

CIVIL SERVICES AND STATE ADMINISTRATIONS (CSSA)

COUNTRY REPORT: BULGARIA

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BULGARIA

A. PUBLIC SERVICE CHARACTERISTICS

1. LEGAL STATUS OF PUBLIC SERVANTS

◆ Legal provisions defining the status of public servants

1.1

Article 116, item 1, of the Constitution reads that civil servants carry out the will and interests of the nation. When discharging their duties they are to be guided solely by law and to be politically neutral. In accordance with item 2 of the same article, the regulation of appointment to office, dismissal, and political party or trade union affiliation is to be settled by law. The aforementioned constitutional norm constitutes the legal rationale of the civil servant Bill which has been put forward by the Council of Ministers to parliament. One has to keep in mind that so far the Bill has been passed at first reading. The detailed text-by-text discussion procedure is under way during the second mandatory voting/reading. Therefore, and for the sake of simplification, the term Civil Servant Act (CSA) will be used in a conditional mode.

1.2

In accordance with Article 12, item 1, of the Administration Act (AA), the administration's activity is carried out by civil servants and by persons employed in *labour-legal* relationships (regulated by the Labour Code). Art. 1 of the CSA reads that the Act regulates the *official-legal* relationships between the State and civil servants in terms of their development, substance and termination. A legal inference is to be drawn that there are *no* civil servants whose rights and obligations are regulated under the Labour Code (LC). All civil servants are subject to the terms of the Civil Code relationship, i.e. *official-legal relationship*. Employees in the administration employed in labour-legal relationships do not have civil servant status.

1.3

In accordance with Art. 3, para. 1, of the CSA, persons who fulfil political functions do not have civil servant status. They are: the Prime Minister, Deputy Prime Minister, ministers, deputy ministers and members of their political offices, regional governors and deputy regional governors. The very sense of these provisions consists of setting apart the civil servant's status – the civil servant works in a permanent official-legal relationship and he/she is to serve any administration – as opposed to the political person's relationship, whose term and responsibilities are set according to the respective political conjuncture.

For the sake of thoroughness, I would point out the remaining groups of political persons who do not have civil servant status:

- mayors of municipalities, regions and mayoralties;

- persons appointed to their respective positions by parliament or by the municipal council;
- persons in charge of supportive, security and auxiliary activities in central, regional or municipal administration.

1.4

The CSA and the AA constitute the first component of the administrative reform effort. Both Acts foresee the elaboration of a series of laws and by-laws, normative acts aimed at constructing an overall organisation of the state administration. According to Art. 13 of the AA and Art. 2 of the CSA, the Council of Ministers has to elaborate a uniform specification for civil servant positions throughout the country. The positions envisaged are the following:

- managerial;
- expert;
- technical.

The core idea, which originated in the CSA, consists of binding all of the administration, including customs, police, etc., to a uniform regulation in order to attain a high degree of uniformity in its structure. That is why para. 6, item 2, of the transitional and concluding provisions reads that within six months the Council of Ministers shall put forward to parliament respective amendments to the specific Acts regulating the legal status of persons considered as civil servants by virtue of these Acts. Obviously, the Customs Act, Police Act and other similar Acts are referred to, since the CSA is supposed to be a general regulation of the civil servant status. In this respect, for the time being there is not a comprehensive regulation of the civil servant status in all areas, but the principal legal basis already exists.

◆ Current status of implementation

1.5 *See answer to 1.4 above.*

◆ Arrangements where laws/regulations are not yet in operation

1.6 The above-mentioned constitutional norm (see 1.1 above) guarantees to civil servants their status in terms of their everyday activity, since according to Art. 5, item 2, of the Constitution, its norms have immediate effect. Apart from this provision, the same article, item 3, stipulates that international laws ratified by parliament have the effect of domestic legislation. In this sense, civil servants are under the protection of international agreements to which Bulgaria is a party. In addition, para. 2, item 1, of the CSA recognizes on a retroactive basis that time worked by those persons appointed to actual civil servant positions prior to the Act's effectiveness is considered as official. This recognition and legal protection have been developed in para. 3 as well, which stipulates that the above-mentioned persons are to be appointed to office under the CSA's provisions within one month after the respective job descriptions have been prepared.

2. RECRUITMENT, SELECTION AND DEPLOYMENT

◆ Selection procedures for entry

2.1

According to art. 12, item 2, of the AA, the process of recruitment and the status of civil servant are regulated by law -- in this case, that law is the CSA). According to the AA, art. 14, a certain qualification is required for recruitment to office. Qualification comprises both education and time worked. Based on these provisions, the CSA determines the procedure and terms for recruiting civil servants. Based on a uniform specification, each administration prepares its own functional guidelines which include the following:

- functional characteristics of departments;
- pay and job description of each position.

According to the CSA, art. 10, recruitment may be carried out based on competition. This procedure is elaborated in detail in the CSA, specifically with regard to existing competition regulations.

2.2

Civil servants are appointed to office by the head of the respective administration. This is a general provision and practice referring to all categories of public servants.

◆ Qualifications

2.3

There are no legal restrictions for external persons applying for an administrative position, with the exception of the imperative provisions of the CSA, art. 7 (see below under 6.1). Apart from this, art. 7, item 4, of the CSA does not allow any discrimination, privileges or restrictions based on racial, ethnic or national considerations. I would like to emphasize that this provision stems directly from both the constitutional guarantee of the right to work and the numerous agreements to which Bulgaria is a party.

2.4

According to the AA, art. 16, the general period of time worked as a condition for applying for a certain position is defined under the labour legislation, whereas the official career, i.e. the career as a civil servant, refers to the period of time during which an administrative position has been held. Both careers are certified by means of formal documents. The levels of education and qualification are also certified by formal documents. Higher education is an absolute requirement for managerial positions. These provisions outline the formal framework of qualification requirements. Candidates' professional and organisational abilities are assessed on a competitive basis.

◆ Probation

2.5

According to the CSA, art. 12, each appointment to a civil servant position is to be preceded by a six- month probationary period. During the probationary period the two parties are in an official relationship. In the event that the probationary period does not evolve into a full-fledged civil servant contract, the official relationship is terminated. In other words, an explicit motion of the state institution is required.

◆ **Transitional arrangements**

2.6

The legal mechanisms [to enable pre-transition officials to become public servants] are set out in detail in 1.6 above and 6.1 below. The Constitutional Court explicitly stipulated (Decree N2/21.01.99) that no restrictions related to party affiliation prior to the democratic shift are to be considered relevant or capable of preventing citizens from holding public administration positions.

2.7

Under no conditions are pre-transition public servants to be restricted in working at present as civil servants except on the basis of the CSA's provisions. In art. 7 the legal bases preventing persons from occupying civil service positions are specified.

◆ **Mobility**

2.8

The legal framework does not impede the transfer of public servants between institutions. My findings evince that the intentional and expedient transfer of civil servants on the respective administration's initiative is not common practice. Transfer is rather due to the civil servant's own initiative and willingness to find better job opportunities. In his/her search, he/she relies mainly on personal sources of information.

2.9

This practice [temporary secondments] is not strictly regulated and specifically earmarked for improving institutions' capacity to deal with EU accession. Neither the Labour Code's provisions nor the CSA's provisions prevents any institution from temporarily employing public servants (under different contractual terms) in order to amplify its capacity in various fields, including EU accession.

◆ **Appeal**

2.10

The issue of appealing the results of a recruitment competition has not been clearly settled. I find it recommendable to adjust the CSA in this respect. By virtue of the CSA, art. 125, all controversies raised with respect to evolving official relationships are to be appealed in court. This provision could be construed to imply that everyone who considers that a competition held has resulted in an official relationship is in a position to appeal. This stems from the general assumption that citizens have the right to appeal each act that they consider transgresses their rights and interests. But from a purely juridical viewpoint, the appeals

procedure should be specified in order to ensure transparency in recruitment and to avoid ambiguity in legal defense.

3. CONDITIONS OF SERVICE, PAY AND CAREERS

◆ Employment system

3.1

In principle and by tradition the employment system in Bulgaria is post-based. The new regulations of the civil service provide for a shift towards a career-based system.

According to the CSA, civil servants comprise two categories – managers and experts. The qualifying criteria are as follows:

- character of official functions;
- level of professional training.

A manager is the head of an administrative unit and is in charge of its performance. An expert assists in carrying out the functions of state powers. The structure of the positions in the public administration is adopted by the Council of Ministers based on a Uniform Position Specification. The CSA defines the basic rights and duties of the civil servant. Supplementary conditions could be specified in the respective functional guidelines of each administration. Civil servants are recruited based on the job terms of the respective position. The job terms are to approved by the head of the respective administration.

3.2 ---

◆ Rights and duties of public servants

3.3

A civil servant's rights and duties outline his/her status within the public administration. In carrying out his/her duties the civil servant is under state protection. The state assumes the responsibility to provide him/her with the necessary working conditions. The state is bound to indemnify him/her or his/her family for damages resulting from carrying out his/her duties in a duly professional manner. The CSA defines the status of civil servant based on two sets of rules:

- norms related to his activity;
- functional regulations that are specific to each administration.

The specific duties of civil servants are defined in the respective administration's job descriptions, and no other duties can be assigned. In addition, the civil servant has to:

- collaborate with representatives of state authority in discharging his/her duties;
- observe the working hours;
- respect the hierarchy;
- keep official secrets (the body responsible for his/her being appointed to office defines the scope of confidentiality);
- refrain from commenting on the administration's behalf except in cases when he/she is explicitly authorised to do so;
- keep his/her superiors informed of any circumstances of inadmissibility having

evolved that imply his/her incapacity to fulfil duties;

- respect the civil service's prestige;
- report his/her property status on an annual basis. This is basically a new obligation, unknown previously in state administration practice; its obvious purpose is to ensure transparency with regard to the civil servant's activities.

The above-mentioned duties are not just an expression of wishful thinking by the legislature. There is a specific operative mechanism for their enforcement, and a system of responsibilities regulated by the CSA. Civil servants' responsibilities are disciplinary and property-based. Disciplinary responsibility is to be assumed by a civil servant who has been found guilty of violating his/her duties. The law foresees that this responsibility could be assumed in parallel with other sorts of responsibilities:

- The civil servant is liable with respect to both intentional and incautious acts.
- Disciplinary responsibility is to be admitted independently and, eventually, in parallel with another responsibility – property-based, penal etc.
- For a single duty transgression, the following punishments have been foreseen:
 - observation;
 - censure;
 - one-year suspension of promotion;
 - reduction in rank for a period of six months up to one year;
 - dismissal.

Disciplinary punishments are to be enforced by the recruiting body under a disciplinary council's instigation.

The civil servant assumes a property-based responsibility in the case of being found guilty of having caused damages resulting from his/her unlawful acts. The civil servant could be held responsible in these terms simply on the grounds of general legal practice, which constitutes an effective solution, ensuring legal protection to both the servant and the state.

The civil servant's rights could be grouped as follows:

- economic;
- social;
- political;
- official.

Economic rights comprise:

- remuneration;
- indemnification;
- official apparel.

Social rights comprise:

- annual leave, which could be paid or unpaid. After having worked more than eight months, the annual leave is a minimum of 30 days. Up to 30 days per year of unpaid leave are considered as worked time;
- fixed working hours and breaks;

- open expression of opinions in terms of the expediency and lawfulness of orders received;
- trade union activity;
- strike (but Art. 74 of the CSA implies that civil servants have the right to symbolic strikes only);
- inviolability of personal mail;
- fringe benefits on the state budget's expenses.

Political rights comprise:

- right of political party affiliation and membership. The civil servant has the right to freely affiliate to political parties unless a specific law rules otherwise. However, the civil servant is not allowed to hold leading or controlling posts in political parties. The CSA's art. 42, item 2, imperatively stipulates that when carrying out his/her duties, the civil servant must not be guided by a political party's interests.

Official rights comprise:

- promotion in terms of rank and position;
- professional training and improvement of qualifications. Training is provided by the recruiting body, and in some cases is carried out at its expense. Improvement of qualifications is a basis for a pre-term promotion.

◆ **Career development and promotion**

3.4

Since the system up to now has not been career-based, civil servants' progress based on special skills and qualities has not been formalised and institutionalised. The initiative rests entirely with the respective administration.

3.5

Rank is based on the civil servant's professional qualifications, which implies that professional qualifications are absolutely essential to the promotion process. Improving qualifications is a basis for a pre-term rank promotion. Worked time is another promotion criterion. A civil servant is promoted in rank within five years (no sooner than three years and no later than five years). Promotion is based on testimonials for the respective civil servant.

Higher education is a mandatory prerequisite for being appointed to a managerial position. According to art. 74 of the CSA, other criteria than those mentioned above could be foreseen in the respective administration's Functional Guidelines. Although the administrative body is in principle autonomous in its decisions, each administration is encouraged to specify its own requirements for its civil servants.

3.6

In principle, yes [performance appraisal is used in connection with promotion], but the procedure is rather sporadic. Western-type personnel management mechanisms and

procedures are not applied on a regular and mandatory basis, which explains why it is necessary to respond from a legal perspective rather than in terms of the current situation. The current situation is rather hostile to the principles of modern personnel management:

- There is an explicit deficit of motivation due to the low prestige of administrative positions and the low pay.
- As the system is not career-based, the personnel management lacks guarantees and procedures for career planning and professional development.
- There is a lack of training and qualification system.
- There is still lacking an awards system in the case of effective performance of official duties.

On a larger scale:

- There is no mechanism for impartial assessment of the necessity to set up or dissolve bodies and structures not described in the Constitution.
- There is no basis for the autonomy of some administrative structures without ministerial rank, and consequently they make their own “internal” personnel policy.
- There is a diffusion of activities connected to information-processing and analysis.
- With the exception of the decision-making process, the administration is involved in one way or another in a governance process that is essentially political. Lacking any clear-cut differentiation of activities implies a rather vague personnel management policy on the whole, and within each administration.

Due to the above-mentioned circumstances, corruption-driven patterns of day-to-day behaviour come to the fore.

◆ **Training**

3.7

Provisions in the state budget specifically refer to resources earmarked for civil servants’ training. Apart from budget-supported training programmes, each ministry or other governmental institution reserves the right to seek outside (domestic or international) training funds.

Language training, specifically in English, is a priority. The command of a Western language is an advantage in the recruitment process. An interesting example is provided by the Ministry of Labour and Social Policy’s practice. Based on the ministry’s network, “virtual English training courses” are carried out for the expert staff of the administration.

3.8

Setting up special training programmes for public servants is at the discretion of the respective ministries. To my knowledge no ministry has elaborated training and qualification plans for its civil servants. Except for officials in the judiciary, acquaintance with EC law and application of EC legislation are rather sporadic and unsystematic. The contact takes effect with regard to specific legislation and regulations. Efforts have focused on EU requirements for admission rather than on an overall systematic learning of EC law and legislation.

EC law and application of EC legislation constitute a mandatory component of the probationary programmes (including long-term study visits and courses in EU countries) for judges.

3.9

No [training as a requirement of career development]. Once again, personnel policy is post-based and not career-based. Training does not exist as a formal requirement for career development in the respective civil servants' job descriptions. There is no formal mechanism for binding civil servants to a permanent learning obligation.

◆ Right to join a union and to strike

3.10

A basic right of civil servants is their right to affiliate to trade unions, and to set up their own trade unions. The CSA's art. 44 reads that civil servants can freely enter trade unions, set up trade unions, terminate end their membership simply by complying with the Trade Unions' Articles of Association. A civil servants' trade union is a legal body from the moment of its court registration. In accordance with the CSA, art. 46, state bodies must assist their trade unions' activity by securing for them free office space, materials, etc. I consider this provision too vague and optimistic since it is not clear what *securing* means, and whether state bodies have the capacity to secure office space.

When requests related to official relationships are not duly met, civil servants can strike. However, as mentioned above, civil servants have the right to symbolic protest, i.e. without effectively interrupting their activity. It is stipulated that the recruiting body is in charge of conflict resolution.

3.11

Since the CSA enforcement has not begun, civil servants' trade unions do not exist.

◆ Pay components

3.12

Civil servants have the right to a basic and a supplementary salary (fringe benefits). As a rule, the remuneration package is set up by the Council of Ministers. The CSA determines only the guaranteed minimum basic salary, which is three times greater than the national minimum salary. The amount of supplementary payments cannot be inferior to similar payments under the Labour Code.

Fringe benefits can be granted for:

- length of time worked;
- employment on weekends and holidays;
- postgraduate degrees;
- supplementary duties commissioned by the recruiting body;
- other cases foreseen in legal regulations.

3.13

Normally, the bulk of the remuneration package is provided by the basic salary [proportion of take-home pay provided by basic pay versus bonuses and allowances].

3.14

This question [what fringe benefits and for whom] should be the subject of a supplementary regulation. To my understanding it should remain at the discretion of the respective administration.

3.15

There is no such regulation so far [special pay arrangements for working in key EU areas]. Each ministry has a team, institutionalised or not, working in the area of European integration. The members of these teams abide by the same rules applicable to all civil servants.

◆ Termination of service

3.16

It is worth noting that civil servants are subject to official relationships. Unlike relationships based on the Labour Code, the official relationship is set up based on an administrative act/order issued by the recruiting body. This type of relationship can be cancelled on the following grounds:

- end of term of probation;
- general reasons for cancellation of the relationship, which are:
 - mutual agreement reached between the two parties;
 - absence from the office;
 - civil servant is not in a capacity to carry out his/her duties due to sickness, which implies a permanent inability to fulfil these duties;
 - due to health problems, the civil servant cannot continue to discharge his/her duties (in the event that the civil servant agrees to be moved to another position in accordance with the Health Commission prescription, his/her contract will not be cancelled);
 - incompatibility by art. 7 (see below);
 - civil servant is under arrest as a result of an effective verdict;
 - death.
- special reasons for cancellation of the official relationship:
 - unilateral cancellation on the part of the employee, based on 30 days' notice in writing. In this case the employer could cancel the official contract prior to this term but would have to assume the responsibility of indemnifying the employee with his/her gross salary for the notice period;
 - unilateral cancellation on the part of the employer. This is admissible only in the following cases: (i) dissolution of the respective administration or suppression of the respective position; (ii) lack of professional skills; or (iii) when an illegally dismissed employee has been reappointed to office but who simultaneously is eligible for a full pension due to time worked or age;

- unilateral cancellation on the part of the employer without notice. This kind of cancellation is admissible when: (i) based on an effective sentence, the employee has been forbidden to exercise his/her profession; (ii) the employee does not accept the new position in the case of a labour readjustment; (iii) when the employer has not been notified in due time in the case of conditions of incompatibility (in accordance with art. 7 of the CSA);
- a disciplinary penalty is a valid reason for cancellation of an official relationship.

An analysis of the above-mentioned law arrangements makes evident the special status of a civil servant compared to that of an employee under a labour relationship. The most important feature is the provision of permanent contracting, which implies stability within the administration. Furthermore, the civil servant can rely on legal protection in the case of violation of his/her rights.

3.17

The indemnification [severance pay] depends on the reasons for the end of service:

- When a civil servant has been laid off due to the reinstatement of another illegally dismissed civil servant, he/she has the right to indemnification amounting to his/her gross salary for the jobless period, but for no longer than ten months. In the event that he/she is offered a lower paid position, he/she is entitled to receive the difference in salary.
- In the case of an official relationship which has been cancelled based on a labour adjustment, the civil servant should be indemnified with six months' gross salary.
- When the contract has been cancelled due to death, the administration assumes all the costs of the funeral and compensates the persons who have been his/her dependants with as many salaries as years worked in the public administration, but for no more than 20 years.
- In the case of an administration being dissolved or an administrative position being suppressed, the civil servant has the right to indemnification for the period he/she will be jobless, but for no more than two months.
- In the case of retirement, the civil servant receives indemnification amounting to the number of gross salaries calculated up to the moment of retirement as years worked in the state administration, but for no more than 20 years.

3.18

There are no special legal guarantees except for the general recruitment provisions. There are no special legal obstacles to a civil servant being intermittently employed in the administration.

4. PERSONNEL MANAGEMENT STRUCTURES AND CONTROL OF STAFFING

◆ Coordination of personnel management

4.1

Yes [overall responsibility for personnel management of public servants rests with a single designated minister]. The minister is the employer of the respective administration. In accordance with the AA, art. 3, direct guidance of the respective administration is carried out by the respective bodies of state authority. In this sense personnel management in the administration is decentralised – each minister is in charge of his own administration. In accordance with para. 10 of the transitional and concluding provision of the AA, its enforcement has been assigned to the Minister of the State Administration, but this provision refers to general administrative restructuring and does not signify personnel management.

4.2

All provisions referring to state administration are valid for all of its branches. The only exception to this rule has been foreseen for civil servants of the Foreign Office who discharge their duties abroad.

4.3

In accordance with the CSA and the AA, the Ministry of State Administration sets up the main legal framework of personnel policy in terms of recruitment, discharging duties, dismissal, etc. However, the managerial aspects of personnel policy (conflict resolution, policy-making, decision-making, promotion, motivation, personnel planning, etc.) are the prerogative of the respective employer.

4.4

There are no specific mechanisms [for coordinating and monitoring personnel management and decision-making]. It is highly probable that personnel management mechanisms will be set up and put into practice after the CSA is passed. Such mechanisms would be instrumental in its enforcement.

◆ Staff involvement in personnel decision-making

4.5 ---

◆ Management and control of staffing

4.6

No, there is no such [centrally controlled] staffing process. This process rests at the discretion of line ministries since formally they are the civil servants' employers.

4.7

The mechanism [for setting staffing ceilings] is based on the budget. There are no formal

limitations to the number of full-time contracted civil servants on the payroll. The only limitation is the funds available to incur personnel costs. Special service contracts provide a supplementary opportunity to temporarily extend the staff when needed.

There is no unified civil service system of personnel monitoring.

On a larger scale I would add that the lack of a consistent monitoring capacity could prove to be the main drawback of the present administrative structure. There are neither legal arrangements nor operative mechanisms to exert control at the present time in parallel with decision-making. Control is rather reactive, carried out *post factum* simply to make evident the mistakes made during the period of implementation.

4.8

Yes. Money saved [by not filling a position] could be used for salary increments.

♦ Job evaluation and classification and job descriptions

4.9

This question has been covered in detail in 3.5 above. I simply wish to point out that the principles of the testimonial, the general requirements and the special ones, which are set out in the respective Functional Guidelines of Law Enforcement, are identical in all the branches of the administration.

4.10

Job descriptions are sanctioned by the recruiting body (person) in the respective administration. The legal basis for this situation is laid down in the CSA, art. 2, item 4.

4.11

Job descriptions containing common requirements for all branches of the administration as set out in the CSA provisions have not been elaborated so far. This task is to be carried out in parallel with the CSA enforcement.

♦ Management and control of pay and salary payments

4.12

There are two basic criteria for remuneration of civil servants. The first is the national minimum salary, which is set by the Council of Ministers. The second is the guaranteed minimum amount of remuneration for civil servants (mentioned above in 3.12) that is set in the CSA, i.e. by parliament. There is a third comparative criterion referring to fringe benefits, which cannot be inferior to those set in the Labour Code (1951, Part III and its Enforcement Guidelines). This system is universal to all branches of the administration. The specific amounts of remuneration for the individual grades and positions are set by the Council of Ministers. The Council also decides whether remuneration packages will be similar for all branches. In this respect the role of the Ministry of Finance is rather important, since it has a say in any decision regarding possible cost increments due to remuneration system changes.

4.13 *See 4.12 above.*

4.14

The system is computerised within each individual administration. There is no single mandatory and officially enforced payroll software for the whole civil service. Salaries are more or less unified; there is a single job specification which is valid for the entire civil service.

◆ **Appeal against personnel decisions**

4.15

Civil servants are in a position to appeal before the court any administrative acts related to setting up, carrying out and terminating their official relationships.

◆ **Evaluation of use of resources**

4.16

The legal arrangement [for public disclosure and scrutiny of the use of public service resources] is based on the Budget Law.

4.17

There is no system of personnel auditing in the sense of a personnel management concept. Staff inspections, especially in terms of personnel costs, are part of the standard auditing procedure.

4.18

Auditing administration is the prerogative of the Auditing Chamber. The National Insurance Institute carries out audits in terms of social payments constituting a share of total payments.

B. PUBLIC SERVANTS: PROFESSIONAL ROLE IN POLICY FUNCTIONS AND DECISION-MAKING; RELATIONS WITH THE PUBLIC AND WITH POLITICIANS

5. LEGAL COMPETENCE, ABILITIES AND ACCOUNTABILITY MECHANISMS

◆ Legal basis for actions of public servants

5.1

The constitutional powers of civil servants have been set out above. Based on constitutional provisions, the head of the respective administration is operationally autonomous with regard to setting rules to be respected by the civil servant. In this respect I find it worth mentioning that the provision to appeal administrative acts before the court constitutes the main guarantee of the civil servant's independence. This opportunity averts any orders that would be inconsistent with the civil servant's status.

◆ Requirements to carry out government policy and to obey orders

5.2

In accordance with the CSA, art. 24, item 1, the civil servant is bound to fulfil his/her superior's orders and injunctions. For this provision to be effective, consistency between the superior's order and the existing regulations should be observed. The CSA allows the civil servant to not abide by orders that are contradictory or violate the general regulations. When the civil servant considers that the order received contains obvious legal inconsistencies or is conducive to obvious illegal acts, he/she has the right to disregard it. The meaning of this provision is quite clear, but I consider that it needs editing. The sense is that the civil servant is not bound to carry out an illegal order even though it had been duly issued. However, a literal interpretation of this provision infers that unless an order is *obviously* inconsistent, the civil servant must obey it.

The civil servant has the right to demand a written version of an oral order that contains an obvious law transgression. I find this provision to a certain extent appropriate as it allows the elimination of the so-called "telephone right". A new and by its sense judicious provision that allows civil servants to not comply with orders directed against their own interests or those of the wife/husband, relatives of direct descent, relatives of a lateral branch, or relatives by marriage to the 4th degree. The legislator takes into account the civil servant's personal life and his/her emotional engagements in parallel with duly fulfilling professional duties.

5.3

See 5.2 above.

◆ **Lines of accountability**

5.4

As mentioned above, civil servants can affiliate to political parties without any restrictions. A person who holds a leading or controlling position in a political party cannot be a civil servant. On the other hand, a civil servant, even if a member of a political party, can rise in the administrative hierarchy without restrictions.

5.5

Civil servants are accountable for their activities in the framework of their hierarchical subordination. Ministers are accountable to parliament, and they have to answer MPs' questions. They have to present their strategies and concepts, commit themselves to parliamentary commissions' inquiries, etc.

◆ **Ability to innovate**

5.6

There are no special provisions for the time being [for encouraging public servants to offer new ideas].

◆ **Management practices**

5.7

There is no formal mechanism allowing line managers to influence their staff's performance. They have no formal basis for rewarding good performance in terms of career development, remuneration, fringe benefits, etc.

◆ **Management control**

5.8

For the time being, prior to the CSA's taking effect, line managers do not have available a variety of arrangements to control their units' performance. Prior to the CSA's effectiveness, the respective provisions of the Labour Code remain valid. The line manager is held fully responsible for his/her unit's performance but he/she cannot influence in an operational way the employees' performance. He/she can prevent undisciplined servants from being promoted on a regular basis by means of periodically required testimonials, but the line manager's power to shape employees' behaviour through payments is rather limited. Line managers can direct policy towards expenditure cutting, but he/she is not in a position to thoroughly manage the unit's finances. This implies that the line manager cannot be fully effective in controlling performance.

I am afraid that the same principle of administrative control has been left in the new CSA. Here again, the testimonial constitutes the main means of control – the eventual direct relationship between everyday performance and monthly salary has not been established. Payments may be influenced only in the long run through the routine testimonial procedure.

◆ **Parliamentary accountability**

5.9

See 5.5.

5.10

Following up critical parliamentary reports that concern a public servant's mistake, misdeed, or corrupt behaviour is a routine and mandatory procedure. When the misdeed is not questionable, sanctions follow. There are a few minor cases (one in the Home Office) of civil servants having been fired due to parliamentary criticism.

◆ **Non-judicial accountability**

5.11

There are no such institutions [ombudsman, court of auditors].

5.12

See 5.11.

◆ **Judicial accountability**

5.13

The CSA settles the issue of when the state, i.e. the administration, due to illegal actions transgresses citizens' interests. If this is the case, firstly and primarily the action should be cancelled. Anyone subject to such wrongdoing has the right to sue for indemnification. The defendant in such cases is the respective state body which is responsible for the wrongdoing. A specific civil servant cannot be a party in such a litigation. The citizen whose interests have been violated has the right to sue for all damages that he/she is able to prove. On its side, the administration which has indemnified the citizen can compel its own civil servant(s) to incur the respective costs paid.

5.14

Citizens can appeal any administrative Act. Some Acts are exceptional cases and constitute exceptions to the above general appealing provision. This is admissible in cases (according to the Constitutional Court's decisions) where state interest prevails over individual interests -- for instance, when national defense or territorial integrity are at stake. In carrying out the legislative reform, the Supreme Administrative Court was set up, which is specialised in treating specifically administrative disputes.

Tacit refusal to issue a decision is tantamount to an administrative Act. The tacit refusal can be appealed according to the same procedure as for administrative Acts. The present provision constitutes an old shortcoming of the public administration. It is actually assumed that the administration is in a position to not deal at all with a specific problem, and therefore to not issue any answer. In my opinion, answering any citizen's request should be mandatory. A step in the right direction is the AA, art. 1, item 4, which stipulates that the administration has to answer requests, letters, applications, etc. submitted by citizens.

5.15

Anyone whose interests have been jeopardized [can challenge an administrative decision before a court]. There are no legal or other obstacles that could prevent individuals or groups from relying on legal aid. Having legal aid or not rests entirely at their own discretion. For civil lawsuits, it is the prosecutor who is in a position to initiate a lawsuit on behalf of bodies not able to present and defend their own interests.

6. PUBLIC SERVANTS AND POLITICS

◆ Legal provisions defining the principle of professional independence of public servants

6.1

The CSA, art. 7, item 1, lays down mandatory prerequisites for being appointed to civil servant positions. The individual should:

- be a Bulgarian citizen;
- be of legal age, i.e. at least 18 years' old;
- be free and not under judicial disability;
- not have been sentenced to prison for a premeditated crime of a general nature, regardless of his/her having being rehabilitated (This prerequisite points to more severe requirements toward civil servants since in principle rehabilitation is supposed to retroactively erase the consequences of any conviction.);
- not be denied certain positions based on other regulations.

Item 2 of the same article contains explicit conditions that would prevent individuals from holding civil servant positions. Barred from appointment to civil service positions are individuals who:

- are in direct hierarchical subordination of management and control to a husband or wife, relative of direct descent, relative of collateral descent until the 4th degree inclusive, or relative by marriage until the 4th degree inclusive;
- are single traders, procurators, or trade representatives;
- are MPs;
- are counsellors in a municipal or a regional local council (for municipal administration only);
- hold managerial or supervisory positions in a political party;
- are already employed under a labour contract (according to the Labour Code).

◆ Political affiliation and activities of public servants

6.2

This question has been answered above. I would emphasize only the principle that the civil servant is free to affiliate to political parties and organisations but without holding a leadership position. Also, in his/her activity as a civil servant he/she must not be influenced by any political considerations.

◆ Contacts with political parties/parliamentary organisations

6.3

The lobby issue has not been explicitly regulated. However, I consider that the interpretation of other regulations tends to rule out the possibility of a civil servant setting up lobbies for political organisations.

◆ **Role of public servants in policy-making**

6.4

The question of a civil servant's activity in terms of political prejudices has been discussed above. In accordance with the CSA provisions (art. 7, item 4), any discrimination, privileges or restrictions based on race, nationality, ethnicity, gender, descent, religion, beliefs, party and trade union affiliation, or personal or social property status are ruled out.

6.5

Yes. This is a common practice in several ministries and other state administrations. Ministers and line managers rely on policy advice provided by both formal advisors and civil servants. Being asked for policy advice does not directly influence a civil servant's pay or career perspectives.

◆ **Changes of officials on changes of government**

6.6

It has happened [replacement of officials by incoming governments]. Without openly recognizing political reasons, civil servants have been transferred to inferior positions or dismissed with each government shift. This has created an atmosphere of insecurity and has demotivated civil servants. The threat of political "cleansing", without being a regular practice since 1989, is seriously thwarting civil servants' performance. The main rationale of the prospective CSA is to radically stop the practice of political "cleansing" and to therefore provide for the stability and independence of the civil servant's status. Enforcing the CSA would rule out the possibility of dismissal or transfer of a civil servant for political reasons. The reasons for dismissal are strictly defined and do not rely on the discretion of individual managers. This law aims to establish a stable administration to service any government.

6.7

Those officials performing political functions are not civil servants, and they are not under the protection of the CSA regulation. Their powers stem from the tenure of the respective minister and his political confidence. Arrangements for the replacement of permanent public servants are strictly defined and should not be compared with those of political officials.

7. STANDARDS OF CONDUCT; MECHANISMS FOR ENFORCEMENT; SANCTIONS

◆ Regulation of administrative functions

7.1

In the AA the main principles of civil servants' activity have been outlined. These principles are: legality, transparency, accessibility, responsibility and coordination. It is stipulated that civil servants carry out their activities in accordance with the Constitution (its norms have immediate effect), laws and by-laws. The specific rules for civil servants' behaviour are based on their liabilities, which are defined in detail in the CSA, and have been set out above. In parallel with these provisions, their conduct is subject to regulation by the respective administration's Functional Guidelines.

7.2

Notwithstanding 7.1 above, I consider it a sound decision to elaborate an Ethics Code, which would comprise and regulate the informal relationships between civil servants and citizens.

◆ Transparency in decision-making

7.3

The transparency principle has been explicitly included in the AA, and specifically in its art. 2. I consider it important to set normative guarantees to prevent or restrict the possibility of so-called "tacit refusals" by the administration, since citizens have the right to receive answers to their applications and pleas.

7.4

In accordance with the AA's Art. 2, item 3, the administration is under order to grant information that is regulated by law. This law is about to be passed. The principles of granting information take into account different sorts of issues, such as: securing state and official secrets, securing the personal inviolability of individuals, and on the other hand, ensuring transparency, respecting the rights of citizens and keeping legal bodies informed.

7.5

In principle and based on the provisions of Art. 15, item 2, of the Administrative Procedure Act, administrative decisions are issued in writing. They are to contain certain mandatory properties which, if overlooked, render the administrative decision null and void. Public servants involved are in principle identifiable but they are not personally liable for what has been stipulated. Motives consist of a mandatory property of each administrative decision. Lacking motivation implies a decision's impropriety. It is worth mentioning that simply pointing out the legal rationale of issuing the decision is not a thorough and satisfactory motive. Mentioning the body that has issued the decision is a mandatory property of the decision. It is not necessary for the public servant who took part in its elaboration to be mentioned, and in this sense the answer to the question is negative [identification of the public servants involved]. I find the present regulation appropriate since what really matters to those

addressing the administration is the authority and not the specific authors. The responsibility of the state is admitted by the respective institution. The specific civil servant who produced the document is prone to internal liability.

7.6

There are no specific provisions, other than those already set out, to encourage public servants to report wrongdoings.

◆ Standards of conduct of public servants

7.7

Elaboration of an Ethics Code is ahead. No principles of ethical conduct have been systematised so far. Related to a corruption combatting policy. some principles of conduct have been sporadically discussed in the broadcast and printed media.

7.8

Breaches of required standards of conduct are subject to disciplinary action, to be undertaken by the recruiting body at the instigation of the Disciplinary Commission. Public servants are bound to criminal prosecution under the general provisions of the Penal Code, keeping in mind some aggravating circumstances for public servants holding management positions at the moment of wrongdoing.

7.9

The structure of disciplinary actions has already been defined. It is settled in the CSA. The civil servant has the right to present all of the proof that he/she considers relevant before the Disciplinary Commission. Decisions, if they imply punishments, are to be taken with a 2/3 vote. Afterwards, the Disciplinary Commission presents its decision to the body that initiated the disciplinary action. The decision to inflict disciplinary action must be in writing and necessarily contain specific motives. The decision can be appealed before the court. There is a special provision that stipulates that, had the civil servant been refused a hearing, the court should rule out the action without considering the problem.

7.10

An Ethics Code is to be elaborated. For the time being no institutional arrangements have been made for settling ethical problems.

◆ Mechanisms preventing incompatibilities and conflict of interest

7.11

To my knowledge no legal and institutional mechanisms other than the respective arrangements of the CSA and the AA have been established. The CSA, art. 6, item 2, contains reasons for avoiding possible conflicts of interest based on status improprieties.

7.12

This question has been answered in 6.1. There are no legal provisions setting restrictions on leaving the public service.

◆ Mechanisms for combatting corrupt activities

7.13

The concept of corruption has two sides: normative and everyday life perception. The normative side is to be addressed primarily and foremost. Corruption is treated in the Penal Code through interpretation of the bribe issue. In the present analysis the passive bribe is at stake since it is the most characteristic to the administration. A passive bribe is interpreted in the Penal Code in three ways:

- when a civil servant receives property benefit in order to undertake legal actions;
- when a civil servant receives property benefit in order to undertake actions that constitute administrative transgressions;
- when a civil servant receives property benefit in order to undertake illegal actions.

A bribe is a serious crime but it is rather difficult to witness and report.

The recruiting body and the Auditing Chamber are responsible for tracking down and dealing with corrupt actions. But the main shortcoming of this control is its being retrospective. A more effective mechanism of current control and prevention should be put in place.

7.14

The only body responsible for investigating allegations of corrupt activities is the Attorney-General's Office. The court has the decisive word when deciding on the appropriateness of any allegations.

7.15

The legislature is absolutely independent, based on the Constitution and the Legislature Act.

7.16

There are no special courts for civil servants. They are investigated under the general arrangements of the Penal Code. It is the practice for some institutions (military necessarily) to set up specialised investigation, prosecution and court procedures.

C. PUBLIC SERVICE DEVELOPMENTS AND CONSTRAINTS

8. PUBLIC SERVICE DEVELOPMENT

◆ Government action on public service development

8.1

Actually the development of the administrative structure stopped at the end of the 1960s, i.e. on the verge of the first wave of industrialization. Industrialization did not exert an essential influence upon government structures, although several attempts were undertaken to reform them before 1989. The inefficiency of administrative reforms was due to the highly centralised and ideological government structure. Performance criteria, if any, were thoroughly separate from the standards of economic efficiency and political neutrality. After 1989, despite the new Constitution, no purposeful actions were put in place in order to create efficient administrative structures, and thus the process of disintegration of the administrative system continued.

Therefore, up until the current government's programme, "Bulgaria 2000", which is now under way, the system of public administration could be defined as reactive in terms of organisation and functionality. This feature implied a high degree of uncertainty and improvisation.

8.2

Yes. The *Strategy for the establishment of a modern administrative system in the Republic of Bulgaria* is an integral part of the government's "Bulgaria 2001" programme. In terms of administrative reform, the programme aims to:

- create a new administrative structure to include:
 - a mechanism of overall management of public administration;
 - common organisational rules of management and supervision;
 - definition of job position and function hierarchy;
 - definition of the essential job descriptions;
- establish a system of coordination among state bodies;
- endorse and guarantee the civil servant's status, which implies:
 - depolitization of their status and separation of the political process from managerial decision-making;
 - introduction of the competition principle in recruitment and clear-cut rules for career advancement;
 - creation of conditions and mechanisms for raising the professional skills and for retraining civil servants;
 - development of specific programmes for qualification;
- improve the mechanisms and structures for coordination of multilateral and bilateral financial and technical assistance by means of international institutions, donors, and organisations;

- ensure that the judiciary doctrine is in compliance with the principle of separation of powers and with democratic social relationships;
- launch an active information policy to ensure transparency with regard to the process of change within the public administration.

8.3

See 8.2 above and 8.4 below.

8.4

The main project [for development/reform of the public service] is the reform of the judiciary as a basis of administrative reform, which comprises:

- enforcement of the Act of Administration;
- completion of the Civil Servant Act at second reading and passage in parliament;
- elaboration of the respective Functional Guidelines of law enforcement;
- elaboration of the Law for Access to Information;
- elaboration of the Law on Normative Acts;
- elaboration of the Amendment to the Public Procurement Law.

8.5

Yes. Initiated by the Council of Ministers, a programme for counteracting corruption and criminality has been passed in parliament. The Prime Minister has made a declaration on this issue.

◆ Staffing strategies to facilitate EU accession

8.6

There is no such overall strategy [to meet staffing needs arising in connection with preparations for EU accession]. On a larger scale there is still an overlapping of different, sometimes conflicting, principles in the organisation of work in the administration. There is a deliberately closed system of institutions that impedes a unified public policy, including on staffing needs. A solid information basis for government decision-making is lacking, which thwarts the elaboration of an overall strategy in this respect. For this reason staffing needs are met separately, depending on the individual administrations.

8.7

See 3.5 and 8.6.

◆ Resourcing public service development

8.8

To my knowledge there is no system of central staff allocation to public service development with regard to public servants. On the other hand, all of the staff of the central administrations' political bodies have been recruited in compliance with the main strategic reform objectives.

8.9

See above.

External assistance and conditions**8.10**

With a view to the EU accession process, considerable assistance is being granted to the Republic of Bulgaria. However, it is impossible to track due to the lack of co-ordination in the use of grants and the overlapping of funds and activities. As has been reported, nearly all of the PHARE projects include information system elaboration. But in most cases this is done separately, without any co-ordination between projects and government activities. Therefore, the accountability of the institutions receiving grants is rather poor.

8.11

External conditions have been imposed related to EU accession, and to obligations which Bulgaria has assumed towards the IMF. The CSA itself is such a condition. The covenants with the IMF concern restructuring the administrative machinery. Specific figures are not publicly released, but a considerable reduction in the number of officials is to take place.

D. NUMBERS AND TABLES

9. DATA

◆ Numbers and distribution of public servants

NOTE: The recent division between state administration and the civil service has not been recorded by the National Statistics and by the individual administrations' databases. Prior to the enforcement of the Administration Act and the elaboration of the Civil Servant Act, no such distinction has been made. For this reason all of the employees in the central and local administration are referred to as to *state government servants*.

9.1

	1994	1995	1996	1997	1998
Total	4 741 244	4 745 424	4 749 223	4 749 476	4 749 600
Government Servants	75 263	76 084	77 231	78 689	77 429
Local Government	n/a	n/a	n/a	n/a	n/a
Private Sector	n/a	n/a	n/a	n/a	n/a

9.2 ---

9.3 ---

9.4

n/a specifically.

Acquiring the knowledge of a foreign language is encouraged by the administrations, and those persons with foreign language skills are in a better position to be recruited.

◆ Pay levels

9.5

Grade/Function	Basic Monthly Payment per Grade (BGL)¹
1 st	53 500
2 nd	58 900
3 rd	61 500
4 th	66 900
5 th	74 900
6 th	82 900
7 th	93 600
8 th	101 700
9 th	104 300
10 th	112 400
11 th	120 400
12 th	131 100
13 th	144 500
14 th	163 200
15 th	203 300
16 th	238 100
17 th	262 200
18 th	288 900
19 th	321 000

9.6

I do not think so [different pay levels in special branches of the administration]. The data provided below gives evidence of a rather unified payment approach.

Administration	Average Monthly Payment (BGL)
Foreign Office	119 588
Energy Committee	136 971
Ministry of Agriculture	137 347
Ministry of Culture	141 561
Ministry of Education and Science	122 800
Ministry of Environment	153 080
Ministry of Justice and European Legal Integration	241 240
Ministry of Industry	173 479
Ministry of Regional and Urban Development	128 398
Ministry of Labour and Social Policy	180 105
Ministry of Tourism and Trade	151 161

¹ Current exchange rate BGL 1800 = US\$ 1

9.7

No accurate and systematized data are available. I am not in a position to indicate any minimum wage as there is a substantial variation per branch. The average level is not available for analysis due to the large differentiation per position. For instance, it is common practice for a top manager in the banking sector to have a monthly wage of no less than US\$ 3,000 (BGL 5,355,000) while concurrently a front-office clerk in the same bank receives no more than BGL 500,000. In other branches, the average payment is considerably less and closer to the state administration rates, especially with respect to lower positions.

◆ **Turnover rates among public servants**

9.8 n/a

9.9 n/a

◆ **Redundancy and termination rates among public servants**

9.10 n/a

9.11 n/a

9.12 n/a

◆ **Training of public servants**

9.13 n/a

9.14 n/a

9.15 n/a

◆ **Disciplinary proceedings against public servants**

9.16 n/a

E. THE JUDICIARY

10. DATA ON THE JUDICIARY

◆ Branches; hierarchical structure; distribution of officials

10.1

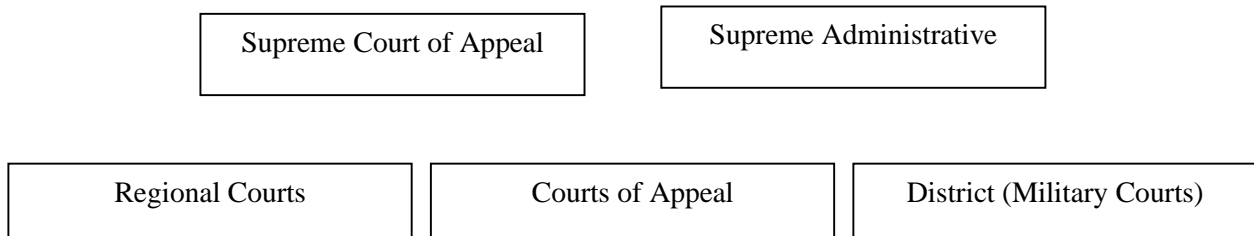
According to the Constitution's art. 119 and the Judiciary Act, justice is rendered by regional, district, military and appeals courts. This system is supplemented by the Supreme Court of Appeal and the Supreme Administrative Court.

There are no specialised courts.

The Constitutional Court does not constitute a part of the judiciary.

10.2

The hierarchical structure of the courts is as follows:



Note: During the period 1994-1997 the respective regulations did not foresee a three-tier court structure, which explains why the Courts of Appeal had not been set up prior to 1998.

10.3

Number of judges:

	1994	1995	1996	1997
District Judges	370	374	375	380
Junior Judges	80	81	81	81
Regional Judges	520	558	560	580

10.4

	1994	1995	1996	1997
Bailiffs	168	205	205	205
Notaries	89	90	92	110

◆ Integrity of judges

10.5

The Constitution's art. 117 and the Judiciary Act's art. 13 deal with the problem of judges' independence. Judges' irremovability, which is effective after three years' employment as a judge, is regulated by art. 129 of the Constitution and by art. 10 of the Judiciary Act. The same Acts regulate the issue of judges' immunity.

10.6

Acts regulating judicial procedures do not foresee a special voting majority. An ordinary majority is sufficient for their amendment.

10.7

In accordance with art. 129, item 1, of the Constitution, and articles 16, 27, and 30 of the Judiciary Act, all judges are to be appointed to office by the Supreme Judiciary Council. The Supreme Court of Appeal's chairman proposes the appointment, promotion, demotion, transfer to a new post or dismissal of the chairmen and deputy-chairmen of the regional, military, and appeals courts. The same person is also responsible for the appointment, promotion, demotion, transfer to a new post or dismissal of the Supreme Court of Appeal's own judges. The Supreme Administrative Court's chairman is responsible for the professional position of the respective judges of the Supreme Administrative Court. The appeals and military courts' chairmen are responsible in this respect for the respective judges of those courts. The district courts' chairmen are responsible for the respective judges and for all the regional judges, regardless of their professional position.

In accordance with art. 30, item 2, of the Judiciary Act, the Minister of Justice and European Legal Integration is authorised to make proposals for all grades.

Each judge is eligible for appointment to the position of judge in the Supreme Court of Appeal and the Supreme Administrative Court provided he/she has worked 12 years and has a good professional record.

10.8

Salary levels have changed as follows:

	1994	1995	1996	1997
District judge	11 400	18 250	24 640	264 510
Regional judge	9 450	15 040	20 440	215 120

Note: The above-mentioned salaries refer to the basic position. Additional payment according to rank has not been taken into consideration.

10.9

During the period 1994-1997 the turnover of justice personnel was obvious, but for different reasons – retirement, transfer to other positions, mainly in the legal field, due to better income opportunities.

	1994	1995	1996	1997
Judges departed	65	77	56	45
Judges recruited	193	65	142	42

70% of the two groups (departed and recruited) are on the regional courts' staff.

10.10

During the period 1994-1997 no judges were removed due to a change of government. Such removals contradict the provisions of the Constitution and the Judiciary Act.

◆ Court proceedings

10.11

During the above-mentioned period, civil, administrative, penal and notarial cases were carried out as follows:

	1994	1995	1996	1997
Regional Courts				
Total completed	471 152	483 741	474 491	681 456
Number of sentences	8 182	10 718	15 525	22 802
Persons sentenced	15 427	14 671	20 734	30 540
District Courts				
Total completed	138 587	132 645	117 218	127 133
Number of sentences	1 051	1 318	1 414	1 592
Persons sentenced	1 451	1 893	1 967	2 380

10.12

The average duration of cases treated in the first instance amounted to three months. Individual cases subject to consideration by a different instance could last up to three years. The ratio of cases completed within three months versus the total number of completed cases is as follows:

	1994	1995	1996	1997
District Courts				
Civil cases (excluding company cases)	44.95%	43.17%	39.18%	45.00%
Penal cases	66.90%	61.34%	55.56%	61.10%
Regional Courts				
Civil cases	57.34%	54.92	53.79	53.51%
Penal cases	61.00%	53.55%	53.79%	51.26%

10.13

The Bar is supposed to provide legal assistance. Furthermore, during the 1994-1997 period according to the regulations the court was formally bound to ascertain the objective truth by means of collecting evidence or by instructing parties to present such evidence.

◆ Training of judges**10.14**

In 1997 training of judges on the EC's judiciary, and specifically on "European Community Law and its Implementation by the Court" (under the PHARE Programme) took place, in which 70 judges of different levels participated. In 1998 a similar training programme was carried out.