



**PROSECUTORIAL
REFORM INDEX**

FOR

BULGARIA

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Introduction

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

The ABA embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in prosecutorial reform. There are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after working in the field on this issue for 15 years in different regions of the world, the ABA has concluded that each of the 28 factors examined herein may have a significant impact on the prosecutorial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

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

Methodology

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

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

In creating the PRI, the ABA was able to build on its experience in creating the JRI, the LPRI, and the more recent CEDAW Assessment Tool and Human Trafficking Assessment Tool in a number



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

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

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

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

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002. The Human Trafficking Assessment Tool is based on the UN Trafficking Protocol and was developed in 2004-2005.

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

Acknowledgements

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Assessment Team

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Executive Summary

Brief Overview of the Results

The 2006 Prosecutorial Reform Index (PRI) for Bulgaria reflects a time of rapid and substantial change for the prosecution function, including numerous judicial reforms in preparation for European Union accession. Despite significant challenges, including new responsibilities stemming from substantial legislative amendments, as well as widespread perceptions that the Prosecution Service is unaccountable and vulnerable to improper influence, the new Prosecutor General is to be commended for taking vigorous action to reform the prosecutorial function, most notably by increasing transparency and accountability. Indeed, even the harshest critics of the Prosecution Service expressed a new sense of hope and optimism that reflects the Prosecutor General's willingness to tackle his institution's most challenging issues.

As illustrated in the Table of Factor Correlations, Bulgaria scored positively on only two of the twenty-eight PRI factors (Professional Immunity and International Cooperation), indicating that the country's legislative framework and practices in these areas substantially comply with relevant international standards. Ten factors received a negative correlation, including at least one negative factor in all six sections of the PRI, indicating that there is still much work to be done in all areas of prosecutorial reform. The remaining sixteen factors all received a neutral correlation. While the overall negative trend in the factor correlations is cause for concern, the underlying analyses reveal encouraging signs of progress and awareness of the need for improvement.

Positive Aspects Identified in the 2006 Bulgaria PRI

- An important recent development is the **initial training program for junior prosecutors** conducted by the Bulgarian National Institute of Justice (NIJ). The quality of instruction, curriculum and practically oriented methodology was praised by most prosecutors interviewed. Even though there are aspects of the legal education and appointment process that draw criticism, the NIJ's initial six-month training program is viewed as a positive step to ensure junior prosecutors are ready to perform their duties. However, the NIJ's continuing legal education offerings are still limited for prosecutors.
- The 2003 **constitutional amendment implementing functional immunity** for prosecutors was praised as an appropriate balance between protecting prosecutors for their official acts while establishing liability for personal, non-official behavior. The only concern is whether the Supreme Judicial Council (SJC) will be an effective mechanism for overseeing requests to waive a prosecutor's immunity.
- The joint **development of the Rules of Professional Ethics for Prosecutors** (Prosecutorial Ethics Rules) by the Association of Prosecutors in Bulgaria and the National Union of Bulgarian Prosecutors, and their subsequent adoption by the SJC, is a positive development. The Prosecutorial Ethics Rules provide clear and comprehensive ethical standards for prosecutors, encompassing general statements of ethical behavior; rules of conduct in the course of official activities; rules of conduct outside the office; and conflicts of interest. Efforts to train prosecutors in their ethical requirements and to disseminate the Prosecutorial Ethics Rules to the public should be substantially increased.
- The Office of the Prosecutor General efforts to promote **cooperation with foreign law enforcement agencies and prosecution offices** are encouraging. Generally speaking, foreign requests for extradition and mutual legal assistance are honored in a timely and organized fashion. Nevertheless, some respondents claimed that the justice system has not taken advantage of bi-lateral agreements or other treaties that could expedite legal assistance requests.

- **Prosecutorial salaries and benefits have increased** considerably in recent years, helping to attract and retain qualified candidates, improve the prestige of the profession, and negate one of the excuses sometimes proffered for prosecutorial corruption. While morale has improved and prosecutors are no longer trending toward abandoning their profession, compensation should remain competitive and continue to increase when appropriate.

Major Concerns Identified in the 2006 Bulgaria PRI

- The Prosecution Service is widely perceived as being unable to perform its professional functions without **improper interference from prosecutorial and non-prosecutorial authorities**, despite legal requirements to the contrary and reported reductions in actual bribe solicitations by prosecutors. Many direct sources report that some prosecutors are subject to improper influence from parties, attorneys, judges, governmental authorities, family connections, and others.
- The ability of the Office of the Prosecutor General to effectively **prosecute corruption and organized crime cases** is discouraging. There is a widespread public perception that prosecutors are involved in corruption. Over the past several years, there appears to have been insufficient attention paid to prosecuting corruption cases, and convictions were few when compared to the number of corruption incidents reported. Convictions for organized crimes remain low as well. Despite recent impressive efforts to combat corruption and organized crime with the establishment of specialized units, the Office has a difficult task to address the sheer volume of cases with existing staff resources.
- The Prosecution Service is generally perceived as being **too independent and unaccountable to the public**. Some steps have been taken to make the Prosecution Service more accountable, including increased Parliamentary controls and proactive measures by the new Prosecutor General to increase transparency. However, these reforms were dealt a serious blow when the National Assembly's power to remove the Prosecutor General was overturned by the Constitutional Court. The Prosecution Service's lack of accountability and transparency is exacerbated by its strict hierarchy and excessive supervisory control over subordinate prosecutors.
- The **state of relationships with actors in the criminal justice system, such as police investigators, victims, witnesses, and the accused** in particular, are of concern. Although the new Criminal Procedure Code confirms that the prosecutor is the *dominus litis* of the criminal investigation, the implications of this role will challenge prosecutors already burdened with substantial responsibilities. Prosecutors were criticized as being insensitive to the needs and concerns of victims and witnesses and were faulted for a lack of training in this area. They also received mixed reviews concerning their ability to sufficiently control and efficiently manage criminal investigations to ensure that the rights of the parties are respected.
- The Prosecution Service suffers from the widespread **impression that it is overly formalistic, highly bureaucratic, and that it impedes the discretionary function** of its subordinate staff. Although part of the current situation may be explained by procedural requirements, there exists a strict and hierarchical management culture that does not support the full exercise of discretionary functions enshrined in law. However, with the arrival of the new Prosecutor General in February 2006, all respondents expressed a strong belief that the environment will improve over time.

- The ***inadequate enforcement of ethical and professional standards*** for prosecutors is a serious concern. While the regulatory framework for disciplining prosecutors is well developed, most respondents reported that the process does not work well in practice. Disciplinary charges are infrequent, in part because the process is deemed too cumbersome and time-consuming, and because of the perception that the SJC is unable to vigorously enforce ethical and professional standards.
- Budget requests for the Prosecution Service have been reduced significantly by the National Assembly in recent years. ***Funding levels do not appear to be adequate to properly support the prosecution function***, including insufficient resources for personnel, aging buildings and overcrowded office space, an effective technological infrastructure, and even basic office supplies.
- Despite the evident recognition of efficiency as an important issue, ***the Prosecution Service is hampered by inefficiency in many aspects of its operations***. These inefficiencies stem from various sources, including a lack of resources and technological infrastructure, legislative and procedural burdens, excessive caseloads, insufficient specialization and training for prosecutors, and a culture of passivity borne from a strict, hierarchical structure that represses initiative.

Bulgaria Background

Legal Context

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

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

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

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

The judicial branch is composed of judges, prosecutors, and investigators, all of whom are deemed magistrates. All courts have related prosecutor offices. Prosecutors, who report through the prosecutorial hierarchy in the courts ultimately to the Prosecutor General, supervise and conduct investigations, bring criminal charges, oversee the enforcement of criminal and other penalties, and take part in civil and administrative cases as required by law. Investigators conduct investigations in those cases specified by statute. However, many investigators were recently transferred to the Prosecution Service to work as prosecutors, and most investigations are now conducted by Ministry of Interior police investigators (*doznateli*), under the direction of prosecutors. While certain budgetary, oversight, and administrative functions are shared with or controlled by the Ministry of Justice [hereinafter MOJ], the judiciary is largely overseen by the Supreme Judicial Council [hereinafter SJC], composed of judges, prosecutors, and investigators elected by representatives of the judiciary, magistrates and other members of the legal profession appointed by the National Assembly, the chairs of the two Supreme Courts, and the Prosecutor General. The Constitutional Court, which is not a part of the judiciary, rules on constitutional issues.

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

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

The provisions of the Constitution apply directly, without need of legislative implementation. Treaties appropriately ratified are also applied directly and supersede domestic legislation.

At the time of the assessment team's visit in June 2006, Bulgaria was in the midst of considering, enacting or implementing major changes in, or additions to, its Constitution and the body of laws and procedural codes. Most of these modifications were driven by a desire to meet requirements for accession to the European Union [hereinafter EU] as anticipated on January 1, 2007, but others were motivated by independent purposes. The volume and speed of these revisions created widespread concern within both the judiciary and the legal profession concerning their capacity as institutions to absorb and implement these revisions, as well as the EU laws and jurisprudence, on a competent and timely basis. Because of the fluid nature of the law during the period of the onsite interviews and preparation of the report, the assessment team decided generally to incorporate all laws and amendments officially adopted on or before April 29, 2006 and refer where relevant to prospective changes under consideration at that date.

Also by way of clarification, this report uses the English terms (i) "attorney" to refer to an *advokat* who has taken oath been admitted to a law faculty, is registered in the Bar Council, and is entitled to practice law on a regular and independent basis for multiple clients, (ii) "lawyer" to describe a *jurist* who has completed his/her legal education, subsequent practical internship and final MOJ examination to attain that title, and thus to include all members of the legal profession such as magistrates, attorneys, in-house counsel and notaries, (iii) "chamber" to mean a college, department or section within a court, which may be further split into "divisions," and (iv) "chairperson" to refer to the chief judge and administrative manager of a court or of a chamber within a court. Also, the terms "police investigator" refers to the *doznateli* who now conduct most investigations under prosecutorial supervision, while the "investigative magistrates" refers to the *sledovатели* who now have responsibility for a small minority of investigations (although higher in profile) and are now part of the judiciary.

History of the Prosecution Service

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

After the fall of the communist regime in 1989, a Grand National Assembly in 1991 crafted a new constitution, *promulgated in STATE GAZETTE* [hereinafter SG] No. 56 (July 13, 1991), *last amended* SG No. 27 (Mar. 31, 2006) [hereinafter CONSTITUTION], thus setting in motion a sweeping process of changes to the Bulgarian legislation. The Judicial System Act, *promulgated*

in SG No. 59 (July 22, 1994), last amended SG No. 39 (May 12th, 2006) [hereinafter JSA], the basic statute that governs the courts and the judiciary, was passed three years later.

The structure of the prosecution service is in accordance with that of the courts. It includes the Prosecutor General, the Supreme Prosecutor's Office of Cassation, the Supreme Administrative Prosecutor's Office, five Appellate Prosecutors' Offices, the Military Appellation Prosecutor's Office, 28 District Prosecutors' Offices, including the Sofia City Prosecutor's Office, five Military District Prosecutors' Offices, and 112 regional Prosecutors' Offices. Approximately 1120 prosecutors work in the country. The Prosecution Service is a unified and centralized entity with a strict hierarchy. Each prosecutor is subordinate to the respective superior prosecutor, and are subordinate to the Prosecutor General. The superior prosecutor assures the adherence to law, exercises control and methodology leadership. He may rescind decisions of his subordinate prosecutors.

The Constitution grants general authority over the judiciary, which includes prosecutors, to the **Supreme Judicial Council** (SJC). The SJC is composed of 25 members, including the presidents of the SCC and the SAC and the Prosecutor General as *ex officio* members. Half of the remaining positions are filled by candidates elected by the National Assembly. The other half are elected by the magistrates themselves, with six chosen by the judges, three by the prosecutors, and two by the investigators. SJC members must have at least 15 years of professional experience as lawyers, including at least five years as a magistrate (i.e., judge, prosecutor, or investigator) or a law professor. The elected members serve five-year terms and may serve a second term, but this may not immediately follow their first term, while the *ex officio* members serve seven-year terms. The Minister of Justice chairs the SJC meetings but does not have the right to vote.

The SJC nominates the presidents of the SCC and the SAC, as well as the Prosecutor General. The President, who appoints these judicial leaders, cannot reject a second nomination of the same individual. The SJC also determines the number and geographic jurisdiction of courts; establishes the number of magistrates; determines their pay; appoints, promotes, demotes and dismisses magistrates as provided by law; approves the ethics codes for prosecutors and judges; handles magistrate discipline; lifts magistrates' immunity; submits the draft budget for the entire judiciary to the Council of Ministers and administers the judicial budget; coordinates magistrate training and qualification; and makes tenure decisions involving magistrates.

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

Conditions of Service

Qualifications

Prosecutors must be Bulgarian citizens with no other citizenship who: (i) graduated from a law school; (ii) completed a six-month internship in the judiciary; (iii) have not been convicted of an intentional crime; and (iv) possess "the required moral integrity and professional capacity," assessed in accordance with the prosecutors' rules of professional ethics. Lawyers with a minimum of two years' experience may serve as prosecutors without first serving as a junior prosecutor. Individuals may also be appointed directly to higher posts in the court system following longer service in the legal system, within or outside of the judiciary.

Appointment and Tenure

Under the recent amendments to the JSA, the appointment, transfer, and promotion of all prosecutors is made by the SJC on the basis of a centralized competition that must be conducted at least twice per year. The competition of junior prosecutors consists of both written and oral examinations, while the competition for prosecutors at the appellate and Supreme Court levels includes both an evaluation of the prosecutor's application and work history as well as an interview. A Competition Committee appointed by the SJC ranks all the applicable candidates and recommends an appointment accordingly.

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

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

Training

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

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

Bulgaria PRI 2006 Analysis

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

Table of Factor Correlations

I. Qualifications, Selection, and Training		
Factor 1	Legal Education	Negative
Factor 2	Continuing Legal Education	Neutral
Factor 3	Selection: Recruitment, Promotion, and Transfer	Neutral
Factor 4	Selection Without Discrimination	Neutral
II. Professional Freedoms and Guarantees		
Factor 5	Freedom of Expression	Neutral
Factor 6	Freedom of Professional Association	Neutral
Factor 7	Freedom from Improper Influence	Negative
Factor 8	Protection from Harassment and Intimidation	Neutral
Factor 9	Professional Immunity	Positive
III. Prosecutorial Functions		
Factor 10	Discretionary Functions	Neutral
Factor 11	Rights of the Accused	Neutral
Factor 12	Victim Rights and Protection	Negative
Factor 13	Witness Rights and Protection	Negative
Factor 14	Public Integrity	Negative
IV. Accountability and Transparency		
Factor 15	Public Accountability	Negative
Factor 16	Internal Accountability	Neutral
Factor 17	Conflicts of Interest	Neutral
Factor 18	Codes of Ethics	Neutral
Factor 19	Disciplinary Proceedings	Neutral
V. Interaction with Criminal Justice Actors		
Factor 20	Interaction with Judges	Neutral
Factor 21	Interaction with Police and Other Investigatory Agencies	Negative
Factor 22	Interaction with Representatives of the Accused	Negative
Factor 23	Interaction with the Public/Media	Neutral
Factor 24	International Cooperation	Positive
VI. Finances and Resources		
Factor 25	Budgetary Input	Neutral
Factor 26	Resources and Infrastructure	Negative
Factor 27	Efficiency	Negative
Factor 28	Compensation and Benefits	Neutral

I. Qualifications, Selection, and Training

Factor 1: Legal Education

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

Conclusion	Correlation: Negative
<p>University-level legal education is obligatory but its quality is uneven and problematic. The availability and quality of clinical or internship programs is often lacking and not state supported.</p>	

Analysis/Background:

Article 126(1) of the JSA provides that among the requirements to be eligible for appointment as a prosecutor are “graduation in law from a higher educational establishment” and “completion of the required post-graduation work experience and attainment of licensed competence to practice law.”

Bulgaria’s Higher Education Act, *promulgated in* SG No. 112 (Dec. 27, 1995), *last amended* SG No. 103 (Dec. 23, 2005), sets out the rights and obligations of higher education. It is the basic law on university-level education. It provides that higher education is the responsibility of both the Council of Ministers and the National Assembly. The Council of Ministers is specifically charged with setting the state requirements for earning degrees in the specialties of the regulated professions. *Id.* art. 9(3)(5). The act also provides that the National Agency for Assessment and Accreditation [hereinafter NAAA]. *Id.* art. 11, must conduct periodic evaluations of both institutions (universities) and their respective programs (law schools, among others) in a broad range of areas to ensure they satisfy the standards established by law. *Id.* art. 11 and 75-83.

Law school requirements for admission procedures, mandatory and elective courses and their minimum hours, are contained in the Ordinance on the Unified State Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer,” *adopted by Council of Ministers Decree No. 75* (Apr. 5, 1996), *last amended* SG No. 69 (Aug. 23, 2005) [hereinafter *Legal Education Ordinance*]. This ordinance requires the law school’s program must contain at least 10 semesters, no less than 3,500 hours of instruction, and must include 19 specified disciplines with certain minimum hours for each. Mandatory courses, which make up slightly more than half of the minimum total hours needed for graduation, usually must be taught by lecturers having the status of full or associate professor in the given subject area. At least half of the total hours of instruction must be in a lecture format. Other courses may be electives (which must include six designated topics) chosen by the law school and optional subjects.

According to Article 7(2) of the Legal Education Ordinance, among the obligatory courses having relevance to the prosecution are Constitutional Law (135 hours), Penal Law (180 hours), Penal Procedure Law (135 hours) and European Union Law (75 hours). The Legal Education Ordinance also states that criminology and criminal execution law must be included among the elective courses offered at law faculties. *Id.* art. 9(1). However, a course of directed study in law faculties for those wishing to pursue a career in the Prosecution Service is lacking.

After the second year of study, students must participate in a practicum consisting of no less than 14 days of work in executive or judicial bodies under an MOJ coordinated program with law faculties. In a 2005 amendment to the Legal Education Ordinance, legal clinics are specifically

authorized, and students participating in clinics who pass an examination may opt out of the 14-day government internship.

After completing the course work, students must pass a state written and oral examination whereupon they receive a diploma with the professional qualification of “lawyer” and a master of laws degree. *Id.* arts. 10-13. Law graduates then serve an unpaid six-month practical internship in the judiciary, followed by a final oral examination administered by the MOJ. JSA art. 163. Upon passing the examination, one is deemed competent to practice law.

However, in reality, the perception that the quality of legal education is inadequate and offers little relevance to the practice of law is common. Within the past 17 years, the number of law schools has proliferated from one to ten. The availability of qualified law professors has not kept pace with the rapid expansion in the number of law schools. Some professors are lecturers at multiple law faculties throughout the country. Most professors are not provided office space or must share limited space with many other professors. As a result, students are usually not offered the opportunity to have meaningful consultations with professors at the law school.

The majority of the legal education is theoretical in nature, delivered in the form of large-group lectures. Except in some seminars, where there is focus on actual or hypothetical case studies and review of case files for exercises in bringing indictments and issuing sentences, there is little focus on professional skills, and practical knowledge. Although moot court competition, trial advocacy classes and law journal do exist, they are not offered in all of the law faculties.

Instruction in legal ethics is neither obligatory nor a required available option. The Rules of Professional Ethics for Prosecutors is not taught at any law faculty. There is little instruction on the rights of the victim. The effect of the absence of this training is apparent in other factors in this PRI. Concerning the instruction of comparative and EU law, some faculties do not have pertinent scholarly articles translated into Bulgarian due to a lack of resources for translation. These key articles or texts are simply not used in those faculties.

Although the Legal Education Ordinance permits and encourages legal clinics, there appear to be few that address criminal defense or the prosecution. Moreover, law students are not permitted to appear before a court even with the sponsorship and supervision of a practicing attorney or prosecutor. Even the six-month practical internship in the judiciary after law school graduation is regarded as providing neither structure, nor instruction, nor practical knowledge. Because the internship is unpaid, participants find employment instead and do not regularly attend the internship. Often supervising prosecutors indulge the absence and approve the completion of the internship. This is often also the case for internships during the law school term. Internships are therefore lacking in effectiveness to prepare students for criminal prosecution work.

Factor 2: Continuing Legal Education

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

Conclusion	Correlation: Neutral
<p>CLE for prosecutors is not mandatory except for an initial junior prosecutors training at the NIJ. In 2006, there has been dramatic growth in the number of prosecutors attending NIJ sponsored CLE activities, however, better coordination with international NGOs and foreign governments' training is needed. CLE participation is taken into account in promotion decisions.</p>	

Analysis/Background:

Pursuant to article 35f(1) of the JSA, the NIJ is assigned the responsibility for the “training and improvement of qualification” of both junior and regular magistrates, which includes prosecutors. The NIJ is a state-funded entity managed by a board of four representatives from the SJC and three designees of the MOJ. Its funding originates from the SJC budget. Following initial appointment to the judiciary, prosecutors “shall go through a continuing education course according to relevant qualification programs adopted by the [SJC].” *Id.* art. 35g(6) The SJC approves NIJ “programs for maintaining and increasing the qualification” of the junior and regular magistracy. *Regulation for the Work of the Supreme Judicial Council and its Administration* art. 7, promulgated in SG No. 54 (June 23, 2004), last amended SG No. 37 (Apr.29, 2005) [hereinafter *SJC Work Regulation*]. Recent amendments to the Constitution also require the Minister of Justice to “take part in the organization of the qualification of the judges, prosecutors and investigators.” See art. 130a.

The JSA provides for the position of “junior judge [prosecutor]”, an individual otherwise qualified to be a judge [prosecutor] who is appointed on the basis of a national competition for a two-year term (which may be extended by six months). See arts. 127a, 147. Junior prosecutors are assigned to a district, regional or military prosecution office, but must first undertake a six-month initial training program at the NIJ, the successor to a nongovernmental organization called the Magistrates Training Center. *Id.* art. 147(3). As appointed junior prosecutors, these persons receive their normal salaries and benefits during their NIJ training; they do not pay tuition for their schooling but are required to cover their own housing and meals costs. For some of their instruction, junior prosecutors join training sessions with junior judges and investigators.

The NIJ's initial training program assumes that junior prosecutors have adequate grounding in theoretical subjects and concentrates instead on delivering practical professional knowledge and familiarity with areas of immediate relevance to their work (including rights and duties, ethical rules, evidence, criminal and procedural codes, media relations, case studies, and associated disciplines such as psychology, forensic medicine and accounting). The NIJ develops junior prosecutors' skills in writing indictments, managing investigations, and in working with police and investigators. They also provide the opportunity for courtroom observation and moot court participation. The NIJ also gives instruction in EU law (particularly EU arrest warrant procedures) and the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter *EUROPEAN CONVENTION ON HUMAN RIGHTS*]. NIJ training is coordinated and delivered by a senior Supreme Cassation Prosecutor who is the official liaison to the NIJ. The NIJ also has a computer lab with 16 computers for legal research and word processing.

The first class of 43 junior prosecutors trained at the NIJ graduated in November 2005. The second class of 47 junior prosecutors began in late January 2006. The NIJ currently graduates only one class per year. Even though the NIJ has graduated only a small number of junior prosecutors, virtually all respondents had unqualified praise for the initial training program and about the subsequent performance of its graduates. They are considered to be better qualified than their predecessors. Even the graduates uniformly agree the training they received was of great professional benefit. The NIJ junior prosecutor training is among the most encouraging developments affecting improved competence in the Prosecution Service.

Following the NIJ initial training period, a junior prosecutor generally assumes a post at a regional level prosecution office. To assist their transition from the NIJ, the Prosecutor General has recently implemented a mentoring program. Regional or respectively district level prosecutors are assigned to mentor junior prosecutors, depending on the level of the Prosecution Office to which the junior prosecutor has been appointed. JSA art. 147(6). In July 2006, the NIJ facilitated training for mentors to ensure they are best providing for the needs of junior prosecutors. Generally speaking, once the two year period is completed, absent a six-month extension, the prosecutor loses his/her "junior" status and assumes a regional prosecutor position. JSA art. 148.

There is no obligation for prosecutors to take CLE courses or other measures to maintain and improve professional skills and knowledge following their initial training. However, when evaluating a prosecutor for promotion in rank or position after five years, one of the factors to be considered is the prosecutor's "participation in training courses and programs, scientific conferences, etc." JSA art. 30b(4).7. Further, prosecutors and other members of the judiciary are entitled to participate without charge in continuing qualification courses, and their participation shall be taken into account when they are considered for promotion. *NIJ Regulation* arts. 43-35. The SJC's list of 10 benchmarks for evaluation of magistrates [prosecutors] appears to suggest the importance of continuing education, "acknowledgments, qualification and educational degrees." *SJC's Temporary Rules on the Order of Performance Evaluation of Judges, Prosecutors and Investigators* art. 15, adopted Jan. 26, 2005 [hereinafter *SJC Temporary Evaluation Rules*]. A working group of the SJC recently submitted a draft ordinance on evaluations which would take into account "participation in training courses and programs, scientific conferences or others" during the review process.

In 2005, the number of NIJ's CLE trainings increased. During that year, the NIJ held a total of 65 CLE courses. In December 2005 the NIJ published a calendar of seminars scheduled for 2006 and offered magistrates, including prosecutors, the opportunity to enroll. There are no seminars uniquely targeting prosecutors. This calendar is updated throughout the year as new legal developments occur and new programs are scheduled. Most of the seminars are held in Sofia, but several are presented in regional areas. Topics have included both domestic and EU laws and jurisprudence, both of which have heightened importance in the current year because there have been or are pending numerous amendments to Bulgarian laws, all of its procedural codes, and even its Constitution, and these events have raised considerable demand for CLE by all members of the legal profession. The NIJ has already held courses on the new Criminal Procedure Code [hereinafter CPC], and plans to schedule with the SJC seminars on the other codes throughout 2006. Training in EU laws and jurisprudence takes on increased importance with the anticipated accession of Bulgaria's accession to the EU in January 2007. The NIJ has published a compact disc on this subject and has also scheduled seminars on EU issues.

Despite NIJ's training mandate, as of March 2006, few prosecutors have attended NIJ sponsored CLE trainings. In 2005, 1, 148 judges attended NIJ CLE courses. In that same period only 49 prosecutors attended CLE (not including initial training for junior prosecutors) accounting for about 5% of the entire sessions' attendance. However, in the first quarter of 2006, 145 prosecutors attended NIJ CLE course offerings.

To better target CLE programs for prosecutors the NIJ recently conducted a survey of prosecutors' training needs. Questionnaires were given to about 1,100 prosecutors. Preliminary

findings from a sample group of 300 respondents reveal that only about 28% have ever attended NIJ courses. Nevertheless, nearly two-thirds of the sample group agreed that more substantive criminal law training in financial, intellectual property, computer, monetary, and trafficking crimes is needed. Roughly half agreed that criminal procedure courses concerning evidence, charging, and the role of the prosecutor in the criminal justice system are vital. Over 60% of those surveyed were willing to attend legal English language training. The NIJ is continuing the review of the assessment to determine training priorities and needs. The NIJ will submit its recommendations to its Program Council for comment later in 2006. It then presents the final training proposal to the NIJ Managing Board for approval. The subjects are thus based largely on the expressed needs of prosecutors appearing before the court everyday, which should help improve CLE attendance.

Delivery of these programs will also depend on the NIJ's financial capacity. In 2005, the budget for the NIJ was 1,298,700 leva (US\$ 811,688 – in 2005 U.S. dollars). See 2005 STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT, *promulgated in* SG No. 115 (Dec. 30, 2004). For 2006, the NIJ budget increased to 2,334,000 leva (US\$ 1,458,750). See 2006 STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT, *promulgated in* SG No. 105 (Dec. 29, 2005). The NIJ also receives some foreign donor support. In fact, guest lecturers, both from Bulgaria and abroad provide the CLE instruction, as the six NIJ staff trainers are exclusively responsible for conducting the initial magistrates training. Under the recent amendments to the Constitution, article 130a, the MOJ has greater input into the judicial system draft budget and takes part in the qualification of magistrates, but it is presently unclear how this change will impact the funding or management of the NIJ. EU accession could also affect the availability of both government and foreign funding of the NIJ. Ensuring the continued viability and expansion of the NIJ after accession and the departure of non-EU donors is of key concern to legal reform in Bulgaria.

The NIJ is not the only source of CLE for prosecutors. In the past year, EU and U.S. entities have provided training on intellectual property violations, cyber-crime, human trafficking, alternative sentencing, organized crime and money laundering, anti-corruption, and a number of other substantive and procedural subjects pertinent to EU law. Despite the satisfaction of the prosecutors who attend these courses, some of these offerings have been criticized for lack of sustainability, absence of structure and curricula that are geared toward specific interests of the donors. Finally, the Bulgarian Association of Prosecutors [hereinafter, Association], a non-governmental, professional organization financed by annual membership fees, has sponsored the first East European Regional Meeting of the International Association of Prosecutors, conducted several lectures in the past on ethics, media relations, computer crimes and human trafficking and were awarded a U.S. Embassy "Democracy Commission" grant to carry out a series of five regional seminars on intellectual property rights. A few members of the Association participate in functions and courses offered by the International Association of Prosecutors. Some Bulgarian prosecutors even participate in internship programs at the EU, European Court of Human Rights, and the U.N. International Criminal Tribunal for the former Yugoslavia. Conducted on an ad hoc and less formal basis are lectures offered by the District and Regional Prosecution offices. These lectures tend to focus on local issues or significant legal developments in codes or statutes, are delivered by senior prosecutors and tend to occur no more than once a month.

Most respondents agreed that better coordination of CLE training with the NIJ is important. At least one respondent encouraged the creation of a training section within the Office of the Prosecutor General. In fact, there is some movement toward establishing training sections even in the five Appellate Prosecution regions. To ensure that CLE is planned, coordinated and delivered to prosecutors in a regular and organized manner, international donors and the Office of the Prosecutor General will need to better collaborate with the NIJ and help fulfill its training mandate. In that way, the delivery of relevant, quality CLE will be achieved.

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

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

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

<u>Conclusion</u>	<u>Correlation: Neutral</u>
<p>Nearly all new prosecutors are appointed by way of a national competition which is generally objective and well regarded. A principal concern however, is that the competition focuses on academic ability to the exclusion of other important qualities. Potentially concerning is that a national competition is also required for most vacancies in the office, which may result in difficulty filling openings with appropriate candidates for transfer and promotion.</p>	

Analysis/Background:

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

1. A degree in law from a university;
2. Completion of the required six-month post-graduation internship in the judiciary;
3. Attainment of licensed competence to practice law;
4. No prison sentence for an intentional crime, even if rehabilitated; and
5. "The required moral integrity and professional capacity," determined by reference to the applicable rules of professional ethics. See JSA art. 126.19.

As described in Factor 2, nearly all prosecutors are first appointed as junior prosecutors following a competition in accordance with articles 127a-d of the JSA. The competition is announced by the SJC and advertised in the SG, specifying the number, type, and location of open positions, as well as the date, time, and place of the competition. The SJC selects a separate five-person competition committee for each branch of the magistracy, at least one member who must be a law professor, which conducts the competition with the administration of the SJC. *SJC Regulation No. 2 Laying Down the Conditions and Procedures for Carrying Out Competitions for Magistrates* ch. III, adopted July 14, 2004, promulgated in SG No. 65 (July 27, 2004) and JSA art. 127(g). The first part of the competition consists of a four hour written examination on a mock case, which is graded anonymously on a six-point scale. Two independent assessors grade the examination. If there is a difference of more than one point, a third assessor is appointed to determine the final grade. To proceed to the oral component of the examination one must receive a score of at least 4.50.

In the oral component three legal topics are discussed. Candidates also discuss their professional and personal attributes during the oral session. Scoring is conducted by all committee members using the same six-point scale. Scores from both components are calculated and candidates are then ranked by their total scores for the position for which they applied. Ties are broken by recourse to the candidates' law school grade point averages and state examination marks. The SJC appoints candidates based on their rank. Unsuccessful competitors may challenge the results before the SJC on grounds of legality and appeal the SJC's decision to the SAC. *Id.* chs. IV-VI; JSA arts. 127f. As described in Factor 2, the newly appointed junior prosecutors are then assigned to the NIJ's six-month initial training program.

In general, this national competition regime is regarded as a positive step forward for the system, replacing a pre-2002 process wherein there was little objective criteria for appointment and was widely criticized for nepotism and cronyism. However, even under the new appointment regime there are complaints that the competition focuses primarily on academic acumen and provides little or no chance to measure the candidate's diligence, work habits, integrity, reputation, or temperament. More than one respondent commented that the oral phase of the competition is not, by its nature, conducted on an anonymous basis, leaving the possibility for bias in the scoring function. Another respondent also suggested that candidates should not be appointed as junior prosecutors until they have successfully completed NIJ initial training.³

The majority of respondents were more critical of the newly implemented promotion and transfer process. For every vacant prosecutor position at every level excepting the Appellate and Supreme Cassation Prosecution (in these higher levels there is a competition with a different procedure, see JSA art. 127b (2), (d) (e) of the JSA), the SJC must conduct a national competition. Although none of the respondents had any direct experience with the new competition, nearly all agreed that a national competition would be burdensome, complicated and inefficient. Many objected to the lack of local control in the decision making process in cases of promotion/transfer of regional prosecutors or transfer of district prosecutors particularly as supervising attorneys are not afforded an opportunity to interview the prosecutor prior to transfer or promotion or provide input to the SJC in the process. Concerns abound that the SJC will become bogged down in managing all of the reported vacancies and in coordinating the national competitions. However, as the relevant amendments to the JSA became effective only on May 12, 2006, the assessor team received no information that a competition had yet been organized by which to judge results. A number of respondents defended the competition process for transfer and promotion as a marked improvement from the prior process. They stated that personal bias and nepotism too often marred a process not based on national competition.

Factor 4: Selection Without Discrimination

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

Conclusion	Correlation: <u>Neutral</u>
<p>Bulgaria does not maintain records on the ethnicity, racial or gender composition of the prosecution, but interviews reveal that while few are minorities, nearly a majority of prosecutors are women. However, women may not be as well represented in leadership positions at the highest levels of the prosecution.</p>	

Analysis/Background:

Article 6 of the Constitution provides that “[a]ll citizens shall be equal before the law. Abridgement of neither rights nor any privileges shall be permitted on the basis of race, nationality, ethnic identity, sex, origin, religion, education, beliefs, political affiliation, personal and social status, or property status.” In 2003, the National Assembly passed the Protection against Discrimination Act, promulgated in SG No 86 (Sep. 30, 2003), amended SG No. 105 (Dec. 29, 2005), and last

³ See also Factor 21, concerning the appointment without competition of National Service Investigators to the Office of the Prosecutor General as a derivative result of CPC Article 194.

amended SG No. 30 (April 11, 2006). It bars *inter alia*, direct or indirect gender and ethnic discrimination (see art. 4), requires equal standards of evaluation, promotion and access to training (arts. 14-15), and encourages hiring aimed at balancing workforces by gender and ethnicity (art. 24). For all magistrates, performance evaluation must be “conducted in compliance with the principles of the rule of law, equity, transparency, reputation in a legal society and fair professional development.” *SJC Temporary Evaluation Rules* art. 3.

In the 2001 census, 9.4% of the Bulgarian population identified themselves as ethnic Turks, while another 4.7% declared themselves Roma. See NATIONAL STATISTICAL INSTITUTE, *Population at 1/3/01 by Districts and Ethnic Groups*, available at <http://www.nsi.bg/Census/Ethnos.htm> (last visited Aug. 13, 2006). The Office of the Prosecutor General maintains no official statistics regarding the numbers of Turkish and Roma ethnic minorities in the prosecution. The available information is anecdotal. All respondents agreed that there are few minority prosecutors in comparison to their populations, with those of Turkish descent better represented than Roma, especially in certain regions. The case of the Roma population is particularly difficult as they tend to suffer both social and economic disadvantages in Bulgarian society. Many believe that poverty, substandard schools, and other impediments deprive Roma children of adequate primary and secondary education, and do not properly prepare them for a university legal education. Although there appear to be several government programs to help improve education for the Roma, the Office of the Prosecutor General has no special initiative to recruit either Roma or Turkish law students or attorneys.

Regarding gender equality, nearly all of the respondents said that women comprise about half of the total number of prosecutors. Although official statistics are lacking, female prosecutors are found at all levels of the prosecution. However, there is a view among many that the most senior supervisory positions are still held by men. Still, no respondent could recall a single formal complaint or other litigation involving gender, racial, or ethnic discrimination in the hiring, transfer, promotion or termination of a prosecutor.

II. Professional Freedoms and Guarantees

Factor 5: Freedom of Expression

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Prosecutors are restricted from making public statements on active cases and must be politically independent. However, informal contacts with the media exist and prosecutors attend political meetings and functions.	

Analysis/Background:

Articles 136 and 137 of the JSA provide reasonable restrictions on the release of information by prosecutors. Article 136 prohibits prosecutors from releasing information they obtain in their official capacity that “[a]ffects the interests of citizens, juristic persons, and the State.” Further, Article 137 prohibits prosecutors from expressing their opinion on either their cases or on cases allotted to other prosecutors. Interpreted strictly, prosecutors are virtually forbidden from making any public statements, except, perhaps, for cases in which there is a final adjudication. Additionally, prosecutors are also restricted from offering any legal advice. JSA art. 138.

The ability of prosecutors to engage in political expression is also restricted. During their work as magistrates, prosecutors may not be members of political parties, organizations, movements or coalitions pursuing political objectives, and may not engage in any political activities. They may, however, attend political meetings and events so long as they do not participate. JSA art. 12(1), POLITICAL PARTIES ACT art 9.

While the statutory restrictions on prosecutors' freedom of expression are largely reasonable, respondents observed that, until recently, the organizational culture strongly discouraged prosecutors from having any dealings with the media, even on general matters concerning the law or the administration of justice. The tone set by the new Prosecutor General has begun to encourage greater access by the media, but prosecutors comment on criminal justice issues only infrequently.

Factor 6: Freedom of Professional Association

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

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

Conclusion	Correlation: Neutral
<p>Prosecutors are able to join the Association of Prosecutors in Bulgaria and the National Union of Bulgarian Prosecutors. The Association of Prosecutors has made significant contributions to the prosecutorial profession, but its independence was tested due to constant attempts at interference from the former Prosecutor General. As a result, the National Union was formed, and its members were reportedly harassed and punished. More recently, however, the two associations have embarked on cooperative efforts, most notably the development of the Rules of Professional Ethics for Prosecutors, which may signal a greater concern for reform and transparency.</p>	

Analysis/Background:

Article 44 of the Constitution guarantees to citizens "the right to freedom of association." Particularly, "judges, prosecutors and investigators shall be free to form and to join organizations which defend the independence and professional interests thereof and promote the professional qualifications thereof." JSA art. 12(2). Such organizations may not associate with "trade union organizations from another branch or sector at the national or regional level." JSA art. 12(3).

There are two national associations for prosecutors in Bulgaria; the Association of Prosecutors in Bulgaria [hereinafter Association] and the National Union of Bulgarian Prosecutors [hereinafter National Union]. The Association is the more established of the two prosecutorial associations. It was founded in 1997 as a nongovernmental organization, and currently has between 360 to 400 members. The Association is supported by membership fees of 35 leva (US\$ 23) per year.

The Association has made several significant contributions to the prosecutorial profession, including the opening of a professional training facility, cooperating with the National Union in conducting professional trainings on a variety of issues, and, in October 2005, the sponsorship of the first East European Regional Conference of the International Association of Prosecutors. The Association also publishes a bulletin on issues of importance to the prosecutorial profession.

Perhaps most significant, however, is the joint development of the Rules of Professional Ethics for Prosecutors [hereinafter *Prosecutorial Ethics Rules*] in cooperation with the National Union. The Prosecutorial Ethics Rules were subsequently adopted by the SJC as the mandatory ethical standards for all prosecutors. The joint work of the Association and the National Union in developing the Prosecutorial Ethics Rules may lead to the unification of the two associations, which would constitute a remarkable development in light of their prior opposition. The Association has also increased its efforts to professionalize its operations and eliminate the perception of favorable treatment for Association members

While the Association is officially independent, several respondents reported that the former Prosecutor General made constant attempts to interfere with the operations of the Association to advance political and personal interests.

The other prosecutors association, the National Union, was founded in 2002 in opposition to the Prosecutor General. Membership in the National Union was strongly discouraged and perhaps even repressed by the Prosecutor General. It never grew beyond approximately two dozen members.

Overall, impressions of the Association were mixed. Many respondents described the Association as an effective representative of the prosecutorial profession, noting, in particular, the many trainings offered by the Association and the development of the Prosecutorial Ethics Rules. Some respondents, however, have mixed feelings regarding the Association, due to the past attempts at interference by the previous Prosecutor General. Some recommended that the Association needs to further improve communication with its members.

Since the change of the Prosecutor General the Association has made notable efforts to increase transparency and introduce reforms. In addition, the Association has made cooperative efforts with the National Union. A possible merger of the two associations is under discussion.

Factor 7: Freedom from Improper Influence

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

Conclusion	Correlation: Negative
<p>The prosecution function is widely perceived as being unable to perform its professional functions without improper interference from prosecutorial and non-prosecutorial authorities, despite legal requirements to the contrary and reported reductions in actual bribe solicitations by prosecutors. Many direct sources report that some prosecutors are subject to improper influence from parties, attorneys, judges, governmental authorities, family connections, and others.</p>	

Analysis/Background:

The independence of prosecutors to perform their professional functions without improper interference from both prosecutorial and non-prosecutorial actors is protected in numerous legislative sources. The primary guarantee of this principle is found in the Constitution, which states that “the judiciary shall be independent. In the performance of the functions thereof, all judges, jurors, prosecutors and investigating magistrates shall be subservient only to the law.” *Id.* art. 117(2).

The JSA echoes this theme in article 13 when it states that, “in the performance of the functions thereof, the judges, jurors, prosecutors and investigators shall be independent and shall be subservient solely to the law.” Additionally, in article 14 the JSA provides that prosecutors, “shall proceed from the law and the evidence collected in the case, judged according to their conscience and free inner conviction.” One finds similar provisions in the CPC, which obliges prosecutors to secure the objective truth (see art. 13) and to base their decisions upon their inner conviction (see art. 14). See *also* CPC arts. 10, 18.

Other laws provide the basis for combating prosecutorial corruption. For example, the Criminal Code states that a person who “entices an official of...the judicial authorities to violate his official duty in connection with the administration of justice shall be punished by deprivation of liberty for up to five years or by probation or public censure.” CPC art. 289. From the other side, the “official who accepts a gift or any other undue benefit, or accepts a proposal or a promise for a gift or benefit, in order to perform or fail to perform an act connected with his service, or because he has performed or failed to perform such an act, shall be punished for bribery by deprivation of liberty for one to six years.” *Id.* art. 301. Further, for bribery committed by a “person holding a responsible official position, including that of a prosecutor,...the punishment shall be...deprivation of liberty for three to ten years, fine of up to 20,000 leva [US\$ 12,500],” and other penalties. *Id.* art. 302.1; see *also* CRIMINAL CODE art. 304a.

Assessing the degree to which the prosecution function suffers from corruption or improper influence is problematic at best, as individuals involved in corruption take every possible step to conceal their activities. This task is further complicated by the striking divergence between the best available quantifications and public perception. For example, based on a recent study that attempts to assess “corruption pressure” in Bulgaria, the prosecution function has seemingly made enormous strides over the past several years. See CENTER FOR THE STUDY OF DEMOCRACY, ON THE EVE OF EU ACCESSION: ANTICORRUPTION REFORMS IN BULGARIA (2006) [hereinafter 2006 CSD STUDY]. Out of 16 targeted occupational groups, prosecutors received the lowest measure of corruption pressure in October 2005, scoring only 1.4%, compared with a score of 12.3% in October 2002. *Id.* at 12. This measure represents the frequency that those persons interacting with prosecutors reported being solicited for money, gifts, or favors.

While this downwards trend is certainly encouraging, it should be noted that this measure does not include political interference, a problem that was widely reported by numerous respondents. For instance, several respondents cited prosecutions targeting political enemies and business interests, such as the prosecution of banking officials in response to political pressure. Additionally, the Center for the Study of Democracy observes that the high rate of corruption pressure on lawyers is probably inflated by instances of corruption initiated by prosecutors, since lawyers frequently find themselves acting as corruption mediators. *Id.* at 13. Coupled with the fact that the measure of corruption pressure for prosecutors probably does not include either unsolicited bribes offered by citizens or survey respondents who yielded to bribe solicitations, the overall frequency of undue interference from all sources is likely much higher.

Another cause for concern can be found in the stark contrast between the low measure for corruption pressure of prosecutors and very negative public perceptions of prosecutorial corruption. In the very same 2006 CSD STUDY, 57.1% of respondents answered that, regarding prosecutors, “nearly all, or most, are involved in corruption.” *Id.* at 14. Out of the 16 occupational groups targeted by the study, this score ranks prosecutors as the third most corrupt profession in Bulgaria. *Id.* at 14. The widespread public perception that the prosecution function suffers from corruption is perhaps just as important as the actual rate of corruption, if not more so. The legitimacy of the legal system overall, and the criminal justice system in particular, rests largely on its acceptance by the public as a fair and impartial mechanism for resolving disputes and enforcing the law. As the representative of the state in criminal proceedings, perhaps the most visible and coercive power of the state, it is essential that prosecutors are perceived to exercise their powers independently and without improper influence from external actors. The arbitrary and partial abuse of the criminal justice power is one hallmark of an autocratic state, thereby

undermining public confidence in the legitimacy of the state, the rule of law generally, and encouraging individuals to accept and resort to bribes as part of the criminal justice system.

The findings of the 2006 CSD STUDY are reinforced by the interviews conducted during the assessment team's onsite visit. Respondents representing all levels of the Prosecution Service, the judiciary, defense counsel, non-governmental organizations, and the media, all reported endemic levels of corruption throughout the prosecutorial system. Respondents described how prosecutors have become "a market", taking money for dismissals or low sentences, or for initiating otherwise unwarranted cases, and that the prosecutorial system had become "poisoned". While most prosecutors diligently uphold the law, even the perception of corruption is sufficient to undermine public confidence in the prosecutorial system.

Several structural issues also raise concerns relating to improper influence. As explored in more detail in Factor 15, on Public Accountability, the Prosecution Service is largely unaccountable to the other branches of government. While this independence should, in theory, reduce interference in the prosecution function, instead, when combined with the strict hierarchy of Prosecution Service, it merely seems to have facilitated the abuse of the prosecutorial power. Indeed, Factor 10, on Discretionary Functions, describes how the structure of the Prosecution Service and strict supervisory controls creates conditions where prosecutorial discretion can be overridden by the inclinations of supervisors.

A second structural issue is the role of the SJC, which is made up of judges, prosecutors, investigative magistrates, and representatives elected by the National Assembly. (See CONSTITUTION art. 130). Several respondents believed that prosecutors, judges, and investigative magistrates, the three components of the judiciary, should be governed by separate councils to eliminate interference in their respective affairs, particularly the appointment, promotion, removal, and discipline of members in each profession.

Recent developments provide some hope that improper influence of the prosecution function may be on the decline. For example, the increased transparency established under the leadership of the new Prosecutor General, along with initial steps to dismiss prosecutors accused of corruption, will hopefully set a new tone for the entire Prosecution Service. However, it is clear that the fight to eradicate corruption from the prosecution function will be lengthy, and should include steps such as enhancing the independence of trial prosecutors and protecting their discretion; developing internal complaint mechanisms; training prosecutors in clear ethical standards, developing effective enforcement mechanisms for such standards; and continuing to increase the transparency and accountability of the Prosecution Service overall.

Factor 8: Protection from Harassment and Intimidation

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>Most prosecutors are satisfied with security at court buildings and at their offices, and incidents of harassment or intimidation seem relatively isolated. Substantial improvements have been made in recent years, but additional resources should be allocated to minimize the risk of attacks.</p>	

Analysis/Background:

Several Criminal Code provisions attempt to protect prosecutors from harassment and intimidation. The murder of a prosecutor carries a sentence of 20 to 30 years imprisonment or a life sentence (art. 116(2); infliction of bodily injury upon a prosecutor carries a sentence of anywhere from 1 to 15 years imprisonment; and anyone using force, threats, or abuse of their authority to coerce a prosecutor is subject to 2 to 8 years of imprisonment.

The focus, however, should be on providing sufficient protection to prosecutors in the first place. The MOJ, acting through a specialized security unit, is responsible for providing security for all judicial system buildings; for physically protecting as necessary magistrates and witnesses; for maintaining order in court facilities; for assisting judicial authorities in both service of summonses and execution of judgments against property; for securing the appearance of persons by compulsory process where warranted by a judicial authority; and for escorting criminal defendants to court proceedings. See JSA art. 36e; see also *MOJ Structural Regulation* art. 30 and Appendix thereto (providing for 1,155 persons in this security unit). According to the MOJ, its budget for this unit was 16,227,911 leva (US\$ 10,142,438) in 2005 and is 20,026,863 leva (US\$ 12,516,789) in the current year. The MOJ says it has responsibility for 98 court buildings, and assigns an average of four security guards to each building. The other members of the unit handle the remaining functions described above. A total of 14 court buildings have a combined 19 metal detectors. It is unclear whether guards in the other 84 courthouses have hand-held “wands” or use other forms of search and detection procedures to inspect persons and bags entering the building.

There is definitely a degree of security in the Bulgarian courthouses and prosecutorial offices, but there is room for improvement. All judicial buildings visited by the assessment team had court police positioned at entrances, and persons entering had to pass through a metal detector and provide identification. Briefcases, bags and similar items did not go through the metal detector, but were placed on a table for inspection by a guard. In most cases, these items were duly, if not thoroughly, searched, but on a couple of occasions (when there was a line of persons waiting to enter) the inspection was cursory or nonexistent. It would have been useful, especially at busy times, to have scanners with conveyor belts for inspection of carried bags. Most buildings had separate guarded entrances for judges, attorneys and other official court personnel, as well as their guests, who were allowed to pass without inspection upon showing identification. Once inside the building, there was typically little visible security in the hallways or in/outside the courtrooms. In the Palace of Justice, there was a guard at each entrance leading to the building wings housing the offices of judges, prosecutors and key administrators. In other courthouses visited by the team, there might be a similar guard post controlling access to office areas; yet in different buildings, anyone able to get through the entrance could walk into a prosecutor’s office without passing through further security.

While some prosecutors cited isolated instances of intimidation and harassment directed against their colleagues, such cases seem to have been more prevalent in the past when security was

not as tight. For example, one prosecutor described how, several years ago, her daughter was followed from school by a man in a Mercedes, whose description matched a visitor who walked into her office to inquire about one of her active cases against a crime group. The visitor was able to enter her office unchallenged and unannounced, as no police or guards provided prosecutorial security at the time. A more common problem is the reporting of false allegations of wrongdoing against a prosecutor in order to have the case transferred to a more sympathetic or agreeable prosecutor, presumably for the purpose of bribery.

As is true in most countries, it appears that security is generally sufficient, although efforts should be undertaken to continue measures that further enhance security for prosecutors.

Factor 9: Professional Immunity

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

Conclusion	Correlation: Positive
<p>Prosecutors have immunity while conducting their official duties, unless their actions constitute an intentional indictable offense. While the functional immunity provided to prosecutors seems fairly balanced, the SJC may not be the most effective mechanism for assessing requests to waive immunity.</p>	

Analysis/Background:

Amendments made to the Constitution in 2003 restricted what had been criticized as overly broad immunity for prosecutors but preserved their right to “functional” immunity. The current provision reads that, “[u]pon exercise of judicial power, judges, prosecutors and investigating magistrates shall not incur criminal and civil liability for the official actions thereof and for the acts decreed thereby, except where what is done shall be an intentional offense at public law.” See art. 132(1). With this change, prosecutors are still protected from both prosecution and civil lawsuits for their official actions and statements, but are responsible for their personal, non-official behavior.

Further, even where an intentional offense at public law is allegedly committed by a prosecutor, a charge may not be brought against him/her without authorization from the SJC. *Id.* art. 132(2). In addition, a prosecutor may not be detained except for committing a “grave” crime (any crime punishable by more than 5 years of imprisonment, life imprisonment, or life imprisonment without substitution) (see CRIMINAL CODE art. 93), and then only with the SJC’s approval. *Id.* art. 132(3). Prior SJC authorization for detention is not required when the prosecutor is caught in the act of committing the grave crime. Authorization for waiver of immunity may be granted by the SJC on the request of the Prosecutor General or at least one-fifth of the members of the SJC. *Id.* art. 132(4); see also JSA arts. 27(1).6, 134; *SJC Work Regulation* arts. 6(1).9, 49-50. The SJC will remove a prosecutor against whom public prosecution criminal proceedings have been brought pending the outcome of the case, with the prosecutor entitled to reinstatement and back pay if the proceedings are terminated or result in acquittal. JSA art. 140.

Most respondents seemed satisfied with the balance struck by the changes in the 2003 constitutional amendments. The only criticism is whether the SJC can be an effective mechanism for overseeing requests to waive a prosecutor’s immunity. Several respondents noted that only one prosecutor has had his immunity waived by the SJC, and while the amendments have only been in effect for a few years, questions have been raised about the SJC’s effectiveness as a disciplinary body. See Factor 19 on Removal and Discipline.

III. Prosecutorial Functions

Factor 10: Discretionary Functions

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

Conclusion	Correlation: Neutral
<p>Although prosecutors have full discretionary powers under the law, in practice their discretion is often eclipsed by the decisions of supervisors that have created an environment in which subordinate prosecutors fail to exercise discretion and adequately manage investigations under their control.</p>	

Analysis/Background:

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

If the prosecutor decides not to initiate pre-trial proceedings or motions the court to suspend or terminate existing criminal proceedings, he/she is obliged to notify victims and the accused of his/her actions. See CPC arts. 213, 243-244. Victims have the right to appeal the prosecutor’s decision to the upper level prosecutor or the criminal court. See CPC arts. 243-244. According to at least one respondent’s estimate, in his region roughly 30% of victims file such an appeal each year. In only 10% of those cases is the prosecutor’s decision overturned or revoked. Unfortunately, no national statistics are available regarding the number or percentage of victims’ appeals or their final outcome.

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

The JSA confirms the same type of authority in the prosecution office. The prosecutor is the chief of the investigation and is responsible for presenting formal criminal indictments to the court. The prosecutor makes charging decisions by inner conviction, which shall be based on the objective, comprehensive and complete investigation of all circumstances relevant to the case, taking the law as guidance. See JSA art., 118-119. Prosecutors are independent of the court in performing their duties. *Id.* art. 117.

The JSA also describes the functional structure of the office. According to article 111, the prosecutors office, “consist[s] of a Prosecutor General, a Supreme Prosecution Office of Cassation, a Supreme Administrative Prosecution Office, appellate prosecution offices, military appellate prosecution offices, district prosecution offices, military district prosecution offices, and regional prosecution offices.” The Prosecutor General directs all the operations of the office ensuring that they are integrated and centralized, and, that caseloads are organized and distributed. *Id.* art. 112.

Each prosecutor is also subordinate to an immediate supervisor. *Id.* art 114. Chiefs of the subordinate offices to the Prosecutor General “organize and direct the operation of the [subordinate] offices.” *Id.* art. 114(4). According to article 115, the Prosecutor General and those prosecutors of the appellate and district level offices are required to conduct audits and are specifically obliged to control the work of the inferior prosecution offices. Article 116 provides that a superior prosecutor may stay or revoke the directives of subordinate prosecutors provided the stay or revocation is in writing. A supervisors’ written order is binding on the subordinate.

Although subordinate prosecutors are permitted by law to make their own decisions regarding criminal investigations and charging (assuming the decisions are properly motivated), in practice they often do not. Most respondents indicated that subordinate prosecutors tend to lack independence of action and thought. Many simply rely on the instruction of supervisors. For many years, the culture of the office was very hierarchical and discouraged independence of action. Prosecutorial discretion was subordinated to the instruction of supervisors. Often, this “top-down” style of instruction meant that cases were influenced more by supervisors’ proclivities and needs than by proper motivation based on fact and law. Over several years of this practice, subordinate prosecutors learned to implement the supervisors’ counsel or instruction without question.

Nearly all of the respondents believed that neither outside governmental officials nor business representatives directly approached a subordinate prosecutor to influence his or her decision on a particular investigation or case. However, there was wide speculation that supervisory prosecutors could have been improperly influenced, and as a result, did improperly impact the discretion of subordinate prosecutors. Many respondents believed that the Office of the Prosecutor General engaged in selective and targeted prosecution for political or economic interest, although these same respondents believed that the situation has improved since the arrival of the new Prosecutor General. They also stated that at times the Office took no action in some criminal cases supported by thorough investigations and compelling facts.

Since the arrival of the new Prosecutor General, the perception of improper influence of prosecutors’ discretion has waned. Although there may still linger a culture of lack of independence, and a perception of excessive supervisory control, things seem to be changing. Most respondents agreed that the line between usual discussion of cases with senior prosecutors and chiefs to ascertain a best strategy, and that of improperly impacting a prosecutor’s discretion is being respected more and more. A more appropriate supervisor-subordinate relationship is emerging. Nevertheless, the hierarchical culture of the institution remains strong, and prosecutors generally do not act with the discretion afforded them in law.

Factor 11: Rights of the Accused

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

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

Conclusion	Correlation: Neutral
Even though prosecutors generally respect the rights of the accused, they often fail to exercise sufficient control over the criminal investigation to ensure that all evidence, especially exculpatory evidence, is collected before the indictment is delivered.	

Analysis/Background:

According to article 11 of the CPC, any person who is part of the criminal proceeding is deemed equal before the law. The court and all pre-trial bodies are obliged to accurately and equally apply the law to all citizens. See, CPC art. 11. Moreover, the goal of all criminal proceedings is to discover the objective truth while affording equality of arms before the court. *Id.* art.12.

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

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

The prosecution has several responsibilities in criminal investigations and cases that impact the accused's rights. First, in publicly actionable cases it assumes, with the investigators, the burden of proof to demonstrate the occurrence of a crime and the culpability of the accused. *Id.* art. 103. Second, pursuant to CPC articles 196 and 226 the prosecutor is to guide and supervise the investigation, constantly controlling its progress, lawfulness and removing investigator(s) or evidence collected that is unlawful. He or she must certify that the collection of evidence was lawful, objective, complete and comprehensive and upon finding any evidence was unlawfully obtained, remove it and conduct his/her own investigation to obtain the truth. Finally, Article

107(3) of the CPC instructs all investigative bodies to collect and verify both inculpatory and exculpatory evidence to ensure the objective truth is obtained.

Prosecutors may be subject to disciplinary action for failure to discharge their duties as described in the CPC. See JSA art. 168. The disciplinary sanctions in such cases could include reprimand, censure, demotion or dismissal. *Id.* art. 170. Under the State Responsibility Act, the accused may sue the Prosecutor General's Office for financial and psychological damages sustained due to a violation of rights' (usually related to illegal or improper detention) upon the formal termination of the pre-trial proceedings or a court finding of not guilty.

The assessment team received no information that explicitly demonstrated prosecutors knowingly used evidence that was obtained in violation of the accused's human rights. Although most respondents agreed that prosecutors did not violate the accused's rights at trial, most believed that prosecutors failed to adequately command the pre-trial investigation. First among their concerns is that prosecutors do not demand that exculpatory evidence is pursued or collected with the same effort as inculpatory evidence. Some respondents also criticized prosecutors for manipulating identification line-ups or in being negligent in addressing complaints that police unfairly conducted line-ups. Many argued that in the past investigations were needlessly prolonged by prosecutors over-zealous in their futile attempt to obtain evidence of the accused's guilt. Several respondents cited the European Court of Human Rights decision in *Assenov and Others v. Bulgaria* No.24760/94 Eur. Ct. H.R. (1998), criticizing the Office of the Bulgarian Prosecutor General for failure to investigate and take action in cases where the accused were tortured in custody. As described in Factor 10 above, some respondents felt that the Office often engaged in selective prosecution, usually against opponents of the former Prosecutor General. Finally, the research team received at least one report of prosecutors receiving bribes from the accused in return for termination of proceedings or a reduced sentence recommendation.

Despite these criticisms, most respondents were keen to point out that the situation has improved since the arrival of the new Prosecutor General in 2006. There now appears to be far less tolerance for partiality and prosecutors are expected to properly control investigations. Most respondents believed that the majority of prosecutors now are impartial and properly motivated.

Factor 12: Victim Rights and Protection

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

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

<u>Conclusion</u>	<u>Correlation: Negative</u>
<p>Prosecutors do not receive significant training on victims' rights and concerns. They do not interact regularly with victims, leaving to other criminal justice system institutions the responsibility to inform victims of their rights and of the status of pre-trial and court proceedings. As a result, prosecutors are often perceived to be insensitive to the needs of victims. There is no national victims' compensation law or compensation system.</p>	

Analysis/Background:

In Chapter 8, article 75 of the CPC, the rights of the victim are as follows:

“(1) In addition to the rights he/she acquires in the event of being constituted as private prosecutor, private complainant or civil claimant, the victim shall also have the following rights: be informed of his/her rights within the criminal proceedings; obtain protection with regard to his/her personal safety and the safety of its close relatives and acquaintances; be informed of the progress of criminal proceedings, where he/she has expressly requested so and has provided an address for the service of process in this country; take part in the proceedings in accordance with the provisions herein made; file appeal from the acts resulting in the termination or suspension of criminal proceedings.

(2) The court and pre-trial authorities shall be obligated to explain to the victim what his/her rights are and allow him/her the opportunity to exercise these in compliance with the stipulations herein set forth.”

The investigating magistrate or MOI *doznatel* (police investigator) typically inform victims of their rights and the progress of the pre-trial phase of the investigation. The court apprises victims of proceedings and rights during the trial phase. *Id.* art. 255. The prosecutor does not interact significantly with victims during the pre-trial and trial phases and does not consult with them on the proceedings or decisions in the case.

However, the law does provide for the victim to intervene in court proceedings as a *private prosecutor*. The victim as *private prosecutor* may appeal decisions of the prosecutor to terminate the criminal proceedings. As discussed in Factor 10, the victim may also appeal the decision of a prosecutor not to initiate an investigation or bring charges. *See also*, CPC arts. 213, 243-244.

The victim as *private prosecutor* may also enter his/her participation by oral or written motion to the court at the beginning of court proceedings. *See* CPC art. 77-78. The *private prosecutor* also has the following rights: “to examine the case-file and obtain the excerpts he/she needs; to produce evidence; to take part in court proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court where his or her rights and legal interests have been infringed upon.” *Id.* art. 79. Pursuant to CPC article 100 and article 23 (2) of the Legal Aid Act, no cost legal aid may be available to a victim as *private prosecutor* assuming the victim is indigent and the interests of justice require. LEGAL AID ACT, *promulgated*, SG No.

79/4.10.2005, *effective* 1.01.2006, *amended*, SG No. 105/29.12.2005, *effective* 1.01.2006, SG No. 17/24.02.2006, *effective* 1.05.2006, SG No. 30/11.04.2006, *effective* 12.07.2006. Otherwise, the victim must retain counsel at his or her own expense.

The victim may also bring criminal charges against a perpetrator for certain crimes enumerated in the Criminal Code. In this circumstance, the victim is a *private complainant*. The victim must file a written complaint in the court of first instance. A private complaint action may only be taken against those lesser crimes enumerated explicitly in the Penal Code. See PENAL CODE arts. 161, 175, 193a, 218c, 348b.⁴

The complaint must be filed within six months of the victims' knowledge of the occurrence of the criminal offence or within six months following notice or termination of proceedings from the prosecution. See CPC art. 80-81. Article 82 of the CPC describes the rights of the *private complainant* as follows: "...rights: to examine the case-file and obtain the excerpts he/she needs; to produce evidence; to take part in court proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court which infringe upon his or her rights and legal interests, and to withdraw his/her complaint." Both the *private complainant* and the accused are entitled to assistance from the MOI in the collection of information. *Id.* art. 83.

Victims (including affected heirs or legal persons) may also file a civil claim of action for damages in criminal proceedings (*civil claimant*). The claim must be filed only at or near the commencement of the trial by oral or written motion. The motion must describe the nature and amount of compensable damages caused by the criminal defendant or any others who could be held liable. The victim as *civil claimant* has similar rights to a *private prosecutor* or *private complainant* in defending his or her claim at trial and to demand a security for the claim. The victim may appeal the decision of the court except in the instance where the proceedings are terminated. The victim may not bring a simultaneous action in civil law until proceedings are concluded. See CPC arts. 84-88. A victim may file a claim in civil court but not contemporaneously with a claim filed in accordance with the CPC.

In those instances where the case is resolved by agreement (plea bargain) under CPC Chapter 39, the victim is permitted limited rights. If the agreement is reached during pre-trial proceedings the victim is notified of the agreement by the court, "with the instruction that they can file a civil claim for immaterial damages before a civil court." *Id.* art. 382(10). However, a victim's written consent is required when he or she is a party (*private prosecutor* or *civil claimant*) during **trial** proceedings concluded by agreement. *Id.* art. 384.

There is no national victims' compensation law in Bulgaria. The MOJ has convened a working group to draft a comprehensive victims' compensation law, which should be submitted to the Parliament in the fall of 2006. As such, those victims whose perpetrator is unknown or who do not specifically request compensation by their own motion at the criminal trial receive no assistance or compensation from the criminal justice system. The judge does not have the discretion to grant compensation without a motion by the victim in the capacity of a civil plaintiff. (For the procedure in cases of an Agreement, see, CPC art. 381(3) and 382 (10)). In either case, the order of compensation or restitution may occur months or years after the commission of the crime.

Concerning victims' safety, article 67 of the CPC allows for the physical protection of the victim through a court imposed stay away order. A first instance court may prohibit the accused from

⁴ According to articles 48, 49 and 50 of the CPC, the prosecutor may join or institute criminal proceedings *ex officio* when otherwise brought by the victim if the victim is in a "helpless state or dependency upon the perpetrator of the crime, [and] cannot defend his or her rights and lawful interests." The action must be brought in a timely manner, and in accordance with pertinent CPC provisions.

directly approaching the victim. The victim must first request the court, or consent to the prosecutor's motion, to receive this protection. The court then conducts a hearing on the motion at which the accused is also heard. The stay away order remains in effect until the conclusion of the criminal proceedings unless earlier, but only upon the request of the victim to repeal the order.

As further explained in Factor 13, article 123 of the CPC and the Protection Act (cited fully below and at Factor 13) describe the procedure for witness protection. Official protection measures may be provided to a victim or witness upon request to the court by the prosecutor with the witness' consent or by the judge. Court ordered victim or witness protection is granted only in cases where there is sufficient evidence of a substantial threat to life, health or property of the witness, his family or friends and is granted only for a temporary period. See *also*, PROTECTION OF INDIVIDUALS AT RISK IN RELATION TO CRIMINAL PROCEEDINGS ACT, *promulgated*, SG No. 103/23.11.2004. [hereinafter PROTECTION ACT].

The victim is not apprised of the release of the sentenced defendant, even in cases involving sexually violent offenders and pedophiles. The victim is not consulted in the circumstance where early release is considered, despite the fact that the prosecutor is a part of the decisions affecting early release of convicted criminals. CPC art. 437.

There was consensus among respondents not employed in the Prosecution Service that victims' concerns and needs are not well served by prosecutors. Law schools and continuing legal education courses lack focus on victims' rights and concerns. Respondents in the NGO community stated that prosecutors are perceived as not being sensitive to victims, particularly victims of domestic violence and sexual assault. Often there are no suitable locations for the prosecutor to interview a victim of sexual abuse or other crimes of a deeply personal nature. According to the NGO respondents, domestic violence cases are not considered important by the majority of prosecutors.

Few victims afford themselves of their rights as private prosecutor or civil complainant. Fewer still attempt to retain counsel from the state, even if they are indigent. Obtaining free legal counsel is reported to be difficult at best. Official victim/witness protection services are rarely used. See *generally*, Factor 13.

Among those prosecutors responding to this factor there was a view that police and the court were traditionally and exclusively responsible for ensuring victims' rights. In their view, the prosecutor usually did not have a significant role vis-à-vis the victim at law. Many cited excessive workloads as chief among reasons for their lack of interaction with victims. However, most believed that with the new CPC prosecutors will assert a greater role in all aspects of the investigation, including victims' issues. Senior level prosecutors have developed special instructions for interviewing victims and witnesses, but they are not accompanied by training on sensitivity to victims' and witnesses' needs and concerns. The new culture of the office also suggests prosecutors will have a more active role leading the investigation and in being responsible for the rights of victims.

Factor 13: Witness Rights and Protection

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

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

Conclusion	Correlation: Negative
<p>Prosecutors also do not receive significant training on witnesses' rights and concerns. They do not significantly interact with witnesses, leaving to other criminal justice system institutions the responsibility to inform witnesses of their rights, obligations and of the status of pre-trial and court proceedings. State sponsored witness protection programs exist but are infrequently used.</p>	

Analysis/Background:

As noted in Factor 12, prosecutors typically defer to the investigating magistrate or *doznatel* (police investigator) to inform witnesses of their rights and the progress of the pre-trial phase of the investigation. The court usually apprises witnesses of trial proceedings and their rights at trial. As in the case of victims (with the possible exception of expert witnesses), the prosecutor does not interact significantly with witnesses during the pre-trial and trial phases and does not usually consult with them on the proceedings or decisions in the case.

The CPC describes the rights and obligations of witnesses during the investigation and trial. Articles 121 and 122 afford witnesses the protection against self-incrimination and the right to refrain from giving information that may tend to incriminate close relatives, spouses, or household members. Witnesses are also not required to reveal information they received from their clients in their capacity as legal counsel. CPC art. 121 (2). The investigating entity must apprise the witness of these rights under CPC article 139 prior to the interrogation. The witness may consult an attorney in the event that he/she believes he/she could incriminate himself or his close relatives, etc. *Id.* art. 122(2). Investigators and/or the court must honor the request for an attorney in this event, and suspend the witness interrogation. Witnesses are entitled to lost wages and expenses during the period they provide information or testimony. *Id.*, art. 139.

Under most circumstances the witness is compelled to provide all information and testimony he/she possesses to investigative authorities or the court. *Id.* art. 120. The CPC provides exceptions to those individuals, "who on account of physical or mental deficiencies are unable to properly perceive the facts of significance in the case, or give reliable testimonies about them." *Id.* art. 118. Similarly, "spouses, ascendants, descendants, brothers, sisters of the accused party and the individuals with whom he/she lives together may refuse to testify." *Id.* art. 119. In all other circumstances, the witness must submit to the request of the investigative authority or court. Failure of a witness to appear before a court or investigative authority to provide information or testimony could result in the issuance of a warrant and fine. *Id.* art. 120. Pre-trial investigation interviews are conducted by the investigator and usually occur at his/her office. S. 112 *Instructions on the Work of and Interaction Between Preliminary Investigation Authorities* [hereinafter *Instructions*]. Until the Supreme Administrative Court ruled in July 2006 that a witness may be represented by counsel at the interview, witnesses could be interviewed by the state without their counsel being present. See, Supreme Administrative Court of the Republic of Bulgaria, Decision No. 8210, 7/20/2006.

Special procedures for interviewing juvenile witnesses are described in the Instructions at S. 118 and in article 140 of the CPC. A witness under age 14 must be interviewed in the presence of a pedagogue or psychologist and, if necessary, also in the presence of the parent or the guardian.

“[T]he investigator shall also allow for the presence of those [same] individuals at the interview with a juvenile witness (aged 14 to 18) and enable them to ask questions to such a witness. The investigator shall advise the minor witness of the need to give truthful testimony, without warning him of criminal liability.” *Instructions*, S.118.

The act and procedural law provisions regulating state provided witness protection are the PROTECTION OF INDIVIDUALS AT RISK IN RELATION TO CRIMINAL PROCEEDINGS ACT, *promulgated*, SG No. 103/23.11.2004, [hereinafter PROTECTION ACT] and CPC art. 123. The Protection Act establishes a Bureau for the Protection of Individuals at Risk within the MOJ. See PROTECTION ACT art. 14(1). In article 13 (1), a Protection Board, reporting to the Minister of Justice, implements the Program for Protection. The Board receives applications for witness protection from the District Prosecutor or the judge (or ex-officio, from the witness or supervising prosecutor, et al), and the Bureau implements the decisions of the Board. *Id* art. 15(1).

The services provided by the Program for Protection include the following: “1. Personal physical protection; 2. Property protection; 3. Provisional placement in a safe location; 4. Change in the place of residence, workplace, or educational establishment or placement in another facility for the service of a sentence; [and] 5. Change of identity.” *Id*. art. 6(1). The Program for Protection can also provide *inter alia*, legal, financial, and medical assistance. *Id*. art. 6(5). Under CPC article 141, the court may initiate special measures to ensure that protected witnesses are not exposed during the trial process, especially when giving testimony.

As indicated in Factor 12, witnesses’ rights and concerns are not emphasized by prosecutors. Law schools and continuing legal education courses tend not to address issues affecting witnesses. Police and judges are still assumed to be responsible for informing witnesses of all proceedings and rights. Prosecutors are perceived to have absented themselves from most interactions with witnesses. As a result, few witnesses afford themselves of their rights to protection or counsel. For example, since its inception in 2005, very few victims or witnesses have been afforded services authorized in the Protection Act.

Among those prosecutors responding to this factor there was a general view that police and the court were traditionally and exclusively responsible for notifying and ensuring witnesses’ participation and rights. Some complained that witness trial preparation and interviews, when they occurred, were hampered by a lack of office space, exposing the witness (or victim) to relate his/her story in front of several prosecutors working in one room. Excessive workloads also were blamed for prosecutors’ lack of attention to witnesses’ concerns. As discussed in Factor 12 most believed that with the new changes in the CPC and office leadership, prosecutors will assume a more dominant role in all aspects of the investigation, including witness concerns.

Factor 14: Public Integrity

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

Conclusion	Correlation: Negative
<p>Although there is a recent focus on anti-corruption measures that is promising, the considerable volume of cases and the impact of the relative lack of attention to corruption acts in the recent past threaten to overwhelm efforts to combat arguably the most intractable crime problem in Bulgaria</p>	

Analysis/Background:

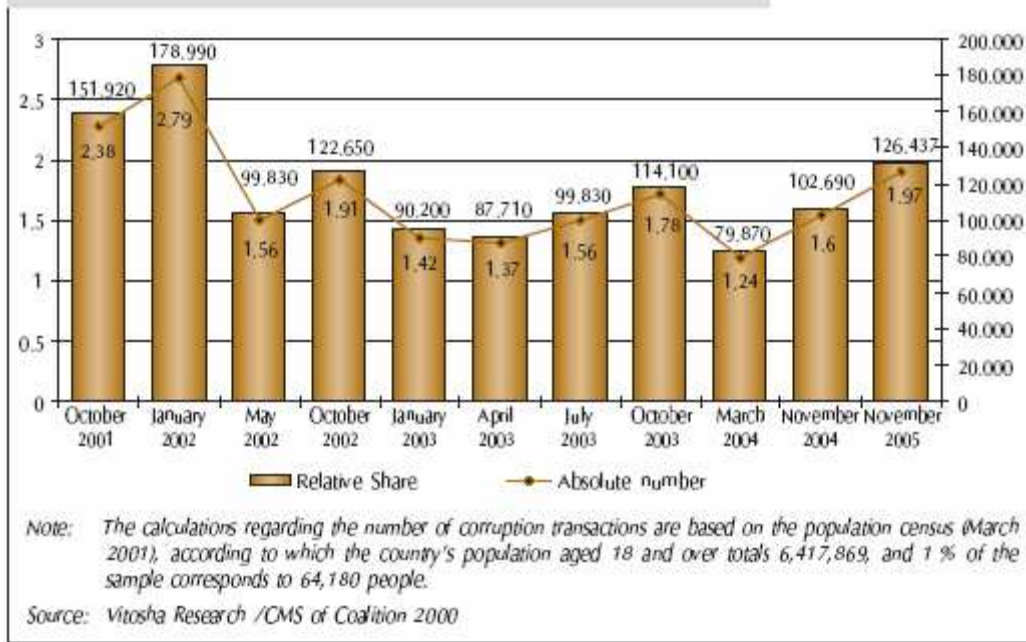
Public corruption is among the most critical and intractable problems facing Bulgaria. Most Bulgarians perceive corruption as endemic. Public opinion surveys in 2004 and 2005 indicate that corruption ranks third among the major social issues facing the country, even above other crime, poverty and drug abuse. In opinion surveys conducted between 2002 and 2005, nearly 60% of the population believes that judges, prosecutors and police are involved in corruption while slightly more than ½ believe that local and national political leaders are corrupt. See 2006 CSD STUDY at 14, 16. In its May 2006 monitoring report, the EU Commission cited the fight against corruption as among the eight most critical issues affecting Bulgaria and requiring the most urgent reform prior to accession to the EU. *“Commission Staff Working Document, Bulgaria, MAY 2006 MONITORING REPORT, COMMISSION OF THE EUROPEAN COMMUNITIES, 16/05/2006, p.5 [hereinafter EU MAY 2006 MONITORING REPORT].*

The Center for the Study of Democracy (CSD), a Bulgarian interdisciplinary public policy institute and the Coalition 2000, an initiative of Bulgarian NGOs committed to combating corruption of which the CSD is the Secretariat, have published numerous reports over the past several years concerning corruption trends and governmental institutions’ response. In the above cited report, the CSD lays out the magnitude of the problem and the response from police and the prosecution.

In the period 1999-2000, Coalition 2000 and CSD reported that the average monthly number of corruption transactions in Bulgaria approached or exceeded 200,000. CORRUPTION TRENDS AND ANTI-CORRUPTION IN BULGARIA 1998-2006, COALITION 2000 AND THE CENTER FOR THE STUDY OF DEMOCRACY, at 3. During the period October 2001 through November 2005, CSD found that the number of corruption transactions for a given monthly period exceeded 178,000 at its peak (January 2002) and dipped to below 79,000 at its lowest level (March 2004). In November 2005, the last month included in the CSD report, the number of corrupt transactions was 126,437. 2006 CSD STUDY at 9. See *also* Chart 1.⁵

⁵ For a methodological description of the survey instruments used in these reports, see CSD and Coalition 2000, CORRUPTION TRENDS AND ANTI-CORRUPTION IN BULGARIA at 2 (2006), and 2006 CSD STUDY at 5, 9.

CHART 1. AVERAGE MONTHLY NUMBER AND RELATIVE SHARE OF CONCLUDED CORRUPTION TRANSACTIONS



Over the period 1998-2005, the response from law enforcement and the Office of the Prosecutor General was mixed. To be sure, criminal investigative proceedings and trials for crimes typically associated with corruption, i.e., bribery, embezzlement and crimes relating to official capacity, took place. As described below, the Office of the Prosecutor General has a detailed and redundant system to manage corruption cases.

Chapters 2 and 3 of the *Instructions* describe the intricate procedures for the investigation and prosecution of corruption and corruption related cases. In these types of cases, multiple levels of investigation and supervision occur. Most embezzlement cases are supervised by prosecutors from the Regional Prosecution offices. *Instructions*, S. 32(6). Most bribery cases are supervised by prosecutors from the District Prosecution (and Sofia City Office) offices. *Id* S. 34(8). In both cases, the assigned “prosecutor must:

1. Perpetually manage and oversee the timely and good-quality investigation, inter alia by visiting once a week the relevant investigation service, regional Directorate of Interior or local police station and scrutinizing the progress of the investigation on the spot;
2. In the event of any omissions found, insert in the warrant to institute the criminal proceedings specific directions and time limits for the rectification of those omissions;
3. Approve an investigation time schedule and oversee compliance therewith;
4. Notify forthwith the superior prosecution office that the case has been placed under special supervision and, if the same case is also placed under special supervision by the superior prosecution office, provide monthly detailed statements on the progress of the investigation (in the event of inquisition, such information is to be provided every seven days); notify the superior prosecution office of the final result by forwarding thereto the relevant prosecutorial act;

5. Decide the case on the merits and, if possible, participate in the trial at the relevant court, unless he is objectively prevented from doing so." *Id.* S. 39.

In addition, the Appellate Prosecution Office for the District or Region must open a special supervisory file. *Id.* at S. 36(1)(2). An appellate prosecutor is then assigned to the case. According to *Instructions* S. 40 and 41, "The prosecutor in charge at the appellate prosecution office must:

1. Notify forthwith the Investigation Department of the Supreme Prosecution Office of Cassation and the relevant lower prosecution office that the case is placed under special supervision at the appellate prosecution office;
2. Stay in constant contact with the prosecutor directly in charge of the case at the lower prosecution office, control, manage and assist in the good-quality and timely completion of the investigation;
3. Provide, every other month, the Investigation Department of the Supreme Prosecution Office of Cassation with information on the progress of the investigation;
4. Participate in the trial at the court of appeal, unless he is objectively prevented from doing so.

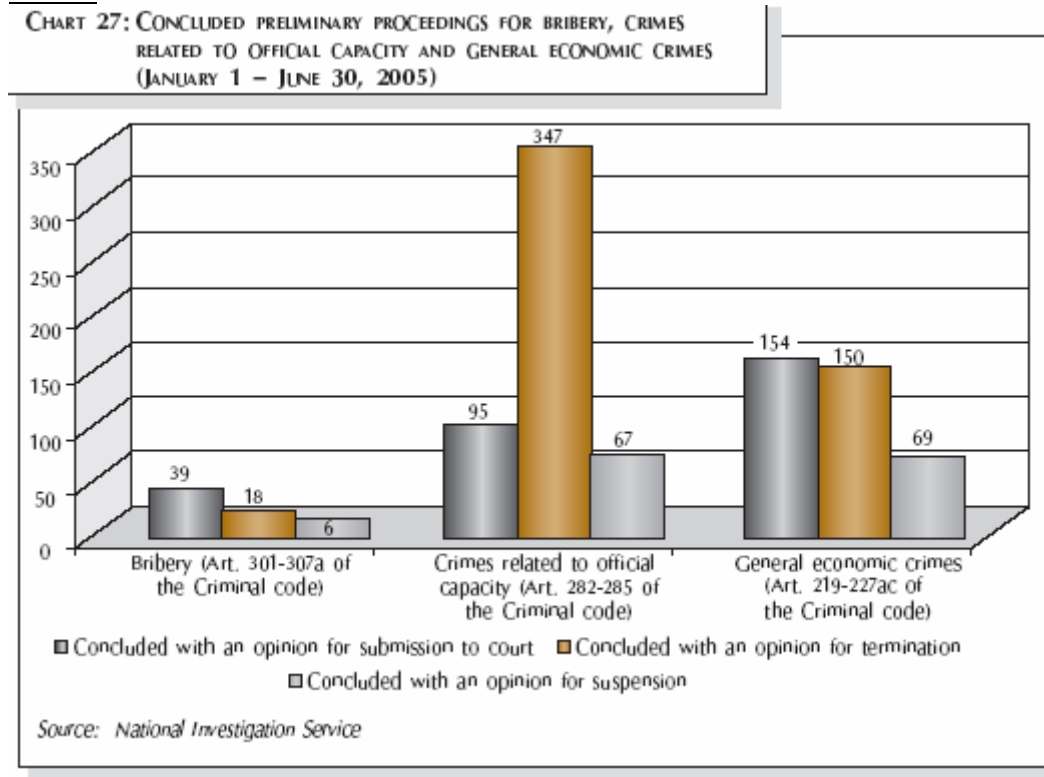
S. 41. The appellate prosecutors shall provide the Investigation Department of the Supreme Prosecution Office of Cassation, every six months, with collated information about the progress of the investigation of cases..."

Finally, the Supreme Cassation Prosecution Office and the Investigation Department of the Prosecution Office must initiate a supervisory file. *Id.* S. 37. The assigned Supreme Cassation prosecutor must coordinate and manage the case with the lower prosecution offices issuing opinions on the lawfulness of warrants and on the direction of the proceedings. *Id.*, S. 42. The Investigation Department must coordinate with the MOI and the NIS to conduct a status review of the supervisory file every six months. *Id.* S. 43(2). Meanwhile, the NIS is required to specially supervise those cases under the purview of the Investigation Department of the Supreme Cassation Prosecution Office and the MOI is to provide organizational assistance as needed. *Id.* S. 44, 45.

Despite this elaborate system for managing and controlling the quality of corruption related cases, according to the CSD report published in 2006, the number of successful investigations, trials and convictions, especially in 2005, did not keep pace with the actual number of corruption incidents. For example, in the first nine months of 2005 prosecutors initiated 1,452 investigative proceedings for corruption crimes, while another 2,877 were concluded or terminated, and 604 indictments were submitted to court. Of those preliminary proceedings initiated, only 33.9% were for crimes traditionally associated with grave official corruption, namely, embezzlement and bribery. In 2003 and 2004 respectively, the Prosecutor General's Office issued 46 and 77 indictments for bribery. From January to September 2005, the number of indictments for bribery was 79. 2006 CSD STUDY at 67-68. Only 35 indictments were filed against high-level politicians during the period 1999-2005. During the same period, only three convictions were made final against civil servants charged with a corruption related offense. EU MAY 2006 MONITORING REPORT at 8.

The CSD research below provides a statistical overview of the corruption cases in the criminal justice system. See Chart 2.

Chart 2.

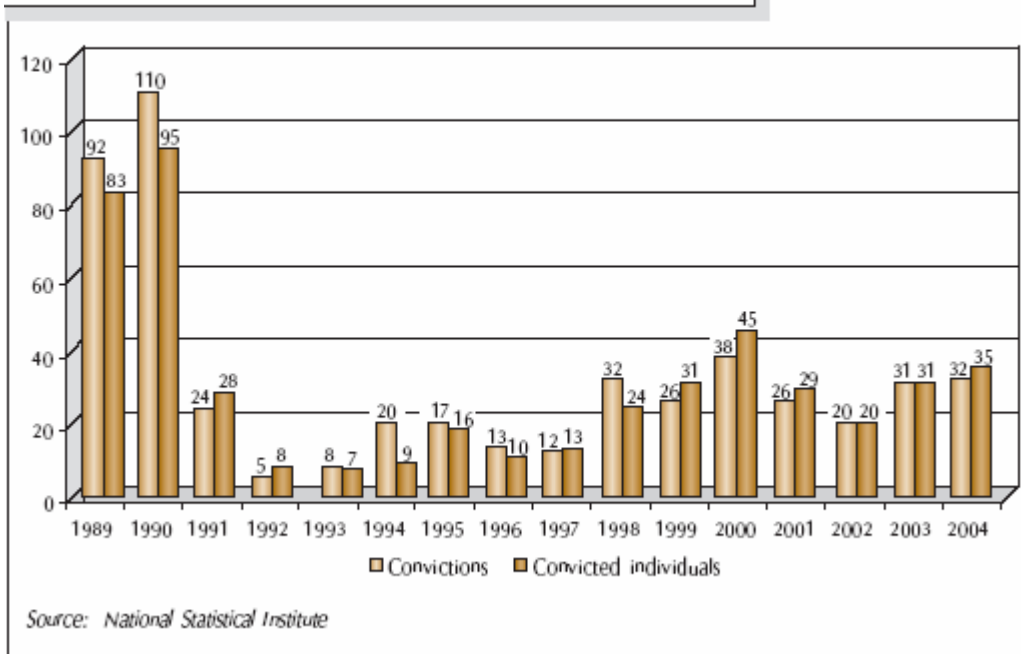


2006 CSD STUDY at 66.

Convictions and sentences for corruption crimes are relatively few and the punishments not severe. For instance, in the first half of 2005, the number of persons convicted for bribery and crimes related to official capacity was 72. The overwhelming majority of those convicted received punishments of three years or less. See Charts 3 and 4 below.

Chart 3.

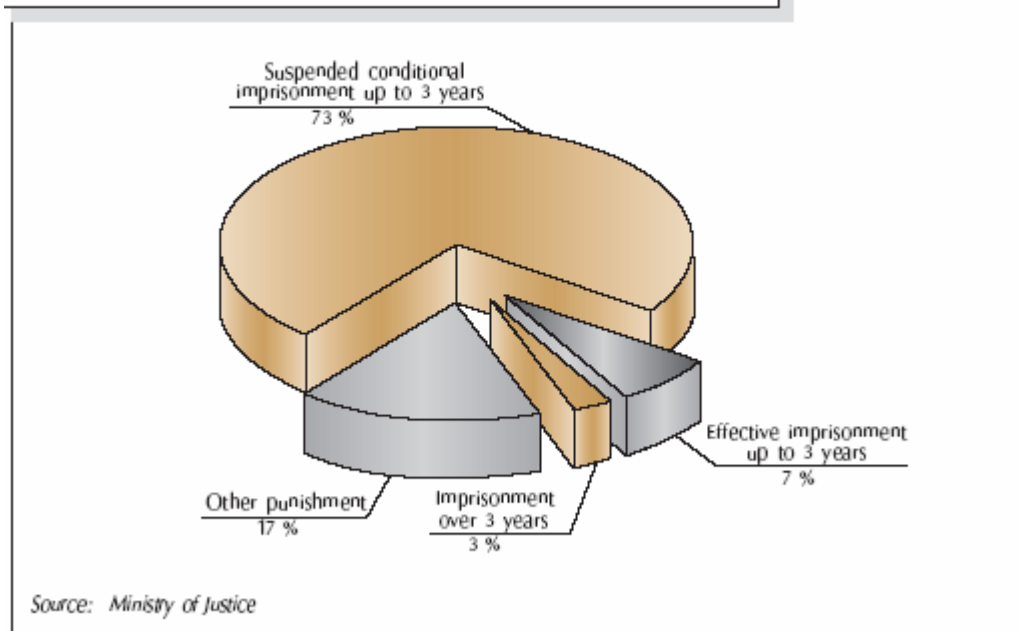
CHART 23: NUMBER OF CONVICTIONS AND NUMBER OF CONVICTED INDIVIDUALS FOR BRIBERY (1989 – 2004)



Id. at 63.

Chart 4.

GRAPH 26: PUNISHMENTS IMPOSED FOR BRIBERY AND CRIMES RELATED TO OFFICIAL CAPACITY (JANUARY – JUNE 2005)



Id at 64.

As described in other factors, office hierarchy, formalism, and a lack of commitment to combating corruption from the leadership at the Office of the Prosecutor General may have contributed to the dichotomy between the volume of corruption, and its investigation and prosecution. Nevertheless, promising reforms have been implemented in 2006. In late March, the new Prosecutor General formed a specialized anti-corruption unit in the Supreme Cassation Prosecution office targeting corruption, organized crime and money laundering. In addition to investigating new complaints, prosecutors in the unit are currently reviewing thousands of terminated investigations. New anti-corruption units have also been established in each of the 28 District Prosecution offices. For each of these units, three to five prosecutors have been assigned.

Other significant anti-corruption efforts in Bulgaria complement the Prosecutor General's fight against corruption. For example, the EU and USG have provided on-going training to prosecutors on corruption and related financial crimes including money laundering. In its *Strategy for Transparent Governance and Prevention and Countering of Corruption 2006-2008* at 8, the Bulgarian government intends to increase dialogue among the criminal justice agencies and to better coordinate complaints of corruption at all branches of government with the Prosecutor General. Moreover, the government and legislature agree to review anti-corruption statutes for effectiveness of implementation, sanctions, and possible amendments. Anti-corruption committees have also been formed at the National Assembly, the Council of Ministers (the MOI heads the Council's Commission on Preventing and Counteracting Corruption) and the Supreme Judicial Council. EU MAY 2006 MONITORING REPORT at 7-8.

Nevertheless, many respondents were skeptical of the end results of reform measures in the Office of the Prosecutor General. Some argued that the office is simply not equipped with the human and physical resources to handle significant numbers of corruption cases. Although all office facilities have special, public boxes to receive citizens' corruption complaints, this was perceived as insignificant outreach to the community. Many respondents contended that despite well intentioned efforts, lack of comprehensive training in prosecuting corruption, and excessive formalism and hierarchy could hamper the efficient and effective fight against corruption.

IV. Accountability and Transparency

Factor 15: Public Accountability

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

Conclusion	Correlation: Negative
<p>Significant steps have been taken to make the Prosecution Service more accountable, including increased Parliamentary controls and proactive measures by the new Prosecutor General to increase transparency. To restore public confidence in the Prosecution Service, however, additional measures should be taken to increase both oversight of prosecutorial activities and access to information.</p>	

Analysis/Background:

As part of the judiciary, the structural independence of the Prosecution Service has been strongly protected in the past. Article 117(2) of the Constitution provides, "The judiciary is independent. In the performance of the functions thereof, all judges, jurors, prosecutors, and investigating magistrates shall be subservient only to the law." (See also CPC arts. 10, 14; JSA arts. 13, 14). As noted in Factor 16, on Internal Accountability, all power in the prosecutorial system flows from

the Prosecutor General, who receives a 7-year appointment and is effectively irremovable. As such, the Prosecution Service is widely viewed as being excessively independent and unaccountable.

The recent constitutional amendments in 2006, however, attempted to rein in the unfettered independence of the Prosecution Service. Perhaps the most important change was power of the National Assembly to remove the Prosecutor General upon a two-thirds majority vote. See CONSTITUTION art. 129(4). However, in September 2006, the Constitutional Court overturned this provision as an unconstitutional breach of separation of powers. See Constitutional Court Decision No 7, Sofia, September 13th, 2006 on the Constitutional File No 6 of 2006. The other major change in the 2006 amendments, requiring the Prosecutor General to submit an annual report to the President, the National Assembly, and the Council of Ministers on the operations of the Prosecution Service, remains in effect. See CONSTITUTION art. 84(16); JSA. art. 114a.

These changes increasing the accountability of the Prosecutor General were enthusiastically welcomed by almost all respondents, although many suggested that additional mechanisms were needed for strengthening the accountability of prosecutors to the other branches of government. In light of the Constitutional Court's decision overturning the Assembly's power to remove the Prosecutor General, serious questions remain as to how this can be accomplished within constitutional parameters. Indeed, the appropriate placement of the prosecution function has been the subject of considerable debate. For example, some respondents proposed that the Prosecution Service be removed from the judiciary and placed under in the executive branch. Others, however, suggested that doing so would completely subvert the prosecution function to partisan political pressures.

The question of where to house the prosecution function is one best answered by Bulgarians themselves, but it is clear that, given the widespread perception of improper influence in the Prosecution Service detailed in Factor 7, additional mechanisms for ensuring prosecutorial accountability and transparency are needed.

For example, the new Prosecutor General has taken significant measures to increase the transparency of the Prosecution Service, including strong cooperation with relevant Parliamentary committees, publication of an internal review, an increased responsiveness to the media both personally and through the establishment of new media spokespersons, and increased access to information on the website for the Prosecution Service. Additionally, basic information as to the policies and procedures that guide the operations of the Prosecution Service is still not readily available. This oversight is probably due to the lack of a comprehensive and uniform office handbook with internal policies and procedures for prosecutors. Not only would such a handbook increase efficiency, but it should be made publicly available.

While the new reporting requirement is a positive step, neither the Constitution nor JSA specify exactly what type of information is required in the Prosecutor General's annual report. *Id.* It is worth noting that in addition to the Prosecutor General's annual report, the regional, district, and appellate prosecution offices must report to the MOJ every six months on their case flow. See JSA art. 115(3).

One recommended constitutional amendment that was rejected was to have the National Assembly appoint the Prosecutor General instead of the SJC. This is a political question that Bulgarians must resolve. Additionally, it would be desirable if the Prosecution Service overall was subject to an external and independent audit or oversight mechanism. Such audits not only ensure that taxpayer money is being spent as budgeted, but they can also help reveal inefficiency, corruption, and other systemic weaknesses.

Public complaint processes provide another mechanism for holding prosecutors accountable. While the Law on Proposals, Notes, Complaints and Applications was appealed, effective July 12, 2006, the SJC Complaints Commission is the primary recipient for complaints against

prosecutors. The SJC Complaints Commission, a permanent organ of five SJC members, reviews complaints and provides a response within 30 days of completing its investigation. See *SJC Work Regulation* arts. 13(2)(9), 25. The MOJ, through its Inspectorate on the Judiciary, also receives and reviews citizens' complaints and forwards the complaint, if meritorious, to the SJC for consideration and appropriate action. Finally, under the Ombudsman Act, *promulgated in* SG No. 48 (May 23, 2003), citizens may also file complaints against prosecutors with the Ombudsman when they feel their rights or freedoms have been violated. *Id.* art. 2. Complaints may be filed either orally or in writing, but not anonymously, and the Ombudsman refers them to the appropriate state agency (in this case, the SJC Complaints Commission), which has 14 days to respond. *Id.* arts. 24-28. The Ombudsman may intervene to mediate the matter, refer it to the MOJ if he/she believes a criminal violation has taken place, or undertake other actions as specified in articles 19-20. Unfortunately, it is unclear whether these complaint mechanisms are widely known to or used by the public.

Factor 16: Internal Accountability

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>Prosecutors do not have effective access to an internal grievance mechanism due to a strict hierarchical model that allows excessive supervisory control over the decisions of subordinates. However, since the arrival of the new Prosecutor General, the SPC Inspectorate has played an increasingly vigorous role in investigating complaints against prosecutors from both citizens and fellow prosecutors.</p>	

Analysis/Background:

On one hand, there is seemingly strong internal accountability within the Prosecution Service, which follows a strictly hierarchical model that places prosecutorial authority completely in the hands of the Prosecutor General. Article 112 of the JSA provides that, "The prosecution office shall be integral and centralized. Each prosecutor shall be subordinate to an immediately superior prosecutor, and all prosecutors shall be subordinate to the Prosecutor General." The Prosecutor General supervises and guides the work of all prosecutors. *Id.* art. 114. See also CONSTITUTION art. 126 (2); CPC art. 46 (4); JSA arts. 111, 112. Supervisors wield considerable authority over subordinate prosecutors, with the power to stay or revoke the directives of their subordinates (*Id.* art. 116(2)), and any written directives issued by a supervisor are binding upon the subordinate (*Id.* art. 116(3)). The strict hierarchical model is also reflected in the CPC. See art. 46.

However, as described in Factor 10, on Discretionary Functions, the strict hierarchy of the Prosecution Service and the culture of conformity that has been instilled in subordinate prosecutors has chilled prosecutorial discretion, decreasing accountability at the supervisory levels. Similarly, it creates opportunities for the abuse of power and improper influence by supervisors over the cases of subordinates. Respondents reported that, until the arrival of the new Prosecutor General, supervisors routinely gave oral instructions to subordinates, vastly increasing the opportunities for interference. These problems have been exacerbated by the influx of young prosecutors after the lustration of the 1990's and the departure of prosecutors for positions with better remuneration. As a result of the strong hierarchy and their inexperience, these young prosecutors have grown unaccustomed to exercising an appropriate degree of independence. While article 116(1) of the JSA does provide that any prosecutor's acts may be appealed to his or her superior, respondents indicated that subordinates simply do not challenge

the decisions of their supervisors. Instead, their only viable alternative is to request reassignment from the case in question.

Accordingly, the problem with the internal accountability of prosecutors is that of excessive supervisory control, with limited checks and balances to protect the discretion and independence of subordinate prosecutors. Prosecutors would benefit from procedures and guidelines that both allow and encourage an effective mechanism for hierarchical recourse, in which prosecutors may lodge grievances against inappropriate interference in their cases. Ultimately, such mechanisms will not be successful without clear guidance from the senior leadership of the Prosecution Service that prosecutors are expected to think independently and that they must not rely exclusively on instructions from superiors.

One encouraging development and possible solution to limited internal accountability can be found in the increased role of the Supreme Prosecution of Cassation's [hereinafter SPC] Inspectorate Department [hereinafter Inspectorate], which is currently an independent unit within the SPC. The Inspectorate serves as the Prosecution Service's internal investigatory authority, with the task of reviewing and investigating complaints against prosecutors received from both citizens and fellow prosecutors, as well as at the direct request of the Prosecutor General. While the Inspectorate has existed for many years, the assessor team received limited information on its work and effectiveness before 2006. Since the arrival of the new Prosecutor General, however, the activity of the Inspectorate has reportedly increased dramatically, indicating a renewed emphasis on internal accountability. According to information received directly from the Inspectorate, the unit previously reviewed approximately 300 complaints per year. As of the publication of this report, the Inspectorate has currently received approximately 1000 complaints in 2006. For example, according to media reports, the Inspectorate is currently investigating complaints against a former prosecutor who influenced trials by threatening his subordinates. See *Bulgaria's Prosecution Taking Court Action Against Former Prosecutor*, THE SOFIA ECHO, October 10, 2006 at http://sofiaecho.com/article/bulgarias-prosecution-taking-court-action-against-former-prosecutor/id_18096/catid_66. Overall, the Inspectorate reported 7 cases currently pending against prosecutors as a result of its investigations. While this is certainly a small number, these initial results under the new leadership are a promising sign that the Prosecution Service is more willing to hold itself accountable for misconduct.

Factor 17: Conflicts of Interest

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>The CPC and Rules of Professional Ethics for Prosecutors contain adequate guidelines for regulating conflicts of interest. However, conflicts of interest do not appear to receive serious attention from the legal community, as evidenced by the lack of enforcement. More attention and resources should be paid both to promoting adherence to conflicts of interest rules and to enforcing those rules.</p>	

Analysis/Background:

Both the CPC (arts. 11 (2), 29, 47 and 274) and the Rules of Professional Ethics for Prosecutors (Section V) [hereinafter *Prosecutorial Ethics Rules*] contain specific conflict of interest guidelines, for which a prosecutor will either be recused or disqualified, including any circumstances that would make the prosecutor biased or interested, either directly or indirectly, in the outcome of the case. See CPC art. 29. The Prosecutorial Ethics Rules are broader than the CPC as they

address not only a prosecutor’s impartiality in a specific case, but also circumstances or conduct that would constitute a misuse of the prosecutor’s position. For example, a prosecutor may not propose a relative for appointment or promotion. See *Prosecutorial Ethics Rules*, Rule 27.

The assessment team received very little comment regarding conflicts of interest. In fact, some respondents seemed to have difficulty recognizing conflicts of interest as an important issue, while other interviewees claimed that there simply were no such cases. The impartiality of prosecutors was not identified as an issue, and the conflict of interest rules were considered to be operating quite well. Given the widespread perception of corruption and interference in cases (see Factor 7), this reaction comes as something of a surprise.

While the CPC and Prosecutorial Ethics Rules appear to provide a sufficient regulatory framework for conflicts of interest issues, the lack of any enforcement is cause for serious concern. It is difficult to imagine any prosecutorial system in which conflicts of interest rules are uniformly obeyed. Even in the best prosecutorial systems there will still be inadvertent violations requiring investigation and, possibly, sanctions. Accordingly, a more vigilant and vigorous approach to conflict of interest issues should be encouraged. This should include training for prosecutors, to better enable them to avoid conflicts of interest, and also for judges, who must be able to rule on motions to disqualify prosecutors. If the SJC is to be an effective mechanism for disciplining prosecutors, it will need to hold prosecutors accountable for conflict of interest violations.

Factor 18: Codes of Ethics

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

Conclusion	Correlation: Neutral
<p>The SJC has approved the Rules of Professional Ethics for Prosecutors, which provide clear and fairly comprehensive ethical standards for prosecutors. However, training in ethics is limited, and ethics rules should be adopted to prohibit <i>ex parte</i> communications.</p>	

Analysis/Background:

There are several laws that impose duties with ethical implications on prosecutors. The JSA, for example, requires prosecutors to “safeguard the official secrecy of information” that has come to his/her knowledge. See JSA art. 136. It also provides that prosecutors may not express anticipatory opinions on cases assigned to them or express any opinions on cases not assigned to them. *Id.* art. 137. Prosecutors are also forbidden from providing legal advice. *Id.* art. 138.

The JSA also provides that the SJC shall “approve rules of professional ethics adopted by the relevant professional organizations of judges, prosecutors and investigators.” See art. 27(1).13. Pursuant thereto, the Prosecutorial Ethics Rules were drafted by the Association of Prosecutors in Bulgaria and the National Union of Bulgarian Prosecutors, and approved by the SJC. As such, the Prosecutorial Ethics Rules are now binding upon all prosecutors and may be used as the basis for disciplinary charges by the SJC. *Id.* art. 168(1).

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

The Prosecutorial Ethics Rules are comprehensive, encompassing general statements of ethical behavior, rules of conduct in the course of official activities; rules of conduct outside the office, and conflicts of interest. While many of the rules are fairly general and aspirational in nature, others provide specific criteria on a variety of important ethical issues. These include provisions that require prosecutors to:

- Refrain from using their position to satisfy their own or other’s personal interests (Rule 4);
- Initiate a case only where there is admissible and trustworthy evidence that has been obtained without unlawful pressure of physical violence (Rule 11);
- Collect evidence in due course, including evidence that is favorable to the accused, and to ensure that such exculpatory evidence is provided to the accused in a timely manner (Rule 13);
- Respect and protect the rights of victims and witnesses by providing them with information and ensuring their protection (Rule 14);
- Recuse themselves from any matters in which their impartiality may be questioned (Rule 22); and
- Comply with financial disclosure requirements in order to avoid conflicts of interest. (Rule 28).

However, one notable omission is a prohibition on *ex parte* communications with the judge, which many respondents indicated is fairly common. Such communications can improperly influence the outcome of the case or create the appearance of collusion between the judge and the prosecutor, thereby undermining confidence in the criminal justice system.

One final issue is that ethical requirements have not been widely disseminated or taught to current prosecutors. While it is part of the initial training at the NIJ, the only CLE training on ethics has been conducted by the Association of Prosecutors in Bulgaria, which has limited training capacity due to funding constraints. In addition to significantly increased CLE ethics training for prosecutors, it would be beneficial for the Prosecutorial Ethics Rules to be widely circulated for public education and awareness.

Factor 19: Disciplinary Proceedings

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

Conclusion	Correlation: Neutral
Prosecutors are subject to well developed and equitable disciplinary procedures, however there are concerns that the disciplinary process is rarely used, and that prosecutors are not held accountable to professional standards.	

Analysis/Background:

Magistrates shall be, among other things, “demoted, transferred and removed from office by the Supreme Judicial Council.” See CONSTITUTION art. 129(1); JSA art. 27(1).4. While prosecutors become “irremovable” after five years by an SJC decision, removal is still permitted for various

causes, including retirement at age 65, resignation, conviction of an intentional crime with a sentence of imprisonment, continued inability to perform one's duties for more than a year, or "grave breach or systematic dereliction of official duties, as well as actions damaging the prestige of the judiciary." See CONSTITUTION art. 129(3). In addition, article 131(1) of the JSA also provides for removal for refusal of tenure by the SJC, holding an incompatible office or occupation, the return of an office-holder for which they were substituting, and reinstatement in cases of illegal dismissal. As a result of the latest amendments to the Constitution, the MOJ is entitled to make proposals for "demotion, transfer and removal from office of prosecutors" as well as other magistrates See CONSTITUTION art. 130a.3. The SJC's decisions in these cases are to be adopted by secret ballot. *Id.* art. 131.

The overall disciplinary procedures governing prosecutors are set forth in Chapter Fourteen, Section III of the JSA. The bases for prosecutorial discipline are general, as article 168(1) simply provides that, "Judges, prosecutors and investigators shall incur disciplinary liability in the event of guilty failure to discharge their official duties, for systematic failure to comply with deadlines, stipulated in procedural laws, for delaying the court proceedings for no good reasons, and for breach of professional ethics." While this standard has the benefit of flexibility, it may suffer from a lack of uniformity in application.

Possible sanctions for prosecutors consist of a reprimand, censure, demotion for 6 months to 3 years, or dismissal. See JSA art. 170. Disciplinary charges may be initiated by the prosecutor's supervisor, the Minister of Justice, or 1/5 of the members of the SJC. *Id.* art. 173. The disciplinary procedure seems quite equitable, with the prosecutor given notice and the opportunity to present evidence (arts. 174-176), the right to be represented by an attorney (art. 178(2)), and the right of appeal to the SAC (art. 184(11)). Additionally, disciplinary proceedings may only be instituted up to 6 months after detection of the offense, and no more than 1 year after the commission of the offense, unless the offense is also a crime, in which case the statute of limitations begins to run upon entry of conviction. See art. 173.

While the regulatory framework for disciplining prosecutors is well developed, most respondents reported that the process does not work well in practice and that disciplinary charges are infrequent, in part because the process is deemed too cumbersome and time-consuming. Some respondents also indicated that the SJC simply does not vigorously enforce the professional standards for prosecutors. Based on information taken from the official website for the SJC, only 8 disciplinary charges were instituted against prosecutors in 2005. See *generally* <http://212.122.184.99/bg/start.htm>. The basis for the charges under art. 168(1) of the JSA is as follows:

- Failure to discharge official duties – 5 charges
- Offences related to lawful control over an investigation – 2 charges
- Professional ethics violations that damage the prestige of the judicial system – 1 charge.

Id.

While the average length to resolve disciplinary proceedings was 5 months, only 2 of the above cases against prosecutors had been resolved by December 31st, 2005. One prosecutor was censured for failure to discharge official duties, while one prosecutor was censured for offences related to lawful control over an investigation. By March 2006, 2 more cases had been resolved, with one prosecutor being dismissed and another censured. *Id.* However, it should be noted that the new Prosecutor General has been much more active in filing disciplinary charges against prosecutors.

According to respondents, the most common disciplinary charges arise from delays in executing a case, and that no prosecutors have been sanctioned for ethical violations. Several respondents believed that the SJC was either unable or unwilling to vigorously enforce professional standards for the judiciary, and that its efforts to do so had been hampered by internal politics. However, it

was also reported that, in the past, the SJC had acted to protect prosecutors who had fallen out of favor with the leadership of the Prosecution Service.

Finally, several respondents noted that it is far too difficult for supervisors to address disciplinary issues and hold their staff accountable to professional standards. While amendments were implemented in 2004 to simplify the disciplinary process, such as the adoption of 3-member disciplinary panels (see art. 33), it was suggested that additional steps be taken to expedite the process or to give supervisors some disciplinary authority.

V. Interaction with Criminal Justice Actors

Factor 20: Interaction with Judges

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

Conclusion	Correlation: Neutral
While most interactions with judges are professional and appropriate, instances of <i>ex parte</i> communications and lack of respect for the integrity of the judge's function exist	

Analysis/Background:

According to Article 1 of the JSA the judicial system is an independent branch of government that administers justice. See also CONSTITUTION arts. 117 (2) and 129. The judicial system includes judges, prosecutors and investigators. Under the JSA, the SJC governs the admission, promotion, demotion, transfer, discipline and removal of all judges, prosecutors, and investigators. *Id.* art. 124. See also Factor 3. There is no specific prohibition against prosecutors becoming judges or vice versa provided each submits to the competition process described in Factor 3. However, a judge may not be part of a trial or hearing in which he or she acted as a prosecutor. CPC art. 29 (1)(3).

Chapters 4, 19, and 20 of the CPC describe most of the functions of the first instance criminal court in the pre-trial and hearing phases. Judges perform several functions among which include: examination and approval of warrants, acceptance of indictments or formal complaints of the victim, scheduling of hearings, examination of witnesses and defendants at trial. They determine lawfulness of evidence, decide motions to remand to custody, and *inter alia*, issue sentences. In the pre-trial phase following the issuing of an indictment a “judge-rapporteur” is appointed to review the case in preparation for trial. *Id.* art. 248. The judge-rapporteur has the power to terminate trial proceedings on jurisdictional grounds and for procedural violations and return the file to the prosecutor with his/her findings. *Id.* art. 249. The judge-rapporteur may also terminate the entire criminal proceeding if she/he finds *inter alia*, a lack of evidence or the alleged act does not constitute a crime. *Id.* art. 250, See also CPC art. 24. In this case, the judge-rapporteur must notify the victim, the accused and the prosecutor by providing a copy of the termination order. with his/her findings. *Id.* art. 249, 250. Judges hearing a criminal case at the trial phase may also terminate trial proceedings and return the case to the prosecutor for several reasons including improper jurisdiction and procedural violations, lack of evidence or the crime alleged is not a violation of the law. *Id.* arts. 288, 289.⁶

⁶ There is an important difference between termination of the **trial proceedings** and of the **criminal proceedings** in Bulgarian law. In the first case the case is returned to the pre-trial

Notwithstanding that these judicial decisions are generally appealable under the CPC, it is in the termination of cases that the greatest conflict exists between judges and prosecutors. Among those interviewed responding to this factor, there were two distinct points of view. Some felt that the relationship between judges and prosecutors was cordial, collegial, and always professional. However, an equal number alleged that prosecutors often knowingly brought indictments clearly lacking in evidence such that the court would bear the responsibility for delivering the termination or return of the case. A few respondents alleged that the former Prosecutor General maintained lists of those judges who reportedly regularly terminated cases or acquitted defendants. It was alleged that these judges were targeted for denial of promotion when their candidacy was reviewed by the prosecutors assigned to the SJC. For SJC procedure, see *generally*, JSA, Chapter 2 and art. 27(4).

Respondents raised additional concerns about courtroom decorum and communications with judges. Overall, most agreed that prosecutors' courtroom comportment was without reproach, however, *ex parte* discussions inside and outside the courtroom were reported. In rural areas in particular, the relationship between judge and prosecutor was reported to be far too familiar and sometimes problematic. As the number of courts using verbatim transcriptions of courtroom activities increase from the eight that employ it now, in court *ex parte* discussions should diminish. Among some of the judges interviewed, prosecutors were viewed as overworked, too passive in their advocacy and at times not well prepared for trial.

Factor 21: Interaction with Police and Other Investigatory Agencies

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

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>Under Bulgarian law, prosecutors have the dominant role in the investigation of criminal acts. In practice, prosecutors do not often assert this role. Prosecutors do not always effectively manage police investigations in the limited time afforded them by law and have not always been able to ensure that the rights of the accused, victims, witnesses, and defense counsel are observed. In prosecuting matters of police misconduct, the prosecutor's office has a specialized unit that investigates and brings cases to trial in a special "Military Court."</p>	

Analysis/Background:

As noted earlier, pursuant to Article 127 of the Constitution, article 118 of the JSA, and article 46 of the CPC the prosecutor's function in criminal proceedings is to direct and supervise the investigation of criminal acts. The law enforcement entities that make up investigative bodies are the National Investigation Service [hereinafter NIS] (investigators belonging to the judiciary,) and the MOI *doznatel* police investigators. By law, the investigative bodies operate under the guidance and supervision of a prosecutor. *Id.* art. 52.

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

phase for further investigation, in the second – the whole proceedings are terminated, and it is crucial that all parties are notified.

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

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

1. Constantly control the progress of investigation, studying and inspecting all case materials;
2. Give instructions in relation to the investigation;
3. Take part or perform investigative actions;
4. Remove the investigative authority, where he or she has committed a violation of the law or is not capable of ensuring the correct conduct of the investigation;
5. Withdraw a case from an investigative authority and transfer it to another;
6. Assign to the respective bodies of the Ministry of Interior the implementation of individual actions related to the discovery of the crime;
7. Revoke decrees of investigative bodies on his own motion or on the basis of a complaint by the interested individual decrees of investigative bodies." *See also, Instructions*, S. 49. (1).

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

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

CPC article 234 imposes a specific time limit on investigations. In most cases, the investigation must be completed and sent to the prosecutor within two months, or less, if ordered by the prosecutor. Upon the well-founded written request of the subordinate prosecutor in complex cases only, a higher level prosecutor may extend the deadline up to another four months. Only in exceptional cases and with detailed written cause from the higher level prosecutor, may the Prosecutor General extend the deadline again. Any evidence gathered beyond the deadline is inadmissible. *See also Instructions* S. 64(1)(2) and S. 65(1).

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

Among the many reasons contributing to break downs in the relationship is excessive workload. According to some respondents, regional prosecutors supervise approximately 400-450 cases at any given time. At higher levels, the workload does not diminish significantly. Instructions are provided only in writing and either handed to, or more frequently, sent to NIS investigators or MOI *doznatel* via an inter-office mail system. In some cases, instructions may not arrive for days.

Questions and responses to instructions are sent via the same mail system. No electronic mail system exists between prosecutors and the NIS or MOI. Investigations are prolonged as a result of this process, jeopardizing deadlines. Senior prosecutors reported that there is a deluge of daily requests from lower level prosecutors for deadline extensions. These requests are also driven by the relatively short timeline, two months, to complete an investigation. Prosecutors, investigators and *doznatel* alike complain that the new CPC two month deadline for investigation is far too short to conclude a comprehensive investigation.

Partly related to workload issues is the lack of effective investigation oversight. Some respondents asserted that in particular *doznatel*, on occasion object to, or reject, instructions from prosecutors, especially from those who have limited experience. In those cases, MOI *doznatel* seek and receive direction from senior MOI supervisors instead. The assessor team was also told that on infrequent occasion police and *doznatel* have not forwarded citizen complaints to prosecutors for investigation. Due to the high volume of investigations, and their unfamiliarity with their new role as *dominus litis* per the CPC, prosecutors often do not assert themselves in these conflicts or violations. This contributes to the opportunity for those few police so inclined to abuse others' rights as described in Section III and at Factor 22.

The CPC, which entered into force in April 2006, ushers in substantial changes to the investigation of cases and in the relationships of the NIS and MOI with the Prosecutor General's Office. As described above, stricter deadlines and a more dominate and active role for the prosecutor are but a few of the more important changes. The impact of article 128 of the Constitution and especially Article 194 of the CPC, removing most of the pre-trial investigations from the NIS (except for special serious, complex, international, or other crimes involving some government officials) in favor of MOI *doznatel*, is also significant. As a result of this change, hundreds of NIS investigators have been administratively transferred to the Office of the Prosecutor General. Although trained as lawyers already, they now serve as prosecutors. Training in trial advocacy for these newly appointed prosecutors is conducted on an ad hoc basis. In their wake, the *doznatel* assume increased investigative responsibilities. Nearly all of the respondents interviewed on this factor expressed concern about the *doznatel's* competence and ability to effectively assume the functions formerly performed by the NIS, although there have been some ad hoc trainings for *doznatel* on their elevated responsibilities. Others were concerned about the new prosecutors' (former NIS investigators) ability to effectively bring an indictment and argue criminal cases before a court.

Nevertheless, several prosecutors, investigators and police pointed out positive aspects of their relationship. Prosecutors cited the large number of indictments and high conviction rates as evidence that the system functions well. Senior police officials and senior level prosecutors argued that especially in specialized crime units, police, *doznatel*, NIS, and prosecutors enjoy effective partnerships. Most agreed that as the opportunity to conclude more cases by agreement is exercised, backlogs could decrease. Many police officials suggested that more joint police-prosecutor training in substantive and procedural law would help cement relationships and better clarify the roles each has in the investigation of cases.

In Chapter 31, articles 396-411 of the CPC, and at Instructions, Chapter Six, procedures are set forth for bringing actions against staff of the MOI, among others, alleged to have violated national law and human rights. These cases are referred to the competence of the Military Courts. To these courts are assigned specialized prosecutors and investigators. Several respondents commented that Military Court prosecutors had a reputation for not aggressively pursuing police abuse or misconduct cases under the previous Prosecutor General. They criticized Military Courts as non-transparent and closed to public scrutiny. However, these same respondents admitted that as regards police brutality, the reported incidence is very low.

Factor 22: Interaction with Representatives of the Accused

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

Conclusion	Correlation: Negative
<p>The Criminal Procedure Code and the Attorneys Bar Act describe the rights afforded counsel for the defense. Defense attorneys experience difficulty in obtaining access to investigation files, and prosecutors as <i>dominus litis</i> are often ambivalent in ensuring their legal rights.</p>	

Analysis/Background:

The CPC and the Attorneys Bar Act [hereinafter BAR ACT] articulate the inviolable rights afforded defense attorneys. Both laws also support the concept of equality of arms. In Article 99 the CPC affords defense counsel the following rights: “[to] meet the accused party in private; to examine the case-file and obtain excerpts he/she needs; produce evidence; take part in the criminal proceedings; make requests, comments and raise objections, as well as to file appeal from acts of the court and of the bodies entrusted with the pre-trial proceedings which infringe upon the rights and legal interests of the accused party. The defense counsel shall have the right to take part in all investigative actions involving the accused party, his failure to appear not being an obstacle to their progress.”

Article 29(1) of the Bar Act mandates that all attorneys at law enjoy equal standing in all proceedings, and, “...shall be placed on equal footing with judges, in terms of respect, and assistance shall be provided to them as to a judge.” BAR ACT, *promulgated*, SG No. 55/25.06.2004, *last amended*, SG No. 39/12.05.2006, *effective* 12.05.2006. As in CPC article 99, Article 31 of the Bar Act guarantees attorneys the right of free access to pre-trial and court case files and provides them the ability to make copies of any data therein. *Id.* art. 31.

As discussed in Factors 11-13, attorneys at law are permitted to defend all the rights afforded the accused, victims and witnesses. According to CPC article 99, the rights of defense counsel to information begin to attach even during the investigation. At the discretion of the pre-trial investigation team, defense counsel may observe the investigation as it is being conducted, unless otherwise prohibited by law and where they do not obstruct the investigation. *Id.* art. 224. At the conclusion of the investigation the prosecutor confirms all investigative actions have been taken and approves the presentation of the entire investigation file to the accused, defense counsel and victim (and his/her counsel). *Id.* arts. 226, 227. Next, the investigative body makes the file and materials available to the defense and accused, *inter alia*, for their review. *Id.* art. 228. Those reviewing the file, including defense attorneys, may make written or oral requests, remarks and objections. The prosecutor rules on the requests. His/her rulings are subject to appeal to a higher level prosecutor. *Id.* art. 229. Where requests for additional investigation are granted, parties may attend the subsequent investigation. *Id.* art. 230. Following review of the investigation, the defense counsel (or prosecutor) may make a proposal to draw up an agreement in cases where the crimes alleged permit agreements. *Id.* art. 381.

If the rights of defense counsel are violated, the Bar Act provides recourse. According to article 29 (2) and (3), the attorney-at-law may request the Bar Council to authorize a review of the facts giving rise to the violation. The Bar Council then initiates an inspection of the reported violation. The Bar Council appoints a member of the Bar Association to coordinate a review with a member of the court or institution in which the violation is alleged to have occurred. Within seven days the court or institution is obliged to appoint a representative to work with the Bar representative. If, upon inspection, the Bar Council finds the violation proved, “it shall make a proposal for the

institution of disciplinary proceedings against the judge, prosecutor, investigator, police investigator or for the imposition of a disciplinary sanction on the respective official by the manager of the administrative authority or service.” *Id.* art. 30(1). Presumably, as a result of the Bar Council’s action, the SJC could then institute disciplinary proceedings against the prosecutor in the manner described in JSA article 168 et seq., and as generally explained in Factor 10 and Section IV.⁷

As the *dominus litis* of the investigation, the prosecutor is chiefly responsible for ensuring that the rights of defense counsel are observed throughout the pre-trial investigation. The assessor team found that not always to be the case. Although the team received no specific information that prosecutors hid or removed evidence from the investigatory file, other troubling practices in the pre-trial stage were reported.

Lack of effective access to the case file was the chief complaint at the pre-trial stage among defense attorneys interviewed. After presentation following the investigation, the criminal file is not always made available to the defense. Defense attorneys reported that during the period leading up to the trial the lone case file is often removed from the court file room by the prosecutor or investigator for their own use in trial preparation. Copies of the file are not provided for the defense. A defense attorney may photocopy the file only at his/her own expense, while the quantity of material in a typical case file usually makes photocopying cost prohibitive. Lack of file availability contributes to defense counsel continuance requests at trial.

Many of the defense attorneys interviewed also charged that prosecutors were not sufficiently involved in the pre-trial process. They stated that it is rare that a prosecutor has contact with the defense attorney during the pre-trial stage. Some argued that prosecutors deliberately return cases to the police or investigation service as a means to renew legally imposed investigation deadlines by way of a new investigation. Targets of the investigation are then subject to additional months’ scrutiny. A few defense attorneys also charged that, on occasion, an investigation of an allegedly unknown perpetrator pursuant to CPC article 215 was conducted even though the perpetrator was known to the police and prosecutor. This type of investigation prevents the defense attorney from acquiring any information until the case is presented and readied for indictment.⁸ Other defense attorneys complained that inexperienced prosecutors on occasion issue incorrect or incoherent instructions to the police or investigators. As noted in Factor 11, defense attorneys interviewed also felt prosecutors too often failed to ensure exculpatory evidence was collected.

Concerning trial proceedings, nearly all respondents agreed equality of arms in litigating a case in the court room is generally observed. Defense attorneys interviewed largely attributed this to the presence of the judge, although some remarked that *ex parte* communications with prosecutors occur. In a justice system committed to the concept of finding of the objective truth, the assessor team also observed that defense attorneys and prosecutors alike have a negative perception of the other’s function and practice.

⁷ The assessment team received no information about the number of active or closed proceedings against any prosecutor made pursuant to article 30 of the Bar Act.

⁸ Other respondents argued that the CPC permits discovery and defense counsel involvement at a point in pre-trial proceedings much earlier than in many other jurisdictions potentially jeopardizing the integrity of the investigation.

Factor 23: Interaction with the Public/Media

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>Although the relationship with the public and the media is improving, years of conflict with the media and inattention to communications with residents contributed to a negative perception of the office among the public.</p>	

Analysis/Background:

The JSA is among three acts regulating the public disclosure of information. Article 108 obligates prosecutors to respect official secrecy or risk criminal sanction under article 284 of the Penal Code. JSA article 136 commands prosecutors to safeguard the secrecy of information they come to acquire in the scope of their position and to respect the confidentiality of the deliberative process even after adjudication. Prosecutors may not publicly express anticipatory opinions on open cases whether assigned to them or not. *Id.* art. 137. Rule 12 of the Prosecutorial Ethics Rules obligates prosecutors to keep state and official secrecy, confidentiality of case facts and prohibits public expression of any preliminary opinions on cases and/or files under penalty of disciplinary sanctions. Finally, article 198 of the CPC prohibits under criminal penalty, making public investigation materials without the express authorization of the prosecutor or court. The assessment team did not receive any information that prosecutors were currently releasing inappropriate case or trial information to the public or media.

On the other hand, each of these acts does allow for public interaction with the prosecution particularly in solving crimes or in gathering evidence. Article 133 of the JSA obligates organizations and the public to cooperate with prosecutors and investigators. See *also* JSA art. 119 (2) and (3). Article 204 of the CPC appears to go even further declaring that, “Pre-trial bodies shall widely use the assistance of the public in order to discover the criminal offence and to elucidate the circumstances of the case.” Even Rule 12(5) of the Prosecutorial Ethics Rules allows a prosecutor, “[to] be free to express a personal opinion in the mass media on any issues that are not covered by an explicit statutory prohibition.” However, there is no act or law that specifically enumerates what information prosecutors may provide the media or public, nor any office guidelines or protocols that describe in detail the parameters of the relationship.

Although the relationship with the media has improved recently, over the past several years it was antagonistic and difficult. Media respondents stated that they rarely received information on the activities of the office. Office spokespersons were often unresponsive or unhelpful. Line prosecutors refused to provide information citing fear of retaliation from supervisors. Respondents stated that the former Prosecutor General used some media outlets to present a favorable view of the office and targeted others critical of his performance.

These same respondents report a dramatic change since the arrival of the new Prosecutor General in March 2006. Office spokespersons are available, responsive and helpful. The Prosecutor General generally enjoys an open relationship with the press. A spokesperson is now assigned in each of the 28 District Prosecution offices to provide appropriate information on all cases within each district and its regions. Line prosecutors are reported to be gradually more comfortable in speaking with the press, although most still defer to the press spokesperson. Still rare are the occasions when prosecutors appear with the media to discuss criminal justice policy issues, crime trends, or crime issues impacting the community.

Factor 24: International Cooperation

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

<i>Conclusion</i>	<i>Correlation: Positive</i>
<p>Mutual legal assistance and extradition laws are generally effective, but on occasion the process for each is not as efficient as it could be. Training in international cooperation, on crimes of world-wide impact, and EU law continues to expand.</p>	

Analysis/Background:

Under Bulgarian law, international mutual legal assistance in most criminal matters is governed generally by the CPC, Section III, articles, 471-479. Extradition is governed by the LAW ON EXTRADITION AND EUROPEAN ARREST WARRANT, *promulgated* SG No. 46/3.06.2005, effective 4.07.2005, *amended*, SG No. 86/28.10.2005, *effective* 29.04.2006 [hereinafter LAW ON EXTRADITION]. Under both acts MOJ coordinates requests for assistance. The Supreme Cassation Prosecution office assumes certain functions for the Office of the Prosecutor General in each act. In most cases, unless a mutual legal assistance treaty or other international agreement states otherwise, legal assistance or extradition requests are coordinated by the MOJ through the letters rogatory process.

In mutual legal assistance matters, the Supreme Cassation Office has the following responsibilities under the CPC:

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

Foreign states' requests for extradition or provisional arrest by other nations are referred by the MOJ to the Supreme Cassation Prosecution office to affect apprehension and detention. When the individual is ready to be surrendered, the International Legal Department of the Supreme Cassation Prosecution office notifies the requesting nation. The Prosecutor General initiates requests for extradition of indicted or convicted individuals in other countries. See LAW ON EXTRADITION, Chapter 3, Part I generally, and art. 26(1)(2).

MOJ respondents and several foreign governments praised the Office of the Prosecutor General for its prompt, thorough, and competent work in legal assistance and extradition matters. Other respondents stated there is institutional reluctance to using quicker methods of exchanging evidence as provided for in legal assistance treaties or other bi-lateral instruments in Bulgaria.

Chapter 5 et seq. of the Law on Extradition describes the process for surrender under the European Arrest Warrant. The provisions in this chapter enter into force upon Bulgaria's admission to the EU. In the meanwhile, training of prosecutors, judges, investigators and police on the entire EU warrant process and other EU criminal laws is becoming more widespread and comprehensive as accession to the EU nears. *See generally*, Factor 2. Law school classes, EU special training projects, and NIJ course offerings are now replete with EU criminal law and procedure subjects. Over the past few years NGOs, OPDAT, and OTA have offered local prosecutors and police numerous workshops in Bulgaria and abroad on transnational crimes including: human trafficking, intellectual property violations, financial crimes, and cyber-crime. Finally, the leadership of the International Cooperation Department actively participates in international associations of prosecutors and the judiciary.

VI. Finances and Resources

Factor 25: Budgetary Input

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>Despite a recent constitutional amendment giving the MOJ authority to propose a draft budget for review by the SJC, it appears the SJC still has responsibility over, and certainly influence in, the preparation, implementation, and accounting of the budget of the judicial system, including the Prosecution Service.</p>	

Analysis/Background:

Article 117(3) of the Constitution provides that “the judiciary shall have an independent budget.” Pursuant to the recent amendments to this document, the MOJ now has the responsibility to “propose the judicial system draft budget and submit it for a review to the [SJC].” *See art. 130a.1.* This change reportedly reflects some unhappiness within the National Assembly and elsewhere regarding the SJC’s budgeting efforts and perhaps the size of its requests, combined with the fact that the Constitutional Court has repeatedly struck down legislation that would have placed more judicial budgeting authority within the executive branch.

The JSA and the State Budget Procedures Act (*promulgated*, SG No. 67/6.08.1996, *amended and supplemented*, SG No. 46/10.06.1997, *effective* 10.06.1997, SG No. 154/28.12.1998, *effective* 1.01.1999, SG No. 74/30.07.2002, SG No. 87/1.11.2005, *effective* 1.01.2006, *corrected*, SG No. 89/8.11.2005, *amended*, SG No. 105/29.12.2005, *effective* 1.01.2006) govern the procedures for the judicial budget, which includes the Prosecution Service. The JSA provides for the SJC to submit the draft judiciary budget to the Council of Ministers and control its implementation, although Article 28 of the State Budget Procedures Act specifies that the SJC implant the judicial budget through the Office of the Prosecutor General and other judicial authorities. *See art. 27(1).8.* The JSA also sets forth the general budgeting procedures, including a requirement that the judiciary budget be a self-contained part of the state budget with the SJC as primary spending unit and the Prosecution Service, the courts, and other judicial authorities as

second-level spending units See art. 196. Once the judicial system budget is ready to go, the Constitution contemplates that the Council of Ministers draft and present the entire state budget in bill format to the National Assembly (see art. 87(2)), that the National Assembly adopt the state budget and report on its implementation (see art. 84(2)), and that the Council of Ministers manage the implementation of the state budget (see art. 106).

While the Prosecution Service does have input into the drafting of the prosecutorial budget, several respondents called for greater budgetary independence for the prosecutorial function.

Factor 26: Resources and Infrastructure

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

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>Budget requests for the judiciary, including the Prosecution Service, have been reduced significantly by the National Assembly in recent years. Funding levels do not appear to be adequate to properly support the prosecution function, particularly in basic areas such as information technology and office space.</p>	

Analysis/Background:

The proper administration of the criminal justice system hinges, in part, on the adequacy of resources for the prosecution function. This includes sufficient personnel, office equipment and supplies, and information technology resources.

The responsibility for managing judicial resources is blurred in Bulgaria. There is nothing in the Constitution that explicitly assigns this task to the SJC, although it could be implied in the independence of the judiciary and the stand-alone nature of its budget. CONSTITUTION art. 117. Article 27(8) of the JSA provides the SJC with the authority to draft and control the implement the judicial budget. However, the JSA provides for the MOJ to establish structural units to interact with the SJC and judicial authorities in, among others, the areas of judicial operation, information technology, and judicial system buildings. See art. 35(1).6. Efforts by the National Assembly to broaden the MOJ’s authority in this and other categories of judicial administration have consistently been rejected by the Constitutional Court as impinging on judicial independence. See, e.g., Constitutional Court Decision No. 4 (Oct. 7, 2004), SG No. 93 (Oct. 19, 2004); Constitutional Court Decision No. 11 (Nov. 14, 2002), SG No. 110 (Nov. 22, 2002). More recently, however, the National Assembly apparently decided to try to bypass the Constitutional Court’s restraints by amending the Constitution itself to provide expressly that the MOJ shall “manage the assets of the judicial system.” CONSTITUTION art. 130a.2. It is still possible, of course, that the Constitutional Court will interpret this amendment narrowly to preserve the ultimate SJC authority in the judicial infrastructure area in keeping with the independence of the judiciary, or will determine that this sort of change is ineffective unless adopted by a Grand National Assembly. For now, though, it appears that the MOJ will be taking charge of judicial facilities.⁹

As shown in the following table, in recent years the overall judicial budget has grown in line with the increases in the overall state budget, representing 2.2-2.3% of the total. According to the CLS Preliminary Study, this percentage is roughly comparable to that of most other European countries. A portion of the judiciary’s budget consists of various court fees paid for judicial

⁹ The JSA was amended to specifically transfer the management of court buildings and properties to the MOJ.

services, an amount forecast to be 48,000,000 leva (US\$ 3,000,000) in 2006. The SJC's budget requests have been slashed dramatically by the National Assembly in arriving at the official budget, cutting the judicial system's request by 30% in 2004 and 2005 and by 42% in 2006. The final 2006 judiciary budget of 273,500,000 leva corresponds to US\$ 170,937,500.

JUDICIAL SYSTEM BUDGET (in thousands)

	SJC Total Request		Actual Jud. Budget		Total State Budget		Jud. Budget as %
	Leva	US\$	Leva	US\$	Leva	US\$	
2004	292,158.9	182,599.3	205,222.0	128,263.8	9,289,533.0	5,805,958.1	2.2
2005	328,564.5	205,352.8	230,105.3	143,815.8	10,467,241.3	6,542,025.8	2.2
2006	471,900.0	294,937.5	273,500.0	170,937.5	11,901,110.7	7,438,194.2	2.3

Source: SJC Administration

Within the 2006 judicial budget, funds were allocated as follows (amounts shown in thousands):

	Leva	US\$
Supreme Administrative Court	8,939	5,587
Supreme Court of Cassation	11,220	7,013
Prosecutor's Offices	58,388	36,493
National Investigation Service	7,082	4,426
National Institute of Justice	2,334	1,459
Supreme Judicial Council	8,010	5,006
Investigative Offices	50,712	31,695
Lower Courts	126,215	78,884
Contingencies	600	375
TOTAL:	273,500	170,938

Source: 2006 STATE BUDGET OF THE REPUBLIC OF BULGARIA Act art. 2, promulgated in SG No. 105 (Dec. 29, 2005).

Several respondents stated that the prosecutorial budget is inadequate, including insufficient resources for aging buildings and overcrowded office space, legal aid programs, court experts, translation services for defendants, and even basic office supplies. This can have unintended but serious consequences on the quality of the criminal justice process. For example, one respondent described how a lack of paper forced at least one prosecutor's office to charge defendants for copies of their case file, despite legal guarantees to the contrary. Additionally, some respondents reported that trial prosecutors were often crowded together in small offices. With no meeting space, sensitive discussions and other meetings frequently take place in front of other staff members.

While the assessment team was unable to visit all or even a significant sampling of judicial buildings and prosecutorial offices, the overall working conditions for prosecutors appears inadequate, a conclusion that was reinforced by information from respondents. While 140 judicial buildings are reportedly being upgraded in the 2004-2006 period, buildings and office space for prosecutors are crowded, particularly for those offices burdened with an influx of former investigative magistrates. Three or more prosecutors typically work in each office, creating an uncomfortable and unproductive work environment.

The technological infrastructure is also substandard, despite substantial funding from the EU. While most or all prosecutors have a personal computer, these computers usually have access to nothing more than a legislative database. A Unified Information System for Counteracting Crime [hereinafter UISCC] has been in development since 1998, but most prosecutors still do not have electronic access to case information, criminal justice statistics, or other information from the police, the courts, and other criminal justice actors. See Factor 27 on Efficiency.

Finally, the assessment team received contradictory information regarding the adequacy of staffing levels. According to the Annual Judicial System Report for 2005, there were 1281 prosecutorial positions and 1506 support staff positions authorized as of December 31, 2005. On one hand, many respondents indicated that prosecutors are severely overburdened with crushing caseloads, indicating a need for additional prosecutors. However, several respondents also noted that Bulgaria has more prosecutors per capita than other countries in the region. Some respondents believed that the number of prosecutors was sufficient, but that additional support staff were needed. The inconsistent findings regarding staff levels may indicate that staffing resources are not being allocated efficiently. The Office of the Prosecutor General may wish to regularly assess staffing and case levels in different offices so that resources can be shifted to those offices that are understaffed.

Factor 27: Efficiency

Prosecutors perform their functions expeditiously, in order to achieve the best possible use of available resources.

Prosecutors’ offices have a written organizational plan to facilitate such efficiency. The prosecutor’s office has written guidelines, principles, and criteria for the implementation of criminal justice.

Conclusion	Correlation: Negative
<p>The Prosecution Service faces numerous challenges in fulfilling its functions efficiently, including insufficient staff, facilities, and technological resources to handle an overwhelming caseload, inadequate training and opportunities to develop specialization, and a culture of passivity that stems from an overly strict hierarchy.</p>	

Analysis/Background:

Several legislative and procedural requirements indicate a concern for efficiency in the prosecution function. For example, article 126 (2) of the Constitution and art. 114 of the JSA state that the Prosecutor General provides methodological direction on the work of prosecutors. The Prosecutor General, as well as both appellate and district level prosecution offices, is also responsible for conducting audits of all prosecutors’ work, and all prosecution offices are required to submit reports on the initiation and progress of case files every six months. See JSA art. 115. Additionally, the annual report on prosecutorial activities that is now required from the Prosecutor General will most likely contain case flow information and other statistics relating to prosecutorial efficiency. *Id.* art. 114a. The JSA also provides for the development of a Unified Information System for Counteracting Crime [hereinafter UISCC], with the Prosecutor General as a member of the Interdepartmental Council that is responsible for the methodological supervision of the UISCC. *Id.* art. 35k. The purpose of the UISCC is to provide a centralized and uniform mechanism for compiling and exchanging data between the different bodies in the criminal justice system. *Id.* art. 35h.

Despite the evident recognition of efficiency as an important issue, the prosecutorial function is plagued by inefficiency in many aspects of its operations. These inefficiencies stem from various sources, including a lack of resources and technological infrastructure, legislative and procedural burdens, insufficient specialization and training for prosecutors, and a culture of passivity borne from a strict, hierarchical structure that represses initiative.

As described in Factor 26, a lack of resources, including staff, facilities, supplies, and information systems creates a working environment that hampers the ability of prosecutors to fulfill their responsibilities. The inadequacy of the information technology infrastructure was particularly apparent. While five pilot information networks have reportedly been established in separate offices, prosecutors generally do not have electronic access to even basic information about the case, let alone the ability to access information from the courts, the police, etc. Although some supervisors are able to track basic case flow information electronically, in other instances the assessor team was shown a handwritten log as the primary mechanism for tracking cases. A centralized, national computer-based network for criminal justice bodies is still under development after many years. One respondent reported that one reason for the delays is that elements within the prosecutors and police did not support a centralized information network, as it would show their deficiencies. Most prosecutors also lack even simple information technology tools such as the Internet and email, and those that did have access said they were rarely used. Communication of instructions to police investigators, for example, often takes place through the mail (as noted in Factor 21). Given the rapid evidentiary deadlines now mandated in the new CPC, delays in communication and coordination with the police will contribute to a surge in case dismissals and requested extensions.

Indeed, the criminal justice system seems unprepared to handle the new responsibilities set forth in the new CPC. Factor 21 explores the relationship between prosecutors and police, and it also serves to highlight many of the systemic inefficiencies. Responsibility for most investigations has been transferred to the police investigators (*doznateli*) and most investigative magistrates have been administratively transferred to the Prosecution Service to work as prosecutors. See CPC art. 194. Additionally, the prosecutor has been granted clear authority over the direction and supervision of the pretrial investigation. See CONSTITUTION art. 127 (1); CPC art. 46. Prosecutors and police reported that this shift in investigatory functions resulted in severe difficulties, delays, and case dismissals. The *doznateli* are overwhelmed by the sudden surge in investigations and may not have a sufficient practical experience to conduct investigations, both factors leading to increased case dismissals either for lack of evidence or due to tainted evidence. Additionally, concerns were expressed regarding the lack of advocacy training for the former NIS investigators now working as prosecutors, who may not be adequately prepared to handle and argue cases before the court.

Complicating these factors are the various pressures placed on prosecutors and their lack of training to handle them. Many regional prosecutors reportedly supervise up to 450 cases at any given time, and this burden frequently leaves them unable to adequately supervise investigations and prepare cases for court. This excessive caseload is, in part, caused by the broad responsibilities given to prosecutors. In addition to supervising investigations and prosecuting criminal cases, prosecutors are also obliged to participate in certain civil and administrative cases. See CONSTITUTION art. 127 (4); JSA art. 118(4). These requirements to participate in civil and administrative cases should be reviewed and, where possible, curtailed to allow prosecutors to concentrate on their primary function of prosecuting crimes.

In addition to the difficulties that stem from handling an excessive caseload, prosecutors complained that their efforts are hampered by lack of specialization, which is exacerbated by the principle of random assignment of cases. See JSA art. 12a. Prosecutors would benefit greatly from the ability to develop areas of specialization both through training and by concentrating on specific types of cases, particularly in areas such as trafficking, intellectual property, organized crime, and anticorruption. At the time of the assessor team's visit, USAID had just completed a needs assessment for prosecutorial training, and this should be utilized by the Prosecution Service, NIJ, bar associations, and aid providers to focus their training activities.

Finally, numerous respondents observed that the strict hierarchy of the Prosecution Service has repressed the independence and initiative of prosecutors. As noted in Factors 10 and 16, the Prosecution Service is highly centralized and orders from superiors are binding. Respondents described how prosecutors were afraid to antagonize their superiors for fear that their careers

would be harmed. As a result, prosecutors developed a culture of passivity and compliance, where it is easier and safer to rely upon their superiors, the police, and the courts to make their decisions for them. This stands at odds with the additional responsibilities that have been given to prosecutors, which expects them to handle an overwhelming caseload, including supervising investigations, preparing indictments, and arguing cases. The new Prosecutor General has emphasized that prosecutors must be given the necessary professional freedom that will empower and enable them to accomplish their work, within a framework that holds them accountable for their responsibilities.

Factor 28: Compensation and Benefits

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

Conclusion	Correlation: <u>Neutral</u>
Salaries and benefits for prosecutors has improved in recent years, although many still feel that they are still too low to attract and retain qualified prosecutors.	

Analysis/Background:

Pursuant to article 27(1).5 of the JSA, it is the responsibility of the SJC to “fix the remuneration of the judges, prosecutors and investigators.” Specifically, the basic monthly salaries of the chairpersons of the SCC and the SAC, the Prosecutor General, and the Director of the National Investigation Service are set at 90% of the salary of the Constitutional Court chairperson. JSA art. 139(1). The latter’s salary is the arithmetic mean between the salary of the President of the Republic and the chairperson of the National Assembly; other Constitutional Court judges receive 90% of their chairperson’s compensation. COURT ACT art. 10, *promulgated in* SG No. 67 (June 16, 1991), *last amended* SG 114 (Dec. 30, 2003).

The basic monthly salary of the lowest position of magistrate will be set at double the average monthly salary of persons employed in the public sector. JSA art. 139(2). The salaries of all the members of the judiciary are to be fixed by the SJC. *Id.* art.139(3). The SAC has ruled that the SJC is free to determine these salaries at its discretion, and this determination is not subject to judicial review.

The basic salary for prosecutorial positions is as follows:

Position	Monthly Salary*	
	Leva	US\$
Deputy Prosecutor General	1960	1289
Prosecutor – Chief of Unit	1940	1276
Prosecutor in SCP/SAP	1880	1237
Appellate Prosecutor	1810	1191
Deputy Appellate Prosecutor	1680	1105
Prosecutor at Appellate Prosecution	1560	1026
District Prosecutor	1475	970
Deputy District Prosecutor	1375	905

* The basic salary for most positions may be increased by various ranks within each position. For example, the salary for an Appellate Prosecutor who holds the rank of Prosecutor in the Supreme Cassation Prosecution is increased to 1835 leva or \$US 1207.

Prosecutor in District Prosecution	1275	839
Regional Prosecutor	1190	783
Deputy Regional Prosecutor	1080	711
Prosecutor in Regional Prosecution	960	632
Junior Prosecutor	732	482

Source: SJC Administration

In addition to their regular salaries, prosecutors also receive an annual robe or other clothing allowance equivalent to two average monthly salaries of persons employed in the public sector (an allowance currently equaling 732 leva or US\$ 458), special pay for service during holidays or vacation periods, free housing or an allowance in lieu thereof, social, health and accident insurance, a lump sum payment on retirement or other removal from office (except for a criminal conviction, dereliction of duty or similar wrongdoing), compensation upon reinstatement for wrongful dismissal, travel and moving expenses when appointed to a new position requiring relocation, and 30 days of vacation per year. JSA arts. 139(4), 139a-f, 190.

By all accounts, judicial compensation has improved considerably in recent years, as only a few years ago salaries were considered very low, with many prosecutors reportedly becoming discouraged and resigning from their positions to become attorneys instead. Now, however, respondents had mixed reactions to the level of compensation. Some indicated that salaries were still too low and increased the risk of corruption, while others expressed satisfaction with the salaries for prosecutors. As in many countries, compensation continues to be well below that of the top ranks of the attorneys' profession, but the stability, security, and prestige of the prosecutorial function offer what many people consider to be offsetting advantages.

While the improvements in prosecutorial pay are noteworthy and encouraging, it is important that ongoing attention be given to this important component of an effective judicial system. The SJC, prosecutors' associations, and other interested organizations need to be sure that salaries are not allowed to stagnate and that they instead continue to be sufficient to attract the best candidates to the profession.

List of Acronyms

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