



PROSECUTOR'S OFFICE OF THE REPUBLIC OF BULGARIA

PROSECUTOR GENERAL

№ 2851/2020 г. - PG
Sofia, 21.09.2020

**THROUGH
THE AMBASSADOR,
PERMANENT REPRESENTATIVE
OF THE REPUBLIC OF BULGARIA
TO THE EUROPEAN UNION
Mr. DIMITER TZANTCHEV**

**TO
THE DEMOCRACY, RULE OF LAW AND
FUNDAMENTAL RIGHTS MONITORING GROUP
(DRFMG)**

DEAR MEMBERS OF THE COMMISSION,

In connection with the questions addressed in your letter dated 07.09.2020, received through the Permanent Representation of the Republic of Bulgaria to the European Union in Brussels, which are relevant to the work of the Prosecutor's Office of the Republic of Bulgaria (PRB) in criminal proceeding with regard to corruption offenses, we provide you with our answers, using the opportunity to express our respect for the European Parliament institution and the LIBE Committee and express our desire to inform you in the future about the actions taken by the Prosecutor's Office of Bulgaria to establish the rule of law in Bulgaria. We answer this part of the questions, which refers to the Prosecutor's Office of the Republic of Bulgaria, insofar as the presentation of information on the other issues is not within our competence, but by that of the executive and legislative authorities.

We would like to express our readiness for future fruitful cooperation in a spirit of good cooperation, remaining at your disposal to provide additional information and expressing our desire for a permanent dialogue with the European Parliament and in particular the LIBE Committee. We also find that the principle of the rule of law, in addition to being the foundation for the full functioning of the rule of law in the European Union, is one of the supreme achievements of modern societies and an integral part of any modern democratic

legal system. In this regard, we should emphasize that one of the main guarantors for the application of this principle according to the current Bulgarian legislation is the Prosecutor's Office of the Republic of Bulgaria. Therefore, we find that a full-fledged mutual dialogue is of utmost importance for the establishment of democratic values and the principle of the rule of law in the Republic of Bulgaria.

Question under № 17 in your letter dated 07.09.2020.

Linked to suggestions during the hearing about shortcomings in the fight against corruption, more information from the Prosecutor General and his Deputy Ms Filipova, would be appropriate. What specific measures has the Prosecution taken in the fight against corruption? Have politicians been investigated and charged and which political parties do they originate from predominantly? Are they from political parties both in Government and in Opposition?

In order to provide comprehensive and systematic information, the answer to this question needs to be considered in three directions. In the first part we will present to your attention information about the actions taken by the Prosecutor's Office of the Republic of Bulgaria, as well as information about the attacks organized against the PORB by persons with significant economic, financial and political resources, whose criminal responsibility is engaged in connection with criminal proceedings conducted under the supervision of the PORB. In the second part we will introduce you to examples from specific criminal proceedings related to the issues raised. The third part contains information on specific measures taken, the difficulties we face in working on criminal proceedings for crimes in this category and other relevant information.

In the context of the question posed by you, we believe that there is a need to also introduce certain clarifications regarding the factors influencing the state of the rule of law in the Republic of Bulgaria. The danger identified by us of violating the principle of the rule of law led to a National Meeting of Prosecutors (attended by over 700 magistrates from all parts of the Prosecutor's Office) and the adoption of a joint declaration condemning the attempts of certain political figures to directly and indirectly affect the independence of the Prosecutor's Office of the Republic of Bulgaria.^{1 2}

17.1 First of all, it should be noted that the actions of the Prosecutor's Office of the Republic of Bulgaria in the last two years in connection with combating crime and the imposition of the rule of law are unprecedented in its nature in the recent Bulgarian history after 1989. As a result of the good interaction between the judiciary on behalf of the Prosecutor's Office of the Republic of Bulgaria on the one hand, and the executive on behalf of the bodies of the Ministry of Interior, State Agency for National Security, Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission on the other hand, a

¹ See the Declaration attached to this letter from the National meeting of prosecutors held on 24.08.2020 and a transcript of the statements of the participants in it - Enclosure № 1 and Enclosure № 2 to the letter.

² <https://www.prb.bg/bg/news/aktualno/45517-pozitsiya-na-prokuraturata-na-republika-balgariya>

number of criminal prosecution actions have been taken against a large number of senior government officials for corruption offenses committed by them, including ministers, deputy ministers, MPs, mayors of municipalities and districts. ***It should be noted that for the first time since 1989, charges have been brought and the court has imposed remand in custody on the current minister and deputy minister of the country's current government, namely the Minister of Environment and Water Neno Dimov (who is from the quota of the IMRO party - part of the ruling coalition) and Krassimir Zhivkov - Deputy Minister of Environment and Water (who is from the quota of the political party GERB).*** Also, criminal liability was involved of some of the richest Bulgarian citizens, whose property was acquired in a criminal way, and for whom there has long been public opinion that they are untouchable from the point of view of Bulgarian justice, namely - Vasil Bozhkov, Plamen and Atanas Bobokovi, Valcho and Marinela Arabadzievi, Nikolay and Evgenia Banevi, Minyu Staykov and the banker Tsvetan Vassilev, who is hiding in the Republic of Serbia. Of these, the criminal proceedings against Tsvetan Vassilev, Valcho and Marinela Arabadzhievi, Nikolay and Evgenia Banevi and Minyu Staykov are filed with an indictment in the court phase. **As a result of the actions of the Prosecutor's Office in this direction until the end of 2019 property and assets worth over BGN 3 billion (equivalent to approximately EUR 1.5 billion)³ were seized.**

In the course of the investigation into two pre-trial proceedings under the supervision of the Specialized Prosecutor's Office, started in 2020, in which were brought as defendants the businessman Vasil Bozhkov (with 19 charges, including leading an organized criminal group, for coercion, incitement to official crimes, murder and illegal possession and preservation of cultural and historical values) and Atanas and Plamen Bobokovi (with charges of participation in an organized criminal group for illegal import, management and storage by direct burial in the soil of hazardous waste with high lead content in various parts of the territory of the Republic of Bulgaria, and the latter - for participation in a criminal conspiracy to trade in influence), a notification was submitted for property, which according to preliminary data is worth **over BGN 4 billion (about EUR 2 billion)** and a large number of cultural and historical values were seized. **The value of only the legally registered 212 pcs items of historical and artistic value from the artefacts seized so far, in warehouses used by the defendant Bozhkov, according to preliminary estimates is about 1 billion Euros**, and to what extent it will increase in the presence of a final conclusion of the appraisers of all seized values - specific, clear and precise parameters cannot be defined yet. These cases are being dealt very actively with the judicial authorities of the Federal Republic of Germany and the Italian Republic, including through the use of EUROJUST's cooperation mechanisms, and joint investigation teams have been set up in this connection. The defendant Vasil Bozhkov is currently hiding in the United Arab Emirates, and the relevant legal actions have been taken by the Prosecutor's Office - he has been declared wanted by Interpol and a request has been made to the UAE for his extradition.

³ At the moment, there is no official statistical information about the pre-trial proceedings against Vasil Bozhkov and Plamen and Atanas Bobokovi regarding the amount of their seized property, as the indicated amount of BGN 3 billion is likely to increase many times over.\

The damaged economic interests were also reflected in the attacks on the independence of the judiciary, in particular the Prosecutor's Office, including those of a media and political nature. The information about the connections of the BOEC association with **the banker Tsvetan Vassilev, who has been hiding in the Republic of Serbia for six years** /he is charged together with 17 other people for draining BGN 3.5 billion from the bankrupt Corporate Commercial Bank AD/ is obvious and a well-founded assumption can be made that the actions of the representatives of this non-governmental organization are in principle motivated precisely by the interests of the defendant Vassilev. **On the occasion of the unprecedented delay (6 years) in the ruling on the extradition of Tsvetan Vassilev, we informed the General Secretariat of the Council of Europe and the European Committee on Crime Problems (CDPC).**⁴ A connection was also established between the oligarch Vasil Bozhkov, who is hiding in the United Arab Emirates, and the organization of part of the protest actions aimed at radicalization and desecration, including through the use of violent actions, of the just demands of the protesting Bulgarian citizens, as on 14.07.2020, with the permission of the supervising prosecutors, the Specialized Prosecutor's Office disseminated material evidence prepared by using special intelligence means - sound recordings of his conversations with Bulgarian politicians and journalists, which show how he gives specific instructions in connection with their conduct, which aims to directly affect the independence of the judiciary, in particular - the Prosecutor General.^{5 6}

The role of the pro-Russian political party Vazrazhdane ((Renaissance) is also active in the attempts to influence the independence of the PORB, including through the implementation of aggressive actions, violating the peaceful protests of the Bulgarian citizens.⁷ After an inspection, in June 2020. The Prosecutor's Office filed a lawsuit in the Sofia City Court for its deletion, which fully corresponds to the actions taken by us at the beginning of the year in two pre-trial proceedings in connection with senior Russian diplomats charged with espionage (the same with notes from the Ministry of Foreign Affairs on 24.01.2020 were declared "persona non grata" and "unacceptable").⁸ Members of the Edelweiss Association, the organizer of the annual neo-fascist event called Lukovmarsh, which is attended every year by many representatives of similar organizations with such anti-democratic, neo-fascist, anti-Semitic views, also play an active role. **Thanks to the actions taken by the Prosecutor's Office of the Republic of Bulgaria, this event in 2020. did not take place for the first time since its inception 17 years ago. In addition, after an inspection by us, a lawsuit was filed in February this year to terminate the Edelweiss association because its activities were against the law, including in view of the anti-Jewish and neo-Nazi ideology preached by its members.**

⁴ <https://prb.bg/bg/news/aktualno/39661-glavnijat-prokuror-ivan-geshev-izprati-pisma-d-219>

⁵ See the press release of the Prosecutor's Office of the Republic of Bulgaria dated 14.07.2020, attached to the present letter, containing also material evidence from the described conversations - Enclosure № 3 to the letter.

⁶ <https://www.prb.bg/bg/news/aktualno/44611-spetsializirana-prokuratura-obrazuva-dosadebno-proizvodstvo-za-prestaplenie-po-g>

⁷ <https://www.mediapool.bg/partiya-vazrazhdane-tarsi-geshev-iz-sadebnata-palata-news310726.html>

⁸ <https://www.mfa.bg/bg/news/23969>

The court proceedings at first instance in the case of the terrorist act at Sarafovo Airport in the city of Burgas in the summer of 2012, which killed six people, including five Israeli citizens and the Bulgarian driver of the exploded bus, has ended. The specialized criminal court found guilty the two defendants in the case - Meliad Farah and Hassan El-Hajj (they belong to the military wing of the terrorist organization Hezbollah), and they were sentenced to the most severe punishments provided for in the Criminal Code - life imprisonment without the right to replacement. The civil claims of the victims and their heirs in the total amount of over BGN 122 million (over EUR 61 million) were respected.

The investigations conducted by the Prosecutor's Office of the Republic of Bulgaria are on a principled basis and arise solely from the Law, regardless of the investigated persons, departments and institutions they represent. Statements by politicians in recent months allege inequality and selectivity in investigations of high-ranking government officials, which is a direct attempt to interfere in the independence of the Prosecutor's Office and place it in a situation of dependence on political entities.

The statements of a number of politicians should also be mentioned as part of the attacks on the PORB. An example of this is the statement of Krassimir Karakachanov - current Deputy Prime Minister, Minister of Defense and chairman of the IMRO party - part of the ruling coalition, who described as "show murder" the prosecution of Mr. Neno Dimov - Minister of Environment and Water, who is from the quota of the same political formation.⁹

In a similar sense, a statement was made by Ms. Korneliya Ninova - Chairperson of the Bulgarian Socialist Party, whose parliamentary group is the second largest in the National Assembly and at the same time is the largest opposition party. Regarding the exercise of the constitutionally established powers to refer to the Constitutional Court by the Prosecutor General in connection with the interpretation of provisions of the current Constitution, in order to clarify issues related to the President's immunity, she called these actions "an attempt to intimidate" the Head of State¹⁰.

Suggestions of political influence were made in connection with an investigation under the supervision of the Specialized Prosecutor's Office and by Boyko Borissov - Prime Minister of the Republic of Bulgaria and chairman of the ruling political party GERB, when he himself was summoned for questioning as a witness in these pre-trial proceedings. According to him, through these actions "the prosecution pleases Radev", i.e. the president.¹¹

The actions of the Prosecutor's Office of the Republic of Bulgaria and the current Bulgarian President, Mr. Rumen Radev, were defined as politically motivated. His statements against the actions of the PORB continued, as on 09.07.2020 on a political protest with his participation, he called the Prosecutor's Office of the Republic of Bulgaria "Mafia". Most likely, the statements of Mr. Rumen Radev against the Prosecutor's Office of the Republic of Bulgaria were motivated by the actions of criminal prosecution, which it undertook against

⁹ <https://btvnovinite.bg/bulgaria/krasimir-karakachanov-za-aresta-na-neno-dimov.html>

¹⁰ <https://dariknews.bg/novini/bylgaria/bsp-brani-radev-tova-e-opit-za-splashvane-i-otstraniavane-na-iaryk-politicheski-ponent-2209034>

¹¹ <https://news.bg/crime/borisov-prokuraturata-ugazhda-na-radev.html>

two employees in the administration of the President of the Republic of Bulgaria, in connection with crimes committed by them in relation to their service. One of them is Mr. Plamen Uzunov - Secretary of the President of the Republic of Bulgaria on Legal Affairs and Anti-Corruption, and the other Mr. Iliya Milushev - Advisor to the President on Security and Defense. Mr. Milushev was prosecuted for a crime committed by him in the line of duty, which consisted in the illegal possession and storage of a large number of documents containing a security seal under the Classified Information Protection Act, obtained illegally by the State Intelligence Agency. It should be borne in mind that during searches and seizures were found five boxes with copies of classified materials (from the archives of the Ministry of Interior), which relate to almost all prominent politicians, businessmen and criminal authorities in the period of the so-called "transition" from a socialist planned to a market economy in our country in the period after 1989. The Secretary on Legal Affairs and Anti-Corruption, Mr. Plamen Uzunov, was charged with participation in a criminal conspiracy established for the purpose of trading in influence, as part of the criminal activity was also exercising influence to obtain Bulgarian citizenship by a Russian citizen who, according to the State Agency for National Security, poses a threat to the national security of the Republic of Bulgaria, illegal supply of a court ruling of the Supreme Administrative Court concerning the Libyan tanker Badr seven days before its proper publication and transmission to a prominent Bulgarian businessman, influencing the pardon of a person who has committed tax crimes and unlawful deletion of a criminal registration of a Bulgarian citizen.

Another example of attempts to exert political influence on the independence of the judiciary are the numerous political statements against the PORB of Mr. Hristo Ivanov (chairman of the unrepresented in the Bulgarian parliament political party "Dvizhenie Da Bulgaria!" (Movement Yes, Bulgaria!) and former Minister of Justice in the previous cabinet of Mr. Boyko Borisov). **In his statements in recent months, Mr Ivanov made inadmissible calls for "clearing and re-selection of prosecutors" (which could be described as a request for lustration).**¹²

In addition, Mr. Hristo Ivanov maintains in his political statements the observation on the criminal inviolability of the Prosecutor General, which understanding is expressed in the ruling of 5.11.2009 of the ECtHR in the case of Kolev v. Bulgaria. These statements, at present, we find incorrect, because at the end of 2019 a request was submitted to the Constitutional Court for a mandatory interpretation on the question of whether the Prosecutor General may exercise methodological guidance and supervision of legality in pre-trial proceedings or inspections, which contain data on his empathy in the specific criminal activity. With Decision № 15 of 23.07.2020 the court held that in these cases the Prosecutor General could not provide any methodological guidance or supervision, and that the main motive in this regard was the principle of "nemo iudex in causa sua" ("No one is a judge in his own cause"), which is an element of the provisions of Art. 4, para. 1 of the Constitution principle of the rule of law. **According to the same decision of the Constitutional Court, each prosecutor has the procedural opportunity to guide and supervise the respective**

¹²https://www.dnevnik.bg/bulgaria/2020/08/03/4098518_hristo_ivanov_ostavkata_na_geshev_niama_da_e/

criminal proceedings, in cases where the probable perpetrator of the crime is the Prosecutor General, including to bring charges against him, and the Prosecutor General cannot exert any influence on such an investigation. After the ruling, it became clear that any allegation of inviolability and lack of control of the Prosecutor General would be incorrect and untrue and, in essence, an attempt for political influence on the independence of the Prosecutor's Office of the Republic of Bulgaria.

We intend to submit additional arguments in this direction regarding the above-mentioned powers of the Prosecutor General, related to the implementation of methodological guidance and supervision of legality in relation to the other prosecutors under Art. 126, para 1 of the Constitution of the Republic of Bulgaria. The methodological manual is essentially the issuance of general methodological instructions and instructions regarding the activity of the prosecution, in general comparable with the interpretative decisions of the Supreme Court of Cassation. These acts are general - they relate generally to the activities of all prosecutors and investigators, have the nature of recommendations that create organizational prerequisites and contain methodological guidelines for the proper application of the law. Through the general methodological instructions, containing general guidelines for similar cases (most often in case of legislative changes), it is precisely the exact and uniform application of the laws by all prosecutors that is achieved. At the same time, the methodological instructions and guidelines, as general and principled, promote professional development and support the independent and autonomous exercise of the prosecutorial activity. They do not concern a separate specific case.

Examples of such methodological acts with methodological guidelines are:

- on the application of certain provisions, separate legal institutes, on certain general issues, etc.: Instructions for improving the organization of work of the Prosecutor's Office of the Republic of Bulgaria on the application of the provisions of Art. 53 of the Criminal Code and Art. 72 of the Criminal Procedure Code on pre-trial proceedings for (regarding the confiscation of the object/means of the crime at) transport crimes (Order № RD-02-06-11.05.2020); Order of the PG on increasing the effectiveness of combating crime by disclosing the entire criminal activity and speeding up the investigation of two or more pre-trial proceedings against the same defendant; Instruction for carrying out instance and official control in the prosecutor's office (Order № LS-1986 / 30.05.2014)

- on the organization and tactics of counteraction to certain types of crimes: Instruction on the organization of work of the PORB on files and pre-trial proceedings initiated on reports of domestic violence, threat of murder and violated order for protection from domestic violence (Order № RD- 02-09 of April 30, 2018); Methodical guidelines for work on files and cases for crimes against intellectual property (Order № RD-02-12 of 18.05.2018); Instructions regarding the organization of work and the implementation of control for legality by the PDB during elections and referendums (Order № LS-1161 of 15.04.2014); Instruction for organization of the interaction between the bodies of the pre-trial proceedings with general and special competence in case of especially serious accidents (Order № RD-02-6 of 15.03.2017);

The experts who carried out the independent analysis of the structural and functional model of the prosecution have recommended that as much of the methodological guidelines and written regulation of the criminal prosecution carried out by the prosecution be made

public as far as this is compatible with national security and effective prosecution.¹³ This recommendation has been partially implemented, and the current leadership of the Prosecutor's Office considers that the positive practice of publishing more such acts should be continued, which will lead to full transparency in cases where the Prosecutor General has exercised his powers of methodological guidance.

Unlike the methodological guidance, the supervision of legality is carried out in specific cases or files, in relation to specific supervising prosecutors. It can be defined as a general power of the Prosecutor General to control the acts of the prosecutors below him (to amend or repeal them, as well as to give mandatory written instructions), and its immediate purpose is to ensure the proper application of substantive and procedural law. **The Prosecutor General shall exercise this power by the order of Art. 46, para 5 of the Criminal Procedure Code after performed instance or official control by all units in the Prosecutor's Office, as there is no case after 1989. in which he has directly revoked or amended an act of a prosecutor below him.**

Example: A prosecutor in a district prosecutor's office has refused to institute criminal proceedings. With regard to this prosecutorial act, control is initially exercised by a prosecutor at the respective regional prosecutor's office. The act of the prosecutor at the regional prosecutor's office is subject to control by the respective Appellate Prosecutor's Office. The ruling of the Appellate Prosecutor's Office is directly controlled by the Supreme Cassation Prosecutor's Office. With regard to the act of the prosecutor at the Supreme Cassation Prosecutor's Office, control is exercised by the respective Deputy Chief Prosecutor at the Supreme Cassation Prosecutor's Office. It is only after his deputy has ruled that the Prosecutor General exercises his supervisory powers.

The control over the decrees for termination of the criminal proceedings under Art. 243, para. 10 of the PPC is applied by the Prosecutor General in exceptional cases. Thus, for 2019, the Prosecutor General was referred to 36 pre-trial proceedings, revoking the termination order in 8 of them, which shows that in practice this power is applied in extremely rare cases.

It is necessary to take into account the fact that in 2016 the Office for Technical Support of Structural Reforms conducted an independent analysis of the structural and functional model of the Prosecutor's Office of the Republic of Bulgaria and its independence. According to the inspectors, there are numerous legal guarantees that the powers of the Prosecutor General are not absolute and are exercised in specific legal procedures. Moreover, the experts who carried out the independent analysis of the structural and functional model of the Prosecutor's Office have identified these circumstances and recommended that the Bulgarian Prosecutor General be more actively involved in specific cases, as is the practice in many EU prosecutors' offices. Recommendations have also been made that "*the administrative heads of prosecutors' offices should refer their staff and be accountable to the Prosecutor General for matters relating to the work of specific sensitive cases carried out under their direction. Information on sensitive cases should be provided upstream so that the Prosecutor General is aware of the work of his staff in cases in which he may be asked to*

¹³ See page 9 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

explain the actions of the prosecution.”¹⁴ Of course, all opinions on cases expressed by superior prosecutors must be documented in writing in the case file so that there is an audit trail of the decision - making process.¹⁵ Again, the independent analysis of the structural and functional model of the Prosecutor’s Office found that most prosecutors work on most of their cases with very little or no intervention from above.

Again, the independent analysis of the structural and functional model of the Prosecutor’s Office found that most prosecutors work on most of their cases with very little or no intervention from above.¹⁶

Attention should also be paid to the recommendation in the independent analysis of the structural and functional model of the prosecution that *“the standard for decision-making on internal conviction should be changed, especially in the part on the prosecution”*.¹⁷ In order for this to happen, amendments are needed to the Structural Law on the Judiciary, as well as to the Criminal Procedure Code. We share the view expressed in the independent analysis that the established lack of opportunity for anyone to intervene in the final decision of a junior or other prosecutor assigned to the case (even when the case is supervised by an appellate prosecutor) is a characteristic of the Bulgarian system, which causes problems.¹⁸ Furthermore, the experts do not hide their surprise that at present administrative heads do not have any role in confirming, amending or revoking the prosecutorial decisions of their subordinates, given the fact that district and district prosecutors are subordinate to their administrative heads.¹⁹

We also share the observation that if the current legal framework is preserved in this form, it is necessary to take appropriate measures to issue an instruction that will give clear methodological guidelines on the application and interpretation of Art. 14 of the CPC. The experts expressed the view that *“it is the change of this standard, together with the provision of more guidance by the Prosecutor General, that would lead to greater consistency in the decision-making process within the prosecution service and to an increased likelihood of convictions”*.²⁰

All the above leads to the conclusion that at present there are sufficient legal guarantees that the powers of the Prosecutor General are not absolute and are exercised in specific legal procedures, as an interpretation to the contrary would be political in nature.

¹⁴ See page 4 of the Independent Analysis of the Structural and Functional Model of the Prosecutor’s Office of the Republic of Bulgaria and its Independence since December 2016.

¹⁵ See page 3 of the Independent Analysis of the Structural and Functional Model of the Prosecutor’s Office of the Republic of Bulgaria and its Independence since December 2016.

¹⁶ See page 3 of the Independent Analysis of the Structural and Functional Model of the Prosecutor’s Office of the Republic of Bulgaria and its Independence since December 2016.

¹⁷ See page 15 of the Independent Analysis of the Structural and Functional Model of the Prosecutor’s Office of the Republic of Bulgaria and its Independence since December 2016.

¹⁸ See page 4 of the Independent Analysis of the Structural and Functional Model of the Prosecutor’s Office of the Republic of Bulgaria and its Independence since December 2016

¹⁹ See page 4 of the Independent Analysis of the Structural and Functional Model of the Prosecutor’s Office of the Republic of Bulgaria and its Independence since December 2016

²⁰ See page 15 of the Independent Analysis of the Structural and Functional Model of the Prosecutor’s Office of the Republic of Bulgaria and its Independence since December 2016

As mentioned above, the activity of the Bulgarian Prosecutor 's Office in the direction of counteracting corruption, as well as on the occasion of engaging the criminal responsibility of a number of significant figures for the Bulgarian society, is unprecedented in the period after 1989. As a result of these actions, the sense of justice and equality before the law of all its members, regardless of their property status or social status, is becoming more and more clearly established in the society. This activity of ours was positively reported by the previous composition of the European Commission in connection with the established Cooperation and Verification Mechanism (CVM) in the field of justice and home affairs. We are aware that many actions need to be taken and the Prosecutor's Office of the Republic of Bulgaria is only part of the justice system. Such actions should be performed by bodies in the system of the executive power (Ministry of Interior, SANS, CCUAAFA, PFIA, etc.), the legislature on behalf of the National Assembly, as well as other parts of the judiciary, respectively the Bulgarian court. Only the synchronous activity of the mentioned subjects would lead to the intended and expected result by all Bulgarian citizens. **However, we also find that the political and media pressure described above could potentially block the upward trend described and put in real danger the observance of the rule of law and the rule of law in the Republic of Bulgaria.**

17.2. The fight against corruption has always been a major focus of the Prosecutor's Office's work. The activity, especially in the last 2 years, on this segment is palpable, as significant results have been achieved in the criminal proceedings conducted under the supervision of the Prosecutor's Office. A number of high-ranking government officials were prosecuted, including ministers, deputy ministers, MPs, chairmen of state and executive agencies, mayors of municipalities and districts for various manifestations of corruption. The fight against corruption has always been a major focus of the Prosecutor's Office's work. The activity, especially in the last 2 years, on this segment is palpable, as significant results have been achieved in the criminal proceedings conducted under the supervision of the Prosecutor's Office. A number of high-ranking government officials were prosecuted, including ministers, deputy ministers, MPs, chairmen of state and executive agencies, mayors of municipalities and districts for various manifestations of corruption. It should be borne in mind in this regard that the prosecutorial and judicial practice gives a broader definition of corruption crimes, and in this regard, by order of the Prosecutor General, a Unified Catalog of Corruption Crimes was introduced, which covers other crimes besides accepting and giving bribery to an official. In addition to senior government officials, a number of officials in the state administration were prosecuted for corruption offenses, namely employees of the Ministry of Interior and the Customs Agency, inspectors from the Automotive Administration Executive Agency, and many other.

As mentioned above, the Prosecutor 's Office of the Republic of Bulgaria does not divide the pre - trial proceedings into those against representatives of the ruling majority or the opposition, as well as according to the position of the specific person. Bulgarian prosecutors and investigators are guided only by the law and perform their duties of conscience and internal conviction. This principle is constitutionally established and guarantees the development of the rule of law in the country. However, in order to provide a correct answer to the question, we will try to make such a distinction on a formal criterion, and it is necessary to take into account that there are political

formations that are formally in opposition, but support the ruling majority in the voting in the National Assembly.

A large number of investigations are underway into genuine corruption offences, some of which have a very high public interest. In this regard, at the beginning of the year, on the occasion of the severe water crisis in the municipality of Pernik and the declared emergency as a result, the then acting Minister of Environment and Water Neno Dimov was prosecuted. He was a member of the government from the quota of the IMRO political party, part of the ruling coalition. **He has been charged with deliberate mismanagement, initially being remanded in custody by a Bulgarian court at the request of the prosecution, and now, given the COVID-19 pandemic, his remand has been changed to "house arrest".**

In addition, as part of an organized criminal group, in connection with an investigation into the illegal import, management and storage (by direct burial in the soil) of hazardous waste with high lead content in various places in the Republic of Bulgaria, charges were also brought against Krassimir Zhivkov - Deputy Minister of Environment and Water, who is from the quota of the ruling party GERB. **He is currently in custody by a decision of the Specialized Criminal Court at the request of the Specialized Prosecutor's Office.**

Anton Ginev - former Deputy Minister of Transport - was charged by a final court judgement with suspended sentence of 2 years of imprisonment for deliberate mismanagement in respect of the state enterprise National Railway Infrastructure Company EAD in the amount of BGN 4.2 million (about EUR 2.2 million). NRIC EAD is the only railway infrastructure manager in the Republic of Bulgaria.

In the first instance, the lawsuit against the former Minister of Economy and Energy Rumen Ovcharov ended in the period 2005-2009 (he was in the composition of the government of the political parties BSP, NMSP and MRF parties) for his deliberate mismanagement in connection with the privatization of Bobov Dol Mines. He was given a 2-year suspended sentence, and the civil lawsuit filed by the state for the damages caused by the crime in the amount of BGN 16.5 million (approximately EUR 8.5 million) was upheld.

On July 21, 2020, the Specialized Criminal Court ruled a conviction of 2 years of imprisonment with 4 years of probation against the former MP from the ruling GERB party Zhivko Martinov. The sentence is for blackmailing a businessman in order to obtain material benefits.

On September 14, 2020, a conviction of 4 years of effective imprisonment was ruled against the Deputy Chairman of the National Assembly and leader of the political party Volya/Will (this party is part of the opposition, but very often when voting in the National Assembly, it votes in support of the ruling coalition).

The criminal proceedings against the former MP from the GERB political party Dimitar Avramov, who together with 2 other people is also charged with extortion, are also in the court phase.

An indictment was filed against the then-chairman of the State Agency for Bulgarians Abroad, Petar Haralampiev (appointed by the NFSB quota, a party in the ruling coalition). The investigation is for an organized criminal group for official and documentary crimes and corruption in connection with the issuance of documents proving Bulgarian origin. In the same case, charges were brought against the Secretary General of the State Agency for

Bulgarians Abroad, as well as two other people. The case was filed with an indictment in the Specialized Criminal Court for consideration on the merits.

In connection with the pre-trial proceedings against Vasil Bozhkov (hiding in the United Arab Emirates), against whom 19 charges have been filed and is considered one of the richest Bulgarians (and whose business is of criminal origin), Alexander Georgiev, the current chairman of the State Commission on Gambling, as well as other members of the Commission for Official Crimes, were prosecuted.

As a result of the actions of the Prosecutor's Office, a conviction was ruled by the Appellate Specialized Criminal Court against the former Mayor of the largest district in Sofia Municipality Desislava Ivancheva - 8 years in prison for receiving a bribe of 70 000 Euros. In the same case, her deputy Biliana Petrova was sentenced to 7 years in prison and Petko Dyulgerov, also a former Mayor of the district, to 6 years in prison.

An indictment has been filed in the Specialized Criminal Court against the former deputy mayor of Sofia Municipality, with the Transport department, Evgeni Krusev, who is also part of the current ruling GERB political party. He was charged with a crime committed in the line of duty in connection with a public procurement contract for major repairs of the central boulevard, as this project was co-financed with funds from the European Structural Funds, and the damage amounted to over 5 million. BGN (approximately 3 million EUR). The case is currently pending on the merits in a trial phase.

Investigations for corruption offences, some of which have been completed, are being conducted against a number of other mayors of municipalities and districts - the municipalities of Plovdiv, Pleven, Vidin, Perushtitsa, Rhodopes, Radomir, Cherven Bryag, Kostenets, Nessebar, Karlovo, Straldzha, Belovo, Chuprene, district "North" in the municipality of Plovdiv and many others. **Although we do not collect information on the political affiliation of the mayors of the listed municipalities and districts, a partial comparison of the criminal proceedings (including those in which no charges have been filed) shows that representatives of the ruling coalition predominate. Of course, there are also investigations against those who are not representatives of large political formations that define themselves as independent.**

Corruption investigations are also under way against a number of state administration officials, most notably the Customs Agency, the Ministry of the Interior and the Automotive Administration Executive Agency. Only since the beginning of the year, an organized criminal group for corruption offences has been neutralized, operating on the territory of the main border checkpoint on our border with the Republic of Serbia - Kalotina (main external border of the European Union, through which millions of cars and trucks pass annually). Thirty people were detained - customs officers and border police, and charges were brought against 20 of them. It was established in the course of the actions carried out that each of them has collected between 800 and 1000 Euros from the passing cars during their shift.

Charges were brought against the two top senior police officers from the General Directorate Combating Organized Crime, involved in countering drug trafficking (head of department and head of sector). The subject of the investigation in this pre-trial proceedings is the activity of an organized criminal group, dealing mainly with bribery and logistics, assistance, umbrella on the activities of organized criminal groups dealing with drug trafficking and distribution, not only in Bulgaria. This activity is only a logical continuation of

the actions of the prosecutor's office during the last 2 years, within which in cases of high public interest several similar criminal groups have been neutralized, consisting of both customs officers and employees of the Automotive Administration Executive Agency, the Ministry of Interior, the State Executive Forestry Agency, the State Agency for Bulgarians abroad and other government agencies.

The circumstances set out above lead to the conclusion that there has been visible progress and that investigations of a similar category and nature are being carried out and which have not been carried out for the whole period of the so-called "transition" after 1989 in the Republic of Bulgaria until now.

17.3. The fight against corruption has been identified as one of the main priorities in the activities of the Prosecutor's Office of the Republic of Bulgaria. In recent years, a number of legislative, organizational and structural changes have been undertaken in order to effectively investigate, counter and prosecute corruption offenses. Prior to these changes, the investigation of high-level corruption offences was the responsibility of the relevant territorial district prosecutor's offices and the interdepartmental units set up with specific orders and agreements to investigate such events. As one of the most significant results of the reforms carried out in recent years in the field of combating corruption offences, we consider the transfer of corruption cases under the so-called "high levels of power" by the territorial district courts and prosecutor's offices, respectively the Sofia City Court and the Sofia City Prosecutor's Office (having in mind their special competence according to Art. 35, para 3 of the CPC, in the Specialized Criminal Court and the Specialized Prosecutor's Office).

Next, in order to effectively counter corruption, a number of joint acts for cooperation were concluded between the Prosecutor's Office of the Republic of Bulgaria and other competent state bodies involved in counter corruption.

For the sake of completeness, we will point out some of these joint acts, which aim to improve the work of all state bodies involved in the fight against corruption. The joint acts of interaction are as follows:

➤ With the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission (CCUAAFA), as follows:

- Instruction for interaction between the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission and the Prosecutor's Office of the Republic of Bulgaria for implementation of the activities under Chapter Nine by the bodies under Art. 16, para. 2 of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act (CCUAAFA);
- Rules for interaction between the PORB and the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission in application of Art. 72a of the Criminal Procedure Code;

➤ With other state bodies involved in the investigation of corruption offences:

- Rules for coordination and interaction between the Prosecutor's Office of the Republic of Bulgaria and the Ministry of Interior on carried out operational cases, carrying out inspections and carrying out urgent and initial actions in the investigation;
- Agreement for interaction between the Prosecutor's Office of the Republic of Bulgaria and the Public Financial Inspection Agency;

- Agreement on interaction and cooperation between the Coordination Council in the fight against offenses affecting the financial interests of the EU and the PORB;
- Agreement for cooperation and interaction between the Bulgarian National Audit Office of the Republic and the Prosecutor's Office of the Republic of Bulgaria;
- Rules for interaction between the Prosecutor's Office of the Republic of Bulgaria and the National Revenue Agency (NRA);
- Agreement for cooperation and interaction between the Prosecutor's Office of the Republic of Bulgaria and the Financial Supervision Commission;
- Agreement for ensuring access of the Inspectorate to the Supreme Judicial Council to the information systems of the Prosecutor's Office of the Republic of Bulgaria.

Regarding the level of interaction with the above-mentioned bodies, it should be noted that in the last 2 years there has been an extremely active interaction with CCUAAFA, PFIA, NRA. In connection with the due notifications submitted by us to CCUAAFA, last year alone property was "frozen", which can be considered to have been unlawfully acquired, worth BGN 3 billion (about EUR 1.5 billion), and this amount is increasing almost daily.

The interaction of the Prosecutor's Office is also extremely important with the Public Financial Inspection Agency, which is directly involved in the verification of the legality of the concluded contracts, the carried out public procurement procedures and the expenses incurred in this connection by the state institutions, the municipalities and the commercial companies with their participation.

We are well aware that the main activity of the Prosecutor's Office - prosecuting and bringing charges against specific individuals, is unthinkable without the operational capacity of the executive authority. In exercising its powers related to the detection of a specific criminal activity, it is necessary to establish a number of data, which will then be collected as evidence and verified in the course of criminal proceedings. This activity is especially valuable in detecting corruption offences. In addition, the interaction of the Prosecutor's Office with other state bodies, in particular the CCUAAFC, is extremely important in connection with the legal possibility provided for in the CCUAAFA on Unlawfully Acquired Assets Forfeiture.

Another specific measure aimed at improving the work of the Prosecutor's Office of the Republic of Bulgaria in cases involving corruption offenses is the organization and conduct of trainings on such topics. In the period 2015 - 2019, 44 trainings were conducted for prosecutors and investigators, dedicated to various issues in the field of both substantive and procedural criminal law, and in the field of criminology - organized crime, bribery, trading in influence, counteraction of corruption, specifics of the subject of investigation and proof of corruption offences, investigation of crimes related to public corruption and money laundering, etc. These trainings contribute to the established solid basis for the investigation of corruption offences, which is also taken into account in the report of the Cooperation and Verification Mechanism and the reports of the Group of States against Corruption (GRECO).

Despite the progress made and the results achieved, the Prosecutor's Office of the Republic of Bulgaria continues to face specific difficulties in prosecuting and bringing charges of corruption offences. In the first place, they are related to the current

legislation governing criminal prosecution. The Criminal Code was adopted back in 1968, in the conditions of the socialist social system and planned economy at that time, which, despite its dozens of amendments, did not sufficiently meet the new socio-economic conditions. To this should be added the exceptional formalism of the Criminal Procedure Code, which significantly complicates criminal proceedings and makes it difficult for both prosecutors and investigative bodies in the performance of their official duties and the court. A function of the latter is also the extremely high standard of proof, in which the indictment prepared by the respective prosecutor should recreate the circumstances described in it to the extent that he himself witnessed the criminal act, which is unreasonably high level of detail.²¹ **Here, for the sake of completeness, we should explicitly note that the standard of proof in criminal cases, not only for corruption offences, in the Republic of Bulgaria is the highest in the whole European Union.**

It is generally accepted in the legal community in our country that the very formalistic Criminal Procedure Code needs to be amended (and even revised), while the Criminal Code of 1968. it needs a complete revision in order to be able to fully reflect the current phenomena and trends in criminal activity.²² This observation is shared as a finding in the report on the Independent analysis of the model of the prosecution in 2016, highlighting a number of other shortcomings of the current substantive and procedural criminal law, which hinder not only the detection of corruption offences but also conventional crime generally. For example, the results of "preliminary inspections", in cases where the signal submitted by a particular citizen or organization does not contain sufficient evidence of a crime, have no procedural value in the course of criminal proceedings.²³ Therefore, it is necessary to repeat all these preliminary actions in the course of the criminal proceedings, but performed through the means of proof provided for in the Criminal Procedure Code and in compliance with the procedural guarantees provided in it, which in many cases are unnecessarily formalistic. This greatly complicates the procedural activity in terms of the amount of evidence gathered in the course of the investigation, due to which the two-month investigation period provided by law (although with the option to be extended several times), seems unrealistic.

Another example of increased formalism in terms of procedural rules is the lack of possibility for public statements of guilt expressed by a particular person to have probative value in court. There is also an opinion and recommendation, again by the experts who have carried out the independent analysis of the structural and functional model of the prosecution, for a comprehensive review of the principle of internal conviction decision-making by prosecutors, which they believe should be amended, especially in the part for the prosecution. It should be noted here that in case the current legal situation remains unchanged, it is very likely that general organizational methodological measures will be taken and the relevant

²¹ See page 20 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016

²² See page 1 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016

²³ See page 10 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016

instruction will be issued, which will give clear guidelines on the application and interpretation of Art. 14 of the CPC.²⁴

Another extremely serious problem before law enforcement, related to the formalism of the Bulgarian criminal process, is the content of the indictment, which is the final prosecutorial act by which the case is submitted for consideration in the trial phase of the criminal process. On this issue, some measures have been taken at the legislative level to simplify it, but the above-mentioned long-standing practice continues, its content to be so detailed in fact that it is as if the prosecutor who prepared it was a witness - an eyewitness to the crime.²⁵ This situation is a function of the excessive guarantees that the Criminal Procedure Code imposes on the right to defense of the defendant. We fully support the recommendation set out in the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office that the content of the indictment should contain in the shortest and most concise form possible the circumstances related to the crime²⁶, as well as a serious review of the so-called substantial procedural violations. We believe that the current provisions of the Criminal Procedure Code on indictments not only create problems for the effectiveness of prosecutors, but also create problems for the effectiveness of the entire criminal justice system. **Compared to other EU member states, the indictments in our country require unnecessary detail. For the sake of completeness, it should be noted that even in cases with a high degree of public interest (which should not be subject to unnecessary delays), it is still common practice for judges to return cases to prosecutors due to minor omissions in the preparation of the indictment²⁷, which is quite possible to be removed in the trial phase of the process.**

Here we should also mention some positive legislative changes that have facilitated the trial phase of the process. For example, it is no longer necessary to read the indictment unnecessarily before the court, a copy of which the defendant has available before the trial and the content of which he was obliged to familiarize himself with. Instead, an obligation was introduced for the prosecutor to present to the court a summary of the facts of the indictment, which determine the criminal liability of the particular defendant. Thus, another of the recommendations of the experts from the Independent Analysis was implemented.

There are also a number of problems with the Criminal Code, especially with regard to the fight against corruption. And now in our criminal law the provocation to bribe continues to be criminalized. Taking into account the specific objectives that the "parties" pursue in the granting and receiving of the respective benefit, we believe that this text of the Criminal Code completely undermines the course of almost any criminal proceedings with such an object of investigation. The provision itself was adopted in 2000, in a historical period accompanied by

²⁴ See page 15 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016

²⁵ See page 20 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016

²⁶ See page 20 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016

²⁷ See page 20 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016

numerous corrupt practices, mostly related to the privatization of state property, and high levels of corruption risk. That is why we find that if political will to tackle corruption is in fact to be demonstrated, then a mandatory step in this direction is the decriminalization of the provocation to bribe.

We also find that the state should apply a comprehensive and differentiated approach to the individualization of the punishment of persons who have committed corruption offences. In this regard, legislative changes are needed to ensure the wider use of accomplices and other participating defendants (through agreements, if necessary) against the person who committed the corruption offense in question (giving them the opportunity to be prosecuted first or granted immunity). Of course, we also take into account the need to fully guarantee the protection of their physical integrity, given the risks that arise as a result of their assistance to law enforcement agencies. In this sense, it is one of the recommendations of the Independent Analysis.²⁸

The meaning of Art. 282 of the Criminal Code (the main composition of the official crime) should be rethought as the breach or abuse of office does not apply to company officials, and corruption crimes need to cover the private sector as well. In the same way, we believe that it makes sense to adopt provisions that criminalize the commission of the criminal act itself, without the need to prove any harm caused by the breach of public procurement rules.²⁹

It is necessary a legislative mechanism to be introduced according to which confiscated assets acquired in a criminal way should be "reinvested" for the purposes of criminal proceedings or to compensate the victims of the crime.³⁰ Such a mechanism exists in part, with regard to citizens and legal entities, through the figure of the "civil applicant", but in cases of corruption offenses, for example, there is no mechanism by which the subject of the crime - the material asset taken from the state to be used for the purposes of an forthcoming criminal proceeding.

Another challenge we face is the correlation between independence and the responsibility of magistrates. In order to have such responsibility, there should also be well-developed control mechanisms guaranteeing foreseeable disciplinary sanctions. Last but not least, the lack of sufficient political will to create a solid legislative basis for an effectively functioning judiciary.

Insofar as the notion of corruption covers not only the acts of active or passive bribery and trading in influence, incriminated in Section IV, Chapter VIII of the Special Part of the Criminal Code, a Unified Catalog of Corruption Crimes was introduced in 2014 by order of the Prosecutor General, involving other offenses in which an official abuses, possibly against payment, his official position for his own benefit or for the benefit of others.

In this regard, in the last 2 years, as mentioned above, a number of criminal proceedings have been initiated and are being conducted against some of the richest

²⁸ See page 22 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

²⁹ See page 24 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

³⁰ See page 28 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

Bulgarians, who have exceptional financial and economic resources through which they can actively participate in corrupt practices. **Such actions are unprecedented in scale for the last 30 years, and the actions of the Prosecutor's Office in this direction continue with extremely high intensity.**

Question under № 18 in your letter dated 07.09.2020

Recently the Spanish Media published information on an on-going investigation connecting allegedly the PM Borissov with a money-laundering scheme in Barcelona. Is the Bulgarian Prosecution working on this case, having in mind that it received signal on this case already in 2019? If yes, at what stage is the investigation?

Following a signal from the Civil Movement BOEC (Bulgaria united with one goal), addressed to the Prosecutor General, the Specialized Prosecutor's Office has opened a file with the subject described by you. The subject of the case file is also the publication in the Spanish El Periodico newspaper, which contains allegations that a property in the Kingdom of Spain was purchased by a person other than the Prime Minister. In connection with this file, a number of actions were taken by the supervising prosecutor in order to verify the facts and circumstances set out in the report and to clarify the actual factual situation. Explanations were taken from the persons indicated in the signal (including the Prime Minister Boyko Borissov), tax audits and inspections were assigned to the National Revenue Agency for individuals and legal entities. Some of the results of assigned actions from various competent Bulgarian institutions are still expected.

In order to verify the veracity of the facts and circumstances of the case file, it was necessary to request information from the competent judicial authorities in the Kingdom of Spain, therefore by decree of the supervising prosecutor of 04.03.2020 it was assigned to the Directorate of International Operational Cooperation to the Ministry of the Interior (D IOC) to request from the investigating authorities in the Kingdom of Spain information whether there is an investigation into the data exported in the article in the El Periodico newspaper.

In the meantime, a new article was added to the file in the Spanish El Periodico newspaper concerning the sale of the house mentioned in the signal to the Kingdom of Spain.

On 10.07.2020 a letter was received from D IOC with information about the investigation in the Kingdom of Spain. It is clarified that it is led by the law enforcement agency Mossos D'Esquadra (Autonomous Police of Catalonia) and the Specialized Prosecutor's Office against Corruption and Organized Crime in Barcelona. It is clarified that the investigation is classified as "judice/confidential", due to which the information requested by the Republic of Bulgaria can be provided only upon establishing contact between the supervising prosecutors. In this regard, a request was made to provide the names of the supervising prosecutor in the case in Bulgaria and contact details. The requested information was provided to the competent authorities in the Kingdom of Spain by letter dated 22 July 2020 by the supervising prosecutor in the Specialized Prosecutor's Office.

Despite the contact details provided and the long period of time that has elapsed, the judicial authorities in the Kingdom of Spain have not yet contacted the Bulgarian law enforcement authorities.

The investigation in the case has not been completed, and in this connection it is necessary to wait for the results of the assigned audits of individuals and legal entities, as well as the information requested by the competent authorities in the Kingdom of Spain.

Question under № 19 in your letter dated 07.09.2020

Several months ago, several audio recordings have been released in the press. Among many other things that are presented in these recordings, at a certain moment the voice that seems to be the voice of PM Borissov threatens to burn down a leading politician from the opposition, currently a fellow MEP. Is there any investigation or preliminary check in this regard? If yes, at what stage?

On August 11, 2020, a file was opened in the Specialized Prosecutor's Office on a signal received by the Supreme Cassation Prosecutor's Office from Mr. Hristo Ivanov. The case clarifies and investigates the circumstances regarding an audio recording published in the press, in which a voice is heard, which is alleged to belong to the Prime Minister of the Republic of Bulgaria Boyko Borisov, who talks to an unknown person and comments on various topics during the conversation. . At the moment, an investigation is underway in this case for committed crimes, including those related to the Prime Minister of the Republic of Bulgaria, and the relevant technical expertises have been assigned to establish the authenticity of the record, which have not yet been prepared. Information has been requested from the relevant institutions in order to assess the data on the existence of a committed crime.

Question under № 20 in your letter dated 07.09.2020

Bulgarian citizens witnessed different audio recordings and pictures published in the media. But not all of these recordings and pictures were anonymous. Some transcripts and recordings were sent officially by the Prosecution - some of them during on-going cases, some of them even before initiating a case. How do you assess this practice?

The independence that the prosecution should have at the institutional (as a body of the judiciary) and personal level (each individual prosecutor) and accountability are not mutually exclusive but complementary principles. They are the opposite ends of a line driven by full autonomy to full subordination in decision-making. No system of EU Member States is located at any of the endpoints, but combines different aspects of independence and accountability.

Pursuant to the international acts and recommendations of the European institutions engaging the Republic of Bulgaria as an EU member and in unison with the current national strategic documents, the Prosecutor's Office of the Republic of Bulgaria carries out its alleged activity of providing civil society with the necessary information of public interest, including through the publication of case materials, in strict compliance with Bulgarian law (Article 198 of the Criminal Procedure Code and international instruments to which the Republic of Bulgaria is a party).

20.1. Specific recommendations of the EC in this direction

Consistently, in the framework of the monitoring of the Cooperation and Verification Mechanism, the European Commission has identified key indicators for measuring the success of measures in judicial reform and the fight against corruption and organized crime. Invariably throughout the CVM period, the main recommendations in the reports to address these two problem areas have been **transparency** in the work of the judiciary and **accountability** to civil society - both in ongoing and closed proceedings. The effect of the steps taken in recent years is tangible.

Thus, with the 2018 report, the EC suspended the monitoring of the sixth indicator: Organized crime, as recommendation 16 of the report³¹ specifically states that "*a mechanism should be established for public reporting of progress in high-level organized crime cases, for which there is information in the public space. Subject to the presumption of innocence, the Prosecutor General should report on investigations and charges.*" The same recommendation is given for the fourth indicator: corruption at the highest levels of government (recommendation 12).

The report of the European Commission from 2019³² which actually ended the action of CVM in relation to the Republic of Bulgaria, emphasizes that transparent reporting and public control are the main pillars on which the next phase of monitoring will be based - that at the national level.

The fulfillment of Bulgaria's commitments under the Cooperation and Verification Mechanism was confirmed in the report on Bulgaria for 2020 (accompanying the EC Communication on the occasion of the European Semester 2020)³³. It points out that results have been achieved in the fight against high-level corruption, but points to the need to continue to improve the anti-corruption framework and to involve stakeholders in implementing the anti-corruption strategy and setting future priorities. More generally, it is noted that anti-corruption institutions need to build public trust and gain a reputation as institutions operating with independence and professionalism.

These two documents mentioned contain the explicit and most recently expressed official position of the European Commission that the progress made by Bulgaria in the field of CVM is sufficient to meet the commitments made at the time of our accession to the EU. As for the judiciary in particular, it is clear that "*Bulgaria has made further progress in its*

³¹ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on progress in Bulgaria under the Cooperation and Verification Mechanism, Strasbourg, 13.11.2018 SWD(2018)550 final

³² REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on progress in Bulgaria under the Cooperation and Verification Mechanism, Brussels, 22.10.2019 COM (2019) 498 final

³³ Brussels, 26.2.2020 r. SWD(2020) 501 final

reform efforts to improve the efficiency of the judiciary ... There are positive developments and additional commitments to continue the reform".³⁴

Specific recommendations in the direction of providing official information were given in view of the "*difficult media environment*"³⁵ established by international observers. **Therefore, in fulfillment of the commitment to accountability of the judiciary (in the aspect of the same, which is exercised by the prosecutor's office) and to stop attempts to spread misleading media coverage, the Prosecutor's Office of the Republic of Bulgaria emphasizes the development of proactive media policy to inform the public. by means of official statements of its representatives.**

20.2. National legislation and international acts

The information gathered in the criminal proceedings is subject to protection by means of the highest order. Disclosure of the content of materials from the cases may be carried out only by the supervising prosecutor in the pre-trial proceedings under Art. 198 of the CPC.

In fulfillment of the obligations of the human rights bodies to inform the public about their actions and the result of the same, in a number of proceedings - due to the increased media interest - after granting a permit under Art. 198 of the CPC, the supervising prosecutors allowed the publication on the departmental website of the Prosecutor's Office of the Republic of Bulgaria of materials from the cases of deletion of personal data, according to the Personal Data Protection Act. The disclosure of evidence gathered in the course of the investigation, including that obtained during the operation of special intelligence means, is an activity admissible by the procedural and substantive criminal law.

In the specific cases all procedural requirements for lawful collection of evidence have been complied with, as - in the cases where the law requires this - a permit has been duly requested and obtained, respectively approval by the relevant court. Accordingly, there is no obstacle to the use of this evidence in the evidentiary process, including in the trial phase.

³⁴ Report on Bulgaria for 2020 accompanying COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN CENTRAL BANK AND THE EURO GROUP European Semester 2020: Assessment of progress in structural reforms, prevention and correction of macroeconomic imbalances and results of in-depth reviews under Regulation (EC) № 1176/2011 {COM(2020) 150}, p.75

³⁵ The report of the EC on CVM from November 2018 (COM (2018) 850) states that "*International observers have noted a significant deterioration in the Bulgarian media environment over recent years, with a Bulgarian media sector characterised by intransparent ownership and weak enforcement of journalistic standards. Such a situation affects the quality of public debate and therefore risks restricting the access of the public to information, with only a limited number of independent sources. The media environment has a specific significance for judicial independence, with targeted attacks on judges in some media connected to intransparent interests, and with difficulties in finding effective redress.*" The finding remains unchanged in the October 2019 report, which states that "*although the media environment is outside the benchmarks of the CVM, its shortcomings continue to impct on the judiciary.*"

The permission received from the supervising prosecutor by the order of art. 198 of the CPC legitimizes the disclosure of this evidence to the public. Accordingly, there is no obstacle to the use of materials that are part of the body of evidence in significant cases to publicize the results of the activities of law enforcement agencies. **In the predominant number of cases, the evidence in pre-trial proceedings was announced after open court hearings were held in proceedings under Art. 64 and Art. 65 of the Criminal Procedure Code (remand proceedings “Detention in custody” and “House arrest”).**

The Prosecutor's Office of the Republic of Bulgaria - called by the Constitution to be the guardian of law and order in the country - would not allow its trampling. The information presented to the public has already been used in the criminal proceedings by including the prepared material evidence and as such it becomes part of the evidence and is subject to the general rules of the Criminal Procedure Code - i.e. and of Art. 198 of the CPC.

The wide media interest in certain cases, provoked by the high public positions held by the defendant, determines the predominance of the public interest over the proclaimed in Art. 198 of the CPC investigative secrecy, as well as transparency in the work of the specific prosecutors supervising the respective cases, the activity of the Prosecutor General and the Prosecutor's Office of the Republic of Bulgaria as a whole.

The presumption of innocence of the defendant is not violated. The publication of official press releases, briefings and statements by supervising prosecutors, prosecutors' spokespersons or the chief prosecutor are a means of providing information and ensuring that the public is immediately informed of important cases. The dissemination of information on criminal proceedings by public authorities is not prohibited by the mandatory for the Republic of Bulgaria EU acts³⁶ and other international acts³⁷. Apart from that, the presumption of

³⁶ Art. 4 § 3 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, stipulates that *“The obligation laid down in paragraph 1 not to refer to suspects or accused persons as being guilty shall not prevent public authorities from publicly disseminating information on the criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest.”*

³⁷ Art. 10 of the European Convention on Human Rights regulates the right of citizens to receive information, to which right corresponds the correlative obligation of the state to ensure the possibility of dissemination of accurate and timely information. The European Court of Human Rights in many of its decisions recognizes that Art. 6 § 2 of the ECHR does not impede, within the meaning of Art. 10 of the Convention, the authorities to inform the public about the ongoing criminal proceedings.

Recommendation Rec (2003) 13 of the Council of Europe on the provision of information through the media in relation to criminal proceedings sets out a basic principle:

„Principle 6 - Regular information during criminal proceedings
In the context of criminal proceedings of public interest or other criminal proceedings which have gained the particular attention of the public, judicial authorities and police services should inform the media about their essential acts, so long as this does not prejudice the secrecy of investigations and police inquiries or delay or impede the outcome of the proceedings. In cases of criminal proceedings which continue for a long period, this information should be provided regularly.”

innocence according to Art. 31, para 3 of the Constitution of the Republic of Bulgaria and Art. 16 of the Criminal Procedure Code is strictly observed.

Neither the manner nor the context in which the information is disseminated gives the impression that the persons are guilty before their guilt is proved in accordance with the law by the court. The publication of official press releases or statements by supervising prosecutors, prosecutors' spokespersons or the Prosecutor General is intended only to inform citizens about the development of the investigation into a public criminal case that has aroused media interest without questioning the presumed innocence of individuals and in no way can these actions affect the outcome of criminal proceedings or the decisions of judges called upon to rule on the guilt of specific defendants, resp. defendants. The official information disseminated by the PORB is based on the evidence gathered so far in its publication in a specific case.

That is why the publication of such information does not infringe the presumption of innocence. It should be recalled that the information disclosed by the prosecution is information gathered at the *pre-trial stage* and, moreover, *at a certain point in the development of the pre-trial proceedings*. Therefore, the possibility of gathering new evidence, verifying new investigative versions and ultimately reaching new legal conclusions cannot be ruled out. Formal written or oral statements are intended to shed light on the general conduct of operations and the development of investigations, and do not rule on the guilt of certain persons, which in principle does not infringe the presumption of innocence.

According to the case law of the ECtHR, a distinction must be made between statements which give the impression that the person is guilty and those which merely describe a state of suspicion. The former violate the presumption of innocence, while the latter are considered to correspond to the essence of Art. 6 of the Convention (**Marziano v. Italy** (Marziano c. Italie), № 45313/99, § 31, 28 November 2002). The official written or oral statements of the prosecution are aimed at shedding light on the general operations and the development of investigations, and do not rule on the guilt of certain persons, which in principle does not violate the presumption of innocence (**Alexey Petrov v. Bulgaria**, 31 March 2016. §§ 22-28, 30, 73 and 74, sentence 3). There is no violation when announcing an ongoing investigation and stating hypotheses established at the time of the statements, which gradually arose with the progress of the investigation and which further determine the need for inspections to be confirmed or refuted (**Slavov et al. v. Bulgaria**, 10 November 2015, § 124, 125). By disseminating such information, the authorities keep the public informed of their efforts to combat crime, which is undoubtedly a matter of public interest (**Yordanova and Toshev v. Bulgaria**, 2 October 2012, § 53).

Opinion № 9 (2014) of the Consultative Council of European Prosecutors (CCPE) states that "*Prosecutors are encouraged to keep the public regularly informed, through the media, of their activities and results. Through their actions, prosecutors must seek to promote and maintain transparency and public confidence in the prosecution service.*"

More generally, **Recommendation Rec (2000) 19 of the Council of Europe** states that "*The public must be informed of the above-mentioned organisation, guidelines, principles and criteria; they shall be communicated to any person on request.*" (36(c)).

Question under № 21 in your letter dated 07.09.2020

Following the in camera meeting of the DRFMG, the Prosecutor General of Bulgaria published on the official homepage information that the meeting was organised at the suggestion of the Prosecutor General of Bulgaria. In fact, it was the DRFMG that took the decision to hold this meeting and invited the Prosecutor General who sent his deputy. Are you willing to correct this false information?

Expressing our deep respect for the President and the members of the LIBE Committee, we would like to make our most sincere apologies, as this is most likely a misunderstanding. The Prosecutor General did not have anything to do with the circulated and quoted by you press release, but it was prepared by the Public Communications Directorate in the Prosecutor General's Office.

Most likely, in view of previous correspondence containing principled proposals for holding working meetings in connection with the rule of law and permanent bilateral communication, the Public Communications Directorate incorrectly perceived the meeting as a continuation of our correspondence.

Question under № 22 in your letter dated 07.09.2020

As indicated in the latest CVM report and the GRECO reports, the structures to fight corruption have been strengthened, but a solid track record of investigations leading to results, including sentences for perpetrators, is still lacking. How will the Bulgarian government and the prosecution make sure that the reforms formally undertaken actually translate into real results regarding the fight against corruption?

The concrete results in the fight against corruption have been addressed in the answers to the previous questions № 17 to № 20, as well as in the annexes thereto.

As has been repeatedly stated, corruption has been one of the main priorities of the prosecution in recent years. However, our activity is a small segment of the overall process of counteracting this type of activity - it is limited to criminal prosecution under current law of persons who have committed corruption crimes, as well as the implementation of a certain type of prevention, expressed in the supervision of legality on the executive authorities. In order to achieve a significant and lasting result in combating corruption crimes, as already mentioned, one-way and multifaceted actions follow not only by the Prosecutor's Office of the Republic of Bulgaria, but also by state bodies in the system of executive authority (MIA, SANS, CCUAAFC, PFIA and others), the legislature on behalf of the National Assembly, but also by other parts of the judiciary, in particular the Bulgarian court.

Reducing the levels of corruption, not only in our country, but also in Europe and worldwide, is a task and a challenge for every country. Criminal proceedings are not in themselves inherent in eradicating this phenomenon, insofar as the latter is inconceivable without the presence of political will to tackle corruption, effective interaction between the judiciary and the executive and the existence of adequate legislation.

The establishment of specialized bodies of the judiciary to combat corruption, organized crime and terrorism (Appellate Specialized Criminal Court, Specialized Criminal Court, Appellate Specialized Prosecutor's Office and Specialized Prosecutor's Office) is a good, working European practice that yields positive results, including in our country. In this way, the dependencies that existed at the local level were overcome in the first place, within which quite often most cases of corruption crimes against mayors of municipalities and districts were finally resolved, as well as the corruption risk among magistrates was significantly reduced. Next, a legal framework has been created in which bodies specializing in resolving the most serious cases in the country - for organized crime and terrorism, to consider corruption cases, which are of no less public importance. This facilitates the possibility of forming a permanent practice, which in turn would speed up the criminal process. This is how the recommendation made in the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office and its Independence, carried out by the EU Technical Support Office in 2016, was implemented, namely: to transfer corruption cases to the Specialized Criminal Court, *"where there is a more constructive interaction between prosecutors and judges and less formalism."*³⁸

Counter corruption requires a comprehensive approach, and the responsibility for dealing with it is within the competence of state bodies, both in the judiciary and in the executive and legislative authorities. Optimal results in the fight against corruption offences, in our opinion, can be achieved only in the presence of excellent interaction and synchrony between the three authorities, in strict compliance with their functional competence and the principle of separation of powers, regulated in the Bulgarian Constitution.

ENCLOSURE:

1. Declaration of the prosecutors from the meeting held on 24.08.2020. in Sofia National Meeting, translated into English;
2. Stenographic recording of the speeches of the participants in the National Meeting of Prosecutors, held on 24.08.2020. in Sofia, translated into English;
3. Prepared statement by Prosecutor Elena Andreeva from the Sofia District Prosecutor's Office in connection with the National Meeting held on 24.08.2020 in Sofia, published on the website of the Prosecutor's Office of the Republic of Bulgaria;

³⁸ See page 20 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

4. Press release of the Prosecutor's Office of the Republic of Bulgaria dated 14.07.2020. concerning initiated pre-trial proceedings under Chapter I of the Special Part of the Criminal Code, translated into English;

5. Independent analysis of the structural and functional model of the Prosecutor's Office of the Republic of Bulgaria and its independence since December 2016.

WITH RESPECT,

FOR THE PROSECUTOR GENERAL: **/SIGNATURE/**

(according to order № RD - 05 - 2932
from 14.09.2020 of the Prosecutor General)

DANIELA MASHEVA
DEPUTY PROSECUTOR GENERAL
AT THE SUPREME CASSATION
PROSECUTOR'S OFFICE