



# Democratic Backsliding in Bulgaria

Institute for Market Economics

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## **Intro**

In this paper IME analyses the state of democracy and free enterprise in Bulgaria, investigating the roots of democratic backsliding in recent years and highlighting the main challenges that citizens in Bulgaria face in regard to democratic and market values. The paper starts with the broad picture that is derived from the most respectable international sources on democratic development in Bulgaria. This introductory section is followed by in-depth analysis of the main challenges - investigating the drivers and possible solutions. This section is also supported by IME work in recent months that included a series of roundtables with experts, surveys among experts and students, and focus groups with young people.

The turbulent political environment in recent years makes the focus of this paper ever more important. Since 2013, Bulgaria entered a period of severe political instability and erosion of democracy, which poses great challenges to the future development of the country. While the economy is growing at a rate above the EU average, incomes are rising and unemployment is trending down, and the political and media environment is worsening, which negatively affects the state of democracy in the country. Now in 2017, in the midst of another caretaker government and the coming election, we explore in detail the most critical issues that are undermining the potential of the country. Democratic and market values are the main prism through which all issues in this paper are investigated.

## **Democratic Development in Bulgaria**

There are numerous international reports which investigate democratic development throughout the world in great detail and on a yearly basis. These reports come from highly respected sources and are usually perceived as a fair judgment of the current state of affairs in the different countries<sup>1</sup>. Their credibility is widely accepted throughout the world and in practice, approved by government officials, as they rarely question their country-related findings. Based on these international comparisons and also on some more in-depth analysis of democratic issues in the country, one can get acquainted with the broad picture of democratic backsliding in Bulgaria. To put that into perspective, we will start with a short description of the political landscape, which has been characterized by substantial turbulence in recent years.

### ***Political Landscape***

Bulgaria joined the European Union (EU) in 2007. At first EU entry was viewed as a fundamental step that would inevitably lead to a positive change in terms of stronger democratic institutions and economic growth. The belief that the pressure for change coming from the EU would be sufficient for a stronger democracy in Bulgaria proved to be

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<sup>1</sup> These reports are widely used throughout the world, as they have sound methodologies and strict standards for research and data gathering.

false. There is no doubt that EU membership did create more economic opportunities and put additional pressure toward much needed democratic reforms in Bulgaria. Nevertheless, the overall political environment remained poisoned, as the real democratic challenges stayed predominantly on the domestic political scene.

The economic crisis of 2008-2009 put an end to a decade of unprecedented economic growth in the country. Higher unemployment and fiscal tightening after 2009 created social pressure on the political parties and made the political environment much more unstable. Even though these processes had been smoldering beneath the surface for some years, Bulgaria eventually entered a period of political instability in the beginning of 2013, after the government resigned amidst mass protests against high electricity bills. Since then, the political environment worsened, as the public debate steadily shifted from economic matters to more general democratic issues such as state capture and overriding institutional failure. No government in Bulgaria has been in power for the full mandate of four years after 2013 and the country has experienced three caretaker governments(2013, 2014 and 2017), the latest of which is still in power as of March 2017.

The game changer came into play in the summer of 2013 when the centre-left government elected an extremely controversial media mogul and political figure, Delyan Peevski, for head of the State Agency for National Security, causing unprecedented mass protests that continued for over a year<sup>2</sup>. Peevski did resign immediately, but the sole act of his appointment changed the political landscape for years to come. The protests that followed were viewed as an "*awakening of the civil society*" in Bulgaria as civil society organizations were spurred by a shared desire to protect fundamental democratic values (being also the strongest movement against political corruption). In that sense, this second bout of protests in 2013 was quite different in its nature in comparison to the rally against high electricity bills just a few months earlier. Petty household economics gave way to genuine social discontent with state capture, corruption and trading in influence.

In mid-2014, just a few weeks before the government that came under fire officially resigned, the fourth biggest bank in Bulgaria - Corporate Commercial Bank, Corpbank, failed in an extraordinary fashion. The bank was owned by Tsvetan Vassilev (now in exile in Belgrade, Serbia), who in his own words was in a business partnership with the above-mentioned Delyan Peevski and invested in various political projects, including the purchase of quite a few media outlets<sup>3</sup>. In June 2014, "*a major conflict between Vassilev and Peevski led to a run on the bank's deposits and a banking crisis*"<sup>4</sup>.

Corpbank was viewed as the "political bank" in Bulgaria, as a serious portion of the holdings of state-owned enterprises, state agencies and ministries had been kept there, which gave

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<sup>2</sup> To understand in great detail the protests of 2013 check the book "#Protest" (2013) – see [here](#).

<sup>3</sup> See more detail on this in [ktbfiles.com](#) (see [interview](#) with Tsvetan Vassilev from September 2016 and a follow-up [article](#) by Petar Ganev, IME)

<sup>4</sup> Nations in Transit 2016, Freedom House (see [here](#))

the initial push for the rise of the bank. Corpbank invested mostly in connected companies, which turned out to be disastrous for the bank. Bulgarian National Bank (BNB) reported<sup>5</sup> that there had been extremely poor documentation for as much as 3.5 billion BGN out of a total loan portfolio of 5.4 billion BGN<sup>6</sup>.

The rise and fall of Corpbank is probably the most blatant example of political corruption and the interconnections between politics, businesses and media in Bulgaria that undermine democratic institutions and lead to serious economic costs for the society as a whole<sup>7</sup>. Shedding light on Corpbank's involvement in various political and media projects is crucial for understanding the poisoned public environment that surfaced in 2013 and still dominates the political arena in the country.

The third major political event after the mass protests of 2013 and the failure of Corpbank in 2014 was the resignation of Hristo Ivanov as Minister of Justice at the end of 2015 over the failed judicial reform in the country. Hristo Ivanov was extremely active during the protests in 2013 (as a then-expert for a non-governmental organization) and came to the political scene as a caretaker Minister of Justice in 2014. The new central-right government decided to keep Ivanov in the cabinet and thus hand to him the responsibility of undertaking the much needed judicial reform.

Judicial reform started in 2015, but it encountered significant difficulties when constitutional changes became necessary. In July 2015 a "historical compromise" was reached among the main parliamentary parties, which included texts in the Constitution that provided for the splitting of Supreme Judicial Council (SJC) into two separate colleges - one overseeing prosecutors and the other one - judges, with the goal of removing political influence over courts and "*decreasing the Prosecutor General's excessive influence in the judiciary*"<sup>8</sup>. The proposed constitutional changes were also supported by the Venice Commission in October 2015<sup>9</sup>.

In December 2015 the parliament vetoed the reform's most important parts, thus breaking the "historical compromise". There was no adequate explanation for the sudden shift in the majority's position, which gave rise to speculations about pressure from the prosecution and a deal with the Prosecutor General (PG) behind the scenes.

With this act, the then-government basically proved incapable of undertaking the much needed reform. While SJC was partly reformed (two separate colleges were formed in 2016), the new legal framework retains the political influence over judges and the excessive

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<sup>5</sup> See BNB statement [here](#) (November 6, 2014).

<sup>6</sup> 1.95583 BGN for 1 Euro (fixed exchange rate)

<sup>7</sup> More on the failure of Corpbank here: <http://www.ktbfiles.com/>

<sup>8</sup> Nations in Transit 2016, Freedom House (see [here](#))

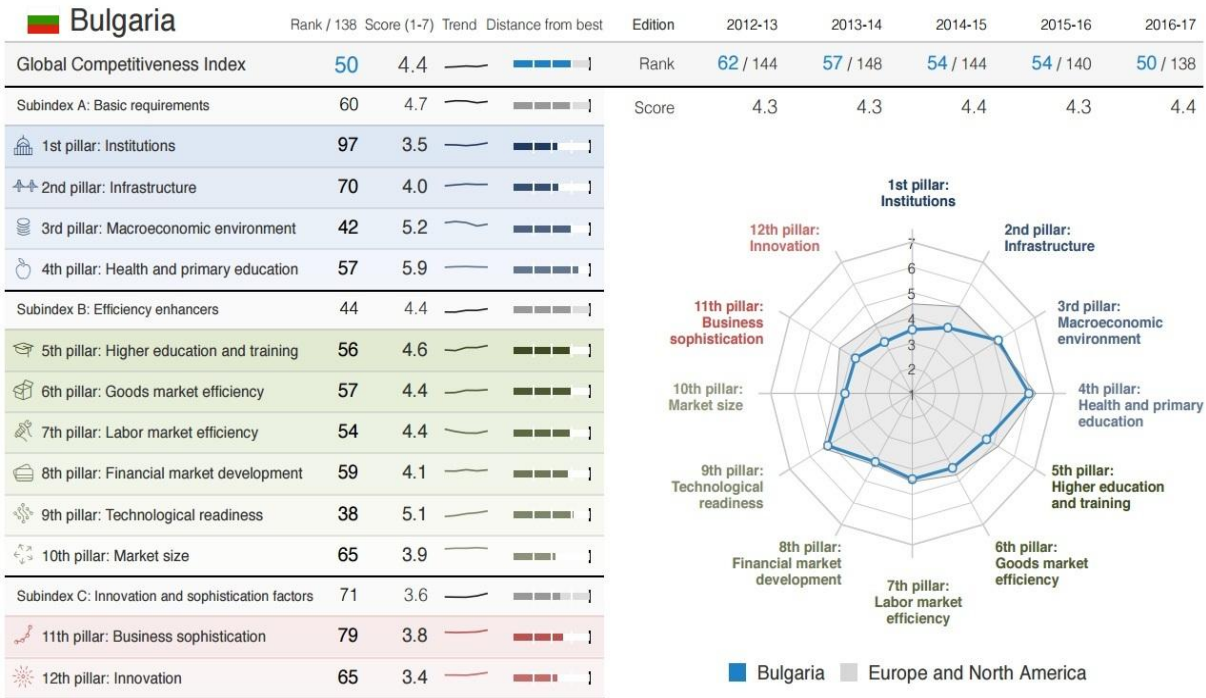
<sup>9</sup> European Commission For Democracy And Law (Venice Commission) Opinion On The Draft Act To Amend And Supplement The Constitution (In The Field Of Judiciary) Of Republic Of Bulgaria, 23-24 October 2015 (see [here](#))

influence of the Prosecutor General over the entirety of the SJC. The veto led to the immediate resignation of the Minister of Justice and a virtual halt to the reform process.

While the resignation did not lead to a wide public outcry, the coalition was shaken and heavily criticized by opinion makers. The government resigned officially at the end of 2016 (after the failure of the ruling coalition in the presidential elections) and the new president appointed another caretaker government in the beginning of 2017. Parliamentary elections are due in late March 2017 and at present the issue of judicial reform is once again the dividing line between different political players.

**Limits to Prosperity**

The quality of democracy in any country has a direct bearing on the quality of life and the level of prosperity in that country, which is why the discussion on democratic backsliding should also be seen in the context of competitiveness<sup>10</sup> and economic development. The Global Competitiveness Report 2016-2017<sup>11</sup> by the World Economic Forum is the most reliable and recent source that investigates the main weaknesses of world economies. In the Global Competitiveness Index Bulgaria ranks 50th out of 138 economies. The most problematic sphere of competitiveness (out of 12 pillars) are the institutions - Bulgaria ranks 97th in that regard, receiving a score that falls behind the average for the western world.



Source: [Global Competitiveness Report 2016-2017](#), World Economic Forum

<sup>10</sup> Competitiveness here is seen in general terms as "the ability of countries to provide high levels of prosperity to their citizens"

<sup>11</sup> The Global Competitiveness Report 2016-2017, World Economic Forum (see [here](#))

The detailed breakdown of the "Institutions" pillar evaluates 21 concrete dimensions of democracy in Bulgaria. Bulgaria receives the worst scores in the sub-categories of "*wastefulness of government spending*", "*favoritism in decisions of government officials*" and "*public trust in politicians*". The first two are more economy-related and mirror the model of economic populism<sup>12</sup> and cronycapitalism that undermines the international competitiveness of the country. It is important to note that in comparative perspective, Bulgaria falls mostly behind the developed world in the sub-categories of "*organized crime*" and "*judicial independence*", which are a sign of the serious problems in the judiciary.

In addition to these findings, respondents to the World Economic Forum's Executive Opinion Survey were asked to select the most problematic factors for doing business in their country. In the case of Bulgaria, corruption is by far the most problematic factor, being way ahead of other factors such as an inadequately educated workforce, poor work ethic and an inadequate supply of infrastructure<sup>13</sup>. To put that into perspective, one may conclude that weak institutions and corruption are the main factors that undermine the competitiveness of the Bulgarian economy and limit economic growth and prosperity.

### ***Democratic Backsliding***

The Economist Intelligence Unit in their latest report "Democracy Index 2016" highlight that there is democratic backsliding throughout Eastern Europe and "*a mood of deep popular disappointment with democracy*"<sup>14</sup>. In the earlier version of their report<sup>15</sup>, the EIU warned that the 2008-2009 economic crisis had a disproportionately negative impact on Eastern Europe compared to other emerging markets, claiming that it "*reinforced an existing mood of disappointment with the experience and results of the transition to democracy and market economies*" and also gave root to "*the rise of populism*". It is important to note that in the EIU's view, the wave of economic populism should not be narrowed down to pure economic matters, but should be viewed as "*a much broader moral, social and cultural challenge to the old established parties*"<sup>16</sup>.

Evaluating the current state of democracy in Bulgaria is of crucial importance, but this should also be done in a dynamic fashion, i.e. from the perspective of time. The report by Freedom House, Nations in Transit<sup>17</sup>, is one of the best sources to investigate the dynamics of democratic developments in Bulgaria since EU membership in 2007. In Nations in Transit

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<sup>12</sup> By economic populism here we mean economic policies (and political rhetoric) that is built upon unfunded and unrealistic promises to specific, vulnerable groups of society. Parties and politicians that engage in economic populism usually emphasize aggressive non-market policies and vow support for inefficient government programs (and state-owned enterprises), which are also a source of corruption.

<sup>13</sup> Most Problematic Factors For Doing Business in Bulgaria, The Global Competitiveness Report 2016-2017, World Economic Forum (see [here](#))

<sup>14</sup> Democracy Index 2016, The Economist Intelligence Unit (see [here](#))

<sup>15</sup> Democracy Index 2015, The Economist Intelligence Unit (see [here](#))

<sup>16</sup> Democracy Index 2015, The Economics Intelligence Unit (see [here](#))

<sup>17</sup> Nations in Transit 2016, Freedom House (see [here](#))

2016 Bulgaria is defined as a "semi-consolidated democracy", which is similar to the evaluation of neighboring countries, including Romania. Yet, the country falls behind the Central European countries and the Baltic States that joined the EU back in 2004 in its "democratic score".. Hungary is the only country among these that has underperformed in recent years and has shown results in its evaluation similar those of Bulgaria and Romania.

Bulgaria receives its worst results in Nations in Transit 2016 in the categories of "corruption", "independent media" and "judicial framework and independence". All these have worsened since 2007, meaning that the democratic score of Bulgaria has actually decreased. The biggest decline is in the evaluation of the judicial system, where a negative trend can be traced throughout the whole period. Moreover, the judiciary’s evaluation is the only one to further worsen in recent years (2015-2016). One may conclude that the biggest threat to democracy and free enterprise in Bulgaria is the dysfunctional judicial system, which is in direct relation to the widespread corruption. These challenges are further exacerbated by increasingly dependent media outlets along the entire spectrum –including: electronic media (radio and TV), printed media, and internet media.

| Nations in Transit Category and Democracy Scores |             |             |             |             |             |             |             |             |             | Bulgaria    |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
|  | 2007        | 2008        | 2009        | 2010        | 2011        | 2012        | 2013        | 2014        | 2015        | 2016        |
| National Democratic Governance                   | 3.00        | 3.00        | 3.25        | 3.25        | 3.50        | 3.50        | 3.50        | 3.75        | 3.75        | 3.50        |
| Electoral Process                                | 1.75        | 1.75        | 1.75        | 1.75        | 1.75        | 2.00        | 2.00        | 2.25        | 2.25        | 2.25        |
| Civil Society                                    | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        | 2.25        | 2.25        | 2.25        |
| Independent Media                                | 3.50        | 3.50        | 3.75        | 3.75        | 3.75        | 3.75        | 4.00        | 4.00        | 4.00        | 4.00        |
| Local Democratic Governance                      | 3.00        | 3.00        | 3.00        | 3.00        | 3.00        | 3.00        | 3.00        | 3.00        | 3.00        | 3.00        |
| Judicial Framework and Independence              | 2.75        | 2.75        | 3.00        | 3.00        | 3.00        | 3.25        | 3.25        | 3.25        | 3.50        | 3.50        |
| Corruption                                       | 3.75        | 3.50        | 4.00        | 4.00        | 4.00        | 4.00        | 4.00        | 4.25        | 4.25        | 4.25        |
| <b>Democracy Score</b>                           | <b>2.89</b> | <b>2.86</b> | <b>3.04</b> | <b>3.04</b> | <b>3.07</b> | <b>3.14</b> | <b>3.18</b> | <b>3.25</b> | <b>3.29</b> | <b>3.25</b> |

Source: [Nations in Transit 2016](#), Freedom House

Media dependence on political and business agendas can be clearly seen in another Freedom House publication - Freedom of the Press 2016<sup>18</sup>. Bulgarian media is classified as "partly free" and the main problems that are discussed in the report are mainly related to political pressure, economic dependency and concentration of the market. These issues became clearly visible after 2013<sup>19</sup> and have intensified during election periods<sup>20</sup>. In

<sup>18</sup> Freedom of the Press 2016, Freedom House (see [here](#))

<sup>19</sup> The interviews of Tsvetan Vassilev after the failure of Corpbank shed light on the issue (see [here](#)).



practice, the legal, political and economic environment in which media operates in Bulgaria feeds a model of high political corruption and institutional failure. These findings are fully supported by another highly respected international report - 2016 World Press Freedom Index<sup>21</sup>, issued by Reporters Without Borders. Bulgaria ranks 113th out of 181 countries, the worst standing in the entire EU, and the score of the country has declined in the last 10 years. Bulgaria is now just one place away from the group of countries considered to be in a "difficult situation" and this is "due to an environment dominated by corruption and collusion between media, politicians and oligarchs"<sup>22</sup>.

The latest issue of the Corruption Perception Index (2016) by Transparency International (TI) further supports the main findings discussed above. According to TI, Bulgaria is still the country with the worst corruption perception in the entire EU<sup>23</sup>. Bulgaria ranks far behind all the new member states in the EU (that joined after 2004) and is even below the average score for the Balkans. Based on their analysis of the results over a 19-year period, Transparency International Bulgaria argues that there is "a tendency for a drastic backlog" and "a systematic failure" to fight corruption<sup>24</sup>.

## Defining the Challenges

Based on the broad picture presented above, in recent months IME has focused its work on defining the main challenges to democracy in Bulgaria, investigating their roots and discussing possible solutions. Aside from its purely research activities, IME conducted two roundtables with experts<sup>25,26</sup>, four focus groups<sup>27</sup> with young people and two surveys (one among experts that took part in the round tables and the other mainly among students)<sup>28</sup>.

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<sup>20</sup> In the past few weeks, just prior to the elections, certain media outlets have tried to completely rewrite the recent history (including the failure of Corpbank) in a major campaign, officially breaking the election rules (see [here](#)).

<sup>21</sup> 2016 World Press Freedom Index, Reporters Without Borders (see [here](#))

<sup>22</sup> 2016 World Press Freedom Index, Reporters Without Borders (see [here](#))

<sup>23</sup> Corruption Perception Index 2016, Transparency International (see [here](#))

<sup>24</sup> Transparency International - Bulgaria presents CPI 2016 (see [here](#))

<sup>25</sup> The first roundtable organized by IME, on the state of democracy in Bulgaria, was held on 26th of October (2016) and gathered together around 20 of the most prominent legal and economic experts in the country. More information of the event and some of the positions can be found [here](#).

<sup>26</sup> The second roundtable organized by IME, on the main challenges to democracy in Bulgaria and the role of economic populism, was held on the 1st of February (2017) and gathered more than 60 experts, thought leaders, and policymakers. The first draft version of this report was discussed during the event.

<sup>27</sup> The four focus groups were conducted by Alpha Research in the period November-December 2016. Each focus group gathered 6-8 young people and they discussed in great detail the democratic challenges in Bulgaria. The first two focus groups gathered mainly students (30th of November and 1st of December 2016), while the third gathered young activists from the non-governmental sector (5th of December 2016) and the fourth focused on young entrepreneurs (13th of December 2016).

<sup>28</sup> The surveys were conducted in the period November-December 2016 and covered 20 experts from the first roundtable and 63 students from various universities in Bulgaria.

The general sentiment in both polls is that there has been democratic backsliding in Bulgaria. 45% of the experts and 61% of the students believe that the quality of democracy has worsened in recent years, while only 25% of the experts and 18% of the students see positive developments.

Opinions about the change in the quality of democracy in Bulgaria in the past 5 years

|                               | Survey among experts | Survey among students |
|-------------------------------|----------------------|-----------------------|
| Rather improved               | 25%                  | 18%                   |
| Neither improved nor worsened | 30%                  | 21%                   |
| Rather worsened               | 45%                  | 61%                   |

Source: IME surveys to roundtable participants and students (November-December 2016)

The main driver of the slightly more positive view shared by the polled experts is their strong support for the civil movements and protests of recent years that are seen as an "awakening" of the civil society.

***Causes of Democratic Backsliding***

The surveys and the roundtable discussions showed that the key causes of democratic backsliding are as follows:

On the demand side (i.e. the side of citizens):

- ✓ People are influenced by economic populism - both experts and students believe that economic populism leads to democratic backsliding;
- ✓ People are influenced by dependent media - the rise of propaganda media and the (financial and political) dependence of the mainstream media is seen as a central issue;
- ✓ People are disappointed with politics and are not interested - widespread disappointment with politics leads to lower civic engagement. While protests in recent years are seen as a "civil awakening", these movements are still struggling to become influential.

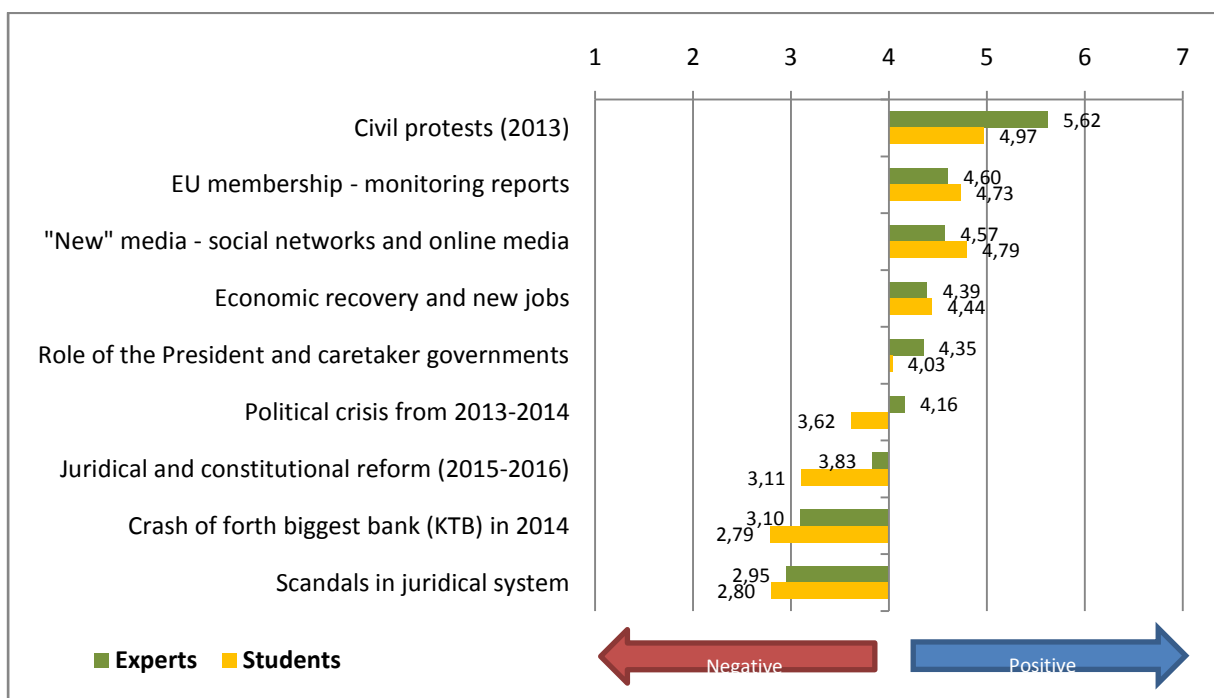
On the supply side (i.e. the side of politicians):

- ✓ Lack of punishment / corrupt juridical system - there is a very strong consensus among the experts in this respect. Lack of punishment is the main facilitating factor for corrupt politicians to play a central role in the democratic process in the country;

- ✓ Crony capitalism / connection between politicians and big businesses / oligarchy - political power is intertwined with economic power, and this interbreeding shapes the political process in the country. A prime example of this is the above-mentioned failure of the fourth largest bank (Corpbank) in Bulgaria, seen as one of the most important political events in recent years;
- ✓ Leading politicians undermine democratic values - students actually see this as the main cause of democratic backsliding. Here the focus is not just on anti-democratic political rhetoric, but also on the lack of political support for the much needed judicial reform. This is also in line with the general perception of ongoing centralization of power and corruption.

It is worth analyzing in more detail respondents' evaluation of recent events that have influenced the quality of democracy in Bulgaria. From the data, it is clearly visible that the positive influence comes from factors that are external to the political elite - civil movements and protests; EU monitoring reports and pressure for reforms; online media and social networks. On the other hand, there is a strong negative sentiment towards the scandals in the judicial system and the pseudo-constitutional reform that was agreed upon (falling short of the so called "historical compromise").

#### Recent events that influenced the quality of democracy in Bulgaria



Source: IME surveys among roundtable participants and students (November-December 2016)

While economic recovery is viewed as a positive factor for the democratic trends in the country, the crash of Corpbank in 2014 is seen more as a political event than an economic one. It is interesting that the political crisis of 2013-2014 is not seen as a purely negative

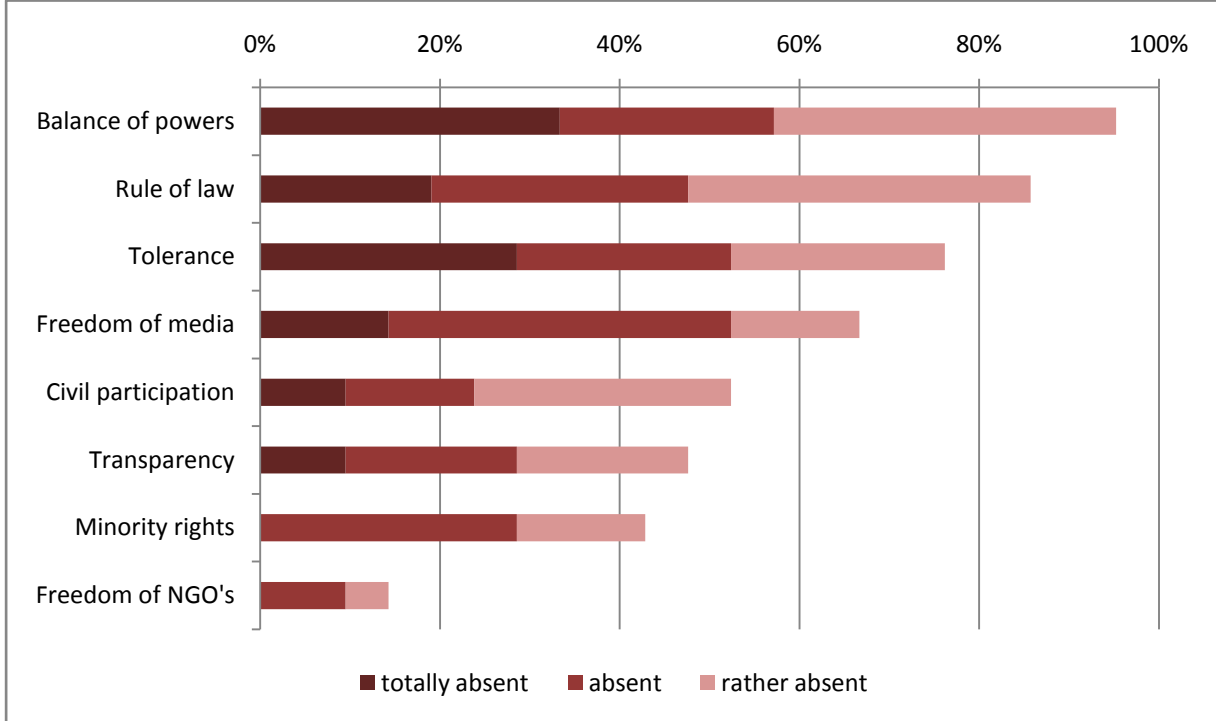
event. Some of the experts actually see it as a positive phenomenon as it gave birth to civil movements, including the initial push for the broader coalition for judicial reform<sup>29</sup>, and made discussion of the most pressing democratic issues (such as state capture and corruption) unavoidable.

**Main Challenges**

There are three main challenges to democracy in Bulgaria that are clearly visible in the polls and the focus groups. Those challenges can be seen in the following graph, which shows the negative sentiment towards several aspects of democracy. Almost all of the experts agree that the effective separation of powers is absent, while more than two thirds perceive problems with the freedom of media and tolerance in the country.

While defining the challenges, we can put together the problems in the judicial system and corruption under the heading of "state capture". By "state capture" we mean a type of systematic political corruption that covers a wide range of state institutions, including not only those of the legislative and executive, but especially the judiciary. While one may argue whether Bulgaria is in fact a captured state, we introduce it here not as a verdict, but mainly as a broader concept that captures the essence of the main challenges to democracy in the country - widespread political corruption, weak institutions and a failing judicial system.

State of democracy in Bulgaria



Source: IME surveys among roundtable participants (November-December 2016)

<sup>29</sup> An example of this is the creation of the civil initiative "Justice for All" in 2015 (see [here](#))

Based on all these findings we can present the main challenges to democracy in Bulgaria:

- ✓ State capture - almost all experts agree that democracy in Bulgaria is failing when it comes to effective separation of powers and the rule of law. There are at least two sub-challenges that are closely related to the general one of state capture:
  - Judicial system - the foundation of this challenge is the overwhelming discontent with the lack of punishment in the country (probably the most pressing underlying issue in the surveys). The focus has shifted in recent years towards the problems of the prosecution and the role of the Prosecutor General;
  - Corruption - the issue of corruption in Bulgaria is closely connected with the more general idea of crony capitalism. This trend, outlined by some roundtable participants, is “the centralization of corruption”, i.e. stronger political influence over certain sectors of the economy, exercised by only a small group of influencers<sup>30</sup>;
- ✓ Dependent media - 2/3 of the experts believe that there is a serious problem with the freedom of the media in Bulgaria. The poll among students and the ensuing focus groups with young people showed even stronger negative views towards the influence of propaganda media;
- ✓ Xenophobia and economic populism - both experts and young people recognize the worsening trend of xenophobia and the rise of nationalists after the outbreak of the migrant crisis in Europe. This trend is already visible on the political field, as the so-called "patriotic" parties are playing a much stronger role in parliament and have even managed to secure 15% of the vote with their joint candidate during the recent presidential elections in Bulgaria. There is also a strong correlation between those who politically exploit the migration crisis and those who are leaning towards extreme economic populism, which is one of the main factors for economic backsliding<sup>31</sup>.

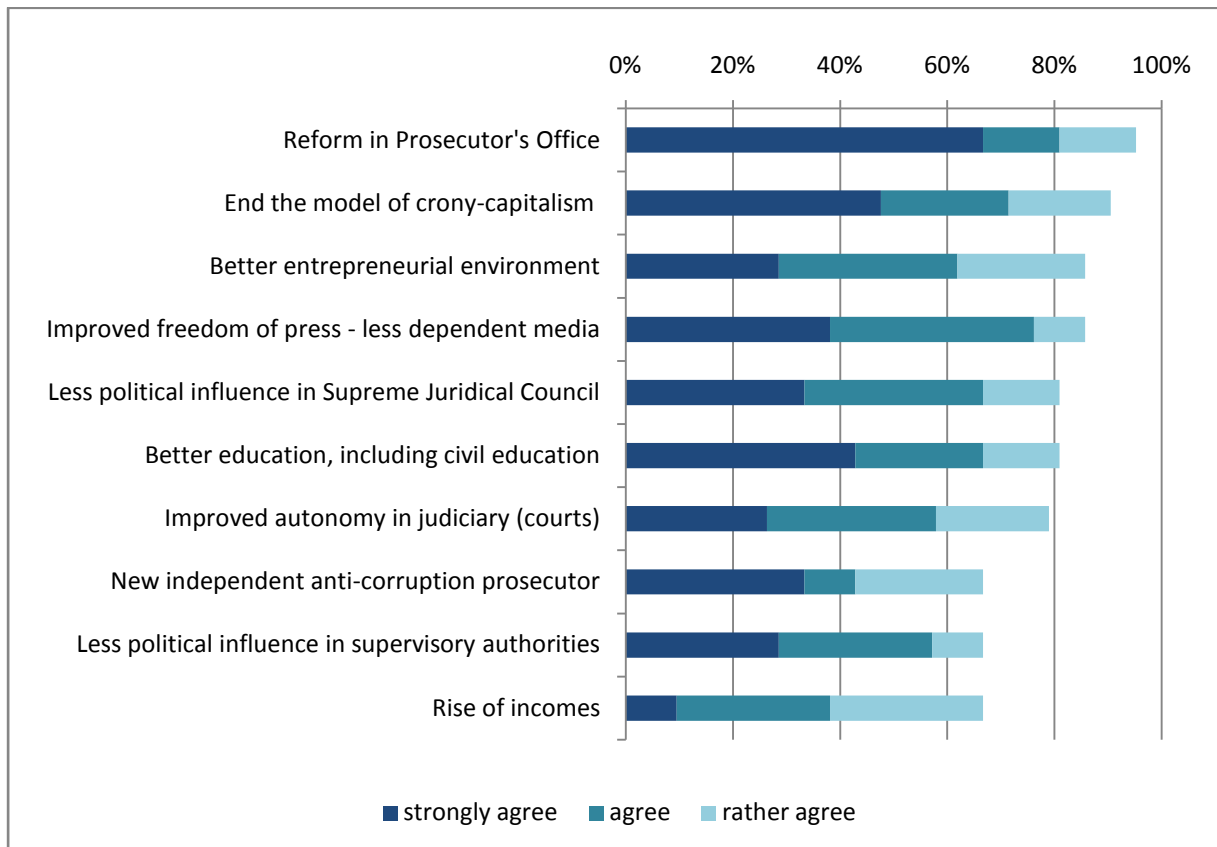
There is general support among experts for several measures that should address the most pressing challenges. While some are broadly formulated - like ending the model of cronycapitalism, others are very specific - like the ideas for reform in the prosecution, which is supported by almost all experts and students. It is interesting that the pure economic measures – like the rise of incomes and an increase in jobs, do not play a central role, which was not the case a few years ago. It seems as the economic recovery has given the opportunity for discussion of broader democratic issues and their rise on the society's agenda.

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<sup>30</sup> Using the language of an economist, the market of influencers is oligopolistic (see more [here](#))

<sup>31</sup> Economic populism and strong anti-refugees positions go hand in hand in the rhetoric of the so called "patriots" in Bulgaria - this is the coalition of the main nationalistic parties. As their support is on the rise in recent years, the positions of the other main parties are also leaning in that direction.

## Measures to improve the quality of democracy in Bulgaria



Source: IME surveys to roundtable participants (November-December 2016)

## Judicial System and Corruption

Based on the above data, we can conclude that the leading challenge to democracy in Bulgaria appears to be the dysfunctional judicial system and the widespread political corruption - discussed above as a form of state capture. As seen in the introductory section of this report, Bulgaria is failing in every international comparison, mainly in the fields of rule of law, judicial independence, and corruption. The general perception among experts, polled by IME, is that there is absence of an effective separation of powers. Thus, the phrase "state capture" as a term that describes both judicial failure and political corruption, seems to be an appropriate label for this challenge.

Those challenges are explored in great detail in the yearly reports of the European Commission (EC) under the Cooperation and Verification Mechanism (CVM). This mechanism was set up upon the accession of Bulgaria to the EU in 2007 to address the shortcomings with judicial reform and the fight against corruption and organized crime. We will use the CVM reports to present the main problems in the judiciary and particularly in the prosecution, as well as the EC's take on corruption in Bulgaria.

## ***Judicial reform***

The key institution governing the Bulgarian judiciary is the Supreme Judicial Council (SJC). In previous CVM reports we can see the expression of persistent concerns about *"the ability of the SJC to fulfill its role as guardian of judicial independence and integrity"*<sup>32</sup>. The 2016 report states that *"controversies have revolved around issues such as non-transparent procedures for judicial appointments, inconsistent practices in disciplinary proceedings, and a lack of follow-up to concerns about potential manipulation of the random allocation of cases in courts"*<sup>33</sup>. The report also discusses that to this has been added *"controversy about political influence in the SJC"*, which is still a major issue in Bulgaria.

Clearly the 2017 report is a bit more positive in that regard - mainly because of the partial reform in 2015, which *"has led to greater transparency in its decision-making, and increased democratization will also feed into the elections to the Council in 2017"*. Nevertheless, *"continued tension among members of the Council, amidst allegations of a lack of objectivity in key decisions, has remained a concern"*<sup>34</sup>.

Moreover, the report in 2017, although not as strong in its rhetoric as the previous one, still states that *"the series of controversies and infighting that have marred the SJC over the past years have fueled suspicion of external influence and affected public confidence in the judiciary"* and kindly reminds the reader that Bulgaria consistently figures among the EU Member States with the lowest perceived independence of the judiciary<sup>35</sup>.

The Bulgarian Prosecutor's Office forms part of the judiciary and is independent of the executive power. At the same time, it plays a central role not only in criminal proceedings but also in a more general monitoring of the administration. The 2017 CVM report states that the *"lack of distinction between its functions and the executive tends to exacerbate suspicions of undue influence and criticisms of a lack of overall accountability of the prosecution"*. Such suspicions are often supported by the leakage of taped conversations<sup>36</sup> between judges or prosecutors and government officials, as well as interviews by high-ranking officials in the judiciary or the executive<sup>37</sup>. Not only is the prosecution extremely centralized and overly powerful, but is *"also at the centre of the debate over Bulgaria's continued lack of a convincing track record of convictions in cases concerning high-level corruption or serious organized crime"*<sup>38</sup>. Over the past ten years, the prosecution underwent several rounds of reorganization as well as legislative and other measures to

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<sup>32</sup> CVM Report on Bulgaria, European Commission, 27 January 2016 (see [here](#))

<sup>33</sup> CVM Report on Bulgaria, European Commission, 27 January 2016 (see [here](#))

<sup>34</sup> CVM Report on Bulgaria, European Commission, 25 January 2017 (see [here](#))

<sup>35</sup> 2016 EU Justice Scoreboard (see [here](#))

<sup>36</sup> See [here](#).

<sup>37</sup> Like the controversial interview with the investigator Boyko Atanasov in 2016 (see [here](#))

<sup>38</sup> CVM Report on Bulgaria, European Commission, 25 January 2017 (see [here](#))

improve its effectiveness. Nevertheless, in spite of these efforts, the results show that significant challenges remain.

### ***High-Level Corruption***

Political corruption is the most apparent factor for democratic backsliding in Bulgaria. The 2017 CVM report states that "*Bulgaria has a very limited track record of concrete cases leading to final convictions in court regarding high-level corruption, the clearest way to show that the fight against corruption is a genuine priority*"<sup>39</sup>. Also, Bulgaria continues to rank among the EU Member States with the highest perceived level of corruption, and corruption is still considered an important issue by citizens and businesses<sup>40</sup>.

In 2015 and 2016 the government made an effort to put in place a unified anticorruption agency with powers to conduct administrative investigations and to check conflict of interest and assets of high-level officials. Nevertheless, "*the anti-corruption law designed to put this body in place has failed to reach agreement in Parliament, illustrating a general lack of political consensus behind the efforts*"<sup>41</sup>.

The final judgment of the 2017 CVM report speaks for itself: "*Bulgaria has been slow to develop a track record in terms of final convictions in serious organized crime cases. In recent years, political decisions to reorganize the key investigatory authorities dealing with organized crime have interrupted progress and had a detrimental impact on results*"<sup>42</sup>.

### ***Recommendations***

The nature of state capture is such that it is a challenge which is extremely difficult to tackle. There are numerous policy recommendations that can be seen in the in-depth CVM reports, but here we will not focus on presenting an exact roadmap for policy change, but rather, on clearly stating the main direction that the policies should take.

There are a few main policy recommendations that can address the challenges in the judicial system and high-level corruption that spring from the data and analysis of our surveys and roundtable discussions:

- ✓ Create a broad coalition for judicial reform - the creation of a much broader coalition for judicial reform is an idea that has been raised and widely supported in all roundtables, focus groups and surveys. A coalition that is both political and supported by various non-governmental movements, which stands for the main (undisputed) ideas behind the judicial reform is crucial for the desired changes to go through;

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<sup>39</sup> CVM Report on Bulgaria, European Commission, 25 January 2017 (see [here](#))

<sup>40</sup> Flash Eurobarometer 445: CVM for Bulgaria and Romania (see [here](#))

<sup>41</sup> CVM Report on Bulgaria, European Commission, 25 January 2017 (see [here](#))

<sup>42</sup> CVM Report on Bulgaria, European Commission, 25 January 2017 (see [here](#))



- ✓ Promoting continued reform in the Supreme Judicial Council (SJC) - while a new SJC will be elected in 2017, there are legitimate concerns that the main issues will not be resolved. The main idea of the reform is to remove political influence over the SJC and to limit the role of the Prosecutor General, as at present this figure acts as a kingmaker, i.e. it dominates the institution. This may require further constitutional changes, which makes the importance of a broad coalition critical;
- ✓ Undertake a deep reform in the prosecution office - a coalition seen to be formed around the goals of transparency, accountability and decentralization of the prosecution office. The main idea is that the figure of the Prosecutor General becomes accountable to the society through a system of checks and balances with the executive and legislative powers, while the entire prosecution becomes less centralized and subordinated to the Prosecutor General;
- ✓ Create an anti-corruption body - there is wide support for the creation of a new anti-corruption body. There are various ideas about how this should be done, among which being the creation of a special anti-corruption prosecution that is independent from the Prosecutor General;
- ✓ Promoting an open budget for the judicial system - many of the operational problems in the judicial system, especially in the courts, can be traced back to poor resource management and bad budget practices. A profound reform of the budget, meaning the proper use of resources, a more balanced distribution of the workload per judge throughout the country, and program budgeting, are to have positive effects on the overall effectiveness of the system.

## Dependent Media

In recent years, especially after the protests of 2013, the Bulgarian media environment worsened and became blatantly dependent on political agendas in various ways. The most recent CVM report points out that *"the media environment is often characterized by low independence and ineffective enforcement of journalistic standards, which has a negative influence on public debate on reforms"*<sup>43</sup>.

A recent report by Freedom House, Freedom of the Press 2016, gives an in-depth and fair judgment of the media environment in Bulgaria. The report states the following: *"Freedom and pluralism in the media continued to decline. A number of print outlets closed because of insolvency, new online resources of questionable quality and professional ethics emerged, and the ownership of print media remained a controversial issue"*. It continues that *"while variety and competition in television and radio outlets is strong, pressure to support the*

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<sup>43</sup> CVM Report on Bulgaria, European Commission, 25 January 2017 (see [here](#))

*politically powerful continued to be a daily phenomenon. Ironically, state-owned television and radio channels were reportedly the most likely to report in a pluralistic way*"<sup>44</sup>.

2016 World Press Freedom Index by Reporters Without Borders (RSF) support this sentiment stating that:

*"Bulgaria is ranked at the lowest position of RSF' World Press Freedom Index inside the European Union. This is due to an environment dominated by corruption and collusion between media, politicians and oligarchs, who include Delyan Peevski, Bulgaria's intelligence former chief, MP and owner of the New Bulgarian Media Group (which has six newspapers)"*<sup>45</sup>.

In addition to this broad assessment, it is worth taking a closer look at the main aspects of the media environment in Bulgaria using the general frame of the Freedom of the Press report.

### ***Legal Environment***

In general, the constitution protects the freedom of speech and the freedom of the press, and the government, in broader terms, respects these rights. In practice, public opinion can be expressed rather freely in Bulgaria. Some laws stipulate financial penalties for media-related offenses - for instance, for causing a bank run. Nevertheless, the effect of these penalties is questionable, as their presence in the law did not provide a better environment during the bank crisis of 2014.

In November 2015, the parliament adopted amendments to the Access to Public Information Act that facilitate electronic information requests and expand the categories of information subject to proactive disclosure, among other improvements. While the law is considered fairly robust, *"state officials sometimes improperly deny information requests or withhold basic information from media outlets they consider unfriendly, and courts are not consistently supportive of access rights"*<sup>46</sup>.

Freedom House also notes that the broadcasting regulatory body is subject to pressure from the government, politicians, and large corporate interests, and is *"notably ineffective in addressing problems such as hate speech"*. This is extremely visible after 2013 and the deepening of the refugee crisis, giving grounds for wider support for the nationalist parties. While the media environment has worsened in recent years, the capacity of the regulatory body to provide for a better environment is questionable.

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<sup>44</sup> Freedom of the Press 2016, Freedom House (see [here](#))

<sup>45</sup> 2016 World Press freedom Index, Reporters Without Borders (see [here](#))

<sup>46</sup> Freedom of the Press 2016, Freedom House (see [here](#))

## ***Political Environment***

The media environment is pluralistic, as there is a vast amount of media outlets that for the most part cover the full spectrum of political views and ideologies. Nevertheless, Freedom House notes that *"editors and journalists routinely shape their reporting to suit the political and economic interests of their owners or major advertisers"*<sup>47</sup>. The New Bulgarian Media Group (NBMG), owned by Irena Krasteva but widely believed to be controlled by her son, a long-time Member of Parliament and member of the Movement for Rights and Freedom political party, Delyan Peevski, has a history of strongly supporting whichever parties are in power. In August 2015, Peevski declared that he held 50 percent of the shares in the Balkan Media Company, the parent company of NBMG, making his role in this business explicit.

The political dependence of certain media also affects the rise of nationalist rhetoric in the country. As written in the report *"some television stations or hosts are openly associated with political parties, and those linked to right-wing nationalist factions often carry hate speech aimed at minorities and refugees"*. Social media campaigns have also been used to exploit the threat of refugees and to support various political agendas.

The cornerstone of the political dependence can be seen in the following judgment of the authors of Freedom of the Press 2016: *"Reporters continue to face pressure and intimidation aimed at protecting economic, political, and criminal interests. Journalists, commentators, and bloggers are sometimes questioned by law enforcement personnel about their activities, and prominent politicians have displayed intolerance for media criticism. Impunity for past crimes against journalists remains the norm, encouraging self-censorship"*<sup>48</sup>.

Freedom House also discusses the emergence of several media outlets and tabloid-style websites in recent years, many of them allegedly owned by Peevski's family. These media outlets *"launched smear campaigns against journalists and editors who produced critical reporting on the government or the media mogul"*. They are seen as a rise of the purely propaganda media, which has no respect for the facts and is involved in the worst kind of political propaganda and personal attacks. Recent data shows that some of the most questionable electronic media in Bulgaria – those that too often fall in line with the term "fake news", are in fact the most visited news pages<sup>49</sup>.

## ***Economic Environment***

While a number of private newspapers are issued daily, quite a few of these are owned by NBMG. The biggest distribution company - Tabak Market, owner of the "Lafka" kiosk chain, is also extremely controversial and its rise is connected to Tsvetan Vassilev and Delyan Peevski in the prime of Corpbank. In recent weeks another scandal around the distribution of media

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<sup>47</sup> Freedom of the Press 2016, Freedom House (see [here](#))

<sup>48</sup> Freedom of the Press 2016, Freedom House (see [here](#))

<sup>49</sup> Infograf (see [here](#))

outlets emerged, as a new satirical magazine was in practice not allowed to reach sales outlets and potential customers<sup>50</sup>.

Foreign media companies own two of the three leading national television stations, bTV and Nova TV; the third is the public broadcaster, Bulgarian National Television (BNT). Freedom House notes that *"both the Bulgarian National Radio (BNR) and BNT generally provide substantive news coverage with a range of viewpoints, but they are vulnerable to political interference"*. BNR for instance was shaken by disputes over its management, editorial independence, wage cuts, and controversial talk-shows back in 2015.

In general *"media concentration remains problematic, and ownership transparency rules are weak and poorly enforced"*. The combination of ownership of various print, broadcast and online outlets, together with a dominant position in the print distribution business, has played a disastrous role for the media environment in Bulgaria. This all became possible through the exploitation of the crony-capitalism model, including the dealings of Corpbank, which *"was widely suspected of funding media enterprises to advance the political and business interests of its owner and his associates, including Peevski"*<sup>51</sup>.

Economic considerations have also led to a dependency on various government programs and subsidies. EU funds have also been used to support certain media (i.e. via paid ads on funding opportunities in selected, government friendly outlets) and keep criticism low. Freedom House points out that *"the limited and increasingly concentrated private advertising market has raised the importance of state advertising and other (de facto) subsidies, especially for local outlets. Individual journalists face decreasing salaries and job insecurity, leading to unethical practices and acquiescence to editorial pressure"*.

## ***Recommendations***

The media challenge is a tough one to tackle, as most media in Bulgaria are privately owned and at the same time any regulation can be seen as a form of censorship. It is clear that there are examples of negative forms of regulation that have actually worsened the media environment in Central Europe in recent years<sup>52</sup>. Nevertheless, there are some steps that can be taken to improve the media environment by removing various artificial dependencies.

- ✓ A better regulatory and legal framework that provides for greater transparency and clear ownership - the set of rules in effect does not provide for an open and transparent media environment and the main regulatory body is in practice dysfunctional. Propaganda media is penetrating both social and traditional media, and this process is not properly addressed in the current state of affairs;

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<sup>50</sup> More on the satirical newspaper "Pras-Press" can be seen [here](#); the scandal that followed can be traced [here](#).

<sup>51</sup> Freedom of the Press 2016, Freedom House (see [here](#))

<sup>52</sup> Hungary is an example of this effect.

- ✓ Clear rules for the distribution or earmarking of any form of public funding (especially EU money) to media - such practices are often used to make certain media outlets dependent on some form of income from the government (at the national or local level). Such transfers should be limited in volume and allocated in a competitive and extremely transparent manner, following strict rules;
- ✓ Reform in the so-called "election campaign" rules and media plans - the design of these rules is problematic, as they encourage various schemes for diversion of public funds (earmarked for political campaigns) and limit the quality of the public debate (being transferred to controversial media outlets). Deep reform in this regard is much needed, as the rules basically restrict media freedom just prior to the elections and various media outlets can be artificially (politically) put forward in the days of the election campaign.

## **Xenophobia and Economic Populism**

The migration crisis that has hit Europe in recent years has had a serious impact on the political arena, bringing a wave of nationalism and populism that threatens both democratic and market values. This trend is also clearly visible in Bulgaria. In practice, after 2013 the various ruling coalitions in Bulgaria have been formed with the (silent) support of nationalist parties, as they replaced the former kingmaker - the Movement for Rights and Freedoms (MRF). MRF is by itself a highly controversial political formation that draws its supporters primarily from the ethnic Turkish minority and has been involved in a number of high-level corruption scandals.

Nevertheless, the rise of nationalist parties in Bulgaria has shifted the debate towards positions that openly undermine the democratic and market values of the society. Also, the topics of xenophobia and economic populism seem to be strongly interconnected, as those political parties that most aggressively exploit the refugee crisis are the same parties that are most extreme when it comes to economic populism<sup>53</sup>. This relation stems out of the fact that these are the parties that undermine both democratic and market values and, being on the rise, they can promote their views on a much greater scale.

## ***Tolerance and Nationalism***

The Turkish and the Roma minorities have been repeatedly used for political gains. The Turkish minority is mainly exploited to secure votes for MRF, but also, through various means, to muster support for some of the nationalist parties<sup>54</sup>. Representatives of the Roma

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<sup>53</sup>The link between xenophobia and economic populism can be seen in the programs and rhetoric of populist left parties such as "Ataka", which is "ultra nationalist and xenophobic, especially anti-Muslim, while also advocating classic left-wing economic and social policies, such as restoring state ownership of major industries and increased spending on education, welfare and healthcare" (see [here](#))

<sup>54</sup> A famous example of this is an incident in May 2011 in which Volen Siderov and supporters of his far-right Ataka party were involved in clashes with worshippers outside the landmark Banya Bashi mosque in Sofia. In

minority, by being economically disadvantaged, are often involved in various forms of election fraud, including vote-selling<sup>55</sup>. These are issues that undermine the fair election process and have not changed throughout the years.

The rise of nationalist parties in Bulgaria since 2013 has clearly followed the deepening of the migration crisis. By that time, the average number of incoming refugees to Bulgaria was usually on the order of a thousand people per year (1993-2012). This has changed since 2013, as refugees increased, reaching a record high of 20 thousand in 2015<sup>56</sup>. While this is not a shockingly high number (in comparison to the total amount of refugees in Europe), it is sufficiently high to penetrate deeply into the media and change the political landscape completely. While the general media environment can be seen as neutral, anti-migrant sentiment (based mostly on public fears of increased insecurity) is exploited heavily by certain media outlets<sup>57</sup>, which then affect public opinion<sup>58</sup>.

Bulgaria has faced hard times in its handling of the migrant inflow, as there are numerous reports of violent treatment, both by officials and self-proclaimed "border guards"<sup>59</sup>. The riot in the largest refugee camp in Bulgaria in the end of 2016 was the best example of the inability of line institutions to deal with the situation. The United Nations' High Commissioner for Human Rights has warned that jailing and criminalization of refugees in Bulgaria is "*inhumane*"<sup>60</sup>.

The migration crisis has not only given rise to nationalist movements, but has once again shown the weaknesses of Bulgarian institutions, and the trend of democratic devaluation, aided by leading politicians and the government itself. The 2016 scandals<sup>61</sup> with the deportation of several Turkish citizens - alleged supporters of Fethullah Gulen (the US-exiled cleric accused by Ankara of masterminding the July 2016 failed coup), to Turkey in the middle of the night, against all legal procedures, has caused outrage only in a limited circle of intellectuals, journalists and civil rights activists, but went unnoticed or ignored by the general public.

### ***Economic Populism***

Economic populism is definitely not a new phenomenon for transition economies, but it seems to play a greater role in recent years. The rise of patriotic/nationalist parties gives a broader base for the promotion of their economic ideas, which traditionally lean towards

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2015 the European Court of Human Rights has ordered Bulgaria to pay damages for this act. More information is available [here](#).

<sup>55</sup> An example of this can be found [here](#) (2015) and [here](#) (2016)

<sup>56</sup> See more data [here](#).

<sup>57</sup> See [here](#).

<sup>58</sup> An example of this is the initially wide support of the so called "voluntary border patrol" (see [here](#))

<sup>59</sup> See the report by Human Rights Watch [here](#) and media coverage [here](#).

<sup>60</sup> See [here](#).

<sup>61</sup> See [here](#) and [here](#).

hardcore economic populism. Needless to say, if these are applied in practice, they could easily shake the macroeconomic stability of the country.

Populism can be viewed as the pursuit of political goals with economic policies<sup>62</sup>, which are often harmful<sup>63</sup> and fail in the long term<sup>64</sup>. Economic populism historically has always been somehow connected to the idea of sovereignty and protection of what is supposed to be the national interest against all foreigners - in recent times this is framed as the "harmful" foreign influence of foreign investors. Home-grown economic populism also plays a major role. Usually it comes in the form of highly controversial economic policy measures, which neglect basic rules (like EU and national fiscal rules) and promote a shocking increase in government spending (mainly on various forms of welfare). The latter has been a long-standing position of nationalist parties in Bulgaria.

Thus, the relation between economic populism and nationalist parties is not surprising as this has been the case for Bulgaria throughout the transition years. As the fiscal position of the country has finally improved (in 2016 the budget had a surplus for the first time since 2008), the fiscal space for populism also gives an incentive for such ideas to grow. Those factors - the rise of nationalist sentiment and the creation of the fiscal grounds for more spending, play a central role in the programs of the main political parties, as they all promise various spending measures, going well beyond what is fiscally possible.

While economic populism goes hand in hand with anti-migrant rhetoric in Bulgaria, it also goes against more general democratic issues by promising various government spending programs and distracting the public debate away from the issues of democratic backsliding (political corruption, media dependency, etc.). Nevertheless, as our findings indicate, those democratic issues have risen to the top of the public agenda and cannot be easily neglected.

## ***Recommendations***

Xenophobia and economic populism have played a major role in the democratic backsliding in recent years. The set of recommendations here involves both practical solutions and broader suggestions:

- ✓ Building institutional capacity in relation to human rights issues - there are numerous examples of actions by government officials and administrative bodies that have been in conflict with international treaties and domestic norms. While these issues are basically covered on paper, institutional weaknesses and lack of proper procedures are usually at the heart of most cases of human rights abuses;

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<sup>62</sup>Robert R. Kaufman, Barbara Stallings, *The Political Economy of Latin American Populism*, Chapter in NBER book "The Macroeconomics of Populism in Latin America", 1991

<sup>63</sup>Simon Wren-Lewis, *What are Populist Policies*, 2016

<sup>64</sup>Rudiger Dornbusch and S. Edwards, *The Macroeconomics of Populism*, Chapter in NBER book "The Macroeconomics of Populism in Latin America", 1991

- ✓ Improved legal and institutional framework concerning migrants - a big chunk of the problem with refugees in Bulgaria is caused by broken administrative procedures, and institutional failures. There should be legal and institutional changes, so that rules and responsibilities are made clearer, including at the border, and human rights violations are limited;
- ✓ Transparency and open data - greater transparency and open data provide for a more adequate public debate and are crucial for understanding various issues that will otherwise be dominated by myths. Improved data on refugees' education and economic status is an example of this;
- ✓ Strict fiscal rules and control on spending - the main result of economic populism is the notable increase of spending, which will threaten macroeconomic stability. Improved fiscal rules and control mechanisms are an appropriate measure that will prevent irresponsible spending and deterioration of the country's fiscal standing;
- ✓ Better education - both on basic democratic values and citizen's rights, and also on economic principles. Economic populism would not find such fertile ground if more voters had economic and financial literacy;
- ✓ Better entrepreneurial environment - economic growth and job creation are fundamentally important for the expansion of the middle class, which is less dependent on politicians and more concerned with broad democratic issues. In the long term, improving the business environment and decreasing the role of state-owned enterprises is crucial for crushing the model of crony capitalism.



## Conclusions

Bulgaria is facing a set of serious democratic challenges in a turbulent political environment. Political instability has dominated the scene since mass protests in 2013, and has shaped the democratic debate in the country ever since. Democratic backsliding undermines market values, reduces the economic growth potential and gives rise to nationalism and economic populism.

The leading challenge to democracy in Bulgaria identified in our surveys and roundtable discussions, appears to be state capture. The latter brings together the problems in the judicial system and the widespread political corruption in the country. These processes are accompanied by a worsening of the media environment, which is increasingly dominated by dependent media and, more recently, by propaganda media. The relation between political corruption and dependent media is a part of the state capture equilibrium, and this has been taken into account in drafting the main policy recommendations.

An additional factor for these negative tendencies is the rise of nationalist parties (after the migrant crisis) and widespread economic populism. These two are working together, as the main political players that exploit the refugee crisis are those that most prominently use economic populism to gain votes. Their rise in popularity has drawn some of the mainstream parties to the same battleground of populism.

The recommendations in this paper confront the main challenges before turning around the trend of democratic backsliding, which limits prosperity and undermines democratic and market values. All of these developments are in a way interconnected, as the paper clearly shows the strong relation between the different challenges - the rise of economic populism and nationalism that is additionally fueling cronycapitalism and political corruption, with the support of a worsening media environment.

These challenges go beyond the purely political spectrum and shall be tackled by the society at large. The role of non-political actors, such as various non-governmental organizations, citizen movements, representatives of various professional groups and the business community, will also be crucial in the years to come.