place of residence, workplace, or educational establishment, or placement in another facility for the service of a sentence; [and] 5. Full change of identity.” PROTECTION ACT art. 6(1). The Program for Protection may also provide *inter alia*, welfare, psychological, legal, financial, and medical assistance. *Id.* art. 6(6). Article 6(5) provides that for the purposes of confidentiality the processing of the personal data is considered a state secret. In practice, however, personal data leaks occur frequently, including to the media, which forces witnesses to request measures of physical protection.

Upon a proposal of the respective prosecutor, or judge, witnesses may be enrolled in the Program for Protection by a decision of a Protection Council, an interagency body assigned to implement the overall activities under the Protection Act and lead by a Minister of Justice's deputy. Members of the council are representatives of the Supreme Cassation Court, Prosecutor General's Office, National Investigation Service, Ministry of Interior and State Agency for National Security [hereinafter SANS]. *Id.* art.13. The Protection Council is ruling also on the protection program's dismissal. Individual protection programs, consisting of measures as prescribed by the Council, are implemented by a Protection Bureau. The latter establishes and maintains a register containing data base about the individual cases. *Id.* art. 15(1).

The Protection Act regime was implemented in 86 cases in 2008. One hundred and twenty-one witnesses were protected by keeping their identity secret, while personal physical protection was afforded only 15. *See* ANNUAL REPORT FOR THE IMPLEMENTATION OF THE LAW AND THE ACTIVITIES OF THE PROSECUTION SERVICE 2008, *available at* <http://www.prb.bg/php/statdanni.php>. Prosecutors increasingly use the Protection Act regime to protect key witnesses and secure their testimony during trial procedures. However, as with the Criminal Procedure Code protection regime, a leak of information is always to the detriment of the witnesses.

The overall use of the available witness protection mechanisms by prosecutors has reportedly increased. However, respondents point out a number of problems in this respect, particularly relevant during police investigations. First, generally, prosecutors do not effectively supervise the investigation during its actual undertaking. Rather, they review the file before and after the investigation. This method of supervision and guidance of the investigation, highly criticized by both the investigating bodies and defense counsels, prevents prosecutors from supervising efforts to engage in witness protection and shifts responsibility to the investigative bodies, along with the discretion as to which witnesses need protection and how urgently. Insufficient communication between the investigating body and the supervising prosecutor prevents the latter from exercising his or her supervision and discretion related to witness protection, to a full extent. This has not been an issue, however, in investigations on organized crime performed by the joint teams of representatives of the Prosecution Service, MOI, and SANS. The prosecutors in these teams supervise and guide the investigating bodies and police on a daily basis, including as to the problems arising from threats to witnesses. Witness protection programs are widely and successfully applied by these teams. The joint teams in this respect provide a model to deal with the rest of the investigations, including in regard with witness protection issues. While positive about the Protection Bureau's work on witness protection programs, respondents within the Prosecution Service express concern that some of the witness protection measures are not effective to remove the threat directed on witnesses. Also, the fact that the protection program is only utilized for the term of the criminal proceedings is a problem in terms of both effective protection and motivation for the witness to testify. The lack of unified instructions for both prosecutors and police about interrogation of victims and witnesses additionally hampers the

efforts of the institutions. Most of the prosecutors who responded to this factor explained that witness protection is difficult since the country is very small and there are not sufficient financial means to assure witness protection on the territory of another country

Some of the respondents within the Prosecution Service also commented on the prosecutors' former obligation to undertake measures for crime prevention, which was removed from the law by one of the numerous amendments in the past aimed at limiting Prosecution Services' powers. Respondents believe that with this obligation's removal the prosecutors lost the initiative for protecting citizens from anticipated crimes, including when such crimes may be directed at witnesses. The suggestion is that this obligation be restored with the possibility that the prosecutor's measures to prevent a crime to be subject to a court review.

Since the 2006 PRI, greater respect for witness rights and protection has developed and legal mechanisms for their protection have been better utilized. However, interviewees indicated that prosecutors need to be more proactive in applying this protection and leaks of information must be avoided through appropriate safeguards. The following suggestions were made to introduce policy changes and effective implementation of the witness protection program: 1) to provide witnesses with phone contact information of the prosecutor; 2) to provide instructions to the police for surveillance of witnesses; 3) to ensure equal implementation of the law in the whole country; 4) to develop common policies and joint training modules (for prosecutors, investigating police officers and police) on interaction with witnesses.

Factor 14: Public Integrity

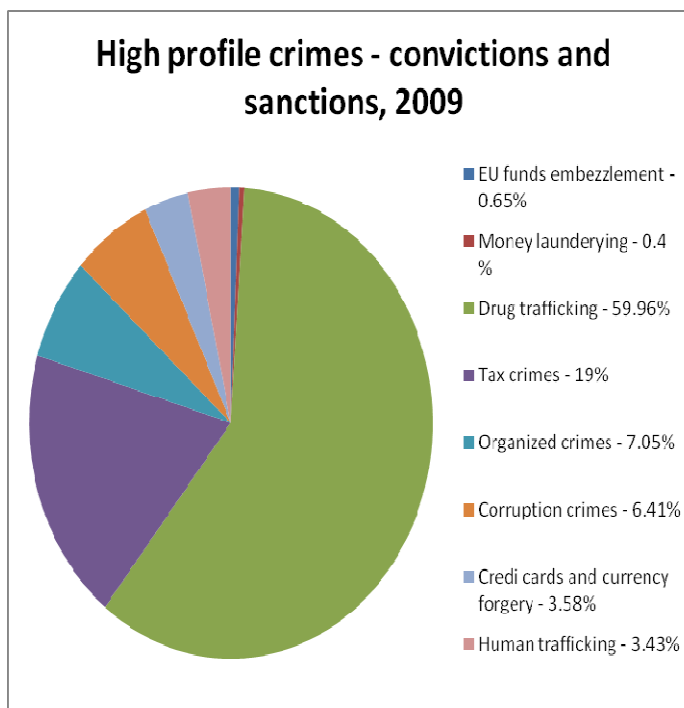
Prosecutors uphold public integrity by giving due attention to the prosecution of crimes committed by public officials, particularly those involving corruption, abuse of power, grave violations of human rights, and other crimes recognized by international law.

<i>Conclusion</i>	<i>Correlation: Negative</i>	<i>Trend ↔</i>
<p>There have been an increasing number of prosecutions and convictions for corruption, and efforts at increased accountability, teamwork, pro-activity, and capacity building have started to produce encouraging results. However, these efforts have yet to match public expectations and the positive trend may be unsustainable. Interviewees pointed out that the Prosecution Service is not solely responsible for detecting cases of corruption, To that end, interviewees believed that important technical improvements should be integrated within a coherent, multi-sector overall reform vision, backed by strong will in all relevant institutions and improvement of the professional ethics of magistrates. In this regard, the MOJ's ambitious strategy in 2010 for a comprehensive judicial reform is viewed by the Bulgarian society, European institutions, and other international sources to be a promising basis for the necessary developments.</p>		

Analysis/Background:

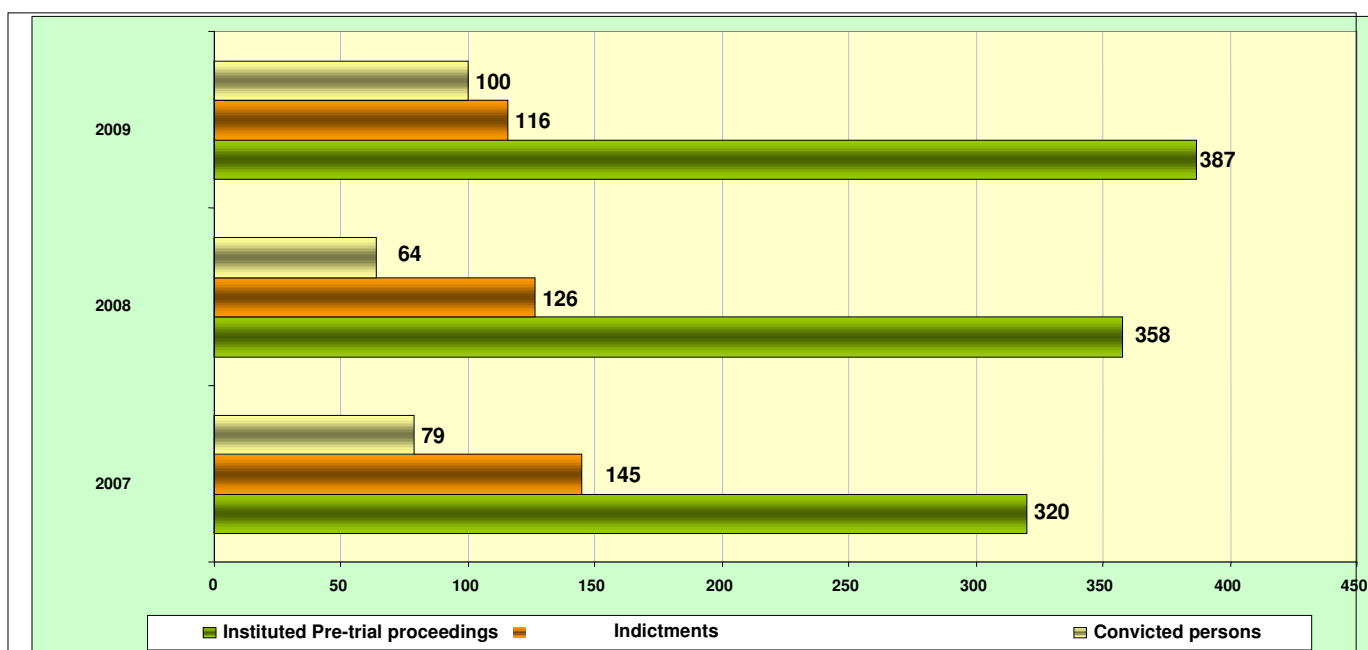
Since the 2006 PRI assessment, there is an increasing trend in prosecutions and convictions of corruption crimes and crimes of "particular public interest" (as defined by judicial and law-enforcement reports). Thus, for the first 9 months of 2009, "crimes of particular public interest" comprised 5.4% of all newly-instituted proceedings. Further, there was a sevenfold increase in prosecutions involving EU funds embezzlement, which is relatively new but highly problematic area for Bulgaria. For the same period of time, cases of organized crime, financial and corruption crimes have constituted 15% of all "particular public interest" cases and 6% of all proceedings. The number of convicted persons for these crimes increased 29%, which accounts for a positive trend over the last years. The resolved cases are 5,535 with 2,218 indictments (40%) and 2,662 persons brought to court. The number of convicted persons is 1,767, with 81 found not guilty. .

The average percentage of the convicted and sanctioned persons depending on the type of “particular public interest crimes” is the following:



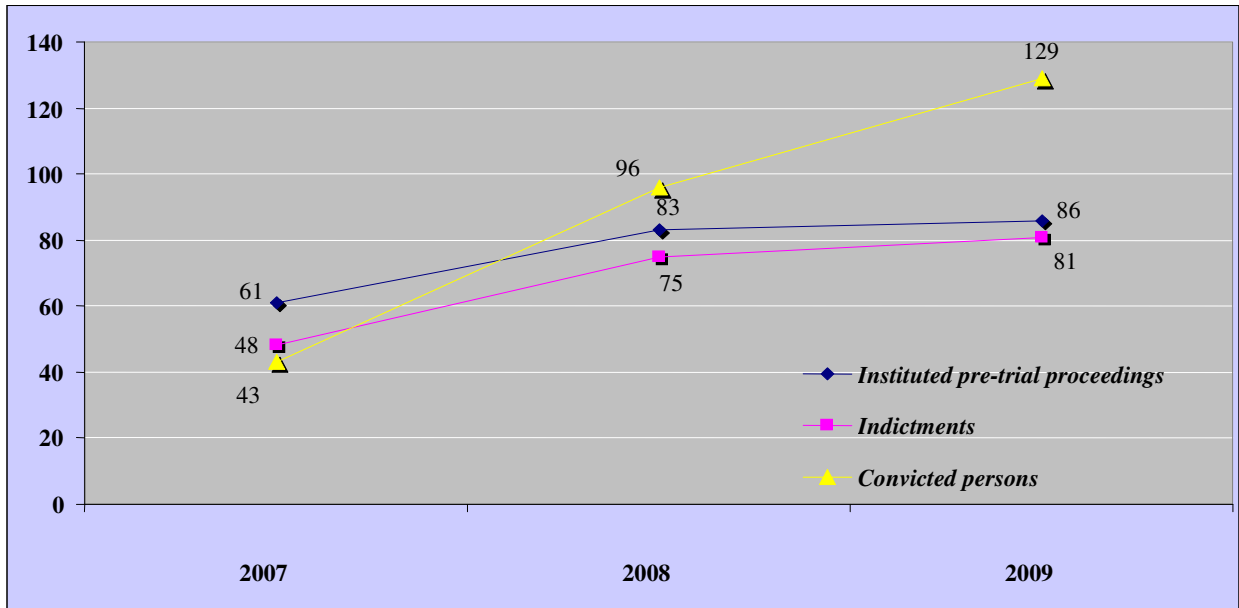
Source: Analysis of the activity of the Prosecution Service on cases of high profile crimes for the period January–September 2009, available at <http://prb.bg/php/statdanni.php>

TRENDS OF INSTITUTED PRE-TRIAL PROCEEDINGS, INDICTMENTS AND CONVICTED PERSONS FOR CORRUPTION CRIMES



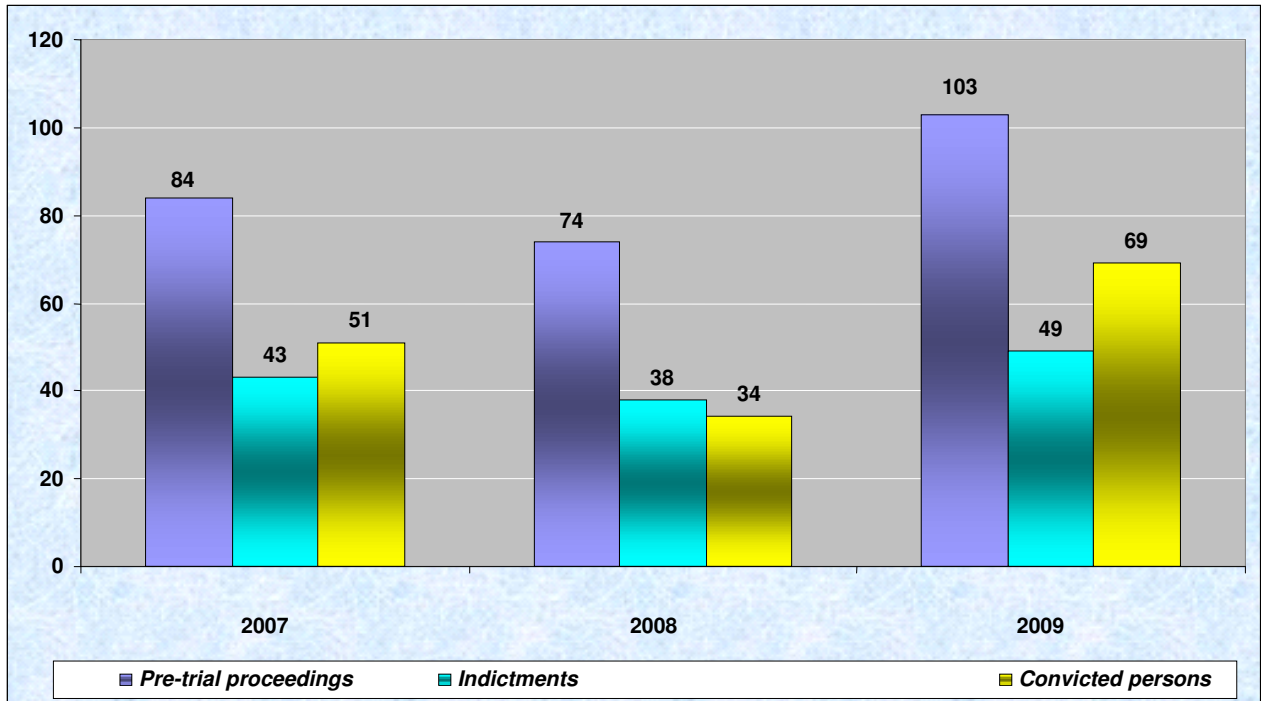
Source: Id.

TRENDS OF INSTITUTED PRE-TRIAL PROCEEDINGS, INDICTMENTS AND CONVICTED PERSONS FOR ORGANIZED CRIMES



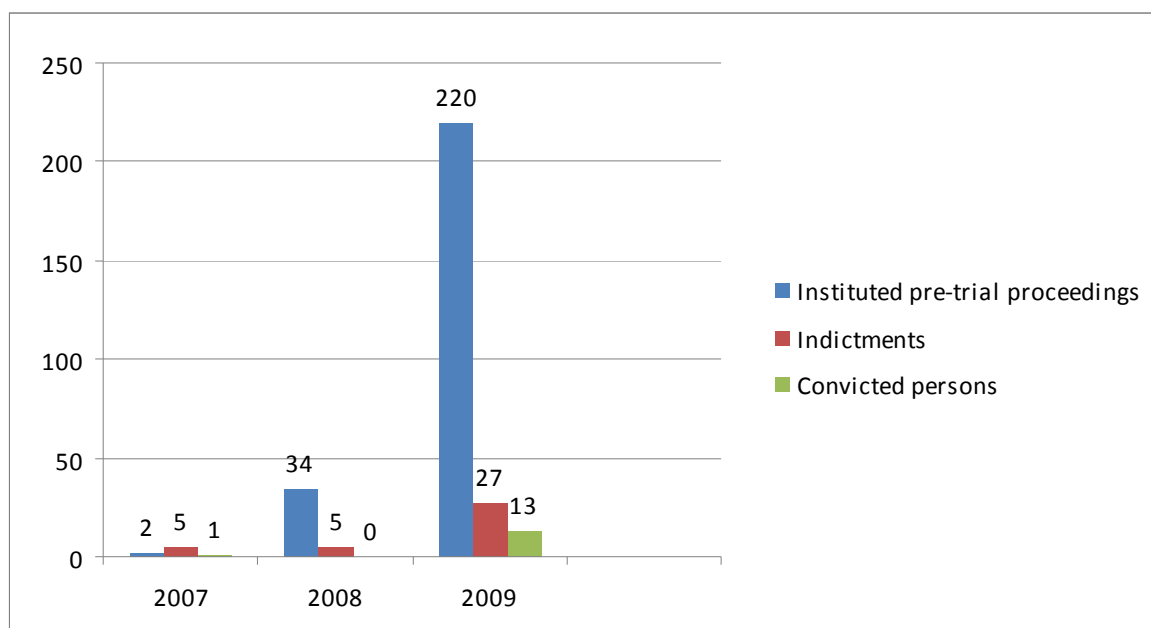
Source: *Id.*

TRENDS OF INSTITUTED PRE-TRIAL PROCEEDINGS, INDICTMENTS AND CONVICTED PERSONS FOR HUMAN TRAFFICKING CRIMES.



Source: *Id.*

TRENDS OF INSTITUTED PRE-TRIAL PROCEEDINGS, INDICTMENTS AND CONVICTED PERSONS FOR EU FUNDS EMBEZZLEMENT



Source: *Id.*

A comparative data analysis on high-profile cases for 2007-2009 shows a sustained trend of an increased number of indicted and convicted individuals.

TRENDS OF INDICTED AND CONVICTED INDIVIDUALS

Crime categories	Indicted individuals			Convicted individuals without right to appeal		
	2009	2008	2007	2009	2008	2007
Organized crime	355	345	316	185	155	77
Corruption	231	242	296	152	111	109
Money Laundering	33	36	11	35	22	7
EU funds embezzlement	109	14	4	39	4	0
Tax Crime	879	690	580	538	410	289
Credit cards and currency forgery	152	124	136	111	75	112
Drug trafficking	2,227	1,926	2,142	1,605	1,403	1,393
Trafficking in Human Beings	91	104	110	99	54	73
Total:	4,077	3,481	3,595	2,764	2,234	2,060

Source: Annual report for the implementation of the law and the activities of the Prosecution Service 2009, available at <http://www.prb.bg/php/statdanni.php>.

A comparative analysis of the overall number of registered/detected crime and indicted, convicted and sanctioned individuals for 2007-2009 also shows a positive trend.

TRENDS OF REGISTERED/DETECTED CRIME AND INDICTED, CONVICTED AND SANCTIONED INDIVIDUALS IN TOTAL NUMBER

Year	Registered crime	Detected crime	Detected economic crime	Total number of indicted individuals	Total number of convicted and sanctioned individuals without right to appeal
2009	121,140	58,082	10,790	52,883	45,839
2008	113,340	54,209	9,353	52,149	47,604
2007	119,967	57,209	9,467	55,677	45,162

Source: *Id.*

The removal of magistrates' absolute immunity from criminal investigation brought an increase in the prosecutions of judges and prosecutors, including for corruption.¹⁴

From the beginning of 2006 till the end of November, 2008, 67 pre-trial proceedings were initiated against magistrates for all types of offences, eight of which were against administrative heads or their deputies, 16 against judges, 15 against prosecutors, 18 against investigators and 10 against judicial clerks. Of these proceedings, 30 (44.7%) ended in indictments, 15 (22.3%) were terminated, and the remaining 22 (32.8%) are still pending. Out of the cases brought to court, six ended in convictions and four in acquittals (all acquittals were appealed before the higher instance court by the Prosecution Service). 19.4% of these cases are for bribery and promised assistance through bribery.¹⁵ CENTER FOR THE STUDY OF DEMOCRACY, CRIME WITHOUT PUNISHMENT: COUNTERING CORRUPTION AND ORGANIZED CRIME IN BULGARIA 13–14, *available at*: <http://www.csd.bg/artShow.php?id=9591> [hereinafter CSD Report]. A range of institutional and organizational measures have contributed to these positive trends. In 2007 the Prosecutor General introduced a new, more focused and effective system of “special supervision” of high-profile cases. The Supreme Judicial Council has established its own system for monitoring “high public interest cases” through a special Commission on the Execution of the Measures on Organizing the Work on Cases of High Public Interest in the Judicial Institutions. The Commission publishes periodical reports of its findings and recommendations. The newly created Inspectorate with the Supreme Judicial Council has been universally acclaimed for its vigorous work.

However, most interviewees stressed that, in order to sustain the positive trends, the quality of investigations, particularly police investigations, must be substantially improved so that the prosecution can support indictments and obtain more convictions on complex and of high priority cases. Respondents emphasize that ensuring sufficient quality of investigations is primarily the Prosecution Service's role and responsibility, as the prosecutor in the criminal proceedings is charged with an obligation to supervise and guide the investigations. A starting point for a strategic change in performing this prosecutorial function is the continued development of a perception that any failed investigation is the supervising prosecutor's failure in the first place. Prosecutors should become more proactive in providing guidance and advice while investigating activities are ongoing. Police officers suggested that instructions to them should take greater

¹⁴ In the summer of 2009 there was a large public scandal (the “Krasio Affair”) involving suspicion of corruption in the appointments of presidents of courts and prosecution services and questionable contacts of almost 20 magistrates, including two SJC members, with the alleged organizer of the corruption scheme. Unfortunately, due to the untimely leaking of the investigation by an SJC member, the case has been compromised and is unlikely to lead to prosecution.

¹⁵ The CSD Report calls these results “small” and “concerning” and compares them with the incidence of whistle-blowing, stating that “...for the period between January and July of 2008, the Commission on Professional Ethics and Corruption Prevention of the Supreme Judicial Council received 674 complaints and tips from citizens.” CSD Report 13–14.

account of the cases' development and investigators' real challenges. This will also be conducive to obtaining reliable evidence and improve dealing with victim and witness issues. This is especially true for the larger prosecution services, specifically for those in Sofia.

Respondents unanimously point to the work of the joint teams now investigating organized crime and the embezzlement of EU funds as models that should be followed. This successful prosecutorial model of dealing with supervision and guidance of cases must be replicated in other high-profile cases and in the conventional crime investigations, as the latter mostly forms the public perception of the Prosecution Service's integrity. On a managerial level, some respondents suggested greater collaboration with the MOI to develop an adequate methodology for supervision and guidance of the investigation, and an accountability mechanism to identify and, if appropriate, sanction those responsible for the investigation's failures. Relevant joint training is encouraged as well. Other shared priorities include the need for more efficient use of special investigative techniques, improvement of the system for the protection of witnesses and controlling leakages of information. Next, further specialization of prosecutors, joint teams, and departments by replicating existing successful practices is widely recommended by respondents from within and outside the prosecution. By contrast, the suggestion for creation of a specialized prosecution unit does not meet much support outside the Prosecution Service.

Further, it must be pointed out that investigating corruption is one of the areas where increased specialization is necessary in light of unsatisfactory results to date. Although there has been some progress, successful prosecution of high profile corruption remains a serious challenge in Bulgaria. The systematic failure of the Prosecution Service in this respect is considered one of the main reasons for a sustained level of corruption activities and is to a great extent the basis for the societal distrust and disappointment in the state's anti-corruption actions. Furthermore, Transparency International has registered a persistently low opinion of the Bulgarian public regarding the country's progress in fighting corruption.

BULGARIA'S CORRUPTION PERCEPTION INDEX SCORES, 2006–2009

Year	Index
2006	4.0
2007	4.1
2008	3.6
2009	3.8
<i>Average index for EU</i>	<i>6.36</i>

0 – level of extremely high corruption
10 – level of no corruption.

Source: Transparency International, available at <http://www.transparency-bg.org/?magic=0.3.5.2>

According to the Center for the Study of Democracy [hereinafter CSD]¹⁶ Bulgarians perceive corruption as the most serious problem for the country: CSD results show that nearly two-thirds of Bulgarian citizens (64.7%) are of this opinion, which has more than doubled over the past four years (31% in March 2004). CSD has registered a stable trend of rising incidence of corruption transactions, reverting to the levels of eight years ago. In 2008, the number of corruption transactions in which Bulgarian citizens were involved reached approximately 2,100,000 transactions for the year. According to CSD there is a vicious circle between criminal cases of corruption and organized crime while effective sentences in corruption cases remain at insignificant levels considering the estimates regarding the spread of corruption in the country. Thus, in CSD's assessment, political corruption and organized crime still remain largely crimes

¹⁶ A Bulgarian interdisciplinary public policy institute acting as the Secretariat for the "Coalition 2000", an initiative of Bulgarian NGOs committed to combating corruption, has published numerous reports over the past several years concerning corruption trends and governmental institutions' response.

without punishment and Bulgaria still displays two major deficits in countering corruption and organized crime: political will and administrative capacity. See CSD REPORT. The former is considered to be addressed by the government's adoption of a strategy and action plan to fight corruption. However, in a 2010 report the European Commission expressed concern about the lack of substantial advancement of state anti-corruption action. See 2010 EUROPEAN COMMISSION REPORT. On the one hand, the Commission acknowledges that since July 2009, "Bulgaria has stepped up its efforts to fight against high level corruption." A number of indictments of members of the parliament, acting and former ministers, deputy ministers and other high state and municipality officials show a positive trend. Efforts to "strengthen the capacity of the joint teams dealing with EU fraud is regarded as particularly encouraging, as well as the recent convictions of three high-level officials for corruption involving EU funds. On the other hand, the Commission notices that the ambitious National Anti-Corruption Strategy and Anti-Corruption Plans have not been implemented since their approval by the government in November 2009. The Commission points out a number of weaknesses which contribute to the unsatisfying level of anti-corruption activity. Amongst these weaknesses, two are relevant to the PRI review: the lack of Prosecution Service's "comprehensive and pro-active investigative strategy" on cases of fraud involving EU funds, and the insufficient level of witness protection. ANNUAL REPORT FOR THE IMPLEMENTATION OF THE LAW AND THE ACTIVITIES OF THE PROSECUTION SERVICE 2009, *available at* <http://www.prb.bg/php/statdanni.php> [hereinafter 2009 PROSECUTION SERVICE REPORT].

Weaknesses stressed by the Commission lead to a broader discussion of the deficiencies in the prosecution of corruption. Some of them, as mentioned above, are attributed to the poor quality of the general supervision and guidance over investigations. Others, such as the lack of comprehensive and pro-active investigative strategy, the insufficient analytical work, and prosecutors' unsatisfactory specialization in collecting specific evidence, need to be addressed narrowly in light of the anti-corruption effort through a development of relevant training modules, and educational and methodological tools by the relevant departments of the Supreme Cassation Service and NIJ. Resolving a third group of questions regarding specialization of prosecutors, teams and units, as well as collaboration with other agencies and institutions, requires administrative heads at all levels to exercise their discretion and put in place a set of rules as to how the anti-corruption prosecution is going to be organised.

In addition to the problems that can be resolved by the prosecution leadership alone, there are deficiencies that result from factors external to the prosecutorial system and need to be addressed by other institutions and the public at large. First, some respondents stress that, while enjoying limited resources to react to statistical and other information contained in publications and other materials documenting the commission of crime, the Prosecution Service in general is not charged with crime detection. Instead, the government and its specialized administration is authorised and equipped with sufficient administrative and executive resources to detect crime, collect relevant data and submit it to the prosecutors. Second, sources within the Prosecution Service indicate that the number of detected crimes does not noticeably exceed the number of criminal proceedings for corruption instituted by Prosecution Services. For example, the number instituted in 2009 by the Prosecution Service pre-trial proceedings for bribery (235) almost doubles the number of detected and reported MOI bribes for the same year (134). Also, the total number of pre-trial proceedings instituted for corruption practices (538) almost equals the number of such practices detected and reported by MOI (542). Next, a dramatic decrease of reported crime from the inspecting government authorities has been registered in 2009, while the Prosecution Service-initiated preliminary investigations based on information from the media quadrupled. 2009 PROSECUTION SERVICE REPORT.

With these clarifications in mind, interviewees believed that the Prosecution Service should not take the blame for the discrepancy between existing and detected corruption, which to a great extent generates the public frustration with the government in dealing with corruption. Nor should the Prosecution Service be accused of not instituting criminal procedures when notified about corruption by the competent police and inspecting state authorities. Hopefully, based on the 2009 anti-corruption strategy and action plan, the government will take action to develop sufficient

capacity to detect corruption in greater numbers and at an earlier stage. This means, as can be seen also from the European Commission’s 2010 report, to not only improve the police dealing with crime detection, but also to build an effective system of independent inspecting units to deal with early detection and prevention of corruption. The Prosecution Service, at the same time, should assert full ownership over the corruption investigation and assume responsibility for its failures.

Finally, respondents point out that most prosecutors from the trial units of the two supreme prosecution services perform in court procedures with great professionalism and diligence, but this is not always true for other prosecutors. Also, there are some instances of prosecutors publicly disputing and obstructing court rulings during court hearings. Criticism has also been expressed with prosecutors’ public statements on active cases denigrating defendants before the media. As explained in regard to Factor 5, such inappropriate behavior in a recent highly-publicized case has been criticized by the Prosecution Service’s leadership and disciplinary procedures have been undertaken promptly.

In conclusion, individual actors and emerging good practices, as well as a technical level improvement are producing encouraging results, but more efforts are needed to fully meet public demand for a decisive strike to the heart of corruption.

The example of the emerging cases of suspected corruption and unethical behavior of magistrates should also be noted. While denial of the existence of corruption and improper influence in the judiciary is no longer possible, these cases have often failed to lead an effective and unequivocal result (be it disciplinary or criminal). See CSD REPORT. These instances have brought a further erosion of the public’s trust in Bulgaria’s judicial institutions. The success of any further reform effort and anti-corruption policy hinges on the judiciary’s ability to demonstrate integrity within its own ranks.

IV. Accountability and Transparency

Factor 15: Public Accountability

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

Conclusion	Correlation: Neutral	Trend ↔
<p>The Prosecution Service has taken significant steps to improve its accountability, including proactive measures to increase transparency and access to information by both the public generally and the media specifically. Additionally, the Prosecution Service is required to publicly account for its activities to the National Assembly. However, many interviewees indicated that a future Prosecutor General could reverse the gains made in recent years if further institutional safeguards are not put into place, as many of the reforms were made at the initiative of the current Prosecutor General. The Prosecution Service has also been made more accountable to the SJC, and in turn the SJC’s capacity to operate as an oversight mechanism by investigating public complaints has been substantially increased. Interviewees believed that, if implemented properly, the SJC’s role in investigating and disciplining prosecutors could serve as a critical mechanism for public accountability.</p>		

Analysis/Background:

Although part of the judiciary, the Prosecution Service has, for the most part, been structured as an independent institution with minimal public accountability. This independence finds its

underpinnings in the Constitution and various other laws. For example, Article 117(2) of the Constitution provides, “The judiciary is independent. In the performance of the functions thereof, all judges, jurors, prosecutors, and investigators shall be subservient only to the law.” See CRIM. PROC. CODE arts. 10, 14; JUDICIAL SYSTEM ACT arts. 3, 4. Philosophically, prosecutors answer only to the law, allowing them to make decisions impartially and without external influence.

Practically, however, the independence of the Prosecution Service led not to objectivity but to an almost entire lack of accountability. This flaw was exacerbated by a rigidly strict, almost feudal, hierarchy, in which all power and authority is vested in the Prosecutor General, who receives a 7-year appointment and is effectively irremovable. Unfortunately, this combination of minimal external accountability and stringent internal controls left the Prosecution Service vulnerable to political and personal influences. As noted in the 2006 PRI, the exploitation of the prosecutorial function led many to assert that Prosecution Service was excessively independent and unaccountable.

Efforts to rein in the unfettered independence of the Prosecution Service in the 2006 constitutional amendments were only partially successful. Article 129(4) of the Constitution would have allowed the National Assembly to remove the Prosecutor General upon a two-thirds majority vote, but the Constitutional Court overturned this provision as an unconstitutional breach of separation of powers. See Constitutional Court Decision No 7, Sofia, September 13th, 2006 on the Constitutional File No 6 of 2006. While the current Prosecutor General continues to enjoy strong support and is credited with making the Prosecution Service more transparent and accountable, some observers still feel that the position of Prosecutor General should be made directly accountable to the public. Otherwise, many respondents indicated that, without institutional safeguards, the next Prosecutor General could easily reverse many of the gains that have been made in recent years. If some sort of Parliamentary control over the Prosecutor General is constitutionally impermissible, one alternative is to provide for a more transparent and competitive selection process, such as by requiring public hearings. Other, more indirect, mechanisms include more clearly codified and published internal rules of decision making and subordination, or improved access to statistics on the work of the Prosecution Service.

A constitutional change that remains intact is the requirement that the Prosecutor General submit an annual report to the President, National Assembly, Council of Ministers, and Supreme Judicial Council on the operations of the Prosecution Service. See CONSTITUTION art. 84(16); Judicial System Act. art. 141(1). By a 2009 amendment of article 141(1) of the Judicial System Act, the Minister of Interior, Director of the National Investigation Service and Appellate prosecutors have been required to provide the Prosecutor General, according to an order and indicators provided by him, with information on the relevant investigations. The provision of information by the Minister of Interior is to be regulated in a joint instruction with the Prosecutor General. While this change has been welcomed, it is noted that the practical impact of having the Prosecutor General present an Annual Report to the Parliament has been diminished by the relative indifference demonstrated by Members of Parliament, who have largely neglected to attend the actual presentation of the Prosecutor General's report and question him on its findings. This serves as a reminder that true accountability depends not only on the cooperation of the Prosecution Service, but also with those public representatives charged with oversight responsibility. Fortunately, the Prosecution Service has taken the additional step of making the report available to the public through its official website. One possibility for improving accountability in the Annual Report is through the use of clearly defined performance indicators, rather than deferring to the Prosecutor General on which statistics to report. The results of these performance indicators could then in turn be considered by Parliament as part of the budgetary appropriation process.

Further amendments to the Constitution in 2007 attempted to make the Prosecution Service more accountable through the SJC, which seems to be evolving into an institution with the necessary capacity and authority to play a meaningful role in this regard. While the 2006 PRI assessment questioned the ability of the SJC to act as an effective oversight mechanism, the capacity and administration of the SJC have been significantly strengthened. The SJC now has an

administrative staff of up to 62 people. JUDICIAL SYSTEM ACT art. 30(3). Meetings of the SJC must now be convened at least once a week in open session, except in certain specific circumstances, *id.* art. 33(1), and it is authorized to create both permanent and temporary commissions to aid its work. *id.* art. 37. As a semi-independent body with both judicial and Parliamentary representation, the SJC has considerable authority over many aspects directly affecting the Prosecution Service. These include the selection, promotion, transfer, demotion, and removal of prosecutors, imposing disciplinary sanctions, coordinating the attestation process for selecting, promoting, and transferring prosecutors, adopting the draft budget for the entire judiciary, and approving the Prosecutor General's Annual Report. CONSTITUTION art. 130; *see also* JUDICIAL SYSTEM ACT arts. 30 and 31. The increased status and authority of the SJC underscores the importance that it too is fully transparent. The election of SJC members remains largely hidden from public view, which, even if conducted properly, only serves to increase public anxiety of cronyism and improper influence.

If implemented properly, the SJC's role in investigating and disciplining prosecutors, could serve as critical mechanisms for the public accountability and oversight of the Prosecution Service. The role of the SJC's Inspectorate in this respect is particularly important. Established by Article 132(a) of the Constitution, the SJC Inspectorate has broad powers to conduct periodic, planned investigations of all court, prosecution, and investigation activities, as well as the power to investigate signals and complaints of disciplinary violations by magistrates and, in response, propose penalties to the SJC itself. *See* JUDICIAL SYSTEM ACT art. 54(1). To accomplish this task, the SJC Inspectorate is authorized to operate a full-time staff of a chief inspector, 10 inspectors, 22 experts, and 22 administrative staff. JUDICIAL SYSTEM ACT arts. 42 and 55. While it was reported that the SJC Inspectorate finds itself overburdened, a staff of 55 constitutes an impressive commitment to helping ensure the integrity, efficiency, and accountability of the judiciary, including prosecutors. It is important to note that the chief inspector and inspectors are elected by the National Assembly by a two-thirds majority. JUDICIAL SYSTEM ACT art. 46. Lawyers with a high standard of professionalism and ethics shall be elected to these positions. To ensure their professionalism, high requirements for legal experience are set forth. Also, for five of the inspectors, 8 year specialized experience in the judicial system is required.

The SJC Inspectorate commenced its work in January 2008 and has been conducting planned and incidental inspections as well as review of complaints in regard to the work of magistrates. Final reports for the inspectorate's inspection have been released, along with an Annual Reports, to the National Assembly. Also, the SJC Inspectorate has an important role in the disciplinary procedures of the SJC. *See* Factor 19 on Disciplinary Proceedings. The Inspectorate's work on complaints against magistrates' work is another important component of the SJC's oversight of the judiciary. While most signals do not lead to a formal inspection, all signals are reviewed through a preliminary check to determine whether or not they should be acted upon. When an indication for the commission of a crime is present on the face of the complaint or appears during the inspection, the Inspectorate submits the file to the Prosecution Service for further investigation. The first two years of the Inspectorate's functioning have led to the establishment of this institution as an independent and effective mechanism for investigating public complaints concerning prosecutors' professional performance. This constitutes an important development in the public accountability of the Prosecution Service.

The public accountability of the Prosecution Service has been enhanced at the initiative of the Prosecutor General himself, who has strongly advocated for a more responsible, transparent, and ethical Prosecution Service. Although the Prosecution Service's relationship with the media is detailed more fully in Factor 23 on "Cooperation and Relationships with the Public/Media," it is important to note that the Prosecutor General has taken significant steps to provide greater access on the Prosecution Service's role and activities to the media and the public. As part of the PRI Implementation Plan following the 2006 PRI, media spokespersons were designated for each prosecutorial office and given training, and access to information on the Prosecution Service website has been enhanced. Also an Information Center has been established on the website, where citizens are able to track the status of cases online. While some respondents note that

delay in this information’s update often occurs, all of them appreciate the easily accessible means of obtaining information about prosecution services’ work. Additionally, the Prosecution Service cooperated with a civil society organization, the Journalists Against Corruption Club, in an ambitious civic education program that included the development of educational brochures, roundtable discussions on the Criminal Procedure Code amendments as well as the relationship between prosecutors and the media, and an educational film on the European Anti-Fraud Office [hereinafter OLAF].

Overall, there are encouraging signs that the Prosecution Service is moving towards stronger public accountability. Signs have been given on the one hand through external developments, such as being required to publicly account for its activities to Parliament and overseen through the complaint mechanism of the SJC. On the other hand, public accounting is ensured through internal developments, such as significantly increased transparency and access to information. In addition, the 2010 MOJ Strategy for the Continuation of the Judicial System Reform suggests measures which, if implemented appropriately, will further increase publicity of the budgeting and appointing procedures in the judiciary, including the Prosecution Service. MOJ JUDICIAL REFORM STRATEGY paras. 1.1 and 1.2. Also, the suggested further unification of the judicial system’s statistic will lead to an increased transparency of the Prosecution Service’s achievements and failures. *Id.* para. 1.7.

Factor 16: Internal Accountability

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>Despite attempts by the Prosecutor General to establish a professional culture that respects prosecutorial independence, prosecutors do not have effective access to an internal grievance mechanism due to a strict hierarchical structure that still exists under the Constitution and relevant laws. Few safeguards exist to protect the discretion and independence of subordinate prosecutors, although excessive supervisory control appears to be diminishing due to efforts of the Prosecutor General. Thanks to a significant increase in resources, the Prosecution Service Inspectorate continues to expand its internal investigations of magistrates, although successful prosecutions are limited in number and the extent of the Inspectorate’s mandate is unclear. Interviewees believed that a mechanism should be established not only for tracking European Court of Human Rights cases in which human rights violations by Bulgarian prosecutors is found, but also for sanctioning such prosecutors.</p>		

Analysis/Background:

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

upon the subordinate JUDICIAL SYSTEM ACT arts. 143(2), (3). This authority is also reflected in the Criminal Procedure Code article 46.

The 2006 PRI found that the strict hierarchy of the Prosecution Service and the culture of conformity that had been instilled in subordinate prosecutors chilled prosecutorial discretion, decreasing accountability at the supervisory levels. With no effective and publicly accessible checks and balances on the discretion of both trial attorneys and supervisors, the “top-down” management structure led to passive trial prosecutors simply accepting directions without question. This in turn created opportunities for the abuse of power and improper influence by supervisors over the cases of subordinates. Until the arrival of the current Prosecutor General, supervisors routinely gave oral instructions to subordinates, vastly increasing the opportunities for interference by supervisors, who were reportedly often motivated by personal needs rather than the facts or the law. Even when subordinate prosecutors disagreed with a supervisor’s decisions or questioned their motives, they rarely bucked the system or challenged their orders. As a result, there were effectively no mechanisms for internal accountability.

As discussed more thoroughly in Factor 10 above, the Prosecutor General has taken steps to break the culture of conformity by increasing the independence of trial prosecutors and disciplining supervisors who abuse their authority, and he takes pride in the fact that subordinate prosecutors feel increasingly free to disagree with him and other supervisors. Many interviewees confirmed that supervisors generally respect the prosecutorial discretion of their subordinate prosecutors and do not interfere in their decisions. For example, trial prosecutors are usually free to dismiss unsubstantiated cases without being forced by their supervisors to continue the investigation. Although, as might be suspected, it was acknowledged that some supervisors continue to resist any limitation of their authority.

The Prosecutor General has set the correct tone for the Prosecution Service and excessive supervisory control appears to be diminishing, but embedding individual prosecutorial independence as a value within the professional culture will take time. In the interim, there are few checks and balances embedded in institutional safeguards to protect the discretion and independence of subordinate prosecutors, although initial steps have been taken to correct this. For example, as part of the PRI Index Action Plan, the Prosecution Service coordinated meetings between the ethics commissions of the Supreme Cassation Prosecutor’s Office and the Supreme Administrative Prosecutor’s Office, and the SJC, to discuss mechanisms for protecting prosecutorial independence. However, until steps are taken to institutionalize these protections, the risk remains that the Prosecutor General’s successor may rapidly undo the positive direction he has established for respecting prosecutorial discretion.

Article 143(1) of the Judicial System Act provides that the actions of any prosecutor can be appealed to the immediately superior prosecution service, but it is unclear whether this appeals mechanism is available to subordinate prosecutors who wish to challenge supervisory interference. If so, the assessment team does not have information on how such appeals work in practice and whether this has been effectively utilized as a mechanism by subordinate prosecutors to protest interference or other inappropriate actions by superiors. Prosecutors would benefit from clear procedures and guidelines that both allow and encourage an effective mechanism for hierarchical recourse, in which prosecutors may lodge grievances against inappropriate interference in their cases.

Finally, it is unclear whether the Prosecution Service’s Internal Inspectorate will succeed as an internal investigatory mechanism, although its staff of prosecutors has increased from 3 to 11. The unit now focuses its inspection on crimes committed by magistrates, and disciplinary violations committed by prosecutors. It also monitors all criminal cases against magistrates. According to information from the Prosecution Service, criminal conduct by magistrates is being targeted more vigorously. See PROSECUTION SERVICES ANNUAL REPORT 2009 at 164–165. In 2009, the Inspectorate monitored 62 criminal cases against magistrates (compared to 21 in 2006) of which 20 were against prosecutors, 18 against judges, and 19 against investigators. On five

cases the identity of the perpetrator has not yet been confirmed. *Id.* Of a total of 64 cases, 6 are for corruption crimes committed by magistrates. In 2009 the prosecutors from the Inspectorate reviewed a total of 1,110 files initiated upon complaints and other materials signaling prosecutors' alleged disciplinary violations, or crimes. *Id.* In 76 of the cases magistrates were found to have committed disciplinary violations, 51 of them prosecutors. In 10 of the cases magistrates were found to have committed crimes and criminal proceedings have been instituted. *Id.* In 2009 the Inspectorate indicted 10 magistrates, 3 of them prosecutors, 3 investigators, and 4 judges. Ten criminal cases have been dismissed. *Id.* At the end of 2009, criminal proceedings against five magistrates were concluded with a conviction; four of the defendants were investigators and one a judge. Eight criminal proceedings concluded with acquittal. *Id.* Despite the increased activity, the Inspectorate faces an uphill battle in prosecuting cases against magistrates. In particular, challenges are faced in collecting sufficient evidence which is also indicated by the high proportion of acquittals. Some respondents expressed concern that the number of dismissed cases and acquittals indicate poor judgment on the Inspectorate's part in initiating procedures.

Reportedly, the Internal Inspectorate has not collected information about the European Court of Human Rights' judgments against Bulgaria when relevant to the prosecution, nor has it reviewed these cases in order to inspect prosecutors' acts on these cases and consider if grounds are present for disciplinary and criminal liability. Similarly, the PRI team did not find any indicia of a database to be maintained and analyzed by the Inspectorate concerning Bulgarian court decisions against the Prosecution Service for violations by prosecutors. On the other hand, interviewees emphasized the importance of Bulgarian and European court decisions not only as a teaching tool for prosecutors all over the country, but also as grounds for disciplinary liability of prosecutors who do not respect human rights and specifically the rights of individuals participating in the criminal process. Interviewees believed it necessary that the Prosecution Service deal on a systematic basis with this important aspect of internal accountability. A mechanism for disciplinary liability following court decisions must be put in place to punish prosecutors whose violations led to liability of the state and the Prosecution Service. Analysis of the courts' decisions in these cases must be performed and submitted to the prosecutors as a teaching tool in their daily work on similar cases. Relevant CLE is also needed.

Factor 17: Conflicts of Interest

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
<p>Conflicts of interest issues appear to be receiving greater attention. The Criminal Procedure Code and the Code of Ethics of Bulgarian Magistrates contain adequate guidelines for regulating conflicts of interest, and a new Conflicts of Interest Act was recently passed. Training in conflicts of interest issues appears to be increasing, and interviewees are more aware of these issues. However, the extent to which conflicts of interest requirements are both observed and enforced remains unclear and insufficient. Interviewees believed that more attention and resources should be paid both to promoting adherence to conflicts of interest rules and to enforcing those rules.</p>		

Analysis/Background:

Both the Criminal Procedure Code and the Code of Ethics of Bulgarian Magistrates Section IV contain specific conflict of interest guidelines, for which a prosecutor, as the other magistrates, will either be recused or disqualified, including any circumstances that would make the prosecutor biased or interested, either directly or indirectly, in the outcome of the case. See CRIM. PROC. CODE arts. 11 (2), 29, 47, and 274; CODE OF ETHICS OF BULGARIAN MAGISTRATES Section IV, SJC

Decision Record No. 21 (May 20, 2009) [hereinafter MAGISTRATES ETHICS CODE]. The Code of Ethics is broader than the Criminal Procedure Code as it addresses not only a prosecutor's impartiality in a specific case, but also circumstances or conduct that would constitute a misuse of the prosecutor's position. MAGISTRATES ETHICS CODE art. 9.4.

One significant development was the recent passage of the CONFLICT OF INTEREST PREVENTION AND DISCLOSURE ACT, *adopted* Oct. 31, 2008, SG No. 94, *last amended* Dec. 18, 2009 [hereinafter CONFLICTS OF INTEREST ACT], The Conflicts of Interest Act, if properly implemented, could provide a strong mechanism for preventing conflicts of interest by government officials. The act covers a broad range of public officials, from the President and Prime Minister to members of the SJC and all magistrates. CONFLICTS OF INTEREST ACT art. 3. Importantly, the Conflicts of Interest Act regulates not only conflicts of interest between a public office holder and another party, but also conflicts interest between the family members of the public office holder and other parties. *Id.*, see art. 2(2); supplementary provision sect. 1. The act is quite comprehensive, requiring disclosure of not only potential conflicts of interest but also all private interests (art. 12), with the public office holder required to eliminate any declared conflict of interest within 1 month (art. 13). An examination mechanism is provided for conflict of interest allegations (arts. 23-31), penalties and fines are provided for violations of the act, including possible dismissal, (art. 33-43), and the act also provides protections and rights for whistleblowers (art. 32).

If the Conflicts of Interest Act is effectively implemented and enforced, it could be extremely useful in deterring, revealing, and punishing corruption and abuses of power by government officials, including prosecutors. However, the 2010 European Commission Report expresses concern that a year after implementation of this legislation "still few cases of conflict of interest have been identified or sanctioned and few signals on corruption have been sent to the prosecution." While acknowledging that progress has been made in the area of central administration inspections, and a number of investigations have led to disciplinary sanctions or formal notification of the Prosecution Service, the Commission recommends strengthening the law on the prevention of conflicts of interest "through an authority with pro-active mandate in charge of indentifying and sanctioning the conflicts." To address the criticism, an amendment of the Conflict of Interests Act is under consideration. Also, developing internal mechanisms to improve the effective identification of conflicts of interest is suggested by the 2010 Strategy for the Continuation of the Judicial System Reform. See MOJ JUDICIAL REFORM STRATEGY para. 3.4.

As part of the reform plans following the 2006 PRI, discussions were convened with the SJC and the ethics commissions of the Supreme Cassation Prosecutor's Office and the Supreme Administrative Prosecutor's Office to increase attention on conflict of interest issues. Conflicts of interest has also been incorporated into the ethics training at the NIJ.

Interviewees demonstrated greater awareness of conflicts of interest issues than in the 2006 PRI assessment. While some interviewees acknowledged that prosecutors do not always recuse themselves from cases involving conflicts of interest, other interviewees, both inside and outside the Prosecution Service, reported that prosecutors strictly observed conflict of interest rules. In instances where prosecutors do recuse themselves, the case is reportedly transferred not just to another prosecutor, but to another office.

Overall, the legislative framework for handling conflicts of interest appears to be considerably improved, although it remains to be seen whether the new Conflicts of Interest Act will be adequately enforced. Implementing the European Commission's recommendation to create a central commission to deal with conflict of interests matters may lead the government to better results and more cases of detected corruption.

Recognition of conflicts of interest as an important issue appears to be increasing, although it will remain a challenging issue in a small country with a tightly integrated legal profession, and where the network of favors and cronyism remains an expectation rather than an exception. Conflicts of interest should be included as part of mandatory ethics training for both junior prosecutors in their

initial NIJ training and for experienced prosecutors as a CLE requirement. Also, it remains unclear from disciplinary records the extent to which existing conflict of interest regulations are enforced, either during the trial itself or as part of the disciplinary process.

Factor 18: Codes of Ethics

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
<p>The Code of Ethics of Bulgarian Magistrates, which was drafted and approved by the SJC, provides clear and comprehensive ethical standards for all magistrates, including prosecutors. Ethics trainings for prosecutors have increased, and the importance of observing professional ethics has been highlighted by the Prosecutor General’s reforms. However, the Code’s implementation is jeopardized by insufficient reporting of the Code’s violations. The Code of Ethics does not stipulate a duty of magistrates to report unethical conduct. Thus, failure to report such conduct is not an ethical violation itself, as it is in other legal systems, which could have a strong preventive effect on magistrates</p>		

Analysis/Background:

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

The Magistrates Ethics Code advances seven principles of conduct for magistrates which provide the framework for ethics regulation. These principles are: independence, impartiality, fairness and transparency, civility and tolerance, integrity and decency, competence and qualification, and confidentiality. MAGISTRATES ETHICS CODE chapter 1. Each principle is further defined by the code and an explanation for its purpose is provided. *Id.* Next, the Code offers detailed rules for the implementation of each principle *Id.* chapter 2. Specific rules for administrative heads conduct are set forth for in Chapter 3 of the Code. Chapter 4 prescribes the rules for conflict of interest prevention. The safeguards for the implementation of the rules of conduct are stipulated for in Chapter 5, and they include the magistrates’ own will and voluntary adherence to the rule, as well as the supervision of the SJC, its Ethics Commission and professional organizations of magistrates. The last chapter of the Code sets for the procedure for forming the ethics commissions, which are established in the regional, district, appellate and supreme bodies of the judiciary, including prosecution services. These commissions serve as assisting bodies to the SJC’s Commission on Anti-corruption and Professional Ethics. Their main task is to consult with the SJC’s relevant commission and to submit opinions on implementation of the ethical rules. *Id.* chapter 6.

The rules prescribed by the Magistrates Ethics Code are comprehensive and clearly stated, and consist of both rules of conduct in the course of official activities and rules of conduct outside the office. A prohibition on *ex parte* communications with judges and other participants in the court procedures is included in chapter 2, section 2.3. Many respondents indicated that *ex parte* communications are currently fairly common. Such communications can improperly influence the

outcome of the case or create the appearance of collusion between the judge and the prosecutor, thereby undermining confidence in the criminal justice system.

In addition to the Prosecutorial Ethics Rules, there are several laws that impose duties with ethical implications on prosecutors. The Judicial System Act, for example, requires prosecutors to “safeguard the official secrecy of information” that has come to his/her knowledge. See JUDICIAL SYSTEM ACT art. 211. It also provides that prosecutors may not express anticipatory opinions on cases assigned to them or express any opinions on cases not assigned to them. *Id.* art. 212. Prosecutors are also forbidden from providing legal advice. *Id.* art. 213.

Prosecutors are also bound by separate conflicts of interest provisions in the Criminal Procedure Code. See arts. 11(2), 29, 47 and 274. As detailed in Factor 17 above, if a prosecutor does not recuse him or herself when there is a conflict of interest, a party may file a request for dismissal.

While the overall regulation of professional ethics appears to be reasonably clear and comprehensive, challenges in implementation still exist. Many respondents complain about various violations of the rule of conduct by prosecutors that they have observed, and express their frustration that in general most of the violations remain unpunished. The respondents from the Prosecution Service have been particularly concerned as the public integrity of the Prosecution Service and each prosecutor alone suffers the damage caused by individual actors. However, many of the respondents acknowledged that the overall reluctance to report such acts to the institutions obligated to supervise the ethical rules’ implementation is an obstacle to effective application. Unfortunately, the Code of Ethics does not impose a duty upon magistrates to report conduct which violates ethical rules. Failure to report such conduct is not an ethical violation itself, as it is in other legal systems. If provided for, the duty to report an ethical violation, including a magistrate’s own conduct will facilitate the Code’s application and will have a strong preventive effect on magistrates.

Comprehensive and clear regulation, while necessary, is not sufficient alone to ensure ethical conduct by prosecutors. Further steps must focus on the safeguards for the ethical rules’ implementation and incentives for prosecutors and other actors in the field to submit information on conduct that may violate the Code of Ethics and other ethical rules. If implemented, the measures suggested by the 2010 MOJ’s Strategy for the Continuation of the Judicial System Reform will also improve the overall process of the application of the rules of conduct. Respondents are particularly positive about the proposal that the statute of limitations for ethical violations be reconsidered. See MOJ JUDICIAL REFORM STRATEGY paras. 1.2, 3.3.

Factor 19: Disciplinary Proceedings

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>Prosecutors are subject to well-developed and equitable disciplinary procedures under the authority of the SJC. The revised SJC structure and creation of the SJC Inspectorate provide the potential for a more effective oversight and disciplinary mechanism. However, interviewees reported that supervisors have little power to discipline subordinates for poor quality work, that the SJC disciplinary process takes too long, and that SJC decisions are frequently overturned</p>		

Analysis/Background:

Authority for the demotion, transfer, and removal of magistrates is vested in the SJC (CONSTITUTION arts. 129(1) and 130(6); Judicial System Act art. 160), although the Minister of Justice is also granted the power to make such proposals (*id.* art. 130(a)(3)). While prosecutors become “irremovable” after five years by an SJC decision, removal is still permitted for various causes, including retirement at age 65, resignation, conviction of an intentional crime with a sentence of imprisonment, continued inability to perform one’s duties for more than a year, or “grave breach or systematic dereliction of official duties, as well as actions damaging the prestige of the judiciary.” See CONSTITUTION art. 129(3).

The overall disciplinary procedures governing prosecutors are set forth in Chapter 16 of the Judicial System Act. The bases for prosecutorial discipline are enumerated in Judicial System Act article 307(4), and include, repeated failure to meet case deadlines, unjustified delays in proceedings, violations of the ethics rules, acts undermining the prestige of the judiciary, and failure to perform other official duties. These standards appear reasonable, and their breadth offers the benefit of flexibility, although there is the risk that they might not be applied uniformly.

While the SJC has overall authority for disciplinary proceedings, less serious punishments may be applied by prosecutorial supervisors. *Id.* art. 311(1). Supervisors may either impose a note to the prosecutor’s personnel file or censure a prosecutor, although such penalties must be reported to the SJC, which retains the power to modify or overturn the sanction. *Id.* art. 314(3). Only the SJC may reduce a prosecutor’s salary or demote or dismiss a prosecutor. *Id.* art. 311(2). Proposals to the SJC for sanctions may be submitted by various sources, including supervisory prosecutors, the SJC Inspectorate, a 1/5 vote of the SJC, or the Minister of Justice. *Id.* art. 312(1).

The disciplinary process is well developed and quite equitable, particularly for the more serious penalties imposed by the SJC, with the prosecutor having the right to notice of the proposal (*id.* art 316(5), to attend the disciplinary hearing in person and present written or oral testimony (art. 313(1)), and to be represented by an attorney (*id.* art 318(1)). A disciplinary panel of three SJC members is selected at random (*id.* art. 316), which collects and reviews evidence and hears testimony, and then proposes either dismissal of the complaint or a sanction to the full SJC by majority vote (*id.* arts. 318 and 319). The full SJC either accepts, rejects, or modifies the proposal, also by majority vote, and issues a written decision and justification. *Id.* art. 320. Following the decision of the SJC, the prosecutor may appeal to the Supreme Administrative Court. *Id.* art. 323.

One important development since the 2006 PRI is the creation of the SJC Inspectorate, which has only been in operation since January 2008. The Inspectorate serves as the investigatory arm of the SJC, although the inspectors are selected by the National Assembly and it operates as an independent body. CONSTITUTION art. 132a. The Inspectorate is composed of a chief inspector, 10 inspectors, 22 legal experts, and an administrative staff of 22. *Id.*; JUDICIAL SYSTEM ACT arts. 42 and 55. In addition to completing planned and incidental inspections, the Inspectorate investigates signals or complaints against magistrates that can be from any source, including those submitted anonymously. Each signal is reviewed to see if it warrants formal investigation, and, if so, is assigned to an inspector, who is assisted by two legal experts. Following the investigation, the inspector presents a recommendation to the full SJC Inspectorate, which votes on whether to send the recommendation to the SJC.

The 2006 PRI reported that although the SJC had been assigned the primary responsibility for disciplining prosecutors, it was not well equipped to serve this role and did so infrequently. The new SJC structure and, in particular, the creation of the SJC Inspectorate, constitutes a far more effective mechanism. Still, some interviewees noted that supervisors still have far too little power to discipline their subordinates for poor quality work, that the SJC disciplinary process takes too

long, and, perhaps most problematic, that SJC decisions were frequently overturned by the Supreme Administrative Court.

V. Interaction with Criminal Justice Actors

Factor 20: Interaction with Judges

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

Conclusion	Correlation: Positive	Trend ↑
Judges and prosecutors generally have a professional and respectful relationship, although inappropriate and ex parte communications, particularly in smaller jurisdictions, remains a concern.		

Analysis/Background:

According to article 117 (2) of the Constitution, the judicial system is an independent branch of government that administers justice. The judicial system includes judges, prosecutors and investigators. The SJC governs the admission, promotion, demotion, transfer, discipline and removal of all judges, prosecutors, and investigators. JUDICIAL SYSTEM ACT art 30; CONSTITUTION art. 129(1) of the Constitution. *See also* Factor 3 above. There is no specific prohibition against prosecutors becoming judges or vice versa provided each submits to the competition process described in Factor 3. However, a judge may not be part of a trial or hearing in which he or she acted as a prosecutor. Crim. PROC. CODE art. 29 (1)(3).

Chapters 4, 19, and 20 of the Criminal Procedure Code describe most of the functions of the first instance criminal court in the pre-trial and hearing phases. Judges perform several functions among which are included: examination and approval of warrants, acceptance of indictments or formal complaints of the victim, scheduling of hearings, examination of witnesses and defendants at trial. They determine lawfulness of evidence, decide motions to remand to custody, and *inter alia*, issue sentences. In the pre-trial phase following the issuing of an indictment a judge-rapporteur is appointed to review the case in preparation for trial. *Id.* art. 248. The judge-rapporteur has the power to terminate trial proceedings on jurisdictional grounds and for procedural violations and return the file to the prosecutor with his/her findings. *Id.* art. 249. The judge-rapporteur may also terminate the entire criminal proceeding if she/he finds *inter alia*, a lack of evidence or the alleged act does not constitute a crime. *Id.* art. 250, *see also* art. 24. In this case, the judge-rapporteur must notify the victim, the accused and the prosecutor by providing a copy of the termination order. with his/her findings. *Id.* art. 249, 250. Judges hearing a criminal case at the trial phase may also terminate trial proceedings and return the case to the prosecutor for several reasons including improper jurisdiction and procedural violations, lack of evidence or the crime alleged is not a violation of the law. *Id.* arts. 288, 289.

Recent amendments of the Criminal Procedure Code restored the provisions enabling the prosecutor to appeal a court's termination order and orders returning the file. While prosecutors welcome the change, respondents from outside the Prosecution Service express concern that the change will lead to unreasonable delays of the criminal procedures. Respondents recall that unreasonable delays of the criminal proceedings, caused by the prosecutor's appeal, which worked to the detriment of the accused, led to a removal of this provision from the Criminal Procedure Code. Some respondents believe that this legislative change will negatively influence

the judges' and prosecutors' interaction. While some tension may arise from the 2010 amendments implementation, overall, the relationship between judges and prosecutors seems to have improved in the past four years. As noted in the 2006 PRI, most interviewees reported that the relationship between judges and prosecutors is generally professional and cordial. Additionally, there was no evidence of the previously reported hostility on the part of prosecutors towards those judges who regularly terminated cases or acquitted defendants. Isolated cases of prosecutors' improper obstruction of judges' rulings on regional level have been reported, and while not sufficient to constitute a negative trend, reveal deficiencies in the former procedure for magistrates' appointments. Armed with now more efficient disciplinary and ethical procedures the Prosecution Service is better prepared to deal with such cases and eradicate them in the future.

Still, courtroom decorum and inappropriate *ex parte* communications between judges and prosecutors remain a concern. While some interviewees maintained that no such communications takes place, a significant number of interviewees feel that *ex parte* discussions both inside and outside the courtroom continue to be a serious problem. Particularly in rural areas, judges and prosecutors are still perceived as being too cooperative and familiar. In addition to the problem of *ex parte* discussions, smaller courts were seen as more likely to defer to the wishes of prosecutors and police, due to the greater degree of familiarity between actors in smaller jurisdictions. However, the new Magistrates Ethics Code offers grounds for addressing this problem by explicitly prohibiting *ex parte* communications.

Factor 21: Interaction with Police and Other Investigatory Agencies

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

Conclusion	Correlation: Neutral	Trend ↑
<p>While coordination between police and prosecutors is improving, the transfer of investigatory responsibility from the NIS to MOI investigating police officers, coupled with inadequate training, resources, and technology, continues to hamper the ability of police and prosecutors in conducting investigations. The investigation stage is widely considered the weakest part of the prosecution process, with 70% of investigations reportedly suspended. Interviewees pointed to overwhelming caseloads and indicated that prosecutors' supervision and guidance of investigations needs to be strengthened, with consequences for failing to do so. Interviewees believed that the successful practices implemented by the Supreme Cassation Office's specialized departments should be implemented more widely.</p>		

Analysis/Background:

As noted above, pursuant to article 127 of the Constitution and article 46 of the Criminal Procedure Code the prosecutor's function in criminal proceedings is to direct and supervise the investigation of criminal acts as he/she may also carry out investigations. The law enforcement entities that make up investigative bodies are the National Investigation Service [hereinafter NIS] (investigators belonging to the judiciary) and Ministry of Interior officers appointed at the position of "investigating police officer." By law, the investigative bodies operate under the guidance and supervision of a prosecutor. CRIM. PROC. CODE art. 52.

Pre-trial proceedings are comprised of the investigation itself and all actions taken by the prosecutor during and after the immediate completion of the investigation and before court proceedings are instituted. *Id.* arts. 192 and 193. Pre-trial proceedings are considered initiated by

the decree of the prosecutor, usually through the drafting of an investigative act, or, when crime scene observation, searches and seizures, and eyewitness interviews are required to be performed immediately by police or investigators to obtain and preserve evidence. *Id.* art. 212.

According to article 196 of the Criminal Procedure Code, the prosecutor possesses expansive supervisory power over the direction of the pre-trial investigation, and especially over the police and investigators. For example, the prosecutor has the mandate to guide the investigation and to:

- Constantly control the progress of investigation, studying and inspecting all case materials;
- Give instructions in relation to the investigation;
- Take part or perform investigative actions;
- Remove the investigative authority, where he or she has committed a violation of the law or is not capable of ensuring the correct conduct of the investigation;
- Withdraw a case from an investigative authority and transfer it to another;
- Assign to the respective bodies of the Ministry of Interior the implementation of individual actions related to the discovery of the crime;
- Revoke decrees of investigative bodies on his own motion or on the basis of a complaint by the interested individual decrees of investigative bodies.”

The prosecutor also monitors the lawfulness of the investigation and his/her written instructions are binding on the investigation team and not subject to objection. *Id.* arts. 196(2) and 197.

The investigation during pre-trial proceedings is subject to strict time limitations in all but a few cases. However, as a matter of principle, the law requires the investigative body, i.e., MOI investigating police officers and NIS investigators, to conduct its work in a prompt fashion and within the shortest period possible without compromising the law or overlooking necessary evidence. During this period, the investigation body should be regularly reporting to the prosecutor and providing updates. *Id.* art. 203.

Article 234 of the Criminal Procedure Code imposes a specific time limit on investigations. In most cases, the investigation must be completed and sent to the prosecutor within two months, or less if ordered by the prosecutor. Upon the well-founded written request of the subordinate prosecutor in complex cases only, a higher level prosecutor may extend the deadline up to another four months. Only in exceptional cases and with detailed written cause from the higher level prosecutor, may the Prosecutor General extend the deadline again. Any evidence gathered beyond the deadline is inadmissible. *See also Instructions* S. 64(1)(2) and S. 65(1). However, when files are sent back to the investigative body, new terms under the time limits described above are instituted. However, the accused’s right to object to an unreasonable delay of preliminary criminal proceedings and to request that his or her case therefore be tried in court no longer exist after the repeal of chapter 26 of the Crim. Proc. Code by the 2010 amendments of the Crim. Proc. Code.. For a further discussion on this amendment see Factor 11 above.

In short, under Bulgarian law prosecutors formally manage the entire criminal investigation. As noted earlier in Section II, prosecutors may also institute their own follow-up investigation if necessary. Law enforcement entities are required to report their findings and progress to prosecutors. In practice, however, the relationship described in law does not always function as envisioned.

The 2006 PRI highlighted numerous challenges in the relationship between police and prosecutors, which substantially impacted the ability of prosecutors to effectively investigate and prosecute cases. While some positive steps have been taken, particularly with regards to increased training, coordination, communication, and mutual respect, the remaining challenges continue to degrade the effectiveness of the criminal justice system.

Many challenges in the relationship between police and prosecutors can be traced to the transfer of most investigatory powers from the NIS to the MOI. Many interviewees described this transfer of responsibility as poorly implemented, with no knowledge transfer from the NIS to the MOI. The MOI investigating police officers simply were not prepared to take on these additional duties and they remain overwhelmed. Circumstances in Sofia are particularly bad, where the average investigating police officer reportedly has between 150–400 active cases at any one time. The combination of overwhelming caseloads, inadequate training, low salaries, and inadequate equipment and technological resources has severely hurt morale, making the role of an investigating police officer extremely unappealing. As a result, turnover is high and there are numerous vacancies, which has in turn increased the burden on those that remain. Quite understandably, the ability of investigating police officers to effectively handle cases and provide prosecutors with the information and evidence they need has been greatly hampered. Exacerbating these problems is the tendency of many investigating police officers to rely on prosecutors, who are themselves overworked, for instructions. Meanwhile, after the transfer of investigatory powers occurred, over 500 NIS investigators remained in their positions, but with very little to do as they were effectively limited to special serious, complex, international, or other crimes involving some government officials. According to one interviewee, NIS investigators typically handled one case per year. However, the last Criminal Procedure Code amendments provided for greater discretion by the prosecutors in ordering an investigation. This, hopefully, will allow NIS and its district units, now all integrated within the Prosecution Service's structure, to relieve the police investigating bodies from more complicated and time consuming cases and will allow for better use of the human resources within the police for the needs of the pre-trial procedures and investigations.

The data cited by various interviewees paints a conflicting picture. On one hand, some sources claimed that only 3–10% of cases are returned by judges for insufficient evidence, while the conviction rate for prosecutions is approximately 96%, which would seem to indicate that both the police and prosecutors are quite effective. In contrast, however, approximately 70% of police investigations are reportedly suspended due to lack of evidence. Perhaps more disturbing is that crime statistics are suspected to reflect only a small portion of actual crime. It is estimated that only 30% of actual crimes are reported, with that number decreasing to 10% for corruption-related crimes. It is suspected that the crime rate has increased in recent years, and that official statistics do not capture this, in part, due to underreporting by police. Several interviewees claimed that petty crime, in particular, is vastly underreported due to efforts by police to repress the registration of crimes by victims.

As noted previously, almost all respondents point out the poor quality of the investigation as the weakest part of the prosecution process. The prosecution is primarily blamed for this negative result due to its broad authority and its duty to supervise and direct the investigation. The extensive range of problems explained above impedes the Prosecution Service's attempt to improve its guiding role in the investigations and inhibits more aggressively measures to enhance prosecutors' accountability. The overwhelming load of supervised cases per prosecutor, coupled with the lack of experience and practical knowledge in police investigating bodies, preordains poor performance. However, through relocation of resources and increase in prosecutors' work efficiency the Prosecution Service can substantially improve the current situation. *See* Factor 27. Another way to improve the quality of supervision would be to widely apply specialization of prosecutors and units as currently is the practice in the Supreme Cassation Service. The joint-teams approach applied to the challenges of specific and complex investigations will increase the efficiency of supervision and allow for the prosecutors to take on greater case loads while observing the same quality of supervision and guidance. As mentioned, respondents unanimously point to the organization of the work of the joint teams now investigating organized crime and embezzlement of EU funds as role models that should be replicated on regional and district level. The July 2010 report of the European Commission on Bulgaria's progress also emphasizes the best practices that these joint teams offer. *See* 2010 EUROPEAN COMMISSION REPORT. Another means of improving supervision would be to better utilize the procedures set forth in Chapter 31, articles 396–411 of the Criminal Procedure Code. Procedures are set forth for

bringing actions against staff of the MOI, among others, who are alleged to have violated national law and human rights. These cases are referred to the Military Courts, to which specialized prosecutors and investigators are assigned. While the Military Courts have been criticized as non-transparent and closed to public scrutiny, respondents indicated that claims of police brutality are fairly low. It is unclear whether this is due to the effectiveness of the Military Court prosecutors in investigating and deterring police brutality, or simply underreporting of the problem.

Police and prosecutors are improving their efforts to work together, and respondents generally seemed to believe that both parties were gaining much-needed experience in the new duties effectively thrust upon them with no preparation. Prosecutors seem to be taking greater responsibility for leading investigations, while the MOI investigating police officers are gradually becoming more effective, despite the considerable challenges they face. However, greatly increased training, resources, and practical and technological coordination are needed.

Factor 22: Interaction with Representatives of the Accused

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

Conclusion	Correlation: Neutral	Trend ↑
<p>Public prosecutors in general respect the independence of the defense function and the rights of defense attorneys are protected by law. The prosecutor has chief responsibility for ensuring the rights of defense counsel during the investigative stage, but there are instances when prosecutors do not meet their obligations towards defense attorneys and defendants, particularly during pre-trial investigations. Defense attorneys are encouraged by greater transparency and media access, but also reported that in some cases prosecutors misuse these mechanisms to release details about a case to the media.</p>		

Analysis/Background:

The Criminal Procedure Code and the Attorneys Bar Act articulate the inviolable rights afforded defense attorneys. See ATTORNEYS BAR ACT, adopted Jun. 25, 2004, SG No. 55, last amended Jul. 20, 2007 [hereinafter BAR ACT] Both laws also support the concept of equality of arms. In article 99 the Criminal Procedure Code affords defense counsel the following rights: “[to] meet the accused party in private; to examine the case-file and obtain excerpts he/she needs; produce evidence; take part in the criminal proceedings; make requests, comments and raise objections, as well as to file appeal from acts of the court and of the bodies entrusted with the pre-trial proceedings which infringe upon the rights and legal interests of the accused party. The defense counsel shall have the right to take part in all investigative actions involving the accused party, his failure to appear not being an obstacle to their progress.”

Article 29(1) of the Bar Act mandates that all attorneys at law enjoy equal standing in all proceedings, and, “...shall be placed on equal footing with judges, in terms of respect, and assistance shall be provided to them as to a judge.” As in Criminal Procedure Code article 99, Article 31 of the Bar Act guarantees attorneys the right of free access to pre-trial and court case files and provides them the ability to make copies of any data therein. BAR ACT art. 31.

As discussed in Factors 11–13, attorneys at law are permitted to defend all the rights afforded the accused, victims and witnesses. According to Criminal Procedure Code article 99, the rights of defense counsel to information begin to attach even during the investigation. At the discretion of the pre-trial investigation team, defense counsel may observe the investigation as it is being

conducted, unless otherwise prohibited by law and where they do not obstruct the investigation. *Id.* art. 224. At the conclusion of the investigation the prosecutor confirms all investigative actions have been taken and approves the presentation of the entire investigation file to the accused, defense counsel and victim (and his/her counsel). *Id.* arts. 226, 227. Next, the investigative body makes the file and materials available to the defense and accused, *inter alia*, for their review. *Id.* art. 228. Those reviewing the file, including defense attorneys, may make written or oral requests, remarks and objections. The prosecutor rules on the requests. His/her rulings are subject to appeal to a higher level prosecutor. *Id.* art. 229. Where requests for additional investigation are granted, parties may attend the subsequent investigation. *Id.* art. 230. Following review of the investigation, the defense counsel (or prosecutor) may make a proposal to draw up an agreement in cases where the crimes alleged permit agreements. *Id.* art. 381.

If the rights of defense counsel are violated, the Bar Act provides recourse. According to article 29 (2) and (3), the attorney-at-law may request the Bar Council to authorize a review of the facts giving rise to the violation. The Bar Council then initiates an inspection of the reported violation. The Bar Council appoints a member of the Bar Association to coordinate a review with a member of the court or institution in which the violation is alleged to have occurred. Within seven days the court or institution is obliged to appoint a representative to work with the Bar representative. If, upon inspection, the Bar Council finds the violation proved, "it shall make a proposal for the institution of disciplinary proceedings against the judge, prosecutor, investigator, investigating police officer or for the imposition of a disciplinary sanction on the respective official by the manager of the administrative authority or service." *Id.* art. 30(1). Presumably, as a result of the Bar Council's action, the SJC could then institute disciplinary proceedings against the prosecutor in the manner described in Judicial System Act article 307, and as generally explained in Factor 10 and Section IV above.¹⁷

While interaction between prosecutors and defense attorneys seems to have improved, defense attorneys expressed concerns with several disconcerting practices. As the *dominus litis* of the investigation, the prosecutor is chiefly responsible for ensuring that the rights of defense counsel are observed throughout the pre-trial investigation. While prosecutorial control over investigations and coordination with police has improved, some defense attorneys reported that prosecutors do not consistently monitor investigations. While obstruction of investigations through neglect or incompetent handling is suspected to be intentional in some cases, there are no direct complaints that prosecutors hid or removed evidence from defense attorneys. But access to the investigatory file can still be difficult and, contrary to the Criminal Procedure Code, access is often delayed until the trial stage.

Defense attorneys were generally encouraged by the greater transparency and media access under the Prosecutor General, however, in some instances, these mechanisms are being misused. Some interviewees report that prosecutors release details about investigations to the media. As in the 2006 PRI, nearly all respondents agreed equality of arms in litigating a case in the court room is observed.

¹⁷ The assessment team received no information about the number of active or closed proceedings against any prosecutor made pursuant to article 30 of the Bar Act.

Factor 23: Interaction with the Public/Media

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend ↔</i>
<p>The Prosecutors' Office has taken significant steps to engage the media, including the creation of media spokespersons for all prosecutorial offices and training for such spokespersons. Additionally, the Prosecutor's Office has collaborated with CSOs and the media on important civic education initiatives. However, prosecutors have reportedly abused their relationship with the media by inappropriately releasing details on open cases. The vilification of defendants in the press has unnecessarily created public hostility both towards defendants and towards the Prosecutors' Office when such cases are unsuccessful.</p>		

Analysis/Background:

The Judicial System Act is among several acts regulating the public disclosure of information. Article 156 obligates prosecutors to respect official secrecy or risk criminal sanction under article 284 of the Penal Code. Judicial System Act article 211 commands prosecutors to safeguard the secrecy of information they come to acquire in the scope of their position and to respect the confidentiality of the deliberative process even after adjudication. Prosecutors may not publicly express anticipatory opinions on open cases whether assigned to them or not. *Id.* art. 212. Article 198 of the Criminal Procedure Code prohibits under criminal penalty, making public investigation materials without the express authorization of the prosecutor or court.

In May, 2009 the SJC adopted a Code of Conduct of the Bulgarian Magistrates. SJC Protocol No. 21, May 20, 2009 [hereinafter CODE OF CONDUCT]. According to it magistrates shall not make public announcements or comments about pending procedures, thus engaging themselves with the final outcome, or create the impression of partiality or prejudice. Outside court hearings, they shall not discuss similar proceedings with the parties involved, attorneys or third parties, unless otherwise provided for by law (Section 2 Rules resulting from the principle of Impartiality, p. 2.3.)

However, each of these acts allows for public interaction with the prosecution particularly in solving crimes or in gathering evidence. Article 215 of the Judicial System Act obligates organizations and the public to cooperate with prosecutors and investigators. *See also* JUDICIAL SYSTEM ACT arts. 145 (2), (3). Article 204 of the Criminal Procedure Code appears to go even further, declaring that, "Pre-trial bodies shall widely use the assistance of the public in order to discover the criminal offence and to elucidate the circumstances of the case." Furthermore, the Code of Conduct establishes the possibility to provide the society with useful, timely, understandable and proper information corresponding to the requirements of the law. Magistrates can present in public, personally or through the media, the motives for their decisions on high profile cases, avoiding at the same time any behavior or actions which can be interpreted as self-promotion or excessively seeking public recognition.

The relationship with the media continues to evolve, with some dramatic improvements in recent years, but also with some new causes for concern. On one hand, the Prosecutor General has dramatically reformed prosecutors' relationship with the media. As part of the PRI Implementation Plan following the 2006 PRI, media spokespersons were assigned to each prosecutorial office and given training, access to information on the Prosecution Service website has been enhanced, and an Information Center was established. The media has regular access to not only the prosecutorial spokespersons, but also line prosecutors handling cases.

Additionally, the Prosecution Service cooperated with a civil society organization, the Journalists Against Corruption Club, in an ambitious civic education program that included production of an award-winning television series on the operations of the Prosecutors' Office, media-hosted roundtable discussions on Criminal Procedure Code amendments as well as the relationship between prosecutors and the media, and an educational film on the OLAF. In short, the Prosecutor General has significantly reversed the prior relationship with the media, which was antagonistic and unresponsive.

The increased transparency and media access has, unfortunately, encountered several problems. First, the newfound openness to the media has, on occasion, been abused by prosecutors to denigrate defendants in the press. In addition to causing irreparable harm to the reputations of defendants who have not been proven guilty, the public vilification of defendants creates unrealistic expectations in both the media and the public at large. When such cases are unsuccessful, it generates considerable criticism of the Prosecutors' Office for failing to convict someone they have portrayed as a menace to society and obviously guilty.

Perhaps as a result of increased scrutiny and the negative effects of trying cases in the press, some interviewees reported that both the Prosecutor General and prosecutors generally were becoming less responsive. Interviewees hoped that the Prosecutors' Office will find an appropriate balance between providing the media with timely and relevant information while avoiding the temptation to incite public hostility towards defendants.

Factor 24: International Cooperation

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

<i>Conclusion</i>	<i>Correlation: Positive</i>	<i>Trend ↔</i>
<p>While bilateral agreements could be made more effective, the Prosecutors' Office continues its strong efforts to respond promptly to requests for international cooperation, and trainings on these issues have been well received. Prosecutors are designated as EU contacts for extradition, arrest warrants, and mutual legal assistance, and trainings on international cooperation have been conducted.</p>		

Analysis/Background:

Under Bulgarian law, international mutual legal assistance in most criminal matters is governed generally by the Criminal Procedure Code articles 471–479. Extradition is governed by the LAW ON EXTRADITION AND EUROPEAN ARREST WARRANTS, *adopted* Jun. 3, 2005, SG no. 46, *last amended* Jun. 6, 2008 [hereinafter LAW ON EXTRADITION]. Under both acts MOJ coordinates requests for assistance. The Supreme Cassation Prosecution Service assumes certain functions for the Office of the Prosecutor General in each act. In most cases, unless a mutual legal assistance treaty or other international agreement states otherwise, legal assistance or extradition requests are coordinated by the MOJ through the letters rogatory process.

In mutual legal assistance matters, the Supreme Cassation Office has the following responsibilities under the Criminal Procedure Code:

- Establishing with other states the activities, duration and composition of joint investigation teams;

- Filing requests with other states for investigation through an under-cover agent, for controlled deliveries and cross-border observations, ruling as well on such requests by other states;
- Deciding to proceed or terminate cross-border observations pursuant to the terms and conditions of the Special Intelligence Instruments Act;
- Reviewing and ruling on requests by states for the transfer of criminal proceedings, but only when the matter is in pre-trial proceedings; and
- Where pre-trial criminal proceedings have been instituted in Bulgaria against the national or permanent resident of another state, filing of the request for transfer of criminal proceedings to the other state. CRIM. PROC. CODE arts. 476, 478, and 479. *The Instructions on the Work of and Interaction Between Preliminary Investigation Authorities*, at S. 77 and 78 describe the process by which subordinate offices may request letters rogatory or extradition through the Supreme Cassation Prosecution. Requests must accord with the Criminal Procedure Code and the requirements of the relevant international treaties or bi-lateral agreements.

Foreign states' requests for extradition or provisional arrest by other nations are referred by the MOJ to the Supreme Cassation Prosecution Service to affect apprehension and detention. When the individual is ready to be surrendered, the International Legal Department of the Supreme Cassation Prosecution Service notifies the requesting nation. The Prosecutor General initiates requests for extradition of indicted or convicted individuals in other countries. See LAW ON EXTRADITION, Chapter 3, Part I and art. 26(1)(2). The court renders a decision whereby extradition is granted or refused. *Id.* art. 17(7). In all cases where rendering a decision whereby the extradition is granted, the court shall impose remand in custody as a measure restricting the personal liberty of the person claimed until the actual surrender of the said person to the requesting State.

While mutual legal assistance treaties still need to be updated, several foreign sources praised the Prosecutors' Office for its continuing efforts to respond promptly to requests for legal assistance and extradition. At the regional level, 43 prosecutors are designated as EU contacts for extradition, arrest warrants, and mutual legal assistance. Another encouraging development is increasing awareness of the importance of international cooperation, evidenced by growing demand for training. In response, trainings on international cooperation have been conducted, focusing on EU cooperation, such as EU arrest warrants.

VI. Finances and Resources

Factor 25: Budgetary Input

States provide an adequate budget for the prosecutor’s office, which is established with input from representatives of the prosecutor’s office.

Conclusion	Correlation: Neutral	Trend: ↑
<p>While the MOJ has authority for preparing the initial draft budget for the judiciary, the Prosecution Service has some input into the budgetary process through its proposals to the MOJ and its representation on the SJC. However, the Prosecution Service does not have sufficient input on the budget for the Prosecution Service, which should include all of the Prosecution Service’s budgetary needs.</p>		

Analysis/Background:

Article 117(3) of the Constitution provides that “the judiciary shall have an independent budget,” although MOJ has been granted the power to “propose a draft budget of the judiciary and submit it to the Supreme Judicial Council for consideration.” See art. 130a(1). This change reportedly reflects some dissatisfaction with the SJC’s budgeting efforts before its recent restructuring and, perhaps, the size of its requests. However, the final formulation of the draft judicial budget seems to rest with the SJC, as Article 130(6)(4) provides the SJC with the power to adopt the draft budget of the judiciary. Additionally, under the Judicial System Act, the SJC has the authority to determine salaries for judges, prosecutors, and investigators. JUDICIAL SYSTEM ACT art. 30(1)(8).

The Judicial System Act also sets forth the general budgeting procedures, including a requirement that the judiciary budget be a self-contained part of the state budget with the SJC as a primary spending unit and the Prosecution Service, the courts, and other judicial authorities as second-level spending units *Id.* art. 361. The only input from the Prosecution Service appears to occur during the formulation of the initial draft budget by MOJ, as it is obliged to accept opinions and proposals on the judicial budget from the Prosecutor General and the heads of the other judicial branches. *Id.* art. 162. Once the judicial budget has been adopted by the SJC, the Council of Ministers drafts and presents the entire state budget in bill format to the National Assembly (CONSTITUTION art. 87(2)). However, the judicial budget, as with all parts of the entire state budget, is reviewed by the Ministry of Finance, which typically reduces the judicial budget by 1/3.

Overall, the Prosecution does have some role with the formulation of the prosecutorial budget, both through its formal input to the MOJ and through its representation on the SJC. However, some respondents noted that Prosecution Service’s budget reflects only a portion of its budgetary needs, as MOJ has sole responsibility for managing the property of the judiciary. *Id.* art. 130a(2) As such, the Prosecution Service has virtually no role in the acquisition or maintenance of its infrastructure needs. On the whole, it would be preferable if the Prosecutor General had a greater role in establishing a comprehensive budget for the Prosecution Service that accurately reflected all of its budgetary needs.

Factor 26: Resources and Infrastructure

States provide adequate funding, conditions, and resources to guarantee the proper functioning of the prosecutor's office.

Conclusion	Correlation: Neutral	Trend: ↑
<p>Budget allocations for the judiciary, including the Prosecution Service, continue to suffer from significant cuts, although the approved budget for the Prosecution Service has increased in recent years. The judiciary does not have complete control over its budget and resources, and the MOJ has primary responsibility for management of the judiciary's real and movable property. The poor condition of judicial buildings remains a significant problem, hampering the Prosecution Service's operations, and information technology is inadequate. Sufficient funding does appear to exist for human resources, as both personnel and salaries have increased in recent years, although some prosecutors reported extremely heavy caseloads that could be alleviated by additional staff.</p>		

Analysis/Background:

Adequate resources and infrastructure, including sufficient personnel, office equipment and supplies, and information technology resources, is essential for the proper administration of the criminal justice system.

Although the Constitution provides for an independent judicial budget in Article 117(3), the judiciary does not have complete control over its budget and resources. Article 365 of the Judicial System Act does provide that the judicial budget is implemented by the SJC through the Prosecutor General and the heads of the other judicial branches. However, the MOJ has primary responsibility for the management of the judiciary's property, including both real and movable property. *Id.* art. 387. The MOJ apportions use of the judiciary's real property to the different branches (*id.* art. 388(1)), and establishes the funds for judicial building construction and maintenance (*id.* art. 388(2)). Inadequate resources for judicial buildings remains a severe problem for the Prosecution Service and greatly hampers its operations.

On one hand, the following table shows that the Prosecution Service's budget has increased significantly in recent years. The final 2008 Prosecution Service budget of BGN 104,346,000 (USD 70,234,700), approximately a 78.8% increase from the 2006 approved budget of BGN 58,388,000 (USD 39,284,200). However, even these increased budgets represent a substantial reduction from the budget requests submitted by the SJC. In 2006 the budget request was cut by 26.6%, by 35% in 2007, and by 21.2% in 2008.

PROSECUTORIAL SYSTEM BUDGET (in thousands)

	SJC Requested Prosecution Service Budget		Approved Prosecution Service Budget		% Budget Request Cut
	BGN	USD	BGN	USD	
2006	79,537.7	53,519.5	58,388.0	39,284.2	26.6
2007	128,598.1	86,524.7	83,622.0	56,263.4	35
2008	132,448.3	89,139.1	104,346.0	70,234.7	21.2

Source: Budget and Financing Department, Prosecutor's Office of the Republic of Bulgaria

In some areas, the Prosecution Service seems to have adequate resources. For example, the transfer of approximately 500 investigative magistrates to the Prosecution Service raised the

number of prosecutors from approximately 1,200 to 1,700, an increase of approximately 41%. Few interviewees, even within the Prosecution Service, claimed that more prosecutors were needed. Also, as discussed in Factor 28 on Compensation and Benefits, salaries have increased substantially in recent years. Resources for translation have also increased, from BGN 551,492 (USD 371,309) in 2006 to BGN 1,300,100 in 2008 (USD 875,240). In other areas, however, the level of resources is inadequate, including insufficient resources for aging buildings and overcrowded office space, legal aid programs, court experts, and even basic office supplies.

Perhaps the most consistent complaint from both prosecutorial and non-prosecutorial interviewees was the extremely poor condition of many judicial buildings, which house prosecutorial offices. The assessment team was unable to visit all or even a significant sampling of judicial buildings and prosecutorial offices, but working conditions for prosecutors frequently appeared inadequate. While the Palace of Justice and other buildings are currently undergoing renovation, and some new judicial buildings are being constructed, the poor condition of many judicial buildings, which are typically quite old and poorly maintained, hampers the effective administration of justice. Frequently, the assessment team observed as many as 4 or more prosecutors crowded into small, unairconditioned offices, creating an uncomfortable and unproductive work environment. In some instances, it has been noted in other reports that the lack of adequate space has prevented the transferred investigative magistrates from being integrated into prosecutorial offices, and even a lack of courtrooms leading to delays in scheduling hearings. WORLD BANK, BULGARIA: RESOURCING THE JUDICIARY FOR PERFORMANCE AND ACCOUNTABILITY at 41 (2008) [hereinafter WORLD BANK REPORT]. This in turn contributed to other problems, such as the inability to implement the policy that one prosecutor oversee the entire trial stage of a case. Other capital infrastructure problems noted in the World Bank Report include:

- Lack of public spaces, such as areas to submit and to view court documents;
- Lack of appropriate space for archives;
- Lack of electrical capacity to support current operations and to accommodate, technology; aged, deteriorated, unsafe wiring and electrical panels;
- Structural deficiencies, such as roof leaks;
- Inadequate accessibility for handicapped;
- Inadequately separated circulation for public, prisoners, witnesses and judges; and
- Lack of secure holding space for prisoners in the courthouse waiting to go to courtrooms. *Id.* at 42.

The World Bank Report concluded that, out of 145 judicial buildings surveyed, 43 required no modifications, 44 were usable but required modifications, and 58 required either expansion or brand new construction. *Id.* at 78. Examples provided to the assessor team include the need for additional courtrooms in both the Sofia Regional Court Building and, surprisingly, the Judicial Palace itself.

Another key deficiency is the technological infrastructure, although there has been some improvement. All prosecutors appear to have computers, and most prosecutors use an electronic case management system. However, most prosecutors' computers cannot access the Internet, and the Unified Information System for Counteracting Crime [hereinafter UISCC] has still not been completed. The UISCC has been in development since 1998, and is now expected to be implemented sometime in 2011. See Factor 27 on Efficiency.

Feedback on the adequacy of staffing levels remains inconsistent. As noted above, most respondents saw no need for additional prosecutors, despite the fact that many prosecutors still seem to carry extremely heavy caseloads, particularly in the Sofia courts. Some respondents believed that additional support staff was needed, particularly paralegals, to help ease the many administrative burdens shouldered by prosecutors. Data from the World Bank Report indicates that overall staffing levels for the Prosecution Service have increased from 2,250 in 2004 to

3,622.5 in 2007, a 61% increase. WORLD BANK REPORT at 67. According to the Annual Judicial System Report for 2005, there were 1281 prosecutorial positions and 1506 support staff positions authorized as of December 31, 2005. As of January 1, 2009, these numbers had increased to 1,697 prosecutors and 2,189 support staff.

While resources have improved in several areas, including the overall budget, salaries, and information technology, the poor condition of judicial buildings remains a significant problem, and information technology must still be fully networked to take full advantage of its potential.

Factor 27: Efficiency

Prosecutors perform their functions expeditiously, in order to achieve the best possible use of available resources. Prosecutors’ offices have a written organizational plan to facilitate such efficiency. The prosecutor’s office has written guidelines, principles, and criteria for the implementation of criminal justice.

Conclusion	Correlation: Neutral	Trend: ↑
<p>Several substantial steps have been made to increase the Prosecution Service’s efficiency through the Prosecutor General’s orders and instructions. Progress is noticeable also through a decrease in both the number of returned by the court indictments and the number of acquittals. While the Prosecution Service made notable progress in some areas, it continues to face challenges in achieving functional efficiency. Increasingly, however, these inefficiencies stem from external sources and changes, such as excessively formalistic procedures, an inefficiently structured penal code, unnecessary responsibility for administrative cases, and inadequate training and resources for police hampering investigations.</p>		

Analysis/Background:

A variety of constitutional and legislative requirements envisage a prosecutorial structure with a centralized flow of information from the lower levels up to the prosecutorial leadership, facilitating the efficient administration of justice. As noted in various factors, including Factor 10 on Discretionary Functions and Factor 16 on Internal Accountability, overall authority in the Prosecution Service is strongly vested in the Prosecutor General, who oversees the work of all prosecutors. CONSTITUTION art. 126(2); *see also* JUDICIAL SYSTEM ACT art. 138. A centralized, top-down management structure is highly dependent on an accurate and constant flow of information to the prosecution leadership, and this is provided for through regular audits and reporting requirements on prosecutorial activities. *Id.* art. 142. Additionally, the Judicial System Act establishes the development of the UISCC, which is to provide a centralized and uniform networking mechanism for compiling and exchanging data between the different bodies in the criminal justice system. *Id.* art 378. Finally, the creation of the SJC Inspectorate, with responsibility for auditing and reporting on all judicial system activities, is a significant development that could help identify inefficient and/or illegal practices. *See* CONSTITUTION art. 132(a); JUDICIAL SYSTEM ACT art.54.

Progress has been made to increase the efficiency of the Prosecution Service, although serious problems remain, many of which are outside the control of the Prosecution Service. Positive developments include greater use of electronic case management and tracking within the Prosecution Service, increased reliance on joint task forces with representatives from multiple agencies to tackle complex cases, the expansion of specialization within those offices large enough to do so, and greater oversight by of a single prosecutor responsible for all phases of a case, rather than having it transferred from prosecutor to prosecutor as it moves through different stages. As noted in Factor 26, delays in implementing greater use of a single prosecutor stem

from a shortage of courtrooms in larger jurisdictions, which limits the flexibility of courts in accommodating the scheduling of hearings.

The Prosecutor General has taken substantial steps to increase efficiency through better coordination of activities and increased information flow. Many such steps are in the Instructions Regarding the Organization of the Information Activities in the Public Prosecutor's Office of the Republic of Bulgaria, dated December 27, 2007 [hereinafter PROSECUTION INFORMATION ACTIVITY INSTRUCTIONS]. The goal of the Prosecution Information Activity Instructions is to provide for a more efficient, transparent, and accountable Prosecution Service through the "[r]egulated and unified collection, processing, and usage" of data and information. *Id.* art. 1. As a whole, they include detailed reporting requirements on a monthly, quarterly, and annual basis, *id.* art. 5, the creation of statistical indices to measure efficiency, *id.* art. 8, and procedures for compiling the Prosecutor General's annual report, *id.* sect. VI. It is worth noting that, while the collection of such data is critical to analyzing and improving efficiency, some respondents reported in 2008 that the increase in reporting and administrative requirements is detracting from prosecutor's time to handle cases.

To avoid such an excessive load, the Prosecutor General has taken additional steps by issuing an order attempting to further strengthen the efficiency of information collection, processing and usage. See Prosecutor General's Order No. LS-780, Mar. 30, 2010. According to this order, the submission of information for the purposes of monitoring and supervision by the superior prosecution services is reasonably limited, centralized and organized under uniform criteria. Any such information is collected electronically by the Supreme Cassation Prosecution Service's specialized department through standardized forms published on the Prosecution Service's official website. After collection, the information is available to the relevant monitoring, or supervising prosecutors and units. *Id.* 1–3. As explained under Factor 10, the same order rescinds and amends a number of orders and instructions due to their temporary nature, or when subject matter overlaps with more recent regulation. Another Prosecutor General's order is also aimed at increasing the efficiency of the prosecutorial work through prioritizing the use of electronic mail for any correspondence within the Prosecution Service. See Prosecutor General's Order No LS-1849, Jun. 10, 2010. According to this order, the entire staff of the Prosecution Service is equipped with electronic accounts and required to regularly check the information in the account. The use of the accounts is required for any working correspondence, unless use of hard copy is particularly requested. *Id.* 1–5. Also, through a Prosecutor General's order of 2010, prosecutors are authorized access to the national database to obtain information regarding an individuals' prior convictions. This order adopts particular rules for this database's usage. Next, specialized instruction approved by the Prosecutor General regulates the prosecutors' use of the database for pending criminal procedures against individuals. Access to both databases is available electronically.

Increased efficiency of the overall prosecutorial function is evidenced through a comparison of the following statistics.

ANNUAL TOTAL OF INDICTMENTS

Year	Total number prosecutorial written acts submitted to court	Total number indictments	Agreements	Proposals for criminal procedures' dismissal and imposing of an administrative punishment (Art.78a Penal Code)
2007	45,255	29,998	7,927	7,330
2008	43,418	27,785	10,398	5,235
2009	45,147	28,275	11,356	5,534
First 6 months of 2010	21,834	13,820	5,192	2,822

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

ANNUAL NUMBER OF ENFORCED JUDGMENTS

Year	Enforced convictions and other sanctions	Enforced convictions	Enforced acquittals	Acquitted individuals
2007	37,250	45,162	940	1,293
2008	40,702	47,604	782	1,021
2009	39,960	45,839	872	1,212
First 6 months of 2010	18,862	22,740	454	557

Source: Id.

ANNUAL NUMBER OF INDICTMENTS RETURNED BY THE COURTS

Year	Indictments returned to the Prosecution Service by the court	%
2007	4,706	10.4%
2008	3,503	8.1%
2009	2,899	6.4%
First 6 months of 2010	1,432	6.6%

Source: Id.

The comparative analysis of the information in charts 1, 2 and 3 shows that the number of indictments returned by the court for procedural violations decreased dramatically. 10,4% of the total number of returned indictments in 2007 dropped to 6,4% in 2009 and 6.6% in 2010. The number of acquittals also decreased from 940 in 2007 to 782 in 2008 and 872 in 2009.

While efficiency is clearly recognized as an important issue and increased efficiency is noticeable, vexing problems remain, and frustration is mounting at the lack of decisive success on high profile cases. The entire criminal justice system, including judges, prosecutors, investigators, and police, has undergone significant reforms, many of which have only served to hamper the

Prosecution Service. For example, while the number of prosecutors was substantially increased by the transfer and conversion of approximately 500 NIS investigative magistrates to prosecutors, it remains unclear, at least initially, whether this has actually increased the effective capacity of the Prosecution Service. While the transferred investigative magistrates were provided with mentors and reportedly eased into their new duties with increasingly difficult cases, they apparently received limited training and, according to many respondents, have not been very effective. While their proficiency at investigations was naturally high, they have not received sufficient support to develop their trial skills. Since they now comprise nearly 1/3 of active prosecutors, the capacity they add is, arguably, largely offset by the increased administrative and management burdens on a larger and increasingly unwieldy prosecution structure as well as their lack of trial skills. Over time, as they receive training and more experience, the transferred magistrates may well prove to be a necessary short-term decrease in efficiency before their long-term gain can be realized, but at the outset it is unrealistic to expect immediate and quantifiable results.

In fact, most respondents maintained that while the number of prosecutors is adequate, it is the burdens placed upon them that generate inefficiencies. The caseloads in smaller, outlying prosecution services are reported to be generally reasonable, but in the major urban areas, and in Sofia in particular, trial prosecutors are overwhelmed, not only by extremely heavy caseloads but also by their broad responsibilities. While the influx of transferred investigative magistrates undoubtedly provided some relief, the best available data indicates that caseloads still remain quite high. According to the Supreme Cassation Prosecutor's Office, the average caseload for regional prosecutors was 564 cases for 2007.

In part, the heavy caseloads are created by a system that is extremely inflexible and formalistic, requiring each case, no matter its relative merits and significance, to be treated equally. Many respondents argued that the penal code and criminal procedure codes still require substantial changes, including the addition of misdemeanors with expedited procedures, which would allow prosecutors to focus their resources on more serious cases. It was reported that the criminal procedure code is still too formalistic and inefficient, such as by effectively requiring significant portion of evidence to be collected twice, since evidence collected prior to the official commencement of the investigation is inadmissible. *See* CRIM. PROC. CODE art. 234 (7). Caseloads are also exacerbated by an overreliance on prosecutors to investigate and monitor activities outside the criminal justice sphere, such as their involvement in administrative cases. This unnecessarily duplicates the role and authority of the other governmental bodies responsible for these administrative activities, and needlessly detracts from the Prosecution Service's ability to focus on its primary responsibility – the investigation and prosecution of criminal activity.

As discussed in Factor 21 on Interaction with Police and Other Investigatory Agencies, prosecutors are responsible for leading investigations. CONSTITUTION art. 127; CRIM. PROC. CODE art. 46(2). The 2006 PRI noted that the prosecutors seemed unprepared to assume this new responsibility, and while prosecutors may now be better equipped and more active in leading investigations, problems remain. The ability of prosecutors to actively lead investigations and direct the investigating police officers is hampered by several factors, including the simple burden of having too much responsibility. Combined with excessive caseloads, cases, as well as reporting requirements and other administrative tasks, prosecutors simply seem too overwhelmed to be as effective as possible in leading investigations. Another complicating factor that undermines the quality of investigations is the lack of resources available to the investigating police officers, who assumed responsibility for conducting most investigations instead of the NIS and its district units. Since the police are relatively new to this role, they are even more reliant on the overburdened prosecutors to direct the investigation. Additionally, the police suffer from poor salaries and working conditions, which have created numerous vacancies. The combination of having overwhelmed prosecutors and poorly trained and equipped police both learning new roles in conducting investigations has, according to many interviewees, decreased the efficiency and quality of investigations. While additional training and resources for the police would, by extension, benefit the prosecutors that rely upon them, the prosecutors themselves would be

more capable of managing investigations and trials if there was a readily available set of consolidated and codified internal rules and guidelines.

According to some respondents, exacerbating this problem is the excessive formalism and procedure of the Criminal Procedure Code, which complicates coordination between police and prosecutors, delaying investigations. As a result, cases that are returned for insufficient evidence consume even more of the prosecutors' and police's time and resources. Meanwhile, the investigators at the NIS have been statutorily restricted from most crimes, and now play a role in only a small percentage of criminal investigations, which constitutes a horrendous waste of resources. Others, however, believe that the "formalism" of the Bulgarian Code is not so excessive, and that prosecution and police simply need better training, better standardization of their procedures and techniques, and better planning and coordination. While the Bulgarian criminal justice system is generally considered to be effective in handling smaller cases, it is less capable in handling complex investigations.

The MOJ Judicial Reform Strategy is viewed to appropriately focus on the legislative obstacles to an increased efficiency of the Prosecution Service's work by advancing as a priority the development of an updated concept for criminal policy. See MOJ JUDICIAL REFORM STRATEGY para. 2.6. The quality and success of such a reform, if undertaken, will depend on the particular legislative drafting and related comparative law analysis.

Another example of conditions outside the control of the Prosecution Service is the greatly delayed implementation of the UISCC. Internally, the Prosecution Service has made substantial progress in developing and rolling out its portion of the UISCC. However, due to reported delays by MOI, the overall network, which has been in development since 1998, has still not been deployed. If and when the UISCC is fully implemented, the ability of prosecutors, the police, other enforcement agencies, and courts to search, share, and track information amongst one another could greatly enhance the efficiency of not just the Prosecution Service but all parts of the criminal justice system.

The 2006 PRI noted that the centralized, strict hierarchy of the Prosecution Service had repressed the initiative of prosecutors. The Prosecutor General has been outspoken in his efforts to replace a culture of passivity with a culture of responsibility, and many respondents see progress in this regard. Reportedly, although many prosecutors embraced this policy, others still demonstrate too little initiative, both in leading investigations and in handling cases at trial. Some interviewees expressed their belief that change will come with the new generation of prosecutors entering the system. What these junior prosecutors lack in experience is offset by their greater enthusiasm and sense of responsibility. However, it is to be expected that a wholesale shift in the culture of any organization as large as the Prosecution Service will take considerable time.

The consequences of the possible decentralization of the Prosecution Service is unclear. A comparative analysis of the EU member states' relevant legislation seems to be the appropriate starting point for any discussion in this respect.

Factor 28: Compensation and Benefits

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

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

Analysis/Background:

The SJC has authority to set the salaries of magistrates under Article 30(1.8) of the Judicial System Act. The basic monthly salaries of the chairpersons of the SCC and the SAC, the Prosecutor General, and the Director of the National Investigation Service are set at 90% of the salary of the Constitutional Court chairperson. Judicial System Act art. 218(1). The latter's salary is the arithmetic mean between the salary of the President of the Republic and the chairperson of the National Assembly; other Constitutional Court judges receive 90% of their chairperson's compensation. COURT ACT art. 10, *adopted* Jun. 16, 1991, SG no. 67, *last amended* Dec. 30, 2003.

The basic monthly salary of the lowest position of magistrate will be set at double the average monthly salary of persons employed in the public sector. JUDICIAL SYSTEM ACT art. 218(2). The salaries of all the members of the judiciary are to be fixed by the SJC. *Id.* art.218(3). The SAC has ruled that the SJC is free to determine these salaries at its discretion, and this determination is not subject to judicial review.

The basic salary for prosecutorial positions is as follows:

Position	2006 Monthly Salary		2009 Monthly Salary		% Increase
	BGN	USD	BGN	USD	
Deputy Prosecutor General	1,960	1,289	2,603	1,733	32.8
Prosecutor – Department Head	1,940	1,276	2,588	1,723	33.4
Prosecutor at SCP & SAP	1,880	1,237	2,525	1,681	34.3
Appellate prosecutor	1,810	1,191	2,397	1,596	32.4
Deputy Appellate prosecutor	1,680	1,105	2,242	1,493	33.4
Regular appellate prosecutor	1,560	1,026	2,121	1,413	36.0
District prosecutor	1,475	970	1,952	1,300	32.3
Deputy District prosecutor	1,375	905	1,820	1,212	32.4
Regular district prosecutor	1,275	839	1,743	1,161	36.7
Regional Prosecutor	1,190	783	1,631	1,086	37.0
Deputy Regional prosecutor	1,080	711	1,488	991	37.8
Regular regional prosecutor	960	632	1,323	881	37.8
Junior prosecutor	732	482	1,178	785	60.9

Source: SJC Administration

Magistrates also receive an additional salary for continuous years of services, gaining an additional 2% to their salary for each year, not to exceed 40%. JUDICIAL SYSTEM ACT art. 219. As

well as their regular salaries, prosecutors also receive an annual robe or other clothing allowance equivalent to two average monthly salaries of persons employed in the public sector (an allowance currently equaling BGN 732 or USD 458), special pay for service during holidays or vacation periods, free housing or an allowance in lieu thereof, social, health and accident insurance, a lump sum payment on retirement or other removal from office (except for a criminal conviction, dereliction of duty or similar wrongdoing), compensation upon reinstatement for wrongful dismissal, travel and moving expenses when appointed to a new position requiring relocation, and 30 days of vacation per year, plus 1 extra vacation day for every 2 years of service, not to exceed 60 days of vacation total. JUDICIAL SYSTEM ACT arts. 221, 220, 223, 224, 225, 330(1).

Compensation for magistrates has improved greatly in recent years. From 2001 to 2006, the average magistrate salary increased 169%. WORLD BANK REPORT at 3. As indicated in the table above, salaries at all prosecutorial levels have improved significantly even over the past few years, but none more so than salaries for junior prosecutors. Whereas many prosecutors reportedly left the profession in the 1990's, in recent years the prosecutorial profession has become increasingly attractive, with many respondents reporting increased competition for positions and better quality candidates. This is largely attributed to the better salaries for positions, and most respondents indicated that salaries for prosecutors were either adequate or good. While compensation continues to be well below that of the top ranks of the attorneys' profession, as is the case in many countries, the stability, security, and prestige of the prosecutorial function now appears to offer what many people consider to be offsetting advantages.

The improvements in prosecutorial salaries and benefits are extremely encouraging, and are essential to recruiting and maintaining a professional and ethical workforce. Interviewees believed that the SJC, Prosecutors Association, and other interested organizations need to ensure that salaries are not allowed to stagnate and that they instead continue to be sufficient to attract the best candidates to the profession.

List of Acronyms

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