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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe de la Relatora Especial sobre la independencia de magistrados y abogados, Gabriela Knaul

Adición

Misión a Bulgaria*

Resumen

Por invitación del Gobierno, la Relatora Especial visitó Bulgaria del 9 al 16 de mayo de 2011. La misión incluía visitas a la capital, Sofía, y a la ciudad de Blagoevgrad. La Relatora Especial se reunió con diversos funcionarios del Gobierno y con otros interesados, entre ellos abogados, jueces, fiscales y representantes de la sociedad civil, además de investigadores, miembros de la comunidad académica, estudiantes, personas detenidas y otros, para obtener una visión lo más completa y equilibrada posible de la situación del poder judicial en el país. También visitó el Centro de acogida provisional de Busmanti, así como los tribunales regionales y de distrito de Blagoevgrad y el Tribunal Municipal de Sofía.

En el presente informe, la Relatora Especial examina las recientes medidas de reforma judicial, así como el sistema de tribunales, y evalúa una serie de problemas relacionados con la independencia e imparcialidad del poder judicial, incluidos los servicios de investigación y enjuiciamiento; la investigación penal; la administración y supervisión del poder judicial; el sistema de evaluación y ascenso de los jueces; el presupuesto del poder judicial y la asignación de causas a los tribunales; la función y las facultades del presidente del tribunal; y la mujer en la administración de justicia. La Relatora Especial señala además una serie de cuestiones que repercuten en la administración de justicia y en la independencia de jueces y abogados, como el acceso a la

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó y en francés.

justicia; la asistencia jurídica; las garantías de un juicio imparcial; el fomento de la capacidad y la formación de los jueces, fiscales e investigadores.

La Relatora especial concluye su informe con recomendaciones para reforzar el sistema judicial y la independencia de los jueces, fiscales y abogados.

Annex

[English and French only]

Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Bulgaria (9-16 May 2011)

Contents

I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers visited Bulgaria from 9 to 16 May 2011, at the invitation of the Government. The visit was aimed at examining the policy and legal framework regulating issues relating to her mandate. She also sought to assess the independence and impartiality of judges, prosecutors and lawyers; the organization and functioning of the legal profession; the effectiveness and independence of the Supreme Council of the Judiciary; the level of access of the population to the justice system; and the respect of fair trial guarantees. She visited the capital Sofia and the city of Blagoevgrad.

2. The Special Rapporteur met with a wide variety of actors, including the Minister of Foreign Affairs and the Minister of the Interior; the Deputy Prime Minister and the Minister of Justice; and the Deputy Minister of Justice and the Deputy Chief Prosecutor. She also met with judges and the court chairpersons at the Supreme Court of Cassation, the Supreme Administrative Court and the Constitutional Court and the Supreme Judicial Council. She met officials from the General Directorate on Execution of Penalties of the Ministry of Justice, the recently established Centre for Prevention of Organized Crime and Corruption and the National Legal Aid Bureau.

3. The Special Rapporteur visited the temporary Centre of Accommodation in Busmanti (Sofia), the Sofia City Court and the regional and district courts in Blagoevgrad. She also met with the Ombudsman of Bulgaria; lawyers, judges and prosecutors; civil society representatives; researchers; academics; students; detainees; and other stakeholders, with a view to obtain the most complete and balanced vision of the situation of the judiciary in the country.

4. The Special Rapporteur wishes to express her deep appreciation and gratitude to the Government of Bulgaria for the opportunity to examine the situation of the judiciary and the cooperation extended for the preparation and undertaking of the visit. She also wishes to express appreciation to all stakeholders and interlocutors for their cooperation and time.

5. The Special Rapporteur begins the present report by summarizing recent developments in judicial reform and challenges related to the court system. She analyses the independence of the judiciary, including issues relating to the investigation and prosecution services; criminal investigation; the administration and oversight of the judiciary; the system of assessment and promotion of judges; the judicial budget and the assignment of court cases; the role and powers of the court chairperson; and women in the administration of justice. The Special Rapporteur also refers to a number of other issues that have an impact on the administration of justice and the independence of judges and lawyers, namely access to justice; legal aid; and capacity-building and training for judges, prosecutors and investigators. She concludes the report with recommendations for strengthening the judicial system and the independence and impartiality of judges and lawyers.

II. Judicial reform

6. Legal and judicial reforms in Bulgaria have been influenced by European organizations, particularly by the Council of Europe and the European Union. Bulgaria framed its judicial reform in the context of the country's full membership to the European Union in 2007, and took a number of steps to strengthen the functioning and independence of the judiciary. The Constitution was amended to recognize the functional immunity of judges and establish the permanent Supreme Judicial Council (SJC) and the related Inspectorate; the structure of the judicial system was determined, and subsequently defined

in the new Judiciary System Act; and the principle of random case assignments was introduced, and implemented thereinafter through an automated system.

7. The judicial reform framework has been complemented by the amendments to the Judiciary System Act adopted in December 2010. Those amendments focused on accountability, professionalism and structural improvements within the judicial system. Legal reform efforts, including amendments to the Code of Criminal Procedure, complemented the most recent amendment to the Judiciary System Act, which entered into force in January 2011.

A. Recent developments in the context of the membership of Bulgaria in European organizations

1. Council of Europe

8. Bulgaria has been a member of the Council of Europe since 1992; that same year it became a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accordingly, Bulgaria allows all persons under its jurisdiction to have access to the European Court of Human Rights (ECHR) to defend the rights and freedoms granted under the European Convention on Human Rights. Recent judgements of the ECHR, particularly under the pilot judgement procedure,[1] have had a great impact on judicial reform in the country.[2]

9. In December 2010, as a follow-up to two cases being considered under the pilot judgement procedure,[3] the Committee of Ministers of the Council of Europe adopted an Interim Resolution on the execution of the judgments of the ECHR.[4] In the resolution the Committee referred to the excessive length of judicial proceedings in 84 cases against Bulgaria and encouraged Bulgarian authorities to speed up judicial proceedings in such cases, to continue to monitor reform initiatives on the situation in the district courts located in regional centres, and to keep the Committee informed of progress made. The Committee also invited Bulgarian authorities to complete as soon as possible the reform introducing a remedy whereby compensation is granted for prejudice caused by the excessive length of judicial proceedings. In February 2012, the Government of Bulgaria submitted various plans of action indicating measures to execute the ECHR judgements, including remedies to address the excessive length of civil proceedings. The Special Rapporteur is further informed that amendments to the Judiciary System Act have subsequently been prepared and submitted for approval to the National Assembly.

2. European Union

10. The influence of the European Union on judicial reform in Bulgaria is directly related to the country's application for European Union membership in 1995, and the subsequent recommendation by the European Commission to open formal negotiations in 1999. Bulgaria joined the European Union on 1 January 2007. In December 2006, the European Commission established a mechanism for cooperation and verification of

[1] See ECHR, "The pilot-judgment procedure", information note issued by the Registrar (2009). Available from www.echr.coe.int/NR/rdonlyres/DF4E8456-77B3-4E67-8944-B908143A7E2C/0/Information_Note_on_the_PJP_for_Website.pdf.

[2] See ECHR, *Dimitrov and Hamanov v. Bulgaria* (Applications No. 48059/06 and No. 2708/09), Judgement, 10 May 2011, and *Finger v. Bulgaria* (Application No. 37346/05), Judgement, 10 May 2011.

[3] ECHR, *Dimitrov and Hamanov v. Bulgaria*.

[4] Interim Resolution CM/ResDH(2010)223, adopted on 2 December 2010.

progress in Bulgaria to address specific benchmarks.[5] This system, known as the Cooperation and Verification Mechanism (CVM), reports on progress made on the commitments made by Bulgaria in the areas of judicial reform and the fight against corruption and organized crime, and provides recommendations to the Government on a biannual basis. The most recent report was published in February 2012.[6]

B. The current judicial reform strategy

11. The most recent reform to the judiciary is the Strategy to Continue the Judicial Reform in the Conditions of Full European Union Membership (Judicial Reform Strategy), adopted on 23 June 2010 by the Council of Ministers of Bulgaria. The Strategy was drafted by the political office of the Ministry of Justice.

12. The Special Rapporteur takes this opportunity to highlight the importance of including all judicial actors, namely judges, court assessors, prosecutors and investigating magistrates, in this and future judicial reform efforts in order to create ownership of the judicial reform among all judicial stakeholders. In particular, the prosecution service, considered as part of the judiciary in Bulgaria, should be more prominently included in the current judicial reform strategy and in future judicial reform efforts. In this regard, the Special Rapporteur welcomes information provided by the Government indicating steps taken to ensure a participatory process to formulate the proposed amendments to the Judiciary System Act, including also professional and non-governmental organizations.

13. The Judicial Reform Strategy follows recommendations of the European Commission and the guidelines for reform in the judiciary outlined by the Stockholm Programme 2010-2014, regarding key aspects of rule of law in the European space.[7]

14. Pursuant to the strategy, the reform is aimed at achieving three strategic goals: (a) better management of the judicial system; (b) qualitative justice and placing the citizen's point of view in the judicial reform debate; and (c) countering corruption in the judicial system. The strategic goals are complemented by the following five priority objectives: (a) improving the management of judicial institutions; (b) strengthening the institutions of the judiciary; (c) developing the potential of personnel and increasing the judges' integrity; (d) increasing the quality of justice and achieving the European standard of law enforcement by strengthening the supremacy of the law; and (e) ensuring dialogue between the judiciary and the citizens as a guarantee of trust. Furthermore, the strategy establishes six mechanisms to ensure its effective implementation and facilitate public participation.

15. The Special Rapporteur welcomes the goals and priorities of the Judicial Reform Strategy, as well as the creation of several mechanisms for its implementation. She wishes to draw the Government's attention to the importance of measuring progress towards the achievement of such goals and priorities. Measuring the performance, integrity, transparency, accountability and capacity, as well as the human rights dimension, of the judicial system is, in her view, a precondition for the attainment of these strategic goals.

16. In the light of the foregoing, the Special Rapporteur considers that the United Nations Rule of Law Indicators Project may assist and complement efforts made by Bulgarian authorities to strengthen the rule of law and develop national rule of law

[5] Commission Decision 2006/929/EC of 13 December 2006.

[6] European Commission document COM(2012) 57, 8 February 2012.

[7] See European Council, the Stockholm Programme–An Open and Secure Europe Serving and Protecting Citizens, available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF.

strategies.[8] In her view, this tool may be of valuable use for the Bulgarian authorities in the elaboration of benchmarks and progress indicators and in determining measures of immediate application, as well as those that require preliminary action, which are to accompany the strategy's plan of action, in accordance with its provisions. It should be noted, however, that such measures are to be tailored to the national situation and are not a substitute for a detailed assessment of the capacity (i.e., material and human resources capacity and administrative and management capacity), performance, integrity, transparency and accountability of the judiciary in Bulgaria.

III. The court system

17. The structure of the court system in Bulgaria is determined by chapter six of the Constitution, which establishes the competence of the Supreme Court of Cassation, the Supreme Administrative Court, courts of appeal, regional courts, district courts and military courts.[9] The Constitutional Court, the jurisdiction of which is stipulated in chapter eight of the Constitution, is not formally part of the judicial system.[10]

18. The general system of courts of justice comprises the Sofia City Court, the district courts, the regional courts and the appellate courts. The courts of first instance are the district courts in civil and criminal matters, as well as the administrative courts. The courts of second instance are the regional courts and the Supreme Administrative Court. Although the main courts of first instance in civil and criminal matters are the district courts, in grave criminal offenses enumerated in the Code of Criminal Procedure, and in cases of serious financial, moral or public interest described in the Code of Civil Procedure, the regional courts play the role of courts of first instance and the appellate courts that of courts of second instance.

19. The Special Rapporteur visited the Sofia City Court, and a district and a regional court in Blagoevgrad. She wishes to recall the importance of ensuring that courts are adequately resourced so that they are able to function properly and uphold the principles of independence, impartiality, integrity, propriety, equality, competence and diligence. The Special Rapporteur also wishes to draw attention to the importance of having the court facilities well maintained, adequately equipped with desks, chairs and office supplies and accessible by persons with disabilities; and of ensuring adequate workspace so that there is no interference in personnel functions. This is a concern of particular importance with respect to the Sofia City Court.

20. The Constitution proscribes the establishment of extraordinary courts,[11] but it authorizes the establishment of specialized courts.[12] Specialized courts in Bulgaria include military and administrative courts. Furthermore, the Specialized Criminal Court and the Appellate Specialized Criminal Court were created to handle cases of corruption and organized crime and became operational in January 2012. Concern regarding the actual need for their establishment was expressed by a number of stakeholders, who also underscored the importance of ensuring that effective mechanisms to prevent improper influence are in place.

[8] The publication *United Nations Rule of Law Indicators: Implementation Guide and Project Tools* is available from www.un.org/en/peacekeeping/issues/ruleoflaw/index.shtml.

[9] Constitution of Bulgaria, art. 119, para. 1.

[10] Ibid., arts. 147-152.

[11] Ibid., art. 119, para. 3.

[12] Ibid., art. 119, para. 2.

21. The Special Rapporteur concurs with the many stakeholders who consider that the aforementioned courts were conceived as a mere replication of existing criminal courts, and that, in times of financial restraint, resources marshalled for their establishment could have been better used to reinforce existing courts by creating specialized units on organized crime and corruption within them. In the Special Rapporteur's view, the establishment of new courts should be complemented by measures to strengthen the capacity for pretrial investigations, while preventing politicization and ensuring respect for the principle of the natural judge and fair trial guarantees.

22. In this regard, the Government should redouble efforts to ensure full respect for procedural safeguards, judicial independence and impartiality. Other elements equally essential for the adequate functioning of the specialized courts include: allocating appropriate human and financial resources; underpinning the selection and appointment of specialized judges with the principle of transparency through appropriate safeguards against judicial appointments for improper motives; and defining properly the scope and internal organization of the specialized courts and prosecution offices. The Special Rapporteur welcomes information provided by the Government indicating that the operationalization of these courts has recently been positively assessed by the European Commission.

23. Stakeholders highlighted that additional challenges affecting the courts include the publication of judicial decisions and the need to harmonize the law and unify the interpretation of the law through judicial decisions. In this regard, the Special Rapporteur welcomes the publication of the official journal by the Supreme Administrative Court since 1998 and invites the high courts to take measures to ensure the uniform and equal application of the law.

IV. Challenges to the independence and impartiality of the judiciary

24. Information received by the Special Rapporteur suggests that the judiciary has been struggling continuously to defend its independence, and that recently judges have faced challenges in the recognition of their crucial role. Information received also suggests a distorted public perception of the independence of the judiciary, as if this were a disproportionate claim of judges, instead of a basic principle of governance that is essential for upholding the rule of law and ensuring the realization of all human rights for all.

25. Other misconceptions are threatening to cast a shadow on judicial activity and the reform of the judiciary in Bulgaria. Some relate to the role of judges, which is to decide impartially and on the basis of existing legislation, even if such legislation is considered by the public as faulty.

26. In this regard, the Special Rapporteur wishes to stress that the independence of the judiciary is to be upheld together with the basic principles of judicial conduct, and invites the Government and all stakeholders to raise awareness of the key values of an independent judiciary, together with the principles on judicial conduct, set forth in the Bangalore Principles of Judicial Conduct.[13] She also calls upon the judiciary to continue building public trust and enhancing its ability to deliver justice on a daily, case-by-case basis, as its

[13] The Principles establish the standards for the ethical conduct of judges and provide both guidance to judges as well as a framework in which the judiciary may regulate judicial conduct. The Principles are organized around the key values of independence, impartiality, integrity, propriety, equality, and competence and diligence. The Principles are formulated to assist executive and legislative branch officials, lawyers and members of the public to understand and support the judiciary. See E/CN.4/2003/65, annex.

performance contributes to building public confidence in the integrity of the justice system as a whole.

27. Also of concern for the Special Rapporteur is information received during the visit indicating that a senior Government official made public appeals to the judiciary, calling on it to declare guilty a number of persons whose cases were at the time in the pretrial phase of criminal proceedings. Without prejudging the information received, the Special Rapporteur wishes to recall that the Human Rights Committee, in its general comment No. 13 (1984) on equality before the courts and the right to a fair and public hearing by an independent court established by law, affirms that it is a duty for "all public authorities to refrain from prejudging the outcome of a trial" (para. 7). In this regard, the Special Rapporteur wishes to highlight that according to international standards, particularly those contained in the Basic Principles on the Independence of the Judiciary, the judiciary must decide matters impartially on the basis of facts and the application of law, without any restrictions, improper influence, inducement, pressure, threat or interference. The courts themselves shall decide whether they have jurisdiction to hear a matter. There must be no unwarranted interference with the judicial process, including the assignment of judges, by the other branches of the power of the State.

28. The Special Rapporteur wishes to invite the Government of Bulgaria to redouble efforts to focus on structural factors that may undermine judicial activity, and wishes to refer to a number of aspects that are directly related to the independence and impartiality of the judiciary in Bulgaria.

A. The investigation and prosecution services

29. The institution of the judiciary in Bulgaria comprises the courts, the prosecutor's offices and the investigation services[14]. Judges, prosecutors and investigating magistrates are considered members of the judiciary, and enjoy the same constitutional and statutory guarantees of independence in their individual status and functional autonomy.[15] Furthermore, pursuant to the Constitution of Bulgaria, the structure of the State prosecution office corresponds to the structure of the court system.[16]

30. During her visit, the Special Rapporteur held consultations with various experts who highlighted a number of difficulties entailed by the fact that the prosecution and the investigation services, notably the latter, constitute integral parts of the judiciary, which has been criticized, inter alia, by the European Commission since 2002.[17] There have also been tensions between members of the three institutions represented in the SJC, particularly between judges and prosecutors, rendering difficult the working environment for the Council and impacting detrimentally on its efficiency.

31. In this regard, the Special Rapporteur was informed of constant criticisms against the courts for the excessive delays in processing cases and the low rate of convictions, particularly in cases involving organized crime. While in some instances the allegations could be corroborated by cases that have been brought before, and in some instances ruled on by, ECHR, a number of experts consulted by the Special Rapporteur highlighted that public scrutiny usually leaves aside criticism regarding the stages of criminal investigation and prosecution, where the handling of cases is usually lengthier. Such criticism has had a

[14] See article 128 of the Constitution.

[15] Pursuant to article 117, paragraph 2, of the Bulgarian Constitution, the judiciary enjoys independence, within the framework of the separation of powers.

[16] Constitution of Bulgaria, art. 126, para. 1.

[17] Commission of the European Communities, "2002 regular report on Bulgaria's progress towards accession", Brussels, 9 October, 2002.

negative impact on public perception regarding accountability and trust in the court system. According to some stakeholders, aspects of accountability and public confidence in the court system will improve if the issue of the separation of the institutions responsible for different stages of criminal proceedings—investigation, prosecution and adjudication—is mainstreamed within the Judicial Reform Strategy. Additionally, as pointed out by certain stakeholders, the SJC defends the interests of several institutions, namely the courts, the prosecution service and the investigation service. This renders difficult its role to insist on the proper reporting and accountability of these institutions.

32. In this regard, the Special Rapporteur wishes to draw the Government's attention to the Guidelines on the Role of Prosecutors, particularly to principles 10 and 12, which respectively recognize that the office of prosecutors shall be strictly separated from judicial functions and should contribute to the smooth functioning of the criminal justice system.

33. The Special Rapporteur understands that a clearer separation of the courts from the prosecution and investigation services may entail a reform of the Constitution, and urges the Government to design a strategy to address the aforementioned concerns within the current judicial reform.

B. Criminal investigation

34. Several institutions in Bulgaria are responsible for criminal investigation. The involvement of three different institutions in criminal investigations, namely, the police, the investigation service and the prosecution, was a matter of criticism in the past, as this situation was considered to have resulted in lengthy investigative work. Under the new Code of Criminal Procedure, pretrial investigation is to be carried out by the investigating police under the authority of the Ministry of the Interior and the supervision of a prosecutor. The amendments to the Judiciary System Act of 2009 incorporated investigation departments within the district prosecution offices where investigating magistrates perform their functions. Since then, the investigation service has been integrated into the Prosecutor's Office and territorial investigation services have ceased to exist as independent bodies.

35. In accordance with the law, investigating magistrates shall conduct the investigative work, in particular regarding crimes committed by military and police personnel, and only a few categories of crimes, such as espionage and crimes against humanity.

36. There is a need to insist on appropriate levels of cooperation and coordination between police officers and prosecutors, as during the Special Rapporteur's visit this was mentioned as a major obstacle to the efficient functioning of the criminal justice system in Bulgaria. In this regard, it should be noted that while the prosecution service forms part of the judiciary, the National Police is a centralized institution within the Ministry of the Interior.

37. The Special Rapporteur also received information indicating that there have been times where delays in criminal investigations that were not the responsibility of the courts were attributed to them by several uninformed actors. Consequently, judges and other actors within the justice sector feel that the courts are used as a scapegoat to hide structural problems concerning criminal investigation.

38. The Special Rapporteur concurs with the recommendations made by the CVM to Bulgaria to continue the police reform and link it to a wider reform of pretrial investigations, which requires, inter alia, establishing effective operational cooperation with the prosecution and other authorities, applying the principle of joint teams in all cases of serious crime, and investing in equipment and specialized training.

39. The CVM reported weaknesses in the collection of evidence, in the protection of witnesses, and in investigative strategies, and highlighted that those deficiencies have yet to be properly analysed. In this regard, the Special Rapporteur concurs with the CVM recommendation to reform the management and structures of and the cooperation between the judiciary and other investigative bodies, including the police.

C. Administration and oversight of the judiciary

40. The SJC is the body responsible for the management and discipline of the judiciary, in accordance with article 130 of the Constitution.[18] It appoints, promotes, demotes and dismisses judges, prosecutors and investigators[19] and imposes disciplinary sanctions.[20] It determines the number of judicial regions and the headquarters of the courts, the number of judges, prosecutors and investigators as well as the number of prosecution and investigative offices.

41. In 2007, a constitutional amendment introduced article 132a, which established an Inspectorate[21] attached to the SJC tasked with overseeing the judiciary's work with due respect for the independence of judges, prosecutors and investigators.[22]

42. The Inspectorate is mandated to refer matters to the appropriate authorities, reporting on these issues or making suggestions thereon.[23] It can act either on its own initiative or pursuant to reports by stakeholders (private individuals, legal persons or State authorities).[24]

43. The Judiciary System Act governs the structure, power and functioning of the Inspectorate (see arts. 40-60). According to the Act, the SJC is a permanent acting body that represents the judicial power and secures its independence, determines its personnel, organizes its work, and manages its activities without interfering with the independence of its bodies (art. 16, para. 1).

44. The SJC Inspectorate undertakes inspections *motu proprio*, including unplanned or programmed annual checks of the work of individual judges, prosecutors and investigators. Following such inspections, the Inspectorate presents to the official concerned (judge, prosecutor or investigator), and to her or his hierarchical superior,[25] a report containing findings and recommendations.[26] The hierarchical superior of the concerned judge, prosecutor or investigator must inform the chief inspector on the implementation of the recommendations made, within a time frame set in the report.[27]

45. According to the Judiciary System Act, the SJC is a legal entity with a registered office in Sofia, and is represented by one of its elected members, determined by an SJC decision. It is composed of 25 members (3 members by law and 22 elected members), who are legal experts with outstanding professional and moral qualities and a minimum of 15 years of judicial experience. The three members by law are the Chair of the Supreme Court of Cassation, the Chair of the Supreme Administrative Court and the Prosecutor General,

[18] See Constitution of Bulgaria, arts. 130-133.
[19] Ibid., arts. 129, para. 1 and 130, para. 6 (1).
[20] Ibid., art. 130, para. 6 (2).
[21] The Inspectorate of the Supreme Judicial Council consists of a chief inspector and 10 inspectors, in accordance with article 132a, paragraph 1, of the Constitution.
[22] Constitution of Bulgaria, art. 132a, para. 6.
[23] Ibid., art. 132a, para. 9.
[24] Ibid., art. 132a, para. 7.
[25] Judiciary System Act, art. 58, para. 3.
[26] Ibid., art. 58, para. 2.
[27] Ibid., arts. 58, para. 4 and 54, para. 1 (2).

who are all appointed by the President of Bulgaria. Of the 22 elected members, 11 are elected by the Parliament and 11 by the judiciary. Elective members have a five-year mandate without the possibility of re-election for two consecutive periods.

46. The Minister of Justice, who has no voting rights, chairs sessions of the SJC,[28] drafts its agenda and plays an important organizational and technical role within the Council and the judiciary. In the absence of the Chair, any of the members designated by law may preside over the SJC sessions.

47. In the Special Rapporteur's view, there remain a number of challenges that must be addressed in order for the SJC to perform its key role and fulfil its mandate as an independent body that oversees the performance of the judiciary while protecting its independence. These challenges start with its composition. Recently, two members of the SJC resigned in protest against some actions taken by the Council, which has prompted debate on the need for reform that could improve the accountability of the Council. In this respect, the Special Rapporteur was informed by several stakeholders that the selection and appointment of judges, which is a task of the SJC, is yet to be underpinned by transparency, equal opportunities for all candidates, and objective criteria.

48. Information received by the Special Rapporteur also indicates that senior appointments were made under the previous rules, despite the entry into force of the amendments to the Judiciary System Act in January 2011. As a result, these appointments are assessed by many stakeholders as faulty, lacking a real evaluation of the professional qualifications, managerial skills and personal integrity of candidates. Lack of investigation of allegations against judges and the inconsistent application of disciplinary measures were also reported to the Special Rapporteur. The CVM corroborated allegations of conflict of interest that were not routinely followed up, and reported weaknesses in asset declarations and verifications of magistrates and other senior civil servants.

49. Many stakeholders also fear that the adoption of new legislation could potentially be used as a means to prevent the completion of the term of the SJC membership. In this regard, the Special Rapporteur learned that since 1991, only once has the SJC membership been able to complete the term of its mandate.

50. In the Special Rapporteur's view, measures to ensure that the SJC fulfils its important role include identifying ways and means to eliminate undue political and external influence on the SJC.

51. In addition, an electronic register came into operation in February 2012 to monitor timelines of investigation and inspections, prosecutors' rulings and remands in custody. Reportedly, administrative heads are to regularly check the register and take measures to prevent delays in investigations and breaches of procedural deadlines. It further provides the possibility for the Prosecutor General's Office to initiate inspections and conduct disciplinary proceedings if appropriate. The Special Rapporteur welcomes the initiative, but has not been provided with sufficient information to assess it, including with regard to the efficiency of the register.

[28] Constitution of Bulgaria, art. 130, para. 5.

D. The system of assessment and promotion of judges

52. In principle, the system of assessment and promotion of judges in place in Bulgaria as conceived by law is in compliance with the Basic Principles on the Independence of the Judiciary. During her visit, the Special Rapporteur was informed that the system is based on objective factors, in particular ability, integrity, experience and the results of competitions, and that factors not linked to the professional merits of the judges concerned are not considered for purposes of promotion.[29]

53. The implementation of the aforementioned system, however, is in practice a matter of concern for several stakeholders, due to the apparent lack of a mechanism to ensure transparency in, and accountability for, decisions on assessment and promotion. Furthermore, several interlocutors within the judiciary expressed concern about the use of the process of secondment as a substitute for an objective and competitive system for the promotion of judges. In this regard, the Special Rapporteur was informed of a practice according to which judges are placed temporarily in higher positions within the judiciary, and in some instances in separate organizations within the justice sector, modifying, or occasionally replacing, the regular progress of judges within the judicial career.

54. During her visit, the Special Rapporteur was also informed of the coexistence of two methods for the initial appointment of judges: a system of selection and appointment of junior judges, which is based on competitive examinations and training, and a system of external appointments, which is used to fill 20 per cent of judicial vacancies. Jurists and lawyers must have worked for a specific period of time in the legal profession, depending on the level of court or prosecution office,[30] to have the possibility to apply to be appointed through the external appointments system, which, unlike the competitive system established to appoint junior judges, does not include specific training. Stakeholders raised concerns about the different criteria applied in these two selection systems and drew the Special Rapporteur's attention to the need to establish a mechanism to ensure that no undue or improper influences are allowed in the system of external judicial appointments. The Special Rapporteur invites all concerned national actors to look into these allegations and adopt the necessary measures to ensure that judicial appointments are objective and transparent and not made for improper motives, in accordance with principle 10 of the Basic Principles on the Independence of the Judiciary.

55. In the light of the foregoing, the Special Rapporteur appeals to the Government to redouble efforts to ensure access to the judicial career through periodic competitive examinations; to introduce a competitive process and periodic evaluation for the promotion of judges; and to use a competitive process for filling temporary positions to which judges may apply with a view to being placed under secondment arrangements.

56. The Special Rapporteur calls upon the SJC to adopt measures to eliminate the use of secondment as a substitute for promotion, and to ensure that objective criteria are introduced and implemented in the system of the assessment of judges. She invites the judiciary, together with the SJC, to examine these concerns and recommendations, as well as to take all necessary measures to prevent improper influence, trade-off and lobbying. Allegations of any such misconduct should be duly investigated.

[29] Such improper factors might, for instance, include discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status.

[30] A minimum of 3 years of service to be appointed as a judge or prosecutor with a regional court or prosecution office, 8 years for a district court or prosecution office, 10 years for the appellate court or prosecution office and 12 years for the Supreme Court of Cassation and the Supreme Administrative Court or the Supreme Prosecution Office of Cassation and the Supreme Administrative Prosecution Office, pursuant to article 164 of the Judiciary System Act.

57. The Special Rapporteur acknowledges information provided by the Government indicating that numerous competitions for promotion, relocation and appointment of magistrates took place in the second semester of 2011 and the first months of 2012, and that SJC decisions in this regard were based on the competitions' results.

E. The assignment of court cases

58. The Special Rapporteur welcomes efforts made by the judiciary in Bulgaria to establish an objective and impartial system that ensures the fair and equitable distribution of cases between or among the judges in each court. These efforts are in accordance with the Basic Principles on the Independence of Judges and Lawyers, which recognize that the assignment of cases to judges within the court to which they belong is an internal matter of judicial administration (principle 14).

59. The current system is based on an automated programme, which allows the random assignment of cases to judges. A court may, by local rule, modify the random assignment system to provide the redistribution of cases, under specific circumstances. Examples of such cases in criminal law matters include cases involving the same criminal defendant, parties, family members or subject matter. In these cases, a judge who is assigned a case by local rule may request the court Chair to reassign a similar case to another judge.

60. During her visit, however, numerous stakeholders, including judges, expressed concern to the Special Rapporteur about the room for manipulation that the automated system may allegedly allow. She was also informed that joint inspections have been carried out over the past six months together with the Professional Qualification, Information, Technologies and Statistics Commission. The Special Rapporteur calls upon the Government to continue addressing these allegations and taking all necessary steps to strengthen the system of random allocation of cases.

F. The role and powers of the court Chair

61. The Special Rapporteur was informed about the role and powers of the judges who are appointed as court Chair. The criteria for being appointed to this function are unclear. One of the powers is to issue warrants to intercept telephone conversations (wiretapping) for the purpose of judicial investigation into crime. The authorization of this measure seems to be a common practice, which is almost automatically granted by the judge once the request is made, without any real control of the actual need for its imposition—and continuation—for the investigation purposes. In the Special Rapporteur's view, this power should be exceptional and analysed in the light of fair trial guarantees recognized at both the international and the European levels.

62. In this regard, the Special Rapporteur wishes to recall that in several cases ECHR has held that telephone tapping amounts to "an interference by a public authority" with the right to respect for correspondence and private life as guaranteed by article 8 of the European Convention.[31] According to ECHR, in order to be justified, wiretapping should be in accordance with national law, and necessary in a democratic society for one or more of the legitimate aims referred to in article 8, paragraph 2, of the European Convention on

[31] Article 8 of the European Convention on Human Rights states: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Human Rights, which are: national security, public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others.[32]

63. The Special Rapporteur recommends that the Government revise the use of wiretapping, particularly in the light of its limited use as evidence in court proceedings. Information provided by stakeholders in this regard indicates that less than 2 per cent of the information gathered through wiretapping is ultimately used as evidence in court proceedings.

64. The Special Rapporteur is especially concerned about information suggesting that, in some instances, the only evidence used to prove a person's guilt is the recording of his or her conversations. She appreciates the information provided by the Government indicating that it is compulsory for the Prosecutor's Office to corroborate the evidence collected by wiretapping with other evidence.

G. The judicial budget

65. The Bulgarian Constitution recognizes in article 117, paragraph 3, judicial budgetary autonomy, which is essential to ensure that the judiciary is free from external influence. By law, the SCJ is entrusted to discuss and accept the draft budget of the judicial system and oversee its execution.

66. The Special Rapporteur has taken note of the prerogatives of the SJC to (a) introduce changes in the budget expenditure of the judicial system authorities in the course of the implementation of the budget of the judicial system; and (b) determine the procedure to allocate the surplus in the event of over-implementation of the revenue from the activities of judicial authorities.

67. However, the Special Rapporteur was informed that the premises where the judiciary functions and the movable assets it uses, including furniture, are administered by the executive branch, namely, the Ministry of Justice. Stakeholders reported that this situation creates a certain dependency of the judiciary on the executive.

68. In the Special Rapporteur's view, this may hamper the independence of the judicial system. She is of the opinion that entrusting the administration of its funds directly to the judiciary or to an independent body responsible for the judiciary may reinforce its independence and prevent financial dependency, thereby avoiding tensions between the judicial and other branches of power.

69. A possible way to address this challenge consists in rendering the process of the allocation of resources to the judiciary more transparent and allowing the judiciary (or an independent body) to administer the premises where the courts function and assign, on the basis of need, the movable assets that are required for the efficient performance of the courts.

70. The Special Rapporteur wishes to stress that the judiciary must participate in drafting its own budget, in cooperation with the Ministry of Finance and the Ministry of Justice. Likewise, the judiciary should also have the right to participate in deliberations on its budget in the legislature. In the view of the Special Rapporteur, budgetary allocations to fund the courts in the current fiscal year, or in the next financial year, may be reduced solely with the consent of the judiciary, or of an independent body representing it, at all

[32] See, for example, *Malone v. UK* (Application No. 8691/79), Judgement of 2 August 1984 and *Halford v. UK* (Application No. 20605/92), Judgement of 25 June 1997.

times, including in times of crisis. She calls upon the Government to establish adequate safeguards in this regard.

H. Women in the administration of justice

71. The Special Rapporteur notes that the representation of women in the judiciary is adequate, particularly at the entry and middle levels of the career. The presence of women in higher positions, however, is still insufficient.

72. The Special Rapporteur devoted two of her previous reports to the issue of women in the administration of justice. She stressed the importance of developing a gender-sensitive judiciary and ensuring an adequate representation of women therein.[33] She would like to recall in that respect that an independent and impartial judiciary, an independent legal profession and the integrity of the judicial system based on equal gender opportunities are essential prerequisites to effectively protect women's human rights and ensure that the administration of justice is free from discrimination on the grounds of gender.

73. The Special Rapporteur also wishes to encourage judges, prosecutors and lawyers to promote equal access to justice, to combat gender stereotypes, and to apply non-discriminatory treatment of women in the criminal justice system.

V. Access to justice

74. During her visit to Blagoevgrad, the Special Rapporteur was informed about a number of good initiatives by courts to promote and ensure access to justice for all in Bulgaria. Examples of such good practices are the flexible arrangements made by judges at the district and regional courts in Blagoevgrad to travel periodically to remote locations with the aim to enable the participation in hearings of victims, witnesses and the accused. The Special Rapporteur invites the judiciary to consider promoting the formal establishment of such arrangements by the district and regional courts whenever the need to bring courts closer to the people is identified. The Special Rapporteur also recommends that the judiciary identify and share good practices among the courts at all levels and in all regions of Bulgaria, an initiative that can be conducted by the SJC.

75. Notwithstanding these initiatives, the Special Rapporteur received information on challenges to ensuring access to justice for certain minority groups, asylum seekers and irregular migrants. The need to make interpretation services for these groups available throughout the judicial proceedings was reported as a major concern.

76. In respect of persons belonging to certain minority groups, notably Roma, discriminatory practices were reported as barriers to access to justice, as some of the representatives of these groups informed the Special Rapporteur that the very presence of certain minorities is often challenged, and sometimes even denied in Bulgaria. They also reported that their lack of recognition has had detrimental consequences within the justice system, as they feel they have been left on the outskirts, without the real means to resort to the formal justice system. According to stakeholder reports, other barriers to accessing justice in Bulgaria are related to a lack of knowledge about the legal system, a lack of confidence in the judicial institutions, and excessive delays in deciding cases.

[33] See A/HRC/17/30 and A/66/289.

77. In the light of the foregoing, the Special Rapporteur emphasizes that access to justice is both a right in itself and a means of restoring the exercise of rights that have been disregarded or violated. As such, access to justice is an indispensable component of specific rights, such as the right to liberty and to personal safety, and is also closely linked to the right to effective judicial protection, which entails the recognition of the right to an effective remedy, the right to equality and the prohibition of discrimination, and fair trial guarantees.

78. The Special Rapporteur further recalls that the State is obliged to remove all obstacles (be they legal, social, cultural, economic or other) that prevent or hinder access to justice. She also wishes to stress that everyone under the jurisdiction of Bulgaria should be knowledgeable of her or his rights and of all mechanisms that are available to seek redress. In this regard, the Special Rapporteur wishes to encourage the Government to consider launching awareness-raising campaigns on access to justice, targeting groups in situations of vulnerability, notably minority groups.

VI. Legal aid

79. The Special Rapporteur praises efforts undertaken in Bulgaria for the improvement of access to legal aid, particularly in the criminal justice system, as this is an important means to reduce the length of pretrial detention, prison overcrowding and congestion in courts. A major step in this direction is the establishment of the National Legal Aid Bureau. The Bureau coordinates the provision of state-sponsored legal aid, which is provided in Bulgaria by lawyers affiliated to bar associations.

80. Legal aid in Bulgaria is aimed at covering the pretrial, trial and appeals stages of proceedings, mostly in criminal cases and to some extent in labour law cases. To benefit from free legal aid, a person under the jurisdiction of Bulgaria should demonstrate (by an oath or through witness statements) that her or his monthly income does not exceed 40 euros. In this regard, the Special Rapporteur expresses concern that legal aid appears to be conceived to help only those in extreme poverty, and under certain circumstances, those that are investigated for the alleged commission of serious crimes. She encourages the Government to ensure that legal aid serves the purpose of providing legal counsel and advice to all those who may need it and cannot afford it.

81. The Special Rapporteur expresses concern about the conditions to ensure the adequate operation of the National Legal Aid Bureau, as this entity appears understaffed and underresourced. It reportedly has 30 staff members at its headquarters to coordinate all legal aid issues at the national level, and its annual budget is approximately 3 million euros.

82. Stakeholders, together with lawyers and representatives of bar associations, reported delays in the payment to lawyers who had provided legal aid and counsel and highlighted the detrimental implications that this may have for the appropriate functioning of the system of administration of justice. It was reported that in 2010 a number of lawyers affiliated to certain bar associations refused to take up cases where legal aid was required, due to major delays in the payment for legal aid services rendered by them in the past

83. In this regard, stakeholders, including lawyers, expressed concern regarding the lack of safeguards to ensure that lawyers withdraw cases only when there is a reason that can be substantiated under applicable law, such as the withdrawal of legal aid attorneys to avoid aiding illegal transactions, or the presentation of perjured testimony or an unwarranted defence to the courts. The Special Rapporteur concurs with stakeholders and recommends that such reasons be clearly defined in the law with a view to ensure a legal aid system that is responsive to the actual needs, and calls upon the Government to establish safeguards to ensure that State-sponsored legal attorneys are remunerated on time for their services.

84. Lawyers also expressed concern about the limited contact they have with defendants in cases requiring State-sponsored legal aid, and highlighted the detrimental impact of such limitations on the coordination and preparation of the defence strategy for individual cases.

85. The Special Rapporteur invites the Government to give the utmost consideration to this issue, as an effective and inclusive system of legal aid contributes to the full implementation of the right to access to justice in Bulgaria. She also wishes to recall that adequate legal aid and counsel impact positively on other fair trial rights, as the unequal economic or social status of the litigants usually translates into the unequal possibility of defence in trial.

VII. Capacity-building and training for judges, prosecutors and investigators

86. The Special Rapporteur commends the Government of Bulgaria for the priority it has given to training and continuous education with a view to strengthening the judicial system. She especially welcomes the establishment of the National Institute of Justice (NIJ) to implement training for judicial actors, as in the Special Rapporteur's view the development of international human rights law education programmes for judges, prosecutors and lawyers is crucial to ensure a solid foundation for democracy and the rule of law.

87. The NIJ has built upon the achievements of the Magistrate Training Centre, a non-governmental organization established in 1999. It became operational in January 2004 and was reorganized through the Judiciary System Act.[34] The NIJ is an independent legal entity, with a functional relationship with both the Supreme Judicial Council and the Ministry of Justice, both of which elect a quota of its five-year managing board.[35] It is funded from the budget of the judiciary and supplemented by those of its various programmes and projects. It is crucial for the NIJ to maintain its independence in practice and avoid improper political interference in its functioning and purposes.

88. The Special Rapporteur visited the NIJ and learned about its various initiatives. The NIJ currently implements three different training programmes: initial training; continuing training of judges, investigating magistrates and prosecutors; and training of court administration clerks. The initial training offered by the NIJ is of two types: (a) a compulsory initial training of nine months' duration for junior magistrates (junior judges or junior prosecutors) who have successfully passed the relevant competition is organized as soon as the magistrates assume their positions; (b) compulsory initial qualification courses are provided to further the qualification of the judges, prosecutors and investigators who are first-time appointees within the judiciary. In both cases, passing a written exam is a requirement at the end of the courses. The continuing training for judges and prosecutors is open to all sitting magistrates and focuses on current amendments to legislation, changes in jurisprudence, interdisciplinary topics and law of the European Union.

89. The NIJ is in the process of reorganizing the initial training programme for junior judges and prosecutors and adopting a two-year programme for the training of magistrates, which is based on the priorities and aims of the Judicial Reform Strategy of Bulgaria. In this regard, the Special Rapporteur wishes to invite the NIJ to adopt a comprehensive approach in its trainings and to consider providing prosecutors and judges with specific training on international human rights law standards.

[34] See chapter 11 of the Judiciary System Act and the Regulation on the Organization of the Activities of the National Institute of Justice, adopted by the SJC.

[35] Five members of the NIJ are elected by the SJC and two members by the Ministry of Justice.

90. The Special Rapporteur was also informed of the need to develop a system of incentives for career development among judges and prosecutors. Despite this challenge, the Special Rapporteur was also informed that a few Bulgarian judges are seconded to the ECHR.

VIII. Conclusions

91. **In Bulgaria, the judiciary comprises the court system, the prosecution service and the investigation service. The Constitution recognizes the principle of separation of powers and the independence of the judiciary, including judicial budgetary autonomy. The legal framework regulating the judiciary is comprehensive and complies with international norms and human rights standards.**

92. **Bulgaria has shown genuine efforts to reform the judiciary, ensure justice for all those under its jurisdiction and build trust in the judicial institutions. Its current strategy for judicial reform is aimed at improving the management of the judiciary, enhancing the delivery of justice, promoting the participation of citizens in the judicial reform debate and taking steps to counter corruption in the judicial system.**

93. **The plan of action for the Judicial Reform Strategy is aimed at measuring the performance, integrity, transparency, accountability and capacity, as well as the human rights dimension, of the judicial system as a precondition for the achievement of the goals and priorities of current judicial reform efforts. Promising initiatives with a positive impact on areas relating to the mandate of the Special Rapporteur include the establishment of the National Legal Aid Bureau and the National Institute of Justice.**

94. **Making the independence of the judiciary a reality in Bulgaria requires further consideration of structural factors within the justice system, such as clearly separating the role and function of the prosecution and investigation service from the courts, with a view to having a more specialized system of administration of justice. At the same time, the investigation service should be separated from the judiciary. It also requires addressing the need to effectively grant to the judiciary or to the Supreme Judicial Council the administration of its budget and the movable assets the judiciary uses, currently administered by the Ministry of Justice. Further efforts are also needed to improve the system of assessment and promotion of judges and prosecutors and ensure a more transparent oversight of the performance of the judiciary, including through a reform of the system of election of the Supreme Judicial Council. Better coordination among the three institutions in charge of criminal investigation, namely the police, the prosecution and the investigation services, is also needed, as well as improved coordination and cooperation among the judiciary, the police and the prosecution service.**

95. **The Special Rapporteur also draws the attention of the Government to the importance of ensuring that justice mechanisms are accessible and affordable, perceived as fair and considered effective and performing to an acceptable standard by the users of the justice system. In the Special Rapporteur's view, these aspects are essential to building trust in the judiciary, therefore, she invites major actors within the justice sector, including the Supreme Judicial Council, the Ministry of Justice, the prosecution service and the judiciary, to make coordinated efforts, or agree to have independent mechanisms, to measure the extent to which the users of the justice system in Bulgaria are confident in the justice system.**

IX. Recommendations

96. **Based on her findings, and with a view to contributing to the development of an effective system of administration of justice that ensures independence, impartiality, integrity, equality and transparency, as a prerequisite for guaranteeing the enjoyment of human rights for all in Bulgaria, the Special Rapporteur wishes to make the following recommendations.**

Recommendations on judicial reform

97. **The Special Rapporteur recommends that the Government:**

(a) Consult and include all judicial actors, namely judges, court assessors, prosecutors and investigating magistrates, in current and future judicial reform efforts with a view to create ownership of the judicial reform among judicial actors;

(b) Include more prominently the prosecution service in the current judicial reform strategy; consider taking steps to assess the possibility of clearly separating the investigation and prosecution services' roles and functions from the courts in Bulgaria; and consider separating judges and prosecutors careers;

(c) Explore synergies and complementarities between the United Nations Rule of Law Indicators Project and the plan of action for the Judicial Reform Strategy, particularly regarding the elaboration and revision of progress indicators and measures to implement the plan of action. Special attention should be paid to those actions aimed at measuring the performance, integrity, transparency and accountability, as well as the human rights dimension, of the judicial system;

(d) Take all steps necessary to ensure full respect for procedural safeguards as well as the independence and impartiality of the Specialized Criminal Court and Appellate Specialized Criminal Court, which are already operational. These courts should be provided with appropriate human, financial and technical resources to ensure their effective functioning;

(e) Redouble efforts to focus on structural factors that may undermine judicial activity, including strengthening criminal investigations and establishing a mechanism of coordination and cooperation between the police and the investigation and the prosecution offices;

(f) Include in current judicial reform efforts the recommendations made by the Cooperation and Verification Mechanism to Bulgaria to address shortcomings regarding, inter alia, the integrity and independence of police action, evidence gathering and witness protection;

(g) Pursue its efforts to implement the plans of action submitted to the Council of Europe in execution of European Court of Human Rights judgements, with a view to address excessive delays in civil proceedings, and adopt the proposed amendments to the Judiciary System Act to this end.

Recommendations to enhance the independence of the judiciary

98. **The Special Rapporteur recommends that the Government:**

(a) Take all steps necessary to ensure a transparent process of allocation of resources to the judiciary, allowing the judiciary or an independent body to administer the premises where the courts function and assign, on the basis of need, the movable assets that are required for the efficient performance of the courts;

(b) Recognize the rights of the judiciary to participate in drafting its own budget, in cooperation with the Ministry of Finance and the Ministry of Justice; to participate in deliberations on its budget in the legislature; and to manage its own budget;

(c) Take all steps necessary to ensure that the courts are adequately resourced to function properly, and that they are adequately equipped, including with facilities for persons with disabilities. Adequate workspace also needs to be provided in order to avoid interference in personnel functions of the judges and the courts;

(d) Establish adequate safeguards to ensure that budgetary allocations to fund the courts in the current fiscal year, or in the next financial year, may be reduced solely with the consent of the judiciary or of an independent body representing it, at all times, including in times of crisis;

(e) Identify ways and means to eliminate undue political and external influence on the Supreme Judicial Council. In this respect, the election process of the Council should be reformed in order to enhance its transparency and integrity.

Recommendations to the judiciary

99. **The Special Rapporteur encourages the judiciary:**

(a) To continue working to build public trust and enhance its ability to deliver justice on a daily, case-by-case basis, as its performance contributes to building public confidence in the integrity of Government;

(b) To take all necessary steps to ensure the uniform and equal application of the law, including by publicizing its decisions;

(c) To identify and promote the sharing of good practices among the courts at all levels and in all regions;

(d) To ensure that the use of wiretapping is limited and that the evidence collected through it is always complementary to other evidence.

Recommendations to the Supreme Judicial Council

100. **The Special Rapporteur recommends that the Supreme Judicial Council:**

(a) Strengthen effective implementation of the reformed Judiciary System Act, which is designed to apply transparent and objective procedures to judicial appointments and prioritize integrity;

(b) Ensure access to the judicial career through periodic competitive examinations;

(c) Introduce competitive processes and periodic evaluation both for the promotion of judges and for filling temporary positions to which judges may apply with a view to be placed under secondment arrangements;

(d) Adopt measures to eliminate secondment as a substitute for the promotion of magistrates;

(e) Reconsider or, in any case, carefully examine the system of external appointments, which is used to fill 20 per cent of judicial vacancies, with a view to avoid judicial appointments for improper motives;

(f) Establish a mechanism to ensure the fair and transparent application of objective criteria for the assessment of judges.

Other recommendations

Recommendations on access to justice

101. **The Special Rapporteur recommends that the Government:**

(a) Ensure the availability of interpretation services in courts, notably for minority groups;

(b) Take all necessary steps to remove all obstacles (be they legal, social, cultural, economic or other) that prevent or hinder the possibility of access to justice;

(c) Consider promoting the establishment of mobile courts at all levels and in all regions of Bulgaria, with a view to address a number of challenges in access to justice;

(d) Consider launching awareness-raising campaigns on access to justice, targeting groups in situations of vulnerability, with the aim of disseminating information on human rights and all mechanisms available in the Bulgarian legal system to seek redress.

Recommendations on the provision of legal aid

102. **The Special Rapporteur recommends that the Government:**

(a) Ensure appropriate contact between lawyers and defendants in cases requiring State-sponsored legal aid;

(b) Consider establishing safeguards to ensure that lawyers withdraw cases only when there is a reason that can be substantiated under applicable law.

Recommendations on the automated system for the random allocation of cases

103. **The Special Rapporteur recommends that the Government continue efforts to investigate allegations regarding the possible room for manipulation of the automated system for the random allocation of cases, and adopt measures to strengthen the system of random allocation of cases.**

Recommendations on women in the administration of justice

104. **The participation of women from various segments of society, as key actors within the justice sector in their roles as judges, prosecutors or lawyers, should be further promoted. In particular, measures should be taken to ensure that women are able to occupy high-level positions within the judiciary and in the justice system in general.**

Recommendation on continuous capacity-building in international human rights

105. **The Special Rapporteur recommends that the Government take all necessary steps to offer continuous capacity-building in international human rights law for judges, prosecutors and lawyers.**