



Rule of Law: Supranationalization from the Perspective of Bulgaria

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Abstract. The following study analyses the supranationalization of the rule of law from the perspective of Bulgaria's EU membership, focusing on how external monitoring and EU governance tools have reshaped domestic understandings of constitutionalism, legality, and institutional accountability. It situates Bulgaria's post-communist constitutional settlement within broader debates on constitutional pluralism and the 'external dimension' of constitutionalization, arguing that Bulgarian doctrine has long remained attached to a predominantly Westphalian conception of sovereignty, with only limited engagement with supranational constitutionalism and the conceptual vocabulary of supranationalization. The article traces the domestic trajectory of the rule of law principle under Article 4 of the 1991 Constitution and examines the constitutional significance of the 2005 EU integration clause, highlighting the largely under-theorized structural consequences of primacy and shared governance for Bulgarian constitutional order. It then evaluates the impact of the Cooperation and Verification Mechanism (2007–2019; repealed 2023) on judicial reform, anti-corruption policy, and institutional practice, before assessing Bulgaria's performance under the EU Annual Rule of Law Cycle (2020–2024) and the EU Justice Scoreboard. The author argues that EU monitoring has had important agenda-setting effects but has also displayed technocratic limitations, including reliance on formal indicators that may misrepresent national realities. It concludes by identifying post-CVM risks and outlining the conditions for meaningful rule of law consolidation in Bulgaria.

Keywords: rule of law, supranationalization, Bulgaria, Cooperation and Verification Mechanism (CVM), EU Rule of Law Cycle

1. Introduction

The rule of law emerged as a cornerstone of European Union (EU) law and policy shortly after the ‘velvet’ revolutions in Central and Eastern Europe (CEE), coinciding with the Union’s eastward enlargement process.¹ The 1993 Copenhagen criteria emphasized the commitment to the rule of law as a key political requirement for EU membership, with the accession process aimed at strengthening fragile democratic institutions in post-communist countries.

The EU, alongside the Council of Europe, acted as a catalyst for reforming institutions responsible for upholding and enforcing the rule of law in the CEE region. The enlargement process not only functioned as a ‘laboratory’ for transforming the candidate nations but also, albeit less visibly, prompted changes within the EU itself.² Through rigorous monitoring and evaluation of adherence to the rule of law and fundamental rights in countries in CEE, the EU grew more aware of its core values and constitutional principles. This awareness highlighted the necessity for explicitly defined obligations for both the Union and its Member States, bridging the gap between external and internal standards³ and reinforcing these principles within the Treaties to mitigate potential political backlash.⁴

Initially, there was a distinct separation of responsibilities regarding human rights between the European Communities and the Council of Europe, which was primarily accountable under the European Convention on Human Rights. Over time, the EU expanded its human rights policy, culminating in the adoption of the EU Charter of Fundamental Rights in 2000 and its incorporation into the EU’s constitutional framework in 2009.⁵

2. Constitutional Aspects of the Supranationalization Process in Bulgaria

In this context, scholars have begun to develop concepts related to the constitutionalization of the accession process⁶ and the ‘external dimension of constitutionalization’ in countries in CEE.⁷ These concepts illuminate how the evolving and pluralistic nature of constitutionalism intersects with democracy and popular sovereignty, primarily driven by the internationalization and supranationalization of constitutional functions. The accession of countries in

1 Engelbrekt, Moberg and Nergelius, 2021, p. 6.

2 *Idem*, p. 7. See also: Sadurski, 2012.

3 Sadurski, 2002, p. 344; Hillion, 2003.

4 Engelbrekt, Moberg, and Nergelius, 2021, p. 8.

5 Sadurski, 2004.

6 Sajo, 2004, p. 434.

7 Sadurski, 2012; Blokker, 2013, p. 5; Engelbrekt, Moberg, and Nergelius, 2021, p. 7.

CEE to the EU exemplifies this external dimension of constitution-making, which not only involves the national adoption of European norms but also signifies a qualitative shift in the establishment of constitutional democracies – from a closed model of national sovereignty to a pluralistic regime based on divided sovereignty.⁸

Paradoxically, Bulgaria has largely adhered to a ‘traditional’ framework of modern Westphalian constitutionalism, characterized by a closed and homogeneous understanding of sovereignty, territory, and people.⁹ For the first 25 years after the adoption of the 1991 Constitution of the Republic of Bulgaria, constitutional theory predominantly focused on the Westphalian model. Recently, concepts such as supranational constitutional pluralism,¹⁰ global constitutionalism,¹¹ and supranational constitutionalism¹² have begun to gain traction in Bulgarian academic discourse on constitutional law. However, these concepts have yet to be examined vis-à-vis the external dimension of constitutionalization concerning Bulgaria’s interactions with the EU and the Council of Europe. Consequently, the tensions arising from the dialogue between national and supranational regimes, as well as the supranationalization of the principle of the rule of law, remain largely overlooked in Bulgarian legal scholarship, particularly regarding EU procedures related to the rule of law.

The Constitution of the Republic of Bulgaria, enacted in 1991, established a new democratic political framework based on the principles of separation of powers, rule of law, and protection of fundamental rights and freedoms. The principle of the rule of law is expressed in Article 4, paragraph 1 of the Constitution, which states: ‘The Republic of Bulgaria is a law-governed state.¹³ It is governed by the Constitution and the laws of the country.’ Notably, contemporary researchers may observe that this new articulation of the rule of law closely resembles the principle of socialist legality found in the socialist constitutions of 1947 and 1971, which similarly asserted that the ‘People’s Republic of Bulgaria shall be governed exactly by the Constitution and the laws of the country’.

8 Blokker, 2013, pp. 5–6.

9 The template is explained in: Walker, 2010. See also Blokker, 2013, p. 6.

10 Танчев [Tanchev], 2014.

11 The topic was first theoretically explored at the international conference titled *Global Constitutionalism and Its Challenges to Westphalian Constitutional Law*, organized by the European Academy of Legal Theory and the University of Sofia St. Kliment Ohridski, Faculty of Law, on 7 April 2017, in Sofia, Bulgaria. The sole Bulgarian scholar participating in this initiative was Martin Belov, who focused entirely on doctrinal issues and did not address the question of how constitutional law and jurisprudence should respond and adapt to the challenges posed by supranational regimes. See Belov, 2018. In the constitutional law literature in Bulgarian, the relationship between constitutionalism and globalization, particularly regarding its implications for democracies, is discussed in Близнашки [Bliznashki], 2019, pp. 282–304.

12 Tanchev and Belov, 2019.

13 The term in Bulgarian language is the translation equivalent to the German term *Rechtsstaat*.

Since the adoption of the Constitution in 1991, the principle of the rule of law has been translated and interpreted in various ways in Bulgaria.¹⁴ Initially, Bulgarian constitutional legal doctrine focused on various theories of the rule of law and distinguished between its formal and substantive elements.¹⁵ Amid this array of theories, versions, and postulates, the principle risked being reduced to a mere ‘decorative ornament’, detached from the realities of ‘living’ law.

Concurrently, the Constitutional Court began to extensively utilize the rule of law as a basis for declaring acts of the Parliament unconstitutional.¹⁶ The 1991 Constitution marked the inaugural establishment of constitutional control – a new mechanism designed to ensure that laws and institutions adhered to constitutional principles and protected individual rights. This represented a significant departure from the arbitrary rule characteristic of communist regimes, where laws were frequently wielded as instruments of oppression. From the outset, the Constitutional Court relied heavily on the principle of the rule of law, and its jurisprudence has significantly contributed to its development within legislation. However, it has largely remained in the conceptual framework of the rule of law, encompassing both formal and substantive components.¹⁷

Bulgaria’s accession to the EU has catalysed a transformative shift in the understanding and application of the principle of the rule of law. The principle has evolved from being merely a test for the constitutionality of legislation to a key criterion for the institutions, procedures, and practices essential to uphold the new constitutional democracy as an EU member.

The 2005 constitutional amendment, directly related to Bulgaria’s anticipated EU membership, introduced a new paragraph 3 to Article 4 of the Constitution: ‘The Republic of Bulgaria shall participate in the construction and development of the European Union.’ This provision, known as the ‘EU integration clause’,¹⁸ was intentionally included in the article enshrining the principle of the rule of law in Bulgaria. While its wording may be described as ‘modest, declarative, and even decorative’,¹⁹ it has established a constitutional foundation for the primacy

14 For a detailed discussion of the various translations of rule of law in Bulgarian constitutional theory, as well as the terms that denote the constitutional principle of the rule of law, see Марчева [Marcheva], 2021a, pp. 21–27, 73–74.

15 Близнашки [Bliznashki], 1999.

16 Tanchev and Belov, 2019, p. 1097.

17 Two landmark decisions of the Constitutional Court establish the conceptual framework of its jurisprudence. The first, issued in 2005, introduced the constitutional principle of the rule of law as a combination of formal and substantive elements, serving as the criteria against which all contested laws must be evaluated (Decision No. 1, 27 January 2005, Case No. 8/2004). The second decision, made in 2016, underscored the importance of adhering to the principle of *ubi ius ibi remedium* ‘where there is a right, there must be a remedy’, thereby highlighting the concept of effective remedies (Decision No. 12, 13 October 2016, Case No. 13/2015).

18 Tanchev and Belov, 2019, p. 1101.

19 *Ibid.*

of EU law and introduced a new supranational tier of institutions coexisting with the national constitutional framework.

This clearly signified a radical structural change in Bulgaria's constitutional order, particularly concerning the rule of law. However, it has not been thoroughly examined by Bulgarian legal scholars, who have discussed the primacy of EU law within the 'national constitutional space'²⁰ and the context of contemporary constitutional pluralism²¹ but have not delved deeply into the problematics of supranationalization. EU law researchers in Bulgaria have elucidated how the principle of the rule of law has assumed a constitutional character within the EU's legal framework, as demonstrated by the case-law of the Court of Justice of the EU and a series of amendments to the founding treaties.²² Some have also observed that advancement of the rule of law at the supranational level is expected to exert a significant counterbalancing effect on the legal systems of Member States, thereby addressing weaknesses in the rule of law at the national level.²³ Nevertheless, Bulgarian academic discourse has significantly neglected to examine the impact of delegating authority and decision-making responsibilities to EU institutions, as well as the EU's rule-of-law procedures, on the national application of this principle.

The term 'supranationalization' is rarely used in Bulgarian legal scholarship, nor are any related theoretical approaches, such as Weiler's classic distinction between normative and decisional supranationalism,²⁴ commonly discussed. Thus far, the Constitutional Court has not identified any tension between the supranational and national principles of the rule of law, operating primarily under the assumption that such a conflict is unlikely to arise because of their shared core concept, despite having dynamic content. Recently, tension has emerged between Bulgarian national courts and supranational jurisdictions regarding human rights²⁵ and judicial independence,²⁶ prompting a re-evaluation of the application of the rule of law at both levels. This situation indicates that following the discontinuation of the EU Cooperation and Verification Mechanism (CVM) Bulgaria must address new rule-of-law-related challenges.

20 Drumeva, 2009.

21 Tanchev, 2014.

22 Арабаджиев [Arabadjiev], 2015; Вълчева [Valcheva], 2022.

23 Христов [Hristev], 2016, p. 189.

24 Weiler, 1981.

25 Judgment of the Court (Grand Chamber) of 14 December 2021, *V. M. A. v Sofia Municipality, Pancharevo District*, Case C-490/20.

26 Judgment of the Court (First Chamber) of 30 April 2025, *Inspektorat kam Visshia sadeben savet*, Joined Cases C-313/23, C-316/23, and C-332/23.

3. Impact of the EU CVM on the Rule of Law in Bulgaria

When Bulgaria joined the EU on 1 January 2007, it was assessed as having critical hurdles related to judicial reform, corruption, and organized crime. To assist both Bulgaria and Romania in tackling these issues, the European Commission established the CVM as a temporary measure. This initiative reflected a shared long-term political commitment to ensure that Bulgarian citizens had ‘access to the full benefits of EU membership which should contribute to strengthening the rule of law and eliminating corruption’.²⁷ Over the years, the CVM has focused on supporting Bulgaria in reforming its institutions and practices, while evaluating progress against a set of predefined, interlinked benchmarks.

The initial monitoring report highlighted ‘the primordial importance of the principle of rule of law for the EU’.²⁸ Given that the previous totalitarian regime had subordinated law to the dictates of communist ideology, establishing the rule of law as a fundamental principle of public order was not a simple task or a straightforward process.²⁹ The economic transformation was accompanied by a significant criminal element that thrived in a largely corrupt system with a weak judiciary.³⁰

Consequently, judicial reforms became the primary focus of the CVM, established to monitor Bulgaria’s progress. Between 2007 and 2019, official reports acknowledged some institutional and legislative efforts undertaken in response to the CVM recommendations and the gradual achievement of certain benchmarks. Despite these advancements, the reports consistently criticized the lack of tangible results and effective enforcement mechanisms, indicating that the rule of law remained Bulgaria’s Achilles’s heel.³¹ Nonetheless, non-governmental organizations (NGOs) have placed considerable reliance on the CVM as a critical tool for applying sustained pressure on the government, advocating for deeper and more meaningful reforms within the judiciary and broader governance structures.³²

In its final report of 2019, the Commission concluded: ‘The past year has seen the consolidation of the legal and institutional framework put in place over previous years. Translating this into results over the long term will require determination and follow-up.’³³ The CVM was officially repealed in 2023,³⁴

27 European Commission, 2008.

28 European Commission, 2007.

29 Mendelski, 2013; Dimitrov, 2015.

30 Станчев [Stanchev], 2004; Ganev. 2007.

31 Марчева [Marcheva], 2021b.

32 Иванова [Ivanova] and Делчева [Delcheva], 2012.

33 European Commission, 2019b.

34 Commission Decision (EU) 2023/1785 of 15 September 2023 repealing Decision 2006/929/EC establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organized crime [C/2023/5652]. Available at: <http://data.europa.eu/eli/dec/2023/1785/oj> (Accessed: 28.08.2024).

following Bulgaria's satisfactory compliance with all established benchmarks. Additionally, the evolving landscape of the Union's rule of law has provided a new context for the Commission's cooperation with Bulgaria within the newly launched Annual Rule of Law Cycle for all Member States.

In retrospect, numerous structural and legislative reforms in the judiciary evolved as part of a continuous process.³⁵ The CVM turned the spotlight on this systemic problem and its ramifications in Bulgarian constitutional democracy, rather than resolving it. The principle of the rule of law began to be recognized within Bulgarian society as equally essential as democracy and human rights.

Many analysts have commented on the 'inevitable crash of the CVM'.³⁶ However, it was clear from the beginning that the post-accession conditionality of EU governance, including the CVM for Bulgaria and Romania, was designed to support the efforts of the new members for effective integration, not to overcome resistance from 'unwilling regimes'³⁷ or to address deep-seated systemic issues within their legal systems. Paradoxically, the shortcomings of the rule of law reforms in Bulgaria were often attributed more to the perceived inadequacies of the EU's CVM than to the actual efforts and limitations of the reforms themselves, which amounted to drafting superficial strategies and redundant institutional restructuring. The legacy of imitative reforms from the communist era, coupled with covert resistance to meaningful progress, has hindered the Europeanization of Bulgaria's socio-political system and continues to pose hurdles in all EU rule-of-law-related procedures concerning the country.

4. Bulgaria in the EU Annual Rule of Law Cycle

In 2014, the Commission established the EU Rule of Law Framework,³⁸ designed to be activated in crises and prevent systemic threats to the rule of law in Member States that could lead to a 'clear risk of a serious breach' as defined in Article 7 of the Treaty on EU (TEU). It serves as a dialogue tool between the Commission and the affected Member State facilitating resolutions without resorting to the mechanisms outlined in Article 7.

35 In 2015, a constitutional reform divided the Supreme Judicial Council into two colleges: one for judges and another for prosecutors and investigating magistrates. In 2023, another constitutional reform further deepened this division by establishing two separate bodies: the Supreme Judicial Council for judges and the Supreme Prosecutorial Council for prosecutors and investigating magistrates, which was intended to strengthen judicial independence. However, in July 2024, the Constitutional Court ruled that these amendments were unconstitutional, stating that they fell under the jurisdiction of the Grand National Assembly (see Decision No. 13 issued on 26 July 2024 by the Constitutional Court of the Republic of Bulgaria in Case No. 1/2024).

36 Alegre Ivanova and Denis-Smith, 2009; Dimitrov, 2015.

37 Grabbe, 2006, p. 53.

38 European Commission, 2014b.

In 2019, the Annual Rule of Law Cycle was launched³⁹ to create a continuous mechanism for monitoring and assessing the rule of law across all EU Member States with a long-term perspective. The primary objective of this cycle is to foster collaboration at both the EU and national levels, in line with their designated roles, to prevent the emergence or escalation of rule of law problems. This initiative includes the publication of Annual Rule of Law Reports, which have featured recommendations since 2022. Bulgaria's post-accession CVM has been effectively integrated and transformed into the Annual Rule of Law Reports for the country.

4.1. The 2020 Annual Rule of Law Report

The first Annual Rule of Law Report of 2020 for Bulgaria⁴⁰ recapitulated the conclusions from the CVM and underlined that judicial reform in the country was a 'gradual process with important implications for judicial independence and public confidence', along with ongoing challenges. The report emphasized the need to establish legal procedures for the effective accountability and criminal liability of the Prosecutor General, as well as to address the ongoing debate regarding the composition and functioning of the Supreme Judicial Council and its Inspectorate. A positive development noted in the report was the repeal of controversial provisions concerning the automatic suspension of magistrates during criminal investigations and the requirement for magistrates to declare their membership in professional organizations.

The Commission analysed the effect of the anti-corruption reform (2017–2018) and inferred that it has led to improved cooperation among the relevant authorities. The report pointed out that high-level investigations were launched in the first half of 2020, and charges were brought in many cases. However, establishing a proven record of successful convictions in high-profile corruption cases was still necessary in Bulgaria. Major obstacles continued to exist, as evidenced by perception surveys indicating a starkly low level of public confidence in anti-corruption institutions. The absence of significant progress in combating corruption was a key factor fuelling the summer 2020 protests in Bulgaria,⁴¹

39 European Commission, 2019a.

40 See European Commission, 2020a.

41 In 2020, Bulgaria witnessed daily anti-corruption protests from July to November, calling for comprehensive reforms in the judicial and prosecutorial systems. The unrest was sparked when political activists attempted to plant a Bulgarian flag on a public beach near the residence of Ahmed Dogan, a controversial politician known for declaring in front of voters in 2009, 'I am the instrument of power that distributes the portions of financing in the state.' The activists were forcibly removed by security personnel with strong physiques, later identified by the President of Bulgaria as members of the National Security Guard. Shortly thereafter, on 9 July, police and prosecutors conducted raids on offices within the Presidency, targeting the President's secretary and one of his advisers, escalating public outrage. This series of events aroused a wave of daily civil demonstrations calling for the Prime Minister and Prosecutor General to step down. None

and it became imperative for the authorities to allocate sufficient resources to effectively address this issue. Although a legal framework addressed conflicts of interest, concerns persisted regarding the lack of transparency and predictability in the legislative process, especially regarding unregulated lobbying practices.

The 2020 Annual Law of Review Report addressed media pluralism, outlining the constitutional and legislative framework while noting that the current legal framework did not explicitly prohibit politicians from owning media outlets. Consequently, this has resulted in established connections between political actors and certain media organizations. Key concerns included the lack of transparency in media ownership and reported incidents of physical and online attacks on journalists.

The analysis of the fourth pillar of the report – checks and balances – drew attention to the limited use of public consultations and impact assessments in the legislative process. On a positive note, it acknowledged the improved functioning of national human rights institutions. However, the Commission expressed considerable concern regarding a new draft law on foreign funding for NGOs, warning that its adoption could further restrict the already diminished civic space in Bulgaria.⁴²

4.2. The 2021 Annual Rule of Law Report

In response to the initial report within the new Rule of Law cycle, the Bulgarian authorities adopted an Action Plan that addressed all four monitoring pillars. However, the subsequent findings of the Commission in the 2021 Rule of Law Report for Bulgaria⁴³ indicated a notable lack of substantial progress in judicial reform. Concerns regarding the composition and functioning of the Supreme Judicial Council remained. The Chief Inspector and inspectors, authorized by the Constitution to conduct integrity and conflict-of-interest checks on judges, prosecutors, and investigating magistrates, saw their mandates expire in April 2020. Nevertheless, they continued to perform their duties, as the Parliament did not elect new inspectors despite the time-sensitive nature of their important

of them resigned but in the peak of the heated political tension in the middle of August 2020, Prime Minister Boyko Borissov and his political party Citizens for a European Development of Bulgaria (GERB) announced their proposal to initiate the procedure to convoke the Grand National Assembly for the adoption of a new Constitution. For further details, see Marcheva and Yocheva, 2021, p. 50.

42 On 1 July 2020, members of the ultra-nationalist group *Обединени патриоти* [Unified Patriots] submitted a bill to Parliament requiring NGOs that received over BGN 1,000 (approximately EUR 500) from international donors – excluding those from the EU – to comply with new regulations. These regulations included the obligation for all governing body members to publicly register asset declarations, among other requirements.

43 See European Commission, 2021.

responsibilities.⁴⁴ Simultaneously, some judges were promoted to higher positions outside the regular open competition procedure. The Commission acknowledged progress in the administrative justice system; however, the overall digitalization of the justice sector remained slow in practice.

Concerning anti-corruption reforms, a new strategy was adopted for the period of 2021–2027, setting priorities such as timely responses and improved accountability. However, EU institutions continued to express concerns about the low success rate of final convictions in high-profile cases, as well as the effectiveness of measures related to public administration integrity, lobbying, and whistleblower protection, which still lacked dedicated regulation.

Regarding media pluralism, the 2021 report reiterated the concerns raised in the previous report and identified a new gap in the legal and policy framework revealed by the COVID-19 pandemic. This gap primarily affected the economic protection of regional journalists, as no specific support measures have been established.

The analysis of checks and balances presented a similar picture, reiterating concerns about shortcomings in the legislative process, such as the circumvention of impact assessments and public consultations, particularly through the introduction of significant changes through amendments to unrelated laws. The Commission also noted that the civic space in Bulgaria remained restricted and narrow despite the abandonment of the draft law on foreign funding for NGOs.

4.3. The 2022 Annual Rule of Law Report

Since 2022, the Commission has broadened the scope of the rule of law cycle and included specific recommendations for each country in the report chapters. In addition to the long-standing concerns from previous reports, which remained relevant, the 2022 Annual Rule of Law Report⁴⁵ noted a legislative reform that abolished specialized criminal courts and prosecutors, reassigning all personnel to ordinary courts and prosecution offices.

In response to the COVID-19 pandemic, the government formulated its Recovery and Resilience Plan within the EU framework, committing to further reform the rule of law in Bulgaria. The government pledged to create a robust mechanism for holding the Prosecutor General and their deputies accountable, ensuring effective criminal investigations against them and instituting judicial oversight of prosecutorial decisions not to pursue investigations.

44 As of 2024, the Bulgarian Parliament has yet to elect new inspectors, and there are no constitutional mechanisms in place to address this unusual delay, undermining the very concept of a constitutional body with a defined mandate.

45 See European Commission, 2022b.

No progress was reported in the anti-corruption sector, apart from the initial identification of specific corruption risks related to budget fund management and control activities, including procurement, during the COVID-19 pandemic. The 2022 report discussed the proposed reforms intended to restructure the Anti-Corruption Commission to improve its capacity to investigate corruption cases.

The analysis of media pluralism in Bulgaria indicated the absence of a clear regulatory framework to ensure transparency in the allocation of state advertising, as well as inadequate safeguards for the independence of public service media. The Commission also noted a rise in so-called SLAPP cases against journalists.⁴⁶

The Commission noted the introduction of new procedural rules aimed at enhancing the law-making process within the Parliament's Rules of Procedure. However, each Bulgarian Parliament has the authority to adopt its own Rules, meaning that such amendments lack stability and continuity compared with those enshrined in the Normative Acts Law. Two new structures within the executive branch received a positive reaction from the Commission: the Council for Civil Society Development, which is tasked with drafting and implementing policies to support civil society, including strategies and funding for NGOs; and the proposed establishment of a Rule of Law Council, designed to address the topics outlined in the Annual Rule of Law Reports.

Four out of the six recommendations focused on judicial reform and addressed long-standing commitments of Bulgaria under the CVM. These included the need to avoid the long-term secondment of judges to fill vacant positions, which should instead be filled through timely ordinary promotion competitions; ensuring that the composition of the Supreme Judicial Council aligned with European standards; enhancing the functioning of the Inspectorate to the Supreme Judicial Council by involving judicial bodies in the selection of its members; and implementing tailored integrity measures for the police, judiciary, and specific sectors of public administration. The Commission emphasized the expectation that institutional reforms within the Anti-Corruption Commission and specialized judicial authorities would lead to more effective investigations and a stronger track record of prosecutions and final judgments in high-level corruption cases. The final recommendation focused on improving the allocation of state advertising.

4.4. The 2023 Annual Rule of Law Report

Legislative reforms in Bulgaria have addressed several long-standing concerns raised in the CVM and previous Rule of Law Reports, specifically regarding the accountability and criminal liability of the Prosecutor General, as well as the judicial review of prosecutorial decisions to refuse opening criminal

⁴⁶ SLAPP is an abbreviation of 'strategic lawsuits against public participation'.

investigations.⁴⁷ The 2023 Annual Rule of Law Report⁴⁸ also noted improvements in the availability of electronic communications within the justice system, along with steps taken to amend legislation aimed at implementing fully digitized justice. The Commission welcomed the introduction of new laws aimed at expanding legal aid and instituting mandatory judicial mediation.⁴⁹

Regarding the anti-corruption pillar, the report acknowledged the adoption of whistleblower legislation that transposed the EU Whistleblowers' Directive, as well as the government's efforts to prepare a draft law on lobbying in Bulgaria. However, significant gaps remained, including ineffective investigations and a lack of final convictions in high-level corruption cases, as well as insufficient control mechanisms for integrity measures in top-level positions.

From the perspective of media pluralism, no significant positive changes were observed, aside from improved access to public information. Although the government established a working group to consider updates to the legislative framework concerning SLAPP cases, no tangible progress was made. Journalists continued to face lawsuits and various threats, including increased online harassment.

The Commission pointed out that the renewal of the mandates of independent and regulatory authorities was delayed owing to the political situation⁵⁰ and reiterated concerns regarding the law-making process, despite the new procedural rules in place. It also highlighted a renewed attempt by an ultra-nationalist party in the Parliament to restrict the NGO sector in Bulgaria through a proposed law on foreign agents, which has not progressed.

The 2023 recommendations were built upon the previous year's incomplete initiatives and specifically addressed the newly emerging challenges in Bulgaria with greater detail. During discussions of the Recovery and Resilience Plan within the European Semester,⁵¹ the Commission stressed delays in reforms related to anti-corruption and public procurement, emphasizing the need for a mechanism to ensure the accountability and criminal liability of the Prosecutor General, as well as the establishment of a new anti-corruption body that is both financially and

47 In June 2023, the Prosecutor General contested the new legislative provisions as unconstitutional before the Constitutional Court. However, the Court rejected this request in Decision No. 14, issued on 26 July 2024, in Case No. 10/2023.

48 See European Commission, 2023a.

49 However, the legislative reform that introduced mandatory mediation for certain types of civil and commercial cases was declared unconstitutional by the Constitutional Court in Decision No. 11, issued on 1 July 2024, in Case No. 11/2024.

50 The Commission refers to the inability to form a stable coalition government in Bulgaria over the past three years.

51 The European semester was established in 2010 in response to the 2008 financial crisis, aiming to enhance EU socio-economic governance and improve coordination of national economic and fiscal policies. It introduces an annual planning cycle during which Member States and EU institutions primarily discuss how budgeting and the allocation of EU funds are linked to various reforms, including those related to the rule of law and social inclusion.

politically independent.⁵² Additionally, it was noted that a lag in implementing several critical rule of law reforms hindered the creation of a better business environment, particularly in the light of the need to transform the energy sector owing to increased uncertainty following Russia's invasion of Ukraine.

4.5. The 2024 Annual Rule of Law Report

The focus of the 2024 Annual Rule of Law Report⁵³ was the comprehensive constitutional reform adopted in December 2023 in Bulgaria to improve judicial independence, including the division of the Supreme Judicial Council into two separate councils – the Judges' Council and Prosecutors' Council – and the limitation of the Prosecutor General's powers.⁵⁴ The Commission also noted that a new draft law on the judicial system act was prepared in line with the constitutional reform to address the issues raised in the previous Rule of Law Reports.⁵⁵

Following the implementation of a reform, the Commission for Counteracting Corruption and Illegal Assets Forfeiture was reorganized into two separate entities: the Anti-Corruption Commission and the Commission for Illegal Assets Forfeiture. However, the effectiveness of this reorganization in Bulgaria was yet to be evaluated. Previous concerns regarding anti-corruption measures remained, and meaningful achievements in practice were still outstanding. It was also mentioned that initiatives aimed at regulating lobbying to enhance transparency were still in the early stages, with no bill yet drafted, although such efforts had been previously underway.

A similar situation has been observed in reform trends concerning media pluralism in Bulgaria. Despite the formal legal framework, the independence of the media regulator still lacked sufficient safeguards. Similarly, although several registers for media ownership information existed, disclosure obligations could not be enforced. While legal protections for editorial independence were in place, signs of practical political and economic influence over the media continued to be evident. The Commission noted that the government had resumed work on a draft law to strengthen the independence of public service media and further stressed its concern that the media regulator has yet to designate a new Director General for national television.⁵⁶

⁵² European Commission, 2023b, p. 8.

⁵³ See European Commission, 2024b.

⁵⁴ However, these reforms were deemed unconstitutional by Decision No. 13, issued by the Constitutional Court of the Republic of Bulgaria on 26 July 2024, in Case No. 1/2024. The court ruled that such amendments fell under the jurisdiction of the Grand National Assembly.

⁵⁵ Following the contestation of the constitutional reform of the judiciary in the Constitutional Court, the proposed legislation was suspended. Currently, it remains unclear what further legislative actions will be taken, as they must align with the current constitutional framework.

⁵⁶ In June 2022, the competitive selection process for a new Director General of Bulgarian national television failed, allowing the incumbent, Emil Koshlukov, to remain in office after his three-

The primary concern for the rule of law in Bulgaria in 2024 was the substantial number of independent and regulatory authorities operating with expired mandates, along with the lack of mechanisms to compel the relevant appointing bodies to fulfil their responsibilities. Additionally, it has become apparent that the ongoing reorganizational reforms transferring authorities among institutions have not significantly improved efficiency or practical outcomes.

Although the Commission's recommendations pinpointed the key rule of law problems in Bulgaria and pressed the authorities to implement the necessary legislative and policy changes, progress has been slow. This is mainly attributable to the political crisis of the past three years and continued difficulties in forming a stable coalition government. However, this situation demonstrates the extent to which the rule of law – both its legal framework and practices – depends on political stability, as well as the lack of compensatory mechanisms that would uphold the rule of law in circumstances where the democratic system fails to produce a government endorsed by the Parliament.

In the context of the recommendations for Bulgaria within the European Semester, it was noted that the country had yet to implement the key business environment reforms outlined in the Recovery and Resilience Plan. Specifically mentioned were the operational establishment of the anti-corruption commission, the transformation of statutory state-owned enterprises, and the reduction of single-bidder contracts and direct contract awards.⁵⁷ These reforms are expected to enhance the business environment, which has been assessed as 'generally not supportive of investment'.⁵⁸

Institutional quality remains a challenge for Bulgaria. According to the World Bank's Worldwide Governance Indicators (2022), Bulgaria ranks low in accountability, government effectiveness, rule of law, and control of corruption compared with the average of the five Eurozone countries with the lowest scores. Additionally, the Single Market Scoreboard indicates that Bulgaria lags in the efficiency of insolvency procedures, which reduces economic flexibility and may discourage market entry and exit.

year term had expired, despite having sparked protests due to his policies and censorship. The first-instance administrative court identified several violations in the selection procedure, including the members of the media regulator, the Council for Electronic Media, voting without providing explanations for their votes. The administrative case is still pending, awaiting a final decision from the Supreme Administrative Court. Notably, the legal framework permitted the previous director to serve a second three-year term, despite the expiration of his initial mandate.

57 European Commission, 2024a, p. 8.

58 *Idem*, p. 3.

5. Bulgaria in the EU Justice Scoreboard

Considering Bulgaria's decades of reform in its justice system to strengthen the rule of law, it is essential to evaluate the country's performance in the EU Justice Scoreboard, which was established in 2013 as part of the EU's broader initiative to improve the efficiency, quality, and independence of justice systems across Member States. It has also become a key element of the EU's Rule of Law toolbox and a valuable resource for the European Semester, the annual cycle focused on coordinating economic policies, while also playing a significant role in the Recovery and Resilience Facility and the application of the Rule of Law Conditionality Regulation. In 2012, Bulgaria was one of six EU Member States identified as having shortcomings in the functioning of its justice system.⁵⁹

5.1. Bulgaria's Status in the First EU Justice Scoreboard of 2013

The 2013 Scoreboard⁶⁰ integrated data from various sources to compare EU Member States on two closely related indicators:⁶¹ first, the perceived independence of the judiciary as a whole, where Bulgaria ranked above the two lowest countries, Slovakia and Romania;⁶² and second, the specific indicator of 'perceived independence of civil justice', where Bulgaria ranked just above Romania.⁶³

In 2013, the Scoreboard presented key findings that primarily focused on indicators associated with the efficiency of legal proceedings, including the duration of cases, clearance rate, and volume of unresolved cases. Some of the quantitative charts in the comparative tool, such as those depicting the time and rate of resolving litigious civil and commercial cases, as well as the number of cases resolved,⁶⁴ lacked data from Bulgaria. The chart illustrating the 'time needed to resolve insolvency', that is, the duration for creditors to recover their debts, revealed that most EU countries fell within a range of one to two years. By contrast, countries in CEE took approximately three years to resolve insolvencies, with Bulgaria performing slightly better than Slovakia, which ranked the lowest at four years. Conversely, the time taken and the rate of resolving administrative issues in Bulgaria were comparable to those of most EU Member States.

59 See European Commission, 2014a, p. 6.

60 European Commission, 2013.

61 *Idem*, p. 19.

62 The data originate from the World Economic Forum, which carried out a survey utilizing a representative sample of companies across various nations, encompassing the primary sectors of the economy: agriculture, manufacturing, non-manufacturing, and services.

63 For this comparison, the 2013 Scoreboard has incorporated data from the World Justice Project, and the chart explicitly stated that there were no data for some EU Member States and they were not included in the comparison: Cyprus, Ireland, Latvia, Lithuania, Luxembourg, Malta, and Slovakia.

64 European Commission, 2013, pp. 7, 9, 11.

According to the 2013 EU Justice Scoreboard, Bulgaria had only implemented standard performance and quality indicators, lacked defined quality standards or a regular evaluation system, and had not assigned responsibility for quality policy or systems to specialized court staff. Thus, the country fell short in establishing a comprehensive monitoring system, which hindered efforts to shorten the length of proceedings and enhance the quality of justice. In 2013, Bulgaria was also behind in electronic communication between the courts and the parties involved. Similar to nearly half of the EU Member States, Bulgaria lacked electronic processing for small claims and undisputed debt recovery, and, as with approximately one-third of Member States, electronic submission of claims was also not feasible.

Furthermore, while nearly all EU countries provided a range of Alternative Dispute Resolution (ADR) methods for civil and commercial disputes, such as non-judicial mediation and conciliation, Bulgaria only offered judicial mediation as a complement to traditional procedures. Additionally, Bulgaria lacked diverse options for training judges beyond initial training, in contrast to many EU Member States, which provided various in-service training opportunities.

5.2. Bulgaria's Progress over the Next Decade vis-à-vis the EU Justice Scoreboard Indicators

Since 2013, the EU Justice Scoreboard has evolved significantly by expanding its indicators for a more comprehensive evaluation and enhancing its data collection methodology, resulting in more accurate assessments and greater transparency in reporting. The annual summaries have offered a comparison of three key components of effective national justice systems: efficiency, quality, and independence.

The 2024 edition introduced new indicators, including statistics on children's access to justice in civil and criminal proceedings, the powers of notaries in succession procedures, and salaries for judicial and prosecutorial expert staff. It also provided an overview of the authorities responsible for appointing court presidents and prosecutors, updated information on the composition of national councils for the judiciary, and provided insights into the powers of national bodies focused on preventing corruption, particularly regarding asset disclosure. Collectively, these updates highlight the problems that need to be addressed at the national level, while showcasing positive examples and practices that can be adopted by other countries.

5.2.1. Efficiency of the Bulgarian Justice System

The 2024 EU Justice Scoreboard⁶⁵ is based on the premise that an efficient justice system handles its caseload and backlog, delivering decisions without unnecessary delays. The analysis of justice efficiency in Member States begins with an overview of general efficiency data, followed by a focus on specific areas of EU law. The latest 2024 scoreboard provides over a decade's worth of efficiency data (2012–2022), allowing for the identification of key trends and acknowledging that the impact of justice reforms often requires time to manifest.

The scoreboard indicated positive trends in the management of civil, commercial, and administrative cases in most EU countries. However, Bulgaria remained in the 'no data' category regarding the number of incoming civil and commercial cases and the estimated time required for their resolution at first instance. The chart comparing the clearance rates for civil, commercial, administrative, and other cases from 2012 and 2020 to 2022 shows no positive trend in Bulgaria, as there has been no significant change.⁶⁶ The number of backlog cases remains consistently low, showing stability without fluctuations over the years.

The efficiency data in specific areas of EU law presented in the scoreboard focuses on narrowly defined scenarios, some of which have not progressed in Bulgaria. For instance, no relevant cases concerning competition law or EU trademark infringement have been initiated in Bulgaria, resulting in the country not being represented in the corresponding charts for average case length.⁶⁷ In the area of consumer protection, the scoreboard indicates that Bulgaria's consumer protection authority has consistently made administrative decisions in less than 100 days, a stable trend since 2014. The average length of judicial reviews has never exceeded 250 days and has improved since 2020, positioning Bulgaria among the countries with the shortest average durations for administrative and judicial proceedings in consumer law.⁶⁸

The Commission has compared data from Member States on the average length of court proceedings, related to money laundering, which is essential for the soundness, integrity, and stability of the financial sector. Since 2014, the average length of anti-money laundering cases in Bulgaria has significantly increased to approximately 300 days, aligning closely with the situation in approximately half of the EU Member States.⁶⁹

65 European Commission, 2024c.

66 *Idem*, p. 13, fig. 10.

67 *Idem*, p. 15, fig. 16 (Competition), p. 17, fig. 19 (EU trademarks infringement cases).

68 *Idem*, p. 18.

69 *Idem*, p. 19, fig. 22. The extremely low number in 2014 is likely attributable to the novelty of anti-corruption measures in Bulgaria and the insufficient number of anti-money laundering cases at that time.

Another metric introduced in the 2022 EU Justice Scoreboard assesses the length of criminal bribery cases, where Bulgaria excels with an average case duration of less than 100 days in 2021 and 2022. However, these figures do not reflect the reality that few complex cases of this nature advance to the first-instance criminal courts because many are dismissed during the prosecutorial phase and seldom reach adjudication.

5.2.2. Quality of the Bulgarian Justice System

The 2024 EU Justice Scoreboard classifies the factors that are widely recognized as relevant for improving the quality of the justice system into four categories: 1) public and business access to justice, 2) adequate financial and human resources, 3) implementation of assessment tools, and 4) digitalization.

Several indicators contribute to a people-friendly justice system, with litigation costs being a key factor. The 2024 Scoreboard focuses on analysing court fees and the availability of full or partial legal aid in an exemplary consumer case. Bulgaria is one of six EU Member States where recipients of legal aid are not automatically exempt from paying court fees.⁷⁰ It is also the only country in the chart where a public authority and not the court is indicated as the one having discretion over granting legal aid, likely because first-instance consumer cases are adjudicated by the Commission for the Protection of Consumers.⁷¹ In the chart comparing the rates of legal aid paid to criminal defence lawyers in specific criminal cases, Bulgaria's rate appears to be comparable to approximately one-third of the rates in other EU countries with low attorney fees funded by the public budget.⁷²

However, this approach does not provide an adequate idea of access to legal aid in Bulgaria, where the law distinguishes between various types of legal aid,

70 Court fees for civil and commercial litigation in Bulgaria are calculated as 4% of the claim's value for first-instance proceedings and 2% for second- and third-instance proceedings. These fees are always proportional and do not adhere to a specific fee schedule structure.

71 Under the Legal Aid Act, the National Legal Aid Bureau – an independent state body funded by the Minister of Justice and attorney councils – is responsible for organizing legal aid in criminal, civil, and administrative cases, as well as in extrajudicial procedures. The authority that typically has the discretion to determine eligibility for legal aid in representation is the entity overseeing the procedural steps in the relevant administrative or court proceedings. In first-instance consumer cases, this authority is the Commission for the Protection of Consumers, the decision of which is subject to judicial review by the Supreme Administrative Court. The Legal Aid Act distinguishes between various types of legal aid, including legal representation in court proceedings or extrajudicial matters, consultations and document preparation for administrative procedures or litigation, and litigation in cases of detention (Article 21). The law provides for the criteria regarding who will have access to legal aid for legal presentation in litigations, such as income, property status, family, health and employment status, age, as well as 'other circumstances', assessed within the discretion of the court of the chairman of the National Legal Aid Bureau.

72 European Commission, 2024c, p. 24, fig. 26.

including legal representation in court proceedings or extrajudicial matters, consultations, document preparation for administrative procedures or litigation, and litigation in cases of detention. Certain categories of individuals, as outlined by law – including at-risk children, those placed in foster families, persons with disabilities, asylum seekers, and very low-income individuals and families eligible for social support – are entitled to guaranteed access to full legal aid. However, bureaucratic obstacles can be burdensome, often discouraging people from asserting their rights. Bulgarian law also outlines some general criteria for access to legal aid, such as income, property status, family, health and employment status, age, and ‘other circumstances’, which are assessed at the discretion of the court or the chairman of the National Legal Aid Bureau. However, the 2016 EU Justice Scoreboard revealed a wide disparity among EU Member States, where Bulgaria was among the countries with the lowest per capita public budget allocated to legal aid, ranking just above Romania, Slovakia, and Malta.⁷³

The 2024 EU Justice Scoreboard further examines how Member States promote the voluntary adoption of ADR methods, including the integration of digital technologies. Bulgaria aligns with the broader trend of encouraging the voluntary use of ADR across various sectors, such as in labour, consumer, civil, and commercial cases, although its application is less prevalent in administrative disputes.⁷⁴ However, the recent ruling by the Constitutional Court in July 2024, which deemed the new legislative provisions on mediation unconstitutional, is expected to significantly and negatively impact Bulgaria’s standing in relation to the ADR indicator.

According to the 2024 Justice Scoreboard, Bulgaria meets all criteria for child-friendly justice in both civil and criminal proceedings.⁷⁵ Key indicators include children being heard in specialized, child-friendly settings, the use of a multidisciplinary approach to minimize multiple hearings and reduce the risk of secondary victimization, and the availability of child-friendly websites and helplines that provide information about the justice system.

However, this portrayal does not accurately reflect the reality of children’s justice in Bulgaria, which has long needed a comprehensive reform. The Committee for the Rights of the Child (CRC) has consistently recommended such reforms in its reviews of 2008, 2016, and 2024. In its latest Concluding Observations, dated 15 March 2024, the Committee expressed deep concern over the ‘complete lack of progress’⁷⁶ in implementing prior recommendations related to child justice from 2016 and 2008. It also emphasized the unacceptably high number of children still affected by the Law on Combating the Antisocial Behaviour of Minors and the

73 European Commission, 2016, p. 18, fig. 19.

74 European Commission, 2024c, p. 26, fig. 28.

75 *Idem*, p. 29, fig. 31.

76 United Nations Committee on the Rights of the Child, 2016, para. 45.

Underaged, adopted in 1958 during the communist regime. Although this law has undergone some amendments, it fundamentally contradicts the Convention on the Rights of the Child, leading the Committee to recommend its abolition.

In March 2024, the CRC emphasized that an alarming number of children remained deprived of their liberty, lacking adequate legal representation and the opportunity for judicial review, while living in correctional and educational facilities with inadequate conditions.⁷⁷ The Committee reiterated its recommendations to Bulgaria to ensure child-friendly justice, which included replacing punitive measures with non-custodial alternatives such as probation and community services. Additionally, it urged that detention be used only as a last resort and for the shortest possible duration, suggesting that this principle is not effectively implemented in practice, despite the corresponding data presented in the EU Justice Scoreboard.⁷⁸ The drastic discrepancy between the findings of the EU regarding the child-friendly justice system and those of the CRC raises questions about the methodology used in the Scoreboard, particularly its reliance on data collected from Bulgarian authorities without cross-referencing it with analyses and observations from specialized monitoring bodies.

In terms of financial resources, Bulgaria surpasses all other EU countries in the chart, showing total general government expenditure on law courts as a percentage of gross domestic product, a trend that has persisted throughout the past decade.⁷⁹ However, public spending levels for courts per inhabitant rank in the middle of the chart, and it is noteworthy that per capita spending has doubled from 2012 to 2022.⁸⁰

The 2024 EU Justice Scoreboard also examines the ratio of annual salaries of judges and prosecutors to the average annual gross salary in each country. Bulgaria is among the EU Member States where judges and prosecutors earn significantly more than the national average salary, with a notable disparity particularly evident for supreme judges and prosecutors.⁸¹ For the first time, the Scoreboard compares the same ratio as regards the annual salaries of judicial and prosecutorial expert staff, and Bulgaria excels in compensating judicial and public prosecution staff with 10 years of experience.⁸²

In 2025, the Institute for Market Economy in Bulgaria conducted a comprehensive analysis of the budgetary process and the factors driving the judiciary's budget growth.⁸³ This study produced the first systematic review of the constitutional framework and its related practices, as well as the prevailing

77 *Ibid.*

78 European Commission, 2024c, p. 29, fig.31.

79 *Idem*, p. 30, fig. 34.

80 *Idem*, p. 30, fig. 33.

81 *Idem*, p. 31, fig. 35.

82 *Idem*, p. 31, fig. 36.

83 Бреггов [Bregov], Георгиева [Georgieva], Баксанова [Baksanova] and Богданов [Bogdanov], 2025.

approach to the preparation, adoption, and execution of the Bulgarian judiciary's budget. This review reveals how the Constitutional Court's jurisprudence has evolved – from safeguarding the judiciary's budgetary autonomy to endorsing unlimited budgetary independence, effectively positioning the judiciary as a supranational authority that derives its budgetary powers internally and fulfils its financial needs independently.⁸⁴

Bulgaria ranks fifth among the EU countries in terms of the number of judges per capita relative to its population.⁸⁵ Additionally, data from 2021 to 2023 indicate that Bulgaria and Romania share the top position for the proportion of female professional Supreme Court judges, which is slightly above 75%.⁸⁶

Bulgaria continues to be one of the Member States that raises awareness and provides training for judges to combat disinformation, as well as to enhance communication with vulnerable groups. This includes individuals from diverse cultural, religious, racial, ethnic, and linguistic backgrounds, as well as asylum seekers, children, victims of domestic violence, and women who have experienced violence. However, it is important to note that LGBTIQ individuals and older persons receive significantly less attention compared with these other vulnerable groups.⁸⁷

Since 2021, the EU Justice Scoreboard has incorporated an extensive and detailed segment focusing on various elements concerning the digitalization of justice. Bulgaria, similar to many other Member States, has adopted digital solutions in various areas, including websites offering clear information on the judicial system, court fees, and access to legal aid. In the charts, Bulgaria is among the 11 EU countries that offer education on legal rights to the general public through interactive online learning tools.⁸⁸

The availability of diverse digital tools for judges, prosecutors, and judicial personnel can streamline workflows, promote equitable workload distribution, and significantly reduce processing times, ultimately improving the overall quality of justice systems. However, in the realm of e-justice implementation, Bulgaria lags behind many other Member States in terms of infrastructure and equipment. While Bulgarian laws have made some progress in adapting procedural rules for digitalization, the use of distance communication tools, such as videoconferencing, and the acceptance of digital evidence remain limited. In practice, courts tend to avoid using these options.

The extent of Bulgaria's lag in digitalization is most evident in the chart depicting the electronic communication tools used by the courts.⁸⁹ The comparative tool

84 *Idem*, pp. 9–10.

85 *Idem*, p. 32, fig. 37.

86 *Idem*, p. 32, fig. 38.

87 *Idem*, p. 33, fig. 40.

88 *Idem*, p. 35, fig. 42.

89 *Idem*, p. 37, fig. 45.

demonstrates that in Bulgaria, secure electronic communication is restricted exclusively to interactions between courts during proceedings. Greece, while also ranking low, surpasses Bulgaria by facilitating secure electronic communication, not only between courts but also between courts and lawyers during legal proceedings. By contrast, most other EU Member States offer secure electronic communication that extends to interactions between courts and detention facilities, notaries, and bailiffs. The Bulgarian justice system lacks essential digital solutions to initiate and manage civil, commercial, and administrative proceedings.⁹⁰ At present, claims cannot be filed online, nor can electronic acknowledgements of receipts for submitted documents be obtained from the courts. Furthermore, official court documents cannot be served electronically to citizens or businesses unless they have initiated the procedure themselves.

5.2.3. Judicial Independence in Bulgaria

Since its inaugural edition in 2013, the EU Justice Scoreboard has evaluated judicial independence across Member States, a vital element for ensuring fair judicial proceedings and effective remedies for protecting fundamental rights. A strong perception of judicial independence fosters a business-friendly environment and enhances public trust in the legal system. In addition to the indicators of perceived judicial independence derived from various sources, the Scoreboard features measures that assess how justice systems are designed to protect judicial independence in situations where it may be at risk.

Bulgaria's position in the 2024 EU Justice Scoreboard highlights critical challenges concerning judicial independence. According to the Eurobarometer survey, a substantial portion of the population views the independence of the courts and judges as 'very bad' or 'fairly bad'. This perception is largely attributed to insufficient legal protections for judges, political interference, and pressure, along with the influence of economic interests.⁹¹ Consequently, Bulgaria ranks among the lowest EU Member States in terms of perceived judicial independence, situated just above Hungary and below Poland in the general public perception chart⁹² and above Poland and below Hungary in the companies' perception chart.⁹³ However, the Commission's summary on this criterion only spotlights Hungary and Poland, as they have received country-specific recommendations regarding judicial independence since 2022. They are also the only EU Member States for which the preventive mechanism of Article 7 of the TEU has been actively invoked. Consequently, Bulgaria's situation is regarded as somewhat less

90 *Idem*, p. 38, fig. 47.

91 *Idem*, p. 45, fig. 52.

92 *Idem*, p. 45, fig. 51.

93 *Idem*, p. 46, fig. 53.

severe than that of Poland and Hungary, which have faced more intense scrutiny and criticism from the EU.

In the chart depicting business perceptions, Bulgaria ranks among the EU countries with notably low confidence in investment protection.⁹⁴ Companies in Bulgaria primarily expressed concerns about frequent changes in legislation, unpredictable administrative conduct, non-securing fair compensation, and protecting property rights. Although Bulgaria's problems are similar to those faced by other Member States, the overall perception of judicial independence and effectiveness and investment protection appears to be weaker in Bulgaria.

In the last five editions, the EU Justice Scoreboard has presented various indicators analysing the structural independence of the judiciary, offering a comprehensive view from multiple perspectives. The 2020 edition⁹⁵ focused on comparing the bodies and authorities involved in disciplinary proceedings for judges, the composition of the Councils for the Judiciary based on the nomination process, and the safeguards related to the functioning of national prosecution services within the EU. Bulgaria has entrusted the Supreme Judicial Council, an independent authority, with the responsibility of investigating⁹⁶ and determining⁹⁷ disciplinary sanctions against judges.⁹⁸ The comparative tool illustrates the various compositions of the Councils of Judiciary, positioning Bulgaria among those that incorporate both a political quota of members elected by the Parliament and a magistrate quota of members elected by their peers.⁹⁹ However, this structural overview failed to uncover critical shortcomings in the system, including the absence of safeguards for fair peer elections of magistrates¹⁰⁰ and imbalances in judicial career advancements over the past 20

94 *Idem*, p. 47, fig. 53.

95 European Commission, 2020b.

96 Along with nine other EU countries entrusting the investigation to the Council of Judiciary or other independent body: Denmark, Ireland, France, Hungary, Italy, Malta, Romania, Slovakia, and Cyprus.

97 Along with seven other EU countries having a Council of Judiciary: Spain, France, Hungary, Italy, Cyprus, Portugal, and Romania.

98 European Commission, 2020b, pp. 45–46.

99 *Idem*, p. 48, fig. 52. The Bulgarian Council of Judiciary consists of 25 members divided into two chambers: the Judges' Chamber, which has 14 members, and the Prosecutors' Chamber, which has 11 members. By law, the Council includes the Chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court in the Judges' Chamber, as well as the Prosecutor General in the Prosecutors' Chamber; all three are elected by the Supreme Judicial Council for a term of seven years. Both chambers also include members elected for a term of five years, comprising a political quota with members elected by the National Assembly (six for the Judges' Chamber and five for the Prosecutors' Chamber) and a magistrate quota with members elected by their peers (six judges elected for the Judges' Chamber and four prosecutors and one investigating magistrate elected for the Prosecutors' Chamber).

100 The most recent elections for the Judges' Chamber took place on 24–25 June 2022, allowing judges to vote either in person at the Judicial Palace or electronically via computer or phone. By the end of 2023, two judges – Vladislava Tsarigradska of the Pleven District Court and Atanas

years. Furthermore, the 2020 Scoreboard assessed disciplinary proceedings for both judges and prosecutors, revealing structural divergences in Bulgaria, despite the legislation organizing these proceedings identically, the only difference being the respective chamber of the Supreme Judicial Council responsible for overseeing them.¹⁰¹ Such inaccuracies in the Scoreboard raise questions about the methodology used to collect data from national authorities.

The structural independence analysis in the 2021 EU Justice Scoreboard¹⁰² examined the appointment processes for supreme court judges and management powers of the Prosecutor General.

In Bulgaria, the appointment of judges and prosecutors at all levels occurs entirely within the judiciary, involving a competitive process and appointments made by the respective chamber of the Supreme Judicial Council, free from interference by the legislative or executive branches. Compared with other EU countries, Bulgaria demonstrates a strong level of structural independence in this regard.¹⁰³ However, this portrayal ignores the fact that promotion competitions are not conducted regularly, and the system is hindered by the long-term secondment of judges to fill vacant positions, which creates dependency on court presidents.

In the chart comparing the management powers of the Prosecutor General across EU countries, Bulgaria's case appears to be relatively standard, including typical powers such as providing general guidance on prosecution policy, issuing instructions in individual cases, removing cases assigned to prosecutors, and transferring cases without consent.¹⁰⁴ This presentation does not distinguish between prosecution offices within the executive and those within the judiciary, resulting in a different structure of accountability. Thus, it may mislead those unfamiliar with the Bulgarian constitutional framework into thinking that the position of the Prosecutor General is unproblematic. In reality, the lack of accountability and

Atanasov of the Sofia City Court – uncovered long-held information that provided key evidence of potential manipulation during these elections. Notably, eight times fewer judges entered the Supreme Administrative Court building on the day of the vote compared with the number who cast their ballots electronically from that courthouse.

101 According to the 2020 EU Justice Scoreboard, the authority responsible for formal disciplinary proceedings concerning judges in Bulgaria is the Council for the Judiciary (fig. 50); for prosecutors, the responsible body is not the same Council (its Prosecutors' chamber in particular) but a 'special body/prosecutors appointed by the Council for the Judiciary/Prosecutorial Council' (fig. 54). Such analysis has misrepresented the structure of the disciplinary authority, the Supreme Judicial Council, which divides its responsibilities between the Judges' Chamber and the Prosecutors' Chamber. Each chamber conducts the disciplinary proceedings for judges and prosecutors, respectively, by appointing among three of its members to serve as a disciplinary panel in charge of the investigation. Ultimately, it is the respective chamber that makes the final decision regarding the determination and sanctioning of disciplinary infringements.

102 Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions [COM/2021/389], pp. 43–51.

103 *Idem*, p. 44, fig. 52, p. 46, fig. 54.

104 *Idem*, p. 48, fig. 55.

inability to conduct criminal investigations against the Prosecutor General are issues that have faced significant criticism from the EU under the CVM.

The 2022 EU Justice Scoreboard¹⁰⁵ examined indicators such as the frequency of potential security checks on judges and safeguards concerning the temporary employment of judges and prosecutors in political positions. Bulgaria is among the majority of EU countries where the National Security Agency does not conduct security checks on judges either prior to their appointment or on a systematic basis.¹⁰⁶ Similar to the vast majority of Member States, Bulgaria offers safeguards for judges and prosecutors elected as members of Parliament, ministers, or those holding other politically exposed positions,¹⁰⁷ specifically a rule that grants entitlement to paid or unpaid leave.

In 2023, the scoreboard¹⁰⁸ concentrated on assessing the powers of judicial councils across the EU, as well as the appointment processes for the presidents of supreme courts, the Prosecutor General, and those in other key positions. The Bulgarian Supreme Judicial Council wields significant powers, comparable to those of other EU countries known for their extensive and diverse authorities such as Romania, Slovenia, Portugal, and Spain.¹⁰⁹ Its responsibilities include the appointment, evaluation, promotion, and dismissal of judges, prosecutors, and investigating magistrates, which are managed by the respective Judges' Chamber and Prosecutors' Chamber. Additionally, the full council adopts the judiciary's budget, determines budget allocations for particular courts and prosecution offices, adopts ethical codes, and decides on the use and implementation of information and communication technology within the system. Despite its broad competencies intended to ensure the structural independence of the judiciary in Bulgaria, the Supreme Judicial Council faces challenges related to perceived political influence in judicial appointments and decision-making. This situation led to the 2023 constitutional reform, which received praise from the EU but was ultimately declared unconstitutional in July 2024. Therefore, Bulgaria must continue to struggle for the structural independence of its judiciary within its current constitutional framework.

Concerning the appointments of the Presidents of the Supreme Cassation Court and the Supreme Administrative Court, and the General Prosecutor, the procedure in Bulgaria seems balanced, as in most EU countries.¹¹⁰ The Supreme Judicial Council selects and nominates a candidate, while the President, as the Head of State, makes the final appointment. The Head of State can return a candidate for reconsideration only once and is obligated to appoint the same candidate

105 European Commission, 2022a, pp. 43–49.

106 *Idem*, p. 44, fig. 56.

107 *Idem*, p. 46, fig. 58.

108 European Commission, 2023c, pp. 44–53.

109 *Idem*, p. 45, fig. 55.

110 *Idem*, pp. 46–47.

if proposed again. However, in practice, this mechanism failed to facilitate a genuinely competitive nomination process within the judicial council. The checks and balances set in place were seldom utilized by the President and, in all instances, demonstrated their insufficiency in guaranteeing the appointments of presidents of supreme courts and prosecutors general who garnered public trust and respect in Bulgaria.

The 2024 EU Justice Scoreboard expanded its comparative assessment to encompass the selection of court presidents at all levels of the judicial system, recognizing their crucial role in court management. The procedure for appointing court presidents in Bulgaria appears to be structurally balanced between the competition phase and the final decision-making authority resting with the Judges' chamber of the council, thereby ensuring the external independence of the judiciary in accordance with the standards upheld by the majority of EU countries.¹¹¹ Nevertheless, over the years, numerous scandals involving judicial appointments connected to politicians have raised concerns that the competitive principle has been eclipsed by factors such as loyalty to specific political parties or corrupt networks.¹¹²

The national framework for asset declarations in Bulgaria appears robust in both material and personal scope,¹¹³ aligning with the objectives of preventing corruption, avoiding conflicts of interest, and ensuring integrity within the public sector. The only shortcoming evident in the charts is the absence of a basic verification check for submitted asset declarations, despite the presence of transparency measures and sanctions for false declarations.¹¹⁴

Overall, Bulgaria appears to have formally established the necessary mechanisms and safeguards for judicial independence. Beneath this solid façade, structural deficiencies and corrupt practices are still prevalent, creating significant tension between reality and established norms, and ultimately undermining the rule of law. The EU Justice Scoreboard has not adequately captured or reflected this situation.

The most recent study by the Institute for Market Economy highlights several structural problems in the drafting and adoption process of the judiciary's

111 European Commission, 2024c, p. 50, fig. 58, p. 51, fig. 59.

112 In 2019, Metodi Lalov, the former President of the Sofia Regional Court (2012–2016), publicly revealed that his appointment was preceded by a meeting at a café with Georgi Kolev, the President of the Supreme Administrative Court (2010–2017), where a politician, Mr Delyan Peevski – who is now widely recognized as one of the few individuals sanctioned by the Magnitsky Act for corruption – was present to endorse him as a reliable choice. Mr Lalov also noted that this meeting was arranged by Vladimira Yaneva, the President of the Sofia District Court (2011–2015), whose own appointment was highly controversial due to her close friendship with a prominent member of the ruling political party. Judge Yaneva was later removed from office and faced legal action in a corruption case known as 'Yaneva Gate'.

113 European Commission, 2024c, pp. 52–53.

114 *Idem*, p. 54.

budget, which covers judges, prosecutors, and investigating magistrates.¹¹⁵ For example, the prosecution consumes a significant portion of the resources allocated to the 'Justice' sector but is subject only to formal accountability with a very limited scope before the National Assembly; there is no external oversight of its expenditures or performance. Meanwhile, the administrative apparatus of the Supreme Judicial Council and its Inspectorate has been expanding without a clear quantitative link to the courts' workload, complicating efforts to measure efficiency. Additionally, workload indicators do not influence the staffing levels of judges, prosecutors, or investigators, rendering expenditures unpredictable and resistant to corrective measures. Under the current financing model, transfers from the central budget to the judiciary nearly doubled between 2018 and 2024. The budget remains heavily dominated by personnel costs (over 90%), while capital investments account for less than 3%.

6. Rule-of-Law Dialogue between Bulgaria and the EU

Since Bulgaria's accession to the EU, the rule-of-law dialogue between Bulgarian authorities and EU institutions has played a vital role in promoting democratic governance, accountability, and human rights protection. In its early stages, this dialogue provided a valuable framework for reform and significantly raised awareness of the importance of implementing the rule of law in practice. However, over the past decade, it has become clear that this dialogue has limitations that cannot overcome the lack of political commitment and active engagement on the part of the Bulgarian society and all stakeholders to advance the rule of law in Bulgaria and ensure alignment with EU standards.

Furthermore, some portrayals of the indicators used in the EU Justice Scoreboard are distorted and inaccurate, raising questions about the data collection methodology. There is a notable absence of cross-referencing or expert verification to ensure the accuracy of the conclusions drawn. Some comparative tools appear to be flawed because they provide answers to questions without adequate context. This can lead to conclusions based solely on formal indicators, thereby overlooking the complexities of actual situations.

Furthermore, certain aspects of Bulgaria's legal, political, and social frameworks regarding the rule of law seem to be lost in translation, leading EU institutions to overlook fundamental deficiencies within the Bulgarian system. A notable example relates to the differing interpretations and applications of the rule of law within EU administrative law compared with Bulgarian administrative law.

Traditionally, a lingering inertia from the era of socialist legality in Bulgaria has led to a firmly established notion that law enforcement authorities are bound

115 Беров [Beregov], Георгиева [Georgieva], Баксанова [Baksanova] and Богданов [Bogdanov], 2025.

solely by the principle of legality. This perception is primarily reinforced by how Bulgarian legislators articulate the principles of administrative, civil, and criminal procedures. None of the procedural codes reference the principle of the rule of law – neither the constitutional phrase, which is a translation equivalent to the German term *Rechtsstaat*, nor any of the known translation phrases of the ‘rule of law’. Instead, all the procedure codes in Bulgaria focus exclusively on the principle of legality.¹¹⁶

Given that constitutional norms have direct effect and that public administration and courts can reference them in their actions, there should be no disconnect between the constitutional principle of the rule of law and the principle of legality within administrative law and procedures in Bulgaria.¹¹⁷ However, such a disconnect has arisen from a limited academic and practical understanding of the implications of the rule of law principle in Bulgaria, coupled with a tendency to imitate reforms in formal structures rather than effect meaningful change in reality. While Bulgarian administrative law textbooks recognize the constitution as ‘the most important source of administrative law’,¹¹⁸ the implementing laws fail to specify how the administration should respond when faced with a conflict between applicable parliamentary law and the constitution.

The Administrative Procedure Code has included provisions directing administrative authorities to apply ‘higher-ranking acts’ – such as laws enacted by the Parliament, ratified international agreements, and the Constitution – when secondary legislation is in conflict.¹¹⁹ In cases where there is a contradiction between parliamentary or secondary legislation and an international instrument incorporated into domestic law, the administration is explicitly instructed to prioritize the ratified international agreement. However, procedural rules deliberately omit guidance regarding the application of the higher-ranking Constitution when parliamentary legislation conflicts with it, leaving this question unaddressed.

116 The principle of legality is prominently articulated as a fundamental principle in civil procedure, specifically in Article 5 of the Civil Procedure Code, and in administrative procedure, as outlined in Article 4 of the Administrative Procedure Code. However, legality is not explicitly included among the principles in Chapter 2 of the Criminal Procedure Code (CPC). Instead, it can be indirectly inferred from the principle of independence of criminal procedure bodies stated in Article 10 of the CPC, which asserts that they ‘shall be subject only to the law’.

117 In Bulgarian administrative law and procedure doctrine, the principle of legality is sometimes regarded as derived from the constitutional principle of the rule of law. See Николова [Nikolova], 2020, pp. 69–70.

118 *Idem*, p. 17.

119 Administrative Code of Procedure, Article 5. (1) When a decree, regulation, ordinance, instruction, or any other act of secondary legislation conflicts with a normative act of higher rank, the higher-ranking act shall take precedence. (2) When an act or secondary legislation conflicts with an international agreement that has been ratified in accordance with constitutional procedures, promulgated, and entered into force for the Republic of Bulgaria, the international agreement shall prevail.

Consequently, Bulgarian administrative law and procedure appear constrained by the principle of legality, with public administration adhering to the hierarchy of regulations ‘excluding the Constitution’. This limitation could have been avoided if the procedural code had directly referenced the principle of the rule of law, rather than focusing solely on one of its components. By contrast, the rule of law is explicitly and unambiguously recognized as a principle of EU administrative law, where legality is conceptualized as one of its components.¹²⁰ It is widely accepted that ‘public administration must act under and within the law, whether as contained in primary and secondary legislation or in the jurisprudence of competent courts’.¹²¹

In societies where the rule of law has been long and firmly established, misconceptions about it ‘might not matter too much, since to a considerable extent it runs on its own steam’.¹²² Conversely, in transitional societies striving to establish the rule of law, misconceptions can result in subversion, imitation, or even the replacement of this principle, potentially leading to serious repercussions. The technocratic approach of EU institutions in monitoring the rule of law among Member States has yielded flawed results, including the misrepresentation of indicators, distorted assessments, and superficial, inaccurate conclusions.

It is evident that the rule of law cannot be represented or examined merely as a form of technology that can be implemented without considering the social context in which it will be integrated.¹²³ When the rule of law is treated as a fixed ‘technology’ to be simply transplanted, it often loses much of its inherent flexibility.¹²⁴ Such an approach neglects the essential role of socially and culturally¹²⁵ sensitive methods in analysing constitutional principles, their implementation in governance practices, and their application within the legal system. Shortcomings in the implementation of the rule of law in Bulgaria do not stem from the ‘failure to correctly engineer an interface between the rule of law and society’.¹²⁶ Instead, they reveal the limitations inherent in the technocratization of the rule of law, particularly when a thinner version is employed – one that focuses solely on cause-and-effect relationships. In such instances, the effects considered vital for successful implementation are frequently confined to economic outcomes, thereby narrowing the broader scope of the rule of law, which is ultimately intended to promote social inclusion and foster an equitable society.

120 Hofmann, Rowe, and Türk, 2011, pp. 148–157.

121 *Idem*, p. 151.

122 Krygier, 2011, p. 32.

123 Krygier, 2006, p. 157.

124 May, 2019, p. 322.

125 Krygier cautions against treating ‘culture’ as a vague, catch-all category that can be used to identify any obstacles to the implementation of the rule of law, thereby allowing responsibility for these challenges to be shifted onto those receiving technical assistance. See Krygier, 2011, p. 31.

126 May, 2019, p. 322.

7. Conclusions

The supranationalization of the rule of law within the EU and the Council of Europe is critically significant for Bulgaria, as it offers a framework for strengthening democratic governance, improving legal and institutional policies, and guiding reforms. The supranational dimensions of the rule of law have become the primary reference point for Bulgarian scholars, policymakers, and stakeholders aiming to critically address façade reforms and formalistic approaches in jurisprudence that neglect the principle of the rule of law. However, the EU's technocratic approach to analysing the rule of law across Member States over the past decade raises significant concerns regarding the methodologies employed and the effectiveness of the comparative tools used, particularly in relation to the overarching objective of promoting the EU as a rule-of-law order.

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