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ABSTRACT OF A DISSERTATION PAPER FOR OBTAINING THE EDUCATIONAL AND SCIENTIFIC DEGREE "DOCTOR"

on the topic "Judicial and parliamentary accountability of the executive power in countering terrorism in Bulgaria, the United Kingdom and Germany in the period 2009-2020."

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The dissertation work has a total volume of 220 pages, containing 193 pages of text and 25 pages of bibliography. The bibliography covers 281 sources, 87 of which are academic (11 in Bulgarian, 74 in English and 2 in German), 69 - electronic, 75 - normative, 36 - containing statistical data and 14 - judicial practice.

1. GENERAL CHARACTERISTICS OF THE DISSERTATION

1.1 RELEVANCE OF THE SUBJECT

The dissertation "Judicial and parliamentary accountability of the executive power in countering terrorism in Bulgaria, Great Britain and Germany in the period 2009-2020" provides an answer to the question of whether there has been a change in the judicial and parliamentary accountability of the executive power in the field of anti- terrorist measures in Bulgaria, Great Britain and Germany for the period 2009-2020.

Faced with the threat of terrorist attacks, many countries have turned their attention to adopting tough measures, especially since the rise of the Islamic State (IS) after 2015. (Sekulow, 2015, p. 15). The topic of the dissertation is motivated by the widespread almost axiomatic perception among some scholars and organizations that these measures in recent years have led to a disproportionate expansion and reduced accountability of the executive branch (eg Amnesty International, 2017, p. 6). At the same time, however, the literature review points to a lack of comparative studies covering a sufficiently long period of time to prove this claim analytically.

It is key to emphasize the importance of the judicial and parliamentary accountability of governments in the fight against terrorism in the context of the rule of law. It is critically important that the executive is accountable to the judiciary and the legislature even in the face of a global terrorist crisis such as the one that began in 2015. Broadly speaking, judicial accountability touches on the boundaries of human rights abuses in the implementation of counterterrorism measures, while parliamentary (political) accountability should cover both issues of the rights of the targeted persons and the effectiveness of measures and the implementation of general policies to deal with the terrorist threat. In relation to the rights of individuals, this topic is essential, as it raises the question of the extent to which targeted individuals have access to justice and publicity in the event that they are incorrectly targeted, disproportionately restricted or even tortured. The topic of torture and illegal detentions in coordination with the American Central Intelligence Agency on the territory of Europe is extremely relevant in the period around 2010, when the European Parliament analyzed and published a lot of information on the matter (Carrera et al., 2012, p. 6).

1.2 GOALS AND OBJECTIVES OF THE RESEARCH

Object of the dissertation are the legal and parliamentary accountability of the executive in relation to their measures – powers and actual steps – in their fight against terrorism. The subject is the dynamics in judicial and parliamentary accountability of the executive power under the influence of the increased danger of terrorist attacks. The aim is to ascertain whether there is a change in the judicial and parliamentary accountability of the executive authorities in the three countries in the field of counter-terrorism. In order to present a systematic analysis of the dynamics in the researched accountability of governments, an assessment of the development in these aspects is given according to a group of criteria concerning the rule of law. The criteria in question are as follows - a requirement to substantiate the reasons in the administrative acts (Neill, 1998, p. 161), limiting the discretion of the executive power (this includes the normatively regulated and practical judicial and parliamentary control, as well as the implementation of the measures) (Topchiyska, 2020, p. 152) and equal application of laws (Topchiyska, 2020, p. 157). The assessment according to these standards is the main task of the dissertation, with the integral sub-tasks being to review the regulatory framework for preventive anti-terrorist powers and the corresponding amendments in terms of powers and judicial control, to present statistics on the measures applied in practice, to illustrate the judicial practice through some key cases, as well as to identify the dynamics in statutory provisions and practical parliamentary control. On this basis, the study presents a comparison of where each of the countries was positioned before and after the start of the crisis in 2015, as well as a comparison between the dynamics in the three countries.

1.3 WORKING DEFINITIONS

The thesis is not limited to a particular type of extremism and generally uses the general term "terrorism". The definition of the term is subject to contested social, academic and juridical-political debate, and according to one of the most prevalent conceptualizations, terrorism is politically motivated violence committed against civilians with the aim of generating and maintaining constant fear in the general public, beyond the individuals attacked (Ruby, 2002, p. 9). "Accountability" refers to horizontal political accountability, i.e. preliminary (debates and questions before a given activity) and retrospective (debates and questions after an activity, reports) oversight by parliaments (O'Donnell, 1998, p. 112), as well as the possibility of preliminary (approval) / current (approval e.g. within 24 hours after the application of the measure) / retrospective control (appeal) by the judiciary (e.g. Bovens, 2007, p. 456 and p. 460). Only preventive anti-terrorist measures, which do not fall within the scope

of criminal law, are investigated; this essentially includes various measures of administrative coercion[1], as well as some police activities (eg the requirement to report to a police station).

Another key concept is the rule of law. It is defined as a system of laws, institutions, norms and public engagement that ensure compliance with four basic principles – accountability, fair laws, transparent governance and accessible and impartial justice (World Justice Project, n.d.). This principle is of fundamental importance to the processes at hand, as it states that those exercising authority must exercise their authority within a „constraining framework of well-established societal norms and not in an arbitrary, ad hoc or purely discretionary manner based on their own preferences or ideology" (Waldron, 2016).

"Militant democracy" is another basic concept for the dissertation, which is discussed in more detail in the theoretical part of the abstract. According to this theory, in democracies, as a result of a spectacular security threat, a constitutional rearrangement is observed, in which the executive has greater and more exclusive powers and less control by parliaments and the judiciary. The paper assumes that there has already been some militarization since the 2001 US attacks and questions whether the 2015 crisis[2] is leading to a further militarization of democracy in the three countries.

For the purposes of the text, it is also necessary to define which structures are meant by executive and judicial power. The dissertation focuses primarily on the Home Office as empowered representatives of the executive branch in the fight against terrorism. The Ministry of the Interior includes both the institutions headed by the ministers and the agencies attached to them, whose functions are in the field of security - police departments (including border control) and migration services. In the Bulgarian case, the investigated State Agency for National Security (DANS) is an exception due to the fact that it is an agency under the Council of Ministers. The judicial institutions, in turn, include the regional administrative courts, as well as the supreme administrative instances in the three countries.

1.4 HYPOTHESIS

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[1] Administrative coercion is defined as an impact by administrative authorities through adverse consequences on the will of the addressees of the coercion in order to prevent or stop various violations (Lazarov, 2017, p. 17).

[2] The paper builds on a common definition which states that any crisis is characterized by three main elements – a high level of danger, a high level of uncertainty and urgency in decision-making. In view of the thesis, this definition can be applied both to the already identified security crisis and to any hypothetical security crisis that could follow that security crisis – including regarding the rule of law. (Boin *et al.,* 2016, p. 1).

The main hypothesis based on the results of the dissertation is that **in all three countries after 2015 no further militarization of democracy occurs. To some extent, the opposite is even observed - paradoxically, the 2015 crisis appears to be an immediate push for a more accountable executive in all three countries compared to the period 2009-2014.** This is due to the fact that in all three countries there is a development in the legally regulated forms of judicial and parliamentary control - to varying degrees and in different contexts. First, it must be emphasized that all three countries have ratified the European Convention on Human Rights [3](ECHR) and absolutely any action of an executive body that violates a right under the convention can be appealed during the entire 2009-2020 study period. In Bulgaria, the main progress in the field of courts comes from the fact that after 2015, many preventive enforcement powers are introduced, and only one of them does not provide for explicit judicial supervision, if there is no appeal under the ECHR. Before 2015, the total number of measures was smaller, and the powers without a specially decreed judicial control were two, and they also hypothetically fall within the scope of the ECHR. Thus, the role of the judiciary in the country is expanded in absolute and relative terms. In addition, there is a normative development in Bulgarian law following a case against Bulgaria before the European Court of Human Rights (ECHR). In Germany and Great Britain, the main development is related to the field of personal data. In Great Britain, until 2018, judicial protection in the processing of personal data is only possible under the ECHR, as well as through the possibility of "judicial review" valid for all administrative acts and activities [4], which is not very accessible due to the associated high costs. After 2018, however, the new law on personal data introduces a special possibility for retrospective appeal. In Great Britain, also for certain measures after 2015, there has been an expansion of the types of already existing judicial control - by adding preliminary and current one. In Germany, until 2017, forms of retrospective judicial control (appeal) were not explicitly provided for for all powers concerning personal data, and judicial protection in these cases was only possible under the ECHR. With the new Personal Data Act of 2017, this changes and judicial retrospective control is added to administrative retrospective control. In terms of parliamentary scrutiny, an increased number of required reports submitted to parliament and parliamentary questions asked have been identified in all three countries since 2015. On the

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[3] Art. 35, European Convention on Human Rights, as amended by Protocols Nos. 11 and 14 since its entry into force on 1 June 2010. Done at Rome on 4 November 1950. https://www.coe.int/bg/web/ compass/the-european-convention-on-human-rights-and-its-protocols

[4] A Bulgarian translation is not applied here because this is a very specific general form of judicial review in British law and if the term is translated, it can be confused with the more comprehensive term "judicial review/control" which is used throughout the thesis. The procedure is codified in Part 54, The Civil Procedure Rules 1998 https://www.legislation.gov.uk/uksi/1998/3132/contents

other hand, the analysis of the applied measures and the practical judicial involvement for the three countries show that there is no danger of *practically* uncontrollable executive bodies.

1.5 THEORY

Theoretically, the dissertation is built by intertwining two main theories. The first of these is acceptance of **accountability as a main pillar of the rule of law**. The rule of law is a normative and social system that ensures compliance with four basic principles - accountability, fair laws, transparent governance and accessible and impartial justice (World Justice Project, n.d.). One of the key ideas underlying the concept is the notion of legal equality formulated by the constitutional theorist Albert Venn Dicey (in Waldron, 2016). “With us no man is above the law [and] every man, whatever his rank or condition, is subject to the common law of the realm, and subject to the jurisdiction of the common tribunals. (Dicey, 1992 [1885], p. 114). A key theoretical element of the study is the choice of an exclusive focus on accountability as one of the pillars of the rule of law.

The second theory, which served as an inspiration for the dissertation, is that of the so-called **militant democracy** ("militant democracy"). It focuses on the constitutional changes that can occur in times of extremist threat. In 1937, Karl Loewenstein wrote two articles (Loewenstein, 1937, p. 417, p. 638) in which he described the rise of totalitarian movements in Europe and called for the "militarization" of democracy - taking urgent legislative measures to isolate extreme parties and techniques from government and politics. Decades later, when religious terrorism has become a major threat, some authors return to this theory to update it to the current challenges to democracy. András Sajo (Sajo, 2009, p. 63) describes the "new constitutional arrangement" that followed the anti-terrorist legislation after the attacks in 2001. By constitutional rearrangement he refers to the measures a country takes against terrorism arising from them limitation of rights, as well as the distribution of powers and control between the authorities. While he understands and rationalizes the protective mechanisms that a rule-of-law state adopts to defend against the terrorist threat, he also pays attention to the proportionality and reasonable limits of these measures. Svetlana Tyulkina (Tyulkina, 2015) illuminates the theory through the prism of a specific country - Australia. Her main thesis is that militant democracy is seemingly absent from the Australian constitution, but a closer reading reveals that in fact the measures the country is taking against terrorism point to the adoption of a militant approach. And Tyulkina, understanding the need for such measures,

spoke about the danger of crossing reasonable limits and the problem of the balance between security and human rights (Tyulkina, 2015, p. 524).

1.6 METHODOLOGY

In order to prove the hypothesis, the study uses **a mixed comparative analysis** of three countries - Bulgaria, Great Britain and Germany. The paper combines **a normative analysis** of the change of legislation, **a quantitative study** of the implementation of anti-terrorist measures, an illustration by means of selected appeal **cases, as well as a quantitative** and to a lesser extent **qualitative** analysis of the parliamentary questions asked.

For all three countries, all laws that relate in whole or in part to counter-terrorism are examined. This includes not only the explicit mention of 'terrorism', but also 'national security', 'extremism', 'radicalisation'. The powers include only levers with which direct restriction of fundamental rights is exercised - privacy, freedom of speech, free movement, etc. The focus is on the dynamics before and after 2015, with the main aim being to establish how the onset of the crisis of that year has affected the normative possibilities for accountability to the judiciary and accountability to parliaments.

The analysis of the applied measures is mainly quantitative. It examines the number of persons against whom administrative levers were used before and after 2015, and the data are presented in tabular and graphical form. The information is collected from various government sources.

As for the actual legal accountability, several cases have been examined for each country, not so much for the purpose of analyzing the court decision itself, as for illustration to help the research - to find out whether there are also successful appeals among the unsuccessful ones, that is, whether the possibility of judicial control is real.

Actual parliamentary accountability was analyzed mainly using quantitative methods – tracking the number of parliamentary questions asked in relation to the governments' anti-terrorist activities before and after 2015. The data was taken from the official websites of the three parliaments.

The standards by which the assessment of movement along the "spectrum" of the rule of law is made should also be described in the field of terrorism. The standards in question are as

follows – **justification of the reasons in the administrative acts, limiting the discretion of the executive power** (means of judicial and parliamentary supervision and practice, implementation of measures) and **the uniform application of laws** (lack of discrimination in acts and court decisions) (Topchiyska, 2020, p. 155). The substantiation of the reasons in the administrative acts is essential to the analysis because it determines whether the courts actually have the conditions – knowledge of the reasons in the relevant acts – to assess whether the administrative decision is lawful or not. This is equally important for the subject himself affected by the administrative act, because when he is aware of the reasons (if he has access to them) he can know what steps are best to take to protect himself from undue coercion and find out if he has the right to legal protection at all (Neill, 1998, p. 161). In turn, limiting executive discretion and uniform application of laws represent more comprehensive principles for the operation of the rule of law. The principle of limiting the discretion of the executive power is inextricably linked to the separation of powers, which in turn is functionally bound to the rule of law. The separation of powers distinguishes legislative, executive and judicial power and essentially sets limits on the scope of each of the power groups, which limits should be respected (Topchiyska, 2020, p. 148). Here comes the question of limiting the discretion of the executive power, namely the existence of procedures to prevent abuse (Topchiyska, 2020, p. 152). Equal application of laws refers to the absence of discriminatory provisions in laws or discriminatory elements in court decisions and is also key to the rule of law. The absence of prejudice in law-making, administration and judicial adjudication is strictly necessary for the correct application of the law (Topchiyska, 2020, p. 157).

1.7 SCIENTIFIC CONTRIBUTION

The different reading of the impact of the 2015 crisis on the role of courts and parliaments in the fight against terrorism can be considered as a theoretical contribution – one that identifies partial development along the spectrum of the rule of law, not regress. Against the background of criticisms regarding the extent of counter-terrorism activity of governments post-2015, which are entirely understandable, the thesis presents a detailed comparative analysis that describes how counter-terrorism processes are extremely nuanced and, despite the increased counter-terrorism power of governments, there is also a strengthening of the role of the courts and parliaments, paradoxically following the crisis of 2015. The practical contribution of the study covers the review of the legislation in the three countries, as well as the detailed statistics on the measures applied and the parliamentary questions asked - these can serve as a starting

point for future reports and inquiries, undertaken by government bodies and non-governmental organizations.

1.8 SCOPE AND LIMITATIONS

The current analysis focuses only on one crisis and its impact on three countries, so theorizing how such an outcome is possible is more in the realm of speculation and provides a basis for future, larger-scale research that includes a larger number of crises over the years as well as a larger number of countries. Based on the present, limited analysis, it can be assumed that not every major crisis in the field of security leads to a crisis in the rule of law, on the contrary – the crisis can be a catalyst for the acquisition of stability and flexibility of democracy. However, larger-scale research that operationalizes and analyzes the impact of a series of crises on government accountability and accountability, as well as other parameters, in a larger number of countries would help here. In such an analysis, a model of the cyclicality of security crises can also be developed and tested, specifically which one acts as the initial catalyst for a deterioration in certain parameters (primary crisis) and which are the subsequent crises that restore (or not) the parameters to positions closer to those before the onset of the primary crisis.

The chosen period of the study - 2009-2020, which is actually built around the key year 2015 - should be justified. It represents a boundary between the two compared sub-periods (2009-2014 and 2015-2020), since then IS mobilized its terrorist resource in Europe in a tangible way (Sekulow, 2015, p. 15). The two sub-periods are 6 years long to avoid (as far as possible) mandates in the states. The best option would cover a longer period, but firstly, this is practically difficult from a data point of view, and secondly, the years around 2008 really mark the increased attention of countries to the issue of human rights in the context of counter-terrorism. An example of this is the so-called "illegal" detentions in cooperation with the American CIA on the territory of European countries (Carey, 2013, p. 431). In this sense, going back to years closer to the 2001 US bombing would have skewed the research.

1.9 STRUCTURE OF THE DISSERTATION

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1. Statutory powers and judicial review in Germany

2. Measures applied in Germany

3. Practical judicial control over the measures in Germany

4. Parliamentary oversight in Germany: legislation and practice

5. Evaluation of the German case according to the criteria of the rule of law research

Comparison

IV CONCLUSION

BIBLIOGRAPHY

2. BRIEF PRESENTATION OF THE DISSERTATION

This part of the abstract presents the evaluations according to the criteria for the three countries, the comparison between them in terms of dynamics, as well as the conclusion of the dissertation work. For the purposes of the abstract and the dissertation, it is necessary to make a few general remarks about the possibilities of judicial control in the three countries. As mentioned, all three countries have ratified the ECHR, which is extremely important for the protection of human rights. At the same time, this protection is limited to cases where a person's rights have been violated, which sets a high threshold for appeal. Measures taken under some powers would not always be successfully challenged before the ECtHR if no rights were violated, but at the same time they still have an impact on the targeted individuals. It is for these reasons that it is also important to see the dynamics before and after 2015 in the possibilities of judicial review existing (or not) separately from the protection guaranteed by the Council of Europe. This is also the place to make more detailed notes about each country. With regard to Bulgaria, the presumption of appealability of administrative acts is enshrined in the Bulgarian constitution. [5]At the same time, according to Art. 128, para. 3 of the Administrative Procedure Code for the protection of national security [6], which also includes anti-terrorism [7], this presumption is dropped and an explicit codification of the appeal procedures in the relevant laws is required. As far as Great Britain is concerned, since the second half of the last century there has been a general possibility of retrospectively appealing

[5] Art. 120, para. 2, Constitution of the Republic of Bulgaria, Promulgated, SG No. 56 of 13.07.1991 https://www.parliament.bg/bg/const
[6] Art. 128, para. 3, Code of Administrative Procedure, Pub. DV. No. 30 of April 11, 2006. https://lex.bg/laws/ldoc/2135521015
[7] This can be confirmed by Art. 4, para. 11 of the Law on State Agency "National Security", Pub. DV. no. 109 of December 20, 2007 https://lex.bg/laws/ldoc/2135574489

all actions of public bodies in the country - the so-called "judicial review"[8] – as the latest version of the instrument codifying this possibility is The Civil Procedure Rules 1998 (chapter 54). [9]This procedure is comprehensive and no infringement is required to use it. Thus, in practice, for the entire studied period, a significant opportunity for judicial supervision is observed, the sphere of national security being no exception. However, it is also interesting to see the dynamics in the additional control procedures, i.e. preliminary, ongoing, as well as retrospective - one that is similar, but not the same as "judicial review", but is expressly regulated in the relevant anti-terrorist laws. In this regard, it is important to mention that "judicial review" is an expensive procedure, the amount of fees for which is at least 1000 pounds and can reach tens of thousands of pounds (see e.g. Public Law Project, p. 4, 2018). Germany is the third identical case. There, judicial review of the actions of public authorities is enshrined in the German constitution in cases where a person's rights are violated. [10]However, an exception until 2017 is the sphere of personal data, since in the article where appealability is decided, it is stated that this provision does not concern art. 10 of the Constitution, according to which access to the courts in cases of personal data processing can be replaced by an administrative review procedure. [11]This was essentially the case before 2017, when the new Data Protection Act added judicial review to administrative. Against the background of all these similarities and differences in the established judicial control in the three countries, it is important to trace the development in the mechanisms of legal accoutability that exist separately from that under the ECHR, as well as separately from the expensive, not yet accessible judicial review procedure in Great Britain and in addition to the constitutional right to challenge actions infringing rights in Germany.

2.1 BULGARIA

First, as regards **the requirement to give reasons for the acts,** the review of the legislative framework showed that after 2015 there is an increased tendency in the laws to require justification of the orders issued. More precisely, almost every new measure introduced after

[8] A Bulgarian translation is not applied here because this is a very specific general form of judicial review in British law and if the term is translated, it can be confused with the more comprehensive term "judicial review/control" which is used throughout the thesis.
[9]Part 54, The Civil Procedure Rules 1998 https://www.legislation.gov.uk/uksi/1998/3132/contents
[10]Art 19, Abs 4, Grundgesetz für die Bundesrepublik Deutschland 1949 https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/grundgesetz#:~:text=Das%20Grundgesetz%20(GG)%20ist%20die,und% 20von%20den%20Alliierten%20genehmigt.
[11]Art 10, Abs 2, Grundgesetz für die Bundesrepublik Deutschland 1949 https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/grundgesetz#:~:text=Das%20Grundgesetz%20(GG)%20ist%20die,und% 20von%20den%20Alliierten%20genehmigt.

2015 has such a requirement, except for most of those in the Asylum and Refugees Act. However, there is also a precedent for refugee law in the country as a whole, since accommodation in a closed refugee center, introduced in 2015, is the first authority in the law at all, the decisions on which must be motivated in writing. The above observation and the fact that most of the measures in force before 2015 (for example, the refusal to issue a visa under the old wording in the Aliens Act until 2015), do not require written justification, prove the identified trend. In fact, the most solid argument in defense of this statement can be found in the Law on Foreigners in the Republic of Bulgaria. Since 2016, visa refusals due to national security concerns etc., which is an old power, must be justified in writing. [12]This development is key because the reasons in the administrative acts help the courts in the country to make a reasoned decision.

The next criterion - **the limitation of the scope of executive power** - includes statutory and practical judicial and parliamentary control, as well as the actual implementation of measures after 2015. The actual legal oversight was examined, which was described as real and not fictitious, it was also concluded, that 2015 does not lead to deterioration in this aspect. As for the normative possibilities, it has been proven so far that in Bulgaria after 2015 there are increased possibilities for the participation of the judiciary in the field of anti-terrorism, which are effectively applied by the courts. It should be noted that this is not due to newly introduced judicial control over old administrative measures, but to the intensive introduction of new measures, the vast majority of which come with an associated, explicitly described in the relevant laws, legal control. More precisely, until 2015, the number of measures was lower and for two of them, there is no provision for a specially ordered judicial review, if they are not appealed under the ECHR (inclusion in the array of foreigners who are not wanted for the country and not being allowed to enter the country). After 2015, through legislative changes to old laws, as well as the new law on countering terrorism, an impressive group of new measures was introduced, only one of which does not provide for a specific appeal procedure or other type of control (except for hypothetical protection under the ECHR) – a ban on entering certain areas. Thus, after the 2015 crisis, courts can exercise greater absolute and relative control over the executive. An additional argument for the increased effectiveness of judicial review is the

[12] Art. 10a, para. 3, Law on Foreigners in the Republic of Bulgaria, Pub. DV. no. 153 of December 23, 1998 https://lex.bg/laws/ldoc/2134455296

already possible suspension of the expulsion procedure in case of ongoing judicial review, introduced in 2021, following the case AUAD v. BULGARIA before the ECtHR from 2011.[13]

First, as regards the executive powers in the hands of the State Agency for National Security (DANS) and the Ministry of Internal Affairs (MIA), a number of new levers of power are being introduced there. The restrictive options that come into force with the new Counter-Terrorism Act 2016 [14]seem serious, but any of them can be challenged in the Supreme Administrative Court (SAC) [15].

Around the new and not entirely clear "preventive activities" of the Ministry of Internal Affairs identified in the research, in force from 2015 until today, some questions arise regarding their essence and control over them. However, from a review of the instructions issued so far, it is clear that this new leverage in the hands of the Home Secretary is not restrictive, but rather organizational and technical in nature. In addition, each of the actual preventive and coercive administrative measures that can be applied by the Ministry of Internal Affairs, the National Tax Service and other authorities is codified in other relevant laws and can be challenged in court.

The dynamics in the field of migration are also summarized and analyzed. The number of coercive administrative measures (PAM) targeting foreigners in Bulgaria grew in 2013 and 2016, which also led to greater involvement of judicial authorities. Indeed, the control over some of them has been amended since 2018, since their application since then cannot be appealed before an appeals court or the Supreme Court. However, this does not change the fact that there is control. In practice, after 2015, the only new power in general that is not subject to judicial appeal except when seeking protection under the ECHR is the requirement that all migrants in Bulgaria accommodated in centers not to visit certain areas without permission during reception proceedings on protection. [16]It should be emphasized that this production is limited in time (most often within 6 months [17]). This feature shows that the development of

[13]AUAD v. BULGARIA (Appeal No. 46390/10) https://refugees.farbg.eu/sbornik-po-bejansko-pravo/normativni-dokumenti/46390-10/
[14] Art. 25, Anti-Terrorism Act, Pub. DV. no. 103 of December 27, 2016 https://lex.bg/bg/laws/ldoc/2136974730
[15] Art. 27, Anti-Terrorism Act, Pub. DV. no. 103 of December 27, 2016 https://lex.bg/bg/laws/ldoc/2136974730
[16] Art. 30 , para. 1, item 7, Law on Asylum and Refugees, Pub. DV. no. 54 of May 31, 2002 https://lex.bg/laws/ldoc/2135453184
[17] Art. 75, para. 1, Asylum and Refugee Law, Pub. DV. no. 54 of May 31, 2002 https://lex.bg/laws/ldoc/2135453184

control over anti-terrorism in Bulgaria is asymmetrical, conditioned by various factors and does not mark one hundred percent progress, but still - to a certain extent.

As for the financial aspect of the fight against terrorism, there is no change between 2009 and 2020, as there judicial supervision has been a constant since the adoption of the law until now.

To the argument for normatively strengthened judicial control can be added the fact that partial progress is also observed in the practice itself in the field of judicial power. First, the reviewed case against Bulgaria before the ECtHR from 2011 showed that the country was criticized for not having a rule to temporarily suspend the expulsion procedure and the related detention under threat of torture and death while the relevant court considers the appeal against such answer. Although ten years later, Bulgaria amended its legislation and such a suspension of the procedure is now possible. The second sub-argument in this direction is the considered appeal in 2020 of the refusal to issue a visa before the Administrative Court of Sofia-city (ACSG), which in 2021 overturned the decision on the refusal by the State Agency for Refugees (DAB). [18]It is important to emphasize that the court ruled that the lack of legal basis is illegal, which further proves the importance of justification in administrative acts. The most important thing this case shows is that the court disagrees with an executive, which is a sign of effective judicial review. The case of Buyuk examined in the dissertation and the ignored decisions of the Sofia City Court and the Sofia Court of Appeal, on the other hand, raise concerns about the rule of law in the country, but this is a problem that existed before 2015. [19]In this case, this case study still highlights already existing weaknesses in the rule of law in Bulgaria.

This criterion also includes parliamentary accountability and participation in processes. In Bulgaria, there is tangible progress in the legally regulated means and a less prevalent, but still present development in the actual control exercised by the National Assembly over the representatives of the executive power. And here the crisis of 2015 appears as an immediate incentive for greater participation of the legislative power in the control of the executive.

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[18] Decision No. 2543 Administrative Court Sofia-city

[19]Abdullah BÜYÜK v. Bulgaria (Appeal No. 23843/17) https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22BUL%22],%22appno%22:[%2223843/17%22],%22documentcollectionid2%22:[%22ADMISSIBILITYCOM%22],%22itemid%22:[%22001-222635%22]}

The third integral element of the limitation of executive discretion criterion is the enforcement of the measures by the executive. One cannot speak of "self-restraint" here, but at the same time it is important to note the following thing. The research identifies a more limited application of some of the powers and a preserved value of others after 2015 in Bulgaria, which is important for the scope of the executive power, since the latter in such a case does not put the courts and Supreme Court in a situation where the activity of executive structures is practically impossible to track and control.

The last basic criterion is that of **the uniform application of laws.** In terms of content, the security laws in Bulgaria both before and after 2015 are not discriminatory. Their equal application is a matter of administrative and judicial practice. Since there is always and everywhere a potential danger of discrimination on ethnic, religious and other grounds, the question of the equal application of the laws is essentially a question of whether judicial review is effective. This is because, if enforcement of the norms is left solely to an uncontrollable executive, the chance of discriminatory decisions is much greater. Effective judicial supervision appears as a guarantor that the actions of the Ministry of the Interior, the National Tax Service, the State Tax Administration, etc. bodies are subject to monitoring and are compared with the norms in the Constitution of the country. It has already been adjudged that there is effective legal control and the courts exercise their power to overturn acts of the administration, including when it comes to foreign nationals. Therefore, it can be concluded that the development in the effectiveness of legal control is indirectly also a development in terms of the uniform application of laws.

In summary of the assessment, it can be said that the increased terrorist threat in Bulgaria after 2015 leads to the strengthening of the rule of law in the field of anti-terrorism by all standards - justification of administrative acts, limitation of the discretion of the executive power and equal application of laws. This conclusion does not mean, of course, that there can never be and will never again be an unlawful restriction of rights. This danger is always present. Nevertheless, the analysis for Bulgaria shows that there is no room for fundamental concern about the impact of the terrorist threat on the rule of law in the country. On the contrary, the anti-terrorist processes in Bulgaria after the rise of IS in 2015 are more in line with the criteria for the rule of law than before.

2.2 GREAT BRITAIN

With regard to **the justification of reasons in administrative acts** in British anti-terror legislation, it can be noted that where there are no such requirements, this applies to the entire period under study (2009-2020) and concerns powers introduced even before 2009. Such for example are the refusal and cancellation of refugee status set out in the Migration Act 1999 [20], and the police stop and search powers introduced by the Anti-Terrorism Act 2000. [21]By comparison, for the exercise of almost every new power introduced after 2015., there is a requirement that the reasons be explicitly described. These are all measures newly introduced by the Investigatory Powers Act 2016 [22], apart from data retention, as well as the new sanctions measures from 2018. There is no express condition of motivation for the processing of personal data under the relevant Act 2018, but it is specified that in the case of newly introduced express judicial control, the judge takes into account the reasons that led to the executive body's decision. [23]This means that they should still be described, so that the act does not fail on appeal to the court. It should be emphasized that the requirement for the motivation of the acts has existed since before 2015 - including the control measures from 2005 and 2011. In this sense, it would not be correct to say that the crisis that occurred in 2015 was reason for the progress in this field, but it can certainly be defined as part of a more general trend that began after the turn of the millennium.

Thus, three interrelated conclusions can be drawn here. First, the 2015 crisis did not lead to a deterioration in the aspect described above; secondly, the above-established progress with it begins before 2015, that is, it is not critical in this field, and thirdly, the conditions for motivating the newly introduced measures after 2015 still reinforce the trend of higher requirements that started earlier for the activity of the executive power.

Moving on to subsequent standards, the analysis presents an assessment of how the two sub-periods of analysis – 2009-2014 and 2015-2020 – differ in terms of limiting executive discretion and uniform enforcement of counterterrorism laws.

Limiting the discretion of the executive power concerns the possibilities and practice of judicial and parliamentary participation in anti-terrorist activities, as well as the actual implementation of the measures. First, a few lines above it was specified that there is de facto judicial control and 2015 does not lead to deterioration or progress in this aspect. As for the

[20]Immigration and Asylum Act 1999 https://www.legislation.gov.uk/ukpga/1999/33/contents
[21] Terrorism Act 2000 https://www.legislation.gov.uk/ukpga/2000/11/contents
[22]Investigatory Powers Act 2016 https://www.legislation.gov.uk/ukpga/2016/25/contents/enacted
[23]Section 27, para 4, Data Protection Act 2018 https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted

legal provisions for judicial control, the review of the legislation showed that the fight against terrorism in the country is conducted along four lines of law - specific anti-terrorist laws; police activity; migration; monitoring and data; finance.

In terms of specifically drafted anti-terrorism laws, the old control orders from 2005 to 2011 and the new terrorism prevention and investigation measures since 2011 [24]make the biggest impression there. [25]The immediate difference arising from this change is that the 2011 measures no longer include a ban on travel to and from the UK [26]; something that was previously subject to current and prior supervision. [27]A similar power is reintroduced by a third law from 2015, but this time the courts can also exercise ex post control by reviewing decisions already made and implemented[28] (in addition to the general possibilities for "judicial review" and under the ECHR). Thus, in practice, after 2015, a horizontal expansion in legal supervision was observed.

As regards police powers and statutory levers of judicial accountability, there is no significant dynamic in the laws regarding the possibilities of legal control. There is no prior or current legal control, but for the entire period under study there is an explicitly stipulated limited form of retrospective – the possibility of appealing gross police violations before a tribunal.

In the field of migration, no significant dynamics were observed for the studied period either. It should be noted that after 2014, refusals to enter and remain in the UK can only be appealed on humanitarian and human rights grounds. [29]Previously, appeals were of all kinds. This cannot, however, be interpreted as a diminished role for adjudication, because courts continue to have a fundamental role in assessing whether someone's rights have been unduly restricted.

[24] Terrorism Prevention and Investigation Measures Act 2011 https://www.legislation.gov.uk/ukpga/2011/23/contents

[25] Prevention of Terrorism Act 2005 https://www.legislation.gov.uk/ukpga/2005/2/enacted https://www.legislation.gov.uk/ukpga/2005/2/enacted

[26]Section 1, para 4(g), Prevention of Terrorism Act 2005 https://www.legislation.gov.uk/ukpga/2005/2/enacted

[27]Section 3, Prevention of Terrorism Act 2005 https://www.legislation.gov.uk/ukpga/2005/2/enacted

[28]Section 11, Counter-Terrorism and Security Act 2015 https://www.legislation.gov.uk/ukpga/2015/6/contents/enacted

[29]Section 82, Nationality, Immigration and Asylum Act 2002 https://www.legislation.gov.uk/ukpga/2002/41/contents

The third area of interest for labor is surveillance, as well as the interception and protection of personal data. It also identified a strengthening of the role of the judiciary after 2015. In terms of surveillance and interception of personal data, a distinct change was observed in 2016, when the new Investigatory Powers Act added preventive legal control over intrusive surveillance undertaken by non-senior employees. [30]In addition, the new 2016 law adds prior and ongoing oversight of data interception decisions in general cases [31], excluding migration centers and interception at the request of other countries [32]. There, the control specifically stipulated in the law remains retrospective (appeal), as it was before.

The two Privacy Acts of 1998 and 2018 again see an important change. After 2018, national security is no longer a legal exception in all parameters, and the certificate of restriction of rights under the new law can be appealed by the targeted person according to a procedure specifically regulated in the law.[33]

And in the last examined sphere - that of financial and others. sanctions – the increase in executive powers goes hand in hand with subsequent judicial oversight.[34] And in this aspect, the developed thesis is proven that the political-legal developments after 2015 are a driver for more opportunities to involve the judicial system in the processes.

In all areas except migration, where no change was reported, it is noticeable that the courts have more opportunities to participate. The proof of this is that some of the measures introduced before 2015 are not subject to judicial control (except in case of violation of rights and appeal under "judicial review", while after 2015 two things are observed - first, the possibilities expand for legal control over some old measures, and secondly, all newly introduced powers allow for a specifically codified control by the courts.This involvement is related to the separation of powers, because in this way, establishing the necessity and proportionality of restricting citizens' rights is emphasized as a primary task. of the judiciary. It can be judged that the crisis of 2015 not only worsens the division of powers in the field of counterterrorism, but on the contrary, it is an engine of strengthening. Also, the quantitative analysis proves that all

[30]New section 32, para 2, Regulation of Investigatory Powers Act 2000 https://www.legislation.gov.uk/ukpga/2000/23/contents
[31]Sections 23, 87, 108 & 140, Investigatory Powers Act 2016 https://www.legislation.gov.uk/ukpga/2016/25/contents/enacted
[32]Section 52, Investigatory Powers Act 2016 https://www.legislation.gov.uk/ukpga/2016/25/contents/enacted
[33]Section 27, para 3, Data Protection Act 2018 https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted
[34]Sanctions and Anti-Money Laundering Act 2018 https://www.legislation.gov.uk/ukpga/2018/13/contents/enacted

measures are implemented visibly less compared to the years around 2010. This is due to three factors – criticism, supranational influence and own desire for higher efficiency.

Here, it is important to note the incorporation of early prevention without restriction of rights in the Security and Counter-Terrorism Act of 2015. [35]On this basis, it can be judged that in the legal-political space the understanding is increasingly being established, that some shift in focus is needed from interventionist levers of power to a soft approach that 'prevents' the need for immediate prevention. This in itself is a limitation in the use of force levers.

Practical judicial control is also included in this criterion. From the reviewed cases on review order appeals, it was found that legal review was not fictitious and judges – both before and after 2015 – successfully used their powers to overturn executive acts. As for the dynamics, it cannot be said here that the border year 2015 leads to development or deterioration in this aspect.

The next element of this criterion is the statutory and factual parliamentary supervision. And in Great Britain, the legislature acquires more opportunities for control, both ex ante and retrospective. The role of the parliament is tangible even before the critical year 2015, which strengthens the already tangible participation of the deputies. This applies to the areas of migration and the use of surveillance data, where the required reports should be more comprehensive and detailed than earlier ones.

Also, the quantitative analysis proves that all measures in Great Britain are applied significantly less compared to the years around 2010. This is the third element of the criterion and in this case it is determined by three factors - criticism, supranational influence and own desire for higher efficiency. Here again, this does not directly concern the limitation of the scope of the executive power, but it has an indirect effect - fewer measures mean a better opportunity for the courts and parliament to exercise qualitative control over the executive power.

The last criterion is **the uniform application of laws.** It practically concerns the question of whether there is discrimination in the application of the relevant measures, as well as in the subsequent court decisions. The British police are the subject of serious accusations regarding

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[35]Part 5, Counter-Terrorism and Security Act 2015
https://www.legislation.gov.uk/ukpga/2015/6/contents/enacted

the allegedly discriminatory application of the so-called stop and search powers (The Guardian, 2022). However, these criticisms are not recent, and in this sense it cannot be said that 2015 has increased discrimination compared to the period before. Furthermore, the available data for London shows that there has been no significant change in the number of people stopped and searched since 2015 and the values, although varying, do not reach the high numbers of 2011 and 2012. On this basis it can be the reasonable assumption that the 2015 crisis did not lead to more chaotic and xenophobic police actions.

The other aspect here is judicial review. Here, too, no trend of discrimination can be established, neither before, nor in the period 2009-2014, nor after, since the cited appeal cases concern persons of different origins.

Thus, with regard to the uniform application of laws, it can be said that the events of 2015 lead to neither progress nor deterioration in this aspect.

On the basis of everything listed so far, the following general assessment can be made - the increased terrorist threat since 2015 is paradoxically an engine for strengthening the rule of law in a significant part of the selected standards. These are the written motivation in the administrative acts and limiting executive discretion. In the third aspect – equal application of the laws – the cut-off year for the analysis, 2015, does not play a decisive role. However, it is equally important to emphasize that it does not lead to deterioration on these points. Thus, the conclusion can be presented that the increased threat in and after 2015 actually partially strengthens the rule of law in the UK in the field of counter-terrorism. The conclusion can also be drawn from this that the country has not observed an intensification of the militarization of democracy as a result of the events of 2015.

2.3 GERMANY

Germany should also be assessed on the basis of the following criteria – substantiation of reasons in administrative acts, limitation of the discretion of the executive power and equal application of laws.

As for **justification of reasons in administrative acts,** it exists in four of the considered laws, both before and after 2015. These are the two laws on the federal criminal police, on the joint database and on asylum and refugees. A significant change in this aspect is observed in

the new Federal Criminal Police Act of 2017. With it, then, for the first time, a condition was introduced to motivate the warrants under the old power - tracking and recording the telecommunications of a person. [36]In addition, two new measures are being introduced, for which reasons must be included - the prohibition of a person moving away from the place of residence or current residence, staying in certain places without the express permission of the police, establishing contact with certain people [37], and also and the possibility of electronic location tracking [38]. In effect, these two measures account for 2/3 of all the new levers of police coercion that the 2017 law provides. Thus, in the period after 2015, not only is there no regress in this aspect, but progress is identified.

The second aspect – **limiting the discretion of the government** – refers to the possibilities and practice of judicial and parliamentary control, as well as a comparison of the analysis with the applied measures. In the previous paragraph, it was specified that no significant change in practical judicial monitoring could be established, and in the part about the legally regulated mechanisms, a progressive development was identified after the border year of 2015. If one mentally distinguishes three key areas - police, financial supervision and migration, in all three, a normative strengthening of the position of the judiciary is noticeable.

First, in relation to the criminal police, before 2017 there were various measures, some of them with due legal control (except for the protection against violation of rights under the constitution and the ECHR) and others not. But the key point there is that not all of the restrictions related to the interception and processing of personal data have prior, ongoing or any judicial control like the others. However, the new Personal Data Act of 2017 also introduces retrospective control over all police measures of this type, which is not limited to ECHR protection alone. Thus, for data-related measures over which the courts previously had absolutely no control, there is now such an option, and for those that were only subject to preliminary and/or ongoing, retrospective now also applies. [39]In addition, in 2017, five new

[36]Art 51, Abs 4, P 6, Bundeskriminalamtgesetz 2017 https://www.lexsoft.de/cgi-bin/lexsoft/justizportal_nrw.cgi?xid=7881151,1
[37]Art 55, Abs 4, Bundeskriminalamtgesetz 2017 https://www.lexsoft.de/cgi-bin/lexsoft/justizportal_nrw.cgi?xid=7881151,1
[38]Art 56, Bundeskriminalamtgesetz 2017 https://www.lexsoft.de/cgi-bin/lexsoft/justizportal_nrw.cgi?xid=7881151,1
[39]Art 60 & 61, Bundesdatenschutzgesetz 2017 https://www.buzer.de/BDSG.htm

measures were introduced with the new law on the criminal police, and the implementation of each of them should be approved in advance or currently by a court.[40]

Second, the same trend is observed in the area of measures aimed at preventing the financing of terrorism and money laundering. The Banking Act did not see any change between 2009 and 2020 – the federal supervisory authority can order a financial institution to freeze the withdrawal and transfer of money from a certain account, and for this there is no specifically prescribed form of control. However, the new Anti-Money Laundering Act of 2017 creates the Central Financial Transaction Investigation Office, which can store and process personal and financial data. [41]The new Data Protection Act 2017, which introduces retrospective judicial review of the processing of personal data, is again applicable here. Thus, in this area as well, the involvement of the judiciary can be seen to be increasing.

Thirdly, the above conclusion can also be made for the field of migration, even though the dynamics of powers are most pronounced there. It should also be noted that this is the only area where a set of restrictions cannot be challenged in a court of law unless the right to respect for private and family life [42]- refraining from contact with certain people - is violated and others. In general, the provisions concerning the refusal and revocation of the right to asylum, refugee status, subsidiary protection, temporary protection, right of residence and temporary residence on humanitarian grounds, as well as deportation, together with the relevant control levers, did not undergo any changes between 2009 2020s and 2020s. The dynamics can be seen elsewhere – in the lowering of the threshold for deportation for reasons of public interest [43], as well as in the newly introduced restrictive measures aimed at controlling the contacts of people who should be deported due to national security concerns. The changes did not go unnoticed by observers of these processes, including Amnesty International. In their 2017 report, already discussed in the literature review, they criticized this expansion of opportunities to restrict rights (Amnesty International, 2017, p. 50).

These criticisms and concerns are certainly not unfounded. The very lowering of the threshold for deportation carries with it the danger of intentional or unintentional

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[40]Art 50, 55, 56 & 60, Bundeskriminalamtgesetz 2017 https://www.lexsoft.de/cgi-bin/lexsoft/justizportal_nrw.cgi?xid=7881151,1

[41] Art 27, Geldwäschegesetz 2017 https://www.buzer.de/GwG.htm

[42] Art. 8, European Convention on Human Rights, as amended by Protocols Nos. 11 and 14 since its entry into force on 1 June 2010. Done at Rome on 4 November 1950. https://www.coe.int/bg/web/ compass/the-european-convention-on-human-rights-and-its-protocols

[43]Art 54, Aufenthaltsgesetz 2004 https://www.buzer.de/gesetz/4752/index.htm

discrimination and unlawful restriction of rights; the change is even twofold – lowering the threshold and expanding the powers at this lower threshold. However, it should be reminded that the deportation order can be reviewed by a court and the period between its issuance and execution is limited in time, that is, together with it and the control measures – a maximum of 30 days. This, of course, does not mean that an unlawful restriction could be justified by the short term, but the law actually puts brakes on the measures.

Something else of essential importance should be recalled here - hand in hand with the above newly introduced measures, a completely new direct authority of the judiciary is also being pushed. More specifically, it is the ability to issue a court order to install tracking devices to monitor the actual compliance or non-compliance of the restrictions being applied. [44]It is very important to note that this court order is issued at the discretion of the court and not at the request of any of the enforcement agencies or the police. Thus, in practice, the extension of powers after 2015 is essentially a prerequisite for the more serious involvement of the German courts in the fight against terrorism. Having deployed these arguments, it can be concluded that even in the field of migration, where the most intense changes are observed, they are compensated by a stronger and strengthened role of the judicial system.

This criterion also includes actual judicial review. From this part of the analysis for Germany, it became clear that the majority of appeals fall before the courts, but there is also a successful challenge from 2018. Here one cannot definitely establish any strengthening after the crisis of 2015, but equally it cannot deterioration was also reported.

All of the above micro-conclusions can be grouped into one larger conclusion – the German legislation has seen an expansion of the powers of the executive power, but it actually represents an incentive for the judicial system to become more prominently involved in the fight against terrorism. As a result, the participation rate of this system is higher. Combined with the conclusions that were drawn for Bulgaria and Great Britain, the thesis can go even further - anti-terrorism not only does not hinder the rule of law and democratic processes, but even stimulates and leads to their strengthening in an institutional plan.

The same conclusion can be drawn for parliamentary accountability before and after 2015, which represents the second part of the criterion for limiting government discretion. Substantial

[44]Art 56a, Aufenthaltsgesetz 2004 https://www.buzer.de/gesetz/4752/index.htm

changes after 2015 are observed in three spheres – the police, migration and personal data. Until 2017, the activities of the police were governed by a single law, and the new one introduced then strengthened the role of the Bundestag. The old law did not provide for the submission of a report on the police's activities to Parliament, while among the areas included in the new provision for the submission of a report [45]is the fight against terrorism.

An important amendment is introduced with the Asylum Act. Since 2017, the federal government has submitted a report to the Bundestag on whether the requirements for the classification of the "safe countries of origin" list have been met. [46]Also, in 2017, the new data protection law again mandates the submission of a report to the Bundestag, as in the old law, but this time it is submitted annually, rather than every two years as before.[47]

There is also tangible progress in the actual role of the German Bundestag. The data showed that parliamentary questions on the subject increased significantly after 2015. Thus, it can be said that the scope of executive power in Germany is limited both normatively and in practice by both the judiciary and the parliament.

The last element of the criterion of executive discretion is the implementation of the measures. Here, as in Bulgaria and Great Britain, a decline in the actual application of anti-terrorist powers was found after 2015. This is not directly related to the limitation of the scope of executive power, but there is an indirect one - the presence of a lower number of applied measures means less high probability that the judiciary and the parliament will carry out careful supervision of the activities of the executive structures.

The last evaluation criterion is **the uniform application of the laws.** Here, as in other countries, no discriminatory provisions are observed either before or after 2015. Nor can discrimination in court decisions be reported in either period.

Thus, the following evaluation of Germany can be made according to the standards of the rule of law - progress after 2015 is observed in terms of the requirement to motivate the acts

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[45]Art 88, Bundeskriminalamtgesetz 2017 https://www.lexsoft.de/cgi-bin/lexsoft/justizportal_nrw.cgi?xid=7881151,1
[46]Art 29a, Abs 2a, Asylgesetz https://dejure.org/gesetze/AsylG
[47] Art 15, Bundesdatenschutzgesetz 2017 https://www.buzer.de/BDSG.htm

and the limitation of the discretion of the government, while no significant dynamics are noticed in the uniform application of the laws.

All this means that the conclusions drawn for Bulgaria and Great Britain are also valid here. The increased government interest in the fight against terrorism after 2015 leads to an increased package of measures, but this does not lead to a deterioration in the parameters of the rule of law; even spurring progress in some of them. And with this case study, the idea of the seemingly paradoxical development of democracies in the conditions of a security crisis can be strengthened. The danger to democracy and citizens is there, but it is also an impetus to strengthen the rule of law in the security sphere.

2.4 COMPARISON

First, several things can be said regarding the legally established forms of judicial review. What the three countries have in common in this aspect is that the crisis of 2015 appears as a catalyst for a more serious and in-depth role of the judiciary albeit in varying degrees and contexts. Progressive trends in this aspect are observed in all three countries. In Bulgaria, the courts can exercise greater absolute (total number of measures with specially regulated judicial supervision other than that under the ECHR) and relative (changed ratio of powers with possible specific control over all powers) control over the executive power. More precisely, until 2015, the number of measures was lower, and for two of them, no judicial review was expressly foreseen, except for a hypothetical appeal under the ECHR (the inclusion in the array of foreigners who are not wanted for the country and the refusal to enter the country). Since 2015, an impressive number of new powers have been introduced, only one of which does not provide for an appeal procedure or other type of control separate from the protection under the ECHR – the ban on entering certain areas. In Great Britain, during the entire period under study, in addition to the protection under the ECHR, the possibility of the so-called "judicial review", but progress is observed separately from these procedures. First, it expands the scope for judicial review of some old measures, and second, all newly introduced post-2015 powers allow for specifically codified review by the courts. Also, since 2018, there has been a special decree according to which the so-called a certificate of restriction of rights related to personal data can be appealed by the subject even in cases where the purpose is to protect national security. In Germany, the development is that, after 2017, a judicial appeal in connection with the processing of personal data is not only possible under the ECHR in case of violation of

rights, but also as a domestic judicial procedure in addition to the already existing administrative control. In addition, a new power is placed in the hands of the judiciary - the ability to issue a court order for the installation of tracking devices (at the discretion of the court).

Within this common development found in all three countries, differences can also be drawn. The first is that only in Great Britain is the introduction of extended, explicitly codified forms of judicial control over old powers (separate from "judicial review" and protection under the ECHR). A clear example of this is the new Investigatory Powers Act 2016, which adds ex ante and ongoing judicial review of the power to intercept data, which was previously only subject to retrospective review. The other such case is the Security and Counter-Terrorism Act 2015, which introduced a similar power to the old one repealed in 2011, but with enhanced judicial review. More precisely, in 2015 the measure of temporary non-admission to Great Britain was introduced, which is subject to preliminary, current and retrospective judicial review. A similar measure was introduced 10 years earlier, in 2005, and repealed in 2011 – banning or restricting movement to, from or within Great Britain – which was subject only to prior and ongoing controls. Thus, to the initially valid preliminary and ongoing control, as well as that under the ECHR and through "judicial review", an explicitly established possibility for retrospective supervision is added.

Another important distinction is that in Bulgaria and Germany, unlike Great Britain, new powers are introduced after 2015, to which the judiciary does not have specifically codified access, apart from that under the ECHR. For Bulgaria, this is the requirement that all migrants in the country housed in centers do not visit certain areas without permission during the procedure for obtaining protection. It should be recalled that this proceeding is limited in time, but still constitutes a restriction of the right to free movement. In Germany, on the other hand, there is no explicitly stated procedure for appealing the following newly introduced package of measures - an order to refrain from contacting, spending time with, or hiring, training or sheltering them – there, for example, there would be a hypothetical judicial review if someone's right to respect for private and family life is violated.[48]

[48] Art. 8, European Convention on Human Rights, as amended by Protocols Nos. 11 and 14 since its entry into force on 1 June 2010. Done at Rome on 4 November 1950. https://www.coe.int/bg/web/ compass/the-european-convention-on-human-rights-and-its-protocols

As for the measures implemented in reality, although different in type for the three countries, all three have seen a reduction in implementation or stabilization to a large extent, as well as improved concentration after 2015 compared to previous years. This cannot be directly attributed to the enhanced role of the judiciary, but has another implication for the argument made above. The less frequent or stabilized use of the powers after 2015 shows that post-crisis judicial review is not being used as a justification for more intrusive executive intervention and greater restrictions on civil rights.

The next aspect on which the countries can be compared is practical judicial review. In all three countries, appeals cases were presented after 2015 that demonstrate at least some effectiveness of judicial review. However, the case with Buyuk was also described in Bulgaria, which shows that sometimes the government, the prosecutor's office and the services in the country allow themselves to ignore the decisions of the courts. This is not a direct consequence of the crisis that began in 2015, but it certainly raises concerns about the independence of the judiciary in general, including in the field of national security. Despite everything, partial progress is being observed in Bulgaria as well, coming from supranational pressure - the introduction of the possibility for the Bulgarian courts to stop the preliminary execution of a decision on expulsion after a critical decision by the ECHR. Also after 2015 there have been successful appeals to PAM, which demonstrates the partial actual role of the judiciary in the processes.

The final line along which similarities and differences between the three countries are drawn is normative and actual parliamentary control. All three countries have seen an increase in statutory mechanisms for parliamentary oversight. Against the background of all developments, however, Bulgaria stands out, where, although new forms of parliamentary accountability are being introduced, there is no possibility of parliamentary monitoring in the field of migration both before and after 2015. In addition, the Ministry of the Interior should report orally to the National Assembly. but not in writing. This again distinguishes the country from Germany and Great Britain, where there are no such breakthroughs. The passivity of the Bulgarian parliament is quite clear, especially compared to the German Bundestag. From the qualitative presentation of the questions, it was seen that the number is essential, since the inquiries in the Bulgarian National Assembly are too general and abstract, while in the German Parliament they are quite detailed and require very specific information. The British Parliament ranks in the middle, but still closer to the Bulgarian one. From this it can be concluded that the

legislative institutions in both countries do not take full advantage of the carte blanche provided to them for monitoring processes related to national security. The data for the German Bundestag, on the other hand, demonstrate Arendt Lijphart's thesis about the advantage of consensus democracies, which are characterized by a wide distribution of executive power among more parties, and hence stronger parliaments (Lijphart, 1999). Despite the shortcomings noted in the other two countries, the progressive role of the 2015 crisis can be observed in all three of them, although the development is asymmetrical and minimal in the Bulgarian case.

2.5 CONCLUSION

Analysis of the data for all three countries shows that viewing the years after 2015 as a period of uncontrollable and draconian executive power belittles the evolutionary processes that condition democratic security. The focus so far on stronger governments seems one-sided because it ignores the greater strength of judicial systems and parliaments in these countries. In all three countries, no further strengthening of pre-existing militarization was identified after 2001.

First, as far as **Bulgaria** is concerned, there is progress (albeit partial and asymmetric) on the criterion **of limiting the discretion of the executive power** - normative possibilities for, as well as the actual exercise of judicial and parliamentary control after 2015, and also real implementation of the measures. In the field of judicial power, the observed development comes not from the introduction of new possibilities for control over measures introduced before 2015, but from the entry into force of numerous new executive powers, almost all of which are subject to explicitly regulated judicial monitoring. Here, the change is rooted in the ratio before and after 2015. Before the year in question, the ratio of measures with an attached specifically codified judicial review to all measures was lower than what followed the sudden introduction of new measures after 2015. More precisely, since before 2015, two measures have been in force without the express possibility of judicial control (if there is no appeal under the ECHR) - the inclusion in the array of foreigners who are not wanted for the country and the refusal to enter the country. On the other hand, the only new enforcement lever in force after 2015 over which the courts have no specifically enacted control (except under the ECHR), is the requirement that all migrants in Bulgaria accommodated in centers do not visit certain areas without permission during the protection procedure. This is limited in time though. This breakthrough signals that the observed dynamic in the legislation is multi-layered and

determined by a partial regress, but in the end progress prevails, as the measure in question is one among many others that strengthen the role of the judiciary. Progress also comes as a result of the considered case against Bulgaria before the ECtHR - from 2021 it is already possible to suspend the expulsion procedure during an ongoing judicial review.

For its part, the review of the cases showed that there are cases in which the ASSG overruled acts of the executive power. This cannot be attributed to the critical year 2015, but at the same time it means that the increased opportunities for judicial involvement are not fictitious in the general case. Here, however, the case study with Buyuk from 2016 should be recalled, which soberingly exposes the fundamental problems in the Bulgarian state, which continue even after 2015 and which demonstrate how complex the researched field is. Against this background, the noted progress in terms of effective legal remedies and the annulment of administrative acts by the ASAG after 2015 do not seem particularly significant, but are nevertheless important in themselves and worth highlighting.

Separately, the analysis of the actual application of the measures showed that there is no room for concern about the scope of the executive power in Bulgaria - some measures have been reported since 2015 (signaling higher accountability), and those that can be traced back, their numbers are seen to either decrease or remain largely the same thereafter. For measures reported since 2015, there is no consistent upward growth to 2020, except for rejected applications for international protection, where values are explained by the overall level of perceived terrorist threat globally. It signals that increased scrutiny is not being used as an "excuse" for an increasingly intrusive executive. Development was also reported in practical parliamentary control. Here, however, it is necessary to emphasize that the relevant parliamentary issues in Bulgaria, although they have increased, are the least of the three countries examined. It is also necessary to remind that in the field of migration there is no parliamentary accountability for the entire period under study, and the accountability of the Ministry of Internal Affairs to the National Assembly is only oral, without requiring written reports. All this shows that there is always a horizon for improvement.

Progress for Bulgaria is also observed in **the requirement to motivate the actions in the administrative acts.** Almost every new measure introduced after 2015 has such a requirement, with the exception of most of those in the Asylum and Refugees Act. And there is nevertheless

a precedent for refugee law in the country, as placement in a closed refugee center, introduced in 2015, is the first authority in the law at all to require a written motivation.

For **Great Britain,** the conclusions regarding the criterion of **limiting executive discretion** are similar. There is progress along several lines. First, under the new Personal Data Act of 2018, the so-called a certificate for the restriction of rights can be appealed by the subject even in cases where the purpose is the protection of national security, as before 2018 only the possibilities for "judicial review" and challenge under the ECHR were valid. Second, there are changes complementing the old control mechanisms. This is the new Investigatory Powers (essentially surveillance)Act of 2016, which adds prior and ongoing oversight of data interception decisions in the general case where migration centers are not concerned and interception at the request of other parties. In these cases, control remains retrospective, as it was before 2015 and 2016. Separately, with the Security and Counter-Terrorism Act of 2015. the measure of temporary non-admission to Great Britain is introduced, which is subject to preliminary, ongoing and retrospective judicial control. A similar measure was introduced 10 years earlier, in 2005, and repealed in 2011 – banning or restricting movement to, from or within Great Britain – which was not only more intrusive, but the force of law and is subject only to preliminary and ongoing control, with no possibility of subsequent appeal unless the person initiates a " judicial review" or an appeal under the ECHR.

An analysis of the powers actually applied in Britain shows that the operation of the police and the immigration service after 2015 not only does not raise concerns about a more aggressive executive, but even the latter is more concentrated and precise. And here, as in the Bulgarian case, this means that the strengthened role of the courts is not used as a rubber stamp for the actions of the executive bodies. The same conclusions apply to the field of parliamentary monitoring, where more required reports are observed, as well as a significantly increased number of parliamentary questions. In terms of practical legal control, 2015 cannot be said to be a watershed year for the UK, as both before and after 2015 there was actual scrutiny.

According to the criterion **of justification of the reasons in the administrative acts** also no difference was reported between the two sub-periods, as this is a well-represented aspect before 2015 as well.

In **Germany,** a dynamic similar to that in Bulgaria and Great Britain is observed – the crisis of 2015 puts new levers in the hands of the executive authorities, but this comes together

with a more emphasized role of the courts and the Bundestag. Thus, here too, a development was reported according to the criterion **of limiting the discretion of the executive power.** The main progress concerns the measures related to the interception of personal data, which until 2017 were only subject to administrative control, and possibly such under the ECHR, while the new Personal Data Act 2017 explicitly introduces retrospective control (appeal).. This amendment applies to the field of police activity as well as financial measures. It adds explicit and subsequent legal control where previously there was only current and/or preliminary, e.g. the requirement by public or private organizations to transfer personal data to other databases, collect data on the Internet traffic of individuals, etc.

It should be emphasized here that migration is the only area where partial regress is noticeable - the threshold for deportation is lowered (from 'reasons' to 'reason to believe') and there is no specifically mandated appeal for the following package of newly introduced restrictions - an order to refrain from making contact with certain people or people from a certain group, from spending time with them, as well as from hiring, training or sheltering them - unless it leads to a violation of the right to respect for private and family life life. [49]This is certainly a significant omission, but it does not completely undo the progress in the role of the courts – “at the end of the day”, the 2015 crisis as a side effect has brought more progress than regression in this specific area. This argument is also supported by the fact that the same amendments to the 2015 Aliens Act also introduce a whole new lever in the hands of the judiciary – the issuing of a court order for the installation of tracking devices to monitor actual compliance or non-compliance of the restrictions applied.

Quantitative analysis of the measures implemented in practice also for Germany shows that the executive authorities act more focused and tight, which in turn means that the strengthened regulatory control is not used as a green light for increased administrative coercion and policing activities. An important clarification here is that there is a lack of aggregated data on the application of measures such as prohibition of communication with certain persons, restrictions imposed in connection with the place of residence, reporting to the police, etc. This is again counted as an omission, but it is also key to note that since 2021 there have been parliamentary debates on the introduction of a consolidated mechanism for

[49] Art. 8, European Convention on Human Rights, as amended by Protocols Nos. 11 and 14 since its entry into force on 1 June 2010. Done at Rome on 4 November 1950. https://www.coe.int/bg/web/ compass/the-european-convention-on-human-rights-and-its-protocols

evaluating anti-terrorist laws in the country (Deutsches Institut für Menschenrechte, 2023; FragDenStaat, 2023). and as of January 2024, it is clear that the mechanism in question has been contracted to the Max Planck Institute for Research on Crime, Security and Law. In addition, a reasonable assumption can be made based on the available data that no significant increase is expected for the other measures either. More precisely, the joint databases under the 2006 law, which were seen to contain data on a lower number of individuals after 2015 compared to the previous period, served as a starting point for the subsequent restrictive measures to be taken. From here, it can be assumed deductively that the applied control measures are subsequently exercised in a more concentrated and concentrated manner.

As for the practical legal review in Germany, the review of the cases showed that most of the appeals were unsuccessful, but still in 2018 there was a successful one. It is an indicator that the role of the judiciary is not fictitious.

Strengthening in the German case is also observed in the field of legislatively regulated and practically exercised parliamentary control – more and more frequent reports are required and significantly more parliamentary questions are asked. Compared to Bulgaria and Great Britain, Germany stands out in this aspect.

Regarding **the motivation in the issued acts,** progress is also noticeable for Germany - in 2017, for the first time, a condition for substantiation was introduced in the orders under the old authority - tracking and recording the telecommunications of a person.

Regarding the last criterion – **the uniform application of the laws,** i.e. the absence of discriminatory regulations and court decisions – in **all three countries,** good performance can be assessed for the entire analyzed period. It should be added that the improved involvement of the judiciary and parliaments in these processes after 2015 reduces the risk of discriminatory treatment.

On the basis of all this, the following conclusion can be presented - as a result of the crisis that began in 2015, in Bulgaria, Great Britain and Germany no additional militarization of democracy or a new "constitutional rearrangement" according to Karl Loewenstein (**Loewenstein, 1937) is observed. András Sajo (Sajo, 2009) and Svetlana Tyulkina (Tyulkina, 2015). On the contrary, the crisis paradoxically proved to be a stimulus for the more intensive and pronounced intervention of the courts and parliaments in the three**

countries. This argument also has a philosophical character - liberal democracies (somewhat tautology) do not undermine the democratic in themselves in their attempts to protect themselves from threats, but on the contrary - they can strengthen the "democratic" along the spectrum of the rule of law in their efforts to protection against massive security threats.

3. LIST OF PUBLICATIONS ON THE THEME OF THE DISSERTATION AND ADDITIONAL PUBLICATIONS WRITTEN DURING THE DOCTORAL STUDIES

Publications on the topic of the dissertation

Bogoevska, B. (202 3). The place of human rights and the rule of law in media coverage of terrorism: a comparison between Bulgaria and Germany (2009-2020). In: Angelova, V. and Popova, S. (eds.), *Medialog* (pp. 122-148).

Bogoevska, B. (2024). Dynamics in the legally regulated judicial control over the preventive anti-terrorist powers of the government in Bulgaria (2009-2020). In: *Post-Globality: Crisis and Future.* (to be published by Southwest University "Neofit Rilski", in press)

Additional publications

Bogoevska, B. (2022). The communication approaches of the heads of government of Bulgaria and Germany regarding the coronavirus pandemic: a comparative discursive analysis (March 2020 – July 2021). In: Manov, B. et al. (ed.), *Collection of doctoral theses presented at the Doctoral School and 5th Doctoral Scientific Session of the Faculty of Philosophy at Southwestern University "Neofit Rilski* " (pp. 299-318).