

COUNTRY REPORT

BULGARIA



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Country Background¹

Type of Regime and Constitutional Law

According to Article 1 of the latest Bulgarian Constitution (1991), Bulgaria is a republic with a parliamentary system of government. The people are the sole fountain of state power and shall exercise this power directly and through the bodies provided for in the Constitution. No part of the people, political party or any other organization, institution of a state or individual may usurp the exercise of the people's sovereignty. Further, Article 4 stipulates that the Republic of Bulgaria is a state committed to the rule of law. It is governed according to the Constitution and the domestic legislation. The European law is applied, too, as the country is an EU member since 2007.

The Constitution shall be the supreme law, and no other law may be in conflict therewith. The provisions of the Constitution shall operate directly (Art. 5). The constitutional law is a branch of public law that creates and regulates the organization of the state. It establishes requirements, forms, and procedures of law-making and holds interaction principles between the highest state bodies. With its specific subject of regulation, constitutional law is the basis of other branches of law. The norms of constitutional law are imperative and of the highest rank, always have a politically oriented and framework character. The Constitution does not include a detailed regulation of all constitutional law issues, leaving room for the subsequent legislation.²

Brief Constitutional History of the Country

The constitutional history of Bulgaria starts after the Liberation from the Ottoman rule in 1878. The very first Constitution (Turnovo Constitution) was adopted on April 16, 1879. It has been qualified as one of the most democratic and progressive constitutions of the time in Europe and contained certain European cultural and civilizational models. Yet, there are many achievements, prototypes of contemporary civil rights and public freedoms. It has established the first democratic practices and representative institutions. Turnovo Constitution guaranteed equality before the law, excluded censorship and ensured freedom of speech and the press. People had the right to participate in different types of associations, to create political and social formations. Democratic governance was institutionalized and embodied in the National Assembly, based on the principle of representation. The National Assembly would function in two variants: a regular National and a Grand National Assembly. The National Assembly debated and passed laws, voted the state budgets and taxes, exercised control over the executive power, etc. The Grand National Assembly would be convened only when significant changes were to be adopted, such as selecting the Prince or Regency, modification or adoption of a new constitution, change of the state

¹ Authors: Prof. Dobrinka Chankova, PhD; Prof. Dobrinka Peicheva, DSc

²Drumeva, E. (2013) *Constitutional law*. 4th edition, Ciela, p. 27-30

borderlines, etc. The established form of political governance in Bulgaria that time was a constitutional monarchy. In 1909 the first Law on Consulting the People on Municipal Affairs was approved, followed by several others.

After the socialist revolution from 1944, a new Constitution (Dimitrovska Constitution) was adopted. A historical change of the form of Bulgaria's political regime was made - from monarchy to republic, and the new ideology became the precondition for the governance of the people. The Constitution contained a provision for direct democracy - "to consult the people". Later, in 1971, an ad hoc law was passed for holding a referendum that would vote on the adoption of yet another new constitution.

The following Constitution of 1971 included provision for referendums. However, in the context of the totalitarian ideology and political system of the time, the referendum could not, and did not, fulfil its democratic purpose. In the political history of socialist Bulgaria, ordinary people could not implement the instruments of direct democracy without the consent of the authorities. It was believed that the main reason why direct democracy, particularly the referendum, has been used to a limited extent in Bulgaria, was the lack of an adequate legal and political-institutional framework, knowledge and compliance with the specifics of the various forms and practices of direct democracy in other countries. Not the least, the totalitarian rule was a factor which negatively affected the political freedoms of Bulgarians.

The latest democratic Constitution of Bulgaria, adopted in 1991, after so-called "tender revolution" from 1989, reflected the refusal of political forces in the country to continue the socialist path of development. It was primarily discussed in the "Round Table procedure" with a broad political representation. The Constitution explicitly provides for holding referendums as a form of direct democracy at the national and local level. It also contains some provisions about initial forms of deliberative democracy. Since 2009, referendums and other direct democracy and deliberative practices have been regulated by a particular Act - Direct Citizen Participation in State and Local Government Act, amended several times, as well as by the Electoral Codes adopted by the National Assembly in 2011, also amended several times, and replaced by Electoral Code from 2014 (under continuous revision).

In summary, the Bulgarian road to constitution-making and deliberative democracy practices in a modern sense was relatively long and uneasy due to numerous political turbulences in history during the last 140 years. After the collapse of the totalitarian communist regimes in Central and Eastern Europe and the re-start of the democratic process, the countries in the region, Bulgaria included, began to build the foundations of the constitutional governance. The forms of civic participation varied considerably depending on the establishment of the political system. During the first wave of democratization, immediately after the "tender revolution" citizens' involvement was related to de-communization and destruction of the authoritarian regime. The first mass civil movement arose, the "street democracy" - manifestations, occupations, strikes dominated as a form of civic mobilization. The removal of legal and political obstacles to freedom of assembly and freedom of

association stimulated this process. The second period of democratization in Bulgaria (approximately until the end of the XX century) is connected to the establishment of the representative democratic institutions and practices, activities of the constituent assembly and the adoption of a new constitution. The third wave of democratization (associated with the first decades of XXI century) is related to the full membership to the EU and NATO, to the adoption of more open and inclusive models of representative institutions, to the gradual opening up of democratic systems to the various forms and procedures of direct democracy and participatory democracy. In this period of the gradual acceptance of civic participation as an important stage of decision-making and the legislative process, we are at the moment.³ Deliberative democracy is a relatively new invention for the Bulgarian constitutional landscape, but it has already numerous manifestations.

Constitutional dynamics

Although a stable act, the latest Constitution of the Republic of Bulgaria is under a permanent constitutional reform process. It is inevitable as it has to follow the development of democracy, political processes, and to meet the requirement of the new social realms. So far, the Constitution from 1991 has been revised six times. The first four revisions - in 2003, 2005 and 2006 (changed twice) were mainly in relation to the reform of the judicial system and to the accession of Bulgaria to the EU (January 1, 2007) and the necessity to achieve compliance with the European standards so that all European citizens may enjoy their freedom of movement while keeping the same rights. The next amendment in 2007 has multiple objectives concerning the continuation of the reform of judiciary through the establishment of an Inspectorate with the Supreme Judicial Council; functioning of the National Assembly, and mainly establishment of taxes, rules for a quorum, budget; functioning of the municipalities (determination the amount of local taxes, fees, etc.); the operation of the armed forces which shall be regulated by statute.

In 2015 again the judicial system was in the constitutional focus: restructuring of the Supreme Judicial Council, new rules of its functioning; new regulations for appointments of the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, and the Prosecutor General; fundamental human rights were also a target - there was a proposal the Supreme Bar Council to have the authority to approach the Constitutional Court with a petition to establish the unconstitutionality of any law whereby any rights and freedoms of citizens are violated. It could be daring said that the instruments of deliberative democracy were used, to a smaller or greater extent, but as a rule on an ascending basis. Not only Constitutional conventions, expert groups, and relevant stakeholders were involved, but many citizens assemblies, academia, different mini-publics discussed for months the forthcoming constitutional supplements, finally approved.

³ Slavov, A. (2017) *Citizen Participation in Constitutional Democracy. Public Law Perspectives*, Ciela, p. 15

Formal constitution-making

The Constitution itself, naturally, provides regulation of the formal process of its amendment, and adoption of a new constitution. A special Chapter Nine (Art.153-163) contains these crucial provisions. According to Art. 153 the regular National Assembly may amend and supplement all provisions of the Constitution with the exception of such as are placed within the exclusive powers of the Grand National Assembly (to be described below).

The right to initiate legislation amending and supplementing the Constitution shall vest in one-fourth (60 persons) of the total number of 240 National Representatives, and in the President. Any such motion shall be considered by the National Assembly not earlier than one month and not later than three months after the submission thereof. The National Assembly shall pass any act to amend or supplement the Constitution by a majority of three-fourths (180 persons) of all National Representatives, taking three votes on three different days. Should the motion have received less than three-fourths but more than two-thirds (160) of the votes of all National Representatives, the said motion shall be eligible for a new consideration not earlier than two months and not later than five months thereafter. To be carried upon such new consideration, any such motion shall require the affirmative vote of at least two-thirds of all National Representatives.

In the same chapter are the provisions of the Grand National Assembly. It shall consist of 400 National Representatives, elected according to the standard procedure. According to Art. 158 the Grand National Assembly shall exercise the following powers: 1. adopt a new Constitution; 2. resolve on the matter concerning a change of the territory of the Republic of Bulgaria, and ratify any international treaties providing for any such changes; 3. decide on the issues concerning changes in the form of state organization and the structure of government; 4. resolve the matters of amending and supplementing Chapter Nine of the Constitution and some other explicitly mentioned issues of utmost importance.

The right to initiate legislation under the preceding article shall vest in at least one-half (120 persons) of the National Representatives and the President. The draft of a new Constitution or a revision of the effective Constitution, as well as of any changes in the national territory under Article 158 herein, shall be considered by the National Assembly not earlier than two months and not later than five months after the presentation of the said draft. The National Assembly shall resolve the conduct of elections of a Grand National Assembly by a majority of two-thirds of the total number of National Representatives. The President shall schedule elections of a Grand National Assembly within three months after the National Assembly resolution. The credentials of the National Assembly shall terminate upon the conduct of elections of a Grand National Assembly. The Grand National Assembly shall pass a resolution on the drafts presented by a majority of two-thirds of all National Representatives, taking three votes on three different days. It shall resolve solely on such matters concerning the Constitution for which it has been elected. In an emergency, the Grand National Assembly shall furthermore perform the functions of

a National Assembly. The powers of the Grand National Assembly shall terminate after the said Assembly pronounces conclusively on the matters for which it has been elected. In such a case, the President shall schedule elections according to the procedure established by statute.

In Bulgaria does not exist the tradition of customary constitutional law through de facto government practice. Written law - the Constitution, laws and bylaws, are a major source of constitutional law. Many acts of the President, the Constitutional Court acts and, in explicitly provided cases, the supreme courts' decisions are a constitutional law source, too. During the last 25 years, a number of constitutional review cases have been brought before the Constitutional Court. The decisions have a regulative and constitutive (transformative) effect, and the act declared unconstitutional shall not be applied from the day of entry into force of the decision. It is worth noting the decisions by which the Constitutional Court gives a mandatory interpretation of the Constitution. Participation in international treaties that change the constitutional status, e.g. accession to the EU, led to a Constitution's formal amendment.

Theoretical and constitutional considerations about deliberative democracy

In the Bulgarian theory and practice, the definition of deliberative democracy allows different interpretations, both in terms of its meaning and in its practical application. It is also known in public law by the names of discussion democracy and discursive democracy. As mentioned, deliberative democracy is relatively new and unfamiliar to much of the Bulgarian audience. It combines elements of both direct and representative democracy, but at the same time is a stand-alone theory that is gaining in popularity and beginning to occupy an essential place in the constitutional reality.

Deliberative democracy, by its very nature, is defined as a process of public reflection on the grounds and dignities of public policy in the process of its formation⁴. The participants in this process give serious consideration to the information that is relevant to them, present their arguments and look for ways to impose their thesis and convince each other of it, thus making it possible to build acceptable public policy. Advisory democracy provides opportunities for citizens and civil society representatives to participate in various consultative forms and forums for active, structured dialogue in the decision-making process. It has also been defined as a model of governance focusing on the comprehensive, systematic, communicative, and rational involvement of citizens in public discourse, both on constitutional consensus and constitutional conflict, concerning general and specific issues, policies and social life together.⁵

In Bulgaria, it is also accepted on a normative, doctrinal, and political level that decisions can be considered legitimate if all interested parties make them through

⁴Bessette, J. M. (1994) *The Mild Voice of Reason: Deliberative Democracy & American National Government*, Chicago, University of Chicago Press, pp. 46-48

⁵Belov, M. (2010) *Civic Participation in the Political Process. Constitutional Foundations*, Sibi, p. 139

a process of rational discussion. According to this concept, the discussion does not consist of direct law-making by citizens, but in an on-going process of public will formation through a decentralized communication network.⁶ Citizens should present their arguments on issues of public concern that the majority can reasonably accept, and inclusion requires democratic procedures to be accessible, transparent, and open to all citizens. It should be noted that the right to information and freedom of expression plays an essential role in creating an adequate deliberative environment for the exercise of all political rights, in particular direct, participatory, and representative democracy in general. Their institutional anchoring and the envisaged legal protection is a guarantee for the full implementation of the civic participation mechanism in political decision-making. And lately, they have been used quite frequently, despite the recognized deficiencies of direct democracy which only aggregates the preferences through voting.

The main emphasis of this democratic governance model is on the engagement and empowerment of active citizenship, political autonomy, and self-government of society by free and equal citizens. Citizens are directly involved in the decision-making process, and public authorities are responsible for their implementation. The extent to which citizens can directly influence the decision-making process depends on their participation. In the course of civil debates, in addition to taking into account the will of the people, ideas are born and developed that can help clarify conflicting political issues, if any. In summary, in Bulgaria is shared the notion that deliberative democracy is a mechanism through which citizens express their views on specific governance issues through their participation in various deliberation panels that precede the actual decision-making by the competent institutions; it is a tool that guarantees the active involvement of citizens in the political process.⁷

It is essential to differentiate between different types of democracy in order to make clear the characteristics of deliberative democracy. The main difference between participatory democracy and democracy through discussion is the extent to which citizens are directly involved in political decision-making. In the first case, the citizens are empowered to make decisions that directly affect their status. In the second case, the focus is on the process of public debate, argumentation, and discussion, which must precede decision-making. Although this procedural discursive aspect can be combined with the forms of participatory democracy and direct democracy, in the deliberative model, the focus is not on direct decision-making but on the process of discussion itself.⁸

Embracing these generally valid postulates about deliberative democracy nature and potential, and trying to keep pace with the latest developments of theory

⁶Habermas, J. (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge, MA: MIT Press

⁷Pisarska, G. (2020) Topical issues of deliberative democracy in the Republic of Bulgaria, *Law, Politics, Administration*, Volume 7, No 1, pp. 53-63

⁸Slavov, A. (2017) *Citizen Participation in Constitutional Democracy. Public Law Perspectives*, Ciela, p. 129

and practice, the following primary forms of civic participation have been legally established and practised, more or less, in Bulgaria during the last decades:

- Referendums (national and local)
- Citizens' Initiatives (European, national and local)
- General Assembly of the Population (Local)
- Public consultation on regulations and strategic documents
- Public advisory councils involving citizens or representatives of civic organizations
- Public forums, deliberation panels
- Citizens' proposals, opinions, and signals
- Protests, rallies, demonstrations
- Citizens' petitions.

Again, although there are differences in nuances and emphasis, both the content of the concept of direct democracy and participatory democracy share a common semantic core - the need to actively engage citizens in various forms of political decision-making. Diversity of civic participation procedures can justify the distinction between the most intense forms of direct participation in the final binding decisions, including nationwide voting - in direct democracy - and forms that offer the opportunity to participate in a full consultation process - participatory democracy and deliberative democracy. It can be argued that in Bulgaria these forms function in symbiosis and there is no "Chinese wall" between them.

Developed deliberative democracies practices

Bulgaria has good traditions in organizing *referenda* as a fundamental instrument of citizens' participation. Both in the old and most recent constitutional history many referenda could be reported, although controversial results and success. During the last decade three national referenda have been organized (plus many locals) and they will be briefly discussed.

Firstly, a *Referendum for the construction of a new nuclear power plant has to be pointed out*. It was held on January 27, 2013, and was initiated through a subscription organized by the Bulgarian Socialist Party, which collects the signatures of 770,000 Bulgarians. In this case, the Bulgarian citizens should vote "Yes" or "No" in response to the following question: "To develop nuclear power in the Republic of Bulgaria through the construction of a new nuclear power plant?". A total of 1 405 453 voters took part, but it was not enough to have a legal effect. According to the Direct Citizen Participation in State and Local Government Act to have a valid referendum, it is necessary: a/to vote at least the same number of voters as in the last parliamentary elections on the electoral rolls; b/ the answer with 50% + 1 of the votes to be "pro". It could be explained by the fact that society was not well informed and prepared.

The second in time was the *Remote vote referendum* - a national referendum, held on October 25, 2015, at the same time as the local elections. The referendum was appointed by the President of the Republic of Bulgaria Rosen Plevneliev with the question: "Do you support that you can also vote remotely electronically while conducting elections and referendums?". It attracted 2 587 593 participants, but again - no legal effect due to lack of proper explanation and dissemination of information.

And on the third place, *Referendum on electoral system change* - a national referendum initiated by the Initiative Committee chaired by Slavi Trifonov, showman, held on November 6, 2016, simultaneously with the elections for President and Vice President of the Republic of Bulgaria. In the final format, citizens must answer "Yes" or "No" to each of the following three questions: "1. Do you support electing the MPs by majority voting system with an absolute majority in two rounds?; 2. Do you support the introduction of mandatory voting in elections and referendums? 3. Do you support the annual state subsidy given to finance political parties and coalitions to be one BGN for one received a real vote in the last parliamentary elections? ". Total of 3 488 588 citizens took part, but again the requirements were not fulfilled, although very near to the necessary number of votes. The information campaigns, media coverage, preparation activities, were much better but not sufficient. There have been many debates about the counting of bulletins, legal suites, etc., without effect. However, the three referenda covered the requirements to be discussed in the Parliament, and it was done. The National Assembly did not take into account the preferences of millions of Bulgarian. In society rests the impression that the political elite did not count the people's will. In addition, some new acts of the ruling government, and not only in relation to COVID-19 crisis response, indicate that there are some fears of citizen's involvement in deliberation and the decision-making process.

It has to be recognized that Bulgaria has not the ambition to be a vanguard in setting standards in constitutional practices and thorough public deliberations. We are not a mature democracy, and a lot has to be achieved in the future. But some other achievements should not be underestimated.

In addition to already mentioned *public advisory councils*⁹, proper implementation of the ideals of deliberative democracy can be found in practice developed by the government of the Republic of Bulgaria for conducting public consultations before making management decisions. The platform, called *the electronic public consultation portal*¹⁰, is administered by the Council of Ministers in accordance with the Law on Normative Acts. It enables structured, on-line dialogue on regulatory and strategic documents. On it, state institutions publish for public discussion the draft normative acts and strategic documents, which envisage extensive consultations, and all interested parties have the opportunity to receive preliminary information about the planned changes and to give their voice for the improvement of legislation and policies.

⁹ <https://saveti.government.bg/web/guest>

¹⁰ <http://www.strategy.bg/>

At the initiative of the President of the National Assembly in implementation of the provision of art. 10, para. 3 of the Direct Citizen Participation in State and Local Government Act, a *public register*¹¹ has been created, which lists the notices for the start of a national referendum with a worded question, and after its completion - the proposals for a national referendum and the corresponding initiative committees, thus giving greater awareness of citizens' involvement in these processes. Registers for local referendums are established at every municipality.

There are some excellent examples of *National Citizens' Initiatives* submitted to the National Assembly: National Citizens' Initiative '7000' on Removal of the Judicial Institute of Prohibition of Person with Disabilities No 839-01-14 of 27.06.2018, organized by an Initiative Committee, which gathered support from 12,000 signatures of Bulgarian citizens from 12 different settlements; National Citizens' Initiative "On Prohibition of the Breeding, Killing and Trade of Animals for the Purpose of Extraction of Leather in the Republic of Bulgaria" No 839-01-13 of 22.06.2018 submitted by an initiative committee; a Justice for All initiative aimed at bringing about changes in the judiciary, and more.

Some *active public organizations*, stimulating civic participation, also deserved to be announced. One of them is Civic Participation Forum¹² - a network of more than 120 Bulgarian civic organizations from all over the country, working in various spheres of public life, united by the idea of more participation of citizens and non-governmental organizations in policy formulation and in critical decision-making by politicians and institutions on national and local levels. The network members have rich expertise in conducting efficient public consultations, promoting citizens - institutions interaction, and elaborating working mechanisms for civic participation.

The Institute for Public Environment Development¹³ is another organization that aims to foster a culture of civic participation in the decision-making process; development and implementation of mechanisms for accountability of public institutions and control over their activities; introduction of innovative practices and models in the activity of public administration.

Bulgarian Centre for Not-for-Profit Law¹⁴ is established in 2001 as a public benefit foundation that supports the development and implementation of laws and policies for the development of civil society, civic participation, and good governance in Bulgaria. It has conducted more than 300 trainings for NGO activists, local authorities, and state institutions for building common mechanisms for cooperation and partnership in mutual interest. One of the newest civic associations is "EqualBG"¹⁵ - a union of 30 NGOs with the mission of protection of democracy and

¹¹ <https://parliament.bg/referendum/?page=reg&lng=>

¹² <https://www.fgu.bg/>

¹³ <https://iped.bg/en>

¹⁴ <http://bcnl.org>

¹⁵ <https://ravni.bg/>

human rights. A lot could be added here; there is an excellent continuum development.¹⁶

Identified problems and challenges

Despite the numerous positive news about the intensification of civic engagement and participation, leading to an increase in public demand for more inclusive, open and accountable institutions, some problems, and challenges are identified.

There are published numerous draft acts in Public Consultation Portal, indeed. But a close overview of the Portal shows that the drafts are published selectively or with delay, and mainly in the inconvenient for deliberations summertime. The most important acts, strategies included, as a rule, are not there. Not always the results of the public consultations are published, as it is noticed by many observers.

There is a good tradition in Bulgaria in the working groups developing notable acts, experts and specialized NGO's representatives to be included. As a rule, they participate on a voluntary basis but are very committed, present sound arguments, etc. Unfortunately, their opinion is not always counted. And they are sometimes quite surprised by the final versions adopted. Moreover, in 2016, after a long preparation, the draft of Diversion of Juvenile Offenders from the Criminal Procedure Act was developed. There was (and still exists) a vast public consensus that the old Juvenile Delinquency Act (1958) should be finally abolished and replaced by modern legislation. However, different vested interests prevented its final approval. The same happened with the numerous attempts to amend the Penal Code and the Penal Procedure Code in order to introduce Restorative Justice (a new more humane paradigm, alternative to the conventional of traditional criminal justice). And this happened after many pilot projects, experiments, sociological surveys proving the benefits of Restorative Practices.

Quite often, regrettably, the most significant amendments and supplements to operative legislation are introduced while the bill is already in the Parliament, between the so-called first and second reading (a part in the legislative procedure). This prevents any public consultations and deliberations. That practice has been criticized by many lawyers, experts, scholars, NGO representatives, and former Parliament members but continues up-to-day.

In Bulgaria, there is an established large-scale Council on the implementation of the Updated strategy to continue the reform of the judiciary – a highly sensitive issue, with many consequences. If they work, definitely it is "in the shadow" as the deliberations are not published. And formally, the voices of citizens and other well-grounded opinions could not be heard.

Since 2018, Art. 4, para. 3 of the Not-for-profit Legal Entities Act has been enforced. A Civil Society Development Council had to be established within the

¹⁶<https://www.ngobg.info/bg/index.html>

Council of Ministers. Representatives of non-profit legal entities for carrying out activities in the public interest should participate in the Council. However, for many reasons, the Council is not functioning yet. Although this is a good idea, on the Balkan Peninsula landscape, some opportunities for manipulation of civil society could be envisaged. There is a traditional long-lasting gap between declared good intentions for massive public involvement in deliberation and decision-making matters of significant interest and their practical implementation. Many other examples could be submitted showing the still existing challenges and even threats for the genuine, full value citizen participation in the law-making process and constitutional democracy.

Latest developments

The constitutional reform in Bulgaria is an on-going process, and lately, some new initiatives were undertaken. One of them originates from the European Court of Human Rights judgment from 2009 (case Kolevi vs Bulgaria). In this case, the ECHR has established a serious problem/omission in the Bulgarian criminal justice system - de facto missing option to initiate a criminal investigation against the Prosecutor General. To resolve this problem, the Bulgarian authorities (the ex-Minister of Justice) developed a mechanism in the form of a Bill for Amendments of the Penal Procedure Code for the Accountability of "Three Big Ones" - the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, and the Prosecutor General, including the establishment of "independent/super prosecutor" for investigation of the Prosecutor General. This bill has not been discussed in public, despite the considerable interest of Bulgarian society to the judiciary and contrary to deliberative democracy ideology. However, the comments of the Council of Europe (Venice Commission for Democracy through Law) on the bill became a public fact. There it is reasonably underlined that this proposal will require a change in the Constitution or at least interpretation by the Constitutional court.

A recent initiative for amendments of the Constitution belongs to the Bulgarian President. In December 2019 he initiated extensive public consultations about the authorities of the Public Prosecution and the place of state accusation in the judiciary. He met the representatives of the academia, NGOs, and magistrates' professional associations. It should be underlined that the election of the Prosecutor General at the end of 2019 was accompanied by a heated debate, broad media coverage, and even street protests. The society was quite sensitive to the only candidate, hence the strong public resistance. At that stage, according to the President, the accountability of the Prosecutor General ends with its election. In the meantime, the last one filed a file to the Constitutional Court, asking for an interpretation of art. 126, para. 2 of the Constitution - the Prosecutor General shall exercise supervision as to the legality and shall provide methodological guidance regarding the work of all prosecutors. More precisely, it is asked whether the control should be excluded in relation to the prosecutor investigating the Prosecutor General, on the base of the principle *nemo iudex in causa sua* (no one can be a judge in their own case). In fact, it

pre-supposes a flexible interpretation of the Prosecutor General's monopoly in the criminal investigation. The Constitutional Court decision from 2020 was affirmative. Recently, the Parliament has adopted a highly controversial bill about the "super" prosecutor.

The latest developments, regrettably, marks a deviation from the standard democratic principles. The current political situation in Bulgaria could be characterized by long-lasting turbulences, including more than six-months of streets' anti-governmental protests, also claiming the resignation of the Prosecutor General. In August 2020, somewhat surprisingly and without any public deliberations, the ruling political party GERB submitted to the Parliament a "brand" new draft Constitution, in response to the public criticism about the political system and its functioning. The draft was severely criticized by many experts and political parties, and the attempt failed. The President himself continued his consultative work on the amendments of the Constitution but declared that he would not submit the draft in the current Parliament.

Moreover, in the last European Commission 2020 Rule of Law Report (Brussels, 30.09.2020, SWD(2020)301final)¹⁷ in the chapter for Bulgaria, it is explicitly mentioned that the use of public consultations in the legislative procedure is limited, and this is worrying. In addition, in the Resolution of the European Parliament "The rule of law and fundamental rights in Bulgaria" (Brussels, 08.10.2020, P9_TA(2020)0264)¹⁸ a deep regret is expressed from the fact that the developments in Bulgaria have led to a significant deterioration in respect for the principles of the rule of law, democracy and fundamental rights, including the independence of the judiciary, separation of powers, the fight against corruption and freedom of the media; the EC also expresses its solidarity with the people of Bulgaria in their legitimate demands and aspirations for justice, transparency, accountability and democracy. The Commission takes note of the proposal to convene the Grand National Assembly in order to adopt a new constitution and stresses that any constitutional reform should be subject to thorough and inclusive debate and based on proper consultations with all stakeholders, notably civil society, and adopted with the broadest possible consensus. Unfortunately, the institutions underestimate these documents and totally ignore all civil society acts - the streets protests claims, professional bodies', academia's and intellectuals' criticism and demands.

No doubt, the situation needs intervention - from civil society, academia, etc. The genuine democracy climate in the country should be restored, and the constitution-making process has to be done in a deliberative mode. While in the critical and emergency-state situations the raising role of the Leader in a general sense and his responsibilities in decision-making could be justified, it should not be entirely on the expenses of democracy instrumentation and full ignorance of civic participation.

¹⁷https://ec.europa.eu/info/sites/info/files/bg_rol_country_chapter.pdf

¹⁸https://www.europarl.europa.eu/doceo/document/TA-9-2020-0264_EN.html

A long-lasting but unsolved issue in the Bulgarian legal realm is the absence of the individual constitutional complaint. This issue was raised again lately, mainly in the discourse of strengthening of the fundamental human rights of the Bulgarian citizens, enhancing their participation in the social processes and the control over the governance. So far, no concrete legal actions are undertaken.

It is disputable whether and how public deliberation was/will be involved in these processes. There are some indications for on-going debate, indeed, despite highly professionalized discussion. Nevertheless, the tiny societal segments directly affected by some of the current debatable issues, the democracy - in all its forms - requires to hear the voice of society.

Conclusions

It is beyond any doubt that the legislative and institutional environment plays a crucial role in creating and accomplishing opportunities for the direct involvement of citizens and their organizations in public debate and decision-making processes in all spheres of public life. In recent years, there has been an improvement in the legal framework for citizenship participation (e.g. in the area of access to information, public consultations, impact assessment of regulations, registration of NGOs, structured partnerships with NGOs at the national level). The brief analysis indicates that the most common forms of civic activity are public forums and discussions, petitions, and signals to institutions. The regulation and practice of national referendums (the last three unsuccessful), seems to need further development. At the same time, local referendum campaigns in recent years are an excellent example of activating the public.

It is well-known that deliberative democracy is not a panacea. Perhaps not all problems could be efficiently resolved through its methods. There is a risk of misuse too – if the institutes of deliberative democracy are in the hands of populists and demagogues. They could simulate a dialogue between the state's authorities, public institutions, and civil society. Constitutional communication could be hypertrophied, manipulative, and selective. It could be implemented through false persons and controlled by the authorities, or lobbies, or political parties. At the same time, the excessive discussion could be at the expense of the constitutionality, efficiency and justice of the real politics. All these should be prevented, and the challenges should be faced adequately. There is a room for further liberalization of the procedures of civic participation through the introduction of constitutional referendums, legislative citizens' initiatives, lowering the validity quorums, etc.

The actions of civil society organizations and informal groups are visible in achieving changes in the regulatory framework and public policies. Although partial, the results leading to a change in policies and influencing management decisions at different levels are a positive signal for the development of civil society in Bulgaria.

References

- Adamova, A. (2017). The legal framework of civic participation at the local and national level in Bulgaria. Index of civic participation in Bulgaria. BCNP. https://fgu.bg/wp-content/uploads/2018/01/LegalEnvironmentAnalysis_Citizen-Participation-Index_2017.pdf
- Civic Participation Forum and Bulgarian Center for Non-for-Profit Law. Index of civic participation in Bulgaria (2015) <http://index.fgu.bg/data/files/83626416f46ba757b8b92809e478f8ec.pdf>
- Hristova, D., Andreeva, A. (2018) Civic activity with variable success. Civic Participation Index - 2017 <http://index.fgu.bg/data/files/02acc59578d4e27d4a7099ce86c4d0b1.pdf>