

Overall Score:

84 - Strong

Legal Framework Score:

97 - Very Strong

Actual Implementation Score:

73 - Moderate

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁰¹Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

References:

BULGARIAN CONSTITUTION (Art. 44).

<http://www.online.bg/law/const/const2.htm>

LAW FOR THE NON-PROFIT CORPORATE BODIES (legal entities)

<http://www.bcnl.org/en/articles/866-law-for-the-nonprofit-corporate-bodies-legal-entities.html>

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

LAW FOR THE NON-PROFIT CORPORATE BODIES (legal entities)

Art. 5. Founders of a non-profit corporate body can be Bulgarian and foreign and able individuals.

No legal restrictions are in place that limit raising funds from any foreign or domestic sources.

References:

LAW FOR THE NON-PROFIT CORPORATE BODIES (legal entities)

<http://www.bcnl.org/en/articles/866-law-for-the-nonprofit-corporate-bodies-legal-entities.html>

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

Implicit requirements as regards disclosure of sources of funding, their format and procedure of disclosure are contained in the Law for the Non-profit corporate bodies (legal entities) .

According to Art. 40 of the Act:

(2) The non-profit corporate body for carrying out socially useful activity shall prepare a report on its activity once a year, which shall contain data regarding:

1. the carried out activities, the spent resources, their relation to the goals and programs of the organization and the achieved results;

2. the size of the gratuitously received property and the revenue from the other activities for raising funds;

3. (new – SG 79/06) the type, the amount, the value and the objectives of the donations received and granted, as well as information about the granters;

4. (prev. text of para 3 – SG 79/06) the financial result.

(3) (amend. – SG 79/06) The annual report on the activity and the financial report of the non-profit corporate body for carrying out socially useful activity shall be presented on paper or electronic carrier. The said documents shall be public and shall be published in the bulletin and on the Internet site of the central register.

References:

LAW FOR THE NON-PROFIT CORPORATE BODIES (legal entities) (Art.40):

<http://www.bcnl.org/en/articles/866-law-for-the-nonprofit-corporate-bodies-legal-entities.html>

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

92

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

The NGO Law creates sufficient freedom for NGOs. The registration process is more or less fast and easy. As of October 2009, more than 1,500 new associations and foundations were registered, increasing the total number to more than 30,500. More than 7,400 of the associations and foundations are registered in the Central Registry of Public Benefit Organizations with the Ministry of Justice. Beyond registration, no specific government barriers are created to the organization of new anti-corruption/good governance NGOs.

References:

Nations in transit- Bulgaria country profile (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

NGO sustainability Index: Bulgaria (2009):

http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/bulgaria.pdf

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

According to the 2009 NGO Sustainability Index, the new government has shown some signs of a more positive attitude towards NGO participation in decision making. For example, the government made all Council of Ministers decisions public and accessible online.

The reality of cooperation with the government shows some controversies. Indeed, there are both positive and negative examples of NGO-government partnerships. The Ministry of Environment and Waters includes NGO representatives in working groups and holds a one-day meeting with NGOs each month. On the other hand, the Ministry of Justice for the first time attempted to withdraw the Bulgarian Helsinki Committee's permission to inspect prisons.

References:

The 2009 NGO Sustainability Index, at p. 84:

http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/bulgaria.pdf

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

No data have been reported that there were NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

References:

NGO sustainability Index: Bulgaria (2009):

http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/bulgaria.pdf

Nations in transit – Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Media overview

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

References:

NGO sustainability Index: Bulgaria (2009):

http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/bulgaria.pdf

Nations in transit- Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Media overview

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

References:

NGO sustainability Index: Bulgaria (2009):

http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/bulgaria.pdf

Nations in transit- Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Media overview

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

References:

NGO sustainability Index: Bulgaria (2009):

http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/bulgaria.pdf

Nations in transit – Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Media overview

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

04a. In law, citizens have a right to organize into trade unions.

Yes | No

References:

Bulgarian Constitution (Article 49):

<http://www.online.bg/law/const/const2.htm>

Labor Code (Article 4):

<http://www.lex.bg/bg/laws/ldoc/1594373121>

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

The freedom to form trade unions and business organizations is guaranteed, and there are three trade unions and several business associations recognized as nationally representative. The dialogue platform between government, NGOs and Trade Unions is the Tripartite Commission. Yet, trade unions, although part of the political process and political discourse, have no important influence on the political process. Also their popularity among citizens is somewhat limited.

References:

Nations in transit – Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Media overview

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

Article 40.

(1) The press and the other mass information media shall be free and shall not be subjected to censorship.

References:

Bulgarian Constitution (Art. 40)

<http://www.online.bg/law/const/const2.htm>

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

Article 39. stipulates the freedom of speech by providing that

(1) Everyone shall be entitled to express an opinion or to publicize it through words, written or oral, sound or image, or in any other way .

Limitations concern the following types of misuse:

(2) This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.

References:

Bulgarian Constitution (Art. 39):

<http://www.online.bg/law/const/const2.htm>

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a

NO score.

6. Are citizens able to form print media entities?

100

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Print media in Bulgaria are subject to almost no regulation.

References:

The Media Sustainability Index, IREX (2010):

http://www.irex.org/system/files/EE_MSI_2010_Bulgaria.pdf

Nations in transit – Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

Decisions of the Council for Electronic Media are subject to appeal before the Supreme Administrative Court.

References:

Radio and Television Act (Article 38):

<http://www.lex.bg/bg/laws/doc/2134447616>

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

A print media license is not required.

References:

Nations in transit – Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

A print media license is not required.

References:

Nations in transit – Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The licensing of electronic media continues to be a major cause of concern. Observers fear that the government is going to be involved increasingly in the process, now that the licensing authority has been transferred from the regulator CEM (Council on Electronic Media) to the state CRC (Communications Regulation Commission). The argument is that while CEM is an independent body and its decisions are based on clear-cut criteria, the CRC is a part of the public administration, which raises concerns about its political bias and lack of transparency.

References:

The Media Sustainability Index, IREX (2010):
http://www.irex.org/system/files/EE_MSI_2010_Bulgaria.pdf

Nations in transit- Bulgaria ()2010:
<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

Decisions of the Council for Electronic Media are subject to appeal before the Supreme Administrative Court.

References:

Radio and Television Act (Article 38):
<http://www.lex.bg/bg/laws/doc/2134447616>

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The licensing of electronic media continues to be a major cause of concern. During the last years, the process of licensing has been blocked. The licensing procedures are complicated and lengthy. There are many suspicions among the public that licensing is biased. Many experts see the process of licensing as too politicized. Observers fear that the government is going to be involved increasingly in the process, now that the licensing authority has been transferred from the regulator CEM (Council on Electronic Media) to the state CRC (Communications Regulation Commission). The argument is that while CEM is an independent body and its decisions are based on clear-cut criteria, the CRC is a part of the public administration, which raises concerns about its political bias and lack of transparency.

References:

Media overview

The Media Sustainability Index, IREX (2010):

http://www.irex.org/system/files/EE_MSI_2010_Bulgaria.pdf

Nations in transit – Bulgaria (2010):

<http://www.freedomhouse.hu/Images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Costs for obtaining licenses are not excessive.

References:

Tariff regulating the fees on radio and TV:

<http://www.bgstuff.net/zakoni-i-normativni-aktove/tarifi/6581-tarifa-za-taksite-koito-se-sabirat-ot-komisiyata-za-regulirane-na-saobshteniyata-po-zakona-za-elektronnite-saobshteniya>

The Media Sustainability Index, IREX (2010):

http://www.irex.org/system/files/EE_MSI_2010_Bulgaria.pdf

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

88

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

Internet use in Bulgarian households continues to increase steadily, and the Internet space is relatively free of interference. As a common practice, the government does not prevent Internet users from viewing online content. There are, however, some isolated cases of shutting down sites also in 2010, i.e. the chitanka.info site that contained an unauthorized book library.

References:

Nations in transit: Bulgaria report (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Media overview:

online digest on shutting down chitanka.info:

<http://kalinvv.wordpress.com/2010/06/23/chitanka-inf/>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Generally, the government does not remove online information or disables servers due to their political content. Some isolated cases of removing information exist, justified on grounds of violation of Intellectual property rights. The 2010 amendments to the Act on Electronic Transmissions, however, significantly increase police, SANS and investigators' access to servers and data without court permission. This is limited to cases where serious crimes and computer crimes are investigated. Media have interpreted the legal amendments as opening doors to internet censorship.

References:

Act on electronic transmissions:

<http://www.lex.bg/bg/laws/ldoc/2135553187>

Media overview:

Vesti.bg: <http://www.vesti.bg/?tid=40&oid=2963871>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

83

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

There are no legal barriers for media to report any accurate news on public figures. However, libel is a criminal offense in Bulgaria, but the penalty is a fine that rarely exceeds US\$10,000. Despite numerous libel cases, the courts tend to interpret the law in favor of the freedom of expression and convictions are few.

References:

Penal code: (Chapter VII):

<http://www.lex.bg/bg/laws/ldoc/1589654529>

Constitutional Court Decision 7/1996 (Article 10), ECHR:

<http://www.constcourt.bg/>

Nations in Transit – Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

Comments:

There have been no explicit cases of the government to attempt to restrict media coverage of corruption-related issues through unofficial means. However, the issue is still of major concern, stemming largely from the established model of media ownership in Bulgaria. According to the Media Sustainability Index, Self-censorship increased markedly in 2009 due to the economic crisis; and the financial pressure over editorial policies in a bid to avoid confrontation with certain political and corporate interests. Media are found to be at risk of becoming "mouthpieces for hidden agendas, and the watchdog role of the press is undermined". " This favors a manipulated 'unreal' agenda, which excludes coverage of some topics.

References:

Media overview

The Media Sustainability Index, IREX (2010):

http://www.irex.org/system/files/EE_MSI_2010_Bulgaria.pdf

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

There is no evidence of the government's direct attempt to prevent corruption-related publications/ broadcasts. Indeed, 2010 marked a real boom in corruption related stories that reached public outreach through the media — i.e. encouragement of a recent public release of a BTV broadcast that led to the withdrawal of Mr. Lahcezar Ivanov from his office in the Parliamentary Committee and the ruling party.

References:

Media overview

The Media Sustainability Index, IREX (2010):

http://www.irex.org/system/files/EE_MSI_2010_Bulgaria.pdf

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

60

10a. In law, print media companies are required to publicly disclose their ownership.

Yes | **No**

Comments:

Although no regulation exists that requires print media companies to publicly disclose their ownership, as long as they are incorporated, information regarding their registration (i.e. their shareholders) is made publicly available. A draft legislation is in debate that will require print media entities to publicly disclose all owners of the company.

References:

There is no law or regulation that requires print media companies to publicly disclose their ownership.

Media overview:

"New Act will Publicly disclose owners of print media":

http://dariknews.bg/view_article.php?article_id=530032

Yes: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes | No

Comments:

Electronic media (radio and television) must disclose their ownership in order to obtain a license or registration. The disclosure, however, may be effectively prevented by using other corporate identities or off-shore companies. As a result, the actual ownership of some media in Bulgaria is not clear, and the radio and television market is still not transparent enough.

References:

Radio and Television Act (Chapter 6):

<http://www.lex.bg/bg/laws/doc/2134447616>

Television Across Europe: Follow-up Reports 2008, Bulgaria, EUMAP, Open Society Institute (2008): <http://www.soros.org/>

Newspaper "Kapital",

http://www.capital.bg/biznes/media_i_reklama/2005/10/29/233531_neobhodim_e_registur_za_sobstvenostta_na_mediite/

Yes: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

Although the situation differs depending on the outlet, the Media Sustainability Index 2010 reports a “general drop in journalism quality in Bulgaria”. It is widely shared that journalists do not always respect professional standards, such as checking facts and presenting a variety of viewpoints, and their subjectivity taints reporting on some topics. The media seem to be influenced by the public mood regarding certain public figures and fail to keep the necessary distance and neutral view; media outlets are struggling to be popular, not necessarily objective. The so-called yellow and tabloid press come to play a bigger public role.

References:

Media overview

The Media Sustainability Index, IREX (2010):

http://www.irex.org/system/files/EE_MSI_2010_Bulgaria.pdf

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to “sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

The Election Law regulates the media during the election campaign. It stipulates that paid broadcast time and newspaper space for campaigning purposes must be provided to all contestants on an equal basis. Campaign coverage on public service broadcasters is limited to three types of programs: special election chronicles, campaign clips and election debates. The OSCE/ODIHR LEOM’s media monitoring of July 5, 2009, Parliamentary elections states that the public TV station BNT1 offered only limited news coverage of the contestants’ campaign activities, but provided intensive coverage of the work of state officials. As many of these officials were also candidates of the ruling parties, this coverage gave them an unfair advantage over their opponents. Paid political advertising was reported to have been used intensively by a number of contestants. The very high cost of paid political advertising on television limits their possibilities to campaign in the media. Some political parties are claimed to have their own channels that increases their media coverage.

References:

Media overview

The Media Sustainability Index, IREX (2010):

http://www.irex.org/system/files/EE_MSI_2010_Bulgaria.pdf

Republic of Bulgaria Page: Parliamentary Elections, July 5, 2009

OSCE/ODIHR Limited Election Observation Mission Final Report:

http://www.osce.org/documents/odihr/2009/09/39984_en.pdf

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

The Election Law regulates the media during the election campaign. It stipulates that paid broadcast time and newspaper space for campaigning purposes must be provided to all contestants on an equal basis. Campaign coverage on public service broadcasters is limited to three types of programs: special election chronicles, campaign clips and election debates. As regards new coverage, the OSCE/ODIHR LEOM's media monitoring of the July 5, 2009, Parliamentary elections states that the public TV station BNT1 offered only limited news coverage of the contestants' campaign activities but provided intensive coverage of the work of state officials. As many of these officials were also candidates of the ruling parties, this coverage gave them an unfair advantage over their opponents.

References:

Media overview

The Media Sustainability Index, IREX (2010):

http://www.irex.org/system/files/EE_MSI_2010_Bulgaria.pdf

Republic of Bulgaria Page: Parliamentary Elections, July 5, 2009

OSCE/ODIHR Limited Election Observation Mission Final Report:

http://www.osce.org/documents/odihr/2009/09/39984_en.pdf

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes | No

Comments:

No journalists were imprisoned related to work covering corruption during the study period.

References:

Freedom of the Press Worldwide in 2010, Reporters without Borders (2010):
<http://en.rsfb.org/attempt-by-mayor-of-southeastern-21-05-2010,37544.html>

Media overview

Nations in transit- Bulgaria 2010:

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes | No

Comments:

There have been no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. For 2010, Reporters Without Borders reported only the harassment of freelance journalist Atanas Tchobanov by the mayor of the southeastern town of Carevo on May 21, for his investigative reports accusing the mayor of abusing public resources and corrupt practices. For 2009, there were no major reported cases of violence or undue procedures against journalists.

References:

Freedom of the Press Worldwide in 2010, Reporters without Borders (2010):
<http://en.rsfb.org/attempt-by-mayor-of-southeastern-21-05-2010,37544.html>

Media overview

Nations in transit- Bulgaria 2010:

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes | No

Comments:

There were no cases of journalists being killed because of their work covering corruption during the study period.

References:

Freedom of the Press Worldwide in 2010, Reporters without Borders (2010):
http://en.rsf.org/attempt-by-mayor-of-southeastern-21-05-2010_37544.html

Media overview

Nations in transit – Bulgaria 2010:

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

87
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

12a. In law, citizens have a right to request government information and basic government records.

Yes | No

References:

Bulgarian Constitution (Article 41):
<http://www.online.bg/law/const/const2.htm>

Law on Access to Public Information:

<http://www.lex.bg/bg/laws/doc/2134929408>

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes | No

References:

Law on Access to Public Information (Article 40):

<http://www.lex.bg/bg/laws/ldoc/2134929408>

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | No

References:

Law on Access to Public Information:

<http://www.lex.bg/bg/laws/ldoc/2134929408>

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

79

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The progress notwithstanding, the prevailing administrative culture causes serious delays of state institutions to disclose information or limit its scope. However, this is all gradually changing in a positive direction – i.e. the Annual Report: Access to Information in Bulgaria, 2009 states that 34.3 percent of the 500 institutions addressed with a request to obtain information responded within the required deadline (14 days). In 2010, the percentage rose to 41.9 percent.

References:

Annual Report: Access to Information in Bulgaria, 2009; Access to Information Program, (2010):

http://www.aip-bg.org/annual_rep_bg.htm

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to public information is provided free of charge. Citizens may only be requested to pay reasonable fees for photocopying, CDs, etc., and those fees are determined by the Ministry of Finance.

References:

Annual Report: Access to Information in Bulgaria, 2009; Access to Information Program, (2010):
http://www.aip-bg.org/annual_rep_bg.htm

Finance Ministers Regulation 10/200:
<http://www.aip-bg.org/library/laws/order10.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Appeal procedures might take longer in specific cases. This, however, relates more to the general deficiencies in the Bulgarian judicial system, which is known for its inefficient and slow proceedings.

References:

Annual Report: Access to Information in Bulgaria, 2009; Access to Information Program, (2010):
http://www.aip-bg.org/annual_rep_bg.htm

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Costs related with the judicial proceedings to obtain access to information are not excessive.

References:

Annual Report: Access to Information in Bulgaria, 2009; Access to Information Program, (2010):
http://www.aip-bg.org/annual_rep_bg.htm

Media overview

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Judicial proceedings to pursue rights under the Access to Public Information Act are not expensive.

References:

Annual Report: Access to Information in Bulgaria, 2009; Access to Information Program, (2010):
http://www.aip-bg.org/annual_rep_bg.htm

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

Refusals to grant access to public information are generally justified. The reasoning, however, may be ambiguous and less comprehensive in cases involving serious economic and political interests. An illustrating example, brought by attorney Ivan Gruikin, refers to the ambiguity in the refusal of the Ministry of Internal Affairs to disclose the contracts of the Ministry with the company „Siemens” – about issuing personal identification documents and the contract with „CIBANK”, which processes the fees for issuing personal identification documents. The request for access to public information followed the major scandal with the implementation of the contract with Siemens and the problems with the performance of the contractor.

References:

Annual Report: Access to Information in Bulgaria, 2009; Access to Information Program, (2010):
http://www.aip-bg.org/annual_rep_bg.htm

Media overview:

<http://www.glasove.com/article-9962.php>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category 2. Elections

2.1. ⁸⁵Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes | No

References:

Bulgarian Constitution (Article 42):

<http://www.online.bg/law/const/const2.htm>

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes | No

Comments:

Parliamentary elections are held every four years. Presidential elections are held every five years. Municipal councils and mayors are elected for four-year terms.

References:

Bulgarian Constitution (Chapters Three, Four and Seven):

<http://www.online.bg/law/const/const2.htm>

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

92

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

No cases of denying the right to vote have been observed during the study period.

References:

INTERNATIONAL ELECTION OBSERVATION MISSION
Republic of Bulgaria – Parliamentary Elections, 5 July 2009:
http://www.osce.org/documents/odihr/2009/07/38632_en.pdf

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

The practice is that citizens vote by secret ballots at elections. However, vote buying gained speed during last European Parliament and National Parliament elections. Despite of the effort to combat alleged widespread vote-buying by criminalization of the latter, many interlocutors doubt the capacity of the law enforcement bodies to implement these provisions in an effective and neutral manner.

References:

INTERNATIONAL ELECTION OBSERVATION MISSION
Republic of Bulgaria – Parliamentary Elections, 5 July 2009:
http://www.osce.org/documents/odihr/2009/07/38632_en.pdf

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

INTERNATIONAL ELECTION OBSERVATION MISSION

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

95

16a. In law, all citizens have a right to form political parties.

Yes | No

Comments:

According to Art. 10. (1), political parties have a minimum membership of at least 50 persons who have voters rights.

References:

Bulgarian Constitution (Article 44):
<http://www.online.bg/law/const/const2.htm>

Law on Political Parties (Chapter 2):
<http://www.lex.bg/bg/laws/doc/2135501352>

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes | No

Comments:

The eligibility requirements specified for the different political offices in regard to age, professional qualifications and other conditions do not question the overall democratic character of Bulgarian elections.

References:

Bulgarian Constitution (Art. 65, Art.93):
<http://www.online.bg/law/const/const7.htm>

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

There are some barriers for registering political parties based on an ethnic principle of challenging the state constitutional order. Such is the case of the party of the Macedonians in Bulgaria (OMO), that was banned by the Constitutional Court, and it still has not been registered, despite several judgments of the European Court of Human Rights against Bulgaria.

References:

Bulgarian Constitutional Court Decision, 2000/1:
<http://www.constcourt.bg/>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

No data supports that there are active direct barriers to prevent any Bulgarian citizens from running for political office.

All eligibility requirements, including financial restrictions as the requirement for financial deposits to register Member of Parliament (MP) candidates, are not excessive and do not prevent political parties and candidates with actual public support from running in the elections.

References:

Nations in transit – Bulgaria (2010):
<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In 2009, the political party Citizens for European Development of Bulgaria (GERB), led by Sofia Mayor Boyko Borisov, won 116 out of the 240 seats in the National Assembly, and Borisov became prime minister. For the first time since 1991, a minority government was formed: GERB created a parliamentary majority and a single-party cabinet with diverse support from the nationalist-populist Ataka, the center-right Blue Coalition, and the newly emerged “conservative values” party Order, Law, and Justice (RZS) (which subsequently withdrew its support).

The National Assembly receives sufficient resources to meet its constitutional responsibilities and has established strong committees and subcommittees. The opposition is represented in Parliament and has sufficient instruments to influence the decision-making process and exercise controls. The BSP acts as an opposition, having won 17.7 percent of the vote and 40 seats. The MRF secured 14.45 percent of the vote, which made it the only party from the previous ruling coalition to stabilize and even slightly better its performance.

References:

Website National Assembly: <http://www.parliament.bg/?page=ns&lng=bg>

Nations in transit- Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition’s ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature’s proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes | No

Comments:

A Central Electoral Commission (CEC) is set up for every election, specifically mandated to organize and monitor elections. It is formally assigned to ensure the integrity of the election process. CECs for local and general elections function until the next local and general elections.

References:

Law on Local Elections (Chapter V):

<http://www.lex.bg/bg/laws/ldoc/2133624320>

Law on the Election of Members of the Parliament (Chapter II):

<http://www.lex.bg/bg/laws/ldoc/2135182336>

Law on the Election of President and Vice President (Chapter II, Art.5 and following):

<http://www.lex.bg/bg/laws/ldoc/2132583425>

Law on the Election of Members of the European Parliament (Chapter II):

<http://www.lex.bg/bg/laws/ldoc/2135545857>

Website of the Central Elections Commission for the 2009 parliamentary elections:

<http://www.cik2009.bg/>

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

85

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes | No

Comments:

The composition of the Electoral Commissions reflects the composition of political parties represented in the Parliament. It has, however, formal organizational independence from the bodies contesting in the election.

References:

Law on Local Elections (Chapter V):
<http://www.lex.bg/bg/laws/ldoc/2133624320>

Law on the Election of Members of the Parliament (Chapter II):
<http://www.lex.bg/bg/laws/ldoc/2135182336>

Law on the Election of President and Vice President (Chapter II, Art.5 and following):
<http://www.lex.bg/bg/laws/ldoc/2132583425>

Law on the Election of Members of the European Parliament (Chapter II):
<http://www.lex.bg/bg/laws/ldoc/2135545857>

Website of the Central Elections Commission for the 2009 parliamentary elections:
<http://www.cik2009.bg/>

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The well-established practice is that qualified professionals (lawyers and experts) are appointed to the Electoral Commissions. Although they are nominated by the political parties, none of them have clear party affiliations.

References:

Nations in transit- Bulgaria (2010):
<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Website of the Central Elections Commission for the 2009 parliamentary elections:
<http://www.cik2009.bg/>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

Comments:

The Central Electoral Commission (CEC) has staff sufficient to fulfill its basic mandate — organize and monitor elections. In the period between elections, CEC exists only nominally.

References:

Website of the Central Elections Commission for the 2009 parliamentary elections:

<http://www.cik2009.bg/>

Nations in transit- Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

Comments:

The CECs makes timely, publicly available reports following the specific election cycle. Reports on election results are released in a timely manner, without exceptions and in accordance with the law. Reports are accessible on the Internet.

References:

Website of the Central Elections Commission for the 2009 parliamentary elections:

<http://www.cik2009.bg/>

Nations in transit- Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

Comments:

Strong suspicions among political parties, the media, and the general public exist that vote-buying was indeed strengthened in 2009 amid elections for the European Parliament (EP), the National Assembly, and several interim mayoral elections. There were allegations that some parties resorted to direct vote-buying, especially in Roma-populated areas. The effectiveness of the SEC to effectively prevent votes buying is limited as electoral commissions do not have the legal power to investigate and impose penalties on offenders. District Courts have the competence to handle complaints concerning the voter lists, and the establishment of precincts by the mayors may be challenged before the Regional Governor.

References:

Nations in transit- Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

OSCE/ODIHR Limited Election Observation Mission

Final report 2009:

http://www.osce.org/documents/odihr/2009/09/39984_en.pdf

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

92

19a. In practice, there is a clear and transparent system of voter registration.

Comments:

The system of voter-registration is generally transparent, and voters lists are made available to the public in a timely manner. The Civil Registration and Administrative Services Department of the Ministry of the Regional Development (GRAO) is in charge of maintaining a national population register based on the data provided by municipal authorities. Observations reports of the 2009 Parliamentary elections note the issues of multiple voting (174 cases of double voting reported by competent authorities) and the usage of absentee voting certificates during the election day that raised some concerns.

References:

Nations in transit- Bulgaria (2010):

<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

Parliamentary Elections, July 5, 2009

OSCE/ODIHR Limited Election Observation Mission Final Report:

http://www.osce.org/documents/odihr/2009/09/39984_en.pdf

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes | No

Comments:

Election results are subject to appeal to the Constitutional Court within 14 days after the announcement of the results by the CEC (Art.112). The European Court of Human Rights, however, concluded in a recent judgment that these provisions related to the challenge of election results did not provide for an effective remedy, due to the limited category of persons and bodies which may refer a case to the Constitutional Court. (According to the Article 150 of the Constitution, only a few institutions can initiate such a procedure).

References:

Law on the Election of Members of Parliament (Article 112):
<http://www.lex.bg/bg/laws/doc/2135182336>

Republic of Bulgaria Page: Parliamentary Elections, 5 July 2009
OSCE/ODIHR Limited Election Observation Mission Final Report:
http://www.osce.org/documents/odihr/2009/09/39984_en.pdf

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Complaints and appeals can be submitted to the district courts, to the executive authorities or to the electoral administration, depending on the subject matter. The practice of the July 5, 2009, Parliamentary elections confirms that the appeal mechanism works efficiently and in a timely manner. The CEC decided on some 23 complaints and appeals, and deadlines were respected in all cases. There were 32 pre-trial proceedings – 26 of these related to vote-buying – all decided on time. However, there are some critics to the effectiveness of challenging election results. The latter are subject to appeal to the Constitutional Court. The European Court of Human Rights, however, concluded in a recent judgment that these provisions related to the challenge of election results did not provide for an effective remedy, due to the limited category of persons and bodies which may refer a case to the Constitutional Court.

References:

Republic of Bulgaria Page: Parliamentary Elections, 5 July 2009
OSCE/ODIHR Limited Election Observation Mission Final Report:
http://www.osce.org/documents/odihr/2009/09/39984_en.pdf

Website of the Central Elections Commission for the 2009 parliamentary elections:
<http://www.cik2009.bg/>

Nations in transit – Bulgaria (2010):
<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

The military or security forces refrain from physically interfering with political campaigns, rallies, or voting. In the elections during the surveyed period they have maintained neutrality.

References:

Republic of Bulgaria Page: Parliamentary Elections, July 5, 2009
OSCE/ODIHR Limited Election Observation Mission Final Report:
http://www.osce.org/documents/odihr/2009/09/39984_en.pdf

Website of the Central Elections Commission for the 2009 parliamentary elections:
<http://www.cik2009.bg/>

Nations in transit – Bulgaria (2010):
<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

Comments:

Domestic and international election observers are allowed to monitor the electoral process. In addition, each political party is entitled by law to nominate its own monitor in any electoral section.

References:

Law on the Election of Members of the Parliament (Chapter VII):
<http://www.lex.bg/bg/laws/ldoc/2135182336>

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

A long-established practice in the Bulgarian electoral process is that domestic and international observers have unfettered access to polling sites, counting stations, and voters themselves.

References:

Republic of Bulgaria Page: Parliamentary Elections, 5 July 2009
OSCE/ODIHR Limited Election Observation Mission Final Report:
http://www.osce.org/documents/odhr/2009/09/39984_en.pdf

Nations in transition - Bulgaria (2010):
<http://www.freedomhouse.hu/images/Reports/NIT-2010-Bulgaria-final-final.pdf>

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100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

Yes | No

Comments:

According to Art.23 (1)(2), donations from a physical person for a calendar year may not exceed BGN10,000 (US\$7,206).

References:

Law on Political Parties (Article 23 and 24):

<http://www.lex.bg/bg/laws/ldoc/2135501352>

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

Comments:

According to Art.24, political parties are banned to receive donations from juridical persons or sole traders.

There is a debate to replace this absolute ban on corporate donations with the more flexible format of introducing limits in size on corporate contributions to political parties.

See expert group to the Center for Liberal Strategies and the OSI-
<http://www.izborenkodeks.com/analysis/view-22>

References:

Law on Political Parties (Article 24):

<http://www.lex.bg/bg/laws/ldoc/2135501352>

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | No

Comments:

No limitations to total political parties expenditures have been defined in the Law on political parties. The Elections law, however, introduce limits to spendings related to electoral campaigns (parliamentary and municipal elections).

According to a 2010 report of an expert group to the Center for Liberal Strategies and the OSI (<http://www.izborekodeks.com/analysis/view-22>) party expenditures that have been officially declared constitute a smaller part of the “price of politics” in Bulgaria.

Limits on routine expenditures, beyond the electoral costs, are not subject to regulation.

References:

Law on Political Parties (Chapter 3):
<http://www.lex.bg/bg/laws/doc/2135501352>

Law on the Election of Members of Parliament (Article 72):
<http://www.lex.bg/bg/laws/doc/2135182336>

Law on Local Elections (Article 69):
<http://www.lex.bg/bg/laws/doc/2133624320>

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

References:

Law on Political Parties (Art. 34):
<http://www.lex.bg/bg/laws/doc/2135501352>

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor’s name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

References:

Law on Political Parties (Art. 34):

<http://www.lex.bg/bg/laws/ldoc/2135501352>

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

Comments:

The National Audit Office has been given the mandate to monitor political party financing.

References:

Law on Political Parties (Art. 34):

<http://www.lex.bg/bg/laws/ldoc/2135501352>

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

Yes | No

References:

Law on the Election of Members of Parliament (Article 71):

<http://www.lex.bg/bg/laws/ldoc/2135182336>

Law on Local Elections (Article 68):

<http://www.lex.bg/bg/laws/ldoc/2133624320>

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

References:

Law on the Election of Members of Parliament (Article 71):
<http://www.lex.bg/bg/laws/ldoc/2135182336>

Law on Local Elections (Article 68):
<http://www.lex.bg/bg/laws/ldoc/2133624320>

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

Comments:

Donations to the presidential candidates need to be disclosed.

Following the April 2009 amendments to the Election Law, the elections for the 240-seat National Assembly were held according to a new mixed electoral system: 31 Members of Parliament (MPs) were elected by a majoritarian (first-past-the-post) system and 209 MPs by proportional representation. Disclosure of donation to individual candidates is a relevant issue also in relation to the election of mayors.

References:

Law on election of President and Vice-president (Article 19):
<http://www.lex.bg/bg/laws/ldoc/2132583425>

Law on the Election of Members of Parliament (Article 73):
<http://www.lex.bg/bg/laws/ldoc/2135182336>

Law on Local Elections (Articles 70a, 71):
<http://www.lex.bg/bg/laws/ldoc/2133624320>

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

References:

Law on the Election of Members of Parliament (Article 73):
<http://www.lex.bg/bg/laws/ldoc/2135182336>

Law on Local Elections (Articles 70a, 71):
<http://www.lex.bg/bg/laws/ldoc/2133624320>

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | No

Comments:

The National Audit Office is entrusted to monitor the financing of individual political candidates' campaigns.

References:

Law on the Election of Members of Parliament (Article 73):
<http://www.lex.bg/bg/laws/ldoc/2135182336>

Law on Local Elections (Articles 70a , 71):
<http://www.lex.bg/bg/laws/ldoc/2133624320>

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

42

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The control over the financing of individual political candidates remains weak. The audit of the financial reports of the individual

political candidates carried out by the National Audit Office (NAO) has not yet led to major investigations by the Prosecutor's Office. Where the control by the NAO is provided for (EMPA, EMEPA), the laws refer to a factual verification of the compliance of the income stated with the actual expenses incurred during the campaign, which is often understood as a merely formalistic check.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

Annual report 2009, Access to Information Program, (2010):

http://www.aip-bg.org/rep_bg.htm

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | **50** | 25 | 0

Comments:

The absence of a consistent prohibition of donations from legal persons is of particular concern. The financing of political parties (on the basis of the PPA), and of the election campaign of parliamentarians (on the basis of the EMPA and the EMEPA) excludes in principle donations from businesses and legal entities more generally. This is not the case of the laws concerning local elections (the LEA) and the election of the President and the Vice-President (EPVPA). The information stated by the GRECO Evaluation Team in their 2010 report during the on-site discussions clearly suggests that political parties receive indirect support from companies via donations to candidates. The most recent scandal that broke out in the media concerns the alleged party financing by Alexei Petrov, referred to as the "Octopus" of the pre-election campaign of the current government.

References:

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

Media publications:

Dnevnik newspaper:

http://www.dnevnik.bg/bulgaria/2010/10/23/981172_aleksei_petrov_nalaga_se_da_vliaza_v_politikata/?forumsort=2

Bulgaria news:

<http://www.bulgaria-news.bg/category/bulgaria/politics/article/post55607.html>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Limits on total party expenditures can be easily bypassed by various channels due to the inconsistency of multiple legal acts that govern party financing. These include mediation of party foundations, direct purchase of goods and services, extensive use of cash (donations and expenditures are not systematically recorded; banking information is useless in practice), fund-raising activities to collect large sums of donations in cash which might not be accounted for in a proper manner.

The institutional supervision is weak, as there are limitations in mandate and insufficiency of sanctions.

References:

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

Comments:

The institutional position of the National Audit Office as a public body responsible for the supervision of political party financing does not allow it to investigate allegations of violations related to political candidates financing. NAO only collects the financial reports and checks their accounting accuracy. It could ask the Prosecutor's Office to start investigations. Besides, according to 2010 GRECO report, overview of results of the NAO's control work shows that at the time of the on-site visit, the few infringements detected were mostly of a formal nature (it being understood that violations committed by political parties in the raising and spending of funds and the management of property allocated are to be notified to the prosecutor's office). Criticism had already been voiced in Bulgaria on the lack of results of the institution in this part of its activity, in particular since it was felt that the NAO never reacted even to public allegations of serious violations committed by parties or their candidates. The discussions held on site by GRECO Evaluation team confirmed that the NAO's contribution to the overall transparency of political financing is perceived as rather modest.

References:

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

Reports of the National Audit Office:

<http://www.bulnao.government.bg/index.php?p=90>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

Comments:

The existing arsenal of sanctions available under the Political Parties Act appears weak and insufficient to effectively penalize offenders.

According to the 2010 GRECO report, the system of sanctions is very much "party-based", in that the only penalties which are specific to political financing infringements are those provided under the PPA; the latter applies only to political parties and the sanctions are very much worded in this spirit. The maximum amount of fines appears to be rather moderate, and violations of a number of specific requirements of the PPA are not punishable, such as the refusal to publish or make publicly accessible the register of the party, the non – or inadequate registration of donations or expenditure, the keeping of secret funds, and dual accounting.

References:

Reports of the National Audit Office:

<http://www.bulnao.government.bg/index.php?p=90>

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The (annual) certification of financial statements under the PPA applies to the regular annual financial activity of political parties. Efforts have been made lately to implement European and international audit standards, and certified auditors are themselves subject to the authority of their professional body and of a special commission (the Commission for the Public Oversight of Statutory Auditors). Despite these professionalization efforts, the GRECO reports states that it would appear that auditors accept a margin of accuracy and tolerance (between the examined statements and the real situation) which can be as high as 50 to 70 percent. During the evaluation round of GRECO, it was acknowledged that this was too high as compared to the declared objective of 5 percent, but at the same time auditors claimed that their task was not to look beyond the statements submitted to their audit (the informal part of the financial activity). The staff of NAO has been claimed insufficient – 22 staff of the division responsible for the supervision of party financing. The National Revenue Agency (NRA) was included in 2009 in the PPA as a subsidiary supervisory body, with limited involvement and effectiveness. However, there are some positive moves. In 2010, the results of controls performed for the first time in respect of campaign financing specifically (for the parliamentary and European elections of 2009) were released, showing that the NAO had uncovered 11 cases involving irregularities.

References:

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

Reports of the National Audit Office:

<http://www.bulnao.government.bg/index.php?p=90>

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

The control over the financing of individual political candidates remains weak. The GRECO Evaluation team in its report observes various issues of concern: unclear responsibilities in the areas of record keeping (that will allow to report to the NAO after the election), on the collection of donations in the case of (independent) candidates presented by initiative committees, in the case of candidates running for the presidential elections (although they would be party members), in the absence of a consistent prohibition of donations from legal persons, in the case of the laws concerning local elections (the LEA), and the election of the President and the Vice-President (EPVPA). According to the GRECO report, te pre-campaign activities of independent candidates not supported by initiative committees remain totally unaccounted for and, therefore, their financial statements cannot reflect the reality. In reality, the audit of the financial reports of the individual political candidates carried out by the National Audit Office (NAO) has not yet led to major investigations by the Prosecutor's Office.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

The control over the financing of individual political candidates remains weak. The GRECO Evaluation team in its report observes various issues of concern: unclear responsibilities in the areas of record keeping (that will allow to report to the NAO after the election), on the collection of donations in the case of (independent) candidates presented by initiative committees, in the case of candidates running for the presidential elections (although they would be party members), in the absence of a consistent prohibition of donations from legal persons, in the case of the laws concerning local elections (the LEA), and the election of the President and the Vice-President (EPVPA). According to the GRECO report, te pre-campaign activities of independent candidates not supported by initiative committees remain totally unaccounted for and, therefore, their financial statements cannot reflect the reality. In reality, the audit of the financial reports of the individual political candidates carried out by the National Audit Office (NAO) has not yet led to major investigations by the Prosecutor's Office.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

Supervision and control over the financing of the individual political candidates is weak. As regards the control over the financing of local elections, the LEA places the reporting duty on the same categories of campaign participants as the EMPA and EMEPA, but it does not provide for any verification by the NAO. As regards campaign financing for the election of the President and Vice-President, the EPVPA (article 19) provides for a mere statement to be made before the NAO by the candidates themselves, who participated in the election; the law is also silent about any control of these statements. Furthermore, where the control by the NAO is provided for (EMPA, EMEPA), the laws refer to a factual verification of the compliance of the income stated with the actual expenses incurred during the campaign, which can be understood in different ways (a merely formalistic check, or an in-depth verification of income and expenditure, including of expenditure actually incurred).

The National Audit Office (NAO) has no power to investigate allegations of violations related to political candidates financing. NAO only collects the financial reports and checks their accounting accuracy. It could ask the Prosecutor's Office to start investigations. The GRECO report states that criticism had already been voiced in Bulgaria on the lack of results of the institution in this part of its activity, in particular since it was felt that the NAO never reacted even to public allegations of serious violations committed by parties or their candidates.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

As stated in the GRECO report, there is "compelling evidence of the inadequate current campaign financing regulations in the area of supervision and sanctions". Legally, the only sanctions applicable to campaign financing are the general ones contained in the (main) electoral Acts (EMPA, EMEPA, LEA, EPVPA); the only penalties applicable under the EMPA for any violation of this Act is a fine of BGN 500 to BGN 5,000 (US\$355 to US\$3,500) or where the offense is committed willfully by an official, a fine of BGN 1,000 to 10,000 (US\$710 to US\$7,100)); here too, the range of sanctions is not always adequate; for instance, not complying with the ceiling on expenditure apparently is not subject to any other sanction besides a fine which may remain comparatively insignificant. On-site visits of GRECO evaluation team confirm that although sanctions apply literally to anyone who infringes the law, this kind of formula is too broad to be effective in practice.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct.1, 2010

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There are serious deficiencies in mandate (limited competences), available resources, technical equipment, that limit effectiveness of the audit of finances of individual candidates' campaigns. Where the control by the NAO is provided for (EMPA, EMEPA), the laws refer to a factual verification of the compliance of the income stated with the actual expenses incurred during the campaign, which is often assessed as a merely formalistic check.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

69

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

The National Audit Office publishes summarized accounts of the parties' financial support and expenditures on its web site. The GRECO report confirms that the results of controls performed by NAO for the first time in respect of campaign financing specifically (for the parliamentary and European elections of 2009) were released, showing that the NAO had uncovered 11 cases involving irregularities. Unpublished documents pertaining to political party financing, including results of the audit of data relating to the financial support and expenditures of the political parties' financial records, may be accessed under the Law on the Access to Public Information.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The National Audit Office publishes summarized accounts of the parties' financial support and expenditures on its web site. The GRECO report confirms that the results of controls performed by NAO for the first time in respect of campaign financing specifically (for the parliamentary and European elections of 2009) were released, showing that the NAO had uncovered 11 cases involving irregularities. Unpublished documents pertaining to political party financing, including results of the audit of data relating to the financial support and expenditures of the political parties' financial records, may be accessed under the Law on the Access to Public Information.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

Access to Information Program, Annual Report 2009:

http://www.aip-bg.org/rep_bg.htm

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are available on-line and may be obtained at small costs. The National Audit Office publishes summarized accounts of the parties' financial support and expenditures on its web site. The GRECO report confirms that the results of controls performed by NAO for the first time in respect of campaign financing specifically (for the parliamentary and European elections of 2009) were released, showing that the NAO had uncovered 11 cases involving irregularities. Unpublished documents pertaining to political party financing, including results of the audit of data relating to the financial support and expenditures of the political parties' financial records, may be accessed under the Law on the Access to Public Information.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

Access to Information Program, Annual Report 2009:

http://www.aip-bg.org/rep_bg.htm

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010

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100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | **50** | 25 | 0

Comments:

Financial statement under the PPA are publicly available, but their quality raises questions. Efforts have been made lately to implement European and international audit standards, and certified auditors are themselves subject to the authority of their professional body and of a special commission (the Commission for the Public Oversight of Statutory Auditors). Despite these professionalization efforts, the GRECO reports states it would appear that auditors accept a margin of accuracy and tolerance (between the examined statements and the real situation) which can be as high as 50 to 70 percent. It was acknowledged that this was too high as compared to the declared objective of 5 percent, but at the same time auditors claimed that their task was not to look beyond the statements submitted to their audit (the informal part of the financial activity).

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010:

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100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

50

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

Comments:

The GRECO report expressed concern about the implications of the absence of publication requirements for financial statements concerning election campaigns to be presented to the NAO – depending on the case – by political parties, coalitions, initiative committees and candidates in the electoral laws (EMPA, EMEPA, LEA, EPVPA). Different from the case of political parties, financial statements to be presented by other categories of campaign participants and individual candidates are not to be published at all. This concerns the campaign of independent candidates presented by initiative committees, but also the candidates for the Presidential elections who run for elections in their own name (although they are very likely to be members of a party, from which they receive support). Although it is a welcome development that the NAO does publish on its own initiative all the financial statements it receives, the GRECO team was informed on site that the current arrangements would not be entirely satisfactory and would not allow the general public to have a full and timely picture of the financial activity of political parties and candidates.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

Access to Information Program, Annual Report 2009:

http://www.aip-bg.org/rep_bg.htm

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010

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100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

Comments:

The GRECO report expressed concern about the implications of the absence of publication requirements for financial statements concerning election campaigns to be presented to the NAO – depending on the case – by political parties, coalitions, initiative committees and candidates in the electoral laws (EMPA, EMEPA, LEA, EPVPA). Different from the case of political parties, financial statements to be presented by other categories of campaign participants and individual candidates are not to be published at all. This concerns the campaign of independent candidates presented by initiative committees, but also the candidates for the Presidential elections who run for elections in their own name (although they are very likely to be members of a party, from which they receive support). Although it is a welcome development that the NAO does publish on its own initiative all the financial statements it receives, the GRECO team was informed on site that the current arrangements would not be entirely satisfactory and would not allow the general public to have a full and timely picture of the financial activity of political parties and candidates.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

Access to Information Program, Annual Report 2009:

http://www.aip-bg.org/rep_bg.htm

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Obtaining records at reasonable costs is not guaranteed under the current system. The GRECO report expressed concern about the implications of the absence of publication requirements for financial statements concerning election campaigns to be presented to the NAO – depending on the case – by political parties, coalitions, initiative committees and candidates in the electoral laws (EMPA, EMEPA, LEA, EPVPA). Different from the case of political parties, financial statements to be presented by other categories of campaign participants and individual candidates are not to be published at all. This concerns the campaign of independent candidates presented by initiative committees, but also the candidates for the Presidential elections who run for elections in their own name (although they are very likely to be members of a party, from which they receive support). Although it is a welcome development that the NAO does publish on its own initiative all the financial statements it receives, the GRECO team was informed on site that the current arrangements would not be entirely satisfactory and would not allow the general public to have a full and timely picture of the financial activity of political parties and candidates.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

Access to Information Program, Annual Report 2009:

http://www.aip-bg.org/rep_bg.htm

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

Comments:

Financial statement under the PPA are publicly available but their quality raises questions. Despite certain professionalization efforts, the GRECO report states it would appear that auditors accept a margin of accuracy and tolerance (between the examined statements and the real situation) which can be as high as 50 to 70 percent. It was acknowledged that this was too high as compared to the declared objective of 5 percent, but at the same time, auditors claimed that their task was not to look beyond the statements submitted to their audit (the informal part of the financial activity). The absence of publication requirements for financial statements concerning election campaigns of individual candidates to be presented to the NAO affects the quality of disclosure as well.

References:

NAO's website:

<http://www.bulnao.government.bg/index.php?p=90>

Access to Information Program, Annual Report 2009:

http://www.aip-bg.org/rep_bg.htm

GRECO, Evaluation Report on Bulgaria

Transparency of party funding, Strasbourg, Oct. 1, 2010

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

80
3.1. Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

Comments:

All citizens are entitled to lodge complaints, proposals and petitions with the state authorities.

References:

Bulgarian Constitution (Art.45)

<http://www.parliament.bg/?page=const&lng=en>

Law on the Liability of the State and the Municipalities for Damages (Art.1)

<http://www.lex.bg/bg/laws/doc/2131785730>

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

81

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

Generally, the chief executive and/or cabinet ministers give formal explanations on debated policy matters. Various formats are in use: including taking critical questions from journalists or an opposition party, on a regular basis. There might be delays sometimes, or the information might not be comprehensive enough for the citizens to get a real understanding of the policies proposed.

References:

Nations in Transit – Bulgaria (2010):

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=321:nations-in-transit-2010&catid=46:nations-in-transit&Itemid=121

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

The Supreme Administrative Court exercises supreme judicial oversight as to the precise and equal application of the law in administrative justice. It rules on all challenges to the legality of acts of the Council of Ministers and the ministers, and any other acts envisaged by law.

The common legislative technique regulates administrative matters to contain norms, providing opportunity to appeal administrative acts.

References:

Bulgarian Constitution (Article 125):
<http://www.parliament.bg/?page=const&lng=en>

Law on the Judicial Power:
<http://www.admincourts Sofia.bg/НОРМАТИВНАУРЕДБА/Законзасъдебнатавласт.aspx>

Administrative Procedure Code
<http://www.admincourts Sofia.bg/НОРМАТИВНАУРЕДБА/Административнопроцесуаленкодекс.aspx>

Law for Administrative Abuses and Sanctions
<http://www.admincourts Sofia.bg/НОРМАТИВНАУРЕДБА/Законзаадминистративнитенарушенияинаказания.aspx>

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Administrative Court (SAC) has increasingly accumulated considerable jurisprudence by reviewing government actions. For 2009, 16,263 completed cases have been reported. Timeliness is often considered to be a problem. In this respect parameters have also improved in 2009. 66 percent of the cases have been completed within a three-month period.

References:

Annual report of the Supreme Administrative Court (SAC) (2010):
<http://www.sac.government.bg/home.nsf/vPagesLookup/Доклад%202009-Народно%20събрание-bg?OpenDocument>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Executive orders are limited in number and narrow in scope.

References:

Nations in Transit Bulgaria (2010) :

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=321:nations-in-transit-2010&catid=46:nations-in-transit&Itemid=121

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

References:

Bulgarian Constitution (Chapter 5, Article 103):

<http://www.parliament.bg/?page=const&lng=en>

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

References:

Bulgarian Constitution (Chapter 5, Article 103):
<http://www.parliament.bg/?page=const&lng=en>

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

81

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 2):
<http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 2): <http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

A formal ban regarding gifts and hospitality to civil servants has been introduced by the Act on Prevention and Detection of Conflicts of Interests. Furthermore, the codes of conduct for civil servants and high-ranking officials also contain restrictions on the acceptance of gifts and services by public officials and civil servants. A prohibition against receiving gifts or other benefits is also regulated by the codes of conduct for judges and public prosecutors. The above, however, have no legal force. Members of Parliament are permitted to receive gifts in an amount that does not exceed one-fifth of their salaries or otherwise they become part of the parliamentary budget (Art .10 of the Appendix No 1 to the Regulations for organization and activities of the National Assembly, which relates to financial rules). Rules have been developed to prevent such corrupt practices in specific sectors. For example, the Act on Defense and Armed Forces in Art. 188b. (in force as of Feb. 26, 2010) has established formal guidelines regarding gifts and hospitality in the sector related to defense and Bulgarian armed forces.

References:

Act on Prevention and Detection of Conflicts of Interests (Chapter One):
<http://www.lex.bg/bg/laws/ldoc/2135603507>

Code of Conduct of High-ranking Government Officials:
<http://www.bglegis.com/code%20of%20ethic.doc>

Act on Defense and Armed Forces of the Republic of Bulgaria (Art.188B):
<http://www.lex.bg/bg/laws/ldoc/2135631954>

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 7): <http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | No

References:

Law on Preventing and Investigating Conflicts of Interest (Chapter Five)
<http://www.lex.bg/bg/laws/ldoc/2135603507>

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | **50** | 25 | 0

Comments:

A focused survey on the topic has not been made. However, there are good examples brought by the media to support the well-established public opinion that the problems related with post-office employment of senior members of government are persistent. Recent examples were the allegations in the media for the commercial activities of the former Minister of State Administration and Public Reform, Nikolay Vassilev, and the former Minister of Finance, Milen Velchev.

References:

Publications:
"Former Minister Nikolay Vassilev, his subordinates and implementing tenders of the Ministry of State Administration work on joint investment project: http://www.capital.bg/politika_i_ikonomika/bulgaria/2010/03/12/872576_mdaar_beta_adsic/

24 hours, "After the power- dangerously close":
<http://www.24chasa.bg/Article.asp?ArticleId=518507>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

Comments:

No focused survey has been conducted on the matter. This is difficult to assess, because of data that may be speculative and the fact that there are no effective convictions. According to most of the polls that have been conducted by different public opinion research institutes, gift-giving remains a standard practice in Bulgaria. Recent broadcasts by New Television investigative journalists revealed the so-called "close villages", owned by customs officers in senior positions- a powerful example of the level of corruption spread in particular sectors.

References:

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct.12, 2010

Publications in Kapital for gift-giving in the taxation

sector: http://www.capital.bg/politika_i_ikonomika/bulgaria/2010/10/29/984029_shouto_na_danuchnite

New Television Broadcast:

<http://www.novatv.bg/>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

Comments:

The National Audit Office (NAO) collects the disclosure forms, compares the data with data from the National Revenue Agency and reports inconsistencies. In special cases, involving allegations about top level executive (and legislative) more detailed audits are conducted, including check-ups of members of the ruling party. However, audits are limited in some way, in both available instruments and manpower.

References:

Reports of the National Audit Office:

<http://www.bulnao.government.bg/>

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

94

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 6):

<http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure records of the heads of state and government are available online on the website of National Audit Office. Access could be obtained on grounds of the Access to Public Information Act within a reasonable time.

References:

National Audit Office:

<http://www.bulnao.government.bg/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure records of the heads of state and government are available online on the website of National Audit Office. Access could be obtained on grounds of the Access to Public Information Act at no excessive costs.

References:

National Audit Office:

<http://register.bulnao.government.bg/2010/index.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure records of the heads of state and government provide the public with accounting of the individuals' sources of income, investments, and other financial interests. In case of alleged non-disclosure, ad hoc audits are initiated. Reports are published – most recently, the asset disclosure record of Deputy Prime Minister Tsvetanov.

References:

National Audit Office:

<http://register.bulnao.government.bg/2010/index.html>

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Formally, official government functions are kept separate from the functions of the ruling political party. However, similar to many other countries, in practice, some problems exist in this respect. For example, the current Deputy Prime Minister and Minister of Internal Affairs, Zvetan Zvetanov, is also the leader of the ruling Political Party Citizens for European Development of Bulgaria (GERB). A considerable number of senior level decision makers in the legislature and the executive either participate in the leadership of their political parties or are related in various formats.

References:

Interview with Ivan Nachev, Chief Assistant, JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct. 14, 2010

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

67

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

Comments:

The Constitutional Court rules on the constitutionality of the laws and other acts passed by the National Assembly, as well as the acts of the president.

References:

Bulgarian Constitution (Article 149):

<http://www.parliament.bg/?page=const&lng=en>

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

Constitutional Court Web site:

<http://www.constcourt.bg/>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | **No**

Comments:

An MP shall be immune from detention or criminal prosecution except for the perpetration of a criminal offense, and in such case the permission of the National Assembly or, in between its sessions, of the Chairperson of the National Assembly, is required. No permission shall be required when a Member is detained in flagrante delicto; the National Assembly or, in between its session, the Chairperson of the National Assembly, shall be notified forthwith. No permission shall be required when the MP has given his consent thereto in writing.

References:

Bulgarian Constitution (Art.70):

<http://www.parliament.bg/?page=const&lng=en>

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

57

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 2): <http://www.lex.bg/bg/laws/doc/2134920704>

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

Comments:

National legislators are exempted from the restrictions of entering the private sector after leaving the government, envisaged in Chapter 5 of the Act on Prevention and Detection of Conflicts of Interests. The restrictions over some forms of involvement of MPs in private sector provided by the Rules of Organization and Procedure of the National Assembly have limited scope and do not concern post office employment .

References:

Act on Prevention and Detection of Conflicts of Interests (Art.21):
<http://www.lex.bg/bg/laws/doc/2135603507>

Rules on the Organization and Procedure of the National Assembly (Chapter 11):
<http://www.parliament.bg/?page=app&lng=en&aid=6>

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

Article 10. No Member of the National Assembly may, in such capacity, receive any gifts equivalent to more than one fifth of their base monthly remuneration for the current month. Any gifts exceeding such value shall be transferred to the National Assembly.

References:

Rules on the Organization and Procedure of the National Assembly:

<http://www.parliament.bg/?page=app&lng=en&aid=6>

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 7): <http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable. There are no such regulations.

References:

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no effective control mechanism with respect to regulations governing gifts, nor are there any serious independent investigations on the topic. MPs are allowed to receive fees or remuneration as independent contractors (Art.117 of the Rules of Organization and Procedure of National Assembly), give lectures, provide attorney services and serve on the directors board of state-run companies. Remuneration for such assignments is very difficult to evaluate against standard market practices, thus, corrupt practices may be disguised as income generated from consultancies, etc. A recent relevant case involved consultancy by Ahmed Dogan, MP and Leader of the Rights and Freedom Movement Parliamentary Group, at the amount of BGN 1.5 million (US\$1.1 million).

References:

Media publications:

Newspaper Trud, Sept. 2, 2010

"Dogan has to prove that he is an expert in hydrology":

<http://bg.time.mk/read/2e0b3bdc42/5cb20ff107/index.html>

Newspaper Dnevnik:

"The Court found no conflict of interests in the consultancies of Dogan":

<http://bg.time.mk/read/2e0b3bdc42/82757116ac/index.html>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure records of national legislators are subject to audit. The National Audit Office (NAO) compares the declared data with data from the National Revenue Agency and reports irregularities in inconsistency reports that are published. Yet, no further investigations and punishments for violations of the law are put in place. This weak follow-up gives ground to a common perception in the society that the real assets may not be declared.

References:

Reports of the National Audit Office:

<http://www.bulnao.government.bg/index.php?p=7>

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

69

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

References:

Law on the Public Disclosure of Assets of High-ranking State Officials (Article 6): <http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Asset disclosure records of national legislators are accessible online through the web site of the National Audit Office. In addition, access could be obtained by means of the instruments provided in the Access to Public Information Act. However, the Interim report of the EU Commission criticizes publication of asset declarations for "not been systematically updated nor was any follow-up by the control bodies in charge of verifying the declarations reported". In addition, the report states that "no follow-up to allegations of conflict of interest among high officials and Members of Parliament by a specially designated parliamentary committee has been reported since December 2009."

References:

Web page of the National Audit Office- Public register

<http://register.bulnao.government.bg/2010/index.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are available to all citizens. They can be obtained at little cost on-line through the web site of the National Audit Office- Public register.

However, the Interim report of the EU Commission publication of asset declarations has stated that the above mentioned web site was "not systematically updated". Relevant delays challenge the quality of the access provided.

References:

National Audit Office- Public register
<http://register.bulnao.government.bg/2010/index.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure records of national legislators contain accounting of the individuals' sources of income, investments, and other financial interests. The Interim report of the EU Commission criticizes publication of asset declarations for "not been

systematically updated nor was any follow-up by the control bodies in charge of verifying the declarations reported.” In addition, the report states that “no follow-up to allegations of conflict of interest among high officials and Members of Parliament by a specially designated parliamentary committee has been reported since December 2009.”

References:

National Audit Office- Public register
<http://register.bulnao.government.bg/2010/index.html>
[/com_2010_112_en.pdf](#)

INTERIM REPORT FROM THE EUROPEAN COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, March 23, 2010
http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_112_en.pdf

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals’ sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

References:

Access to Public Information Act (Article 40):
<http://www.lex.bg/bg/laws/ldoc/2134929408>

Rules of Organization and Procedure of the National Assembly:
<http://www.parliament.bg/?page=app&lng=en&aid=6>

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

Comments:

Some exceptions aside, most legislative processes and documents are available online.

References:

Website of the Parliament:

<http://www.parliament.bg>

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

Comments:

Records are available online.

References:

Website of the National Parliament:

<http://www.parliament.bg>

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

Judges, prosecutors and investigating magistrates are appointed, promoted, demoted, transferred and removed from office by a special independent body — the Supreme Judicial Council (SJC) . The chairman of the Supreme Court of Cassation, the chairman of the Supreme Administrative Court, and the prosecutor general are appointed and removed by the president of the Republic upon a proposal from the Supreme Judicial Council for a period of seven years, and shall not be eligible for a second term in office. The president shall not deny an appointment or removal upon a repeated proposal.

References:

Bulgarian Constitution (Article 129):
<http://www.parliament.bg/?page=const&lng=en>

Judiciary Act (Article 27):
<http://www.lex.bg/bg/laws/ldoc/2135560660>

Rules of Operation of the Supreme Judicial Council and its Administration:
<http://www.vss.justice.bg/bg/start.htm>

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Formal requirements of Chapter 10 of the Law on the Judiciary provide for the professional qualifications of magistrates required. In most cases, formal requirements are met. Important exceptions have been brought to public concern with the scandal known as "Krasyo Chernia Notebook" . The Interim report of the EU Commission, from March 2010, restates that during the second half of 2009, allegations of trade in influence and corruption in relation to senior judicial appointments involving members of the SJC were made public. In response to the allegations, the SJC launched formal disciplinary proceedings against a number of magistrates (SJC Report 2009.)

References:

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

Annual report of the Commission „Professional ethics and prevention of corruption for 2009” to the SJC:
<http://www.vss.justice.bg/bg/start.htm>

Blitz information agency:
“13 magistrates have spoken with Krasyo Chernia”:
<http://www.blitz.bg/news/article/62877>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

Comments:

The Supreme Judicial Council elects all judges (including those in the Supreme Courts) and prosecutors in the country. These appointments are not contingent upon the approval of any other institution, except in the case of the chairmen of the Supreme Administrative Court, the Supreme Court of Cassation and the Prosecutor General. The nominees for these positions are reviewed and finally approved by the president. However, the president can only veto these nominees once. The chairman of the Constitutional Court is elected by the members of the court. One third of them are elected by the National Assembly, one third are appointed by the president, and one third are appointed by the general assembly of the judges in the Supreme Administrative Court and the Supreme Court of Cassation.

References:

Bulgarian Constitution (Article 129):
<http://www.parliament.bg/?page=const&lng=en>

Judiciary Act (Article 27):
<http://www.lex.bg/bg/laws/ldoc/2135560660>

Rules of Operation of the Supreme Judicial Council and its Administration:
<http://www.vss.justice.bg/bg/start.htm>

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

88

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

All court rulings should be motivated.

References:

Bulgarian Constitution (Art.121 (4)):

<http://www.parliament.bg/?page=const&lng=en>

Judiciary Act:

<http://www.lex.bg/bg/laws/ldoc/2135560660>

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

All court rulings are motivated. Relevant decisions and the underlying reasons are accessible through the relevant court web sites.

References:

Web site of the Supreme Administrative Court:

<http://www.sac.government.bg>

Web site of the Supreme Court of Cassation:

<http://www.vks.bg>

Web site of the Constitutional Court:

<http://www.constcourt.bg/>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

Comments:

This role is played by the Supreme Judicial Council (SJC). A specialized body – the Supreme Judicial Council Inspectorate – has been specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

The “Professional ethics and prevention of corruption in the judicial system” commission acts as a standing commission to the SJC.

References:

Bulgarian Constitution (Chapter 6):

<http://www.parliament.bg/?page=const&lng=en>

Judiciary Act (Chapter 3):

<http://www.lex.bg/bg/laws/ldoc/2135560660>

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

Comments:

The composition of the Supreme Judicial Council, the procedure for selection of its members, the fixed term of appointment, and its mandate allow for a balance among various institutional and political interests, and thus for an operational independence from political interference by the executive and legislative branches. The chief inspector and the inspectors of the Inspectorate to the SJC are being appointed with two thirds of the votes of the National Parliament.

References:

Bulgarian Constitution (Chapter 6):

<http://www.parliament.bg/?page=const&lng=en>

Judiciary Act (Chapter 2):

<http://www.lex.bg/bg/laws/ldoc/2135560660>

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

Comments:

Both the EU reports from March 2010 and July 2010 confirm the good record as of July 2009 of the inspection of the SJC . It has been affirmed that except for the Sofia Appellate Region, regular inspections by the SJC's Inspectorate have now reportedly covered the whole Bulgarian judicial system. Together with its own monitoring of high-level cases, the council was now found to have a good basis of information regarding weaknesses in structure, discipline and practice. This is the first positive assessment of the SJC in counteracting corruption, "a strong momentum" as featured by the EU Commission. However, the judiciary continued to produce only few results in cases involving high-level corruption and organized crime, and a further street killing occurred in January 2010.

References:

INTERIM REPORT FROM THE EUROPEAN COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, March 23, 2010
http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_112_en.pdf

TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, July 20, 2010:
http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_400_en.pdf

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The "strong push for reform" by the government is showing some results in the judicial system. This has been reaffirmed by the European Commission. As evidence, we can point out to th increasing number of allegations of corruption within the judiciary in April receiving a stronger disciplinary and criminal response than in the past. The number of indictments for organized crime has increased and severe sentences were pronounced, but not yet enforced, in a case involving large scale fraud of EU funds in April and June. At the same time, important deficiencies remain in judicial practice both at the level of the prosecution and at the level of the court. The number of judicial procedures that fail in court is high. To strengthen the effectiveness of the judicial system, a considerable strengthening of the role and responsibilities of the SJC has been recommended.

References:

INTERIM REPORT FROM THE EUROPEAN COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, March 23, 2010
http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_112_en.pdf

TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, July 20, 2010:
http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_400_en.pdf

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders,

resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

75

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 2): <http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

Comments:

The 2009 Code of Ethics of Magistrates (5.1) forbids magistrates to receive any type of benefit from third parties, that may be reasonably considered to be a compromise with their professional integrity The Act on Judiciary considers violations of the Code of ethics disciplinary violations.

References:

Act on Judiciary (Art.307 (4)):
<http://www.lex.bg/bg/laws/ldoc/2135560660>

Code of Ethics of Magistrates elaborated by the Supreme Judicial Council: <http://www.bgbas.org/include/etikodm.doc>

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 7): <http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | No

Comments:

The restrictions over post office employment introduced by the Act on Prevention and Detection of Conflicts of Interests (Art.21) relate to the chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court, the chief prosecutor, as well as members of the Supreme Judicial Council.

References:

Act on Judiciary:

<http://www.lex.bg/bg/laws/ldoc/2135560660>

Act on Prevention and Detection of Conflicts of Interests:

<http://www.lex.bg/bg/laws/ldoc/2135603507>

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

This is difficult to measure precisely due to the lack of relevant data.

References:

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

No focused survey has been conducted on the matter. This is difficult to assess due to the fact that there are mostly allegations and almost no effective convictions. According to most of the polls that have been conducted by different public opinion research institutes, gift-giving remains a standard practice in the Bulgarian judicial sector of Bulgaria. Allegations of corruption of magistrates are often made in Bulgarian media. The many scandals have left a strong suspicion about a high level of corrupt practices in Bulgarian judiciary.

References:

Media publications

Deutsche Velle:

“Bulgarian Judicial System- Scandal after Scandal”

June, 2010

<http://www.dw-world.de/dw/article/0,,5665065,00.html>

Newspaper Trud,

“Drunk magistrate says he is corrupted”- video:<http://www.trud.bg/Article.asp?ArticleId=502225>

Fornews:

“Margarita Popova- Minister of Justice says “the SJC should get rid of corruption”:

http://frognews.bg/news_21294/Margarita_Popova_VSS_da_se_otarsi_ot_koruptsiyata/

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

Comments:

Asset disclosure records of national-level judiciary are subject to audit. The National Audit Office (NAO) compares the declared data with data from the National Revenue Agency and reports irregularities in inconsistency reports that are published. Yet, no further investigations and punishments for violations of the law are put in place. This weak follow-up gives ground to a common perception in the society that the real assets may not be declared.

References:

Reports of the National Audit Office:

<http://www.bulnao.government.bg/index.php?p=7>

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

69

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 6): <http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

Comments:

Asset disclosure records of senior civil servants are accessible online through the web site of the National Audit Office. In addition, access could be obtained by means of the instruments provided in the Access to Public Information Act. However, the Interim report of the EU Commission criticizes publication of asset declarations for "not been systematically updated nor was any follow-up by the control bodies in charge of verifying the declarations reported".

References:

Web page of the National Audit Office- Public register
<http://register.bulnao.government.bg/2010/index.html>

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100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are available to all citizens. They can be obtained at little cost on-line, through the web site of the National Audit Office- Public register.

However, the Interim report of the EU Commission publication of asset declarations stated that the web site was "not systematically updated". Relevant delays challenge the quality of the access provided.

References:

National Audit Office- Public register
<http://register.bulnao.government.bg/2010/index.html> INTERIM REPORT

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100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure records of national-level judiciary provide the public with accounting of the individuals' sources of income, investments, and other financial interests. In case of alleged non-disclosure, ad hoc audits are initiated. However, in 2010 the scandals with top level magistrates have given grounds to strong suspicions in Bulgarian society that magistrates can easily surpass the law and not declare their actual assets and properties.

References:

National Audit Office:

<http://register.bulnao.government.bg/2010/index.html>

Media overview:

Monitor:

"Top 7 of scandals in the temple of Temida":

<http://www.monitor.bg/article?id=249194>

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

100

40a. In law, the legislature can amend the budget.

Yes | No

References:

Bulgarian Constitution (Art.84)

<http://www.parliament.bg/?page=const&lng=en>

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

All significant public expenditures are approved by Parliament when passing/amending the Law on the State Budget for the respective year.

References:

Media reports

http://dariknews.bg/view_article.php?article_id=553320

Interview with Ivan Nachev,
Chief Assistant, JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, President of Political Circle
"Thought", Oct. 14, 2010.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

The Standing Parliamentary Budget and Finance Committee, which has 26 members, has sufficient capacity and resources and may use external expertise when needed. There is no data to support deficiencies in this aspect.

References:

Budget and Finance Committee National Parliament

<http://www.parliament.bg/?page=ns&lng=en&nsid=5&action=show&gid=225>

Interview with Ivan Nachev, Chief Assistant, JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University,
Oct.14, 2010.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

58

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

There is a formal, transparent process for the budget debate, and major documents about the budget figures and budget proceedings are publicly available. However, there is no tradition of a wide public debate on the budget. No effective operational mechanism for public involvement in the debating process has been developed yet.

References:

Report of Open Budget Initiative (2009):

http://www.internationalbudget.org/files/cs_bulgaria.pdf

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Beyond the possibility of some business organizations and interest groups to attend public hearings, no effective operational mechanism for public involvement in the budget hearings has been developed yet.

References:

Open Budget Index (2009):

<http://www.internationalbudget.org/countryData/?fa=countryData&ct=Bulgaria>

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Public access to itemized lists of budget allocations is available through diverse channels. Information is available online and regularly updated on the web site of the Ministry of Finance.

Yet, Bulgaria's score on the Open Budget Index shows that the government provides the public with some, albeit incomplete, information on the central government's budget and financial activities during the course of the budget year.

References:

Ministry of Finance website

<http://www.minfin.bg/en/>

Open Budget Index (2009):

<http://www.internationalbudget.org/countryData/?fa=countryData&ct=Bulgaria>

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

The Standing Public Sector Accountability Subcommittee, which has seven members, supervises the spending of public funds.

The Ad Hoc Committee of inquiry on the expenditures, appointments and transactions made by the government of Sergey Stanishev in the last year was set up after the Parliamentary Elections. It was active between Sept. 2, 2009, and March 22, 2010.

References:

RULES OF ORGANIZATION AND PROCEDURE OF THE NATIONAL ASSEMBLY

<http://www.parliament.bg/?page=app&lng=en&aid=6>

Standing Public Sector Accountability Subcommittee

(7 Members) <http://www.parliament.bg/?page=ns&lng=en&nsid=5&action=show&gid=255>

Ad Hoc Committee of inquiry on the expenditures, appointments and transactions made by the government of Sergey Stanishev in the last year

<http://www.parliament.bg/?page=ns&lng=en&nsid=5&action=show&term=adhoc&gid=242>

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

67

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

Web page of the Standing Public Sector Accountability Subcommittee

<http://www.parliament.bg/?page=ns&lng=en&nsid=5&action=show&gid=255>

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The committees in the Bulgarian Parliament reflect the composition of the chamber. Of the seven members of this Subcommittee, two representatives, (including the chairperson), come from the ruling GERB Party.

References:

Web site of the Standing Public Sector Accountability Subcommittee

<http://www.parliament.bg/?page=ns&lng=en&nsid=5&action=show&gid=255>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The limited information on the activities of the Public Sector Accountability Subcommittee does not allow a complete assessment of its performance.

References:

Web site of the Standing Public Sector Accountability Subcommittee

<http://www.parliament.bg/?page=ns&lng=en&nsid=5&action=show&gid=255>

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

81 4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

References:

Civil Servants Act (Chapter One – Art.4, Chapter Three)

<http://www.lex.bg/bg/laws/ldoc/2134673408>

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

The Civil Servants Act refers to the Code of Conduct for civil servants (Art.28). The Code of Conduct further develops specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service.

Most administrations have introduced Codes of Conduct to govern in detail ethical rules within the particular administration.

References:

Civil Servants Act (Art. 28)

<http://www.lex.bg/bg/laws/ldoc/2134673408>

Code of conduct for civil servants

http://www.port.bg/bg/documents/kodeks_za_povedenie.pdf

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

Mechanisms for civil servants to address grievances regarding civil service management actions exist in the format of various options. Civil servants may appeal disciplinary decisions before the administration that have appointed them, and then before the court. There is an opportunity for appeals to administrative courts for violations of the law. Some administrations have special ethics committees to decide on ethics dilemmas.

References:

Civil Servants Act (Chapter eight)
<http://www.lex.bg/bg/laws/ldoc/2134673408>

Administrative Procedure Act
<http://www.admincourts Sofia.bg/НОРМАТИВНАУРЕДБА/Административнопроцесуаленкодекс.aspx>

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | No

Comments:

Terms of appointment exclude candidates who have been indicted for a committed crime of general character to imprisonment. This includes corruption and related crimes, as defined in the Penal Code. When a civil servant is convicted of any premeditated crime, his or her contract is terminated and the person may not be appointed to another position within the administration.

References:

Civil Servants Act (Art. 7 in relation with Art. 103):
<http://www.lex.bg/bg/laws/ldoc/2134673408>

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

78

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The stronger the political cabinets existing in all state institutions, the greater influence they have in imposing political criteria in recruitment and career development at lower operational levels. The Report on the State of Administration 2009 confirms lower rates of turnover of civil servants. However, there is still strong public perception that appointments in the administration (especially for attractive positions) are not entirely based on merit.

References:

State of Administration 2009 :

<http://www.strategy.bg/Publications/View.aspx?lang=bg-BG&Id=81>

Media overview:

Nespaper Sega:

<http://www.segabg.com/online/new/articlenew.asp?issueid=5814&ionid=5&id=0001101>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The Report on the State of Administration 2009 confirms the decreasing number of appeals of decisions related to recruitment. For the most part, civil servants are appointed and evaluated according to professional criteria. However, there are media allegations and public perceptions that professional considerations play a minor role in appointments of senior civil servants. Focused independent surveys on the topic are missing.

References:

State of Administration 2009

<http://www.strategy.bg/Publications/View.aspx?lang=bg-BG&Id=81>

Media reports:

Nespaper Sega:

<http://www.segabg.com/online/new/articlenew.asp?issueid=5814&ionid=5&id=0001101> T

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Nepotism, cronyism and patronage remain an issue of concern. The Report on the State of Administration 2009 shows that the majority of cases of violations of the Public Service Act are related to civil service management actions, including hiring, where various ways to surpass legal requirements are being used.

References:

Report on the State of Administration 2009 (III-15)
<http://www.strategy.bg/FileHandler.ashx?fileId=1096>

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

All civil servants have clear job descriptions included in the administrative Rules of Organization.

References:

Report on the State of Administration 2009:
<http://www.strategy.bg/FileHandler.ashx?fileId=1096>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

It has been reported that in total of 352 administrative units (62.5 percent of all administrations) in 2009, the bonuses amounted to 25.1 percent of the gross salaries (compared to 22.5 percent in 2008.) For central administrations, bonuses amounted to 22.5 percent of the gross salaries (compared to 30.0 percent in 2008), and in territorial administrations to 26.1 percent (compared to 24.5 percent in 2008).

References:

Report on the State of Administration 2009 (III.11):
<http://www.strategy.bg/FileHandler.ashx?fileId=1096>

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

A regularly updated Register of Administrative Structures, as required by the Law on Public Administration, maintains an online database of all administrative structures and positions in the administrations (occupied and vacant). The aggregated number of authorized civil service positions along with the number of positions actually filled is published on annual basis in the Reports on the State of Administration. See – Report on the State of Administrations 2009 -III.

References:

Register of Administrative Structures:
<http://www1.government.bg/ras/konkursi/index.html>

Report on the State of Administrations 2009 (III):
<http://www.strategy.bg/FileHandler.ashx?fileId=1096>

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The independent redress mechanism by means of general court proceeding is generally effective. What could cause problems are the delays in court proceedings, which are common.

References:

Interview with Lilia Kolova, Program Director, Center for Social Practices – CSP, Oct. 28, 2010

Report on the State of Administration 2009:

<http://www.strategy.bg/FileHandler.ashx?fileId=1096>

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

There are no data to confirm irregularities in paying civil servants on time.

References:

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010.

Report on the State of Administration 2009:

<http://www.strategy.bg/FileHandler.ashx?fileId=1096>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | **75** | 50 | 25 | 0

Comments:

Convictions due to corruption are rare in Bulgaria. A recent case, from October 2010, gained importance for being among the first cases of effective convictions. The mayor of Yambol, Georgi Slavov, was convicted for being elected with the votes of the ruling party. In light of the above, there are no cases in which persons convicted of corruption have been reappointed to public office.

References:

Report on the State of Administration 2009:

<http://www.strategy.bg/FileHandler.ashx?fileId=1096>

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

Publication:

<http://www.radar.bg/redirect.php?newsid=7574428>

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

75

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

High-ranking state officials under the Law, specified by Art.2 of the Law on Public Disclosure of Assets of High-ranking State Officials, are obliged to declare their assets by April 30 of each year, as well as within one month after they take and, respectively,

leave office. The obligation extends to the assets of close relatives: spouses and children above 18 as well (Art.2 (3)). A Public register is maintained at the National Audit Office to contain asset declarations. The declared data is subject to verification and check-ups (Art.7). Submission of false data in declarations is criminalized under Art. 313, para.1 of the Criminal code. Failure to submit declarations is also subject to administrative and disciplinary sanctions (Art.8).

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 2):

<http://www.lex.bg/bg/laws/doc/2134920704>

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

Comments:

Civil servants are under the obligation to declare incompatibility and private interests in the cases specified by law (Chapter 3) when they may affect their performance of public duties and decisions.

References:

Conflict of Interest Prevention and Detection Act (Art.7):

<http://www.lex.bg/bg/laws/doc/2135603507>

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

Comments:

Art.21 restricts public servants' ability to take positions in the private sector within one year after leaving public office .

References:

Conflict of Interest Prevention and Detection Act (Chapter 5):

<http://www.lex.bg/bg/laws/doc/2135603507>

Yes: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

Comments:

A formal ban regarding gifts and hospitality to civil servants has been introduced by the Act on Prevention and Detection of Conflicts of Interests. Further rules are formulated in the Code of Conduct of Civil Servants. Art.8 forbids civil servants to request or receive gifts, services, money benefits or other advantages that could influence the exercise of their duties or decision making or could affect their professional attitude. The code also prohibits the receiving of such benefits that could be considered as a reward that forms part of the official duties. Only customary gifts received by relatives or other gifts in amount not exceeding 200 BGN (US\$138) per year are permitted. Gifts received in an official capacity are registered by the secretary general of the respective administration (Art.12, para.3).

In addition, acceptance of gifts for conducting or omitting to do anything required by service is generally covered by the Penal Code (Art.301, para.1, bribery).

Specific rules have been developed to prevent such corrupt practices in some sectors. For example, the Act on Defense and Armed Forces in Art. 1886. (in force as of 26.02.2010.) has established formal guidelines regarding gifts and hospitality in the sector related to defense and Bulgarian armed forces.

References:

Act on Prevention and Detection of Conflicts of Interests (Chapter One):
<http://www.lex.bg/bg/laws/ldoc/2135603507>

Code of Conduct of Civil Servants

Penal Code:
<http://www.lex.bg/bg/laws/ldoc/1589654529>

Act on Defense and Armed Forces of the Republic of Bulgaria (Art.188B):
<http://www.lex.bg/bg/laws/ldoc/2135631954>

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | No

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 7): <http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

A focused survey on the topic has not been made. However, there are good examples brought by the media to support the well-established public opinion is that problems related with post-office employment are persistent. An illustrating example has been brought by the Capital newspaper, debating a case where the former Minister of State Administration and Reform, Nikolay Vassilev, his subordinates — senior level officials from the same ministry and persons that have implemented tenders of the Ministry of State Administration — work on joint investment project.

References:

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

Media overview:

Publications:

“Former Minister Nikolay Vassilev, his subordinates and implementing tenders of the Ministry of State Administration work on joint investment project: http://www.capital.bg/politika_i_ikonomika/bulgaria/2010/03/12/872576_mdaar_beta_adsic/

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to most of the polls that have been conducted by different public opinion research institutes, gift-giving remains a standard practice in Bulgaria.

References:

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

Publications in Kapital for gift-giving in the taxation sector:

http://www.capital.bg/politika_i_ikonomika/bulgaria/2010/10/29/984029_shouto_na_danuchnite/

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | **50** | 25 | 0

Comments:

Growing sensitivity towards enforcement of conflict of interest regulations has been reported by the end of 2009 — disciplinary proceedings for alleged violations of conflicts of interests against 867 civil servants, fired 103 civil servants. However, nepotism, cronyism and patronage remain serious problems. Several important cases attracted public attention during the study period. In March 2010, Bulgarian Minister of Health Nanev resigned after being accused of conducting twounfavorable deals for the supply of the antiviral swine flu medicine “Tamiflu” and alleged conflicts of interests.

References:

Report on the State of Administration 2009

<http://www.strategy.bg/Publications/View.aspx?lang=bg-BG&Id=81>

Media overview:

http://www.novinite.com/view_news.php?id=114777

http://sofiaecho.com/2010/03/30/880979_bulgarias-health-minister-resigns-after-being-charged-by-prosecutors

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | **50** | 25 | 0

Comments:

Asset disclosure records of civil service senior members are subject to audit. The National Audit Office (NAO) compares the declared data with data from the National Revenue Agency and reports irregularities in inconsistency reports that are published. Yet, no further investigations and punishments for violations of the law are put in place. This weak follow-up gives ground to a common perception in the society that the real assets may not be declared.

As far as asset declarations of other categories of civil servants is concerned, the Report on the State of Administration 2009 states that in 383 administrations (68 percent of all administrations in Bulgaria) there is no practice to check-up and analyze the submitted declarations.

References:

Reports of the National Audit Office:
<http://www.bulnao.government.bg/index.php?p=7>

Report on the State of Administration 2009 (at p.138):
<http://www.strategy.bg/FileHandler.ashx?fileId=1096>

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

69

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

Citizens can access the asset records of senior civil servants through the web page of the National Audit Office, provided that personal data is protected.

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 6): <http://www.lex.bg/bg/laws/ldoc/2134920704>

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Asset disclosure records of senior civil servants are accessible online through the web site of the National Audit Office. In addition, access could be obtained by means of the instruments provided in the Access to Public Information Act. However, the Interim report of the EU Commission criticizes the publication of asset declarations for "not been systematically updated nor was any follow-up by the control bodies in charge of verifying the declarations reported". In addition, the report states that "no follow-up to allegations of conflict of interest among high officials and Members of Parliament by a specially designated parliamentary committee has been reported since December 2009."

References:

Web page of the National Audit Office- Public register
<http://register.bulnao.government.bg/2010/index.html>

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

On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, March 23, 2010
http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_112_en.pdf

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are available to all citizens, and they can be obtained at little cost on-line through the web site of the National Audit Office – Public register.

However, the Interim report of the EU Commission states that the publication of asset declarations has “not been systematically updated”. Relevant delays challenge the quality of the access provided.

References:

Web page of the National Audit Office- Public register
<http://register.bulnao.government.bg/2010/index.html>

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

On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, March 23, 2010
http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_112_en.pdf

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

Comments:

The asset disclosure records of senior civil servants contain accounting of the individuals' sources of income, investments, and other financial interests. The Interim report of the EU Commission criticizes publication of asset declarations for "not been systematically updated nor was any follow-up by the control bodies in charge of verifying the declarations reported". In addition, the report states that "no follow-up to allegations of conflict of interest among high officials and Members of Parliament by a specially designated parliamentary committee has been reported since December 2009." Recent cases where it has been alleged that asset records may be lacking financial arrangements in which the individual has an interest, have been subject to a further investigation by the competent authorities: case with asset declarations of Rumjana Jeleva- Former Minister of Foreign Affairs- February 2010, and Deputy Prime Minister Zvetan Zvetanov- October, 2010. Required statements of the National Audit have been made.

References:

National Audit Office- Public register
<http://register.bulnao.government.bg/2010/index.html>

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

31

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

Art.32 of the Act on Prevention and Detection of Conflict of Interests provides for protection of whistle-blowers to include cases of termination, harassment or other negative consequences. The Act stipulates the right to compensation of whistle-blowers in due court proceedings. 2010 amendments to the Penal Procedure Code (Art.. 123a.) extend protection of a servant under-cover in criminal proceedings.

References:

Penal Procedure Code
<http://www.lex.bg/bg/laws/ldoc/2135512224>

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Although the current system of protection has been systematically subjected to criticism by both foreign and national experts, no progress has been made to effectively guarantee sufficient level of protection for the civil servants who report cases of corruption. The EU Commission suggests that "in order to step up the fight against high-level corruption, Bulgaria should also consider a more forceful protection of witnesses in line with best practice in other Member States".

References:

Interview with Antoaneta Zoneva, Chairperson of the Board of the Institute for Public Environment Development, Sofia, Nov. 2, 2010.

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Bulgaria under the Co-operation and Verification Mechanism {SEC(2010) 948}, Brussels, July 20, 2010
http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_400_en.pdf

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

References:

Bulgarian Penal Code
<http://www.lex.bg/bg/laws/ldoc/1589654529>

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes | No

Comments:

Public servants are under the obligation to immediately report to investigating authorities any criminal offenses that they have witnessed, as well as to take the necessary steps to preserve the evidence of the crime (Art. 205, para.2 of the Criminal Procedure Code). Inspectors, entrusted to control the implementation of legislation in the field of civil service, are also obliged to notify violations identified. Internal audit units also have the obligation to inform the head of their administration when they find data of fraud committed during their inspections, and if no action is taken, afterward to inform the public prosecutor (Art. 30 of the Internal Audit in the Public Sector Act). An obligation to inform the public prosecutor is imposed on the National Audit Office (NAO) in cases where the performed audit reveals data that a crime has been committed. In such cases, the audit materials or the audit report is submitted to the public prosecution office by decision of the NAO (Art. 52 of the National Audit Office Act).

References:

Criminal Procedure Code:
<http://www.lex.bg/bg/laws/ldoc/2135512224>

Internal Audit in the Public Sector Act
<http://www.lex.bg/bg/laws/ldoc/2135519287>

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

63

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Inspectorates in state institutions are generally well-staffed. Investigating corruption, however, is not the prime line of their basic mandate.

References:

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There is no specific data to support irregularities in funding for inspectorates. However, no focused survey has been carried out on what part of funding has been directly allocated to finance activities related to counteraction of corruption.

References:

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Although there are various formal mechanisms established for reporting corruption, no important cases have brought to the public eye through these internal channels. No focused reports are available to investigate the number of complaints related to corruption and the reaction time. The general public has little trust in the existing reporting mechanisms.

References:

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

Important investigations of cases of corruption come to the public eye generally through external channels, including allegations of corruption brought by the opposition, media reports, etc., and not through the established internal mechanisms of reporting .

References:

Interview with Lilia Kolova, Program Director, Center for Social Practices – CSP, Oct. 28, 2010

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to

enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

65

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

90

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes

No

References:

Civil Servants Act (Art. 29a)

<http://www.port.bg/bg/documents/zds.pdf>

Law on Preventing and Detecting Conflicts of Interest- Chapter 2

<http://www.lex.bg/bg/laws/doc/2135603507>

Statutes of the Public Procurement Agency:

http://rop3-app1.aop.bg:7778/portal/page?_pageid=173,1102277

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes

No

Comments:

No such requirements exist in the Public Procurement Act. The Civil Servants Act provides for mandatory training for all newly appointed civil servants.

The Statutes of the Public Procurement Agency give a mandate to the Executive Director of the Agency to disseminate good practices and organize the activities related to training in public procurement.

References:

The Civil Service Act

<http://www.port.bg/bg/documents/zds.pdf>

Statutes of the Public Procurement Agency-Art. 5 (3)15

http://rop3-app1.aop.bg:7778/portal/page?_pageid=173,1102277

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

References:

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Bulgaria under the Co-operation and Verification Mechanism {SEC(2010) 948} Brussels, July 20, 2010, at p.6

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | No

Comments:

The Heads of the Public Procurement Agency and their deputies are obliged to submit annual asset disclosure forms to the National Audit Office.

Civil Servants Act regulates the general obligation of civil servants to declare the proprietary status. Art. 29: At taking the position and every year till March 31 the civil servant shall be obliged to declare his proprietary status to the body of appointment.

References:

Law on Public Disclosure of Assets of High-ranking State Officials (Article 2) <http://lex.bg/bg/laws/ldoc/2134920704>

Civil Servants Act (Article 29):

<http://www.port.bg/bg/documents/zds.pdf>

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

Mandatory application of the Public Procurement Act required for awarding public procurement contracts which have the following values, net of value added tax, is as follows:

1. in respect of works: not less than BGN 2.15 million (US\$1.5 million), where the place of performance of the procurement contract is outside Bulgaria, not less than BGN 6 million (US\$4.2 million);
2. in respect of supplies: not less than BGN 180,000 (US\$127,000) and, where the place of performance of the procurement contract is outside Bulgaria, not less than BGN 250,000 (US\$177,000);
3. in respect of services: not less than BGN 110,000 (US\$77,756) and, where the place of performance of the procurement contract is outside Bulgaria, not less than BGN 250,000 (US\$176,712);
4. design contest: not less than BGN 110,000 (US\$77,756).

References:

Public Procurement Act (Article 14):

<http://lex.bg/bg/laws/doc/2135482815>

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

References:

Public Procurement Act:

<http://lex.bg/bg/laws/doc/2135482815>

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

Tender results are subject to appeal before the Commission for Protection of Competition and before courts.

References:

Public Procurement Act (Part Four- Chapter 11):

<http://lex.bg/bg/laws/ldoc/2135482815>

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

Comments:

Every decision of the contracting authorities shall be subject to appeal before the Commission for Protection of Competition with regard to assigning public procurement. The ruling of the Commission is subject to appeal before the Supreme Administrative Court within three days from its announcement .

References:

Public Procurement Act (Part Four):

http://www.aop.bg/fckedit2/user/File/en/Normativna%20baza/LAW_PP_16072010.pdf

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

References:

Public Procurement Act (Article 47):

http://www.aop.bg/fckedit2/user/File/en/Normativna%20baza/LAW_PP_16072010.pdf

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Blacklisting for companies that have a bad record in public procurement is currently being debated. Indeed, the Public Procurement Portal has assigned a specific directory for the list of Contractors that have violated the law (still no records). Companies convicted of corruption are rare in Bulgaria. However, blacklisting will not prevent companies from participating in public procurement under new corporate identity.

References:

Public Procurement Portal: Public Procurement Agency
http://rop3-app1.aop.bg:7778/portal/page?_pageid=173.1248251&_dad=portal&_schema=PORTAL

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

79

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

The Public Procurement Register maintained by the Public Procurement Agency contains public procurement regulations.

References:

Public Procurement Act (Articles 21, 22):
http://www.aop.bg/fckedit2/user/File/en/Normativna%20baza/LAW_PP_16072010.pdf

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

The Public Procurement Register maintained by the Public Procurement Agency contains: the decisions for opening and termination of procedures for assigning public procurement, as well as the decisions for prolonging the term for submission of offers or applications for participation; the announcements required for entry in the register; the information regarding the assigned public procurement; information concerning the fulfilled public procurement contracts; other information determined by the regulations for implementation of the law.

References:

Public Procurement Act (Articles 21, 22):

http://www.aop.bg/fckeditor2/user/File/en/Normativna%20baza/LAW_PP_16072010.pdf

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The annual report of the Access to Information Program on the Access to Information in Bulgaria (2009) states some negative tendency with respect to publication of procurement contracts with external parties compared to the previous year.

References:

Annual Report: Access to Information in Bulgaria (2009); Access to Information Program (2010) (at p.32):

http://www.aip-bg.org/pdf/report2009_bg.pdf

Interview with Lilia Kolova, Program Director, Center for Social Practices – CSP, Oct. 28, 2010.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Annual Report: Access to Information in Bulgaria (2009); Access to Information Program (2010):
http://www.aip-bg.org/pdf/report2009_bg.pdf

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Annual Report: Access to Information in Bulgaria (2009); Access to Information Program (2010):
http://www.aip-bg.org/pdf/report2009_bg.pdf

Public Procurement Portal: Public Procurement Agency:
http://rop3-app1.aop.bg:7778/portal/page?_pageid=173,1082253&_dad=portal&_schema=PORTAL

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Information about the contracts made with the contracting companies is rarely made publicly available on grounds of protection of

commercial secrets. The annual report of the Access to Information Program on the Access to Information in Bulgaria (2009) states some negative tendency with respect to publication of procurement contracts with external parties compared to previous years (2.4 percent in 2009 against 4.6 percent in 2006).

References:

Annual Report: Access to Information in Bulgaria (2009); Access to Information Program (2010) (at p.32):
http://www.aip-bg.org/pdf/report2009_bg.pdf

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

92

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

References:

Privatization and Post-privatization Control Act
<http://www.priv.government.bg/apnew/Root/index.php?magic=0.13.25.1.2>

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

References:

Privatization and Post-privatization Control Act (Art.23)

<http://www.priv.government.bg/apnew/Root/index.php?magic=0.13.25.1.2>

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Major privatization deals were finalized several years ago. For the period of the survey there have been no cases of established violations of the conflict of interest regulations by officials from the Privatization Agency .

References:

Interview with Ivan Nachev, president of Political Circle "Thought", Chief Assistant at JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct. 14, 2010.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

100

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

Article 6 requires that (1) The Privatization Agency prepares annual action plans to identify the priorities for the operation of the Agency during the relevant period and shall be published. Art.3 lists specific requirements for decisions on privatization to be gazetted and inserted in at least two national daily newspapers. Public registers that contain information on the privatization process and the deals completed are in place.

References:

Privatization and Post-privatization Control Act

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

It contains easily accessible information about projects for which the sale procedures – tenders or auctions – are announced officially.

References:

Web site of the Bulgarian Privatization Agency

<http://www.priv.government.bg/apnew/Root/index.php?magic=0.61.0.0.2>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

References:

Privatization and Post-privatization Control Act

<http://www.priv.government.bg/apnew/Root/index.php?magic=0.13.25.1.2>

Regulation on the mandatory information to be provided to the entities/persons who have expressed interest to take part in the privatization under the Privatization and Post-Privatization Control Act and on the documents and data, constituting official secret:

<http://www.priv.government.bg/apnew/Root/index.php?magic=0.13.39.3.2>

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All relevant regulations are published on the Privatization Agency's web site in Bulgarian and English.

References:

Website of the Privatization Agency

<http://www.priv.government.bg/apnew/Root/index.php?magic=0.0.0.0.2>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

All relevant regulations are published on the Privatization Agency's web site in Bulgarian and English.

References:

Web site of the Privatization Agency

<http://www.priv.government.bg/apnew/Root/index.php?magic=0.0.0.0.2>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

References:

Law on the Ombudsman

http://www.anticorruption.bg/ombudsman/eng/legframe_eng.htm

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

84

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

The independence of the Ombudsman has been established by Art. 3. (1) The Ombudsman shall be independent in his/her activities and shall obey only to the Constitution, the laws, and the ratified international treaties to which the Republic of Bulgaria is a party. He/she shall be guided by his/her personal conscience and morality.

The Ombudsman is elected by the Parliament (Art.8) and financed by the State Budget and/or by other public sources (Art.7).

The office is fully independent from the executive and legislative branches.

References:

Law on the Ombudsman

http://www.anticorruption.bg/ombudsman/eng/legframe_eng.htm

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman is elected by the National Assembly for a term of five years and may be re-elected for the same office only once (Art.8). Removal requires serious justification (Art.15).

The practical reality confirms a considerable level of protection from ungrounded dismissal of the ombudsman.

No media reports on cases of political interference in the work of the ombudsman during the survey period have been brought to public attention.

References:

The Ombudsman is elected by the National Assembly for a term of five years and may be re-elected for the same office only once.

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Interview with Lilia Kolova, Program Director, Center for Social Practices – CSP, Oct. 28, 2010.

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Ivan Nachev, president of Political Circle "Thought", Chief Assistant at JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct. 14, 2010;

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Appointments of staff members should be made independently by the Ombudsman. Generally, appointments made support the independence of the institutions. Some staff members have had clear political affiliations in the past, but they represent different political parties.

References:

Interview with Ivan Nachev, president of Political Circle "Thought", Chief Assistant at JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct. 14, 2010;

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget is provided by the State Budget. There is no data available to support irregularities in provision of funding.

References:

Annual report Ombudsman Institution- 2009

http://www.ombudsman.bg/documents/ombudsman_doklad2009_LR.pdf

Interview with Ivan Nachev, president of Political Circle "Thought", Chief Assistant at JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct. 14, 2010;

Interview with Antoaneta Tsoneva, Chair of the Management Board, IPED- Institute for Public Environment Development, Oct. 12, 2010

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Following Art. 22.of the Ombudsman Act, the Ombudsman submits an annual report on his/her activities to the National Assembly by March 31 of every year.

References:

Annual reports of the Ombudsman at the web site of the Ombudsman Office: <http://www.ombudsman.bg/reports/>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman has limited instruments to act on complaints. These include “opinions, proposals and recommendations” to competent authorities. The investigative powers of the Ombudsman are limited to “making examinations upon the complaints and signals received” and making proposals, recommendation, notification to relevant authorities. Also, the analysis of the complaints-checks in 2009 demonstrate that the majority of cases are not relevant to corruption.

References:

Annual reports of the Ombudsman at the web site of the Ombudsman Office: <http://www.ombudsman.bg/reports/>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies’ investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman has no legal capacity to impose penalties on offenders, but notifies the Public Prosecution Office when data exists that a crime, prosecuted on indictment, has been committed. The administrative penalties in relation to hindering the Ombudsman to perform his/her official duties or failure to submit data, documents or certificates, demanded by the Ombudsman, in the term, specified by him/her, are imposed by the court.

References:

Annual reports of the Ombudsman at the website of the Ombudsman Office: <http://www.ombudsman.bg/reports/>

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The 2009 Annual Report of the Ombudsman states as positive results the involvement of the Ombudsman Office in the legislative process- draft acts being prepared, as well as in the activities of the Constitutional Court and the general courts on grounds of Art.125 of the Judiciary Act .

References:

2009 Annual Report of the Ombudsman of the Republic of Bulgaria: Chapter 15
<http://www.ombudsman.bg/reports/661#middleWrapper>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Annual report Ombudsman Office 2009:
<http://www.ombudsman.bg/reports/>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

References:

The Ombudsman Act (Art.23)

http://www.anticorruption.bg/ombudsman/eng/legframe_eng.htm

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports, publications, opinions are available online.

References:

Reports of the Ombudsman Office:

<http://www.ombudsman.bg/reports/661#middleWrapper>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports, opinions, publications are available online.

References:

Reports on the web site of the ombudsman:

<http://www.ombudsman.bg/reports/661#middleWrapper>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes

No

Comments:

The National Audit Office is the Supreme Audit Institution that covers the entire public sector.

References:

Law on the National Audit Office:

<http://www.bulnao.government.bg/index.php?p=67>

Ordinance on the organization of activities of the National Audit Office:

<http://www.bulnao.government.bg/index.php?p=24>

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

84

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

The National Audit Office (NAO) is independent in implementing its activities, and is accountable to the National Assembly. Members and the chairman of the National Audit Office are elected by Parliament.

References:

Law on the National Audit Office (Art. 2, Art. 10):
<http://www.bulnao.government.bg/index.php?p=67>

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The chairperson of the NAO serves a defined term and cannot be removed without a significant justification through a formal process (Art.12). The National Assembly has the competence to decide on the removal.

References:

Web site of the National Audit Office:
<http://www.bulnao.government.bg/?lang=en>

Interview with Ivan Nachev, president of Political Circle "Thought", Chief Assistant at JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct. 14, 2010.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The existence of professional, full time staff to implement the mandate of the NAO has been confirmed by its reports (at the end of 2009, 516 professional staff were involved).

References:

2009 Report on the activity of the National Audit Office: p.204

<http://www.bulnao.government.bg/index.php?p=63>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Interview with Ivan Nachev, president of Political Circle "Thought", Chief Assistant at JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct. 14, 2010.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The National Audit Office has reported regular funding, and no outstanding financial obligations for 2009.

References:

2009 Report on the Activity of the National Audit Office, at p.203
<http://www.bulnao.government.bg/index.php?p=63>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Reports are published regularly on the web site of the National Audit Office.

References:

Web site of the National Audit Office
<http://www.bulnao.government.bg/index.php?p=2160>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Generally, the government, and in particular the National Revenue Agency, act on the findings of the National Audit Office (NAO). The actions are reported, analyzed and summarized in reports, and published on the web site of NAO. However, as regards inconsistencies reported by NAO in relation to asset declarations of high-ranking politicians and public officials, follow-up actions by the prosecution office have not been up to the level of expectations of the general public. New draft legislation is currently being proposed in order to guarantee effective interventions in case of non-compliances found.

References:

Reports on the implementation of the recommendations of NAO on NAO's web site:

<http://www.bulnao.government.bg/index.php?p=4>

Media publications

Sega newspaper:

<http://www.segabg.com/online/new/articlenew.asp?issueid=6996§ionid=16&id=0000101>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The mandate of NAO is limited to fact-finding. Its office is not vested with the power to initiate its own investigations.

References:

NAO's web site:

<http://www.bulnao.government.bg/index.php?p=4>

Media overview

Sega newspaper:

<http://www.segabg.com/online/new/articlenew.asp?issueid=6996§ionid=16&id=0000101>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

Yes | No

References:

Law on the National Audit Office (Articles 2 and 24):

<http://www.lex.bg/bg/laws/doc/2135219205>

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Audit reports are published on the web site of the National Audit Office and in a special Bulletin issued by the National Audit Office. Access may be obtained also by means of the Access to Public Information Act.

References:

Reports of the National Audit Office:

<http://www.bulnao.government.bg/index.php?p=7>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Audit reports are available on the web site of the National Audit Office and in a special Bulletin issued by the National Audit Office. They can be obtained at little cost.

References:

Reports of the National Audit Office:

<http://www.bulnao.government.bg/index.php?p=7>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

95
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

References:

Law on National Revenue Agency
<http://www.lex.bg/bg/laws/ldoc/2135461320>

National Revenue Agency
<http://www.nap.bg/>

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Agency is funded by the state budget. There is no data to support irregularities in funding.

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Application of tax laws raises serious concerns due to widespread corruption. Media reports contain numerous allegation of corrupt practices involving various tax offenses. Criminal court proceedings for corrupt practices have been initiated against the former Head of the National Revenue Agency, Maria Murgina, in June 2010.

The reforms in tax administration have been acknowledged in the March 2010 Interim Report from the European Commission. However, it is hard to speak of discrimination in application of tax laws, as there is no group of companies that are systematically targeted or discriminated against by the officials.

References:

Media overview

Kapital newspaper:

http://www.capital.bg/politika_i_ikonomika/bulgaria/2010/10/29/984220_zad_kulisite/

aktualno.com news:

http://society.aktualno.com/news_304629.html

INTERIM REPORT FROM THE EUROPEAN COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, March 23, 2010:

http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_112_en.pdf

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes

No

References:

Customs Act

<http://www.lex.bg/bg/laws/ldoc/2134384640>

National Customs Agency

<http://www.customs.bg/en/>

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

It is funded by the state budget. There is no data to support irregularities in funding.

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Sofia, Oct. 28, 2010.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The EU report confirms that reforms which should lead to greater accountability and efficiency have been initiated at the National Customs Agency. Yet, perceptions about the high level of corruption amongst customs officers are widely shared in Bulgarian society. Recent media reports expose shocking facts about properties of customs officers that remain extremely disproportionate to their declared taxed income.

References:

Interim report from the EC to the European Parliament and the Council
On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, March 23, 2010,
http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_112_en.pdf

Media broadcasts

<http://www.btv.bg/shows/btv-reporterite>

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

Comments:

Various mechanisms for overseeing the state-owned companies exist. Some remain under the direct supervision of the relevant ministries, including the Ministry of Economy, Energy and Tourism.

Publicly listed companies are supervised by the Financial Supervision Commission.

References:

Financial Supervision Commission.
<http://www.fsc.bg/?l=english>

Ministry of Economy, Energy and Tourism
<http://www.mi.government.bg/eng/>

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

60

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | **No**

Comments:

State-owned enterprises, under the direct supervision of the ministries, are ultimately controlled by political appointees (ministers), who also appoint board members.

As it was legally established by Art.5 of the Financial Supervision Commission Act, members of the Financial Supervision Commission should be "guided by the principles of independence, impartiality, and good faith in performing the duties assigned to them by the law."

References:

FINANCIAL SUPERVISION COMMISSION ACT (Art.5)
http://www.fsc.bg/media_center/files/FSC.pdf

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

No data to support irregularities in receiving funding have been found.

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The competence of the overseeing agencies to undertake investigations is limited to fact-finding and imposition of administrative sanctions where prescribed by law. In cases where facts related to potential alleged crimes are discovered, they have to be addressed to the prosecution office in order to initiate an investigation. The above agencies may recommend measures to improve the management of state-owned companies.

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

Media have reported some cases in which offenders have been investigated for misconduct, yet more effective control over state-owned companies remains a challenge. Supervising authorities have limited competence to impose effective sanctions in this respect.

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

90

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

Citizens may access the financial records of state-owned companies, especially the publicly listed companies.

References:

Law on the Public Offering of Shares
http://www.fsc.bg/media_center/files/sk1.pdf

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Financial records of state-owned companies are regularly audited, but exceptions may exist.

Not much information on the issue is publicly available.

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of state-owned companies are either available online or can be accessed at little cost. The time to obtain access through using the channels of the access to public information may be delayed.

References:

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of state-owned companies are either available online, or the costs to obtain them through other channels are not excessive.

References:

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010

Interview with Nikolai Samardjiev, Lead Auditor, MI, Sofia, Nov. 2, 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

70. Are business licenses available to all citizens?

81

70a. In law, anyone may apply for a business license.

Yes | No

References:

Law on the Limitation of Administrative Regulation and Administrative Control over Economic Activity:
<http://www.lex.bg/bg/laws/doc/2135468357>

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

Denial of a business license can be appealed before the relevant administrative courts, which have discretion to try the case.

References:

Law on the Limitation of Administrative Regulation and Administrative Control over Economic Activity:
<http://www.lex.bg/bg/laws/doc/2135468357>

Administrative Procedure Code

<http://www.admincourts Sofia.bg/НОРМАТИВНАУРЕДБА/Административнопроцесуаленкодекс.aspx>

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Some licenses are easy to be obtained in a reasonable time period. Others, including construction licenses, are obtained within a

longer period. The World Bank reports 119 days necessary to obtain a construction permit. The 2010 Index of economic freedom states that the overall freedom to establish and run a business is relatively well protected under Bulgaria's regulatory environment. Obtaining a business license takes less than the world average.

References:

2010 Index of economic freedom :
<http://www.heritage.org/Index/country/Bulgaria>

Doing Business 2010, World Bank:
<http://www.doingbusiness.org/Documents/CountryProfiles/BGR.pdf>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

8.8 percent of firms identify business licensing and permits as a major constraint, according to Enterprise Surveys. The cost of business licenses is within reasonable limits. To exemplify, a construction permit for construction companies in Sofia, Bulgaria's capital, costs BGN 21 (US\$14) per square meter, compared to the average market price of properties per square meter of BGN 2,000 (US\$1,428).

References:

Enterprise Surveys 2009, World Bank:
<http://www.enterprisesurveys.org/ExploreEconomies/?economyid=30&year=2009>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

Relevant requirements, governed by numerous normative acts, are transparent and made easily available on the web sites of the relevant, competent authorities.

References:

Law on the Limitation of Administrative Regulation and Administrative Control over Economic Activity:
<http://www.lex.bg/bg/laws/ldoc/2135468357>

Health and Safety at the Workplace Act
<http://www.lex.bg/bg/laws/ldoc/2134178305>

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

Relevant requirements, governed by numerous normative acts, are transparent and made easily available on the web sites of the relevant, competent authorities.

References:

Law on the Limitation of Administrative Regulation and Administrative Control over Economic Activity:
<http://www.lex.bg/bg/laws/ldoc/2135468357>

Law on the Protection of the Environment
http://www.moew.government.bg/recent_doc/legislation/ZOOS.pdf

Web site of the Ministry of Environment and Waters
http://www.moew.government.bg/index_e.html

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Tema weekly:

<http://www.temanews.com/index.php?p=tema&iid=619&aid=14636>

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁸²Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes

No

References:

Bulgarian Penal Code (Article 301 (1)):

http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes

No

References:

Bulgarian Penal Code (Chapter 5, Section V Art. 213a to Art. 214a) : http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

References:

Bulgarian Penal Code (Chapter 8, Section IV) :
http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

References:

Bulgarian Penal Code (Chapter 8, Section IV) :
http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

References:

Bulgarian Penal Code (Chapter 8, Section IV) :
http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

References:

Bulgarian Penal Code (Chapter 8, Section II):

http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

References:

Bulgarian Penal Code (Chapter 8, Section II- Art.284):

http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes | No

References:

Measures Against Money Laundering Act:

http://www.fia.minfin.bg/images_content/Measures_Against_Money_Laundering_Act.pdf

Bulgarian Penal Code (Chapter 7)

http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

Comments:

The Penal Code criminalizes the organization and participation in a criminal group (i.e. who forms or leads an organized criminal group, or who participates in such activities.)

References:

Bulgarian Penal Code (Article 321)

http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

The State Agency for National Security was established in January 2008 with the specific functions (among others) of fighting corruption of high-ranking state officials.

The anti-corruption infrastructure accommodates anti-corruption bodies in the legislative, executive and judicial systems. It includes:

The Commission on Prevention and Counteraction of Corruption (CPC), established by Decision No. 61/2.2, 2006 of the Council of Ministers, responsible for establishment of the priorities of state anti-corruption policy and approaches to effective prevention and counteraction of corruption . Decisions № 145 of the CoM from 12.03.2009 and № 760 from 25.09.2009 r. alter the composition and functions of the Commission.

AC bodies In the judicial system- Anti-corruption Commission to the Supreme Judicial Council and Special Judicial Board to investigate high-level corruption cases.

Commission for Counteraction of Corruption, Conflict of Interests and Parliamentary Ethics to the National Parliament.

References:

State Agency for National Security
Law on State Agency for National Security (Art. 4 (1) p.4):
<http://lex.bg/bg/laws/ldoc/2135574489>

The Commission on Prevention and Counteraction of Corruption (CPCC) at the Council of Ministers
<http://anticorruption.government.bg/content.aspx?p=14>

Commission for Counteraction of Corruption, Conflict of Interests and Parliamentary Ethics to the National Parliament

Anti-Corruption Commission to the Supreme Judicial Council

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

64

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

The State Agency for National Security is a specialized body on national security issues, subordinate to the Council of Ministers, that has some formal organizational and operational independence (Art. 3 (3)). The chief of the State Agency for National Security is appointed by the president upon proposal of the government (Art.8). Since mid-2009, Bulgaria restricted the competence of the State Agency for National Security (SANS). Although representatives of SANS participate in the recently established joint teams, responsibility for the investigation of organized crime cases was shifted back to the Ministry of the Interior. On the other hand, SANS will, as reported, keep responsibility for the gathering of intelligence concerning high-level corruption. The Anti-Fraud Co-ordination structure (AFCOS) was also transferred back to the Ministry of Interior from the Ministry of Finance. The Commission on Prevention and Counteraction of Corruption (CPCC) is not totally independent from the executive power; that is, from political interference. The Commission for Counteraction of Corruption, Conflict of Interests and Parliamentary Ethics to the National Parliament has some formal operational independence from the government based on its composition and mandate.

References:

Law on State Agency for National Security (Chapter One):
<http://lex.bg/bg/laws/ldoc/2135574489>

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

So far, the State Agency for National Security has not managed to prove that it is effectively clean from political interference.

References:

Media publications:

24 Chasa: Borissov: SANS- Scandals- Till When?:

<http://www.24chasa.bg/Article.asp?ArticleId=272866>

Bulgarian National Television: Scandals and SANS: Interview with Deputy Prime Minister Tsvetanov

http://bnt.bg/bg/news/view/16912/slujbi_i_skandal_vicepremieryt_cvetan_cvetanov

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

So far there have been two removals of key officials in SANS: the removal of the Deputy Director Drashkov in 2008, which was associated with major scandals, and the more recent resignation of Director Sertov (August 2009) after the parliamentary elections in 2009 and the formation of the new government. These developments indicate that heads of AC agencies may not be always effectively protected against dismissals on political grounds.

References:

Media overview:

Trud newspaper:

“SANS has been given to Tsevetelin Jovchev”:

<http://www.trud.bg/Article.asp?ArticleId=194728>

Vsekiden:

“Sertov has left, what about Kirov?”:

<http://www.vsekiden.com/56294>

Sega newspaper:

<http://www.segabg.com/online/article.asp?issueid=3119&ionid=2&id=0000301>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Although appointments to the agency (or agencies) are usually based on professional qualifications, political or personal preferences still play an important role.

References:

Foundation Risk Monitor: Monitoring of SANS-2009:

<http://riskmonitor.bg/RM-11.pdf>

Media publications:

novinar net:

http://www.novinar.net/news/ivan-kostov-dans-se-zanimava-s-politicheski-inzhenering_MzAxMTsxMg==.html

BTV: They hire relatives in SANS:

http://www.btv.bg/news/politika/story/531323412-RZS_V_DANS_kato_agenti_se_naznachavat_rodni.html

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Foundation Risk Monitor: Monitoring of SANS-2009:

<http://riskmonitor.bg/RM-11.pdf>

Media overview:

vesti bg:

http://bgvesti.com/index.php?option=com_content&view=article&id=39260:2009-11-05-08-13-49&catid=65:2008-10-05-17-23-33&Itemid=107

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

No problems have been reported.

References:

Foundation Risk Monitor: Monitoring of SANS-2009

<http://riskmonitor.bg/RM-11.pdf>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The State Agency for National Security is required to submit identical information to the president, the prime minister and the chairperson of the National Assembly. Annual Reports on the activities of SANS are to be submitted to Parliament as well. Information provided, however, is subject to restrictions, due to the nature of the activities of SANS.

As of October 2009, the Agency has its own web site, which provides some limited information to the public.

The Commission for Counteraction and Prevention of Corruption reports to the public on the implementation of the national anti-corruption strategy.

References:

Foundation Risk Monitor: Monitoring of SANS-2009

<http://riskmonitor.bg/RM-11.pdf>

Internet site of SANS:

<http://www.dans.bg>

Law on State Agency for National Security (Chapter Nine):

<http://lex.bg/bg/laws/ldoc/2135574489>

Website of the Commission for Counteraction and Prevention of Corruption:

<http://anticorruption.government.bg/content.aspx?p=14>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The State Agency for National Security has most of the powers needed to carry out its mandate, with some exceptions. As mentioned by most commentators, including the European Commission in its regular monitoring reports, SANS is yet to prove its capacity to effectively counteract corruption.

References:

Foundation Risk Monitor: Monitoring of SANS-2009:
<http://riskmonitor.bg/RM-11.pdf>

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

For the limited period of its existence, SANS has not yet proved its effectiveness in combating corruption and crimes. As major achievements in 2009 they reported the investigation against the former chairperson of the National Revenue Agency, Maria Murgina, and the investigations against Irena Krasteva and her son Delyan Peevski. The scandal in Ribnovo in March 2009, however, gave the media reasons to question the methods of SANS. As of July 2009, with the new government, the functions and purpose of SANS have been revisited. The Agency has been restructured, and its mandate restricted. As put by commentators "From SANS to Mega Ministry of Interior".

References:

Foundation Risk Monitor: Monitoring of SANS-2009
<http://riskmonitor.bg/RM-11.pdf>

Media publications:
Kapital newspaper:
The Tiger who does not Bite, Aug. 6, 2009

Dnevnik:
http://www.dnevnik.bg/bulgaria/2007/12/10/406141_nov_zakon_vadi_zubite_na_mvr/

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Due to lack of sufficient information made publicly available, it is hard to precisely assess the responsiveness of the Agency. The functioning web sites of SANS and the The Commission on Prevention and Counteraction of Corruption provide citizens with a chance to report corruption. However, citizens in general do not rely on the Agency (or other public institutions dealing with corruption) to bring alleged cases of violation to justice, and they often refrain from reporting such abuses. Devoid of public support, those institutions are insufficiently effective in preventing or investigating those crimes.

References:

Foundation Risk Monitor: Monitoring of SANS-2009:
<http://riskmonitor.bg/RM-11.pdf>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:

Public image and respective credibility of AC Agencies as effective instruments against corruption suffer serious deficiencies. Channels to report corruption have multiplied, including increased possibilities to report online. However, citizens refrain from reporting cases of corruption, not as much out of fear of recrimination, but due to a lack of confidence that the law enforcement and judicial institutions will bring the cases to an end by indicting or dismissing the perpetrators from their positions.

References:

Foundation Risk Monitor: Monitoring of SANS-2009:

<http://riskmonitor.bg/RM-11.pdf>

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

71

6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

75

77a. In law, there is a general right of appeal.

Yes

No

References:

Bulgarian Constitution (Article 120):

<http://www.parliament.bg/?page=const&lng=en>

Judiciary Act:

<http://www.lex.bg/bg/laws/ldoc/2135560660>

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The “excessive length of enforcement procedures” is among the main complaints in the Bulgarian judicial system.

There is no specific data on the average period in which appeals against criminal judgments are resolved. The average length stated in a report of the Center for Liberal Strategies in 2008 (including the pretrial phase and appeals) of common criminal cases is 835 days, which is below the average European standard. A July 2010 report of the Commission for Legal Matters to the Parliament reports improved efficiency of judicial proceedings in 2009 – a 22,62 percent increase of the proceedings that have been completed within deadlines. International observers continue to criticize the Bulgarian judicial system for its lengthy proceedings. The July 2010 report of the European Commission stresses the need for “improving the efficiency of justice” as well.

References:

European Judicial Systems, Edition 2010, European Commission for the Efficiency of Justice (CEPEJ):
http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/JAReport2010_GB.pdf

Media overview:

Dnevnik newspaper, Sept. 27, 2010,

“OLAF wants a more efficient judicial system”:

http://www.dnevnik.bg/bulgaria/2010/09/27/966816_olaf_iska_po-efektivna_sudebna_sistema_v_bulgaria/

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Bulgaria under the Co-operation and Verification Mechanism {SEC(2010) 948}:

http://ec.europa.eu/dgs/secretariat_general/cvm/progress_reports_en.htm

The Judiciary: Independent and Accountable. Indicators on the Efficiency of the Bulgarian Judicial System, report of the Center for Liberal Strategies:

<http://www.cls-sofia.org/bg/>

Parliamentary Commission Report – July 1, 2010:

<http://parliament.bg/?page=ns&lng=bg&nsid=5&action=show&Type=cmStan&SType=show&gid=226&id=2093>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010

Interview with Ivan Nachev, president of Political Circle “Thought”, Chief Assistant of JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct.14, 2010

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

Comments:

Judgments in the criminal system usually follow the protocols of written law. Yet, there are important exceptions when corruption and other flaws in the system decide outcomes. Since July 2009, a number of indictments were registered against two Members of Parliament, three former ministers, three former deputy ministers and, for the first time also against an acting minister. In addition, a number of high-level officials and mayors were also indicted for high-level corruption. A sentence for imprisonment of one high-level official for corruption involving EU funds has been pronounced, as well as sentences in two emblematic cases regarding fraud with EU funds and money laundering. However, as the Commission puts it “Shortcomings regarding the accountability of the judiciary persist.” The recent case of the famous Galevi brothers — pronounced not guilty after serious allegations — raised high doubts in Bulgarian society as to the quality of justice in Bulgaria.

References:

Annual report 2009 Bulgarian Helsinki Committee
<http://bghelsinki.org/upload/resources/doklad%20LAST%20202.pdf>

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Bulgaria under the Co-operation and Verification Mechanism {SEC(2010) 948}:
http://ec.europa.eu/dgs/secretariat_general/cvm/progress_reports_en.htm

Media publications:

Dnevnik newspaper:

“Galevi brothers- completely innocent”

http://dnevnik.bg/bulgaria/2010/11/04/987638_bratia_galevi_napulno_opravdani_grupata_im_-_pochti/

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

The system of private bailiffs introduced to enhance effective enforcement of judicial decisions has been reported successful. Until July 1, 2010, a number of 346,000 cases have been filed, and 97, 000 cases have been completed. Financial problems, yet, continue to raise serious concerns as far as the enforcement of judicial decisions is concerned.

References:

Media overview:

Focus New Information Agency,

“The World Bank confirms the success of the Reform in Bulgarian Judicial Enforcement System “, Sept. 28, 2010

<http://www.focus-news.net/?id=n1444732>

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Bulgaria under the Co-operation and Verification Mechanism {SEC(2010) 948};

http://ec.europa.eu/dgs/secretariat_general/cvm/progress_reports_en.htm

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

References:

Bulgarian Constitution (Chapter 6):

<http://www.parliament.bg/?page=const&lng=en>

Judiciary Act:

<http://www.lex.bg/bg/laws/ldoc/2135560660>

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

National-level judges are typically independent, yet they might be influenced by their political preferences based on their appointments and the personal relationships with specific parties. Shortcomings regarding the accountability of the judiciary, including nepotism in judicial appointments, have been consistently criticized by the European Commission and most international and national observers.

References:

Annual report 2009 Bulgarian Helsinki Committee

<http://bghelsinki.org/upload/resources/doklad%20LAST%20202.pdf>

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Bulgaria under the Co-operation and Verification Mechanism {SEC(2010) 948}:

http://ec.europa.eu/dgs/secretariat_general/cvm/progress_reports_en.htm

Media overview

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

Comments:

Assigning cases in a random-choice, computerized process may be compromised in smaller towns, due to the limited number of judges.

References:

Judiciary Act Art.9):

<http://www.lex.bg/bg/laws/ldoc/2135560660>

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

References:

Judiciary Act (Art.27, Chapter 9):
<http://www.lex.bg/bg/laws/doc/2135560660>

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

There were no such cases.

References:

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010

Interview with Ivan Nachev, president of Political Circle "Thought", Chief Assistant at JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct.14, 2010.

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

Comments:

There were no such cases.

References:

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010

Interview with Ivan Nachev, president of Political Circle "Thought", Chief Assistant at JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct.14, 2010.

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

89

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

No data have been reported.

References:

Annual report 2009 Bulgarian Helsinki Committee
<http://bghelsinki.org/upload/resources/doklad%20LAST%202009.pdf>

European Judicial Systems, Edition 2010, European Commission for the Efficiency of Justice (CEPEJ):
http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/JAReport2010_GB.pdf

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

Comments:

No data were reported to support the existence of discriminatory practices.

References:

Annual report 2009 Bulgarian Helsinki Committee
<http://bghelsinki.org/upload/resources/doklad%20LAST%20202.pdf>

European Judicial Systems, Edition 2010, European Commission for the Efficiency of Justice (CEPEJ):
http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/JAReport2010_GB.pdf

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

References:

Legal Aid Law (Chapter One):
<http://www.lex.bg/bg/laws/doc/2135511185>

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

Comments:

The 2009 Report of the Ministry of Justice shows that state-provided legal aid has been made extended to 47,294 persons. The

Ministry reports that the state has secured access to justice for all socially disadvantaged Bulgarian nationals and foreign citizens. However, there is a widely shared perception that quality of state legal aid suffers serious deficiencies.

References:

Report of the Ministry of Justice for 2009 (at p.59):

http://www.justice.government.bg/.../Otchet_31_12_2009_programen_nov.doc

Media publications:

Legal world:

<http://www.legalworld.bg/show.php?storyid=21485>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. However, costs related to the generally lengthy and inefficient judicial proceedings, and the serious weaknesses of the Bulgarian judicial system, known for its corruption scandals, may effectively prevent one from seeking justice in conditions of crisis. Attorney fees may be considerable as well.

References:

Annual report 2009 Bulgarian Helsinki Committee;

<http://bghelsinki.org/upload/resources/doklad%20LAST%20202.pdf>

Media overview

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

Comments:

In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. However, costs related to the generally lengthy and inefficient judicial proceedings, and the serious weaknesses of the Bulgarian judicial system, known for its corruption scandals, may effectively prevent one from seeking justice in conditions of crisis. Attorney fees may be considerable as well .

References:

Media overview

European Judicial Systems, Edition 2010, European Commission for the Efficiency of Justice (CEPEJ):

http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/JAReport2010_GB.pdf

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

Comments:

Geographic location does not play a major role in access to justice.

The relatively short distances and the developed infrastructure make courtrooms accessible to citizens and businesses at costs that are not excessive.

References:

Interview with Lilia Kolova, Program Director, Center for Social Practices- CSP, Oct. 28, 2010

Interview with Ivan Nachev, president of Political Circle "Thought", Chief Assistant at JEAN MONNET CENTER OF EUROPEAN POLITICS, New Bulgarian University, Oct. 14, 2010.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

67

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In practice, appointments to the law enforcement agency are made according to professional criteria. However, the society continues to have concerns that the system is not effective enough, allowing appointments based on nepotism and creating a system of favor exchange. It has been reported that as of July 2009, with the new government, 120 officers have been removed from office, including high ranking management officers. Nepotism and favoritism are practice by so-called political cabinets.

References:

Media overview:

Monitor news:

<http://www.monitor.bg/article?id=262774>

Glasove news:

<http://www.glasove.com/article-9455.php>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement agencies have considerable budgets, measured as a percentage of the state budget. However, due to cases of mismanagement and general shortage of funds in period of crisis, financial issues become a serious issue. Relevant demonstrations and protests of police officers do occur.

References:

State Budget:

<http://www.minfin.bg/bg/page/419>

Media overview:

Vsekiden news:

<http://www.vsekiden.com/71410>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

Formal professional criteria for appointments in law enforcement agencies are in place. However, there is a strong perception in Bulgarian society that appointment decisions are not always based on merits. Nepotism and favoritism are practice by so-called political cabinets.

References:

Media publications:

<http://www.glasove.com/article-9455.php>

Kapital newspaper,

"State security- current reality in the Ministry of Interior":

http://www.capital.bg/blogove/dosieta/2010/08/20/949385_durjavna_sigurnost_kato_nastoiashite_v_mvr/

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

Broader mechanisms, including the Inspectorate to the Ministry of Interior, the national ombudsman, the regional prosecutors, the Parliament (Complaints and Petitions Committee) have jurisdiction over the police. Citizens may address complaints to the above.

References:

Ombudsman Act:

<http://www.lex.bg/bg/laws/ldoc/2135467520>

Law on the Ministry of Interior:

<http://www.lex.bg/bg/laws/ldoc/2135516991>

The Act on Administration:

<http://www.lex.bg/bg/laws/ldoc/2134443520>

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Complaints are considered and answered within a reasonable period of time.

References:

European Institute and TI , May 2009,

"I report non-compliance- so what?"

http://europa.bg/upload/docs/Doklad_Inspektorati.pdf

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

The Inspectorate to the Ministry of Interior, subordinated directly to the Minister of Interior and separate from police, is specifically mandated to investigate corruption-related activities in the law enforcement agencies. It has investigative functions, but may impose only disciplinary sanctions.

References:

Law on Administration (Art. 46):

<http://www.lex.bg/bg/laws/ldoc/2134443520>

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

Reports of the Inspectorate of the Ministry of Internal Affairs:

<http://www.inspektorat.mvr.bg/default.htm>

Media reports

Mediapool:

<http://www.inspektoratvss.bg/bg/pubs/155?tip=1>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:

Law enforcement officials are fully accountable for their actions. The Bulgarian Constitution stipulates immunity very restrictively:

for MPs (Art. 70. (1) A Member of the National Assembly shall be immune from detention or criminal prosecution except for the perpetration of a criminal offense, and in such case the permission of the National Assembly or, in between its session, of the Chairperson of the National Assembly, shall be required.)

for the president or vice-president (Art. 103), judges, prosecutors and investigating magistrates when exercising the judicial function (Art. 132. (1) When exercising the judicial function, the judges, prosecutors and investigating magistrates shall bear no civil or criminal liability for their official actions or for the acts rendered by them, except where the act performed constitutes an indictable intentional offense).

for judges of the Constitutional Court (Art.147 (6) A judge of the Constitutional Court shall enjoy the same immunity as a Member of the National Assembly.

References:

Bulgarian Constitution:

<http://www.parliament.bg/?page=const&lng=en>

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | **75** | 50 | 25 | 0

Comments:

Some positive steps aside, there is still strong professional solidarity amongst police officers and the prosecutors or investigators that might potentially impede the investigations of crimes committed by policemen.

The Ministry of Internal Affairs reports a significant increase of criminal investigations for official misconduct of law enforcement officers in 2009 (some examples: investigations against the head of Transport Police, Shumen, and his colleagues, who manipulated more than 150 violations of the law – June, 2009; Kjustendil case – May, 2009 , attempt for extortion of International Asset Bank Local Branch by a police officer of the Capital 3rd Police Station and 6 policemen; corruption scandals in Military Police, refereed to as the Rose BMW scandals).

References:

Media overview:

Focus news:

<http://www.focus-news.net/?id=f15420>

Vesti.bg:

<http://www.vesti.bg/?tid=40&oid=2798791>

Sega newspaper:

<http://www.segabg.com/online/new/articlenew.asp?sid=2009062300040001201>

News.bg:

http://news.ibox.bg/opinion/id_259398662

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
