MONITORING REPORT

ON THE ACTIVITIES OF THE XLI NATIONAL ASSEMBLY

JULY-NOVEMBER 2009


MODERN
INSTITUTE OF
POLITICS

Institute of Modern Politics (IMP) is an independent policy institute established in 2002 as a public benefit non-profit, non-partisan foundation (initially under the name Direct Democracy Center).

IMP brings together individuals who share a deep interest in good governance and human rights. Members of IMP Board of Governors and experts involved in IMP's activities encompass a diverse range of backgrounds and professions including academics, policy-makers, former MPs, the media, NGOs, legal practitioners, political science researchers.

IMP'S MISSION

The mission of IMP is to be a leading source of independent research on legislative and government policies, and based on that research, to promote informed debate and to provide innovative, practical recommendations that advance good governance and human rights in Bulgaria.

IMP pursues this mission by:

- Monitoring legislation and producing independent and rigorous analysis of critical good governance and human rights issues;
- Promoting debates about significant developments in legislative affairs and about the context and content of policy responses;
- Shaping new ideas to decision-makers and -shapers on how to implement on full scale principles of good governance both on national and local level.

IMP focuses its work in three programs:

- Good Governance Program;
- Legislative Monitoring Program;
- Human Rights and Anti-Discrimination Program.

This Report of The Institute of Modern Politics has been prepared by a working group comprising university professors, lawyers, sociologists and political scientists as follows: (in alphabetical order):

- Borislav Tsekov (lawyer, MP /2001-2005/);
- Dimitar Avramov (political scientist);
- Emil Georgiev
  (lawyer and political scientist; lecturer, Sofia University "Sv.Kliment Ohridski);
- Ivilina Aleksieva (lawyer);
- Venelin Stoichev
  (sociologist; lecturer, Sofia University "Sv.Kliment Ohridski);
- Vladimir Shopov
  (political scientist; lecturer, Sofia University "Sv.Kliment Ohridski);
- Zdravka Krasteva
  (lawyer; lecturer, Sofia University "Sv.Kliment Ohridski).

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ON THE PURPOSES AND CONTENT OF THE REPORT

The National Assembly (the Parliament of Bulgaria), as a legislative body and a national political forum, naturally focuses the public and media attention. At first glance, Parliament is the most transparent supreme state institution and the citizens can obtain detailed information about all aspects of its activities, the parliamentary debates and the bills discussed. Yet, this is the first glance only. There is a number of areas in the legislative process and the work of Parliament which remains beyond "the spotlight" or the public information about them is scattered, incidental and insufficient.

In this context, the Institute of Modern Politics begins a systematic monitoring of the activities of the National Assembly. The purpose is to increase the awareness of active citizens, non-governmental organisations and business associations so that their civil control and participation in the legislative process can become more efficient.

A series of regular and ad hoc reports the Institute of Modern Politics will systematise legislative information and assess analytically the work of Parliament. The reports will also present and assess ongoing legislative initiatives which have an impact on two specific areas:

a) The basic principles of good governance – transparency, accountability and civil participation in government decision making[1];

b) Citizens' rights and protection against discrimination.

The conceptual prism which the Institute of Modern Politics applies to monitor and assess the legislative process and overall activities of Parliament is based on the following precepts:

- The legislature is one of the most important guarantors of the observance of the new fundamental right every Bulgarian citizen enjoys with the entry into force of the Lisbon Treaty – the right to

[1] There are numerous definitions of the principles of good governance in documents of the Council of Europe, the European Union, the World Bank, etc.; the definitions of these concepts in accordance with the European Commission document **White Paper on European Governance, Brussels, 25.7.2001 COM(2001)** are used for the purposes of this report.

good governance and good administration enshrined in Art. 41 of the Charter of Fundamental Rights of the European Union, in a number of instruments of the Council of Europe and the jurisprudence of the Court in Luxembourg;

- The main functions of the National Assembly – legislative and controlling – must be performed in strict compliance with the principles of modern parliamentarianism, the status of the Members of Parliament (MPs) and the constitutionally defined correlation between the three separate branches of government;
- Parliament must in reality be accountable to the citizens and the civil control over its work must not be limited to voting from elections to elections only;
- The laws adopted must meet the requirements of proportionality, legal security, predictability and quality of the regulatory framework in the spirit of the recommendations of the Organisation for Economic Cooperation and Development (OECD) on Improving the Quality of Government Regulations[2];
- The laws adopted must contribute to: a) reduction in bureaucracy; b) guaranteeing the transparency and accountability of public institutions; c) protection of the citizens' rights and the vulnerable groups; d) promotion of economic freedom.

This is the first Monitoring Report of the Institute of Modern Politics which covers the first four months of the term of office of the 41st National Assembly (from its constitution on 14 July to 14 November 2009).

[2] **Recommendation of the Council of OECD on Improving the Quality of Government Regulation** (1995); OECD Guiding Principles for Regulatory Quality and Performance (adopted by the Council of OECD, 2005).

SECTION I
THE NEW ROLE OF PARLIAMENT IN THE CONDITIONS OF EUROPEAN UNION MEMBERSHIP AND THE ACTIVITIES OF THE 41ST NATIONAL ASSEMBLY

The current 41st National Assembly (NA) elected on 5 July 2009 is the first Parliament elected in Bulgaria as a European Union Member State. **The Institute of Modern Politics** emphasises certain important trends in the conditions of European Union membership which determine the need for a number of changes in the activities of the legislature.

The previous three Parliaments – the 38th, 39th and 40th NAs – made Bulgaria's accession to the European Union (EU) in 2007 possible. They enacted a radical legislative reform replacing the transition laws with the laws of the EU requirements, norms and standards. The overall harmonisation of Bulgarian legislation with the acquis communautaire in the period 1997 – 2007 determined the high intensity of the legislative process which frequently affected the quality of the laws passed. The legislative function took up the prevailing part of the NA's institutional and political efforts and resources.

The fact of European Union membership will naturally bring about a gradual change in this tendency in the direction of reduction in the NA's legislative "burden." The number and scope of the laws passed will decrease.

However, the reduction in intensity of the legislative activities in comparison with the years of active reforms in the pre-accession period does not mean an automatic reduction in the public and political weight of the Bulgarian Parliament, less still can it be grounds to restrict or marginalise its constitutional status, as such ideas are sometimes put forward (for example, the NA could

sit only 2 or 3 times a year as its communist predecessor did, or the parliamentary form of government could be revised, etc.).

The current Parliament is called upon not so much to effect overall legislative reforms but to continue to perfect the regulatory environment and to guarantee its stability, predictability and efficient implementation.

Now that Bulgaria is an EU Member State, the key challenge to the country's government bodies is the efficient implementation of the legislation and of the principles of good governance and good administration. This is the reason why **the weight and importance of the NA's other main function – parliamentary control over the Government and the overall system of the executive – are gaining in strength significantly.** This makes it necessary for appropriate forms to expand and intensify the parliamentary control to be elaborated on in the future, including the introduction of mechanisms known from other constitutional models such as "incidental" or "ad hoc" control over the government ministers, strengthening the role of the parliamentary standing committees, etc.

Also in this vein is the need for **an appropriate adjustment of the parliamentary procedures and capacity in view of the possibility provided for in the Lisbon Treaty for national parliaments to participate in and exert an influence on the acquis communautaire.** As it is known, in accordance with the Protocol on the Role of National Parliaments in the EU and Art. 6 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality which are an integral part of the Treaty[3], the National Assembly will be able to issue reasoned opinions on legislative initiatives of the European Commission within eight weeks when they fail to comply with the principle of subsidiarity; it will receive, on an ongoing basis, other draft acts of the European institutions as well, etc. Last but not least, it is also good to apply efficiently the possibilities for the so called "Union control" stemming from Art. 105, para. 2 and 3 of the Constitution in relation to the in-

[3] Protocol on the role of National Parliaments in the EU - http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/protocols-annexed-to-the-treaties/656-protocol-on-the-role-of-national-parliaments-in-the-european-union.html; Protocol on the Application of the Principles of Subsidiarity and Proportionality - http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/protocols-annexed-to-the-treaties/657-protocol-on-the-application-of-the-principles-of-subsidiarity-and-proportionality.html

teraction of the NA and the Council of Ministers in the process of formation and pursuing Bulgaria's European policy[4].

Has the 41st NA demonstrated in its ongoing work so far and to what extent that it has the capacity to respond adequately to these tendencies?

Its work began with heightened public expectations about a new kind of policy, revision of the corruption practices in the government and implementation of anti-crisis measures aimed at reducing and quickly overcoming the negative impacts of the economic crisis.

The overall assessment of the Institute of Modern Politics, which is expanded on in the sections of the Report, is that the **41st NA, at least at this stage, fails to live up to its responsibilities.**

SOME NEGATIVE FINDINGS AND CONCLUSIONS

- **There is a deficit in competence** – There is no clear legislative policy, the quality of parliamentary debates is low, a number of legislative acts fall within the zone of "grey" legislation[5] and pose a risk to the citizens' rights and the transparency in the institutions (see Sections 2 and 3 and the Appendix to the Report).

- **One can observe government disorientation and restoration of the aggressive political confrontation** which were typical of the early years of transition to democracy. The re-active and not pro-active policy pursued by the current majority in the NA is due mostly to the lack of a medium-term government vision about the country's future after the end of the economic crisis. Reliance is placed first of all on the hard party line and not on the search for a broader consent on the issues of importance to the country. In a number of cases, the ruling majority initiates or catalyses political action in contradiction to the principles of parliamentarianism and the constitutional correlation and balance among the branches of government (for more details, see Section 3 of the Report). Another deeper crisis which was typi-

[4] Constitution of the Republic of Bulgaria, "Art. 105....
(3) (New – SG, issue 18 of 2005) The Council of Ministers shall inform the National Assembly on issues concerning the obligations of the Republic of Bulgaria resulting from its membership in the European Union.
(4) (New – SG, issue 18 of 2005) When participating in the drafting and adoption of European Union instruments, the Council of Ministers shall inform the National Assembly in advance, and shall give a detailed account for its actions."

[5] For the purposes of the Report, the Institute of Modern Politics sets the following working definitions: **a) "transparent legislation"** – it complies with the European standards and guarantees effectively the citizens' rights and the freedom of the economy; **b) "grey legislation"** – it provides for private, corporate and personal interests of individual Members of Parliament and persons and groups related to them or introduces excessive regulations to the detriment of the freedom of economic initiative and citizens' rights; **c) "black legislation"** – it creates prerequisites for corruption and damages significant public interests.

cal of the transitional 40th NA comes to the fore once again, the crisis of political representation.

- **The majority fails to conduct the broad public discussions obligatory for European democracies** on important legislative amendments which have a direct impact on the conditions of economic initiative and the business environment in the country, such as the budget laws and the amount of fees and excise, for example. They are adopted without active consultations with the representatives of employers, business associations and trade unions. A dynamic change can be observed, often within several hours, in the ideas of those in power with respect to these issues which not only attests to the lack of a clear political will and a government and legislative strategy but also raises concerns that important decisions are taken under the influence of behind-the-scenes lobby interests and personal or strictly party aspirations.

- **Parliament is turning ever more into a non-criticising registrar of the will of the executive and the party leadership of GERB (Citizens for European Development of Bulgaria)** – The MPs from the GERB Parliamentary Group (PG) fail to demonstrate legislative initiative and activity in the plenary debates and discussions within the standing committees outside of the direct instructions of their political leaders.

- **There has been no significant progress on the adoption of the Election Code promised by the majority in the 41st NA** which, in addition to codifying and modernising the election rules, must provide, in the opinion of the Institute of Modern Politics, for the setting up of a permanent election administration. This will allow all Bulgarian citizens, whether living in the country or abroad, to obtain finally the right to good administration with respect to their election rights as well.

SOME POSITIVE ASPECTS IN THE WORK OF THE 41ST NA

Among the **positive aspects** in the work of the 41st NA so far one needs to emphasise **the efforts of the parliamentary leadership**:

- **For more transparency in the work of the standing committees** – verbatim reports and opinions from their sessions are published regularly on Parliament's website;

- **For more transparency and accountability with respect to the budget expenditure** of the legislature – expenditure reports are already published as a rule on Parliament's website;

- To achieve progress in **overcoming the so called "voting with other MPs' cards."**

SECTION II
LEGISLATIVE ACTIVITY, PLENARY SESSIONS AND WORK OF THE STANDING COMMITTEES

LEGISLATIVE ACTIVITY

What follows is a presentation of the legislative activity of the 41st National Assembly in the first four months of its term of office in comparison to the first four months of the previous three legislatures which served full terms of office – the 38th NA (1997 – 2001), the 39th NA (2001 – 2005) and the 40th NA (2005 – 2009).

The data given below show that in quantitative terms the **current NA is lagging behind in comparison to the 38th NA, does not significantly fall behind the previous 40th NA and surpasses the 39th NA in the number of bills passed** (the number of ratifications of international agreements is not taken into account). From the point of view of the volume and importance of the laws adopted, however, it must be noted that the three previous legislatures outdo the 41st NA both in the scope of the legislative amendments implemented and in the number of the completely new laws passed. Of course, this is the result not only of the lower parliamentary activity of the majority at present but also of the fact that it was the previous legislatures which bore the main burden of the reforms related to the harmonisation of the Bulgarian legislation to the European Union law and the laying down of the regulatory foundations of free enterprise economy. This objectively leads to a lower intensity of lawmaking in the following years.

For more details about the legislative activity and for the assessments of the Institute of Modern Politics of the bills monitored, see Section 4 and the Appendix to the Report.

PLENARY SESSIONS AND WORK OF THE STANDING COMMITTEES

After the constitution of the 41st NA on 14 July 2009, five more sessions were held by the end of the month in relation to the election of

	38 NA 7.05.1997 7.10.1997	39 NA 5.07.2001 5.12.2001	40 NA 11.07.2005 11.10.2005	41 NA 14.07.2009 14.11.2009
BILLS INTRODUCED				
Total				**100**
Excluding Ratification Bills				87
Put forward by the Council of Ministers				55
excluding Ratification Bills				42
Put forward by MPs				45
opposition				9
ruling majority				35
Withdrawn by the Council of Ministers				3
Withdrawn by MPs				6
ACTS ADOPTED				
Total	**49**	**44**	**28**	**40**
Excluding Ratification Bills	37	15	22	30
Amendment Acts	29	11	19	30
New acts	8	4	3	0
Adopted acts put forward by the Council of Ministers (excluding ratifications)				22
Adopted bills put forward by MPs				8*
Rejected bills put forward by MPs				8
opposition				1
ruling majority				7
BILLS UNDER DISCUSSION				
Total				**43**
Put forward by the Council of Ministers				20
excluding Ratification Bills				17
Put forward by MPs				23

2 of them in relation to the Trade Act are unified by a Council of Ministers draft; two in relation to the Cultural Heritage Act – unified

the new Council of Ministers, the adoption of the Rules and Regulations of Parliament and the election of the parliamentary standing committees[6]. From then on, Parliament was to fall into step. The beginning of the 41st NA, however, was difficult – with brief plenary sessions and inadequate legislative agenda. Instead of outlining the legislative policy of the new ruling majority, the NA leadership brought into the spotlight and filled the public ear with peripheral topics related mostly to the domestic needs of the new MPs, their Parliament-provided accommodation and furnishing, and the restructuring of Parliament's administration.

The cause of the factual inaction of the 41st NA in the beginning of its term of office was, to the greatest

[6] NA sessions on 22, 23, 27, 29 and 30 July 2009.

extent, the lack of parliamentary, government, public and political experience of GERB, the political party which had won the elections. This is natural and should not be deemed necessarily a weakness to the extent to which every newly created power which has not taken part in previous national elections usually falls into a similar situation. *(Similar was the case with the first months of the term of office as the ruling party of Simeon the Second National Movement (SSNM) [currently National Movement for Stability and Progress] in 2001 but, unlike GERB, the SSNM parliamentary group included personalities with civil and political experience and activity, including as representatives of the non-governmental sector and MPs in previous Parliaments).*

In this case, however, the period of initial adjustment to the rhythm and mechanism of the legislature was combined with two other circumstances which give grounds to the Institute of Modern Politics to assess the initial start of this Parliament's term of office as unsatisfactory:

- The lack of a specific government, respectively legislative agenda which has led to periods of inaction and lawmaking "piece by piece";
- The decision of the ruling majority that Parliament would not use its traditional summer holidays in order to resolve the pressing problems stemming from the economic crisis which was not implemented[7].

The above-mentioned decision envisaged that only the standing committees would sit in the period 1 – 21 August to prepare the reports needed for Parliament's legislative work while the plenary sessions would be held after that.

We do not doubt the good intentions which had prompted this decision, but in practice it was not implemented and led to a discrepancy between the words and deeds of the newly elected majority.

Parliament's factual inaction in August, despite the formal cancellation of the MPs' summer holidays, can be seen in the number and the agenda of the sessions of the parliamentary standing committees held. For example, a total of 20 sessions were held in August 2009 (and most of them in the period after 20 August!). At the normal legislative pace, these sessions would have been 68 – one for each of the 17 committees a week.

As for the content of the sessions held, the prevailing number of committees which sat in August exhausted it with internal issues of

[7] Decision about the work of the NA in August 2009 put forward by I. Fidosova, MP, on 29 July 2009 and adopted by the NA on 30 July 2009.

administrative and organisational nature – adoption of working rules, presentation of the members and leadership, etc. In isolated cases only were the sessions related to the NA's main functions – legislative and controlling – such as, for example:

- **Economic Policy, Energy and Tourism Committee** – 19 August 2009, discussion of the possibilities for additional budget revenue from uncollected receivables after the privatisation (in relation to the Report on the Activities of the Post-Privatisation Control Agency for the first six months of 2009).
- **Budget and Finance Committee** – 19 August 2009, a decision was taken to assign it to the National Audit Office to conduct an audit of the financial management of the budget and property of the Council of Ministers in accordance with a draft brought forward by MPs Stoyan Mavrodiev and Dimitar Glavchev from the GERB PG.
- **Legal Affairs Committee** – 13 August 2009, discussion at first reading of the Notaries and Notary Activities Amendment Bill brought forward by a group of MPs from the ruling majority (Order, Legality, Justice PG, Ataka PG and GERB PG).
- **Regional Policy and Local Self-Government Committee** – 25 August 2009 and Transport, Information Technologies and Communications Committee – 25 August 2009, discussion at first reading of the Roads Amendment Bill brought forward by a group of MPs from the GERB PG.
- **Education, Science, Children, Youth and Sports Committee** – 20 August 2009, discussion of an audit report of Sofia University St. Kliment Ohridski and Report on the results of the audit of the activities of drawing up and implementation of the programmes Evaluation, Development and Preservation of the National Scientific Potential and Promotion of the Development of Scientific Activities through Programme and Competitive Funding from the programme- and result-oriented budgets of the Ministry of Education and Science for the period 1 January 2007 – 31 December 2008.

Two standing committees did not sit at all in August while Parliament "was working" – the Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee and the Human Rights, Religion, Citizens' Complaints and Petitions Committee.

At the end of August, the 41st NA held

four record-breaking sessions in terms of duration[8].

Despite the statement of Parliament's leadership that the MPs "are working in their regions" during the formally cancelled holiday, information appeared in the media that the "working" MPs are in fact on vacation and Parliament's buildings are deserted.

In the period from the beginning of September to November of this year, the 41st NA gradually found a more ordinary pace for its activity, yet without managing to fill its agenda to the full. For example:

- A total of 13 sessions were held in September of which only two (on 9 September and on 16 September 2009) were "full-time" from 9:00 a.m. to 2:00 p.m.[9], while the others were significantly shorter.
- The number of sessions in October was 14, of which 8 had the duration set out in the ROPNA (on 7 October, 14 October, 16 October, 21 October, 22 October, 28 October, 29 October, 30 October 2009).
- From 1 to 6 November – there were 3 sessions and all of them were full-time.

[8] A session was held on 20 August 2009 lasting 55 minutes; a session on 26 August 2009 of 1 hour and 48 minutes; a session on 27 August 2009 of 1 hour and 52 minutes; a session on 28 August 2009 of 27 minutes.

[9] Pursuant to Art. 38, para. 1 of the Rules of Organisation and Procedure of the National Assembly (ROPNA), the regular sessions are held on Wednesday, Thursday and Friday from 9:00 a.m. till 2:00 p.m.

SECTION III
PARLIAMENTARY DEVIATIONS

Some wotroubling instances of legal and political voluntarism are observable in the work of the 41st NA so far which deviate from the principles of parliamentarianism and which are contrary to the constitutionally established correlation and balance among the supreme government institutions.

Examples of this are:

a) Encroachment on the independence of regulatory and control bodies;

b) Some official statements of representatives of the ruling majority regarding the opening of a procedure to impeach the President on the basis of grounds unsound from the point of view of constitutional law;

c) Adoption of a declaration of the National Assembly on the manner in which certain MPs and political leaders implement their parliamentary mandate.

ON „A"

The ruling majority launched a purposeful attack against independent regulatory and control bodies such as the Financial Supervision Commission, the Commission for Protection against Discrimination, the National Health Insurance Fund, the Criminal Assets Identification Commission and the Competition Protection Commission. The annual reports of these institutions to the National Assembly were rejected. Obviously, the goal is to have their terms of office terminated in advance and to elect leadership of these government bodies from among those loyal to the parties from the majority. Also in this vein are the signs coming from the Government that a "reduction" in the composition of these bodies is under preparation for reasons of budget economies. Such a massive party encroachment on independent government bodies has not had an analogue in the recent years.

The Institute of Modern Politics emphasises that:

- The creation of the above-mentioned independent regulatory and control bodies and of the regulatory framework for their work is not a party end in itself left from the previous mandates but part of Bulgaria's commitments in the course of harmonisation of the Bulgarian legislation with the European Union law.

- A fundamental principle in the setting up of these institutions which results from the significance of the public spheres and problems they regulate is the guarantee for their independence from party and political interference. Such an inadmissible interference would also be the possible advance termination of the term of office or the "reduction in the composition" through legislative amendments adopted by a given parliamentary majority, regardless of what it may be. It is not by chance that the terms of office of these bodies as a rule do not coincide with the term of office of the National Assembly to minimise the relation between them and the parliamentary majority.
- The annual reports these bodies submit to the National Assembly in accordance with the law may not be approved or rejected by the legislature because this constitutes a factual interference with their powers and a direct infringement upon their independence. Parliament may accept them for reference and, if necessary, act on their content and assign to the standing committees to exercise parliamentary control or discuss legislative proposals arising from the respective report.
- The budget economies expected from the possible "reduction" in the number of staff and composition of these bodies are so tiny that they fail to be a serious argument in favour of such reorganisations.

ON „B"

In the period under review, representatives of the ruling majority in the 41st NA announced in a series of official statements the intention to open a procedure to impeach the President. The possible grounds indicated as causes to raise charges against the Head of State included:

- Failure to comply with Art. 98, item 14 of the Constitution which provides that the President informs the National Assembly on the main matters within the President's powers;
- Failure to perform the President's constitutional "obligation" to sign a decree releasing ambassadors from their positions upon a Council of Ministers proposal.

Not discussing the purely party and political dimensions of the debates about the idea to impeach the President, the Institute of Modern Politics emphasises the ungroundedness of the reasons indicated from a constitutional point of view.

First, the President's powers under Art. 98, item 14 falls within the cat-

egory of the so called discretionary powers. This means that its exercise depends entirely and only on the discretion of the Head of State. Should the Head of State decide that he has a reason, cause or grounds to inform the NA about a certain issue, he may do so either in writing or be requesting to address the MPs at a plenary session. Should he decide that there are no issues the significance or specificity of which requires that he inform the legislature, he may not exercise this power. In addition, such a discretionary power of the President is also the right to address the nation and the National Assembly (Art. 98, item 2 of the Constitution).

Second, the President is not obligated to sign automatically a decree, upon a Council of Ministers proposal, for the appointment or release of an ambassador. Pursuant to Art. 92, para. 2 of the Constitution, the President represents the state in international relations. That is the reason why the procedure for appointment of ambassadors falls within the category of the so called complex factual cases – it may not be completed without the adoption of two acts which are independent in their legal essence – a Council of Ministers decision and a Presidential decree. The appointment of ambassadors is a power shared between the President as a representative of the state in international relations and the Government which implements the foreign policy. This issue has been clarified not only in the theory of constitutional law but also in the jurisprudence of the Constitutional Court which is obligatory for all government bodies, legal entities and citizens. As Judgment No. 2 of the Constitutional Court of 2002 in constitutional case No. 2/2002 states expressly:

> *"The President may refuse to issue a decree. The constitutional powers and status of the Head of State established in international law stem from state sovereignty and reveal the special place of the President in implementing international relations and defence. The President's powers under Art. 98, item 6*[10] *and Art. 100, para. 2 of the Constitution must be considered in this context. The President may refuse to take into account the Council of Ministers proposal and such a refusal does not constitute a violation of the Constitution."*

The Institute of Modern Politics draws the attention of all institu-

[10] Art. 98, item 6 of the Constitution provides that the President "shall appoint and remove the heads of the diplomatic and permanent missions of the Republic of Bulgaria with international organisations upon proposal of the Council of Ministers."

tions, the media and the public to the negative consequences of such a political and parliamentary conduct. They exceed the effect of hot political scandals of the day and "wars between institutions" because they instil constitutional nihilism, debase the importance of Parliament and erode the democratic traditions and political culture in our society, as fragile as they are.

(On another note, the political powers would probably be more successful in giving reasons for the constitutional responsibility of the current President if, for example, they referred to his systematic failure to comply with the Consultative Council on National Security Act which provides that this body must be convened once every quarter.)

ON „C"

Another instance of a parliamentary deviation in the period reviewed was the declaration voted by the National Assembly giving a negative evaluation of opposition political leaders on the account of their absence from the parliamentary plenary sessions.

Such an act is inadmissible from the point of view of the MPs' constitutional status and the principles of modern constitutionalism.

First, a fundamental principle of the modern constitutional state is that a Member of Parliament enjoys the so called free mandate (Art. 67 of the Constitution). This principle holds true for all democratic states in the EU, for the USA, Canada, Australia, Japan, etc. The free mandate means that MPs have freedom of conscience, conduct and opinion in their parliamentary activities and may not receive mandatory orders and instructions from regions, sectors, classes, etc. including from the National Assembly itself as an institution. The situation was different in the time of feudalism when the so called imperative mandate was in force by virtue of which an MP was a delegate and representative of the respective class or region and carried out their will which had been formulated in advance. Modern democracy came about precisely when the feudal manners gave way, including the imperative mandate.

Second, Parliament as a body may not adopt acts whereby it evaluates the manner in which individual MPs exercise their parliamentary mandate. Such an evaluation, moreover with a purely moral and political value, may be given by the parliamentary groups and parties or by individual MPs in their political statements. But to institutionalise such an evaluation in an act voted for by Parliament is inadmissible! Because this is an infringement upon the free

mandate enjoyed by every MP by virtue of the Constitution. And because tomorrow another majority may ask that the MPs against the government be "condemned" by means of a declaration, for example.

(In view of the specific case, it is good to bring to mind that by virtue of Parliament's rules the absence from plenary sessions attracts a disciplinary sanction – deduction of amounts from the monthly remuneration.)

It is also good to bring to mind that Parliament does not consist of the ruling majority only. But of the majority and the minority together. This is the only institution in the state where the opinions of those in power and those in opposition meet. Neither the former, nor the latter may usurp the right to speak on behalf of the entire nation. It is so not only because the Constitution forbids it[11], but also because the votes of thousands of Bulgarian citizens who are equal in their rights stand behind both those in power and those in opposition.

[11] Art. 1, para. 3 of the Constitution: "No part of the people, no political party nor any other organisation, state institution or individual shall usurp the expression of the popular sovereignty."

SECTION IV
MONITORING OF THE LEGISLATION

For the purposes of this Report, the Institute of Modern Politics introduces the following working definitions which will be used to illustrate the brief analytical assessments of the bills monitored:

a) "Transparent legislation" – It complies with the European standards and guarantees effectively the citizens' rights and the freedom of the economy;

b) "Grey legislation" – Legislative acts which provide for private, corporate and personal interests of individual Members of Parliament and persons and groups related to them or introduce excessive regulations to the detriment of the freedom of economic initiative and citizens' rights;

c) "Black legislation" – It creates prerequisites for corruption and damages significant public interests.

MORE SIGNIFICANT FINDINGS AND CONCLUSIONS

Of the 100 bills submitted during the period under review (June – November 2009), the Institute of Modern Politics monitored 26 bills (see the Appendix to the Report) which impact most immediately on the principles of good governance and the citizens' rights.

The following **more significant findings and conclusions** have been made on the basis of the analysis of these bills and their discussion in Parliament:

a) At this stage, the ruling majority fails to live up to its pre-election commitment to introduce and implement "a procedure for evaluation, publication, discussion and economic analysis of the proposals for legislative acts"[12] as a fundamental principle of its government policy.

b) The ruling party put forward several bills in the field of criminal justice – to amend the Ministry of the Interior Act and the State Agency for National Security Act (already adopted by the NA) and also bills of the Government and of MPs to amend the Criminal Code (CrC) and the Criminal Procedure Code (CrPC)

[12] Program of the political party GERB For a European Development of Bulgaria, 1 June 2009, p. 5, Quality Legislation, http://www.gerb.bg/uf/pages/upr_programa_gerb_1June.pdf

which have already passed the procedure of first reading in the standing committees. The assessment of the Institute of Modern Politics is that the amendments proposed hide serious risks for the citizens' fundamental rights and freedoms and entail excessive and imbalanced strengthening of the criminal repression and disputable expansion of powers of police bodies (for more details, see item 2 of this section).

c) The Ministry of the Interior and the security services have resumed their attempts to obtain a direct, expanded and easy access to information about citizens' telephone and internet communications, even for the purpose of prosecuting petty crimes, in contradiction to the constitutional protection of confidentiality of correspondence and other communications. This is being done despite the definitive objections of civil and law organisations expressed in the first half of this year when the previous Government launched similar legislative initiatives and despite the amply justified opinion of the Ombudsman of the Republic of Bulgaria in his 2008 Annual Report to the NA against such amendments to the Electronic Communications Act[13].

d) In the field of tax legislation, the ruling majority increased the tax burden on certain groups, including through elimination of former tax reliefs, which is quite a debatable measure in the conditions of economic stagnation and crisis. The examples of this include the significantly increased tax on the gambling business and on buildings as well as the elimination of privileges for activities in agriculture, the processing industry, production, high technologies and infrastructure.

e) Parliament and the ruling majority demonstrate the necessary activity in introducing imperative requirements arising from the European Union law. The examples of this include:

- Elimination of the differences in the tax treatment of domestic and foreign entities from the EU and the European Economic Area with the amendments to the Corporate Income Tax Act submitted by the Council of Ministers on 20 October 2009;
- Elimination of the inequality in the re-calculation of the final tax on the income of foreign natural persons (amendments to the Personal Income Tax Act submitted by the Council of Ministers on 19 October 2009);
- Implementation of the requirements of the Seveso II Directive

[13] 2008 Annual Report of the Ombudsman of the Republic of Bulgaria, pp. 20 – 21, http://www.ombudsman.bg/documents/gd2008.pdf

(amendments to the Environmental Protection Act submitted by the Council of Ministers on 9 October 2009);

• Alleviation of the licence procedures in the field of postal services (amendments to the Postal Services Act submitted by the Council of Ministers on 11 September 2009);

• Provisions for the general rules for the exercise of the freedom of establishment of service suppliers and the free movement of services while keeping their high quality (Activities related to Service Provision Bill submitted by the Council of Ministers on 12 November 2009);

• Regulation of the counting of agricultural farms (Counting of Agricultural Farms in 2010 Bill submitted by the Council of Ministers on 19 October 2009), etc.

LEGISLATIVE ACTIVITY OF THE INDIVIDUAL PARLIAMENTARY GROUPS

PARLIAMENTARY OPPOSITION (COALITION FOR BULGARIA, MOVEMENT FOR RIGHTS AND FREEDOMS)

At this stage, the parliamentary opposition is demonstrating too weak a legislative activity – of the 100 bills put forward during the period under review, the Coalition for Bulgaria PG submitted only 5 bills and the Movement for Rights and Freedoms PG – only 1.

Coalition for Bulgaria PG (CBPG)

The bills brought forward by the CB PG concern citizens' social and labour rights.

For example, amendments are proposed to the Local Taxes and Fees Act to exempt people with disabilities, children who are ill, the third and every subsequent child of parents of many children from fees for children's day nurseries and kindergartens and provision of social services to children. Reliefs are also proposed for the amount of fees for orphans, children of single parents, children whose parents are full-time university students, etc. The bill lays down guarantees that these citizens who are disadvantaged socially will enjoy fully the protection granted by virtue of the Constitution.

The amendments proposed to the Labour Code envisage a possibility to extend the period in which part-time work is introduced for the workers and employees in an enterprise or a unit of an enterprise as a result of a decrease in the volume of work. This will continue the promotion measure adopted by the previous Government to support employers in the conditions of an economic crisis.

In two other bills – **to amend the Roads Act and the Agricultural Producers Support Act** – the CB PG proposed that the staff of the Roads Agency and the Agriculture State Fund be given the status of civil servants. According to the submitters of the proposal, the purpose is to build a professional and politically neutral administration and to create stability of the official legal relations which would guarantee the impartial performance of the duties.

The CB PG also put forward one of the amendment drafts with respect to the **Trade Act** for reduction of the required minimum capital for the setting up of a limited liability company (OOD) from BGN 5,000 to BGN 2. In principle, the Institute of Modern Politics supports such an idea as part of the efforts to reduce the procedural obstacles and the expenses for starting up a business in Bulgaria. At the same time, it must be emphasised that the measure as it is goes only halfway and has not been well elaborated. First, because the guarantee function of the registered capital is seriously infringed upon while additional guarantee mechanisms for the creditors, the way they are provided for in the countries with Anglo-American legal systems, have not been introduced. Second, because the reduction in the expenses to start up a business would be much more real and tangible if the administrative and court fees were reduced, for example the fees to book a name, to register with the BULSTAT register, to appeal against public procurement procedures before the Competition Protection Commission and others[14].

The bills put forward by the CB PG as a whole comply with the principles of good governance and with the protection of the citizens' rights.

The attitude of the ruling majority to these bills is ambivalent. With respect to the amendments to the Trade Act, for example, there was consensus in Parliament and the GERB PG and the Blue Coalition BG submitted almost identical bills and the three were passed. The situation with the other CB PG bills is different. The proposal that the staff of the Agriculture Fund become civil servants, for example, was rejected. This is reason to believe that the fate of the analogous proposal for the staff of the Roads Agency will be the same. Those in power obviously lack the political will to stabilise the administration in these

[14] Pursuant to Art. 120 of the Public Procurement Act (PPA), the competent body for appeals against actions and decisions of assignors of public procurement is the Competition Protection Commission. In accordance with the Tariff of Fees collected by the Competition Protection Commission under the PPA, the fee for appeal against a decision before the Commission is BGN 850 and, if the public procurement announcement must be published in the Official Journal of the EU, the fee for appeal is BGN 1,700.

government structures and introduce competitions for the appointment of management staff and employees. Naturally, the question comes up why these reasonable legislative measures were not adopted during the term of office of the Stanishev Cabinet and they have been put forward just now in the position of opposition.

With respect to the tax reliefs proposed by the CB PG in the Local Taxes and Fees Act, at this stage there are no signs that the ruling majority would support them.

Movement for Rights and Freedoms PG (MRF PG)

The only bill brought forward by the MRF PG is related to waste management. It was submitted by MP and former Environment and Waters Minister Dzhevdet Chakarov. In accordance with the bill, upon proposal of the Minister of Environment and Waters, by means of a Council of Ministers act up to 20% of the capacity of the regional depots built with funds from the state budget and/or European Union funds may be used for the deposit of waste by municipalities located in other regions. Waste will be deposited at prices which are not higher than the price of depositing waste from the municipalities from the respective region serviced by the depot.

The bill complies with the requirements for good governance. The proposed solution would overcome a number of problems in a national and European context. What remains open is the issue why the commitments of the previous Government to the EU to build regional depots were not fulfilled in time and also why this proposal was not submitted and passed by the previous 40th National Assembly.

RULING MAJORITY (GERB PG, BLUE COALITION PG, ATAKA PG, ORDER, LEGALITY, JUSTICE PG)

GERB PG (included are the Council of Ministers bills)

During the period under review, MPs from the GERB PG put forward 16 bills and the Council of Ministers put forward 55 bills. For the purposes of this Report, 10 of those put forward by the Council of Ministers are discussed as well as 8 put forward by the GERB PG (excluding Ratification Acts which implement imperative EU requirements or provide for structural changes only and several bills which are outside the scope of the monitoring conducted by the Institute of Modern Politics).

- **Internal order and security, criminal justice**

Those in power brought forward several bills in the field of criminal

justice – for **amendments to the Ministry of the Interior Act and the State Agency for National Security Act** (already adopted) – as well as bills of the Government and individual MPs for **amendments to the CrC and the CrPC** (which have passed through first reading in the standing committees). Upcoming are the discussions of the amendments to the Electronic Communications Act related to retention and use of data about the citizens' electronic communications.

Generally, according to the reasons expounded by the submitters of the amendments to the CrC and the CrPC, the changes aim to increase the punishments for diverse crimes, criminalise certain new encroachments posing a public threat, simplify the proof process in crime investigation and reduce the unnecessary formalism in criminal proceedings. The assessment of the Institute of Modern Politics is that the means proposed to achieve these otherwise publicly justified goals pose serious risks for the citizens' fundamental rights and freedoms and entail excessive and imbalanced strengthening of the criminal repression and disputable expansion of the powers of police bodies. The opportunity to analyse a whole package of bills in this field gives reasons for the claim that there is a trend and not individual and isolated legislative proposals. The significance of the topic merits an independent assessment in a separate and more detailed analysis which the Institute will prepare in due time. The following more significant and alarming findings can be identified in this Report:

- The punishment of imprisonment is increased excessively for a number of crimes (for some of them almost 5 times!) which leaves the impression that the proposals were drawn up mechanically without a serious analysis of the effectiveness of the punishments so far. The strengthening of the criminal repression is the easiest reaction to the public expectations for fair punishments which often disguises the insufficient efforts to tackle the real reasons for the lack of convictions or for the disproportionately small punishments. It has long been known in theory and in practice that graver punishments do not necessarily lead to a decline in crime; on the contrary, they are often the cause for the offenders to become more savage. In some of the changes proposed there is a dangerous overlap of the punishments for murder and for other crimes.
- It is inadmissible from the point of view of the Constitution and of international law to restrict the

accused person's right to protection through the introduction of "reserve defence" indicated by the prosecution and their participation in the criminal proceedings despite the express authorisation of a defence counsel chosen freely by the accused person. The right to protection is also unjustifiably infringed upon with the elimination of the possibility for relatives to act as defence at the pre-trial stage and the change in the mandatory nature of defence before the Supreme Court of Cassation.

- The so called "everlasting accused person" is restored with the elimination of the possibility for the accused person to request a judicial review of the proceedings against the person which have been excessively delayed.
- A serious infringement upon the citizens' rights is the provision for the possibility to have a conviction based solely on evidence collected in a clandestine or secret way. This can result in sentences issued only on the basis of evidence which the parties have limited possibilities to verify. The elimination of the requirement that at least two certifying witnesses be present at some investigative actions goes in the same unfavourable direction. These unbiased witnesses, who the bill sponsors obviously find to be "unnecessary formalism," are a guarantee for the reliability of the evidence collected at the pre-trial stage when the possibilities of the parties to take part in the investigative activities are highly restricted.
- The broad possibility for investigative bodies to be interrogated as witnesses is inadmissible. The concerns are that this possibility will be used mostly to compensate for their mistakes at the pre-trial stage.
- The proposal that not only investigating police officers but the other police bodies as well will carry out investigative activities poses many questions about the quality of investigation.

From the point of view of the citizens' rights, special attention must be paid to the **amendments to the Electronic Communications Act proposed by the Council of Ministers**. They envisage changes in the procedure for retention and storage of data about the citizens' electronic communications. The regulation of these data has become popularly known as "Internet tapping." The bill impacts on fundamental human rights such as the right to private life, secrecy of correspondence and communications. It is puzzling why the Ministry of the Interior should propose the revision of a matter

which caused a broad and troubling public reverberation and prompted civil pressure during the discussion of similar texts in the previous 40th National Assembly. The bill brought forward now proposes a number of measures which are similar to the ones that have already been rejected. Its adoption as it is would result in a violation of the citizens' constitutionally guaranteed rights. The expansion of the scope of crimes outside grave crimes is contrary to Art. 34 of the Constitution which allows for exceptions to the principle of inviolability of the secrecy of correspondence and communication only to detect and prevent grave crimes. The view of the bill sponsors that the secrecy of communications is not violated if data about their content is not collected cannot be shared. The circle of people one communicates with and the frequency and traffic of information exchanged are an integral part of communications. This part of communications bears at least as much (if not even more!) information about a person and must enjoy the same level of protection.

The possibility provided for the Ministry of the Interior bodies to have a direct access to the data stored by communication enterprises merits an outright rejection as it creates too high a risk for uncontrolled use of these data. Moreover, despite the preliminary judicial consent required in accordance with the proposal, the so called "interface" makes it possible for the data to be used by the Ministry of the Interior without the enterprises delivering the communications even finding out about the fact. The bills itself implicitly admits this with the provision that when the Operational Technical Operations Specialised Directorate accesses the data through an "interface," the delivering enterprise must be notified about the need to store the data.

▸ Health care

The bills in this field do not comply with the principles of good governance and some of them restrict the citizens' rights. The principally good idea about the creation of a relaxed regime of purchase of medicinal products with funds from the republican budget outside the mandatory health insurance when there are epidemic outbreaks, epidemics, pandemics, etc. in the country laid down in the **amendments to the Human Medicinal Products Act** submitted by the Council of Ministers on 6 November 2009 and adopted by the NA on the very next day has been corrupted. There are no provisions for a clear mechanism for the purchase of the said products. The lack of terms and procedure for the exercise of the powers provided for creates prerequisites for abuse and corruption prac-

tices. Any decisions for the purchase of medicinal products under the conditions indicated may be taken only "in the dark" without the necessary transparency and accountability of the executive.

The second amendment bill concerning the same act put forward by the GERB PG on 23 October 2009 is discriminatory and sets privileges for certain groups of pharmacists. According to the proposal, pharmacists who exercise their professional activities in pharmacies in small, mountainous and border population centres will not be deleted from the official records on the grounds of failure to file documents for the re-registration of a pharmacy by the deadline set out in the law unlike their colleagues in other population centres. Moreover, the deadline for the re-registration of the pharmacies of these pharmacists is extended. Along with this, there are provisions that they will register new pharmacies at a fee 5 times lower than the one paid by other pharmacists. Last but not least, the law does not introduce (or refer to another law for this matter) any legal definitions of the concepts of "mountainous population centres" and "border population centres." This creates prerequisites for possible abuse and corruption practices when the fee due by a Master of Pharmacy for the opening of a pharmacy is set as well as that for the use of the additional term for re-registration of an already existing pharmacy.

Another bill in this field envisages **amendments to the Health Insurance Act**. Some good ideas are put forward in relation to the protection of the patients' rights such as, for example, heightened requirements for the Director and Deputy Directors of the National Health Insurance Fund (NHIF); conclusion of two National Framework Terms – on medical assistance and on dental assistance; legislative provisions and not contractual agreements with the respective profession for the control and sanctions for violations of the law; introduction of quality criteria for the medical assistance provided; introduction of requirements for the public nature of information; overcoming of the existing inequality when health insurance contributions are paid and others (for more details, see the Appendix to this Report). Still, it can be said that the proposed changes will not contribute to the efficient functioning of the health insurance system. First, the proposed changes in the NHIF management structure take several steps back in comparison to the current situation. The existing provisions set out a clear differentiation between the functions of a supreme body, management body, supervisory body and executive body of the NHIF. The proposed amendments dilute these functions as

the existing supreme body and the management and control bodies are united into one body which does not correspond to the principles of good governance. The National Association of Municipalities in the Republic of Bulgaria will not longer take part in the new body, the Supervisory Board. The Supervisory Board will be made up of 4 representatives of professional organisations and 4 government representatives, which creates prerequisites for stalling the institution when the government and the professions differ in opinion.

Next, the proposal to eliminate the competition for the election of NHIF Director and for the majority in the National Assembly to elect this person deserves an outright rejection. The rights of the Bulgarian Medical Association and the Bulgarian Dental Association, which until now have taken an active part in the annual negotiations of the volume, price and methodology of payment for medical assistance, are also restricted. It is proposed now that these elements be set unilaterally by the Finance Minister.

Also unacceptable are the proposals related to the contracts with providers of medical assistance. According to the proposal, for example, the obligation of the Regional Health Insurance Fund (RHIF) Director to conclude a contract with a provider meeting the requirements of the law and of the National Framework agreement (National Framework Terms) will be removed, including when health cards are filled. Instead, it is laid down that the RHIF Director will conclude such contracts with the providers which meet the requirements of the National Framework Terms to the fullest and ensure accessibility and quality of the medical assistance. The refusal to conclude a contract must be accompanied with reasons and may be issued only if the RHIF has entered into agreements with a sufficient number of medical institutions which meet the criteria set. Thus, the introduction of the "first in time, first by right" rule in combination with the RHIF Director's operational independence to decide, including to refuse to conclude a contract with a provider of medical assistance given the insufficiently clear criteria and evaluation methodology, create conditions for abuse of power and corruption practices as well as for depriving the citizens of access to medical assistance. The proposed one-level procedure in the event of disputes between the RHIF and providers of medical assistance, as well as the excessively shortened deadlines, infringe upon the constitutional right to protection. The bill is also restrictive with respect to the restoration of health insurance rights as it proposes heightened requirements for payment of unpaid health insurance contribu-

tions. The goal, according to the submitters of the bill, is to ensure greater collection of the contributions but this goal is very unlikely to be attained with the proposed changes.

It is positive that some of the proposals in the bill envisage overcoming of the inequality in determining the income on which health insurance contributions are due when they are covered by the state budget.

▸ Taxation

The Council of Ministers put forward 3 bills – concerning **amendments to the Corporate Income Tax Act (CITA), the Local Taxes and Fees Act (LTFA) and the Personal Income Tax Act (PITA)**. What is positive about these bills are the provisions for tax reliefs for donations to the Assisted Reproduction Fund Centre and the Transplantations Fund Centre and the introduction of some European requirements. As a whole however, the bills are restrictive – they increase the tax burden on different groups, including through removal of tax reliefs for activities in agriculture, the processing industry, production, high technologies and infrastructure which, at present, may be applied under certain conditions set out in the law.

As for the CITA, it is proposed that the annual determination of municipalities where the unemployment level is 50 or more than 50 percent higher than the average in the country be stopped which would prevent these municipalities from providing for special relaxed measures. There are also provisions for an increase in the tax rate for gambling activities.

The amendments to the LTFA envisage an increase of the tax burden on the citizens. Taxes on property with a very low tax evaluation will be collected. The taxes on buildings will go up, the tax on a vehicle paid unfairly will not be repaid when the vehicle is stolen or destroyed. The setting of the domestic waste fee will not be tied to the expenses approved by the municipal council for the respective year for every activity for which the fee is paid.

The amendments to the PITA also entail burdens. It is proposed that the income from the sale or exchange of real estate property be taxed if 3 years have not elapsed between the date of acquisition and the date of sale or exchange. Any stocks and shares for in-kind contributions in a commercial company will be deemed taxable income. There is also a proposal to remove the tax reliefs for young families who have concluded mortgage loans in a large amount and the mortgaged residence is the family's only residence.

Highly debatable is the proposal that loans totalling more than BGN 5,000

be declared along with information about the progress of repaying them at the end of the year.

As a whole, the tax laws proposed by the Council of Ministers and the GERB PG lead to an increase in the tax burdens on the citizens and certain sectors of the economy which, in the conditions of an economic crisis, would undoubtedly have a negative impact. A level of redistribution of more than 42% is envisaged which is the highest level from the beginning of the 1990s. And all this is being done by a ruling majority which defines itself as "right-wing."

‣ Social and labour rights

The GERB PG also brings forward **amendments to the Labour Code** which are almost identical to the bill introduced a month earlier by the CB PG – to extend the period in which an enterprise or a unit of an enterprise may introduce part-time work for the workers and employees due to the decrease in the volume of work. Supporting this idea with the arguments presented above, the Institute of Modern Politics highlights the practice of those in power not to support the good proposals of the opposition but to re-write them themselves and accept them only then. On another note, this practice is something familiar from the previous parliaments as well.

‣ Environmental protection

Amendments to the Hunting and Game Protection Act (for more details, see the Appendix to this Report). This bills falls within the grey zone and raises concerns about pursuit of personal interests of certain MPs and persons related to them. The elimination of the unified professional organisation which protects the professions, participates in the development of the policies and exercises control is completely inappropriate. This is definitely a step back and instead of applying the modern approach of transfer of government functions to public and professional organisations, everything is returned to the powers of the state administration. Along with this, the expansion of the hunting periods is completely unacceptable from the point of view of the protection of the environment and biological species. There is no appropriate analysis of the animal populations in Bulgaria. The comparisons made by the submitters of the bill with the regulations in other countries are not a sufficient argument due to the difference in environmental and climatic conditions, etc.

Amendments to the Environmental Protection Act (for more details, see the Appendix to this Report). The process of reporting for the condition of the environment is becoming less transparent while the public is deprived of the possibility for a public

debate in Parliament, as well as exercise of control by the Parliament on the executive in the field indicated.

Amendments to the Agricultural Producers Support Act. The proposal is appopriate and aims to facilitate funding related to the implementation of projects funded under the EU's Common Agricultural Policy.

▸ Culture

The amendments to **the Cultural Heritage Act** adopted on proposal of the GERB PG extend the terms for requests for identification and registration as movable cultural values of movable archaeological objects or movable archaeological monuments of culture by the persons who have actually held them as well as for requests for identification and registration of movable archaeological objects – coins and coin-like objects by the same persons. It was a necessary and appropriate amendment in view of the fact that the necessary secondary legislation had not been adopted by the elapse of the terms initially set in the law.

▸ Civil rights

The amendments to the Protection against Domestic Violence Act brought forward by the Council of Ministers comply fully with the principles of good governance and protection of vulnerable groups (for more details, see the Appendix to this Report).

Blue Coalition PG

The Blue Coalition PG put forward 16 bills (two of which were withdrawn: on amendments to the Human Medicinal Products Act of 2 October 2009 and a bill on an Institute for National Memory about the Crimes against the Bulgarian People).

The more significant of them are:

▸ Energy

The amendments proposed to the Energy Act envisage that the Energy Strategy of the Republic of Bulgaria submitted by the Minister of Economy, Energy and Tourism and adopted by the Council of Ministers is to be approved with a decision of the National Assembly. This proposal would certainly increase the transparency and accountability in the work of the institutions engaged in the performance of the Strategy.

▸ Health care

Amendments to the Health Insurance Act – the purpose is to overcome the inequality with respect to the health insurance contribution covered from the state budget. The proposed change encompasses students, university students, persons who receive social support, persons

who take care of people with disabilities, etc. for whom the insurance contribution at present is paid on half of the minimum insurance income for the self-insured persons. This idea has also been taken up by GERB and included in their social insurance bill. This bill aims to overcome inequality and, in its essence, is anti-discriminatory.

Taxation

The Blue Coalition PG put forward 5 bills in the field of taxation and social security. The proposed amendments to the Value Added Tax Act (VATA) submitted on 26 August 2009 envisage a reduction in the tax rate on the supply of medicinal products and medicinal items and on text books and reference books from 20 to 7 percent. The bill may be deemed to be compliant with the principles of good governance and guaranteeing the rights of social groups in need of protection – people who are ill and students. The reduction in indirect tax will significantly facilitate the access to health services and education. Unfortunately, this bill was rejected by the National Assembly.

Other amendments to the VATA submitted on 27 August 2009 envisage the introduction of a unified term for VAT reimbursement – up to 10 days as of the elapse of the deadline for its declaring for all liable persons. In the event of delay in the term, regardless of the grounds, interest for delay will be due. The proposals also include the introduction of a possibility, in the event of an inspection taking place, the reimbursement of the tax to be made in the course of the inspection by provision of indemnity not only in cash, a bank bond or government securities but of other collateral admissible pursuant to the Tax and Social Insurance Procedure Code (TSIPC) as well and also preservation of the legal possibility to deduct the tax but only if the liable persons wish to do so. The proposed amendments would certainly create equality between the traders with respect to the terms for reimbursement of the tax as well as an opportunity for the traders, in the conditions of an economic and financial crisis, to use this financial resource timely. On the other hand, however, the elimination of all requirements for preliminary inspections before the reimbursement of VAT, the shortened terms and the obligation of interest payment will make it significantly more difficult for the tax administration to exercise its functions and will create conditions for a rise in VAT abuse. That is why, the bill is unbalanced from the point of view of the inter-

est of the government and the companies and does not comply with the principles of good governance. The bill was rejected.

Two of the proposals of the Blue Coalition – for amendments to the CITA and the PITA – envisage a reduction in the tax rate on income from dividends and liquidation shares from 5 percent to 1 percent and a reduction in the tax rate on income from economic activities as a sole trader from 15 percent to 10 percent. These bills were also rejected by the National Assembly.

Social security and labour rights

Amendments to the Social Insurance Code are proposed – a reduction in the amount of the Pension fund insurance contributions and a change in the allocation of the contributions between the insurers and the insured persons in accordance with which the insured persons will bear a greater contribution burden in comparison to the current situation. In addition, there is also a proposal for an increase in the amount of insurance contributions to mandatory pension insurance for a general pension fund, again with a greater burden for the insured persons. The rest of the changes aim to overcome the inequality of a certain group of people when cash compensation for temporary unfitness to work is paid and to reduce the time required for length of service to acquire the right to cash compensation for pregnancy and birth from 12 months to 6 months.

Amendments to the Labour Code – introduction of protection for women workers and employees at an advanced stage of an in vitro fertilisation treatment which would be equal to the protection granted by law to pregnant workers and employees. This bill corresponds to the commitment made by the government to protect the citizens' health, in particular their reproductive health. The bill guarantees the rights of women workers and employees at an advanced stage of an in vitro fertilisation treatment.

Commercial companies regime

The Blue Coalition PG also put forward one of the Trade Act Amendment Bills adopted by the National Assembly which provides for a reduction of the minimum capital required for the setting up of a limited liability commercial company from BGN 5,000 to BGN 2. It must be emphasised once again that the Institute of Modern Politics supports in principle such an idea as

part of the efforts to reduce the procedural obstacles and expenses for starting a business in Bulgaria. At the same time, as it is, such a measure goes only halfway and has not been elaborated well enough. First, because the guarantee function of the registered capital is seriously infringed upon while additional guarantee mechanisms for the creditors, the way they are provided for in the countries with Anglo-American legal systems, have not been introduced. Second, because the reduction in the expenses to start a business would be much more real and tangible if the administrative and court fees were reduced, for example the fees to book a name, to register with the BULSTAT register, to appeal against public procurement procedures before the Competition Protection Commission and others.

▸ Other

Amendment to the Labour Code – it proposed 2 new official holidays in Bulgaria: 23 August, Memorial Day for the victims of the national socialist and communist regimes in Europe, and 9 September, Memorial Day for the victims of the communist terror in Bulgaria after 9 September 1944. The bill was rejected by the National Assembly. It must be noted that neither at the submission of the bill nor at its rejection, neither its submitters nor he other parliamentary groups raised the issue that in a democratic society official state holidays must be determined not as a party decision of the ruling majority but as a result of a broad public discussion.

The results of the legislative activity of the Blue Coalition PG are the following: of the 14 bills practically discussed in Parliament (excluding the two withdrawn ones), only one was adopted – the amendments to the Trade Act (analogous to the ones put forward by the Council of Ministers by the CB PG). At the same time, 7 bills were rejected – the highest number of rejected bill submitted by a parliamentary group.

Ataka PG

The Ataka PG does not demonstrate any significant legislative activity. Except for the unconditional support for GERB, the Ataka PG did not itself put forward any bill. Together with representatives of the GERB PG, Ataka MPs brought forward amendments to the Special Intelligence Means Act (whose text has not been uploaded on the website of the National Assembly). Ataka MPs also co-submitted the amendments to the Notaries and Notarial Practice Act which will be dealt with below in the section on the Order, Legality, Justice PG.

Order, Legality, Justice PG[15]

The OLJ PG exhibits a weak legislative activity. It put forward 6 bills one of which was withdrawn.

▸ Economy

Two of the bills of this parliamentary group concern the regulation of gambling activities. The proposals are extremely restrictive – a ban on gambling activities performed by companies registered in off-shore areas; a requirement for at least 5 persons from the management, managerial or expert staff to have 5 years of experience in companies which organise and conduct games of chance in Member States of the European Union or the European Economic Area; organisation of lottery games, toto and lotto only by state enterprises; a 5-percent increase of the tax on gambling and others (for more details, see the Appendix to this Report).

As for the proposal for an abrupt rise in the tax on the gambling business, it must be noted that it will probably fail to accomplish the goals proclaimed by the submitters of the bills – an increase in the revenues in the state budget, maintenance of cash resources, creation of new jobs and reduction in grey economy. Representatives of the sector have recently made public forecasts that lawful gambling will shrink which will lead to closure of jobs, reduction in the revenues in the state budget and increase in illegal gambling activities in the country. On another note, it is obvious that OLJ MPs pay a special interest to the regulations and the introduction of restrictions on the gambling business. Such an interest on their part cannot be observed with respect to other sectors of the economy.

▸ Criminal justice

The proposals for amendments to the Criminal Code put forward by OLJ MPs aim to strengthen the criminal represession and are similar in philosophy to the amendments brought forward by the Government. As noted above in this Report, the Institute of Modern Politics believes that the excessive and imbalanced enhancement of criminal repression presents a serious risk for the citizens' fundamental rights and freedoms.

▸ Notarial practice

OLJ is the main group, together with representatives of the Ataka PG and the GERB PG, putting forward **amendments to the Notaries and Notarial Practice Act.**

[15] As of the date of presentation of this Report, the OLJ PG does not exist because the number of its members dropped below the 10 MPs required pursuant to Parliament's rules.

This bill undoubtedly falls within the area of "grey legislation" because it provides for the personal interests of MPs from the majority and creates privileges for a certain group of people who act as notaries. It is provided that those notaries who are elected President, Member of Parliament, Minister or Mayor will be replaced by assistant notaries or another notary, even though they have lost their legal capacity.

In practice, this bill was linked in the public domain to the personal interests of Iskra Fidosova, a Member of Parliament from the GERB PG. From the point of view of parliamentary ethics and the rules for the prevention of conflicts of interest, it was more appropriate for her to withdraw from the discussions of these proposals and not to defend actively in her public statements her private interest in the adoption of such a bill. The amendments proposed also grant other privileges to assistant notaries who work for notaries who are elected President, Member of Parliament, Minister or Mayor.

The Appendix to the Report gives summaries of the bills monitored by the Institute of Modern Politics and brief analytical assessments of each bill.

APPENDIX

I. MONITORED BILLS WITH AN IMPACT ON THE CITIZENS' RIGHTS

SECRECY OF CORRESPONDENCE AND OTHER COMMUNICATIONS

Bill:	**Electronic Communications Amendment Bill**
Submitted by:	Council of Ministers
Date of submission:	2 December 2009
Lead Committee:	Internal Security and Public Order Committee
Status:	Discussion

The submitters of the bill justify it with the need to overcome the "serious problems which have arisen in the work related to detecting and investigating crimes after the latest revision of the norm of Art. 251 of the Electronic Communications Act."

The key elements are:

- The legal entities which provide public electronic communication networks or services are obligated to store all data relating to the communication traffic which have been generated or processed in the course of their activities.
- A differentiation is made between the data with regard to the communication traffic and the communication content and the regime applied to them.
- The storage of data for a certain period is guaranteed with a view to using all or part of them to detect and investigate crimes which entail the punishment of imprisonment of two or more years and crimes under Chapter Nine A of the Criminal Code as well as to search for people.
- Two possibilities for access to the data are set out: through an interface with the Operational Technical

Operations Specialised Directorate of the Ministry of the Interior or directly by the bodies which have requested access. According to the provisions, access to the data under Art. 250a, para. 1 will be given upon a reasoned request submitted by the respective head of a body under Art. 250c, para. 1 after a ruling of the Regional Court President or a judge authorised by them as per the seat of the body.

A special non-public register is envisaged for the approvals or rejections in the respective courts. The Operational Technical Operations Specialised Directorate of the Ministry of the Interior will make queries about the data under Art. 250a, para. 1 when a court ruling is filed which must also be registered in a special non-public register.

The Commission for Personal Data Protection is identified as the monitoring body with respect to the security of the data stored and it is entrusted with the exercise of supervision over the activities of the enterprises providing public electronic communication networks and/or services concerning the observance of the rules for protection and security in data storage.

It is envisaged that the National Assembly, through a committee set up in accordance with its Rules of Organisation and Procedure, will exercise parliamentary control and monitoring of the procedures for granting and carrying out access to the data under Art. 250a, para. 1 and for protection of the citizens' rights and freedoms against unauthorised access to the data.

A para. 2 is created in Art. 360 of the Criminal Code criminalising the acts of a person who in violation of the law discloses traffic data which are collected, processed, stored and used by the enterprises providing public electronic communication networks and/or services pursuant to the Electronic Communications Act.

It is worth presenting in brief the background of the discussion of this issue which has become known as "Internet tapping." The regulation of retention of data from electronic messages derives from the need for the Bulgarian legislation to introduce the requirements of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006. The first attempt at this was made during the previous administration's term of office through a piece of secondary legislation – a joint ordinance of the Ministry of the Interior and the Information Technologies Agency. Following serious public debates and as a result of an appeal of civil society representatives, the Supreme Administrative Court repealed the Ordinance text providing for the access to data from electronic communications. The arguments put forward by the Court included the lack of restrictions for the data to which access is allowed

through a computer terminal while the phrase "for the purposes of operational and investigative activities" is too general and does not offer guarantees for compliance with Art. 32, para. 1 of the Constitution that the citizens' personal life is inviolable. According to the Court, there were no conditions preventing the abuse of the possibility to violate the citizens' constitutionally guaranteed rights. Also missing were references to the special laws – CrPC, Special Intelligence Means Act, Personal Data Protection Act – which detail the prerequisites for allowing access to certain data related to an individual's personal life and personal data. The Court was explicit that the national laws must comply with the principle introduced in Art. 8 of the European Convention on Human Rights pursuant to which everyone has the right to respect for their private and family life, their home and the secrecy of their correspondence while any interference by a public authority with the exercise of this right is inadmissible. The national legal norms must introduce understandable and clearly defined grounds both for the access to data from the citizens' personal life and for the procedure for obtaining the data. The Court found that Art. 5 of the Ordinance lacked clarity about the guaranteeing of the right to protection against unauthorised interference in the citizens' private and family life which makes the norm contrary to Art. 8 of the European Convention on Human Rights, to texts of Directive 2006/24/EC, to Art. 32 and Art. 34 of the Constitution.

To avoid the infringements upon the citizens' rights found by the Court, the texts of the Electronic Communications Act effective now were adopted. And in the first months after their adoption, the Ministry of the Interior made unsuccessful attempts at expansion of the possibilities to retain data from the citizens' communications. The present bill continues these efforts and suffers from the shortcomings criticised in the earlier proposals.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The adoption of the bill as it is would result in a violation of the citizens' constitutionally guaranteed rights.

The expansion of the scope of crimes outside the grave crimes is a violation of Art. 34 of the Constitution which allows for exceptions to the principle of inviolability of the secrecy of correspondence and communications only to detect and prevent grave crimes. The view of the submitters of the bill that the secrecy of communications is not violated if data about their content is not collected cannot be shared. The circle of people one communicates with and the frequency and traffic of information exchanged are an integral part of the communications. This part of the communications bears at least as much (if not even more!) information about a person and must enjoy the same level of protection.

The possibility provided for the Ministry of the Interior bodies to have a direct access to the data stored by communication enterprises creates too high a risk for uncontrolled use of these data. Moreover, despite the preliminary judicial consent and register of requests provided for, the so called "interface" makes it possible for the data to be used by the Ministry of the Interior without the enterprises delivering the communications even finding out about the fact. The bills itself implicitly admits this with the provision that when the Operational Technical Operations Specialised Directorate accesses the data through an "interface," the delivering enterprise must be notified about the need to store the data.

RIGHT TO PROTECTION

Bill:	Criminal Procedure Code Amendment Bill
Submitted by:	Council of Ministers
Date of submission:	18 November 2009
Lead Committee:	Legal Affairs Committee
Status:	Discussion

The bill sponsors justify it with the need to overcome the weaknesses pointed out by acting magistrates in the application of the law and difficulties in their work. Arguments from two reports are adduced – the 2009 Technical Update and Regular Report of the Commission of the European Communities - which suggest that the pre-trial stage in the Criminal Procedure Code must be simplified.

Measures in three areas are proposed with these arguments: The first is improving the evidence procedure and mostly simplification of the process of providing proof in which 8 specific measures are proposed.

The second group are measures related to restriction of the formalism and speeding up of the criminal procedure. 18 specific measures are proposed.

The third group are texts related to the rights of the participants in the process – the accused person and the victim.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

- It is inadmissible from the point of view of the Constitution and of international law to restrict the accused person's right to protection through the introduction of "reserve defence" indicated by the prosecution and their participation in the criminal proceedings despite the express authorisation of an attorney chosen freely by the accused person. The right to protection is also unjustifiably infringed upon with the elimination of the possibility for relatives to act as defence

in the pre-trial stage and the change in the obligatory nature of the defence before the Supreme Court of Cassation.

- The so called "everlasting accused person" is restored with the elimination of the possibility for the accused person to request a judicial review of the proceedings against the person which have been excessively delayed.
- A serious infringement upon the citizens' rights is the provision for the possibility to have a conviction based solely on evidence collected in a conspiratorial or secret way. This can result in sentences issued only on the basis of evidence which the parties have limited possibilities to verify. The elimination of the requirement that at least two certifying witnesses be present at some investigative actions goes in the same unfavourable direction. These unbiased witnesses, who the submitters of the bill obviously find to be "unnecessary formalism," are a guarantee for the reliability of the evidence collected at the pre-trial stage when the possibilities of the parties to take part in the investigative activities are highly restricted.
- The broad possibility for investigative bodies to be interrogated as witnesses is inadmissible. The concerns are that this possibility will be used mostly to compensate for their mistakes at the pre-trial stage.
- The proposal that not only investigating police officers but the other police bodies as well will carry out investigative activities poses many questions about the quality of investigation.

Bill:	**Criminal Code Amendment Bill**
Submitted by:	Yane Yanev (OLJ PG) and a group of MPs
Date of submission:	23 October 2009
Code:	954-01-36
Lead Committee:	Legal Affairs Committee
Session:	First session
Status:	Discussion

In brief, the submitters of the bill propose the following with the new texts and revisions:

• Impossibility for one to practice again a profession or activity of which the defendant has been deprived in a judicial procedure if the damages from the crime have not been restored and the compensations under the civil claims granted in the criminal procedure have not been paid.

• Avoidance of the possibility to impose unreasonably lenient sanctions in proceedings with expedite judicial investigation and clarification of the limits of punishments in these cases for crimes

committed by underage persons.

• Providing the prosecutor with the legal possibility, should the prerequisites for exemption from criminal liability be in place, to impose a fine on the defendant in an administrative procedure.

• New very heavy punishments for persons and organised crime groups kidnapping people for ransom.

• Criminalisation of the act of exercise of other people's voting rights in collective bodies by MPs and municipal councillors.

• Criminalisation of acts related to unauthorised performance of commercial activities, incorrect reporting for economic indicators with a view to avoiding or reducing tax and social security obligations and failure to pay social security constrinutions despite the availability of cash. The Criminal Code texts concerning illegal gambling are revised with provisions for criminal prosecution of illegal organisation and participation in games of chance.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The proposals for amendments to the Criminal Code put forward by OLJ MPs aim to strengthen the criminal repression and are similar in philosophy to the amendments brought forward by the Government. As noted above in this Report, the Institute of Modern Politics believes that the excessive and imbalanced strengthening of the criminal repression hides serious risk for the citizens' fundamental rights and freedoms.

SOCIAL AND LABOUR RIGHTS

BILLS AT THE STAGE OF "DISCUSSION"

Bill:	**Labour Code Amendment Bill**
Submitted by:	Vaniyo Sharkov (Blue Coalition PG) and a group of MPs
Date of submission:	7 October 2009
Code:	954-01-28
Lead Committee:	Labour and Social Policy Committee
Session:	First session
Status:	Discussion

The bill envisages protection for women workers and employees who are at an advanced stage of an in vitro fertilisation treatment which is made equal to the protection afforded to pregnant workers and employees. The proposed protection measures are:

- Prohibition of night labour.
- Inadmissibility of extra-time work.
- Prohibition for employers to give tasks and obligate women workers and employees who are at an advanced stage of an in vitro fertilisation treatment to do work which poses dangers and threats to their security and health.
- Right for women workers and employees who are at an advanced stage of an in vitro fertilisation treatment to refuse to do work which is deemed harmful for the health of a mother or a child or which, following a risk assessment, is determined to pose a serious risk to the mother's health or that of her unborn child.
- Obligation of employers to furnish respite rooms following a procedure set by the Health Minister;
- Provisions for labour re-adjustment: when women workers and employees who are at an advanced stage of an in vitro fertilisation treatment do work which is inappropriate in their condition, upon instructions from the health care authorities the employers are obligated to take the necessary measures to adjust temporarily the working conditions and/or working time in order to eliminate the risk for their safety and health. If the adjustment of the working conditions and/or working time is technically and/or objectively impossible or if it is unreasonable to require it on the account of good grounds, the employer is obligated to take the necessary measures to transfer the workers or employees to other appropriate jobs. Until the instructions for transfer are fulfilled, the workers or employees will be relieved of the obligation to do the work which is inappropriate in their condition while the employer pays them compensation amounting to the gross work remuneration for the month preceding the day of issuance of the instructions. The employer together with the health care authorities will determine annually the positions and jobs appropriate for women workers and employees who are at an advanced stage of an in vitro fertilisation treatment.
- Obligation of the employer and enterprise officials to keep secret the circumstances related to the condition of women workers and

employees who are at an advanced stage of an in vitro fertilisation treatment.

• Protection in the event of dismissal: dismissal by the employer with an advance notice is allowed only on several of the grounds listed in the Labour Code, namely: a) when the enterprise is wound up; b) if the worker or employee refuses to follow the enterprise or its unit in which they work when they move to another population centre or locality; c) when the position the worker or employee occupies must be vacated to restore a worker or employee who has been unlawfully dismissed and who has occupied the same position; d) in the event of objective impossibility to perform the labour contract. A dismissal without notice is possible only when a worker or employee is detained to serve a sentence or is dismissed on disciplinary grounds. In the last case, the dismissal may be made only with the preliminary consent of the labour inspection.

Provisions in the same vein are also envisaged in the Civil Servants Act with respect to business trips without consent in writing and protection in the event of termination of official relations.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The bill sets guarantees for ensuring health protection of the citizens' reproductive health[16]. Such a protection by the state is one of the main factors for the overcoming of the negative demographic processes. Arguments to this effect can also be found in the requirements of EU Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and the jurisprudence in the field of the Court of Justice of the European Union in Luxembourg.

[16] Approximately 270,000 couples in the Republic of Bulgaria have damaged reproductive health. According to the 2008 European Commission Report on the demographic processes and trends in the European Union, Bulgaria's population will drop to 6,735 million people by 2030 and to 5,923 people by 2050. As per the European Commission excerpt about the demographic processes and trends in the EU, 1.37 children per woman were born in our country in 2006, compared to the growth of 2.07 children per woman in the 1960s and 1970s.

PROTECTION AGAINST DOMESTIC VIOLENCE

Bill:	**Protection against Domestic Violence Amendment Bill**
Submitted by:	Council of Ministers
Date of submission:	23 October 2009
Code:	902-01-35
Lead Committee:	Legal Affairs Committee
Session:	First session
Status:	Discussion

The bill envisages the following more significant changes:

Expansion of the scope of the legal definition of the concept of "domestic violence": *"domestic violence shall be any act of physical, sexual, psychological, emotional or economic violence and the attempt at such violence, forced restriction on private life, personal freedom and personal rights, committed with respect to persons related by kin, who are or have been in family relations or in factual cohabitation."*

Emotional and economic violence as well as the attempt at such have been added to the text in force; the cases of violence between persons who live in the same residence and are not related by kin, are not or have not been in family relations or factual cohabitation are removed. The provision has been expanded with the case that domestic violence committed in the presence of a child is deemed psychological and emotional violence against the child.

There are also provisions that protection may be sought against a person who has committed domestic violence when the victim is in a collateral relationship up to the fourth degree inclusive with the person (at present, it is only brother or sister) and against a person when the victim is or has been in kinship by marriage up to the third degree inclusive (at present, only up to the second degree). There are also additions to the existing texts ensuring the possibility to seek protection against an ascendant or descendant of the person with whom they cohabit or against a person with whom the parent is or has been in factual cohabitation.

The types of liability the offender may bear outside the scope of the liability under this law have been detailed. Until now, the liability under the law did not exclude the offender's civil and criminal liability. It is now proposed that the offender's administrative criminal liability borne

by virtue of other laws be engaged as well.

The provisions for the cases when a person may file a request with the Ministry of the Interior bodies have been changed. In accordance with the texts in force, the victim may file a request when there is evidence of a direct or immediate danger to the person's life or health. The proposal is that "direct and immediate danger" be deleted and thus requests may be filed in the cases when there is evidence of a danger to the victim's life and health.

The measures for protection against domestic violence have been expanded with a prohibition for the offender to get close to the victim and an extension of the minimum and maximum term for imposition of certain measures (now: from one month to one year; changed to: from 3 to 18 months). An exception is set out from the implementation of the measure of temporary designation of the child's residence with the victimised parent or the parent who has not committed the violence under terms and conditions laid down by the court if this is not contrary to the child's interests. The exception covers the cases when there is a pending judicial dispute between the parents in relation to the exercise of the parental rights, the designation of the child's residence or the regime of personal relations.

The regional court as per the victim's permanent or current address becomes competent to impose all protection measures. According to the effective law, competent to impose a protection measure is the regional court as per the victim's current address and, in the cases when cooperation has been requested of the Ministry of the Interior bodies – the regional court as per the location of the regional police department in whose territory protection has been sought.

The persons who are competent to refer to the court the matter of issuance of an order for protection measures have been detailed. At present, these are: the victim, the Director of the Social Assistance Directorate, a brother or a sister, or a person who is a relative with the victim in a direct line without limitation – in the cases of immediate judicial protection. The proposal defines the persons in the following way: 1) the victim if the victim is from at least 14 years of age or is partially incapacitated; 2) the victim's representative by law; 3) the Director of the Social Assistance Directorate when the victim is between 14 and 18 years of age, incapacitated or disabled; 4) a brother, a sister or a person who is a relative with the victim in a direct line without limitation.

In relation to the appeal against the decision before the district court, a prohibition is proposed to append new evidence to the appeal; there are provisions for exemption from stamp duty; a 7-day term is proposed for filing of objections and new evidence by the other party (the term now is three days) as well as a 30-day term for the review of the appeal by the district court (the term now is 14 days).

It is envisaged that the Ministry of the Interior bodies will be authorised to assist with the removal from the residence where the two parties have lived together of an offender who has been prohibited from getting close to the victim, the residence, place of work and places of social contacts and relaxation of the victim in the cases when the offender refuses to comply with the measure voluntarily.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The bill provides for a broader protection of victims of violence.

The protection mechanisms have been defined more clearly. Access to protection is facilitated.

A positive step is the creation of a National Programme for Prevention of and Protection against Domestic Violence and ensuring financial resources for its implementation.

II.
MONITORED BILLS WITH AN IMPACT ON THE PRINCIPLES OF GOOD GOVERNANCE

IN THE FIELD OF HEALTH CARE

ACTS ADOPTED

Bill:	**Human Medicinal Products Amendment Bill**
Submitted by:	Council of Ministers
Date of submission:	5 November 2009
Lead Committee:	Health Care Committee
Status:	Adopted
First reading:	6 November 2009
Date of adoption:	6 November 2009
Published in the SG	88/2009

The reasons to the bill emphasise that the goal is to ease the regime of purchase of medicinal products with funds from the budget outside the mandatory health insurance when there are epidemic outbreaks, epidemics, pandemics, etc. in the country or in the event of dissemination of chemical or biological agents or a nuclear reaction. An exception is introduced that the medicinal products given with a doctor's prescription which are necessary for prevention or treatment in the situations listed will not be included in the Positive Medicinal List.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

This bill definitely falls within the grey zone of the legislation which creates prerequisites for abuse and corruption practices. Its main shortcoming is the lack of a clear mechanism for ensuring transparency and accountability.

BILLS AT THE STAGE OF "DISCUSSION"

Bill:	**Health Insurance Amendment Bill**
Submitted by:	VANIYO SHARKOV and MARTIN DIMITROV (Blue Coalition PG)
Date of submission:	30 September 2009
Lead Committee:	Health Care Committee
Status:	Discussion

The proposal includes an equalisation of the health insurance contribution paid from the state budget with the minimum insurance income for the self-insured persons and covers:

1. Persons up to 18 years of age and after they attain this age if they are regular students – until they complete their secondary education;
2. University students – regular attendants at higher institutions until they become 26 years of age and the persons studying towards Doctor's degrees who are regular attendants in accordance with the state plan;
3. Foreign university students - regular attendants, until they become 26 years of age and the persons studying towards Doctor's degrees who are regular attendants admitted to higher institutions and scientific organisations in Bulgaria;
4. Citizens who meet the requirements for monthly social assistance and targeted assistance for heating if they are not insured on other grounds, as well as those placed in specialised social service institutions and admitted to social vocational training centres and temporary residence centres;
5. Persons under arrest or persons who are imprisoned;
6. Persons in a procedure for acquisition of the status of a refugee or the right to asylum;
7. Parents, adopters or spouses who take care of people with disabilities who have lost more than 90 percent of their ability to work and who need constant care;
8. Spouses of members of the armed forces participating in international operations and missions – for the period of the mission and the persons who receive compensation under Art. 320 of the Republic of Bulgaria Defence and Armed Forces Act – for the period in which compensation is provided.

At present, an insurance contribution is paid for the indicated persons in an amount set out with the Annu-

al National Health Insurance Fund Budget Act on half of the minimum insurance income for the self-insured persons. The reasons indicate that the government's participation in the health insurance must be equalised to the citizens' participation.

According to the submitters of the bill, the change would guarantee better financing of Bulgarian health care.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

This bill definitely falls within the grey zone of the legislation which creates prerequisites for abuse and corruption practices. Its main shortcoming is the lack of a clear mechanism for ensuring transparency and accountability.

Bill:	**Health Insurance Amendment Bill**
Submitted by:	LACHEZAR BOGOMILOV IVANOV
Date of submission:	8 October 2009
Lead Committee:	Health Care Committee
Status:	Discussion

Out of the numerous changes envisaged in the bill, the more significant ones are outlined below:

1. Changes related to the management of the NHIF:

A reduction in the NHIF management bodies is proposed: a) Supervisory Board [17] with a term of office of 5 years and b) a Director. The Chairperson of the Supervisory Board and the other three government representatives on the Supervisory Board are to be determined with a Council of Ministers decision upon motion from the Health Minister. In comparison to the provisions currently in force, the Supervisory Board will combine the functions of the Meeting of Representatives and the Management Board. It is also entrusted with certain control powers. The scope of its functions no longer includes the preparation of the draft NHIF annual budget, of a draft Ordinance on the Terms and Procedure for Payment of the Medicinal Products, Medicinal Items and Diet Foods for Special Medical Purposes (currently within the competence of the Management Board).

[17] It is proposed that the Supervisory Board be made of 8 members – 1 representative of the representative organisations for patients' rights protection, 1 representative of the representative organisations of workers and employees, 2 representatives of the representative organisations of the employers and 4 government representatives.

It is proposed that the NHIF Director be elected by the National Assembly for a period of 5 years. One of the requirements for the position is heightened: from a minimum of five to a minimum of eight years of professional experience in the field of management of health care, banking, insurance or social security. The three-month notice when the contract is terminated on the Director's initiative is cancelled and replaced by "hand in resignation." The Director's competences no longer include the approval of forms and other documents concerning the performance of mandatory social insurance in relation to the activities entrusted to the NHIF which are obligatory for all individuals and legal entities. The Director's obligation to participate in the Fund's supreme management body is also removed.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

This category of changes falls within the grey zone on the account of the following more significant consideration:

- The administrative and party-neutral character of the position of NHIF Director is changed with the replacement of the current appointment procedure following a competition with a political appointment by the majority in Parliament.
- The current system of NHIF management bodies corresponds to the requirements for good governance – separation of the functions of supreme, management and controlling bodies and an executive body. The proposals violate this principle.
- The setting up of the Supervisory Board made up of 4 representatives of professional organisations and 4 government representatives creates prerequisites for stalling the institution when the government and the professions are of different opinions.

2. Changes related to the National Framework agreement:

It is proposed that the term National Framework agreement (NFA) be replaced with National Framework Terms (NFT) which are defined in the following way: a normative administrative act effective on the entire territory of the country for a certain period of time which is mandatory to the NHIF, the providers of medical assistance, the insured persons and the insurers. It is envisaged that the NHIF will set out the NFT for medical activities together with the Bulgarian Medical Association and the NFT for dental activities together with the Bulgarian Dental Association. The NFT will be adopted for 5 years in-

stead of the current 1-year term of the NFA. The number of representatives of both parties in the preparation and adoption of the NFT is reduced – from 10 to 9, and the requirement for persons in support for the NFT for them to be adopted is reduced respectively – from 8 to 7 persons. The NFT prepared and adopted will be coordinated (and not signed, as the current provision is) by the Health Minister. The NFT content will no longer include the determination of: 1) volume, prices and methodology for payment of the assistance; 2) lists of medicinal items and diet foods for special medical purposes and the prices up to which the NHIF pays for them in full or partially; the conditions for prescribing and receiving the medicines, medicinal items and diet foods for special medical purposes; 3) terms and procedure for control over the performance of the contracts with the providers of medical assistance; 4) sanctions for non-performance of the contracts. Also removed are:

- The requirement for the prices and volumes for payment for the assistance to be determined in accordance with the NHIF budget for the respective year;
- The possibility to amend the NFA (NFT) on the request of a party taking part in the negotiations but not more than once every 6 months as well as in the event of changes in the terms and procedure for payment for medicinal products, medicinal items and diet foods for special medical purposes;
- Inclusion in the NFA (NFT) of new methods of diagnostics and treatment under Art. 31, para. 3 of the Public Health Act.

The volumes, prices and methodologies for valuation and payment for medical assistance will be developed by the Executive Agency for Economic Analyses and Forecasting with the Finance Minister while the opinions of the national advisors under Art. 6a of the Health Act and of other leading specialists in the individual branches of medicine will be taken into account. An Advisory Council with the Finance Minister will be set up which will review and provide opinions on the volumes, prices and methodologies [18]. The volumes, prices and methodologies of valuation and payment for medical assistance will be adopted on an annual basis by a Council of Ministers decree upon motion from the Finance Minister.

[18] The Council will be made up of: a Deputy Health Minister, a Deputy Minister of Labour and Social Policy and one representative of each of the following, the NHIF, the Bulgarian Medical Association and the Bulgarian Dental Association; its Chaiperson by right will be the Finance Minister.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The proposed changes have some positive aspects such as:

- Conclusion of two NFTs – for medical and, respectively, dental activities;
- The forms of control and the sanctions are laid down in the legislation and not in the NFT.

Negative aspects of the bill:

- The extension of the NFT duration from 1 year to 5 years prevents the possibility to re-negotiate entirely the NFT terms with the professional organisations in the conditions of a dynamically changing environment;
- The professional organisations will not take part in the negotiations for the volume, prices and methodologies for payment for assistance.

3. Changes related to the contracts with providers of medical assistance:

• The obligation of the RHIF Director to conclude a contract with a provider meeting the requirements of the law and of the NFA (NFT) is removed, including when health cards are filled. Instead, the RHIF Director will conclude such contracts with the providers which meet the requirements of the NFT to the fullest and ensure accessibility and quality of the medical assistance. The refusal to conclude a contract must be accompanied with reasons and may be issued only if the RHIF has entered into agreements with a sufficient number of medical institutions which meet the criteria set.

• The possibility to appeal against the refusals in an administrative procedure is eliminated and a direct appeal before the court at 1 instance is introduced with shortened terms for the court to render its judgment – within one month or within two months.

• The following criteria of accessibility of the medical assistance are introduced: a) the specific needs of the population from the region or the respective population centre for medical assistance based on the number and age structure of the population, infant mortality, hospitalised people with diseases, use, etc.; b) infrastructure features of the respective population centre or region.

• Criteria for the quality of the medical assistance provided are introduced: a) the accreditation score the medical institution has received; b) availability of medical specialists in the medical institution; c) availability of medical equipment in the medical institution; d) existence of certificates of quality.

• The possibility for the RHIF Director to conclude contracts with doctors and dentists practicing outside hospitals who have entered into agreements with a hospital on the same territory is eliminated.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

This part of the bill falls within the grey zone on the account of the following more significant considerations:

- It is provided that the obligation of the RHIF Director to conclude a contract with a provider who meets the requirements of the law and the NFA (NFT), including when the health cards are filled, is eliminated. The introduction of the "first in time, first by right" rule in combination with the RHIF Director's operational independence to decide, including to refuse to conclude a contract with a provider of medical assistance given the criteria and evaluation methodology which are not clear enough create conditions for abuse of power and corruption practices, and for depriving the citizens of access to medical assistance.
- The proposed one-instance procedure for resolution of disputes between the RHIF and the providers of medical assistance as well as the extremely shortened terms infringe upon the constitutional right to protection.

4. Changes related to ensuring the public nature of information about health services:

• The medical institutions will be obliged to post on the internet and in publicly accessible spaces in their buildings information about: a) health activities guaranteed from the NHIF budget; b) the value the NHIF pays for health activities; c) medical services provided free of charge; d) cases when the citizens need to pay for medical assistance, etc.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

Such measures aimed to boost the citizens' awareness will contribute to the more efficient protection of the patients' rights and the guarantees of the constitutional right to accessible medical assistance.

5. More significant changes related to the health insurance rights and contributions

a) It is proposed that the contribution for citizens on unpaid leave who are not insured on other grounds be set on the minimum monthly amount of the insurance income for self-insured persons and not on half of it, as it at present.

b) It is proposed that the insurance contribution for students, university students, etc. who are insured from the budget be made on the minimum monthly income for the self-insured persons and not on half of it, as it is at present.

c) Regarding the suspension and restoration of health insurance rights – at present, if a citizen fails to pay

more than three monthly insurance contributions due for a period of 15 months, the citizen's insurance rights are suspended and restored as of the date of payment of the contributions due. In accordance with the bill, the period of non-payment will be extended to 36 months.

d) There is a change in the procedure for restoration of the health insurance right of citizens who have spent more than 183 days out of the country in one calendar year – if two cumulative conditions are in place:

- Health insurance contributions for at least three consecutive months must be paid;
- A lump sum amounting to 24 health insurance contributions set on the minimum monthly amount of the insurance income for self-insured persons must be paid.

e) It is proposed that the insurance income on the basis of which the health insurance contribution is calculated be identified with the inclusion of any remuneration accrued but not paid yet.

f) The health insurance book is replaced with an electronic health insurance card.

g) The period in which the NHIF will store data about the insured persons and the providers is reduced from 10 to 5 years after the end of the health insurance.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

This part of the bill has some positive aspects such as:

- Elimination of the existing inequality between certain categories of citizens with health insurance;
- Improved communication with the National Revenue Agency;
- Clarification of the citizens with health insurance.

The bill is restrictive with respect to the restoration of the health insurance rights as it proposes tighter requirements for payment of unpaid health insurance contributions. The goal, according to the submitter of the bill, is to ensure greater collection of contributions but it is very unlikely that this goal will be attained with the proposals made.

6. In relation to control:

- It is proposed that the control and sanctions for violations committed by providers of medical assistance be set in the law. It is envisaged that sums from fines and property sanctions imposed may not be recorded as revenue of the NHIF.
- The possibility for a dispute to be resolved by an arbitration committee and a direct appeal in a judicial procedure is eliminated.
- The amounts of sanctions go up.

- Amendments are envisaged to the Tax and Social Insurance Procedure Code by virtue of which the following measures of administrative coercion may be applied to members of management and supervisory bodies of commercial companies and organisations which have not paid the monthly health insurance contributions due for more than two months regardless of their amount: a) prohibit the debtor or the members of the supervisory or management bodies from leaving the country, and refuse to issue or take away any passports and substituting documents issued; b) notify all bodies which by virtue of administrative acts issue licences or permits for the performance of certain activities for which certification of the public obligations is required. These restrictions are highly debatable and impact directly on the citizens' freedom of movement.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The positive aspects of this part of the bill include:

- Provisions for control and sanctions in the law and not in the NFT which correspond to the requirements for legal security and predictability;
- Increased sanctions for violations;
- Elimination of the possibility to record sums from fines and property sanctions imposed as revenue of the NHIF.

Debatable aspects:

- Contraction of the inspectors' control functions, especially the elimination of the inspection for compliance with the rules for good medical practice by the providers of medical assistance;
- Elimination of the arbitration committee and direct judicial appeal introduced.

Bill:	**Human Medicinal Products Act**
Submitted by:	Lachezar Ivanov (GERB PG) and a group of MPs
Date of submission:	23 October 2009
Lead Committee:	Health Care Committee
Status:	Discussion

The bill envisages reliefs in the re-registration of pharmacies opened in small, mountainous and border population centres, namely:

1. In the event of registration of new pharmacies – state fee in the amount of BGN 1,000 (unlike the fee paid by pharmacies located

elsewhere which, in accordance with the tariff approved by the Council of Ministers, is BGN 5,000).

2. Extension of the deadline for re-registration of Masters of Pharmacy who have obtained permits to open pharmacies under the repealed Human Medicinal Drugs and Pharmacies Act in their capacity of natural persons but have not re-registered in accordance with the new law adopted in 2008 by 31 December 2009. The re-registration fee remains BGN 100.

A shortcoming of the bill is the lack of definition of the concepts of "mountainous population centres" and "border population centres." A definition of small population centres is suggested: "cities and villages with a population under 10,000 people."

The reasons point to the fact that the termination of the work of pharmacies in the said population centres will create difficulties for the citizens or leave them without access to medicinal products. According to the submitters of the bill, the provision of medicines to the population is directly related to the obligation of the government to protect the public health enshrined in Art. 52, para. 3 of the Constitution.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The bill falls within the zone of the grey legislation because it sets privileges for a group of persons from a given sector using the criterion of place of exercise of professional activity. It would be good to include express legal definitions of the concepts of "border population centres" and "mountainous population centres" with a view to eliminating the prerequisites for interpretation and possible abuse.

IN THE FIELD OF ECONOMY AND FINANCE

ACTS ADOPTED

Bill:	**Trade Act Amendment Bill**
Submitted by:	Petar Dimitrov, Anna Yaneva (CB PG)
Date of submission:	26 August 2009
Code:	954-01-7
Lead Committee:	Legal Affairs Committee
Session:	First session
Status:	Adopted
First reading:	17 September 2009
Date of adoption:	2 October 2009
Published in the SG, issue/year:	82/2009

Bill:	**Trade Act Amendment Bill**
Submitted by:	Council of Ministers
Date of submission:	27 August 2009
Code:	902-01-4
Lead Committee:	Legal Affairs Committee
Session:	First session
Status:	Adopted
First reading:	17 September 2009
Date of adoption:	2 October 2009
Published in the SG, issue/year:	82/2009

Bill:	**Trade Act Amendment Bill**
Submitted by:	MARTIN DIMITROV DIMITROV and VANIYO EVGENIEV SHARKOV (Blue Coalition PG)
Date of submission:	27 August 2009
Code:	954-01-13
Lead Committee:	Legal Affairs Committee
Session:	First session
Status:	Adopted
First reading:	17 September 2009
Date of adoption:	2 October 2009
Published in the SG, issue/year:	82/2009

The proposed amendments concern the minimum capital required for incorporation of an OOD (limited liability company). The proposals include a reduction in the minimum capital required from BGN 5,000 to BGN 2 (CB PG and Council of Ministers), and respectively to BGN 100 (Blue Coalition). The reasons to the bills put forward by the Coalition for Bulgaria PG and the Council of Ministers are almost completely identical. The change is justified with the need to ease the procedures and expenses for starting a business.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The proposal for reduction of the registered capital required for an OOD is, in principle, a good idea to reduce the procedural obstacles and expenses for starting a business in Bulgaria. At the same time, it must be emphasised that the measure as it is goes only halfway and has not been well elaborated. First, because the guarantee function of the registered capital is seriously infringed upon while additional guarantee mechanisms for the creditors, the way they are provided for in the countries with Anglo-American legal systems, have not been introduced. Second, because the reduction in the expenses to start a business would be much more real and tangible if the administrative and court fees were reduced, for example the fees to book a name, to register with the BULSTAT register, to appeal against public procurement procedures before the Competition Protection Commission and others.

Bill:	**Agricultural Producers Support Amendment Bill**
Submitted by:	Stoyan Gyuzelev (GERB PG)
Date of submission:	14 September 2009
Code:	954-01-17
Lead Committee:	Agriculture and Forests Committee
Session:	First session
Status:	Adopted
First reading:	23 September 2009
Date of adoption:	14 October 2009
Published in the SG, issue/year:	85/2009

The law creates the possibility for the Agriculture State Fund to provide funds of commercial banks on loans by them given in certain conditions set by the Fund, including loans for the implementation of projects under the plans and measures of the Common Agricultural Policy applied by the Paying Agency. Until the change, an analogous measure was provided only for projects under the SAPARD Programme.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The legislation adopted is appropriate and helps to ease the financing related to the implementation of projects funded under the EU's Common Agricultural Policy.

BILLS AT THE STAGE OF "DISCUSSION"

Bill:	**Local Taxes and Fees Amendment Bill**
Submitted by:	DRAGOMIR STOYNEV and MIHAIL MIKOV (CB PG)
Date of submission:	22 October 2009
Code:	954-01-34
Lead Committee:	Budget and Finance Committee
Session:	First session
Status:	Discussion

As to the fees for children's day nurseries, kindergardens, specialised institutions for social services, camps and other municipal social services, the following changes are proposed:

1. Fees will not be paid for:

   a) Children whose parents have disabilities and are certified I or II group, children of unknown parents, children of people who died in production accidents and natural disasters, children of people who died while performing their official duties;

   b) Children with grave chronic diseases included in a list approved by the Health Minister who are admitted to sanatoria (recuperative) institutions or groups for children;

   c) The 3rd and every next child of parents of many children; the parents will pay fee for the first child amounting to half of the fee and for the 2nd child – a quarter of the fee.
2. The fee will be paid with a 50-percent reduction for children without parents or children with one parent as well as children whose parents are regular university students.
3. When two children of the same family are admitted to one or different institutions for children, the fee for the second child will be paid with a 50-percent reduction.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The bill suggests a reasonable measure which is socially necessary in the conditions of an economic crisis to support the families with many children and the children from vulnerable groups.

Bill:	Corporate Income Tax Amendment Bill
Submitted by:	Council of Ministers
Date of submission:	20 October 2009
Code:	902-01-33
Lead Committee:	Budget and Finance Committee
Session:	First session
Status:	Discussion
First reading:	4 November 2009

The bill envisages the following more significant changes:

a) Reliefs are introduced for donations to the Assisted Reproduction Fund Centre and the Transplantations Fund Centre totalling up to 50 percent of the accounting profit.

b) When the corporate tax is declared with the annual tax return, the liable persons will also file an annual activity report. The requirement for filing of annual financial statements with the appendices to it is eliminated. An annual activity report will not be submitted by the tax liable persons who have not conducted activities during the year and have not recorded income or expenses for the year.

c) It is envisaged that the municipalities with a level of unemployment which is 50 or more than 50 percent higher than the average for the country will no longer be determined.

d) It is proposed that the tax relief for activities carried out in agriculture, the processing industry, production, high technologies and infrastructure be eliminated. According to the law in force, the corporate tax is assigned for a period of 5 years in an amount of 100 percent to tax liable persons for their tax profit from activities carried out in the indicated areas if circumstances laid down in the law are in place.

e) It is envisaged that the dividends and liquidation shares allocated (personified) by domestic legal entities to the benefit of a foreign legal entity which is a domestic person for tax purposes in a Member State of the European Union or the European Economic Area when there is covert profit distribution will be taxed at source.

f) Changes in the provisions for gambling activities are brought forward. The tax rate will go up from 10 to 12 percent and the same increase is envisaged for the taxation of subsidiary and auxiliary activities within the meaning of the Gambling Act which are taxed with an alternative tax on their value.

g) The Social Insurance Code is also amended:

- The revenue of the funds for supplementary voluntary pension insurance and any analogous revenue directly related to the voluntary pension effected by people registered pursuant to the legislation of another Member State who may, in accordance with that legislation, carry out activities of voluntary pension insurance will not be taxed under the Corporate Income Tax Act.
- The revenue of the funds for supplementary voluntary insurance for unemployment and/or professional qualification and any analogous revenue directly related to the voluntary insurance for unemployment and/or professional qualification effected by people registered pursuant to the legislation of another Member State who may, in accordance with that legislation, carry out activities of voluntary insurance for unemployment and/or professional qualification will not be taxed under the Corporate Income Tax Act.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

In spite of some positive aspects such as the tax reliefs for donations to the Assisted Reproduction Fund Centre and the Transplantations Fund Centre, the Institute's assessment of the amendments put forward is rather negative from the point of view of our principle position against increasing the tax burden and eliminating the tax privileges for municipalities where the level of unemployment is above 50 percent and for activities in agriculture, the processing industry, production, high technologies and infrastructure.

Име на законопроекта:	**Законопроект за изменение и допълнение на Закона за хазарта**
Вносител:	ЯНЕ ЯНЕВ и група н. п. / ПГ на РЗС /
Дата на постъпване:	04 ноември 2009
Сигнатура:	954-01-42
Водеща комисия:	Комисия по бюджет и финанси
Сесия:	Първа сесия
Състояние:	обсъждане

The more significant proposals in the bill are:

- Licences for organising games of chance, for production and distribution of gaming facilities, of importers and distributors of gaming facilities for gambling and for performance of service activities will not issued to sole traders or legal entities when an owner or

partner is an unincorporated company or a company registered in an off-shore area. This also covers the "related parties" within the meaning of §1 of the Additional Provisions of the Trade Act which directly or indirectly may exercise dominant influence. - - An obligation of the organisers of gambling to request advance permission from the State Commission in the event of a change in a partner or a shareholder in the company.

- Licences to organise gambling will not be issued to the candidates when they fail to produce evidence that they have concluded contracts of management, managerial or labour contracts with at least five individuals who have proved professional experience before the date of submission of the request acquired from at least 5 years of work in companies organising and conducting gambling in other Member States of the European Union or the European Economic Area.
- Any lottery games, toto and lotto games may be organised by the government only through state enterprises from the Ministry of Finance or the Bulgarian Sports Totalisator. The income after taxation and deduction of the expenses and wins paid out is to be approved by the Finance Minister: a) for the revenue from the Bulgarian Sports Totalisator – in accordance with plans proposed by the Minister of Physical Education and Sports for the needs of physical education and sports and also for maintenance, repair and creation of new sport facilities in the schools, in coordination with the Minister of Education, Youth and Science; b) for the revenue from other enterprises – for the purposes of culture, health care, education and social policy.
- Implementation of a number of requirements for betting through independently functioning terminals among which are: the organiser's centralised computer system must ensure transmission of the necessary data to the information system of the National Revenue Agency following jointly coordinated rules, with the data about the revenue being transmitted before the respective round or before the event which determines the distribution of the profits comes into being and the data about the profits – after the profits are determined in the round and before the profits for the next round are determined. The same requirement is proposed for the lottery games, toto and lotto games, etc. carried out through the internet or another telecommunication link.

- Introduction of additional prohibitions for the members of the State Gambling Commission – any persons who were in the management and supervisory bodies or had labour relations with an organiser of gambling not earlier than 5 years before may not be appointed such and the general requirement for the members and employees of the State Gambling Commission to meet the requirements set in the Conflict of Interest Act. In addition, it is proposed for the members and employees of the State Gambling Commission not to have the right to work in companies which organise and hold gambling on the territory of the country and in producers and importers of gaming facilities for a period of three years after they leave the Commission.
- In the course of the check and research of a request filed, the State Gambling Commission will collect data from the Ministry of the Interior, the State Agency for National Security and the National Revenue Agency about the structure and origin of the applicant's capital, their commercial partners, financial relations, real rights and other information necessary to decide whether the applicant complies with the requirements of this law. When the applicant has failed to prove the origin of the capital or if there is any doubt about the origin of the capital, the State Commission will refer the matter to the competent bodies to clarify the origin of the applicant's capital. In such cases, the State Commission will render its decision on the request filed after it receives a response from the competent bodies.

In the reasons, the submitters of the bill refer to data from the official statistics about the turnover of illegal gambling operators and the losses for the state budget as well as on foreign legal models. According to them, the positive effects of the provisions proposed are: a) increase in the revenue in the state budget; b) better harmonisation of the regulatory framework with EU law; c) creation of additional legislative guarantees for protection of the state and public interest; e) increase of the budget revenue amounting to at least BGN 200 million on an annual basis; g) retention of cash resources amounting to more than BGN 1 billion and 500 million in the state; h) creation of new jobs in the conditions of a crisis; i) sharp restriction of the activities of illegal gambling operators.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The proposed changes as a whole will lead to a sharp deterioration of the conditions for activities of the gambling business and will create prerequisites for monopoly. Worth noting is the special attention the OLJ MPs pay to the gambling business suggesting extremely restrictive measures. There is no other economic sector with respect to which this political power puts forward such legislative ideas which raises the question about the true reasons for these initiatives.

Bill:	**Corporate Income Tax Amendment Bill**
Submitted by:	YANE YANEV and a group of MPs (OLJ PG)
Date of submission:	4 November 2009
Code:	954-01-41
Lead Committee:	Budget and Finance Committee
Session:	First session
Status:	Discussion

The bill concerns the gambling activities from toto and lotto, betting on results of sports competitions and chance events. The more significant proposals are:

- The tax base for determining the tax on gambling activities will not be determined as "the value of the bets made on every game" but as "the difference between the value of the bets made and the value of the wins paid out identified in accordance with a methodology of the State Gambling Commission approved by the Finance Minister."
- Raise the tax rate on gambling activities from 10 percent to 15 percent.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

In accordance with information from the Bulgarian Trade Association of the Producers and Organisers from the Gaming Industry, in 2008 the companies paid approximately BGN 112 million in taxes on gambling and BGN 5.6 million in fees to the State Gambling Commission.

It is inadmissible to adopt such a sharp tax change without discussions with the representatives of the sector. There would be a much better fiscal effect, without placing serious difficulties for the entire sector in the conditions of an economic crisis, if the internet betting were regulated as a large part of the revenue goes there.

In the conditions of an economic crisis, such a tax increase will not only lead to the shrinking of the business and loss of jobs but will also entail an expansion of illegal gambling and the grey economy.

Bill:	Labour Code Amendment Bill
Submitted by:	Emilia Maslarova and Dragomir Stoynev (CB PG)
Date of submission:	28 September 2009
Code:	954-01-23
Lead Committee:	Labour and Social Policy Committee
Session:	First session
Status:	Discussion

The bill proposes that the period in which an enterprise or a unit of an enterprise introduces part-time work for the workers and employees due to a decrease in the volume of work may be extended by another six months. This extension of the period will be possible in the period from 1 January 2009 to 31 December 2010. Until now, it was allowed to introduce part-time work for a period of three months which could be extended by another three months in the period from 1 January 2009 – 31 December 2009. The reasons for this proposal are related to the economic crisis and the development in response to it of 2009 Plan - Financial Stability, Support for Businesses and Social Protection in accordance with the principles and actions enshrined in the European Economic Recovery Plan of 26 November 2008. On the basis of the forecasts that the crisis will continue in 2010 and as a result of the dialogue with the social partners, the bill aims to assist with the preservation of jobs.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The proposed change is in its essence an encouragement measurement for the employers which was implemented once already in 2009 and yielded positive results. Almost 20,000 workers and employees from approximately 50 enterprises resorted to it. Along with this, for 2009, the measure is supplemented with the provision of compensation, in certain conditions, in addition to the labour remuneration of the workers and employees who start working part-time.

Bill:	Labour Code Amendment Bill
Submitted by:	Svetlana Angelova, Vyara Petrova and Emanuela Spasova (GERB PG)
Date of submission:	28 October 2009
Code:	954-01-39
Lead Committee:	Labour and Social Policy Committee
Session:	First session
Status:	Discussion

The content of the bill is very close to the bill put forward by representatives of the Coalition for Bulgaria PG on 28 September 2009. The difference lies in the way in which the extension of the period of part-time work introduced by an enterprise or a unit of an enterprise for its workers and employees due to a decrease in the volume of work is determined. The Coalition for Bulgaria suggests an extension by 6 months for the period 1 January 2009 – 31 December 2010 while GERB proposes an extension by 3 months in the period 1 January 2010 – 31 December 2010.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The Institute supports this bill with the arguments used with the analogous bill brought forward by the Coalition for Bulgaria. Note is made of the approach of the ruling majority which, instead of adopting good ideas suggested by the opposition, tries to submit proposals on its behalf by all means, as analogous as they may be.

ECOLOGY

BILLS AT THE STAGE OF "DISCUSSION"

Bill:	**Waste Management Amendment Bill**
Submitted by:	Dzhevdet Chakarov (MRF PG)
Date of submission:	23 September 2009
Code:	954-01-20
Lead Committee:	Environment and Water Committee
Session:	First session
Status:	Discussion

Under the bill, upon proposal of the Minister of Environment and Waters, by means of a Council of Ministers act up to 20% of the capacity of the regional depots built with funds from the state budget and/or EU funds may be used for the deposit of waste by municipalities located in other waste management regions in accordance with the National Programme for the Management of Waste Activities. Such waste will be deposited at prices which are not higher than the price of depositing waste from the municipalities from the respective region serviced by the depot. This ensures a possibility for environment-friendly deactivation through deposition of waste formed on the territory of municipalities located in waste management regions: a) where no regional depots have been built and/or the existing depots do not meet the requirements of the European and the national legislation, or b) where there are regional depots which meet the requirements of the European and national legislation but the available free volumes in the respective depot are not sufficient to take in the quantity of domestic waste formed in the respective region and there is need to redirect it for deposition to other regional depots which will make it possible to create new cells in the existing depots.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The Institute in principle supports these proposals. In view of the fact that the submitter of the bill occupied the position of Minister of Environment and Waters in the period 2005 - 2009, the issue what prevented the development and adoption of such reasonable proposals during the previous ruling mandate naturally comes up.

Bill:	**Environmental Protection Amendment Bill**
Submitted by:	Council of Ministers
Date of submission:	9 October 2009
Code:	902-01-24
Lead Committee:	Environment and Water Committee
Session:	First session
Status:	Discussion
First reading:	12 November 2009

The more significant changes proposed are:

1. Regarding the annual report on the status of the environment

It is envisaged that the requirement for adoption of this annual report prepared by the Minister of Environment and Waters at 2

stages by 2 bodies – by the Council of Ministers and then by the National Assembly – will be eliminated. In accordance with the bill, the report will be adopted only by the Council of Ministers. It is also proposed that the legislative obligation of the Regional Inspectorates of Environment and Waters to prepare annual regional reports about the status of the environment be removed.

2. Regarding the performance of environmental assessments and environmental impact assessments

In accordance with the bill, the requirement for registration of the experts who perform environmental assessment and environmental impact assessments (EIA) in a public register with the Ministry of Environment and Waters is removed. Also removed will be the requirements for the experts to have at least 5 years of experience during the last 10 years in performing activities related to environmental protection: design activities; experience in production enterprises; expert activities, including the development of expert opinions, advice in writing, reports on EIAs, environmental audits or environmental analyses; teaching at higher institutions and/or scientific work; control activities.

Lifted is the control exercised by the Minister of Environment and Waters on the experts on the basis of the regulatory framework which sets out the obligation to remove from the register the experts for whom it has been proven that in their EIA practice: a) three times they have authored sections of EIA reports which have been returned for revision in the evaluation of the quality of the report; b) have submitted a false declaration of lack of personal interest in the realisation of an investment project and this has been proved accordingly. Under the existing legislation, the removal from the register is for a period of 5 years, i.e. during these 5 years the expert removed may not take part in assessment activities.

Instead of preserving these provisions, the bill proposes that the assessments be performed by a team of experts with a leader and the team must have educational and qualification degrees awarded by higher institutions. In the course of consultations about the procedure for an environmental impact assessment (EIA), the competent environment body may, in its discretion or upon request, recommend to the assignor that the team include experts with certain competences in view of the specifics of the investment proposal or

its location. The lack of a requirement for certain experience is replaced with declarations from the experts that they are familiar with the requirements of the existing Bulgarian and European legislation on the environment and that in their assessment work they will refer to and comply with these requirements and the applicable methodological documents.

3. Regarding the prevention of large accidents and limiting their consequences

New provisions are envisaged in accordance with which the prevention of large accidents and limiting their consequences must be taken into account in the planning of the urban environment and the planning of the protection of the population and the environment. This will be achieved through control in the planning of: the location of new enterprises and/or facilities; significant changes in enterprises and/or facilities to which permits have been issued; new construction such as transport connections, residential areas, public sites in proximity to existing enterprises and/or facilities to which permits have been issued when the construction work will increase the risk of large accidents or will aggravate its consequences. Control will be exercised through: a) issuance of permits for construction and use of enterprises and/or facilities by the Minister of Environment and Waters; b) revision of permits issued for planned significant changes in enterprises and/or facilities to which permits have been issued by the Minister of Environment and Waters or an official authorised by them; c) coordination with the Minister of Environment and Waters or an official authorised by them of the planning schemes and charts of the municipalities on whose territories there are enterprises and/or facilities to which permits have been issued.

In such cases, the public opinion about the risk of large accidents and the envisaged safety measures obtained in accordance with the procedure under Art. 111, para. 4 of this Act or Art. 121, para. 1 of the Urban Planning Act will be taken into account. When the protection of the population and the environment is planned, the prevention of large accidents and limiting their consequences will be achieved through the external emergency plans for the enterprises and/or facilities with a high risk potential prepared by the mayor of the respective municipalities.

A change is envisaged in the term for revision and update of the safety report of an operator of an enterprise and/or facility with a high risk potential. The current requirement is every 5 years. After the change, this will be done at appropriate intervals but not longer than 3 years.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

The analysis of the proposed legislative amendments shows that they take a step back from the requirements for transparency in the activities related to environment protection. The lack of detailed requirements for the experts performing EIAs and the elimination of indirect control over them could have an extremely negative impact, including from the point of view of the creation of prerequisites for corruption (conditions are created for the preparation of custom-made reports which do not reflect the objective situation).

A positive aspect of the bill is the transposition of the Seveso provisions.

Bill:	**Hunting and Game Protection Amendment Bill**
Submitted by:	Emil Dimitrov, Atanas Kambitov and Dimitar Avramov (GERB PG)
Date of submission:	24 September 2009
Code:	954-01-21
Lead Committee:	Agriculture and Forests Committee
Session:	First session
Status:	Discussion
First reading:	1 October 2009
Date of adoption:	5 November 2009

The following more significant changes are proposed:

Without being removed as a possible structure under the law, the National Hunting Association loses its monopoly on the hunting associations which, in accordance with the existing law, must be its members. The principle of voluntary association is introduced as well as a new definition of "national hunting association" – this is an association which unites hunting associations whose hunter members amount to more than half of the total number of the persons registered in the country who have acquired the right to hunt. There is no longer a requirement for the national association to be registered under the Not-for-Profit Legal Entities Act. The National Hunting Association is deprived of numerous functions assigned to it under the existing law such as: to support the Minister of Agriculture and Food in the implementation of the government policy on game stocks management by participating in the activities related to the organisation of hunting areas provided to the associations, the management and protection of game; to make proposals to the Executive Agency for Forests for determination of the hunting areas of the hunting associations; for the determination of hunting associations; for planning predator culling, etc. The National As-

sociation will no longer have the function to determine the regions of activity of the hunting associations and the chairperson of the National Hunting Association together with the Hunting Council will not propose to the Executive Director of the Executive Agency for Forests an annual contribution for game management. According to the proposals, any changes in the boundaries of the hunting areas of the state hunting farms and the game breeding areas and those of the hunting associations may be made upon the proposal of the Executive Director of the Executive Agency for Forests and the respective hunting association while the Management Board of the National Hunting Association will not have any functions in this process. The functions of the National Hunting Association preserved in the law cover only those hunting associations which are its members and it loses its function to register the hunting associations in the country and control their activities.

Further, the bill envisages a change in the legal subject "hunting group." It will be a unity of at least 20 Bulgarian citizens who have acquired the right to hunt in view of their common interests to manage and protect the game in a hunting area. Only one hunting group may be formed in a hunting area. The persons who form hunting groups in adjacent hunting areas will set up a hunting association with a view to performing activities related to game reproduction, management, protection and use (under the existing law, the persons who have acquired the right to hunt directly establish a hunting association which sets up hunting groups). The requirement for the area of activities of a hunting association to have a total area of not more than 22,000 hectares and to encompass the territory of one or more municipalities is eliminated. The hunting periods for 12 groups of game are extended by approximately a month.

ASSESSMENT OF THE INSTITUTE OF MODERN POLITICS

This bill falls within the grey zone and raises concerns that individual MPs and persons related to them pursue their personal interests. The elimination of the unified professional organisation which protects this group of people, takes part in the development of policies and exercises control is utterly inappropriate. This is definitely a step back and instead of the modern approach of transferring some state functions to public and professional organisations, everything is brought back within the powers of public administration. Along with this, the extension of the hunting periods is completely unacceptable from the point of view of the protection of the environment and the biological species. There is no appropriate analysis of the animal populations in Bulgaria. The comparisons made by the submitters of the bill with the regulations in other countries are not a sufficient argument because of the different natural and climatic conditions, etc.

STATE ADMINISTRATION, PUBLIC FUNCTIONS

Bill:	**Ministry of the Interior Amendment Bill**
Submitted by:	Council of Ministers
Date of submission:	23 September 2009
Code:	902-01-20
Lead Committee:	Internal Security and Public Order Committee
Session:	First session
Status:	Adopted
First reading:	15 October 2009
Date of adoption:	11 November 2009

Structural changes are envisaged such as: setting up of a Chief Directorate for Fight against Organised Crime and of independent units – Migration Directorate, Bulgarian Identity Documents Directorate, International Projects Directorate, the latter having the status of a legal entity, etc.

Structural reforms are made as a result of the dissolution of the Ministry of Emergency Situations (MIS) such as: a Civil Protection Chief Directorate and a National System 112 Directorate are set up in the Ministry of the Interior. It is proposed for the Civil Protection Chief Directorate to have the status of an independent legal entity and its functions will cover the entire range of prevention activities and training in protection in the event of disasters, protection when there is a disaster, etc. It is planned for the civil servants from the dissolved MIS who perform functions related to protection in the event of disasters and ensuring public access to the emergency services through the National Emergency System with "Single European Emergency Call Number 112" to be appointed in the Ministry of the Interior without competitions and without the specific requirements under the Ministry of the Interior Act for age, education, psychological and physical fitness and professional preparation to occupy a position which are set out with an ordinance of the Minister of the Interior.

Another part of the amendments proposed aims to simplify the exchange of information and data between the law enforcement agencies of European Union Member States.

Last but not least, changes are made with respect to the trade union activities of Ministry of the Interior staff. It is proposed that the provision under which the organisations of the Ministry of the Interior staff protect their interests without interfering with the management of the main structures of the Ministry of the Interior be removed. It is expressly laid down that the persons working under labour relations have the right to associate in trade union organisations in accordance with the Labour Code. There are detailed provisions for how a trade union organisation of Ministry of the Interior staff becomes a legal entity, the range of rights which can be protected through trade union activities, the right of the trade union organisations to participate in international trade union organisations which are similar in functions and nature, the mechanisms for dialogue and consultations with the Ministry of the Interior management, the right to protests, etc. It is also proposed to remove the requirement for the meetings of the civil servants to take place in premises closed to external parties and there is a possibility for a free choice of premises for meetings. The number of hours for meetings during the working time is increased, the composition of the Social Partnership Council with the Ministry of the Interior is expanded, etc.

There is an express administrative criminal provision in the law in accordance with which any person who illegally infringes on the physical inviolability of a Ministry of the Interior staff member in the performance of their official duties will be punished with a fine from BGN 500 to BGN 1,000 if the act does not constitute a crime.

An important aspect is the possibility provided for the setting up of Municipal Police units at the level of municipalities to keep the public order, guard sites, ensure the safety of traffic and exercise the control and administrative criminal activities of the bodies of local self-government. The control and methodological guidance of the activities of these units will be exercised by the respective district directorates and regional departments of the Ministry of the Interior.

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Positive aspects: Expansion of the trade union rights and provisions for municipal police.

Negative aspects: The restructuring stemming form the dissolution of the Ministry of Emergency Situations does not lead to any material budget savings. Quite the contrary, as a result of the need to equalise (increase) the remuneration of the staff of the dissolved Ministry with that of the Ministry of the Interior staff, the expenditure under this budget item will go up.

Bill:	Roads Amendment Bill
Submitted by:	Meglena Plugchieva – Aleksandrova (CB PG)
Date of submission:	25 August 2009
Code:	954-01-4
Lead Committee:	Regional Policy and Local Self-Government Committee
Session:	First session
Status:	Discussion

The bill envisages that the Road Agency staff will acquire the status of civil servants. The proposal is justified with the need for a professional and political neutral administration which will perform the responsible functions in relation to projects funded from the Transport and Regional Development Operational Programmes with funds from the European Union funds; establishment of clear criteria related to the requirements for the necessary professional experience which the employees must have; achievement of stability of the official relations which will guarantee unbiased performance of the duties. As an additional guarantee of professionalism, there will be obligatory competitions for new appointments.

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The Institute in principle supports legislative initiatives aimed at expanding the scope of civil service, the guarantees of political neutrality of the state administration and introduction of competitions for appointment to the administration system. It is obvious, however, that there is not enough political will in the majority either of the current 41st NA or the previous 40th NA.

Bill:	Notaries and Notarial Practice Amendment Bill
Submitted by:	Biserka Petrova (OLJ PG), Yavor Notev (Ataka PG), Todor Dimitrov, (GERB PG)
Date of submission:	12 August 2009
Code:	954-01-2
Lead Committee:	Legal Affairs Committee
Session:	First session
Status:	Discussion

The bill envisages the following changes:

1. The number of public positions, such as President of the Republic, which are incompatible with the performance of the functions of a notary is increased and the existing text providing for such in-

compatibility with respect to the municipal councillors **is deleted**. In these cases, the notaries lose their legal capacity.

2. Under the existing law, the substitution of a notary by an assistant notary is admissible when the notary is absent or is unable to perform the functions. The assistant notary who substitutes for the notary must have the professional experience required by the law and must have passed an examination. In such a case, the assistant notary independently carries out all actions within the notary's competence and adds "in substitution for" after their signature. The period of substitution may not be longer than 2 years. The proposal envisages that an assistant notary will substitute for a notary in the cases when the notary has occupied one of the positions: President of the Republic of Bulgaria, Member of Parliament, Minister or mayor. The period of substitution in such cases is determined in view of the application of the notary and the assistant notary. There is also a new provision that, if after the elapse of the period the need for substitution is still in place, then the notary and the substituting assistant notary will file a new application with the Minister of Justice indicating a period of substitution. In such a case, the Minister of Justice will render an opinion with an order for entry into the register of the Notary Chamber without the need for the assistant notary to sit for another examination. Also in this regard is the proposed change that the legal capacity of an assistant notary working with a notary will not be lost when the notary has been removed from the register of the Notary Chamber on the grounds of incompatibility arising from the fact that the notary has occupied the position of President of the Republic of Bulgaria, Memebr of Parliament, Minister or mayor.

Under the current law, the positions for notaries in a given region may not be less than two and a position for one notary is opened for every 10,000 citizens of a region. Should more notaries be needed than the ones determined in this way, the Minister of Justice may, on their initiative or upon the proposal of the Notary Council, open additional positions. The change envisages that the Minister's order must contain objective reasons such as economic position of the region, number of notarial certifications performed and other important circumstances.

The existing law allows for a notary to be moved to another region of practice on the basis of the notary's reasoned application filed with the Minister of Justice when a new position for a notary has been opened. The move is made with an order of the Minister of Justice. Changes are proposed in two directions: a) definition of the concept of "important reasons" as "circumstances that have come about independently and outside the notary's subjective will after the notary has acquired legal capacity. They may

concern the notary's health, family situation, etc. and in all cases they must lead to the person's complete or partial inability to perform notary functions in the existing region of practice;" b) it is proposed that the Minister of Justice will coordinate the move with the Notary Chamber before the respective order is issued.

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The bill is a typical example of "grey legislation" and serves the personal interests of individual MPs and persons related to them.

Negative aspects:

- Privileges for a certain group of people who act as notaries;
- Privileges for assistant notaries who work for the notaries under the previous proposition.

Bill:	**Cultural Heritage Amendment Bill**
Submitted by:	PAVEL ILIEV DIMITROV and DANIELA MARINOVA PETROVA (GERB PG)
Date of submission:	27 August 2009
Code:	954-01-10
Lead Committee:	Culture, Civil Society and Media Committee
Session:	First session
Status:	Discussion
First reading:	7 October 2009
Date of adoption:	5 November 2009

Bill:	**Cultural Heritage Amendment Bill**
Submitted by:	PAVEL ILIEV DIMITROV and DANIELA MARINOVA PETROVA (GERB PG)
Date of submission:	27 August 2009
Code:	954-01-11
Lead Committee:	Culture, Civil Society and Media Committee
Session:	First session
Status:	Discussion
First reading:	7 October 2009
Date of adoption:	5 November 2009

The two bills indicated were put forward on the same date – 27 August 2009 – by the same MPs from the GERB PG.

The first bill proposes:

1. The text providing that the Inspectorate for Preservation of the

Cultural Heritage is directly subordinated to the Minister of Culture is to be removed and the Inspectorate will remain within the structure of the Ministry of Culture. Another proposal concerns the elimination of the requirement that "an inspector may be appointed a person with a Master's degree and 5 years of professional experience in the professional area corresponding to the position" while the minimum requirements will be set in the Unified Classification of Administrative Positions.

2. The special technical tools for field research are to be registered in accordance with a procedure set out in an ordinance of the Minister of Culture.
3. The term for requests for identification and registration as movable cultural values of movable archaeological objects or movable archaeological monuments of culture by the persons who have actually held them is to be extended by 6 months (the current term is 6 months after the entry into force of the law).
4. The term for requests for identification and registration of movable archaeological objects – coins and coin-like objects – by the persons who have actually held them is also to be extended by 6 months (the current term is also 6 months after the entry into force of the law).

The submitters of the bill claim that their proposals for the Inspectorate for Preservation of the Cultural Heritage will facilitate its constitution and will allow for differentiation of the levels of positions and the requirements for occupying a position in the Inspectorate. The proposal for registration of the special technical tools used before, during and after field archaeological research is justified with the need to bridge a legislative gap. The extension of the terms is justified with the fact that the secondary legislation necessary for the identification and registration of the said movable cultural values has not been issued by the elapse of the terms initially set out in the law.

The second bill proposes the following changes:

1. The National Institute for Preservation of the Immovable Cultural Values is to be closed down and its successor will be the Ministry of Culture. In this regard, there is also a proposal to terminate the activities of the National Institute for Preservation of the Immovable Cultural Values, Underwater Archaeology Centre related to the search for and study of cultural values; it is proposed that these activities will be performed only by scientific organisations, higher education institutions, museums,

individuals and legal entities.

2. Elimination of the possibility when a religious temple which is a cultural value of national and local significance and which is the only one in the respective population centre, this temple to be used by the registered denominations which have the right to perform rituals and ceremonies in it in keeping with the regimes for its preservation until the right to use state and municipal property is provided free of charge.
3. Elimination of the requirement for establishment of the ownership right with an official document in the identification of the movable cultural values and its replacement with a requirement that a document must be produced – either official or of private nature.
4. Extension of the term within which the Minister of Culture must draw up plans for the management of the established declared monuments of culture of international importance from 1 year to 2 years as of the entry into force of the law.
5. Obligation of the Ministry of Culture, within six months as of the entry into force of the law, to provide the Registry Agency with a list of the established declared and announced immovable monuments of culture which is to indicate the status of cultural value in the file of every site within two months as of submission of the list.

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The powers and functions of public bodies responsible for the preservation and protection of the cultural heritage are to be detailed. The extension of the term for identification and registration of movable archaeological objects or movable archaeological monuments of culture is a step in the right direction to the extent to which the necessary secondary legislation providing for this process has not been adopted. The elimination of the requirement for evidencing by means of an official document in the identification of movable cultural values is also appropriate, including in view of the decision of the Constitutional Court to declare the unconstitutionality of the prohibition for referring to acquisitive prescription as a means of acquisition of cultural values.

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INSTITUTE OF MODERN POLITICS
Bulgaria, Sofia 1000, 52 Aksakov Str, 3rd floor
t. +359 2 9885386, imp@europe.com
www.modernpolitics.org