

National Anti-Corruption System in the Republic of Bulgaria

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In the last years corruption has become a global threat not only for the economic development of the countries themselves and their international relations, but also for the global economy and politics.

As a complex phenomenon corruption is the opposite of free competition in the economic field, discourages entrepreneurship, stimulates the grey economy and economic crime, diminishes the quality of public services and makes the social burden of transition harder. In this way, corruption enlarges the gap between rich and poor in the framework of transition to a market economy and becomes a direct threat to the democratic foundations of society.

During the last years Bulgarian society has focused its attention on the problems related to corruption. The public discussion indicated the ways for limiting and placing it under control, by increasing the law enforcement and regulatory functions of the State, guaranteeing of transparency and publicity of administrative and governing processes, endorsement of civil control and such values as honesty and ethics in society.

Corruption and anti-corruption policy have been major political issues since 1997, when a new Government came to power on a platform that included the fight against corruption as one of its main priorities. The Government took important steps to limit the influence of organised crime on the economy. A number of important laws were passed, in particular the Acts on: Administration, Administrative Services to Natural and Legal Persons, Civil Servants, Asset Disclosure by Persons Occupying Senior Positions in the State, and Access to Public Information, as well as amendments to the Criminal Code. However, some reforms have been ineffective, particularly public administration reform and asset disclosure provisions. The coordination of anti-corruption efforts has been poor, at least until the beginning of 2001.

The current reform in the administrative system of the Republic of Bulgaria and several newly adopted laws and regulations introduced a number of measures with anticorruption potential in the social practice. These steps together with the curbing of the activities of semicriminal groups contributed to some stabilisation in the corruption environment in the country.

Based on the above mentioned the paper analyses the institutional environment for curbing corruption within the Bulgarian Parliament, Government and Judiciary, and the impact of the national anti-corruption system on the effectiveness of the mechanisms for corruption prevention.

1. Anticorruption structures within Bulgarian Parliament

In the anticorruption agenda remains the question about the need of strong commitment of the National Assembly of the Republic of Bulgaria (NA) with the problems anti-corruption by the implementation of its basic functions (adoption of legislative acts, parliamentary control and formation of certain state institutions) and by the creation of specific mechanisms.

38-th National Assembly (1997-2001) at the end of its mandate, took certain steps in this direction - especially in criminal law, public administration reform and on the publicity of property of persons occupying high state positions. The established *Parliamentary Committee for Combating Crime and Corruption* couldn't win recognition as a coordinating center and promoter of sustainable and effective solutions and failed to ensure lasting and effective anti-corruption suggestions.

The established by the next, 39-th National Assembly (2001-2005) *Commission for Combating Corruption* (CCC) had as its primary tasks examining draft legislative acts and reports, preparing opinions and suggestions on them in case that the rules create conditions for the occurrence and spread of corruption. CCC in the 39-National Assembly provided the basis for closer cooperation with NGOs and anti-corruption initiatives, but it did not become a permanent mechanism for cooperation. Despite the large number of complaints received from citizens, government institutions and civil society organizations, the most common cases of corruption have not been summarized or analyzed. Very few were granted by the commission opinions submitted to the NA bills. The Committee did not even give its opinion on widely discussed in the media and public society corruption cases [4, page 54].

Commission on Combating Corruption in the 40-th National Assembly (NA), created on August 24-th, 2005, demonstrated an intention for more serious and consistent work and began implementation of its main priorities [3, page 77]:

- A legislative agenda with proposals for amendments of legislative acts that are relevant to effective anti-corruption (including the Privatization Control Act, The State Property Act, Municipal Property Act, Public Procurement Act, Tax Procedure Code, etc.);
- Monitoring and control over a number of agencies in areas with high corruption risk: Ministry of Finance (Revenue Agency, Customs) concerning problems with VAT fraud; Post Privatization Control Agency in connection with the privatization contracts whose terms are not met; Ministry of Health in conjunction with corrupt practices.

To the Commission Consultative Civil Council was established whose main task was to promote coordination and cooperation between the CCC and civil society. The establishment of the Council institutionalized cooperation with civil society and was an important step towards the creation of preconditions for transparency and effectiveness in work of the Commission.

The *establishment of the Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee* (ACCIPEC) after the elections for 41-th National Assembly held on 5 July 2009

consolidated the activities of three parliamentary committees, having worked under the previous, Fortieth National Assembly. There is no doubt that the topics of anti-corruption, conflict of interests and parliamentary ethics, seen in conjunction, present an opportunity for wider and closer control.

The Committee is created, based upon the parity principle – one member from each parliamentary group, and has been under rotating presidency by representatives of all parliamentary groups, except the largest one, each chairing for two consecutive parliamentary sessions. The ACCIPEC works seriously in the field of anti-corruption. Signals are being received both from citizens and institutions. They concern the work of the bodies of local administration, the judiciary, the executive – on central, regional and municipal level. 966 case files have been opened, 255 of which are based upon complaints and signals against judicial and prosecutorial acts. The Committee does not interfere with the work of the independent judiciary. By way of exception, it has commissioned inspections to the Inspectorate with the Supreme Judicial Council [1, pages 2 and 3]. 172 case files have been opened, based upon complaints against bodies of local self-government – mayors, municipal councilors.

The Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee proved itself as the most active parliamentary anticorruption commission since 1997 till 2011. Within its powers, it operates in three main areas: legislative amendments, parliamentary control and work on specific signals.

2. Government anti-corruption policy and structures

2.1. Anticorruption structures established in the period 2001-2005

The National Anti-corruption Strategy approved by the Government in October 2001 was the first attempt to place anti-corruption efforts within a systematic framework in Republic of Bulgaria. The Strategy itself was a short and very general five-page document and unfortunately remained focused on lowlevel corruption, and virtually no progress has been made towards fighting corruption at the level of the Government, the Parliament and in the political parties. Most worrying, there were doubts over weather the Government can pursue reforms in areas where powerful vested interests are opposed, such as customs.

As a result from the adoption of the Strategy the government set up an *Anti-Corruption Coordination Commission*, chaired by the Minster of Justice to coordinate the work of the various institutions and bodies in the process of implementing the strategy as well as to collect, summarize and analyze information on the anti-corruption measures. The Commission in general failed to fulfill its major tasks focusing only on awareness raising measures.

Analysis [12, page 17] of the Commission's activities allows identifying a number of significant weaknesses in its work. Among them the most important are organizational and functional failure of the Commission and its Secretariat. Created as a Committee to the Council of Ministers

(CoM), it practically operated as a body to the Minister of Justice. As a factor limiting the capacity of the Commission should be mentioned that most of its members were leaders from the middle management echelon and as such were responsible for their own enormous organizational effort, which has not allowed them to devote the necessary time to work on problems of the Commission. In this respect the contribution of the Commission remained very small and limited [5, page 37].

2.2. Structures, created after the adoption of the second Anticorruption Strategy

By 2005, despite achievements in some areas (institutional and legislative infrastructure, decrease of administrative corruption, etc.), corruption continued to be a major challenge in the process of Bulgaria's accession to the EU. To respond to the continuing criticism of the European Commission in the beginning of January 2006 Bulgarian government adopted the *National Strategy for Good Governance, Prevention and Counteraction of Corruption 2006-2008*. The new Strategy made progress in terms of its oversight mechanisms. Civil society has been included in the process of implementation monitoring and a system of unified statistics on the enforcement of criminal anti-corruption legislation was envisaged to be put in place [6, page 2].

To supervise and coordinate the implementation of the Strategy with decision of Council of Ministers on 2-nd of February 2006, a *Commission on Prevention and Combating with Corruption* (CPCC) was established replacing the previous governmental Anti-Corruption Coordination Commission and receiving much stronger mandate and institutional status. CPCC develops state anti-corruption policies, such as: analyze the phenomena of corruption and conflict of interest, suggests to the CoM the anti-corruption priorities for each calendar year; analyze existing legislation creating the conditions for occurrence and spread of corrupt practices and suggests Council of Ministers to take appropriate measures for changes, etc.

The *Coordination Council of the Anticorruption Commissions*, formed as a result from the new Strategy, is a body on central level which had functioning since April 2006 and consolidating three commissions - Commission for combating corruption under the Supreme Judicial Council, Commission within the National Assembly and the Commission within the Council of Ministers. The Council meets on a monthly basis on strategic and operational issues, including on specific issues. The main tasks of the Coordination Council are connected with: information exchange, coordination and harmonisation of activities; developing and conducting joint initiatives; specifying priority fields and forms of interaction in the fight against corruption.

The Main Inspectorate in the administration of the Council of Ministers is directly subordinated to the Prime Minister and provides the functions of a secretariat to the Committee on Prevention and Combating of Corruption to CoM [2, art. 46a]. The main emphasis in the work of the Inspectorate is to examine the signals for conflict of interest and other violations of duties, as well as signals for corruption in government bodies and state servants on management positions. While the desire to

institutionalize the highest level in the executive administration activities in combating corruption and conflicts of interest must be supported, the number of the Inspectorate employees is only 6 [15, Annex 3 to Art. 88, paragraph 2] and this does not create real guarantees that this structure has the administrative capacity for effective work. The activity of the Main Inspectorate is not sufficiently public and transparent, and therefore difficult to assess objectively.

To all ministries and government agencies *Inspectorates* have been established. Scanty legislative framework does not regulate in detail their powers; there is a shortage of human resources. Inspectors need more extensive opportunities for control of the administration, including verification of claims, complaints and reports of citizens and intervention in cases of conflicts of interest and corruption, and the necessary disciplinary powers. In addition to the established Inspectorates in the structure of two ministries, there are other departments, which are responsible for the disclosure of corruption practices. Ministry of Defence (MoD) has established a Military Police office, which functions are to prevent and reveal crimes of general nature, made by or in complicity with the military and civilian officials of the ministry structures and investigation of crimes and cases under the Criminal Code [12, Article 26], including the finding of corrupt practices in the MoD. In the Ministry of Interior such directorates are: "Combating Organized Crime", which works to prevent, intersection, investigate and detect criminal activity related to corruption within public authorities [11, Article 51a, paragraph 9] and the "Internal Security" Directorate, which is specialized structure for operative search, Information and organizational activities in prevention, interception, detection of crime and disciplinary violations committed by officers of the ministry [11, Article 137c].

Regional Public Councils for Counteracting Corruption have been functioning in all regional administrations. The greater part of the council chairmen are Regional Governors; the council members include representatives of the Prosecutor's Office of the Republic of Bulgaria, the Investigation Office, the Police, the courts, the Revenue Agency, Customs, the health and education sector, NGOs, media, etc. All regional public councils have adopted Programmes for Implementing the Strategy for Transparent Management and Counteracting Corruption.

3. Structures for Control and Combating Corruption within the Judicial System

The judiciary in Bulgaria is widely regarded as highly corrupt both by public opinion and foreign observers.

The Bulgarian judiciary encompasses the court system¹, prosecution offices and investigators. Judges, prosecutors and investigators are commonly referred to as the magistracy [7, Article 117].

¹ Under the Bulgarian Constitution, justice is to be administered by the following courts: Supreme Court of Cassation, Supreme Administrative Court; courts of appeals; district courts; military courts, regional courtsq district courts

3.1. Commission for Combating Corruption (CCC) - for overcoming and combating corrupt practices in the judicial system a CCC has been set up. It is a permanent auxiliary body to the Supreme Judicial Council (SJC) and holds regular weekly sessions. The CCC's work is related to implementation of the priorities and measures foreseen by the *Strategy for Combating Corruption in the Judicial System and the Programme for its implementation*. These measures are aimed at popularizing the efforts and actions of the judiciary in prevention of corrupt practices and increasing the transparency in the functioning of the judicial system. CCC decisions ascertaining corrupt behaviour of magistrates and administrative staff of the judiciary bodies must be reported in a timely manner to the Supreme Judicial Council so that it may undertake immediate disciplinary measures. In the discharge of its functions, the CCC works with the respective offices of the Ministry of Justice, the Ministry of Interior, the Ministry of Finance, the Audit Office, the Commissions for Combating Corruption of the CoM, the National Assembly and the NGOs.

An important mechanism for accountability and control of the judicial system is the *SJC Inspectorate* introduced by the Constitutional amendment [7, Article 132a]. The Inspectorate checks the activities of the judiciary bodies without infringing the independence of judges, jurors, prosecutors and investigators in the discharge of their functions. In practice it supports the SJC by being responsible for collecting significant information for the discharge of its disciplinary, organisational and staffing powers. The NA, which may elect inspectors, may remove them (upon a SJC proposal). The Inspectorate must provide public information concerning its activities and to submit an annual report to the Parliament.

3.2. The Prosecutor's Office², headed by the Chief Prosecutor, is charged with the responsibility that legality be observed. To that end, such Office is to [7, Article 127]: bring charges against criminal suspects and support such charges in criminal trials; oversee enforcement of penalties and other measures of compulsion; act for the rescission of all illegitimate acts; take part in civil and administrative suits when the law so requires.

In the early 1999 an Inspectorate to the Supreme Prosecutor's Office of Cassation was established. In this Inspectorate are received all kind reports containing allegations of violations or failure to perform duties of magistrates and corrupt activity, regardless of their source. The analysis of signal source reveals that most of them come from the Ministry of Interior. Signals are received by the Commission for Coordination of the Anti-Corruption Council of Ministers, the Commission on Combating Corruption in the National Assembly, the Commission on Combating Corruption in the Supreme Judicial Council, by citizens and NGO representatives. Signals are given also by all

² The Prosecutor's Office in the Republic of Bulgaria consists of the Prosecutor General, the Supreme Prosecutor's Office of Cassation, the Supreme Administrative Prosecutor's Office, Prosecutors' Offices of Appeals, Military Prosecutors' Offices of Appeals, District Prosecutors' Offices, Military District Prosecutors' Offices and Regional Prosecutors' Offices [16, Article 111, par. 1]. The structure of the Prosecutor's Office is in accordance with the courts (16, Article 3, par. 2)

prosecutors, which in the course of inspection or concrete investigation determine data, revealing corrupt activity of a magistrate [14, page 6].

3.3. Investigation

Investigative authorities are in the system of the judiciary. They carry out investigation of criminal cases. Investigative bodies in Bulgaria are the National Investigation Service and the district investigation departments in the District Prosecutors' Offices [16, Article 148, par. 1]. The National Investigation Service has specialized departments to investigate cases with particular factual and legal complexity in cases of crimes committed abroad, requests for legal assistance, and investigation of cases in other cases provided by law [16, Article 148, par. 2], including corruption. Units to combat corruption are also established in all district investigation departments.

Conclusion:

Since 2001 till now Bulgaria has made important progress in the establishment of national anti-corruption system and improvement of the legislative framework. There are specialized anti-corruption units in the structure of: the Parliament (*Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee*); Council of Ministers (*Commission on Prevention and Combating with Corruption and the Main Inspectorate*), in all ministries (*Inspectorates, Military Police office in the Ministry of Defence and two Directorates in the Ministry of Interior – “Combating Organized Crime and “Internal Security”*); there are *Regional Public Councils for Counteracting Corruption*. Moreover, there are specialized units for fighting corruption within Supreme Judicial Council (*Commission for Combating Corruption*), within the Prosecution (Inspectorate to the Supreme Prosecutor's Office of Cassation) and within the Investigation. In addition and in order to achieve operability and effectiveness of the joint activities with the specialised units for combating corruption in the system of the legislative, executive and judiciary, the Commissions for Combating Corruption at the National Assembly, Judicial Council and Bulgarian government work together in a Council for Coordination of the three Anti-Corruption Commissions has been set up.

Unfortunately although there are concrete steps in the anti-corruption policy (including the existence of the above mentioned administrative structures, but also the elaboration of two National Strategies for Prevention and Counteraction of Corruption and amendments of laws) the mechanisms and institutions for combating corruption do not ensure timely and effective detection and punishment of corruption practices in the Republic of Bulgaria. In this context, the idea for establishment of an independent specialized anti-corruption service became a topic in the anti-corruption agenda.

As part of the Strategy against Corruption in December 2010 Bulgaria started to implement a large scale anti-corruption project (*BORKOR*). With considerable investment in financial and human

resources³, a new central unit will be set-up by the end of 2011 with the task of increasing transparency and addressing corruption within the public administration at all levels. The new body will not replace existing structures set up to prevent and sanction corruption, but will assess the current legal and institutional environment for its effectiveness and will suggest improvements where necessary.

Bulgarian authorities and the Minister of Justice, which are criticized by the European Union for the delay of important trials and lack of severe penalties, consider creating a specialized court to deal with corruption practices.

The establishment of a specialized anticorruption unit and court raises some serious concerns as well. Apart from the fact that the initiative would be a rather expensive effort in terms of financial resources, there is a risk of allowing spread of corruption within the new institutions. From this point of view, building the capacity of the already existing institutions dealing with corruption (primarily the judiciary and the other law enforcement bodies) rather than creating a new service with similar functions seems justified as well.

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³ In 2011, Bulgaria has made available EUR 4 million for this project. The central unit in charge of the Borkor project will employ 40 permanent staff.