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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

# OPINION

# ON THE DRAFT LAW AMENDING THE LAW ON JUDICIAL POWER

# AND

# THE DRAFT LAW AMENDING THE CRIMINAL PROCEDURE CODE

# OF BULGARIA

**Adopted by the Venice Commission**
**at its 85th Plenary Session,**
**Venice (17-18 December 2010)**

**On the basis of comments by:**

**Mr Harry GSTÖHL (Member, Liechtenstein)**
**Mr James HAMILTON (Substitute Member, Ireland)**
**Mr Jeremy McBRIDE (Expert for the Legal and Human Rights Capacity Building Department of the Directorate General of Human Rights and Legal Affairs, United Kingdom)**

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## I. INTRODUCTION

1. By a letter of 19 July 2010, Mr Mihail Bozhkov, *Chargé d'affaires* a.i. of the Permanent Representation of the Republic of Bulgaria to the Council of Europe, on behalf of the Parliament of Bulgaria, requested an opinion on the draft Law amending the Law on Judicial Power and on the draft Law amending the Criminal Procedure Code of Bulgaria.

2. The present opinion was prepared jointly with the Legal and Human Rights Capacity Building Department of the Directorate of Co-operation of the Council of Europe on the basis of comments by Mr Harry Gstöhl (Liechtenstein), Mr James Hamilton (Ireland) and Mr Jeremy McBride (United Kingdom), who were invited by the Venice Commission and the Legal and Human Rights Capacity Building Department to act as rapporteurs. Their comments are in documents CDL(2010) 087, 088 and DG-HL (2010) 20, respectively.

3. The draft Opinion on the draft Law amending the Law on Judicial Power and the draft Law amending the Criminal Procedure Code of Bulgaria was presented at the 84th Plenary Session of the Venice Commission in October 2010. The amendments, in general, introduce specialised criminal courts, prosecutors' offices and investigative bodies. While the idea of setting up such courts was not in itself objectionable, a number of points needed to be clarified in order to bring the relevant provisions into line with European standards. The Venice Commission was informed that a recent letter from non-governmental organisations, notably the Foundation of Bulgarian Lawyers for Human Rights and the Association for European Integration and Human Rights, had raised new arguments that needed to be taken into consideration.

4. On 7-9 November 2010, the rapporteurs Mr Harry Gstöhl (Liechtenstein) and Mr Jeremy McBride (UK, DGHL expert) accompanied by Ms Tanja Gerwien of the Venice Commission, visited Sofia, where they met with the Minister for Justice, the Vice-President of the National Assembly and Chairman of the Internal Security and Public Order Committee, the representatives of the Foundation of Bulgarian Lawyers for Human Rights and the Association for European Integration and Human Rights, the Prosecutor General, the Vice-President of the Supreme Court of Cassation and the Minister for the Interior.

5. Prior to this visit, the Venice Commission received a second version of the draft Law amending the Criminal Procedure Code of Bulgaria (CDL(2010)143). As the first version of the draft Law amending the Criminal Procedure Code was accepted during its first reading before Parliament and since the second version will also be presented to Parliament, making it possible for either versions to be adopted by Parliament or a combination of the two, both versions of the draft Law amending the Criminal Procedure Code will be commented on in this opinion. There was no second version of the draft Law amending the Law on Judicial Power, which remains as originally submitted to the Venice Commission. The draft Law amending the Law on Judicial Power and the two versions of the draft Law amending the Criminal Procedure Code will collectively be referred to as the "three draft laws".

6. The Opinion was adopted by the Venice Commission at its 85th Plenary Session on 17-18 December 2010.

## II. BACKGROUND

7. In 2003, the Venice Commission identified problems within the Bulgarian judiciary system in its Memorandum on the reform of the judicial system in Bulgaria[1], in which it concluded that there were insufficient results achieved in the fight against crime, especially with respect to organised crime and corruption, including corruption of the judiciary. One of the reasons that were identified for this problem was the high level of immunity given to judges and one of the

[1] CDL-AD(2003)012, paragraphs 14-15.

discussion points was on how to achieve accountability of the judiciary while preserving it from undue influence from the executive and legislative branches of power.

8. In its Resolution of April 2010 on the Post-monitoring dialogue with Bulgaria, the Parliamentary Assembly of the Council of Europe found that this country was progressing well with the implementation of the Assembly's recommendations. This included, among others, the adoption in 2007 of new constitutional provisions relating to civil and criminal immunity in the judiciary and the amendments in 2008 to the Criminal Procedure Code that abolished the obligation for civilians to file lawsuits against the police in military courts.[2] However, the Assembly pointed out that many of the changes were introduced too rapidly in order to conform with European standards to join the European Union. This was especially true for changes with respect to the judicial system.[3]

9. Bulgaria received similar responses with respect to its European Union commitments. It signed the Treaty of Accession on 25 April 2005, became a full member on 1 January 2007 and a Co-operation and Verification Mechanism was immediately established under which the European Commission made a number of recommendations for adopting more effective measures for fighting organised crime and corruption at the highest level of government. The explanatory memoranda to both the draft Law amending the Law on Judicial Power and the draft Law amending the Criminal Procedure Code explain that these were prepared by the Bulgarian authorities as a response to the problems in the fight against organised crime and corruption in their country, raised by the reports of the European Commission under the Co-operation and Verification Mechanism.

## III. PRELIMINARY REMARKS

10. As concerns any changes that might be made to the three draft laws and for the drafting of any future laws, the Venice Commission would like to refer to its Opinion on the concept for a new Law on Statutory Instruments of Bulgaria (CDL-AD(2009)018) and to its Opinion on the draft Law on Normative Acts of Bulgaria (CDL-AD(2009)053) and encourage the Bulgarian Parliament, if it has not done so already, to follow the Venice Commission's recommendations with respect to the drafting, design and impact assessment of any bills tabled by members of Parliament[4].

11. The draft Law amending the Law on Judicial Power (hereinafter, the "draft Law on JP") and the two versions of the draft Law amending the Criminal Procedure Code (hereinafter, the "first draft Law on CPC" and the "second draft Law on CPC) are closely linked. The amendments introduced by them establish a system of specialised criminal courts, prosecutors' offices and investigative bodies to deal with certain offences, in particular those which would typically be committed by organised criminals, corrupt officials and servants of the state.

12. The objectives of the draft laws seem clear: provide high quality justice within a reasonable period of time using specialised criminal courts and investigative bodies composed of judges and prosecutors with higher qualifications and experience than foreseen for those in ordinary courts, prosecutors' offices and investigative bodies. It should, however, be pointed out that the proposed reforms leave the court system as it is and that there are no current proposals for a more general overhaul of the system.

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[2] Parliamentary Assembly of the Council of Europe Resolution 1730 (2010) on Post-monitoring dialogue with Bulgaria, paragraphs 6 – 6.6.
[3] Ibid, paragraph 3.
[4] See paragraphs 22-24, 30-32 (particularly paragraph 23) of CDL-AD(2009) 053 and paragraphs 58-63 of CDL-AD(2009)018.

13. The amendments envisage the trial of certain offences, including some only when they are alleged to have been committed by judges, prosecutors and various public officials (this sub-clause is no longer reflected in the second draft Law on CPC), by what is termed a "specialised criminal court". The specialised criminal courts will have the Supreme Court of Cassation as a third instance court and whereas the Supreme Court of Cassation is an existing court in Bulgaria[5], provided for under Article 119.1 of the Constitution and Article 108 of the Judiciary System Act, the specialised criminal courts will be established as new courts if the draft Law amending the Law on Judicial Power is adopted.

14. The authority for the establishment of these "specialised" courts by way of statute is explicitly conferred by Article 119.2 of the Constitution. The "specialised" courts are not intended to be extraordinary courts, which are prohibited by Article 119.3 of the Constitution. In its recent history, Bulgaria has known extraordinary criminal courts that were set up to judge and convict Bulgarian citizens after World War II and the operation of those courts is still present in the collective memory of the Bulgarian population.

15. In addition to making some special provision for the conduct of trials by these courts, the amendments deal with appeals where such trials have taken place, the handling of disputes over jurisdiction and the pre-trial phase in these cases. They also include provisions governing the examination of witnesses in these trials and appeals and the disclosure of bank secrets and tax and social security information and (the underlined text reflects provisions that have been dropped in the second draft Law on CPC) the prosecutor's powers after the closure of an investigation, as well as the ones concerning some transitional arrangements.

16. The European standards of particular significance for the amendments in the draft laws are those embodied in the European Convention on Human Rights, as interpreted and applied by the European Court of Human Rights.

17. It is important to keep in mind that any evaluation of legal provisions can only give a limited indication of the possible impact - positive or negative - that they may have on fulfilling European standards. The manner in which particular provisions are actually applied is likely to be much more significant in this regard.

18. Furthermore, in principle, there would appear to be nothing inconsistent with the requirements of the European Convention on Human Rights in the use of a different court for the trial of certain offences from that used for the generality of criminal cases. Not only is the distribution of jurisdiction over offences between different courts a general feature of legal systems, but the admissibility of this approach is also implicitly acknowledged in Article 2 of Protocol No. 7 - which Bulgaria has ratified - by the provision of an exception to the right of appeal which it establishes where the "person concerned was tried in the first instance by the highest tribunal".

19. Moreover, the former European Commission of Human Rights found that the use of a special court to try certain offences did not, as such, raise any issues under Article 6 of the European Convention on Human Rights[6]. Similarly, there has been no objection in principle by the European Court of Human Rights to the establishment of a national security court[7].

20. In addition, there would appear to be no inherent objection to certain categories of persons being tried by a specially constituted court, since the use of military tribunals to try persons in the military or of a country's cassation court to try government ministers has never been

[5] There is thus no need to consider its role further in this section of the opinion.
[6] *X and Y v. Ireland* (dec.), no. 8299/78, 10 October 1980.
[7] See, e.g. *Incal v Turkey*, no. 22678/93, 9 June 1998 and *Sadak and Others v Turkey (No. 1)*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, 17 July 2001.

suggested by the European Court of Human Rights to be contrary to the right to be tried by an independent and impartial tribunal established by law[8], although it has found their use to try civilians to be generally unacceptable[9] (this paragraph concerns an aspect that has been dropped in the second draft Law on CPC).

21. However, as a number of cases involving both military tribunals and national security courts has shown, the constitution of a special court can give rise to difficulties in complying with the requirements of independence and impartiality[10]. Furthermore, even if that is not a problem, the operation of a specialist court - whether at first instance or on appeal - must always fulfil all other aspects of the right to a fair hearing under Article 6 of the European Convention on Human Rights, unless a derogation has been entered under Article 15, which does not appear to be proposed for the draft laws.

22. A solution that could be envisaged by the Bulgarian authorities is for sensitive cases, which would fall within the scope of the draft laws, that would normally come within the jurisdiction of regional courts, to be transferred to the courts in Sofia in order to avoid a trial in the region where certain organised criminal groups concerned by the case, operate. However, the Venice Commission delegation was informed by the Bulgarian authorities that such a transfer, as the justice system stands in Bulgaria at the moment with the available courts, would completely overload the already struggling courts in Sofia. In this respect, it might be considered instead to use the resources earmarked for the establishment of the new specialised criminal courts, to boost the already existing courts in Sofia.

## IV. DRAFT LAW AMENDING THE LAW ON JUDICIAL POWER

23. Paragraph 5 of the draft Law amending the Law on JP establishes a specialised criminal court and provides that its jurisdiction is to be established by law. This specialised criminal court is to rank as a district court and hear cases in panels, each of which is to be staffed by one judge and two lay assessors. The most senior judge presides over the panel and all judges of the specialised criminal court form the general assembly. The general rules of the law are applicable to this general assembly. There may be a problem with the translation, however something seems to be missing from this provision, if there is one judge and two lay assessors, why does the provision say that it is the "senior" judge who presides, since there is only one judge? Or is there a possibility of the lay assessors being replaced by judges?

24. An appellate specialised criminal court is foreseen by paragraph 6 of the draft Law on JP and the specialised prosecutors' office, which will contain an investigative department to investigate cases falling within its jurisdiction, is foreseen by paragraph 7 of the draft Law on JP.

25. If a judge needs to be replaced, the general rule is to replace him or her with a judge from the same court and if that is not possible, the chairperson of the appellate specialised criminal court may second a judge, in line with the limits set out in Article 227 of the Judicial System Act. If this is not possible, the chairperson of the Supreme Court of Cassation may second a judge from a district or an appellate court with the necessary rank. The secondment must be co-

[8] See, e.g. *Findlay v. United Kingdom*, no. 22107/93 and *Irfan Bayrak v. Turkey*, no. 39429/98, 3 May 2007 with respect to military tribunals and *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96. 22 June 2000 with respect to a cassation court.
[9] *Ergin v. Turkey (No.6)*, no. 47533/99, 4 May 2006.
[10] See, e.g. the *Findlay* and *Irfan Bayrak* cases previously cited as regards military tribunals and *Incal v Turkey*, no. 22678/93, 9 June 1998 and *Sadak and Others v Turkey (No. 1)*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, 17 July 2001 as regards a national security court. The former European Commission of Human Rights found the special court in issue in *X and Y v. Ireland*, (dec.), no. 8299/78, 10 October 1980 to be independent and impartial.

ordinated with the relevant judge's administrative head and reasons for the secondment must be provided (paragraph 5, draft Law on JP).

26. In the second draft Law on CPC there is no specific system of appointment of judges. In the draft Law on JP – however - the Supreme Judicial Council will approve the numbers of judges to be appointed to the specialised criminal courts (paragraphs 1 and 33 of the draft Law on JP), according to the general rules under the Judicial System Act. The professional qualifications required follow higher standards than those for ordinary courts and the recruitment is carried out exclusively within the judiciary on the basis of stricter nomination criteria. Proposals for the nomination of judges are made by no less than 1/5 of the members of the Supreme Judicial Council. Paragraph 15 of the draft Law on JP sets out that judges at the specialised criminal court and prosecutors at the specialised prosecutors' office require at least 10 years' professional experience having served at least 5 of them as a criminal judge, prosecutor or investigator and those in the appellate court having at least 12 years' such experience and having served at least 8 of them as a criminal judge, prosecutor or investigator.

27. As the specialised criminal courts will be regular courts governed by the Law on JP, should this draft Law be adopted, there is no reason to consider that those appointed to these courts would not have the necessary guarantees to satisfy the requirements for independence in Article 6 of the European Convention on Human Rights.

28. It would, however, be desirable to have confirmation that the general requirements for judicial appointments in Article 162.3-5 of the Law on Judicial Power - namely, having the required standard of ethics and professionalism, complying with the rules of professional ethics for judges, prosecutors and investigating magistrates, not being sentenced to imprisonment for a deliberate criminal offence, notwithstanding rehabilitation and not suffering from a mental illness - are also applicable to those appointed as judges in the specialised criminal courts, as additional experience should not operate as a dispensation from fulfilling the essential qualities to be expected of all who become judges.

29. Article 6 of the European Convention on Human Rights also requires that a court determining a criminal charge, whether at first instance or on appeal, must be established by law. This requirement entails that there must be a legal basis for both the court itself[11] and its composition in a particular case[12]. The former would undoubtedly be satisfied with respect to the specialised criminal courts if the draft Law on JP were adopted[13] and the latter is merely a matter of observing the provisions which the latter measure contains.

30. The judicial rank and remuneration have been adequately matched to the higher professional qualifications required (paragraphs 22 and 23 of the draft Law on JP). According to the draft Law on JP, specialised judges and prosecutors of first instance courts have the rank and remuneration of those in appellate courts and prosecutors' offices. Those in the appellate specialised criminal court have the rank and remuneration of the Supreme Court of Cassation and prosecutors' office. It is made clear in the draft Law on JP that these aspects do not interfere with the nature of decision-making or the independence of judges.

31. The work of the specialised investigative departments, including the ordinary investigative departments, is assigned by the administrative head of the respective prosecutor's office. The power of the administrative head of the prosecutor's office seems to have been widened by the concentration of the power to assign investigative work. This competence has not only been

[11] See, e.g. *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96. 22 June 2000.
[12] See, e.g. *Posokhov v. Russia*, no. 63486/00, 4 March 2003.
[13] The former European Commission of Human Rights found the special court in issue in *X and Y v. Ireland* (dec.), no. 8299/78, 10 October 1980 to be established by law.

given to the administrative head of the new specialised prosecutors' offices, but also to the ordinary prosecutors' offices at the district courts.

32. Judicial and prosecutors' assistants are foreseen in the specialised criminal courts (district level and appeal) and specialised prosecutors' offices and a professional experience of at least 3 years is required from them in addition to other requirements (paragraph 25 of the draft Law on JP).

33. The other changes made by the draft Law on JP are of a technical nature, which need to be made in order to introduce the specialised criminal courts (district level and appeal), and do not call for any comments.

34. The introduction of these specialised criminal courts and prosecutors' offices should not only be seen from the angle of the mere possibility provided by the Constitution to establish such specialised courts as a measure to improve the fight against organised crime and corruption, but should also be seen within the context of the legal and historical reality of Bulgaria. Should this option to set up specialised courts be chosen, the choice of candidates and their nomination, qualifications required, will become crucial in order to determine the nature of these courts as either "specialised" or coming closer to "extraordinary" courts.

35. The Venice Commission notes that the procedure for the appointment of these new categories of judges and prosecutors, under the first draft Law on CPC, will be important for their independence and impartiality, and for the effectiveness of the reform. In this respect, the Venice Commission also wishes to remind the Bulgarian authorities that it has, since 1999[14], pointed out that the issue of the composition of the Supreme Judicial Council needs to be addressed so that judges and prosecutors are seen to be independent, as this institution's task is to guarantee the independence of the judiciary[15].

36. The lay assessors seem to be a firm part of the Bulgarian judicial system (see Article 66 *et seq.* of the Judicial System Act (CDL(2009)036)). They have the same rights and obligations as the judges and the fact that they are nominated by the next higher general assembly of judges helps to ensure their qualification. The lay assessors can be removed by the general assembly under certain conditions. The procedure for their nomination, remuneration and other organisational matters are fixed in an ordinance by the Minister for Justice. However, their nomination to the specialised criminal court will be made by the Municipal Council of Sofia (paragraph 4, draft Law on JP), which might be in line with the Bulgarian legal system but, in the context of the accurate selection of judges, may not be an appropriate solution, taking into consideration that those lay assessors have the majority vote in the senate.

37. Having chosen to have lay assessors in their system to fight corruption and organised crime, the Bulgarian authorities may be aware that these could represent a weak link in their system as they could perhaps be exposed to a greater risk to potential undue influence by persons being judged by the specialised criminal courts. For this reason, lay assessors must be carefully chosen. The criteria for choosing judges has been clearly set out in the draft Law on JP, however, there seem to be no set criteria for choosing lay assessors, other than the need for their nomination to be approved by the general assembly of the specialised criminal court. It is clear that lay assessors should not be specifically qualified persons (professionals) and it may simply be enough that the judges who approve them are aware of the potential risk. In any case, this may already be recognised and dealt with by the judicial system and may not need to be addressed.

[14] Opinion on the reform of the judiciary in Bulgaria (CDL-INF(1999)005).
[15] Opinion on the Constitution of Bulgaria (CDL-AD(2008)009, paragraph 25. See also the Venice Commission's document on Judicial Appointments (CDL-AD(2007)028, paragraph 32).

38. On the whole, this draft Law on JP gives the impression of a strong political intention to fight organised crime and corruption. However, whether the creation of specialised courts and specialised prosecutors' offices as well as specialised investigative bodies are really needed in order to achieve this aim and – at the same time – maintain the minimum rights of citizens, should be carefully considered and discussed.

## V. THE TWO DIFFERENT VERSIONS OF THE DRAFT LAW AMENDING THE CRIMINAL PROCEDURE CODE

39. The specific provisions of the first draft Law on CPC raise questions of compliance with European standards with respect to the jurisdiction of the specialised criminal courts, the use of special means of surveillance, the pre-trial phase bodies, the examination of witnesses, the disclosure of bank secret and tax and social security information, the prosecutor's powers after closure of an investigation, procedural rules, appeals, general rules and the transitional arrangements.

40. The second draft Law on CPC, which will be submitted together with the first draft Law on CPC to Parliament, appears to have taken into account much of the questions and criticism raised by the various stakeholders in Bulgaria. The first draft Law on CPC had specialised courts ruled by special criminal procedural rules, which brought them dangerously close to what are termed "extraordinary courts" in the historical sense, whereas in the second draft Law on CPC, specialised courts follow the ordinary criminal procedure insofar as it is compatible with the jurisdiction of these courts and thereby brings these specialised courts into line with European standards.

41. The following paragraphs apply to both versions of the draft Law on CPC. Any changes introduced by the second draft Law on CPC that are different from those of the first draft Law on CPC are noted and explained.

### A. *Jurisdiction*

42. Article 1 of the draft Law on CPC removes from the Sofia City Court part of its current jurisdiction pursuant to Article 35.3 of the Criminal Procedure Code over "Cases for publicly actionable criminal offences by individuals covered by immunity or by members of the Council of Ministers". This removal is linked to the introduction of the new Chapter 31a into the Criminal Procedure Code which is entitled "Special rules for the proceedings before the specialised criminal courts". It should be noted that the second draft Law on CPC has completely dropped the jurisdiction for specific persons and has considerably reduced the jurisdiction to cover only certain type of crimes.

43. New Chapter 31a (Articles 411a to 411j) of the first draft Law on CPC sets out the main crimes in relation to which jurisdiction will be conferred on the specialised criminal courts. These include the following:

(1) certain crimes carried out by organised criminal groups or in furtherance of a decision of such groups. These include armed kidnapping, kidnapping by two or more persons, kidnapping internationally protected persons, kidnappings directed against two or more persons, kidnapping by guards or persons from the Ministry of the Interior, kidnapping for mercenary purposes or for the purpose of taking a person out of the country, as well as kidnapping children and pregnant women (Article 142.2.2-142.2.6, Criminal Code), hostage-taking (Article 143a, Criminal Code), people-trafficking (Article 159b, Criminal Code) and money laundering (Article 253.3 and 253.5, Criminal Code);

In the second draft Law on CPC, these crimes have been reduced to forming a criminal organised group and to homicide and for causing bodily harm committed in relation with an organised criminal group, kidnapping committed in relation with organised crime, crimes related to prostitution in connection with organised crime and pornography involving minors. Robbery and crimes against public property and customs and taxes, when committed in relation to organised crime; money laundering when committed by two or more persons who have conspired in advance or when acting in relation with organised crime as well as certain offences committed in a generally dangerous way or by generally dangerous means, if committed in relation with organised crime and narcotraffic for large amounts.[16]

It should be noted that the crimes under Article 253.3.1 (i.e. money laundering) also create a competence for the specialised courts if committed by two or more persons who have conspired in advance and not only in relation to organised crime. This calls for comments since money laundering is rarely carried out by just one person without the help of an accomplice. However, there are many crimes that have an economic component that could qualify them as cases of money laundering and therefore attract the jurisdiction of the specialised criminal courts. This could significantly increase the jurisdiction of the specialised criminal courts. The Venice Commission therefore suggests that the competence of the specialised criminal courts with respect to cases of money laundering related to criminal organisation be limited and to drop the competence for commitment "by two or more persons who have conspired in advance...".

(2) forming or leading a criminal gang which is armed or engages in certain crimes including offences against the monetary and credit system, the financial, tax or insurance systems, people-trafficking, explosives and firearm offences, drug offences (Article 321.3, Criminal Code);

(3) being an official who participates in a group referred to at (2) above, this has been dropped in the second draft Law on CPC;

(4) certain crimes committed by persons having immunity, members of the Supreme Judicial Council and its inspectorate, administrative heads of judicial bodies and their deputies, judges, prosecutors, investigators, persons having certain administrative functions, deputy ministers and secretaries generals of ministries. The crimes include misappropriation in public office, fraud, the use of forged documents to obtain property, negligence in handling public property, deliberately concluding an unprofitable transaction, money laundering, providing untrue information to obtain credit, violation of official duties, the abuse of an official position to obtain an unlawful benefit, as well as taking or offering a bribe (Articles 202, 203, 209-212, 219-220, 253-254, 282-283, 301-307, Criminal Code) - it is most welcome that the second draft Law on CPC has completely dropped the competences under this item, as it has suffered harsh criticism within the legal community of Bulgaria;

(5) crimes mandated by an organised criminal group or committed in furtherance of a decision of such a group.

44. The specialised criminal courts, under the first draft Law on CPC, will therefore be given a very wide jurisdiction over almost every serious offence which could be committed by an organised criminal gang or in pursuance of the activities of a criminal gang or of a public official.

[16] It should be noted that the offences in Article 208 paragraph 5, Article 256 paragraph 2 and Article 278a paragraph 3 referred to in the second draft Law on CPC do not seem to exist in the version of the Criminal Code that was given to the Venice Commission.

45. The use of special courts for the trial of certain offences and of certain categories of persons is not as such inconsistent with European standards. Moreover, there would not appear to be any basis for limiting the types of offences that can be entrusted to a special court, so long as the proceedings before it are fair and the offence being tried is actually within the mandate given to the court concerned[17]. In the second draft Law on CPC, it is clear that one of the main purposes is also to hold the procedures outside the sphere of influence of the accused and the suspects accused of acting as criminally organised groups.

46. There is, however, a need to clarify one aspect of the scope of the proposed Article 411a(1), namely, as to whether or not the jurisdiction over the offences in it applies to all persons suspected of committing them and thus includes the categories of persons listed in the proposed Article 411a(2). The latter provision could be read as limiting the jurisdiction of the specialised criminal court over the listed categories of persons to only the offences which are also specified in it. Although this is not the only possible reading of the relationship between the two proposed Articles, it would be important that the provision be understood in the first rather than in the second sense and if there is any room for doubt under the rules of statutory interpretation in Bulgaria, the provision will need to be amended. These remarks are not applicable to the second draft Law on CPC.

47. No issue of compliance with the European Convention on Human Rights arises with regard to the jurisdiction to be given by the proposed Article 411a(3) of the Criminal Procedure Code to the specialised criminal court regarding the listed crimes when committed abroad. The location of the offence has no bearing on the suitability of the court trying it.

48. Furthermore, no issue of compliance with the European Convention on Human Rights arises with respect to the stipulations in the proposed Articles 411a(4) and (6) of the Criminal Procedure Code that the specialised criminal court is to have jurisdiction over all the charges and defendants where respectively only one of several crimes with which a person is charged and only one of several defendants charged as accomplices fall within its jurisdiction. In such cases trying all the charged offences and defendants together should, in principle, enhance and not diminish the prospects for securing a fair trial as this could help ensure that all relevant material - evidence and argument - is put before the court concerned.

49. This last consideration would also justify the provision in the proposed Article 411a(7) of the Criminal Procedure Code to integrate into a joint case - with the specialised criminal case having jurisdiction - two or more cases for different crimes against different defendants where these are connected and thus "is necessary for reaching a right decision".

50. However, there might be grounds for concern about the provision in the proposed Article 411a(5) of the Criminal Procedure Code that if "a joint punishment has to be imposed in case of several entered into force guilty verdicts one of which is delivered by a specialised criminal court the joint punishment shall be determined by that court". This is because the right to a fair hearing, under Article 6 of the European Convention on Human Rights, applies until the final determination of a criminal charge and this includes any sentencing proceedings[18]. The fact that a different court from the one trying the case actually determines the sentence to be imposed - as would be the consequence of applying the new Article 411a(5)of the Criminal Procedure Code - would not necessarily lead to a violation of Article 6 of the European Convention on Human Rights. It would, however, be essential that any defendants tried in a court other than the specialised criminal court had a genuine opportunity to present all relevant

[17] Both requirements were found by the former European Commission of Human Rights to be met in *X and Y v. Ireland* (dec.), no. 8299/78, 10 October 1980.
[18] *Eckle v Germany*, no. 8130/78, 15 July 1982.

material on their behalf and to respond to submissions from the prosecution both as to the basis for their conviction and the appropriate penalty[19].

51. The specialised criminal court will also have jurisdiction over a number of offences, if these are tried together and one of them appears on the list of offences over which it has jurisdiction. The only exception to this is if one of the offences falls under the jurisdiction of a military court, in which case this court will have jurisdiction.

52. There would be no basis for objecting to a military court trying a case that falls both within its jurisdiction and that of the specialised criminal court - as would be the effect of the proposed Article 411a(8) of the Criminal Procedure Code - where the person being tried is in the armed forces. However, as has already been noted, it would generally be incompatible with Article 6 of the European Convention for a military court to have jurisdiction over a civilian and that would appear to be the position under Article 396 of the Criminal Procedure Code. The latter provision gives military courts jurisdiction over not only military personnel, but also to civilian staff in the Ministry of Defence and assistants with various agencies who also do not appear to be military personnel. The European Court of Human Rights does not exclude entirely the possibility of military courts having jurisdiction over civilians, but it has stated that "there are compelling reasons justifying such a situation, and if so only on a clear and foreseeable legal basis. The existence of such reasons must be substantiated in each specific case. It is not sufficient for the national legislation to allocate certain categories of offence to military courts *in abstracto*"[20].

53. It is far from clear what the compelling reason could be for the reach over civilians conferred by Article 396 of the Criminal Procedure Code and, in the absence of appropriate substantiation, this would mean that the provision in the proposed Article 411a(8) of the Criminal Procedure Code would be incompatible with Article 6 of the European Convention to the extent that it led to a military court rather than the specialised criminal court having jurisdiction over a civilian. In these circumstances there is a need to provide very specific substantiation or to amend the proposed Article 411a(8) to the extent that it allows military courts to have jurisdiction over civilians. This latter situation might be reconsidered with the introduction of the specialised criminal courts. [21]

54. The specialised criminal court of appeal deals with the appeals brought against judgments rendered by the specialised criminal court, which in turn may be appealed to the Supreme Court of Cassation. Here, it should be noted that both the judgments of the ordinary courts and the specialised criminal court may be appealed to the Supreme Court of Cassation, which ensures the uniform interpretation of the law. Disputes over jurisdiction are resolved by the Supreme Court of Cassation (Article 411, draft Law on CPC). No issue of compliance with the European Convention on Human Rights arises with regard to either the arrangements made for appellate jurisdiction or for the resolution of disputes over jurisdiction under the proposed Articles 411b and 411c of the Criminal Procedure Code. These partly give effect to the right of appeal required by Article 2 of Protocol No. 7[22].

[19] See, e.g. *Botten v. Norway*, no. 16206/90, 19 February 1996 (albeit concerned with an appeal).
[20] *Ergin v. Turkey (No.6)*, no. 47533/99, 4 May 2006, at paragraph 47.
[21] Under Article 396.1.5 of the Criminal Procedure Code, civilian witnesses tried in military courts are staff in the Ministry of Defence, the Bulgarian army, the Intelligence Service, the Ministry of the Interior and the Diplomatic Protection Service "during or on the occasion of discharging their duty". However, under Article 396.2 "cases for crimes in the commission of which civilians were involved" are also covered. This seems very wide. Hence the problem seems to stem from Article 396 of the Criminal Procedure Code rather than from the proposed Article 411a(8).
[22] See also paragraph 53.

### B. *Use of special means of surveillance (this section is not relevant to the second draft Law on CPC)*

55. Article 2 of the draft Law on CPC amends Article 174 of the Criminal Procedure Code so as to add the specialised criminal courts to the list of courts that can authorise the use of special means of surveillance[23].

56. Judicial authorisation for such means of surveillance - which in most if not all cases could interfere with respect for private life, home or correspondence - is one of the key safeguards required in order to prevent a violation of the right guaranteed by Article 8 of the European Convention on Human Rights[24]. The introduction of a new court to provide this authorisation does not, as such, give rise to any problem of compliance with the requirements of Article 8.

57. However, it is important that new paragraph 3 be subject to new paragraph 4, as the former provision is clearly capable of covering the use of special means of surveillance in respect of the persons listed in the latter provision since the cases falling under the jurisdiction of the specialised criminal court clearly covers such persons. Undoubtedly the aim is to have a higher judicial authority to give authorisation in the case of these persons, but the current formulation of the two provisions would appear to allow the first instance court to give the necessary authorisation. If, under the rules of statutory interpretation in Bulgaria, it is not clear that new paragraph 3 is subject to new paragraph 4, the provision will need to be amended.

### C. *Pre-trial phase bodies*

58. Pre-trial investigations that come within the jurisdiction of the special criminal court are dealt with by the specialised prosecutors' offices and the relevant investigation department. Police officers are designated by the Minister for the Interior. No issue of compliance with the European Convention on Human Rights also arises with regard to the designation by the proposed Article 411d of the Criminal Procedure Code of the bodies responsible for prosecuting and investigating offences that fall within the jurisdiction of the specialised criminal court. Provision for these bodies is made in the draft Law on JP and the relevant provisions are matters more of internal organisation and specialisation, with no substantive impact on the rights of a suspected or accused person under Articles 5 and 6 of the European Convention on Human Rights.

59. It seems that the intention behind the proposal is to appoint as judges to the specialised criminal courts or prosecutors to the specialised prosecutors' offices only those judicial officers or prosecutors who are regarded as above suspicion. Since Bulgaria is having difficulties with a high degree of corruption among the existing judges and prosecutors, it seems that the appointment of specialised criminal courts and prosecutors' offices is a proportionate response to the problems of corruption within the Bulgarian governmental and judicial systems.

### D. *Examination of witnesses (this section has been dropped in the second draft Law on CPC and the possibility of examining anonymous witnesses was left to the ordinary criminal procedure)*

60. Article 411e, a proposed new provision of the draft Law on CPC, provides that "when there is well-founded information that a risk for the life or health of witness exists his examination before a judge shall take place according to the rules for examining of anonymous witnesses". The existing Article 123 of the Criminal Procedure Code provides that the identity of witnesses may be kept secret. However, Article 124 of this Code provides that a conviction cannot be based solely on the testimony of secret witnesses. Article 141 of the Code provides for the

[23] As defined in Article 172 of the Criminal Procedure Code.
[24] See, e.g. *Kopp v. Switzerland*, no. 23224/94, 25 March 1998.

procedure under which secret witnesses' testimony may be obtained. The pre-trial authorities in the court are to interrogate the witness and to undertake all possible measures to keep the witnesses' identity secret. Transcripts of the records that do not bear the witnesses' signature are to be submitted to the accused and to the defence counsel and the parties may put questions to the witness in writing.

61. Although Article 6.3.d of the European Convention on Human Rights provides that everyone charged with a criminal offence should be able to examine or have examined witnesses against him or her, the European Court of Human Rights has accepted that there may be cases in which conferring anonymity on a witness will not lead to a violation of this provision[25]. However, the need for this anonymity must be demonstrated, with the court concerned carrying out an examination into the seriousness and substantiation of the reasons for it being granted[26]. This requirement would seem to be met by the specification in the proposed Article 411e of the need for "well-founded information that a risk for the life or health of a witness exists".

62. Nonetheless, the justification for a witness's anonymity does not guarantee that the reliance on his or her testimony will not lead to a violation of Article 6.3.d of the European Convention on Human Rights. There is also a need to demonstrate that there was a counterbalancing procedure that was sufficient to enable the defence to challenge the evidence of the anonymous witness and to cast doubt on its reliability. In addition, a conviction should not be based solely or to a decisive extent on anonymous statements[27].

63. It may be that in some cases the provision of the defendant and his or her lawyer with a copy of an anonymous witness's testimony and the giving to them of an opportunity to ask the witness questions in writing will be a sufficient counterbalancing procedure to satisfy the European Court of Human Rights[28], but there will also be cases where seeing the witness is essential to assess his or her demeanour and reliability[29]. Furthermore, the provision in the proposed Article 411e(2) and the existing Article 141 of the Criminal Procedure Code do not indicate what will be the position where a court is faced with basing its verdict to a decisive extent on anonymous statements. There is a need, therefore, to establish the current practice in handling the testimony of anonymous witnesses before concluding that this proposed provision is or is not in compliance with Article 6.3.d of the European Convention on Human Rights.

64. There are several provisions that need to be clarified. For instance, what is meant by providing that a conviction may not be based solely on the testimony of secret witnesses? Does this mean that the other evidence must be sufficient in itself to ground a conviction? If so, then the evidence of the secret witness would be unnecessary. Or, does it simply mean that there must be some other evidence corroborating the testimony of the secret witness? The problem is a delicate one, because the opportunity for questioning a secret witness is necessarily limited. If the identity of the witness is not divulged, then opportunities to pursue a particular line of questioning may be lost. However, it is noted that the establishment of the specialised criminal courts does not in any sense amend the existing rules of procedure in Bulgaria, but merely extends them to cover the new courts.

65. In the case of *Al-Khawaja and Tahery v UK* (Application Nos. 26766/05 and 22228/06) of 20 January 2009, a chamber of the European Court of Human Rights doubted "whether any counterbalancing factors would be sufficient to justify the introduction in evidence of an

[25] See, e.g. *Doorson v. Netherlands*, no. 20524/92, 26 March 1996.
[26] *Krasniki v. Czech Republic*, no. 51277/99, 28 February 2006.
[27] See *Doorson v. Netherlands*, no. 20524/92, 26 March 1996 and *Van Mechelen v. Netherlands*, no. 21363/93, 21364/93, 31427/93 and 22056/93, 23 April 1997.
[28] As in *S N v. Sweden*, no. 34209/96, 2 July 2002.
[29] As in *Van Mechelen v. Netherlands*, no. 21363/93, 21364/93, 31427/93 and 22056/93, 23 April 1997.

untested statement which was the sole or decisive basis for the conviction of an applicant." (at paragraph 37). An appeal to the Grand Chamber is pending.

66. An amendment to Article 124 of the Criminal Procedure Code may need to be made to provide that a statement from a secret witness should not be the sole or decisive basis for an indictment or a conviction in order to align the Code with the jurisprudence of the European Court of Human Rights.

### E. *Disclosure of bank secret and tax and social security information (this section has been dropped completely by the second draft Law on CPC)*

67. A proposed new Article 411f in the Criminal Procedure Code will require the banks and the tax and social security authorities to disclose information on the request of the administrative head of the specialised prosecutor's office. This requirement for the purpose of criminal proceedings would be an interference with the right to respect for private life under Article 8 of the European Convention on Human Rights. However, it is one that is capable of being justified and the nature of the offences within the jurisdiction of the specialised criminal court is likely to lead the European Court of Human Rights to regard the creation of such a requirement in the proposed Article 411f as necessary for a legitimate aim. Nonetheless such a conclusion would also require that there be in place effective and adequate safeguards against abuse, particularly as regards disclosure by the specialised prosecutor's office of information received that is not linked to the prosecutor and does not adversely affect persons who are not the object of a prosecution[30]. There is a need, therefore, to clarify whether any such safeguards exist in order to determine whether or not the proposed duty of disclosure is compatible with the requirements of Article 8 of the European Convention on Human Rights.

### F. *Prosecutorial powers after closure of an investigation*

68. No issue of compliance with the European Convention on Human Rights arises with regard to the prosecutor's powers after the closure of the investigation in the proposed Article 411g of the Criminal Procedure Code. These powers are the normal ones to be exercised at the conclusion of an investigation into an alleged offence.

### G. *Procedural rules (the second draft Law on CPC has kept very few special rules of procedure in order to really keep the specialised courts a part of the judicial system)*

69. Article 411h introduces stricter rules for trials before the specialised criminal court than the ones that exist for ordinary courts. This includes the obligation for rapporteurs to send the case to public hearing within 15 days, the exclusion of private prosecutors and civil plaintiffs, the serving of summons etc. by special persons belonging to the court, to the Ministry of Interior or the Ministry of Justice, the obligation to appear before the specialised criminal court regardless of other summons to appear before other courts, witnesses or experts who did not appear without a valid excuse are to be brought before the court the next day for trial, the time limit of 15 days for the court to deliver its verdict. It seems that the procedure was drafted to follow a very strict line that leads to a particularly rapid result, leaving no room for diverting tactics.

70. No issue of compliance with the European Convention on Human Rights arises with regard to the arrangements for composing panels and designating a judge-rapporteur in the proposed Article 411h(1) and (2) of the Criminal Procedure Code. The former is part of the guarantee of impartiality and the latter is a normal practical arrangement.

[30] See, e.g. *Z v. Finland*, no. 22009/93, 25 February 1997 and *M S v. Sweden*, no. 20837/92, 27 August 1997.

71. Although it is not a constitutional right of civil plaintiffs to be heard during criminal proceedings, and there is no right under the European Convention on Human Rights either to have someone prosecuted[31] or to join a prosecution as a civil party[32], their exclusion from a hearing (Article 411h(3)) that is public might be questionable and is a departure from the normal arrangement in criminal proceedings. The reasons provided in the explanatory memorandum to this draft Law is to reduce the length of proceedings and that civil plaintiffs will have the possibility of filing a civil claim and that, in any case, it was not sure whether his or her claim would be dealt with by a criminal court judge. These are valid reasons, and the exclusion being proposed is not, in principle, problematic and it is unlikely the different treatment of victims in cases before the specialised criminal courts as compared with those before other criminal courts will be seen as lacking an objective and reasonable justification so as to be in breach of the prohibition of discrimination in Article 14 of the European Convention on Human Rights. A different conclusion on this point might, however, be reached if there was no possibility of victims of the offences within the jurisdiction of the specialised criminal courts still having available to them the possibility of bringing civil proceedings against the alleged offender. The absence of such a possibility would not only support a finding of unjustified discrimination but would have implications for the protection of civil and property rights under Article 6 and Article 1 of Protocol No. 1, as well for the right to an effective remedy under Article 13. The existence of such an alternative remedy should thus be clarified.

72. Furthermore, Article 7 provides for the discontinuance of proceedings in cases that fall within the jurisdiction of the specialised criminal courts and the subsequent transfer of the cases to those courts without the possibility of being a civil party would amount to a determination of the civil rights of any victims who had already joined the proceedings as a civil party[33]. The absence of any alternative means of civil redress would undoubtedly be regarded by the European Court of Human Rights as failing to strike a fair balance between the requirements of the general interest of the community and the need to safeguard the fundamental rights of individuals.

73. No issue of compliance with the European Convention on Human Rights arises with regard to the arrangements for serving summons, messages and papers in the proposed Article 411h(4) of the Criminal Procedure Code. These deal with important practical arrangements for the processing of a case.

74. No issue of compliance with the European Convention on Human Rights ought also to arise with either the priority to be given by participants in proceedings before the specialised criminal courts over other courts or the ability to compel the attendance of witnesses and experts in the proposed Article 411h(5) and (6) of the Criminal Procedure Code. However, while the priority is understandable, given the objective set for the specialised criminal courts, there is a need to clarify that the duty of compliance with it does operate as an effective exoneration from any liability that might arise from not attending proceedings in other courts. The compulsion to attend for witnesses and experts without an excusable reason would be consistent with the deprivation of liberty permitted under Article 5.1.b. of the European Convention on Human Rights "in order to secure the fulfilment of any obligation prescribed by law". However, consideration needs to be given to the practical operation of this compulsion as it could lead to the absence of experts and witnesses from other proceedings, thereby affecting both their fairness and their determination within a reasonable time.

75. No issue of compliance with the European Convention on Human Rights arises with regard to the arrangements for deliberation and delivering a verdict in the proposed Article 411h(7) of the Criminal Procedure Code. These ensure that the accused person has the last word and he

[31] *Perez v. France* [GC], no. 47287/99, 12 February 2004.
[32] *Ernst and Others v. Belgium*, no. 33400/96, 15 July 2003.
[33] *Cordova v. Italy (No. 1)*, no. 40899/98, 30 January 2003.

or she should thus have the required opportunity to respond to all evidence and submissions of the prosecution. The deadline for the verdict ought also to facilitate compliance with the requirement for a trial within a reasonable time. Nonetheless, the practicability of compliance - including the workload of the judges of the specialised criminal court - will need to be kept under review, not only to avoid a failure to observe compliance with the deadline, but also to ensure that attempts to comply with it do not lead to verdicts that fail to give proper consideration to all the submissions of the defence[34]. Also, since the normal rule in Bulgaria is for verdicts to be given immediately, it might be considered that the delay in giving the verdict could leave open the possibility of influence. Furthermore, this added delay seems to be at odds with the general commitment to speed and there seems to be no need for a delay of 15 days.

### H. *Appeals (all reference to a specific procedure has been dropped by the second draft Law on CPC)*

76. The right of appeal to the second instance courts by the prosecutor, the accused or his or her counsel, is set out in the specific rules. No issue of compliance with the European Convention on Human Rights arises with regard to the arrangements made for appeals in the proposed Article 411i of the Criminal Procedure Code, which deal with the initiation of appeals, the applicable procedural rules and the deadline for determination. The rest is referred to in the general rules of procedure.

### I. *General rules*

77. The principle of equality of arms requires that each party must be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent. Furthermore, in preventing such a disadvantage from arising, the European Court of Human Rights has underlined the importance of procedural rules in protecting a defendant against any abuse of authority, since the defence is the most likely to suffer from omissions and lack of clarity in such rules[35]. The stipulation in the proposed Article 411j of the Criminal Procedure Code (in the first draft Law on CPC) that, insofar as there are no special rules in the new Chapter, the general rules are to apply is thus of considerable importance in preventing defendants being placed in a state of uncertainty and thus at a considerable disadvantage *vis-à-vis* the prosecution, leading to a trial which is not fair and in violation of Article 6.1 of the European Convention on Human Rights.

### J. *Transitional provisions*

78. The transitional provisions foresee technical changes with respect to a number of special laws, which are needed due to the changes made to the Criminal Procedure Code. Apart from the issue already raised regarding civil parties[36], no issue of compliance with the European Convention on Human Rights arises with regard to the provisions in Articles 4-8 of the draft Law. However, only Article 7 - which deals with the handling of proceedings under way when the draft Law enters into force - really merits the description 'Transitional Provisions'. Articles 4-6 actually deal with consequential amendments required by the adoption of the provisions in the draft Law on CPC and Article 8 concerns this draft Law's entry into force. A more accurate description of these provisions would benefit those who have to implement this draft Law in the event of it being adopted.

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[34] See, e.g. *Gradinar v. Moldova*, no. 7170/02, 8 April 2008.
[35] *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96. 22 June 2000, at paragraphs 102-103.
[36] See paragraphs 66-67.

## VI. CONCLUSION

79. It seems clear, from the explanatory memoranda to the draft Law on JP and both draft laws on amending the CPC, that there is a major problem at present with corruption and organised crime in Bulgaria.

80. The setting up of specialised courts may be a good solution to deal with the most serious crimes involving organised crime and corruption in public office, which would be staffed by persons appointed by the Supreme Judicial Council using the normal procedure for the appointment of judges, which presumably will exercise such care as it possibly can to avoid appointing any corrupt persons to these positions.

81. The second draft Law on CPC seems, much more than the first draft, to be endeavouring to respect the rights of the defence and basic human rights with aim of establishing a competent, efficient and very rapid procedure in order to fight organised crime. Although this is welcome, it is, in the Venice Commission's view, going to be important to monitor how this works out in practice, particularly, but not exclusively, with regard to the work of the prosecutors who still have a very wide power to direct the pre-trial investigation and the trial towards the specialised court. This power seems to be contained by the fact that the criminal procedure before the specialised criminal court is (with very few exceptions) the ordinary procedure. Monitoring by courts in individual cases of appeal and cassation, by the Constitutional Court and by the legal community, both on a national and international level will probably be the best guarantee for a correct application of the new provisions.

82. In particular, it is to be welcomed that:

- the Bulgarian authorities have not followed the solution proposed in some other jurisdictions of removing existing members of the judiciary from their post and requiring them to apply again if they wish to be judges;
- the specialised criminal courts are to operate under the normal substantive law and procedural law (including the law of evidence), which applies in Bulgaria;
- experience is guaranteed by the requirement of long professional practice and the fact that a person's character is also taken into consideration in the nomination procedure, that the nomination procedure is the same as for ordinary judges;
- not all rights of the defence and the victims are to be sacrificed to the requirement of more speediness (this relates only to the second draft Law on CPC).

83. The following modifications are required to bring the relevant provisions into line with European standards (this relates to the first draft Law on CPC):

- the provision of very specific substantiation for a military court to have jurisdiction over civilians or the amendment of the proposed Article 411a(8) to remove this possibility;
- the inclusion of an express statement that the new Article 174.3 of the Criminal Procedure Code is subject to new Article 174.4;
- the adoption of more appropriate headings for Articles 4-6 and 8 of the draft Law on CPC.

84. The following points need clarification on issues as to the compliance of the relevant provisions with European standards:

- whether or not the general requirements for judicial appointments in Article 162.3-5 of the Law on JP are also applicable to those appointed as judges in the specialised criminal courts;
- whether or not the jurisdiction over the offences in the proposed Article 411a(1) applies to all persons suspected of committing them and thus includes the

categories of persons listed in the proposed Article 411a(2) (the second draft Law on CPC has abolished a jurisdiction for certain categories of persons);
- whether any safeguards against abuse exist with regard to the duty of disclosure in the proposed Article 411f (not applicable to the second draft Law on CPC);
- whether there is any possibility of victims of the offences within the jurisdiction of the specialised criminal courts having available to them the possibility of bringing civil proceedings against the alleged offender (not applicable to the second draft Law on CPC);
- whether the duty of compliance with the priority accorded to proceedings in the specialised criminal court operates as an effective exoneration from any liability that might arise from not attending proceedings in other courts;
- whether or not the current practice in handling the testimony of anonymous witnesses allows a verdict to be based solely or to a decisive extent on such testimony;
- the arrangements for appointing lay assessors (paragraphs 36 and 37) and the protection to be provided for them against improper pressure.

85. The following steps would be desirable to preclude any non-compliance with European standards in practice:
- ensuring any defendants tried in a court other than the specialised criminal court have a genuine opportunity to present to the latter court all relevant material on their behalf and to respond to submissions from the prosecution both as to the basis for their conviction and the appropriate penalty where it is responsible for sentencing;
- bringing the deadline set for giving verdicts into line with that set for other criminal proceedings.

86. In effect, it seems clear that the Bulgarian authorities are adopting the solution, not of introducing special measures to ensure the law is applied, but rather of taking measures to ensure that the courts and prosecutors apply the laws properly in dealing with cases of organised crime and corruption, which it seems up to now has not always been the case. Another issue the Bulgarian authorities are keen to solve is to achieve a geographical separation between the location of the trial of members of organised criminal groups and the region where these organised criminal groups operate in order to maximise the neutrality of all parties involved, including judges and lay assessors.

87. Altogether, the draft laws do not give rise to any fundamental problems of compliance with European standards. There are a few points that ought to be borne in mind when implementing the amendments so as to avoid the unnecessary risk of European standards being breached. However, they are of minor importance in comparison to the huge task of fighting organised crime and corruption. The fact that the third instance court is the Supreme Court of Cassation is a further guarantee that excesses in the legislation may be evened out by the jurisprudence of this court and the Constitutional Court of Bulgaria. It will be the practical application of these draft laws that may bring to light their effective quality.

88. The Venice Commission remains at the disposal of the Bulgarian authorities for any further assistance they may need.