



PROSECUTOR'S OFFICE OF THE REPUBLIC OF BULGARIA

PROSECUTOR GENERAL

№ 2851/2020 - ГП

Town of Sofia, 19.02.2021

**THROUGH
AMBASSADOR, PERMANENT REPRESENTATIVE
OF THE REPUBLIC OF BULGARIA
TOWARDS THE EUROPEAN UNION
Mr. DIMITAR TSANCHEV**

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

DEAR MEMBERS OF THE COMMISSION,

We present to your attention the answers to the additional questions aimed at exchanging views on democracy, the rule of law and fundamental rights in the Republic of Bulgaria. We take this opportunity to express our satisfaction with the continuation of the bilateral dialogue, assuring you of our readiness to provide additional information on the legal order in the Republic of Bulgaria and related issues of mutual interest.

Expressing our deep respect for the members of the LIBE Commission, we would like to note again that the powers and status of the Prosecutor General are exhaustively regulated in the Constitution and the laws of the Republic of Bulgaria. Through the amendments to the Judiciary System Act in 2016 compliance with the constitutionally defined structure and organization of the prosecution, which is unified but not centralized, has been achieved. Prosecutors and investigators are not subordinate to the Prosecutor General in their work. Only the administrative heads, and only in the exercise of their managerial activity, are subordinated to the Prosecutor General and to each superior administrative head. In this sense, the Prosecutor General

is the senior administrative head who heads and represents the prosecution. Therefore, the legislator has delegated to him a number of operational powers, including for secondment of prosecutors to other prosecutor's offices, and in exceptional cases prosecutors may be seconded without their consent, but for not more than 3 / three / months. Depending on their territorial competence, the administrative heads of the district and appellate prosecutor's offices have a similar power of secondment, but it is applied only in case of extreme necessity, when there is no other possibility to solve a personnel problem.

The power of the Prosecutor General to second prosecutors without their prior consent for a period of up to 3 / three / months has not been actively exercised in recent years, as for the past 2020 only 6 prosecutors were seconded with motivated orders. The main reason in these cases was the established official need in regional and district prosecutor's offices with permanent staffing, which seriously hinders their functions. Another objective reason for exercising this power is the changed generic or local jurisdiction of a specific pre-trial proceeding, characterized by factual and / or legal complexity, due to which the initially appointed supervising prosecutors and / or investigative bodies are seconded for a short period of time to the body to which the case has been assigned, in order to ensure continuity between the bodies of the pre-trial proceedings in order to ensure the effectiveness of the investigation.

The main powers of the Prosecutor General, which derive from the Constitution of the Republic of Bulgaria, the Judiciary System Act and the Penal Procedure Code, are methodological guidance on the activities of all prosecutors and investigators, and supervision of legality - in relation to specific prosecutorial acts in files and pre-trial proceedings. Their content is discussed in detail in our letter to you from September 21, 2020. The exercise of both powers is realized only in writing. Giving oral instructions by any superior prosecutor is expressly prohibited.¹ The current legislation does not allow either the Prosecutor General or the administrative heads of prosecutors' offices to take a direct part in specific pre-trial proceedings or files through specific written instructions in certain cases.

Insofar as the emphasis of the first question is mainly on the power of the Prosecutor General to supervise the legality of specific files and cases, some terminological clarifications should be made. By definition, this power ensures the correct application of the substantive and procedural law in a particular case, as the current legislation exhaustively lists the hypotheses in which it can be implemented (for example: *upon revocation of a resolution for termination of criminal proceedings*

¹ Judiciary System Act

Art.143. (2) Oral orders and instructions in connection with the work on the cases and the files shall be inadmissible..

by the order of art. 243, para 10 of the Penal Procedure Code, and only when no judicial control has been carried out, which has priority), which do not include the exercise of direct management and supervision of specific pre-trial proceedings, including by giving specific instructions on what investigative actions to take. There is a theoretical possibility for the Prosecutor General to amend or revoke a specific prosecutorial act, but not immediately, but only after a consistent inspection of the prosecutor's act by all lower-ranking prosecutor's offices (for example, in appealing a resolution refusing to initiate pre-trial proceedings by a prosecutor from a district prosecutor's office, first a prosecutor from the respective district prosecutor's office will rule, then a prosecutor from the respective appellate prosecutor's office, then a prosecutor from the Supreme Cassation Prosecutor's Office, then the deputy of the Prosecutor General and only finally - the Prosecutor General).

In this sense, we would like to emphasize that **such written instructions have not been issued in any pre-trial proceedings or files by the current Prosecutor General**, and to the best of our knowledge by the previous Prosecutors General. For precision, it is necessary to point out that the power to rule on a specific prosecutorial act under the supervision of legality is used **only in exceptional cases - in 2019. the Prosecutor General has ruled with resolutions under Art. 243, para 10 of the Penal Procedure Code only in 8 / eight / out of 36 / thirty-six / cases, and in 2020. - out of 28 / twenty-eight / cases** in which he was seised with a proposal for annulment of a resolution for termination of criminal proceedings, the Prosecutor General respected **only 9 / nine / of them, without giving written instructions for the actions of the investigation, which need to be carried out in the course of the pre-trial proceedings.**

There are many legal guarantees that the powers of the Prosecutor General are not absolute and are exercised in specific legal procedures. We take this opportunity to recall some of the recommendations of the representatives of the Office for Support of Structural Reforms, contained in the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria from 2016. Even one of the recommendations is for more active involvement in specific cases of the Bulgarian Prosecutor General, as is the practice in many EU member states. Recommendations are also given that *„the administrative heads of the prosecutor's offices should direct their staff and report to the prosecutor general on matters relating to the work of specific sensitive cases carried out under their direction. Information on sensitive cases should be provided upstream so that the Prosecutor General is aware of the work of his staff in cases where he may be asked to explain the*

actions of the prosecution.“² Again, the independent analysis of the structural and functional model of the prosecution found that most prosecutors work on most of their cases with very little or no intervention from above.³

We would like to draw attention again to the fact that the Prosecutor General of the Republic of Bulgaria does not monitor specific pre-trial proceedings, and they are managed only by the supervising prosecutors from the territorial prosecutor's offices. Performed in 2016 changes in the structural law on the judiciary exclude the possibility of interference of the prosecutor general in the work of prosecutors in specific files and pre-trial proceedings.

Bulgarian law explicitly prohibits the disclosure of information in specific pre-trial proceedings without the permission of the relevant supervising prosecutor⁴ and exceptions to this prohibition are inadmissible, including for the Prosecutor General.

In this regard, and on the specific issue raised in the case of money laundering and alleged participation of the Prime Minister of the Republic of Bulgaria, Mr. Boyko Borisov, we do not have additional information beyond that already provided to you by our answer of September 21, 2020.

In the other two cases, concerning the Prime Minister, Mr. Boyko Borisov, with the permission of the respective supervising prosecutors, the Prosecutor's Office of the Republic of Bulgaria has officially announced information about their progress. At the beginning of August 2020. The Sofia City Prosecutor's Office has announced that after self-referral pre-trial proceedings have been instituted for a crime under Art. 339a, para 1 of the Criminal Code⁵, subject to investigation, photographs and video footage of the Prime Minister 's bedroom published in the media. After performing all possible and necessary actions in the investigation, the pre-trial proceedings were suspended due to non-disclosure of the perpetrator of the crime⁶.

Regarding the inspection carried out under the supervision of the Specialized Prosecutor's Office under Article 145 of the Judiciary System Act in connection with the audio recordings distributed in the media, a refusal to initiate pre-trial proceedings was issued, as far as a result of data for a crime of a general nature have been

² See page 4 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

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

⁴ **Penal Procedure Code**

Art. 198. (1) The materials on the investigation may not be disclosed without permission of the prosecutor.

⁵ **Criminal Code**

Art. 339a. (1) Who without proper permission, which is required by law, produces, uses, sells or holds a special technical device, intended for secret collection of information, shall be punished with imprisonment of one to six years.

⁶ The press release of the Sofia City Prosecutor's Office on the specific case can be found on the following website: <https://prb.bg/sgp/bg/news/48377-saobshtenie-na-sofiyska-gradska-prokuratura>

established.⁷ The Prosecutor General and his deputies do not manage and supervise specific pre-trial proceedings and files, therefore we could not provide you with the requested information on issues from № 2 to № 4. In summary, we specify that the competence of the Prosecutor's Office of the Republic of Bulgaria is the engagement only of the criminal liability of specific persons who have committed crimes of a general nature within the meaning of the Bulgarian Criminal Code. As for the other types of liability, their implementation is beyond the powers of the prosecution and could not be the subject of analysis and assessment by us.

Next, we would like to declare to you that in carrying out its functions, the Prosecutor's Office of the Republic of Bulgaria will continue to be as open as possible to the public. The Prosecutor's Office of the Republic of Bulgaria has Rules for Media Communication, which assign individual prosecutors the right and obligation to carry out this activity, in strict compliance with the established legal procedure related to dissemination of information in specific criminal proceedings and in compliance with the presumption of innocence.

In view of the inquiries for a special database or register created in the Prosecutor's Office of the Republic of Bulgaria for cases of illegal pressure on the prosecutor's office, it is necessary to note that we do not know media publications that export such information and we are not familiar with its content. We categorically state that such a register does not exist in the Prosecutor's Office of the Republic of Bulgaria.

We could assume that you mean the "Public Register of Cases of Infringements against the Independence of the Judiciary" established by the Supreme Judicial Council in implementation of short-term measure 4 under the pillar "Judicial System", section "Independence" of the Plan for Implementation of Measures in response to the recommendations and the identified challenges contained in the Report of the European Commission of 30 September 2020 on the rule of law in Bulgaria, approved by Decision of the Council of Ministers №806 / November 06, 2020. The register is published on the home page of the website of the Supreme Judicial Council in the section of the same name and is already filled with prepared positions, declarations and appeals of the Prosecutorial College to the Supreme Judicial Council and the Judicial College to the Supreme Judicial Council. cases of affecting the independence of the judiciary. It includes cases of independence in each unit of the judiciary - court, prosecutor's office and investigation, given their equal status, and in no case applies, and could not apply only to such cases in the prosecution. An organization has been set

⁷ The press release of the Specialized Prosecutor's Office in connection with the refusal to initiate pre-trial proceedings can be found at the following website: <https://prb.bg/sp/bg/news/48323-saobshtenie-na-spetsializirana-prokuratura>

up to provide information to the Supreme Judicial Council on cases of measures taken in connection with the independence of the judiciary, in accordance with existing standards, with a view to recording them in the Public Register.

On the issue of the election and accountability of the Prosecutor General, it should be noted in advance that the relevant procedures are regulated in detail in the Judiciary Act and are the same for the Prosecutor General and the other two senior administrative heads in the judiciary - the President of the Supreme Court of Cassation, court and the chairman of the Supreme Administrative Court. The selection procedure is extremely formal and is opened and conducted by the Supreme Judicial Council (SJC), with nominations made at the suggestion of at least three members of the relevant college.⁸

⁸ **Judiciary System Act**

Art. 173. (1) The procedure for election of candidates for chairman of the Supreme Court of Cassation, chairman of the Supreme Administrative Court and Prosecutor General shall be opened by the plenum of the Supreme Judicial Council not earlier than 6 months and not later than 4 months before the expiration. of the mandate or within 7 days from the occurrence of a circumstance under Art. 175, para. 1.

(2) Proposals for candidacies for chairman of the respective court may be made by not less than three of the members of the respective board of the Supreme Judicial Council, the Minister of Justice, as well as the plenum of the Supreme Court of Cassation and the plenum of the Supreme Administrative Court.

(3) Proposals for candidacies for Prosecutor General may be made by not less than three of the members of the respective board of the Supreme Judicial Council, as well as by the Minister of Justice.

(4) The proposals shall be made in the four consecutive sittings, following the sitting, at which a decision for opening the procedure has been adopted.

(5) The proposals shall be accompanied by detailed written motives and personnel reference of the candidate according to a sample, approved by the respective board of the Supreme Judicial Council. The candidates shall submit a written concept for their work at the respective position within 14 days from the expiration of the term for the proposals under para. 4. All documents submitted shall be published on the website of the Supreme Judicial Council no later than two months before the public hearing.

(6) The candidates for chairman of the Supreme Court of Cassation and for chairman of the Supreme Administrative Court shall be heard respectively by the plenum of the judges of the Supreme Court of Cassation and of the Supreme Administrative Court, who express an opinion on the existence of the qualities under Art. 170, para. 4 and 5.

(7) The Plenum of the Supreme Judicial Council shall announce the date, time and place for hearing for each candidate at least one month before its holding. The hearings are held in alphabetical order. They are public and are broadcast in real time through the website of the Supreme Judicial Council.

(8) (Amended - State Gazette, issue 17 of 2019) Non-profit legal entities designated to carry out public benefit activities, professional organizations of judges, prosecutors and investigators, universities and scientific organizations not later than 7 days prior to the hearing, they may submit to the Supreme Judicial Council opinions on the candidate, including questions to be asked. Anonymous opinions and alerts are not considered. The submitted opinions and questions are published on the website of the Supreme Judicial Council within three days after their submission in compliance with the requirements for personal data protection.

(9) The Commission for Attestation and Competitions and the Commission for Professional Ethics at the respective college prepare reports on the professional and moral qualities of the candidates, with which they propose the candidatures for discussion and voting by the respective college of the Supreme Judicial Council. The reports contain a conclusion on:

1. the legal requirements for holding the position;
2. the presence of data that cast doubt on the moral qualities of the candidate, his qualification, experience and professional qualities;
3. the specific training, the qualities and the motivation for the respective position.

(10) The report of each commission shall be published on the website of the Supreme Judicial Council at least 14 days before the voting of the respective candidate.

According to a comparative study by the Open Society Institute⁹ from January 2019, the procedure for election of a Prosecutor General in the Republic of Bulgaria is one of the most transparent compared to those established in the Member States of the European Union and provides sufficiently high guarantees for upholding the professional election of prosecutors. For the sake of completeness, it should be borne in mind that the predominant option in the other EU member states is for the nomination proposal to be made only by the executive, in the person of the Minister of Justice or the government, and the appointment to be made by the head of state. , while according to the current Bulgarian legislation the initiative for nomination belongs both to the Minister of Justice and to the professional community, whose representatives are the members of the Prosecutorial College at the Supreme Judicial Council. The possibility of an initiative by the Minister of Justice is rather theoretical, as the representatives of the central executive power refrain from making proposals, strictly observing the principle of separation of powers.

We would like to recall that the candidacy for the election of the current Prosecutor General was raised and supported unanimously by all members of the Prosecutorial College of the Supreme Judicial Council. The session of the Plenum of the Supreme Judicial Council, at which the initial election took place, lasted more than 10 hours, during six of which the candidate presented in detail his concept and comprehensively answered more than 100 questions from citizens and NGOs, as well as and a large number of questions from the members of the Plenum of the Supreme Judicial Council.^{10 11} The meeting was broadcast live on the Bulgarian National Television and the Bulgarian National Radio, which guarantees its maximum

(11) (Supplement, SG No. 29/2019) The Plenum of the Supreme Judicial Council shall adopt the decision to elect a candidate by a majority of not less than seventeen votes from among its members by open ballot and shall immediately send it to the President of the Republic.

(12) When in the first ballot none of the candidates has received seventeen or more of the votes of the members of the plenum of the Supreme Judicial Council, the election shall continue for the two candidates who have received the most votes.

(13) When the President of the Republic refuses to appoint a candidate proposed by the plenum of the Supreme Judicial Council and there is no repeated proposal for the same candidate, the new election shall be carried out under the conditions and by the order of para. 1 - 12.

⁹ Study of the Open Society Institute from January 2019: <https://osis.bg/?p=3037>

¹⁰ A summary of the speeches of the members of the Supreme Judicial Council during the meeting of the Plenum of the Supreme Judicial Council held on October 24, 2019 can be found on the following website: <https://bntnews.bg/bg/a/po-bnt1-i-bnt2-vss-provezhda-izbor-za-glaven-prokuror-na-republika-blgariya>

¹¹ Summary of the meeting held on October 24, 2019 meeting of the Plenum of the Supreme Judicial Council can be found at the following address: <https://bntnews.bg/bg/a/vss-odobri-ivan-geshev-za-glaven-prokuror-sled-blizo-10-chasazasedanie>

transparency, as it is not known if such a practice was introduced when electing a Prosecutor General in any country of the European Union. A second meeting of the Plenum was held in connection with the election of the Prosecutor General, and the discussions lasted more than 5 hours and were also broadcast live on the national media.¹²

The Bulgarian legislator has also provided a number of guarantees for the accountability of the Prosecutor General, in several areas - periodic and extraordinary hearings (at the request of members of parliament) before the National Assembly (NA) and periodic hearings before the Plenum of the Supreme Judicial Council.^{13 14} We would like to draw attention to the fact that a general solution regarding the subject scope of the reporting of the Prosecutor General in the case where he reports extraordinarily to the National Assembly on issues related to the activity of the prosecution on law enforcement, crime prevention and criminal policy implementation is given by decision № 6 of June 06, 2017 on constitutional case № 15 of 2016 of the Constitutional Court. According to the decision „*The National Assembly may not request from the Prosecutor General a report on the activity of the Prosecutor's Office in specific criminal proceedings*“.

In the previous 2020 With a decision of the National Assembly, **an extraordinary procedure for hearing the Prosecutor General in the National Assembly was initiated for the first time**, which took place within two days – October 14, 2020 and October 15, 2020, during which the Prosecutor General was heard successively by the members of the Legal Committee of the National Assembly

¹² A summary of the meeting of the Plenum of the Supreme Judicial Council held on November 15, 2019 can be found on the following website: <https://bntnews.bg/bg/a/vss-izbra-ivan-geshev-za-glaven-prokuror>

¹³ **Constitution of the Republic of Bulgaria**
Art. 84. The National Assembly:

... ..

Item 16. hear and accept the annual reports of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General, submitted by the Supreme Judicial Council, on the application of the law and on the activity of the courts, the prosecution and the investigative bodies; The National Assembly may hear and adopt other reports of the Prosecutor General on the activity of the Prosecutor's Office on the application of the law, the counteraction to crime and the implementation of the penal policy;;

¹⁴ **Judiciary System Act**

Art. 138a. (1) The Prosecutor General shall annually by April 30 submit to the plenum of the Supreme Judicial Council an annual report on the application of the law and on the activity of the prosecution and the investigative bodies and shall publish it on the website of the prosecution.

(2) At the request of the National Assembly or on his own initiative, the Prosecutor General shall submit to the National Assembly other reports on the activity of the prosecution on the application of the law, the counteraction to crime and the implementation of the penal policy.

(3) Within 14 days from the receipt of the report under para. 1 The Supreme Judicial Council shall hear the Prosecutor General. At the hearing, the members of the council may also ask written questions received from citizens, institutions and non-governmental organizations in connection with the report, to which the Prosecutor General shall respond.

(4) The Supreme Judicial Council shall submit to the National Assembly the report under para. 1 to 31 May. The reports under para. 1 and 2 shall be discussed after the National Assembly has heard the Prosecutor General. When discussing the reports, the members of parliament may also ask written questions received from citizens, institutions and non-governmental organizations in connection with the reports to which the Prosecutor General responds..

and in the plenary hall - by all members of parliament present.^{15 16} In a long period of time - over 5 astronomical hours, the Prosecutor General presented detailed information on the activities of the Prosecutor's Office of the Republic of Bulgaria, answering a large number of questions from members of parliament related to the functions of the Prosecutor's Office of the Republic of Bulgaria. Questions were also asked about specific criminal proceedings. Respecting the principles of parliamentary democracy and out of respect for the Members of Parliament, despite the constitutional decision, the Prosecutor General did not divert any questions, but answered each of them within the limits of the duly obtained permissions from the respective supervising prosecutors.

For us, the continuation of the bilateral dialogue, focused on the problems of the rule of law and the rule of law in Bulgaria, is an honorable and professional commitment with the highest priority. If necessary, we remain available to provide additional information in connection with the questions asked.

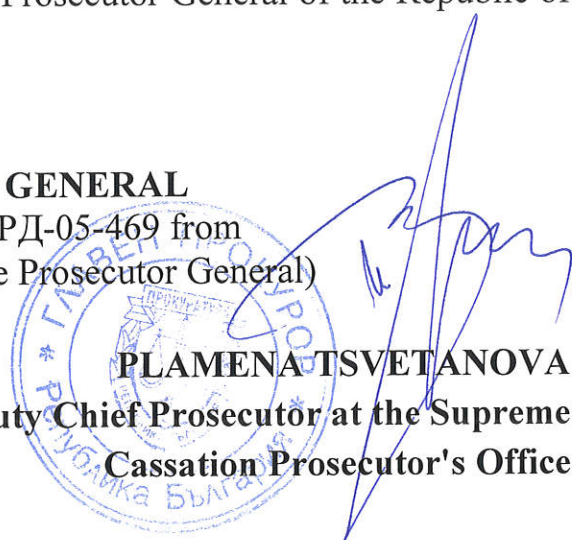
ANNEX:

Rules for media communication in the system of the Prosecutor's Office of the Republic of Bulgaria, approved by order № ПД - 02 - 9 / March 24, 2015 and amended by order № ПД - 02 - 08 / April 12, 2019 of the Prosecutor General of the Republic of Bulgaria

FOR PROSECUTOR GENERAL

(according to Order № ПД-05-469 from
18 February 2021 of the Prosecutor General)

PLAMENATSVETANOVA
Deputy Chief Prosecutor at the Supreme
Cassation Prosecutor's Office



¹⁵ Summary of the meeting held on 14.10.2020 hearing of the Prosecutor General in the Legal Committee of the National Assembly you can find at the following interest address: <https://bntnews.bg/news/pravnata-komisiya-v-ns-prie-doklada-za-deinostta-na-prokuraturata-1078369news.html>

¹⁶ Summary of the meeting held on 15.10.2020 Hearing of the Prosecutor General in the plenary hall of the National Assembly can be found at the following address: <https://bntnews.bg/news/ivan-geshev-predstavi-doklada-si-za-prokuraturata-pred-deputatite-1078447news.html>