CORRUPTION ASSESSMENT REPORT 2002

COALITION 2000

Sofia, 2003

Coalition 2000 is an initiative of Bulgarian non-governmental organizations launched in the spring of 1997 with the aim to counter corruption in Bulgarian society through a partnership between state institutions, non-governmental organizations and individuals, who developed and have been implementing an Anti-Corruption Action Plan, a Corruption Monitoring System, and an anti-corruption public awareness campaign.

The Corruption Assessment Report - 2002 follows the structure and approach of the Action Plan adopted by the Policy Forum of *Coalition 2000* in November 1998. The Report contains a general evaluation of the state and dynamics of corruption in Bulgarian society and of anti-corruption efforts in the year 2002.

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INTRODUCTION

The corruption situation in Bulgaria moderately improved in 2002, as reflected in the *Coalition 2000* Corruption Indexes. Trust in the government's anti-corruption efforts rose. However, a large part of the public still believes the government has not yet achieved any tangible results in reducing corrupt practices. **Corruption is still perceived as one of the gravest problems of transition**. It ranks fourth by importance, after unemployment, low incomes, and poverty.

The international community has assessed favorably the country's capacity to deal with corruption. Bulgaria has continued to improve its ranking in the Transparency International Corruption Perception Index - in 2002 it was 45th out of 102 countries, up from 66th place in 1998. In this respect Bulgaria has outperformed such countries as the Czech Republic, Latvia, and Slovakia, and was the only EU applicant country to achieve significant improvement of its corruption rating.

However, the evaluation of the anti-corruption measures taken by the government is ambiguous. Inconsistent implementation of its anti-corruption policy has been the dominant characteristic of its actions, whether due to insufficient will to institute changes or the lack of administrative capacity to implement it.

At the same time, it has become obvious, especially toward the end of the year, that the **accumulation of unsolved problems in counteracting corruption has been due not only to the unconvincing performance of the executive, but also to intensified partisan bickering**. There was a conspicuous tendency to exploit the flaws of the Constitution and the conflicts arising between the three branches of power for partisan purposes. All of these factors have affected adversely the fight against corruption and its chances of success.

The politicization of the judiciary has not only intensified the conflict between the different branches of power, but has also provided a convenient cover for corrupt practices among magistrates. **The judiciary was used to exert influence over large-scale privatization and the redistribution of national wealth**. At the same time, the absence of internal and external means of control over the magistrates is conducive to impunity and **mounting corruption pressure within the judiciary**. Public trust in the third power has reached an all-time low.

Political tensions in turn have affected the capacity of **law-enforcement authorities** to mobilize their anti-corruption resources. It has become increasingly obvious that any major crackdown on corruption is impossible without more radical anti-corruption reforms in the security forces - the Ministry of Interior, the armed forces, etc.

In this context, the risk of corruption affecting government institutions and of consolidation of the positions of organized crime in the national

economy remains. Furthermore, corrupt practices on the lower levels of national and local government administration are still rampant.

* * *

The 2002 corruption situation could be summarized by the following, **often contrasting evaluations of government actions**:

- **The old clientelist matrix reproducing corruption schemes at the various levels of interaction between the political and economic spheres was dismantled.** At the same time, government activity was marked by a tendency towards revival of certain non-transparent methods and practices, which **cast doubts on its declared intentions**.
- With the adoption of more transparent procedures in the economy and the progress made in the regulation of party financing, **political corruption has been significantly restrained**. On the other hand, **the level of corruption among lower-ranking public officials has remained unchanged** due to corruption impunity and weak control over public administration work.
- Personal involvement in corrupt practices shows a steady marginal decline in the period 1998-2002 and relative stability in 2002. **On average about 130,000 actual acts of corruption have taken place monthly in 2002** (about 2% of the population have indicated that they have given money, a gift, or have done a favor in order to have a problem of theirs resolved). The declining personal corruption involvement since 1998 is definitely indicative of certain achievements in curbing corruption, but **the level of corruption in absolute terms** remains disturbingly high.
- While there has been considerable progress in 2002 in the development of anti-corruption **legislation**, the pace and quality of the changes still remain inadequate.
- **International and European legal instruments related to the criminal prosecution of corruption** were successfully adopted in 2002. This has made it all the more imperative to ensure the effective enforcement of the new legislation and the harmonization between the newly adopted legal instruments and existing laws.
- The implementation of the **Strategy for Reform of the Judiciary in Bulgaria** began in 2002. Notwithstanding the measures to change the legal framework of judicial governance, structure and professional qualification, there has been no tangible anti-corruption progress. Furthermore, the issue of the financing of the judicial reform still remains unsettled. The issues related to the judiciary occupy an important place in the debate on possible constitutional changes, and more specifically on those concerning the independence and structure of the judiciary, as well as the immunities and irremovability of magistrates. However, the politicization of the debate threatens to distort the very goal of the changes needed - namely, an independent, effective, free of - and successful against - corruption, judiciary. At the same time, there

was not sufficient political will to implement the reforms that were feasible under the existing constitutional model.

- In the course of the year **the prosecution has become more active** in investigating corruption-related offenses, including in the high ranks of power. On the other hand, there were allegations of non-transparency and prejudice in the prosecution, implicating mainly its top-ranking members, which makes it very difficult to evaluate its impact in counteracting corruption.
- The **lack of statistical records kept by the different units of the judiciary and law enforcement,** based on common criteria and integrated in a unified information system, makes it impossible to examine the actual role of these units in detecting, investigating, and punishing corruption. The role of the law-enforcement authorities for the operation of the judiciary remains unrecognized.
- The National Assembly is **still far from being a model institution in terms of anti-corruption impact**. Under public pressure, Parliament has established a standing **Anti-Corruption Committee**, which is yet to become a working instrument. However, MPs have failed to institute a **mechanism for resolving conflicts of interest within the legislature**. The adoption and implementation of codes of conduct, whether by law or by internal regulations, would help enhance the authority of the National Assembly and public trust in the work of the MPs.
- **No sustainable results in limiting corruption in the public administration, and particularly in the provision of administrative services, have been achieved**. Measures to develop and reinforce specialized control mechanisms over the public administration are yet to unfold their full anti-corruption potential. There have been unwarranted delays in the introduction of additional mechanisms for monitoring the work of public administration and for countering corruption. **Bulgaria continues to be among the few European countries without an ombudsman institution**.
- A host of anti-corruption initiatives have been announced in the **economy** but few have actually been implemented and have produced any results. Despite declared intentions, the government did not reduce **the tax and social security burden in 2002, and the regulatory intervention of the administration in the economy remained controversial and non-transparent**. As a result, **the share of the gray sector in the economy and related corruption remains high**. Efforts in this area need to shift from improvement of the regulatory framework towards ensuring transparent and prompt implementation of existing rules.
- **The level of direct government intervention in the economy through subsidies has remained unchanged in 2002**. The adopted *Law on State Subsidies* is conducive to transparency but does not create conditions for limiting state subsidies. Aid for agricultural producers is becoming a major risk area for corruption and abuse.
- **Transparent management of budget expenditures** is an important element of the fight against corruption. The problems in this area remain although the 2003 budget approval procedure has been

somewhat improved. Delaying financial decentralization and preserving matching subsidies for the municipalities create **preconditions for the use of public resources to exercise political control over local governments**. The **lack of progress in the implementation of healthcare reforms has led to an increase in „unregulated" payments** within the system and to rising public discontent with the quality of healthcare services.

- Despite the 2002 amendments to the *Law on Public Procurement*, which aim at improving transparency, optimizing and shortening delays, and ensuring greater competition, **public procurement procedures are still among the main sources of corruption** and generate considerable "rent" for the public administration (by conservative estimates, approximately BGN 15 million [appr. USD 7.5 mln.] in 2002). **More than half of the companies that have participated in tenders resort to bribes when obtaining every other procurement contract**. **Irregularities in the public procurement practices in Bulgarian municipalities are a particularly serious problem.**
- In the divestiture of state owned assets, the **abolition of non-transparent privatization procedures** such as negotiations with potential buyers and management-employee-buy-outs has had a positive effect. **Privatization through tenders and auctions has demonstrated strong fiscal efficiency and transparency**. The anti-corruption measures laid down in the *Law on Privatization and Post-Privatization Control* have not been fully implemented due to **delays in the adoption of by-laws and regulations**.
- The focusing of **Privatization Agency's efforts** on the two large-scale and politically encumbered deals for the sale of Bulgartabak and the national telecom BTC has led to a **slowdown of the privatization process** and has reinforced negative public opinion about rampant corruption in this area. The work of the **Post-Privatization Control Agency has been greatly impeded by the lack of adequate financing and by the delayed adoption of its statutes**.
- Efforts to counteract corruption in the public sector have been adversely affected by the **absence of proper coordination in the actions of the executive**. This could **adversely affect the effective implementation of the National Anti-Corruption Strategy**.
- **Public-private partnership in counteracting corruption** has been particularly effective when implemented with the support of international governmental or private organizations. **An example of best practice in anti-corruption partnerships is the USAID supported Open Government Initiative** project**.** A number of government ministries, and most notably the Ministry of Justice, the Ministry of Interior, and the Ministry of Foreign Affairs, demonstrated **readiness to work with non-governmental organizations**, including on counteracting corruption. Nevertheless, the potential of public-private partnerships is still not fully utilized owing to the reluctance or inability of state institutions to engage civil society and to seek broader public support for their policy.

- In the course of 2002 a **large number of corruption-related investigations have been initiated as a result of publications and reports in the media**. Nonetheless, **obscure regulations diminish the impact the media could make in this area.** The problems related to the professional skills and inadequate legal awareness of journalists also have a negative impact.
- Most international institutions and donor agencies provide significant technical and financial assistance to anti-corruption efforts in Bulgaria. There was, however, **insufficient coordination among internationally supported government projects and inadequate public accountability about their results.**
- Regional aspects of the spread of corruption were still relevant in 2002. The reports of the Southeast European Legal Development Initiative (SELDI) indicate a strong impact of trafficking on corruption in Southeast Europe. This warrants a **stronger focus by law enforcement agencies on the cross-border sources of corruption.**

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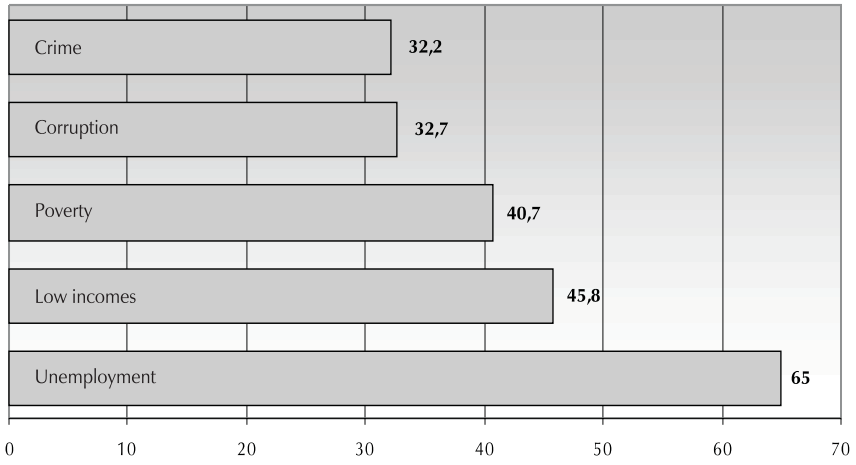
Judging by the successes and setbacks of anti-corruption efforts no breakthrough was achieved in 2002. Intended **reforms in the judiciary and the security forces,** also needed in the context of EU and NATO accession, could be a **turning point in curbing corruption in Bulgaria.** This needs to be a priority task for both the government and society as a whole. Proceeding with reforms in these areas would further ensure anti-corruption progress.

A. CORRUPTION LEVEL AND DYNAMICS OF PUBLIC ATTITUDES TO CORRUPTION

Coalition 2000 Corruption Monitoring System (CMS) results show that in 2002 **corruption did not increase but it did not decline either; corruption continued to rank among the top four critical problems faced by Bulgarian society** along with unemployment, poverty, and low incomes.

FIGURE 1. IMPORTANCE OF CORRUPTION IN THE CONTEXT OF THE PROBLEMS BULGARIANS FACE TODAY* (GENERAL PUBLIC) (%) - OCTOBER 2002



Source: Corruption Monitoring System (CMS) of *Coalition 2000*.
(*) Note: 1) % of those citing each factor 2) The respondents cited up to three answers and the percentage therefore exceeds 100.

Coalition 2000 Corruption Indexes

The corruption indexes are the main output of the Corruption Monitoring System (CMS) of *Coalition 2000*. Their values are updated quarterly based on empirical survey data. The corruption indexes assume values from 0-10. The closer the value of the indexes is to 10, the more negative are the assessments of the respective aspect of corruption.

Index numbers closer to 0 indicate approximation to the ideal of a „corruption-free" society. Corruption indexes are computed for the general public and for the business sector and include:

Attitudes to Corruption

- **Acceptability in principle** - this index reflects the extent to which various corrupt practices are tolerated within the value system.
- **Susceptibility to corruption** - measures citizens' inclination to compromise on their values and principles under the pressure of circumstances.

Corrupt practices

- **Corruption pressure -** measures the frequency of attempts by public sector employees to exert direct or indirect pressure on

citizens in order to obtain money, gifts, or favors.

- **Acts of corruption -** reflects the involvement of citizens in various forms of corrupt behavior, i.e. accounts for the *actual number corruption cases*.

Assessments of the spread of corruption

- **Spread of corruption -** registers citizens' assessments of the spread of corrupt practices among public sector employees.
- **Institutional spread of corruption** - reflects public perceptions of the spread of corruption by professional groups.
- **Practical efficiency of corruption -** shows citizens' assessments of the extent to which corruption is becoming an effective means of resolving personal problems.

Corruption-related expectations

- **Expectations regarding the development of corruption** - reflects assessments of the potential of Bulgarian society to cope with corruption.

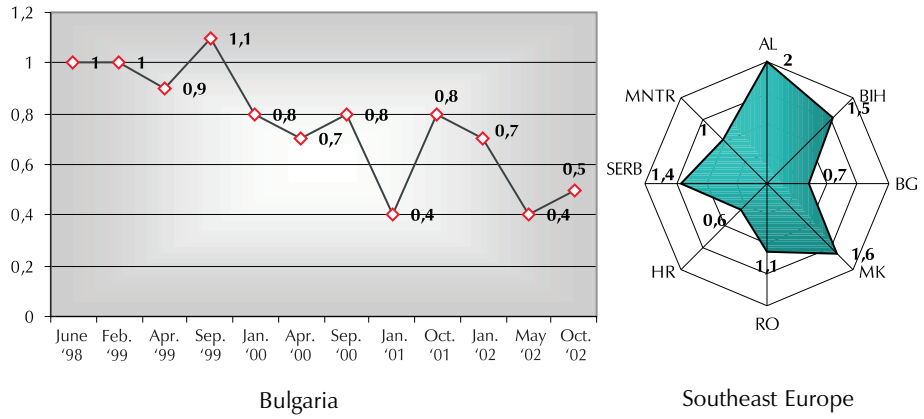
A.1. Level of Corruption

The *Coalition 2000* CMS measures two types of corruption-related phenomena: 1) corrupt behavior, and 2) attitudes and perceptions related to corruption. The assessment of corrupt behavior is the most important indicator measuring the **actual level of corruption** in the country (the average monthly incidence of cases of corruption). Corrupt behavior takes two basic forms: **bribes demanded** by public sector employees (Corruption Pressure Index) and **bribes offered** to public sector employees by the citizens (Personal Involvement in Corruption Index). The indexes reflect actual cases of involvement in various corrupt practices acknowledged by the citizens. They register the **actual frequency of involvement in corrupt practices** (i.e., the level of corruption-related victimization), **and not attitudes or opinions about corruption**.

The Personal Involvement Index **showed a marginal but steady decline in the period 1998-2002, and relative stability in 2002**. The index value for October 2002 was 0.5, representing a monthly average of about 130,000 actual acts of corruption (about 2% of the population indicated that they had given money, a gift, or had done a favor in order to have a problem of theirs resolved). The declining index values since 1998 are indicative of certain achievements in curbing corruption. The comparison between Bulgaria and the remaining countries of Southeast Europe under this indicator also provides some grounds for optimism. However, although **the level of corruption in the country did not increase in 2002**, in absolute terms the number of instances of corruption was alarmingly large. The overall effect of the efforts made could be considered to be deterring: corruption neither grows nor decreases.

The Corruption Pressure Index values in the period 1998-2002 showed an **unstable decline (improvement) tendency.** This index reflects the extent to which public officials interpret objective realities as an „atmosphere of impunity and freedom". As a rule, its values are lower than that of the Personal Involvement Index since not all demands „to get something" lead to actual corruption transactions. The index values suggest

FIGURE 2. INVOLVEMENT IN CORRUPT PRACTICES* (BULGARIA 1998-2002; SOUTHEAST EUROPE, JANUARY 2002)



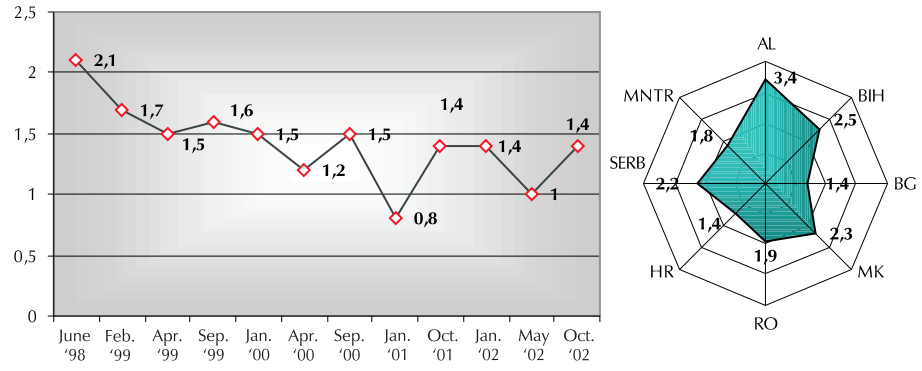
Bulgaria Southeast Europe

Source: CMS of *Coalition 2000*; SELDI
(*) Note: The maximum value of the index is 10.0 indicating the highest possible level of corruption. The minimum value is 0.0 indicating total absence of corruption.
Legend: AL - Albania; BIH - Bosnia and Herzegovina; BG - Bulgaria; MK - Macedonia; RO - Romania; HR - Croatia; SERB - Serbia; MNTR - Montenegro.

that the administrative environment created by the present government did not deteriorate in the course of the year, but then neither were there any more tangible improvements.

Both indexes reflect the level of corruption and are primarily related to low-level everyday corruption. Of the 130 thousand acknowledged cases of involvement in corruption, the most frequent bribe-takers were traffic police officers, low-rank administrative officials, and those working in healthcare. As evident from the data (see Figures 1 and 2), after the steady decline since 2000, both indicators registering personal corruption-related experience in terms of personal involvement and corruption pressure remained at the same levels. In this respect everyday life of ordinary Bulgarians still has not changed. According to expert estimates, **with 5-6 thousand requested bribes or cases of abuse of public office per day, the institutions concerned should investigate several hundred perpetrators a month**. This necessitates fundamentally different mechanisms for control, investigation, and punishment, which should initially have the capacity to handle 3-4 thousand cases a year.

FIGURE 3. CORRUPTION PRESSURE (BULGARIA 1998-2002; SOUTHEAST EUROPE, JANUARY 2002)



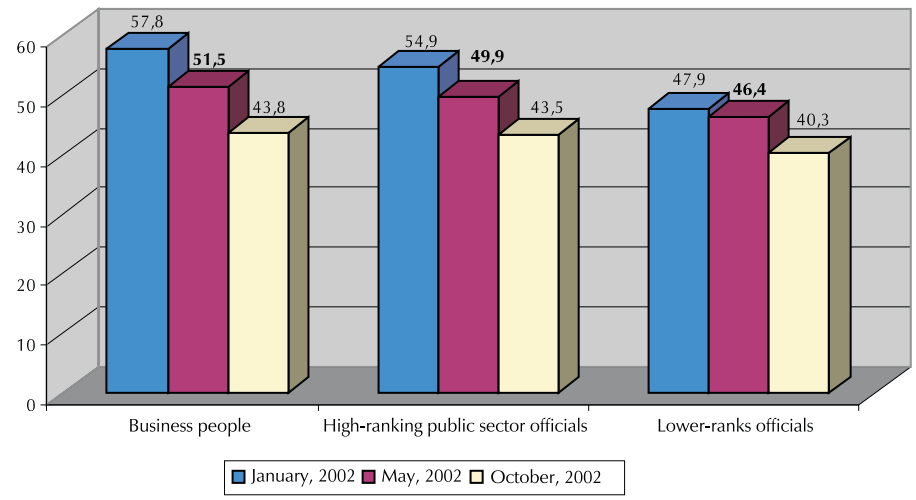
Bulgaria Southeast Europe

Source: CMS of *Coalition 2000*; SELDI

A.2. Effectiveness of Government Action

Public expectations regarding the radical reduction of corruption are fairly high. The evolution of public assessments of the activities of the government in this respect was contradictory. On the one hand, there was a significant **decrease** of the share of those who think that the Government was not making any particular efforts to find effective solutions to the problem. The decline in negative evaluations is indicative of **public trust in the declared readiness to fight corruption and in the activity of the**

FIGURE 4 **ASSESSMENT OF THE EFFECTIVENESS OF GOVERNMENT ANTI-CORRUPTION EFFORTS ***

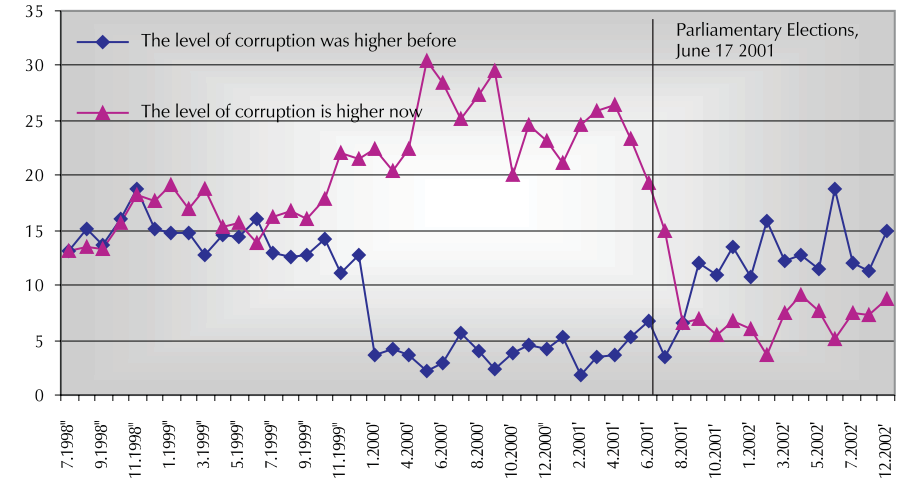


Source: CMS of *Coalition 2000*
(*) Note: Relative share of the answers „The Government is not doing anything"

government to date (Figure 4). On the other hand, a considerable part of the public (41-44%) still thinks the government is not doing anything to counteract corruption.

The comparison between the corruption situation „under the present government" with that „under the previous government" reveals the way in which the public reacts to the process of accumulation of corruption allegations against the government. In this respect the data suggest that despite the buildup of **intense critical attitudes to the present government, this has not led to its evaluation by public opinion as more corrupt than the preceding government** (Figure 5). By contrast, evaluations of Ivan Kostov's cabinet (1997-2001) grew more unfavorable than those of the previous government already in early 1999, with the difference increasing considerably to the last parliamentary elections (July 2001).

FIGURE 5 **SPREAD OF CORRUPTION: COMPARATIVE ASSESSMENT OF THE PRESENT SITUATION AND THE SITUATION UNDER THE PREVIOUS GOVERNMENT (JULY 1998 - DECEMBER 2002)**

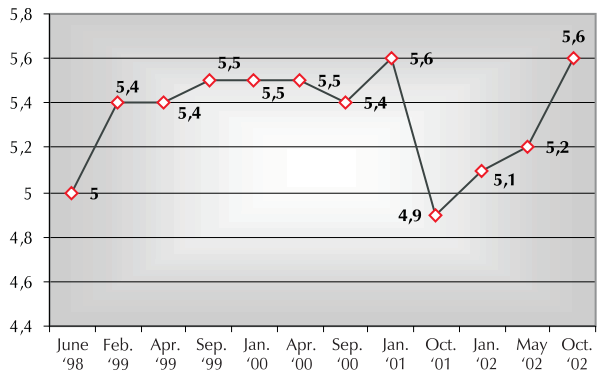


Source: Early Warning Report, UNDP

It should be noted that such attitudes were registered despite the drastic fall in trust in Simeon Saxe-Coburg Gotha's cabinet (down from 50% in August 2001 to 28% in December 2002) and despite the increase of pessimistic evaluations of the country's economic prospects.

The higher public expectations from the government when it first came to power were mirrored in the hopes that the corruption problem would be resolved (October 2001). A year later **trust in those in power and optimism as to the capability of Bulgarian society to deal with the problem of corruption have shrunk considerably** (Figure 6). Such an outlook on the situation

FIGURE 6 **CORRUPTION EXPECTATIONS (BULGARIA 1998-2002; SOUTHEAST EUROPE, JANUARY 2002)**



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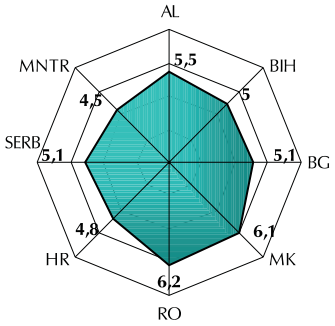


Southeast Europe

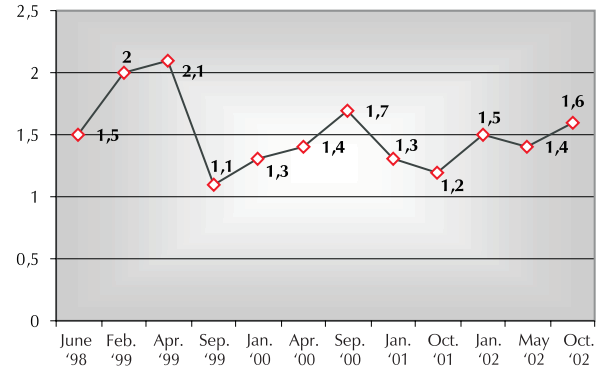
Source: CMS of *Coalition 2000*; SELDI

inevitably affects the assessments (attitudes and perceptions) of corruption dynamics and manifestations.

A.3. Value System and Ethical Preconditions

Notwithstanding that corruption is a problem primarily of the social system, rather than a matter of personal choice and values, the moral rejection of corruption is a prerequisite for its reduction. Of the multitude of corruption-related public attitudes, the *Coalition 2000* CMS monitors two main groups of indicators. First, indicators reflecting the extent to which various practices are identified as corrupt behavior and are considered unacceptable (Acceptability in Principle Index). Secondly, indicators reflecting people's subjective inclination to use corruption as a problem solving tool (Susceptibility to Corruption Index). The values of these two indexes appear to have settled permanently at relatively low levels. The Corruption Acceptability in Principle Index assumed its lowest values in February 1999, which is indicative of a **firmly established moral rejection of corrupt practices and their perception as socially unacceptable**.

FIGURE 7.A **ACCEPTABILITY IN PRINCIPLE (BULGARIA 1998-2002; SOUTHEAST EUROPE, JANUARY 2002)**



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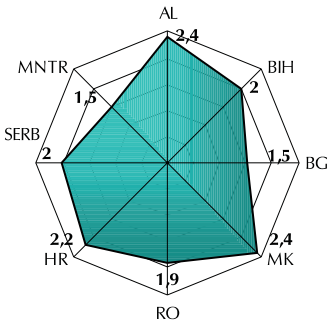


Southeast Europe

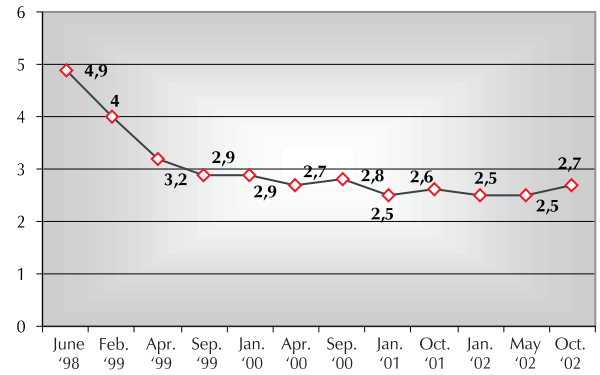
Source: CMS of *Coalition 2000*; SELDI

Yet the Susceptibility to Corruption Index continued to be nearly twice as high as the Acceptability in Principle Index. This shows that corrupt behavior largely occurs under the pressure of everyday circumstances and the pragmatic interests of those involved in corrupt dealings. In this sense, **a considerable part of the general public still tends to consider corrupt practices an effective, even if morally unacceptable, means of resolving private problems**.

A.4. Assessment of the Spread of Corruption

The indexes reflecting the **spread of corruption** (*Spread of Corruption* and *Practical Efficiency of Corruption*) summarize public assessments of the **corruption image** of institutions and/or people in power. Their values are in general considerably higher than those reflecting the actual level of corruption (*Corruption Pressure* and *Personal Involvement*). The dynamics of these evaluations are affected by personal experience and impressions as well as the public debate on corruption in all its dimensions (media coverage, statements by various actors, shared experience and opinions of friends and acquaintances, etc.). In the context of a more intense public debate, assessments of the spread of corruption often tend to go up, which does not necessarily mirror the actual level of corruption.

FIGURE 7.B **SUSCEPTIBILITY TO CORRUPTION (BULGARIA 1998-2002; SOUTHEAST EUROPE, JANUARY 2002)**



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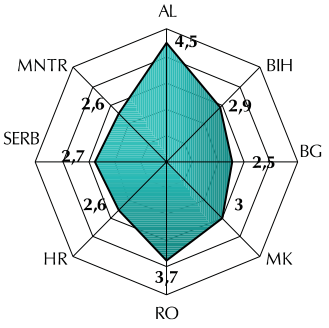
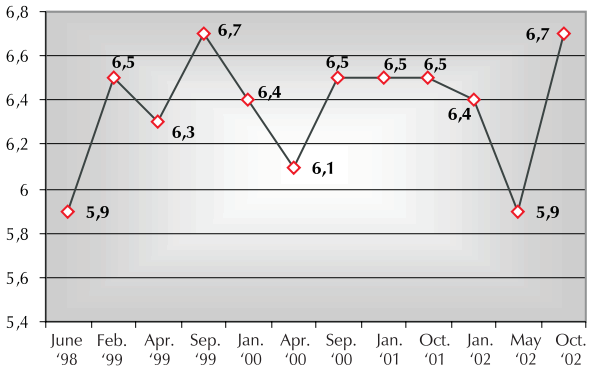


Southeast Europe

Source: CMS of *Coalition 2000*; SELDI

Bulgarians' general estimation that **they live in a society in which corruption constitutes a serious problem** (see Figures 8 and 9) did not change substantially in the period February 1999 - October 2002. The negative changes observed in the period May 2002 - October 2002 were conditioned by several problem situations with a direct or indirect impact on corruption: the judiciary reform debates, the Bulgartabak privatization, the disclosures related to corruption in law enforcement, and others. The assessments of the spread of corruption among public sector employees in 2002 were affected not only by the exercise of power in political terms, but also by the efficiency of the institutions ensuring court and administrative control.

FIGURE 8 **SPREAD OF CORRUPTION (BULGARIA 1998-2002; SOUTHEAST EUROPE, JANUARY 2002)**



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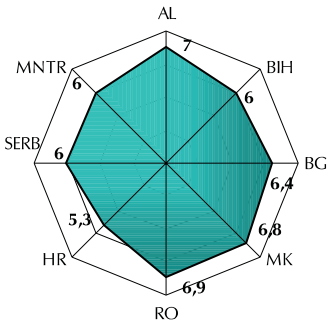


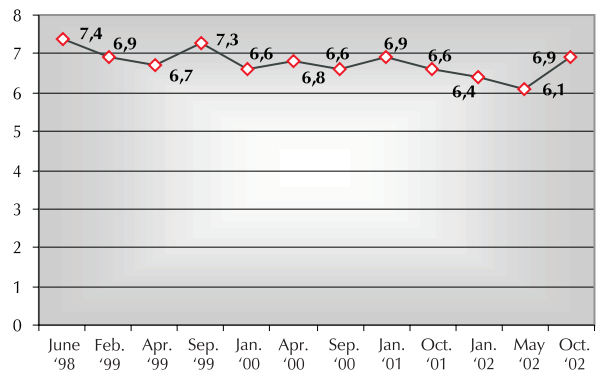
Southeast Europe

Source: CMS of *Coalition 2000*; SELDI

Assessments of the spread of corruption in the judiciary deteriorated. Corruption pressure exerted by all of the professional categories related to the judiciary (lawyers, prosecutors, judges) appeared to be on the rise. In the course of the year, **the focus of public interest shifted from the legislative and the executive to the cases of corruption in the judiciary**.

The shift in public attention also affected public

FIGURE 9. PRACTICAL EFFICIENCY OF CORRUPT PRACTICES (BULGARIA 1998-2002; SOUTHEAST EUROPE, JANUARY 2002)



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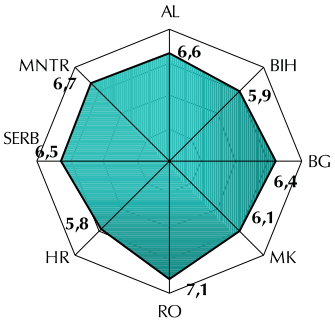


Southeast Europe

Source: CMS of *Coalition 2000*; SELDI

perceptions of the factors of corruption. Increasing importance came to be ascribed to those depending directly on the state of the **legal framework and the operation of the judiciary**. As a result, there emerged a high level of distrust in the capacity of the governing elite and the political class as a whole to tangibly reduce corruption in the country.

The year 2002 was marked by gradual redefinition and transformation of the notion of corruption as a problem of essentially ethical nature to its perception as a **problem of the practical aspects of the technology of political power and governance**. Corruption gradually came to be considered and dealt with in terms of mechanisms, people, and institutions, rather than in the context of political and ideological disputes on whether or not corruption actually exists. The government is now expected to ensure a clear-cut political strategy to curb corruption and to implement it effectively.

In terms of popular assessments, however, **curbing corruption involves considerable risks** - real measures lead to public exposure of corrupt officials and corruption schemes and in this sense reinforce the perception of Bulgarian society as severely affected by corruption. Yet, this risk is likewise associated with **increased opportunities**. The broader coverage of anti-corruption measures within the system of the Ministry of Interior exposed the scope of the corruption problem, but likewise boosted public trust in this ministry and support for its efforts.

TABLE 1. ASSESSMENTS OF THE SPHERES WITH THE HIGHEST SPREAD OF CORRUPTION (% OF THOSE CITING EACH SPHERE)*

General Spread	May 2002	October 2002
Customs. Custom officials.	33.2	30.4
Parliament, Presidency, Government, political elite	24.1	30.3
Court, Judiciary, Justice, Lawyers	23.5	28.5
Healthcare system (incl. National Health Insurance Fund)	25.6	20.6
In the system of the Ministry of Interior (incl. Traffic police)	20.6	19.9
Public Institutions	**May 2002**	**October 2002**
Privatization Agency	22.0	22.5
Customs	12.6	10.9
National Health Insurance Fund	2.5	2.6

Source: CMS of *Coalition 2000*;
(*) Note: The questions were open-ended and the above categories summarize the institutions cited by the respondents.

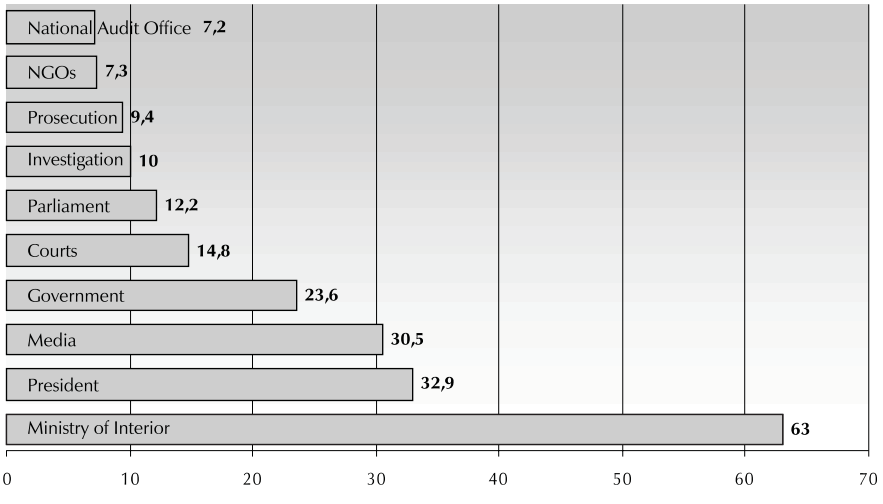
B. PUTTING IN PLACE AN OVERALL INSTITUTIONAL AND LEGAL ANTI-CORRUPTION FRAMEWORK

The development and making operational of efficient legal and institutional mechanisms limiting corruption have been seriously addressed since 1997-98 in a number of anti-corruption initiatives. Initially, these were mainly non-governmental or public-private initiatives, including those of the *Coalition 2000*, which were later integrated into various government programs and strategies.

A number of political decisions and legal instruments adopted at the end of 2001 and in the course of 2002 resulted from the commitment to put in place a legal and institutional framework hostile to corruption. On October 1, 2001, the *National Anti-Corruption Strategy* was adopted and complemented by the *Program for the Implementation of the National Anti-Corruption Strategy* adopted by a Decision of the Council of Ministers on February 13, 2002.

The program provides for the creation of legislative, organizational and social prerequisites facilitating the implementation of the European and international anti-corruption principles and standards in nine major areas. An *Anti-Corruption Coordination Commission,* chaired by the Minister of Justice was set up (Decision No. 77 of the Council of Ministers of February 11, 2002).

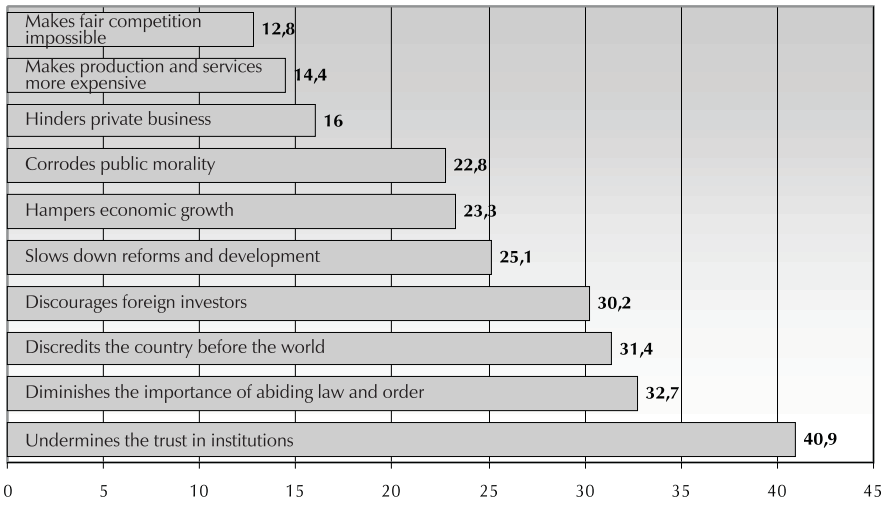
FIGURE 10. ASSESSMENT OF THE ANTI-CORRUPTION EFFECTIVENESS OF INSTITUTIONS IN BULGARIA* (%)



Source: CMS of *Coalition 2000*, October 2002
(*) Note: Respondents marked up the three most effective institutions in curbing corruption, therefore the sum total of percentages exceeds 100.

The results of the *Program for the Implementation of the National Anti-Corruption Strategy* in the first half of 2002 were described in a six-month report. In addition, an annual report was released on the implementation of the Strategy and the Program. Nonetheless, **the results of the anti-corruption measures undertaken were not sufficiently publicized neither were the problems encountered during the implementation of those measures**. The reports contained primarily findings, rather than an analytical overview of existing problems

FIGURE 11. ASSESSMENT OF CORRUPTION EFFECTS* (%)



Source: CMS of *Coalition 2000*, October 2002
(*) Note: Respondents marked up the three most harmful consequences of corruption, therefore the sum total of percentages exceeds 100.

that might help formulate future tasks. Greater transparency is necessary, as well as regular reporting on the activities of the governmental Commission, in view of its fundamental tasks to analyze and summarize the information about any existing anti-corruption measures, coordinate and monitor the implementation of the National Strategy, and propose further measures to enhance the fight against corruption. The Commission also needs considerable institution-building and institutionalized democratic civil involvement in its work.

In 2002, the high level of corruption persisted and was perceived as a viable pattern of behavior. This was largely due to the unresolved problems of the nation-wide administrative reform and the means of control over the administration. The lack of efficient anti-corruption measures undertaken by state institutions and of meaningful interaction between them, on the one hand, and between the state and the society, on the other, and the insufficient level of civil anti-corruption control have also contributed to the persistently high levels of corruption.

B.1. Public Administration Reform: from Legislation to Practice

Administrative reform in Bulgaria has been under way since 1998. It started by adopting new laws in that area, its philosophy was refined in the *National Anti-Corruption Strategy* and in the *Strategy for Modernizing Public Administration* approved by Government Decision No. 645 of July 9, 2002.

The Strategy for Modernizing Public Administration is based on the following key points: bringing the administration into line with the principles of the rule of law, market economy and respect for human rights; strengthening the capacity of the administration to plan, coordinate and implement the pre-accession processes, and preparing the public administration for a fully-fledged operation within the EU. The Strategy also lists measures that would help build an adequate administrative environment to prevent and curb corruption. These measures are to be implemented in the framework of the *National Anti-Corruption Strategy*. This approach reiterates **the significance of the modernization of the administration for successful anti-corruption efforts and actions.**

In 2002, the process of formulating the strategic basis of the administrative reform was finalized. Almost all intended legislative instruments and measures for the day-to-day implementation of the reform were approved, the implementation of the reform being the most serious challenge of all

changes so far. While a lot has been achieved in the context of administrative reform, **the objective results still fail to match the public expectations** of better administrative work, especially given that the administrative sphere is prone to corruption. The problem is important as corruption affects, to a larger or lesser degree, the administration of all bodies of the executive. Failure to solve that problem and the persisting limited administrative capacity will hinder compliance with the stringent requirements to the administration in the context of Bulgaria's future membership of NATO and the European Union.

B.1.1. The Common Organizational Model of the Administration: Its Anti-Corruption Potential and Results

The implementation of uniform standards for institution-building and internal organization of the administration is a serious guarantee that corruption would be confined by way of clearly defining the powers and responsibilities of the variety of administrative structures. The *Law on the Administration* (in force as of December 1998, amended in 1999, 2000 and 2001) became the basis for the introduction of a common organizational model, and common rules on the internal structure of various executive bodies (central, regional and municipal). Similarly, an electronic register of the administrative structures and the acts of the administrative bodies has already been functioning.

The administrative structures were completely restructured in 2001 but, since then, numerous deviations from the common organizational model of the administration and from its anti-corruption potential came into being:

- The administrative structures proliferate in a way that is not strictly necessary in view of their specific activities (*e.g.* Nuclear Regulation Agency, Bulgarian Standardization Institute). Some structures were created but still have a rather obscure place and role in the system of government agencies. This entails ambiguous powers and responsibilities and makes it even more difficult to consolidate the institutional environment that should act as a barrier to corruption.
- The rank of some administrative structures does not correspond to the hierarchical place of the respective authorities they should assist, as required by art. 67(3) of the *Law on Civil Servants*. Almost all sets of internal organic rules deviate from the legislative requirements about general administration directorates. Legal and information services are often provided by the specialized administration, in violation of art. 7 of the *Law on the Administration*.
- Executive agencies are set up with the special purpose to provide administrative services but they do not carry out such activities in reality (*e.g.* Military Residential Estates and Disposal of Property, National Communications System). The process of freeing the administration from extraneous functions thus slows down and becomes cumbersome.

Relieving the administration of the burden of extraneous functions and the privatization of administrative services still tend to be **isolated examples, rather than a consistent policy** aimed at curbing corrupt practices based on a clear distinction between public and private and on

the active involvement of NGOs in various regulatory functions. Serious efforts should be made in that respect, as **the withdrawal of the administration from such spheres of action would naturally mitigate the administrative environment beneficial to corruption**.

- *Openness, transparency, access to information*

A prevailing number of central administrative bodies, as well as some regional and municipal ones have already set up their web-sites that provide information on their structure, functions, procedures, and sometimes even the forms to be filled out for the services sought. A number of administrations have also established an interactive dialogue and solicited feedback from citizens.

The measures ensuring the openness in the work of the administration still fall short of what is needed, despite the annual reports describing the performance of the administration and the reports of separate administrative structures presented at their web-sites. While almost all administrations have special reception rooms for citizens having petitions or complaints, there are no efficient mechanisms ensuring feedback and the drafting of adequate legal norms. The constitutional right of citizens to file petitions and complaints should be governed by a new piece of legislation, as the existing *Law on Proposals, Warnings, Complaints and Petitions* of 1980 is deplorably obsolete.

In August 2002, the *Ordinance on the Conditions and Procedure for Keeping the Register of Administrative Structures and the Acts of the Administrative Bodies* was supplemented with additional regulations. Under the new rules, the main parameters (including sample documentation) of all licensing, authorization, registration and coordination procedures within the respective administration should also be entered into the register. This will certainly facilitate the individuals and the legal entities, and would also provide ample data for an in-depth analysis of the existing regimes.

The procedures to exercise the right of access to public information, the grounds for refusal of access and the appeal procedures are covered by the *Law on Access to Public Information* passed in 2000. This instrument put in place the minimum required legal framework to gradually overcome the traditional aspiration of any administration to keep most of the information related to its operations for official use only. **Although a number of provisions in the *Law on Access to Public Information* have a rich anti-corruption potential, the practice of its implementation has brought to light the lack of sufficient guarantees for transparency and public accountability**. In April 2002, the law was amended and supplemented with the intention to remove some of the existing regulatory drawbacks: the restrictions on the access to public information were only confined to **classified information**; the period during which access to some categories of public information for official use could be refused was shortened from 20 to 2 years; the courts were given the power to also control the legality of the affixing of security marks if access to information was denied on account of classification.

In April 2002, a *Law on the Protection of Classified Information* was passed. It covers the creation, processing and storage of information constituting a **state or official secret** and the conditions and the procedure for providing access to such information. The **principle of legality** has been introduced with respect to state and official secrets alike. However, the

information that is subject to classification as a state secret is included in a list annexed to the law, whereas the official information is to be announced by the head of each administration in a separate list. The procedure and the way for announcing the lists of official secrets will be part of the rules implementing the law. No such rules have been set up yet. The lack of those lists, therefore, has blocked the application of the *Law on the Protection of Classified Information* as far as official secrets are concerned. Hence, it is **possible to refuse access to information on grounds of unclear criteria, and these circumstances lead to corruption**.

Greater accountability is needed, as well as better access to information within the possession of public authorities, as that would limit the possibilities for corruption-driven action or inaction.

- *Accountability in the administration*

In implementation of art. 61(3) of the *Law on the Administration*, in 2002 the government drafted and discussed a *Report on the Situation with the Administration in 2001*. Based on the analysis in that report, proposals have been made to restructure and streamline the administrative units in the central administration and to make some urgent changes in the statutory framework. The report, however, does not contain any **findings of corrupt practices, nor does it refer to specific anti-corruption measures.** It is still difficult to identify benchmarks for the efficiency of administrative work and for a target-oriented performance management. The same holds true of the annual reports of the variety of administrations most of which are available on their web-sites. To prevent those reports from becoming a pointless formality, however, **clear emphasis should be laid on the degree to which the objectives set have been met** and on how the problems within the competence of a given administrative structure are solved.

B.1.2. Introducing a System of Professional Civil Service

The public perception of a high level of corruption among officials in the administration makes it necessary to examine with utmost care the implementation of the *Law on Civil Servants* and of the anti-corruption measures envisioned in the Law.

In line with the *Law on Civil Servants* (in effect as of August 1999), a **system of professional civil service** is currently being introduced to comply with the principles of lawfulness, political neutrality, loyalty and accountability. On that basis, civil servants' status has been gradually introduced in the administration of the Council of Ministers, the ministries, and some other administrative structures, the regional and municipal administrations.

The civil servant status has been introduced in all structures of the central administration and in 95 per cent of the municipal administrations. It is unusual, though, that **the status is inapplicable to the National Audit Office and the tax administration**, especially given the important supervisory functions of those bodies. Similarly, the *Law on Civil Servants* is not yet applicable to the expert positions within the general administration which remain covered by the *Labor Code*. There is a trend for some special laws (*e.g.* the *Law on the Judiciary* providing that the officials within the administration shall avail of that status, the *Law on the*

Ministry of Interior, the *Law on Defense and on the Armed Forces,* the *Law on the Constitutional Court*) to include only a few „beneficial" elements of the civil servant status, without taking on board the status as a whole. The derogations from and exceptions to the status of civil servant impede the introduction of a system of professional civil service based on a steady anti-corruption behavior and culture.

- *Recruitment and professional qualification*

As the competition procedure is not compulsory for taking a position in the civil service, most administrations simply do not apply it. This gives rise to well-founded doubts that inadmissible influence is exerted for the appointment of civil servants. The lack of clear criteria for the evaluation of the professional knowledge and skills of applicants nurtures corruption and fails to guarantee objective recruitment based solely on professional merit. The existing possibility for the head of an administration to appoint any of the first three applicants ranked by the recruitment committee, instead of the winner, is also conducive to corruption.

The professional qualification of civil servants, as a means to enhance the efficiency of the administration, is a major factor that contributes to limiting corruption. In that respect, in February 2002, the government approved *a Strategy for Training the Officials in the Administration*. It provides for the introduction of a modern system to evaluate the needs for training and of rules that would ensure the required financial resources for such training. It is necessary, though, to put in place **a general system for the development of professional skills and qualifications of those working in the administration**. The introduction of a **systematic training of public officials on corruption-related issues** could also be quite important. The latter is offered by the Institute of Public Administration and European Integration, an institution that has been mainly involved in offering compulsory and specialized training courses to improve the qualification of civil servants over the past two years.

- *Stability and career development*

Servants who are aware of their uncertain status are much more inclined to misuse their official position. Stability is, therefore, a key anti-corruption factor within the administration. Unfortunately, the guarantees provided for in the *Law on Civil Servants* have proved to be insufficient. Civil servants are often times laid off on account of formal internal restructuring and reshuffling of various units within the administrations. The highest structural levels strive **to blur the divide between political and career-based appointments**. This is a serious challenge to the comprehensive implementation of the status of civil servants, of which **stability** is a core element.

The performance-based career development of any civil servant is a decisive precondition to improve the work of the administration as a whole. The implementation of **fair and transparent career development procedures** contributes to uprooting the existing conditions for in-house corruption. In May 2002, the Council of Ministers issued an *Ordinance on the Evaluation of Officials in the Public Administration* that introduced a performance-based evaluation system. The latter has been applied on a pilot basis since June 1, 2002, in the administration of the Council of Ministers, the Ministry of Finance and the Ministry of Regional Development and Public Works. It is still early to see if that would yield the required prerequisites for a systematic, well-founded and documented

evaluation of the performance of any official in the administration and to what extent such a system would be beneficial to their professional development and career promotion. This, however, should be a major task for the administration as it creates a genuine incentive for civil servants to perform better and rectifies the imbalance between the capacity of the administration and the needs of society, whereas that imbalance being a serious corruption-generating factor.

The implementation of the „merit" principle to career development must also be reflected in the remuneration which currently depends exclusively on the position held, the category of the respective administration and the length of service of the official in question. The lack of material incentives for better performance is a serious reason for corruption; moreover the salaries in public administration are far from being comparable with those in the private sector.

- *Ethical norms of conduct*

Already at the end of 2000, the Minister for Public Administration approved a *Code of Conduct for the Civil Servant* which is not yet published in the State Gazette. Therefore, it is not really sure if all civil servants are aware of it but, at the end of the day, they are expected to model their conduct after the Code. In addition, the administration is composed of civil servants and employees whose status is governed by the *Labor Code*. Thus, without any good reason the officials working under contracts of employment are not bound by those ethical norms, although employees are an equally risky group in terms of corruption. The Code itself needs serious changes; it should contain clearer anti-corruption rules and mechanisms ensuring their observance. Recommendations along these lines were made in the *Corruption Assessment Report* 2002. A number of European instruments also contain important blueprints in that sphere, *viz. Recommendation No. R (2000)10* of the Committee of Ministers of the Council of Europe to the Member States on codes of conduct for public officials adopted at the 106th session of the Committee of Ministers on 11 May 2000 and the *Model Code of Conduct for Public Officials* annexed thereto, and the *Code of Good Administrative Behavior* adopted by the European Parliament on 6 September 2001 which is based on the case-law of the European Court of Justice and on the domestic laws of EU member states with respect to the administration.

- *Internal control and corruption-preventing mechanisms*

The application of legal instruments concerning the administration has shown that **the latter has no working and efficient self-control mechanisms.**

The inspectorates with the various ministries and government agencies, as set up by virtue of art. 46 of the *Law on the Administration* fall short of performing their tasks. In a number of cases they only exist formally and have a minimum number of officials which makes them unable to exert genuine control. If their staff is sufficient, the inspectors could be involved in the internal investigation of maladministration and corrupt practices of the officials. In view of these tasks, it would be appropriate to provide for better protection of the inspectors that should guarantee their impartiality.

Given the practical implementation of the *Law on Civil Servants*, the government has started drafting some amendments. The draft envisages a number of anti-corruption measures, such as the mandatory organization of **competitions** in the event of recruitment and appointment, introducing **incompatibility** between holding an office as a civil servant and working as a trustee in bankruptcy or a liquidator; removing the possibility for an earlier promotion in rank on the basis of unclear criteria, etc. In order to ensure the avoidance of any **conflicts of interest**, the restriction on relatives to work in the same administration should be extended and made applicable to any type of hierarchical relationship, be it direct or indirect. In view of the better implementation of the principle of **political neutrality**, the restriction on the members of municipal and local councils to work as civil servants should apply to all administrative structures, not only to municipal administrations as is the case now.

B.1.3. Administrative Services

The measures aimed at improving the administrative services for citizens and the prevention of existing corruption, arbitrariness and abuse in this sphere are of key importance, as the public perception of the administration is built up exactly in the process of applying for and providing administrative services. This process must convince citizens that the administration is there to service them. It would thus be possible to eradicate the years-old negative perception that the administration is a slow, bureaucratic and hostile system.

Further to the implementation of the *Law on Administrative Services for Natural and Legal Persons*, the administration has started opening up towards the citizenry. The step-by-step implementation of the „one-stop shop" principle in the separate administrations upgrades the quality of administrative services. The annual reports on the situation with the administration contain details about the number of administrative services provided and analyze the general picture of the provision of administrative services.

Nonetheless, the expected results, i.e. **lawfulness, swiftness, accessibility, good quality of administrative services and declining corruption**, have not been seen yet. Many administrations have addressed the problems of administrative services only formally, without going down to the essence of the reform under way. There is no understanding that efficient services are unthinkable without the improvement of the internal procedures applied in each administration. The required information materials are not always provided or, if provided, they sometimes contain obsolete information. The quality of administrative services differs from one administration to another. This is a practical obstacle to the gradual development of administrative services from the mere provision of a service to integrated administrative servicing, to constructing a uniform model of „one-stop shop" services provided by any administration within the executive branch. This finding is reconfirmed by the fact that the legal instruments rarely provide for procedures of *ex officio* coordination among several administrations. The process of improving the administrative services is also undermined by the lack of financial resources for documents and equipment.

It is necessary to put in place a reliable **feedback mechanism** to solicit the views of service recipients, so that their ideas could be used to improve

the process of administrative servicing and to resist corruption. Special attention should be given to providing various channels of access to services (phones, post, e-mail, internet portals) and to the use of a flexible working time by administrative service units. The specialized training of officials working at those units should spread out a new administrative culture and improve their competitiveness. That would make the provision of services more efficient and suppress the reasons for corruption. Such training should prepare the officials to meet the new requirements in their relations with citizens: to provide information, to make transparent decisions, to guarantee the right of appeal.

Two recently adopted documents are the *E-Government Strategy* and the *Concept Paper for Improving Administrative Services Based on the One-Stop Shop Principle*. Both of them provide guidelines for a modern and efficient administration meeting the public demand for high-quality and readily accessible administrative services, including those provided through electronic links between the citizens and different public administration agencies. While the most optimistic predictions suggest that the complete automation of the administrative process would take at least seven to ten years, the gradual implementation of the model of electronic administration in the course of that process would entail greater transparency, accountability, flexibility and swiftness of administrative processes and, hence, reduce the level of expenditure. The exercise of state power, including the provision of administrative services through information technology vehicles, would reduce bureaucracy and advance a corruption-hostile environment.

B.1.4. Specialized Control Bodies

The reinforcement of the control exercised by the National Audit Office, the bodies of public internal financial control, the Financial Intelligence Bureau remains a key issue in all anti-corruption initiatives and strategies. Equally central is the drafting of clearer rules on the competencies of those bodies and the coordination among them, the introduction of new mechanisms and instruments loaded with a potential to curb corruption.

- *The National Audit Office*

As of the end of 2001, a new *Law on the National Audit Office* has been in effect. It is expected to strengthen the independence and extend the powers of the National Audit Office to exert control and prevent corruption, as discussed in detail in the Corruption Assessment Report 2001: enlarge the scope of audit activities, reinforce current control, improve the interaction with the National Assembly and other state bodies.

The implementation of the new measures approved in 2002 is a good basis to summarize the following results and problems relating to the control of the management and spending of public funds in Bulgaria:

- At the beginning of March 2002, a special current audits department was set up to carry out on-going monitoring of income and expenditure, to identify the possible risks in the execution of the state budget, and to timely warn the government and the parliament of them;

- The results of the audits performed are now more widely disclosed to the public;
- Cooperation and interaction agreements have been signed with the Public Internal Financial Control Agency, the tax administration, the customs administration, the Agency for State Receivables, the Financial Intelligence Bureau and the public prosecution. The agreements provide that interaction would take the form of exchanging information about any violations of the relevant legislative instruments, the risky spheres and areas in terms of corruption, any financial irregularities, the efficiency of the legal framework and the mutual provision of expert assistance. Those agreements aim to extend cooperation and improve the interaction in the fight against fraud, corruption and money laundering, enhance the efficiency of the control system in the country and the collection of state receivables;
- Contacts have been established and good relations are maintained with the specialized EU committees for combating corruption, fraud and crime, the interaction with specialized institutions in other countries is also expanding. Joint inspections are organized with the Romanian National Audit Office to check the observance of customs legislation and the collection of customs revenues, in view of reinforcing the customs control. A regional association of audit offices in the Black Sea region is in the process of being set up. It would enable joint operations on common issues, including suspicious international transactions involving public resources. The drafting and adoption of *Rules of Procedure of the National Audit Office* is forthcoming - it will be an important instrument in the fight against fraud and corruption, the development of procedures to detect fraud and corrupt practices in the public sector, and the introduction of an electronic public register;
- The efficiency of the National Audit Office is hindered by the fact that it lacks powers to impose sanctions if it comes across violations of the law. Under the legislation in force, the findings of the National Audit Office must be reconfirmed by the Public Internal Financial Control Agency which is a body of the executive. In other words, **the body that is especially created to monitor the lawfulness of public expenditure may only notify the executive which should then penalize itself**.

It is necessary to think and discuss ideas about how to improve the *Law on the National Audit Office* and the practice of its implementation along the following lines:

- Vesting the National Audit Office with supervisory powers not only with respect to budget-funded entities but also with respect to banks and commercial companies that might be used to drain public resources;
- Extending the existing powers of the National Audit Office to rely on the results of audit operations; the findings in the audit reports and the materials collected during the audits should be the proper evidence before the competent authorities. That would require the corresponding amendments to the *Law on Accounting*, the *Law on Public Procurement*, the *Law on the Judiciary* and other instruments;

- Granting the auditors from the National Audit Office with the status of civil servants;
- The *Law on Property Disclosure by Persons Occupying Senior Position in the State* should be amended as follows: setting up time limits in which the persons appointed or removed from office should file declarations; providing for a possibility to control the information in the declarations filed; envisaging appropriate sanctions for failure to file a declaration or to respect the time limits, and for declaring false data; extending the list of persons under an obligation to disclose their property, income and expenses.

- *Public Internal Financial Control*

The Pubic Internal Financial Control Agency (PIFCA) must harmonize and co-ordinate the development and functioning of *ex-ante* and *ex-post* financial management and control systems. In October 2002, the *Law on Public Internal Financial Control* was amended (amendments in effect as of January 1, 2003) to correct some inconsistencies with other domestic laws. Many amendments are clearly inspired by the endeavor to combat corruption and the need to harmonize Bulgarian legislation with the *acquis communautaire*.

The amendments provide that **financial comptrollers** should be appointed who would be in charge of ***ex-ante* control**. All first-level central or municipal budget spending units, the units spending funds under EU programs and the heads of the National Social Security Institute and the National Health Insurance Fund are now obliged to appoint financial comptrollers. The major idea of that change is **to spread the functions** of making decisions, exerting control and keeping the accounting books among various persons. This would help overcome the current practice of concentrating the supervisory and accounting functions in the same hands (those of the chief accountant), enhance and improve the efficiency of the financial management and control systems and restrict the conditions for corrupt practices.

The amendments have also introduced additional guarantees for objectivity and impartiality in the process of exerting control. In that respect, in-house auditors are prohibited from getting involved in the management, accounting and control of entities where they have previously carried out *ex-ante* control, for a period of three years after that control has ended. The rule should prevent conflicts of interest that might invite corrupt practices.

Another interesting change is **the extended scope of the public internal financial control** - it now covers the operations of the spending units with funds provided under international treaties, agreements, conventions and other international instruments, where the relevant instrument so provides. Other changes concern the extended list of individuals and entities put under an obligation to build up financial management and control systems. Similarly, the *Law on Administrative Offences and Penalties* has been amended so as to set a longer time limit for finding violations of the statutory instruments governing the budget-related, financial, economic and reporting activities. That would guarantee better detection of those administrative offences.

The application of the amendments would largely predetermine the extent to which PIFCA would properly exercise its control powers, including

those to combat corruption. As a sustainable anti-corruption institutional environment should be promoted and the recommendations of the European Union towards Bulgaria taken on board, it is necessary to distinguish more clearly between the functions of PIFCA and those of the National Audit Office.

- *Measures against money laundering*

The transparent movement of cash flow is a must in the fight against corruption. The key role in preventing and detecting money laundering is entrusted to the Financial Intelligence Bureau (FIB).

In the first half of 2002, the FIB submitted to the public prosecution 116 reports on money laundering cases worth a total of 193 millions US dollars. During the same period, 14 investigation cases were instituted based on FIB reports. The biggest case which the FIB submitted to the public prosecution involved 83 millions US dollars. In the first half of the year the BFI, jointly with the privatization authorities, prevented the investment of significant funds of a suspicious origin in the privatization of the government stakes in several commercial companies. From the beginning of the year up until June 2002, the BFI received 105 suspicious transaction reports worth a total of 172 millions US dollars. Most of those reports were submitted by commercial banks, as usual. The FIB works in active cooperation with foreign financial intelligence units to combat the financing of terrorism and to exchange methodologies, experts and theoretical information. Thus, more than 500 persons were inspected out of the lists supplied by competent American services.

The FIB also carries out operations directly related to the combat against corruption, in line with the *Program for the Implementation of the National Anti-Corruption Strategy*. Some of the measures undertaken by the FIB to shield itself against corruption are the in-house internal training program drafted in line with the general strategy for anti-corruption training of civil servants and the initiative to additionally protect classified information by enhancing the system of personal accountability of FIB officials. With its media strategy, the FIB endeavors to ensure the transparency, the general accessibility and openness of its work. Especially important for the success of FIB is the effective cooperation between the Bureau and other bodies and institutions, such as the Ministry of Interior and the national services attached thereto (National Service for Combating Organized Crime and National Security Service), the Public Prosecution, the Customs Agency, PIFCA, the General Tax Directorate, foreign financial intelligence units. Lasting contacts have been established with the financial intelligence services of some well-known offshore areas and joint projects are under way.

On October 1, 2002, the Council of Ministers presented to the parliament draft amendments to the *Law on Measures against Money Laundering*. The objective of the draft is to complete the harmonization of Bulgarian laws with the core instruments of the *acquis communautaire* in the area of combating money laundering (*Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering and Directive 2001/97/EC of the European Parliament and the Council of 4 December 2001 amending Directive 91/308/EEC*), and to expand the scope of anti-money laundering, while improving its mechanisms and efficiency.

In line with the explicit requirement of *Directive 2001/97/EC*, the list of

reporting entities under art. 3(2) of the *Law on Measures against Money Laundering* has been extended. Bound to report on any suspicious transactions and operations would be the attorneys-at-law, and other persons who provide consultations on a professional basis; real estate dealers and persons organizing unofficial securities markets; persons dealing in high-value items on a professional basis, etc.

Some of the amendments aim to extend the forms and ways of identifying natural and legal persons, for instance if a transaction or an operation is not made in the presence of the client, which covers electronic statements, documents, signatures, etc. With commercial banks, the so-called „double signature" system applies that has proven to be quite efficient.

The proposed amendments put in place conditions for a quicker and more effective exchange of information between the FIB and the law enforcement structures. Later, this would hopefully result in a quicker and efficient investigation of instances of money-laundering by way of combining the information resources of units that use different methods of information gathering and processing.

The draft amendments envisage that a supervisory mechanism should be set up for the financial investigation work. In particular, a **Chief Financial Investigation Inspector will be appointed who would be one of the Deputy Ministers of Finance**. While the Chief Inspector would be able to monitor and control the activities of the FIB, strict legal guarantees would prevent him from unduly intervening in its day-to-day operations.

The passing and efficient implementation of the law would result in a more comprehensive and accurate cash-flow monitoring, thus severely restricting the opportunities to engage in strong corruption triggers such as money laundering.

B.1.5. Other Control Mechanisms and Means to Combat Corruption: the Ombudsman Institution

The public authorities and bodies endowed with controlling or supervisory powers in Bulgaria cannot always timely and effectively resist corruption. The specialized authorities themselves are not immune from corruption. Examples have been seen already of abuse on behalf of public officials who are in charge of preventing various forms of corruption. The process of fixing the relevant institutional and legal framework, and of drafting in-house rules of conduct for the officials of different institutions or units is still under way (*e.g.* Ministry of Defense, Ministry of Interior, including the police, the border police and other specialized services, the Ministry of Finance and the Customs, etc.). The same holds true for the elaboration of codes of ethics and other internal control mechanisms for combating corruption. Hence, there are widely spread instances of maladministration (misuse of power, corruption, disrespect for human rights and insufficient protection). All this entails the need for a new mechanism that should be implemented in parallel to the existing institutions and complement their work. An institution like the Ombudsman may well play this part. Bulgaria, however, is among the very few European countries whose legislation does not provide for an Ombudsman.

The idea of setting up a specialized institution that should control and monitor the administration (an ombudsman or a civil/public defender),

inter alia in the event of corruption, was developed by the Center for the Study of Democracy back in 1998, in a special report „Opportunities for Introducing Ombudsman Institution in Bulgaria". The report outlined the fundamental principles and possibilities for a future legal framework in Bulgaria of an institution similar to the ombudsman that should match the current needs, the public attitude and the political and constitutional background in the country. The recommendations in the report were included in the Anti-Corruption Action Plan, a major document produced by *Coalition 2000*. Starting from a detailed strategic basis, a *Draft Law on the Ombudsman* was prepared. The draft provides that the institution of the ombudsman should be introduced at both the central and the local levels and should combine the features of the classical institution (the Swedish ombudsman) and the versions of other countries, while matching the peculiar conditions in Bulgaria. In 2002, a modified version of the draft, viz. the *Draft Law on the Civil Defender and the Local Civil Mediators* was presented to the Chair of the National Assembly and to the chairpersons of the standing parliamentary committees for human rights, for citizens' petitions and complaints and for legal issues. Nonetheless, the modified draft was not officially tabled by the 39th National Assembly. Later, three other draft laws on the ombudsman were officially presented to the Assembly and they were all passed at first reading.

On the basis of the three drafts officially presented to the parliament, the Standing Parliamentary Committee for Human Rights and Religions developed a consolidated *Draft Law on the Ombudsman* that will be tabled for second reading. That version contains only some of the proposals of the first draft elaborated by *Coalition 2000*. Moreover, some of the solutions embodied in the new summarized version invite doubts as to whether the future institution would be **politically neutral and efficient**. For example, the list of persons empowered to nominate candidates for an ombudsman (only MPs and parliamentary groups) would somewhat politicize any election made by a simple majority, there would be fewer possibilities for selection, for alternatives and for competition among the candidates. There is no rule on what should happen if none of the nominees is elected at the second voting in Parliament. In his or her activities, the future ombudsman should be supported by an administrative service, a point that is not covered by the consolidated draft either. The procedure for handling complaints is incomplete and there is no possibility whatsoever for the ombudsman to require an administrative authority to pronounce explicitly in the event where the deadline to appeal against a tacit refusal has expired.The consolidated draft law contains only one general text that **enables the municipal councils to elect local public mediators (ombudsmen).**

Despite the lack of relevant legislation local ombudsman institutions, set up mainly on the initiative of the civil society and with the assistance of the local authorities, operate quite successfully in a number of municipalities (*e.g.* Sofia, Veliko Tarnovo, Razgrad, Zavet, Loznitsa, etc.). Their work is geared towards facilitating the access of citizens to the public services offered and reducing the improper contacts between citizens and municipal officials where the latter perform their duties.

The public has become better aware of the need for and usefulness of such an institution at the local level, of its potential in enhancing the **transparency of the local administration, improving the administrative services** and fostering a climate of respect for human rights and intolerance to corruption. Recently, amendments were drafted to the *Law on Local Self-Government and Local Administration* according to which the municipal councils should have autonomous budgets. Therefore, it would be appropriate to envisage that, when adopting the corresponding municipal budget, the municipal councils should also be able to adopt a budget for the local ombudsman.

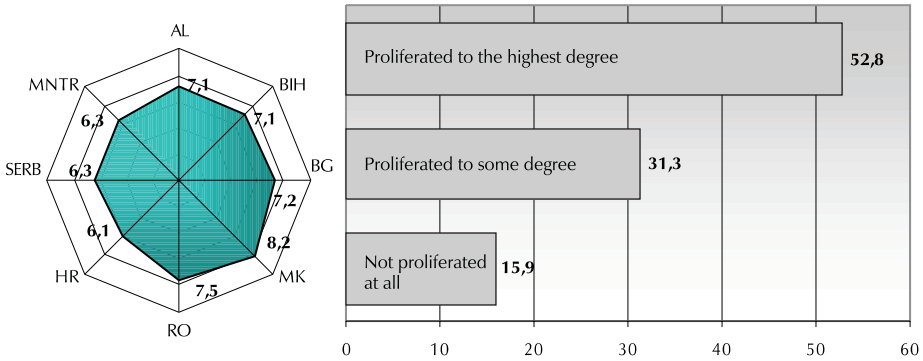
B.2. The State Institutions, Law and the Society

In addition to the guarantees for transparency and openness of administrative and governance processes and functions, the general institutional and legal climate needed for the fight against corruption would be greatly supported by enhancing the law enforcement and social functions and by **streamlining the regulatory functions of the state**. In particular, **the state should withdraw from the economy and the sphere of services**, the democratic values and anti-corruption morality should be rooted in politics and in public relations, **civil control should be institutionalized**. While the efforts of the state and society to fight corruption in 2002 did bring about some positive results, those efforts are not yet based on a consistent partnership.

B.2.1. Parliamentary Governance and Law

- *The role of parliament*

FIGURE 12. SPREAD OF CORRUPTION IN THE PARLIAMENT* (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, January '02

Source: SELDI, January 2002
(*) Note: The maximum value of the index is 10.0 indicating the highest possible level of corruption. The minimum value is 0.0 indicating total absence of corruption.
Legend: AL - Albania; BIH - Bosnia and Herzegovina; BG - Bulgaria; MK - Macedonia; RO - Romania; HR - Croatia; SERB - Serbia; MNTR - Montenegro.

The exercise of state power in a democratic context is based on the principle of the separation of powers but is intrinsically linked to the development of dialogue and cooperation among the three branches of power.

As a supreme institutional representation of the nation, the National Assembly holds a key place in the system of state authorities. Its tasks require that the parliament should work with maximum openness and transparency and contribute to the efficiency of all anti-corruption initiatives in the state and in society in general.

By the decision of September 11, 2002, the National Assembly set up a

Standing Anti-Corruption Committee. The committee is still in the process of identifying its position and role within the overall anti-corruption process. In order to become an operational anti-corruption mechanism, the Committee should fulfill its intent to analyze corrupt practices, the legal and social conditions that perpetuate or benefit such practices, and initiate the required legislative measures in that respect.

Although in 2002 the parliamentary committees again tended to invite NGO representatives to participate in the discussions on various draft laws, public hearings and the democratic participation in the process of law-making are not a well-established practice yet.

The Committee on Civil Society Issues and some of its members were very active in preparing and tabling draft laws with varying anti-corruption potential, *e.g.* the drafts laws on lobbying, on the ombudsman, on ethical rules, on political parties, etc. Serious criticism could be voiced in that respect, however, as no sufficient efforts were made to involve a wider roster of experts, to fully use the existing potential and experience gained by the spectrum of civil organizations, or to launch a wider public debate on any initiated anti-corruption legislation. Members of Parliament in this and other standing committees may also be recommended to more actively commit themselves to the anti-corruption initiatives of the civil society. There have been specific examples of an almost complete absence of MPs from fora organized in public-private partnership or on the problems of judicial reform, the role of the judiciary and law enforcement in combating corruption, on the ombudsman institution, etc.

Despite some of the measures taken, the National Assembly is still **far from being an institution serving as a model of anti-corruption efficiency**. No mechanism ensuring the settlement of conflicts of interests within the legislative branch was set up in 2002 either. A group of MPs presented a *Draft Law on the Ethical Norms Applicable to the Work of the Members of Parliament*. The draft contains some principles for the conduct of MPs (priority of public interests, transparent actions, respect for the citizens, objectivity, etc.), rules on the disclosure of information (declaring and disclosing information about the income and property status of MPs), and also principles and rules on the conflicts of interests.

The proposed norms place Members of Parliament under an obligation to provide information about their income at the beginning and the end of their tenure (including information on the sources of funding for their pre-election campaigns), about expenditure for their reception rooms or offices, on technical and other assistants and/or advisers, information about their trips and travel, on gifts received, and also on the details of any personal or family interest involved in the exercise of their powers. It is proposed to set up a standing parliamentary ethics committee that should keep record of any declared conflicts of interests, handle complaints from citizens and civil organizations from MPs' behavior incompatible with the law and with the Rules of Procedure of the National Assembly, and propose sanctions. The draft law also identifies a list of possible sanctions. The establishment of ethical rules and their practical implementation would consolidate the reputation of the National Assembly and enhance the public confidence in the work of MPs.

In addition, the following measures remain indispensable:

- Introducing a mechanism to inform the public of any violations of

the fiscal discipline committed by MPs, and of the sanctions imposed in each case; here, a subtle balance should be struck between the requirement to keep confidential the information that the future standing parliamentary ethics committee would use in its work and the need for transparency and openness.

- Improving the quality of the legislation while avoiding the automatic copying of foreign experience and taking into consideration the views of the experts in every relevant field and the lasting public interest;
- Bringing the legislative program in line with the needs of society and the aspiration to root an anti-corruption model of relationships between state and business, and state and civil society;
- Making changes towards the democratic decentralization of the state.

The parliament creates the legal basis for the functioning of the other branches of power. It elects and removes from office the members of the government, elects some of the members of the Constitutional Court and the Supreme Judicial Council (the body that administers the judiciary) and participates in the formation of a number of other important state authorities. It is therefore indispensable for the National Assembly to play a **key part** in establishing a democratic balance among the different branches of power, overcoming the conflicts and tension that arise from time to time between some of them, and **coordinating anti-corruption efforts**. Due to the specificity of transition in Bulgaria, the separation of powers often results in opposition between the branches of power, rather than in a balanced relationship between all those branches. The negative effect of that peculiarity over the past year was enhanced by the lack of homogeneity, coordination and dialogue both within the government and inside the parliamentary majority. Practice has given a number of good examples of **the lack of dialogue or of a mechanism to overcome the tension between the branches of power**. A fresh example was the fact that the Supreme Court of Cassation challenged the consistence of the latest amendments to the *Law on the Judiciary* with the Constitution, resulting in most of the amendments being adopted to be declared anti-constitutional. Other examples include the preparation of the draft budget and the ensuing debates which resulted in the Supreme Judicial Council's challenging the draft budget before the Supreme Administrative Court; the fact that the Supreme Judicial Council requested the Prosecutor General to resign, etc. In addition, last year, the tools available to the judiciary and the constitutional justice venue were much more frequently used against the executive than were the tools of parliamentary control. The right solution, however, would hardly lie in limiting judicial review of the acts issued by the executive. The parliament itself should develop its supervisory functions and more actively apply the mechanisms of parliamentary scrutiny and control. In the end, it is exactly the parliament that has the heaviest responsibility in fortifying statehood.

- *Improving the process of law-making*

The principle of the rule of law is intrinsically linked to the law-making process and to drafting and application of legislative instruments. In that sense, the existing *Law on Legal Instruments* (passed in 1973) is not an adequate basis for law-making. The prevailing opinion is that the legal instruments are of poor quality, which is due to the insufficient administrative capacity in the area of law-making. The instruments of

secondary legislation are often inconsistent with the requirements of the laws they are intended to implement. The legislation is oftentimes amended and this entails difficulties not only for the citizens and organizations trying to enforce their rights but also for the administration that has to apply the rules. The unclear and contradictory provisions and the existing principle of abolishing obsolete rules pave the ground for subjective assessment, thus advancing a corruption-friendly environment.

Hence, it is **mandatory to draft a new piece of legislation that should govern the law-making work**. That law should provide for coordination procedures that guarantee the involvement of the structures of civil society in the drafting of all legislative programs and legal instruments. A system of criteria should be developed to evaluate the expected results of the implementation of legislative instruments, also with respect to the individuals, institutions and organizations concerned. It is especially important to rely on the capacity of local authorities and civil organizations, in particular by devising a mechanism to constantly monitor the effects of the implementation of legal instruments, and to make appropriate conclusions about the required amendments.

TABLE 2 MAJOR FACTORS FOR THE SPREAD OF CORRUPTION*

	January 2000	September 2000	January 2001	October 2001	January 2002	May 2002	October 2002
Fast personal enrichment sought by those in power	57.0	57.8	60.8	59.2	58.6	58.6	58.4
Imperfect legislation	**35.1**	**40.5**	**39.1**	**38.0**	**43.0**	**39.7**	**39.2**
Ineffectiveness of the judicial system	**24.7**	**22.2**	**27.2**	**28.5**	**32.3**	**31.2**	**38.0**
Low salaries	47.2	41.6	33.7	32.3	38.5	36.0	36.6
Lack of strict administrative control	30.8	32.3	31.8	35.2	34.5	38.9	34.5
Mixing official duties and personal interests	28.3	32.6	25.8	31.7	26.7	26.9	28.8
Moral crisis in the period of transition	18.2	17.0	18.9	21.1	18.3	16.3	13.2
Problems inherited by the communist past	7.3	7.8	4.4	5.8	5.0	6.9	6.3
Specific characteristics of Bulgarian national culture	5.9	4.2	5.9	4.4	5.3	4.3	4.9

Source: CMS of *Coalition 2000*
(*) Note: 1) % of those citing each factor
2) Respondents marked up to three answers, therefore the sum total of percentages exceeds 100.

MPs who exercise their legislative initiative are not bound to coordinate their drafts with various ministries or agencies, unlike the government, which is under an obligation to coordinate its bills. This affects the quality of the drafts presented by MPs and may easily entertain suspicion that improper influence has been exerted. As the MPs from the ruling majority exercise their right of initiative more than frequently, the political government has no serious commitment to the drafts presented by MPs and to their enforcement once they are passed.

Out of 436 draft laws presented to the 39th National Assembly until the end of 2002, 235 were produced by the Council of Ministers, whereas of 201 bills submitted by MPs, 97 came from members of the NMS2 parliamentary group.

Source: Web-site, Bulgarian National Assembly

It appears that the principles of the legislative process should be reconsidered so as to guarantee the better quality of bills presented by individual MPs and mechanisms should exist for the compulsory coordination of those bills with the widest possible range of institutions and persons involved in the area in question. Despite the progress towards transparent reforms that is demonstrated by the public hearings on a number of draft laws, larger openness is needed at the stage of developing and discussing the program for reforms. Otherwise, the current practice of presenting alternative draft laws will persist, as will the trend to consolidate the different bills mechanically and pass versions that are devoid of a consistent strategic basis.

B.2.2. Anti-Corruption Measures within Public Order and Security Bodies

The specific role of the institutions in charge of ensuring public order and security gains importance in the fight against corruption (i.e. the Ministry of Interior and its national and specialized services, the Ministry of Defense and its structures, the special and specialized institutions subordinate to other authorities such as the National Intelligence Service, the National Guard Service etc.).

At the same time, corruption within the public order and security institutions is among the most distressing, complex and important problems as those institutions are vested with the widest powers to combat corruption in the overall political, economic and social life of the country. The major problems of combating corruption inside those institutions stem mainly from the lack of coordination among the different bodies, the duplication of functions, the poor equipment and underfunding, the insufficient training of staff, the difficult recruitment of good experts as a result of the low salaries, etc.

A key factor that predetermines the spread of corruption within the public order and security institutions is the significant volume of classified information that they have to collect, process and store. The possibility for that information to be improperly used paves the ground for particularly dangerous and disturbing corrupt practices.

At the end of 2002, on the initiative of the Parliamentary Committee for Foreign Policy and the Parliamentary Committee for Domestic Security and Public Order, a debate was launched if it would be possible to draft a special *Law on National Security* to delineate the place of the secret services, their functions and the interaction among them. The opportunity is discussed, *inter alia*, to merge the secret services in a National Security Agency that would have the status of a ministry directly subordinate to the Council of Ministers. The steps to be undertaken should be closely linked with the efforts to more efficiently combat corruption.

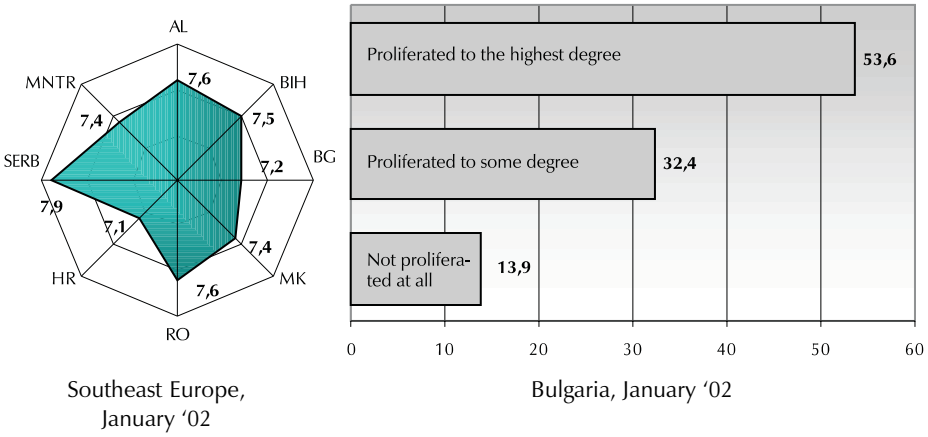
In line with the tasks stemming from the *National Anti-Corruption Strategy*, the **Ministry of Interior (MoI)** adopted and started implementing its own *Anti-Corruption Program*. The latter aims in particular to limit corruption by way of efficient mechanisms for consolidating the status of the units involved in anti-corruption efforts, improving in-house control and the interaction between the bodies of the MoI and the mass media. It is worth mentioning that an **Intra-Ministerial Anti-Corruption Coordination Board** has been set up within MoI and a set of *Methodological Rules for the*

Organization and Procedure of that Board have been adopted. The Board is chaired by the line Deputy Minister of Interior who is in charge of the general monitoring and supervision of interaction in the fight against organized crime and corruption.

The operational interaction between MoI structures upon receiving, notifying and clarifying the complaints of internal corruption, and the control of their handling, have been entrusted to a special **Department on Combating Corruption within MoI**, of the Inspectorate. In the national and the territorial services of MoI, **specialized units** have been assigned the functions of conducting **operations to check information about corruption**. In conformity with the legal requirements for checking complaints of corruption, the directorates at the national and territorial services summarize information at the end of each quarter and provide it to the Department on Combating Corruption within MoI of the Inspectorate. In turn, every six months the department drafts and submits to the Intra-Ministerial Coordination Board consolidated reports analyzing corruption prevention and detection in the system of the MoI.

The data provided by the newly-created Intra-Ministerial Anti-Corruption Coordination Board within MoI show that, **in the first six months of 2002, 113 officials of the Ministry were penalized for corruption**. One of them was a civil servant, 63 were officers and 49 were sergeants. Twenty-six persons were fired, 20 were moved to other positions, and 19 were subjected to psychological aptitude tests. Files about violations committed by 40 officials were submitted to the public prosecution and 8 officials were arrested. The results of the anti-corruption efforts made by the MoI were appreciated by the leadership of the Ministry who are of the opinion that the new mechanism for preventing and detecting corruption among MoI officials operates smoothly at all levels.

FIGURE 13. SPREAD OF CORRUPTION IN THE POLICE FORCE (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, January '02

Source: SELDI, January 2002

Measures were taken to reinforce the commitment of the structures of civil society in the fight against corruption while relying on public reception rooms, „hotlines", „mailboxes" and other forms that enable NGOs and individual citizens to provide information about instances of corruption on the basis of guaranteed anonymity. The Crime Prevention and Public Relations Groups with the Metropolitan Directorate of the Interior and at the county police directorates across the country frequently appear in broadcasts on local media. Attention is paid to the possibility of citizens to file information about corruption among officials of the MoI. The opening up and greater accountability of MoI towards the society needs to be further promoted. The working style of secrecy and concealment which gives rise

to suspicions and forms a good ground for corruption should be replaced with wider transparency and openness. The development of a system of staff recruitment and career development, on-the-job training, the use of objective performance evaluation criteria are also of key importance as they all promote the motivation of staff members.

To enhance the efficiency of MoI in combating corruption and to reconfirm the role of the Ministry in that process, the structure of the Ministry should be streamlined and the place and functions of the special services should be better defined.

After Bulgaria was invited to start negotiations for NATO membership, the **Ministry of Defense** declared it would start working to reform the legislative framework of defense and of the armed forces. The initial ideas suggest that the reform would already start at the beginning of 2003. It will have to distinguish between two separate sets of legal rules - on defense and on the armed forces. This will be achieved, among other things, by passing two separate laws - a law on defense that should cover the entire system of interaction among, and subordination of all institutions in the country for the purpose of national defense and security, and a law on the armed forces that would govern in detail the system of the armed forces and professional military service.

When the contemplated reform of the legislative framework is implemented, it should not be forgotten that some specific problems of the Ministry of Defense may also generate corruption, *e.g.*: the lack of transparency and of sufficient controls in the allocation of the considerable budget funds earmarked for army maintenance and modernization, and for tendering procedures; the management of substantial property, including real estate, and the fact that large portions of that property have become redundant in the army as a result of the military reform. At the beginning of December 2002, the government approved an *Ordinance on the Conditions and the Procedure for the Award of Public Procurements relating to National Defense and Security*. The entities that may be contracting authorities under the Ordinance are those vested with defense and security-related functions in Bulgaria, whereas the potential bidders must satisfy the conditions for access to classified information or the requirements for applying special security measures. It is still early to conclude to what extent the application of the Ordinance would help curb corruption.

B.2.3. The State and Society

- *The system of political parties*

The year 2002 witnessed further gradual transformation of the political party system into more transparent and independent of the state system. The funding of political parties had already been covered by the relevant legislative instrument in 2001 which, however, preserved the possibility for anonymous donations, along with a number of anti-corruption provisions. In May 2002, a new *Draft Law on Political Parties* was presented to the National Assembly. A number of its rules intend to establish lawful means of financing and mechanisms to control the funding of political parties, such as:

- a full ban on anonymous donations and on the possibility of political

parties to receive support, in whatever form, from commercial companies with any government or municipal equity interest (by contrast, the current rule only prohibits such support if the government or a municipality is a majority shareholder);

- a possibility for restricted, albeit authorized and controllable economic operations so as to cut off the current practice of conducting business operations „in the shadow", avoiding the legislation in force.

A second draft law on political parties is in the process of being prepared and should be presented to the National Assembly. Its underlying ideas are close to those of the first draft. The second draft provides for more stringent restrictions on donations to political parties, and a total ban for such parties to be funded by companies involved in the business of gambling. It also suggests a new mechanism for allocating government subsidies for political parties and prescribes a mandatory requirement for political parties to submit their financial statements for the last three years to the National Audit Office in order to participate in elections.

Political consensus is required for the most important anti-corruption measures concerning political parties and the informal links between political parties and various private interests. It is clearly necessary to ensure, by legislative means, maximum transparency in the course of conducting activities as a political party, to make clear the sources of funding, to do away with the „shady" cash flows from and to the headquarters of political parties. The attainment of these objectives would move forward the combat against corruption and help reform the system of political parties while placing it on a solid anti-corruption basis.

The *Draft Elections Code*, presented to the National Assembly in 2002, pursues similar objectives. It seeks to codify the law on elections, to change the elections system and to **provide for new rules on the funding of election campaigns**. It would prevent state-owned and municipal companies from funding such campaigns. Another provision introduces a ceiling on the expenditure in the course of an election campaign (2 400 000 Bulgarian levs for a political party and 80 000 levs for each independent candidate). In addition, a deposit should be paid in advance (10 000 levs for each political party and 500 levs for each candidate standing on a first-past-the-post basis) on a bank account of the Central Elections Committee, with the proviso that the Committee would release the deposit after the political party or candidate in question submits a report on collecting and spending the funds for the campaign. The draft proposes that a permanent elections administration should be put in place and the spending of the funds should be controlled by the Central Elections Committee, instead of the National Audit Office.

The introduction of a new control mechanism that should achieve the required transparency is largely supported by the major political forces. Nonetheless, it needs discussion and sophistication so that its anti-corruption ideas and potential could be fully developed. Most debatable are the envisaged changes to the current election legislation, *e.g.* the introduction of a mixed (majority and proportional) elections system modeled after the German one. The establishment of a professional elections administration has also given rise to some controversy.

The reinforcement of the autonomy and transparency of the political party

system, the eradication of any possibilities to use corruption in order to achieve the goals of political parties necessitate the adoption of a modern and consistent domestic legislation that should be strictly implemented.

- *Lobbying and conflicts of interests*

Lobbying is a specific activity which greatly exceeds the constitutional right of citizens to lodge petitions and make proposals to state institutions. It often accompanies, in one form or another, state governance at different levels. Lobbying is practiced on behalf of a third party, against payment, and aims to promote specific private interests, individual or collective. To implement the principles of transparency in the interaction between state and society, and to demolish corruption in that sphere, clear rules are needed about the mechanisms whereby individuals and private organizations could influence decision-making within the executive and the legislative branches of power. This will stop any inappropriate pressure behind the scene and any conflicts between private and public interests. This objective, however, requires a complex process of adopting new legislative and ethical norms, while simultaneously infiltrating new practices and developing a corruption-hostile public and political culture.

Some very practical steps were undertaken along this path in 2002. The *Draft Law on the Disclosure and Registration of Lobbyists and Lobbying*, presented to the National Assembly by a group of MPs from the ruling majority, proposes that a **Public Register of Lobbyists and Lobbying** is set up. It contains definitions of the concepts of „lobbyist" and „lobbying" and covers the conditions, procedure, prohibitions and restrictions in relation to lobbying. The draft rules, however, trigger a number of critical remarks:

- the formulation of „lobbying" is far too broad, there is no requirement that lobbying and the financial investment therein should be disclosed to the public;
- the possible addressees of lobbying, be they institutions or personalities, are too numerous (all authorities of the legislature and the executive, authorities of local self-government, civil servants, members of political cabinets and persons working under contracts of employment at the bodies of the Executive, at the administration of the National Assembly and at the administration of the President of Bulgaria);
- there are no criteria to distinguish between the activities defined as „lobbying", on the one hand, and ordinary civic activities or democratic civic involvement in the process of law-making and the general political process, on the other hand. The draft does not treat as lobbying only those activities of NGOs that are developed under projects with grant financing from the European Union, other international organizations or specialized foreign government programs. All the other activities of NGOs, including those in pursuit of public interests, would thus fall within the definition of lobbying;
- the relationship between unlawful lobbying and the crime of „trade in influence" remains unclear.

Given the lack of traditions in Bulgaria, and the lack of experience in most European countries, in order to achieve its goal and provide for „additional guarantees to enhance transparency in the work of state

institutions and to curb corruption", the draft needs to be substantially improved and reflect the views of a wider range of experts, representatives of the civil society, individuals and organizations that might be engaged in lobbying.

- *Civil control, legal and institutional framework of the non-governmental sector*

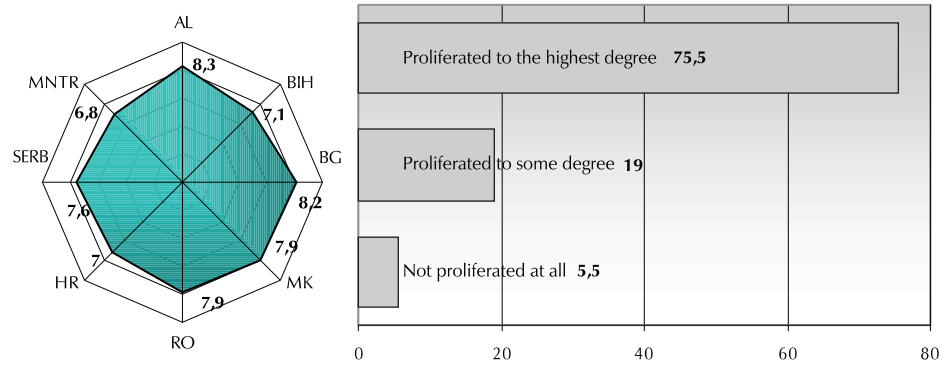
The legal framework for the non-profit sector has developed more than slowly: the *Law on Not-for-Profit Legal Persons* only came into effect on January 1, 2001. While that law laid the legal foundation of a modern non-profit sector in Bulgaria, it failed to address a number of issues concerning the institutionalization and strengthening of anti-corruption civil control, the dialogue and interaction between non-profit organizations and the state. Since the entry into force of the law, no steps have been undertaken to improve the legislation, regardless of the problems encountered in practice. Some of those problems are the lack of clear criteria to distinguish between non-profit organizations depending on their objectives and on how society assesses the relevance and usefulness of those objectives, the complicated procedure for the registration of non-profit public benefit entities and the complex requirements they should meet.

In addition, no guarantees have been envisaged for a fully-fledged implementation of the freedom of association, as enshrined in the Constitution, and to avoid the risk that many profession-based non-profit organizations might actually become monopolies strongly linked with the corresponding state structures.

C. JUDICIAL REFORM AND ITS ANTI-CORRUPTION DIMENSION

The problems of corruption are most painfully mirrored in the assessment and perception of the judicial system in the country. The major units and bodies of that system are called upon to investigate corruption-related crimes and to punish their perpetrators, so any failure to perform those duties or to perform them in good time undermines the public confidence in the judiciary. Public opinion polls in 2002 did not reveal any change in the continuing negative attitude of different social groups towards the judiciary and to the magistrates and officials working therein, or to the legal professions as whole.

FIGURE 14. SPREAD OF CORRUPTION IN THE JUDICIARY* (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, January '02

Source: SELDI, January 2002
(*) Note: The maximum value of the index is 10.0 indicating the highest possible level of corruption. The minimum value is 0.0 indicating total absence of corruption.
Legend: AL - Albania; BIH - Bosnia and Herzegovina; BG - Bulgaria; MK - Macedonia; RO - Romania; HR - Croatia; SERB - Serbia; MNTR - Montenegro.

In addition to the prevailing impunity of corruption, which is wide-spread across all segments of the society, **the instances of corruption inside the judiciary itself have even stronger demoralizing effects** as they undermine the very idea of justice, democracy and the rule of law. Under the strong pressure exerted by civil society in Bulgaria and the numerous critical assessments of the Bulgarian judicial system (*e.g.* the regular reports of the European Commission and other international monitoring fora and instruments), the measures aimed to reform the judiciary have obtained a clearer shape.

In the process of applying the *Strategy for Reform of the Judiciary in Bulgaria*, in March 2002 a *Program for the Implementation of the Strategy* was approved, whereas on July 18, 2002 the draft amendments to the *Law on the Judiciary* proposed by the government were passed by the National Assembly (in effect as of August 3, 2002). This was the thirteenth set of amendments (the law itself was passed in 1994) passed in **an attempt to find a more comprehensive approach to the reform of the judiciary** and to ensure the attainment of its priorities. Many of the latest amendments were geared

towards eradicating the prerequisites for corruption inside the judiciary. Most of them, however, were labeled as falling outside the scope of the existing Constitutional model and encroaching upon the independence of the judiciary. During the preliminary discussions and after the passing of the law, some of the major amendments provoked disagreement and criticism by some judicial institutions and professional circles, and the conformity of the new provisions with the Constitution was challenged by the Supreme Court of Cassation.

TABLE 3. SPREAD OF CORRUPTION IN THE PUBLIC SECTOR*

	April 1999	Sept. 1999	January 2000	April 2000	Sept. 2000	January 2001	October 2001	January 2002
Customs	8,78	9,10	9,02	9,10	8,90	8,96	9,06	8,95
Privatization Agency	7,46	7,86	7,96	8,28	8,06	8,24	8,66	8,57
Judiciary	7,62	7,88	7,68	7,68	7,60	7,82	8,04	8,21
Tax administration	7,10	7,98	7,68	7,56	7,54	7,42	7,62	7,72
Industry line ministries	6,94	7,40	7,24	7,44	7,50	7,56	7,12	7,34
Police	7,16	7,54	7,30	7,24	7,14	7,36	7,34	7,22
Parliament	6,78	7,16	6,96	7,24	7,42	7,46	6,78	7,18
Committee on Energy	6,40	6,84	7,00	7,10	7,00	6,82	6,80	7,08
District governors	6,90	7,32	7,02	7,04	6,94	6,90	6,90	7,01
Commission for the Protection of Competition	6,14	6,40	6,18	6,68	6,54	6,84	6,88	7,00
Ministerial level	6,58	7,12	6,94	7,10	7,44	7,42	6,44	6,87
Municipal administration	6,64	7,24	6,82	6,74	6,54	6,54	6,58	6,73
Securities and Stock Exchanges Commission	6,24	6,28	6,22	6,50	6,46	6,48	6,40	6,73
Bulgarian Telecommunications Company	-	-	-	6,28	6,60	6,30	6,42	6,63
National Audit Office	5,74	5,86	5,54	5,84	5,98	5,82	5,72	6,07
National Bank	5,34	5,32	5,34	5,16	5,72	5,48	5,24	5,49
Army	4,88	5,06	5,06	5,08	4,98	4,80	4,70	5,13
National Statistical Institute	4,80	4,54	5,00	4,68	5,02	4,76	4,61	4,68
President and President's administration	4,46	4,50	4,28	4,52	4,52	4,24	4,26	4,63

Source: CMS of *Coalition 2000*
(*) Note: The maximum value of the index is 10.0 indicating the highest possible level of corruption. The minimum value is 0.0 indicating total absence of corruption.

By its Decision No. 13 of December 16, 2002, the Constitutional Court declared 44 provisions of the *Law Amending and Supplementing the Law on the Judiciary* anti-constitutional. In other words, new legislative solutions will have to be sought. The view that the constitutional model needs to be modified in order to achieve the main priorities of the judicial reform gains an ever wider ground. To be productive, the debate about the judicial reform should go beyond institutional conflicts and personal attacks and scandals.

In addition to the commitment of the government to judicial reform what is needed is a consensus among the political parties about its philosophy, goals and specific stages. On the other hand, a stronger and more substantial participation in the reform on behalf of the judiciary itself is required as well. Otherwise future amendments to the Constitution with respect to the judiciary would not be feasible.

The lack of an overall concept for the reform and of consensus among the separate branches of power and the different institutions of the judiciary on the key priorities of the reform results in **fragmentary and inconsistent reform efforts or even attempts to block the reform**. These considerations formed the basis for the evaluation provided in the *Regular Report of the European Commission in 2002*. In the view of the Commission, despite the progress made towards reform, „the judicial system remains weak and there are almost no concrete changes in its functioning".

The acceleration and practical implementation of the judicial reform is a *conditio sine qua non* to crack down on corruption, including that in the **judiciary**. For that purpose, more comprehensive and swifter solutions are required of a number of major issues:

- developing and harmonizing the anti-corruption legal instruments;
- achieving consistency between the organization (structure and management) of the judiciary and the principles of the rule of law, independence and stability, swiftness, accessibility, efficiency and fairness of justice;
- reaffirming the status of magistrates on the basis of impeccable professionalism and better staffing;
- improving the organization and work of the court administration, the technical infrastructure and the funding of the judicial system.

C.1. Developing Anti-Corruption Legal Instruments

The development and harmonization of the legal instruments needed to resist corruption are a must for the success of the reform and for endowing it with **a coherent anti-corruption basis**. In terms of harmonization, there is a sharper need not only to align Bulgarian domestic legislation with European and international standards but also to **ensure its consistency and conformity with Bulgarian legal traditions and the realities in the country**. The legal instruments passed or initiated are impressive in number and volume but the legislative framework still lacks a consistent conceptual basis. Oftentimes solutions are copied verbatim from foreign legislative traditions, the recommendations given are taken on board without any adjustment; models are adopted that go counter to the legislation in force in the country. This is valid both for the acts of parliament, that the bodies of the judiciary apply in the process of their work, and for the legislative instruments directly intended to reform law enforcement and the administration of justice.

The key place within the first group of anti-corruption legal instruments is attributed to the provisions of substantive criminal law that directly incriminate various corruption acts, to the rules of criminal procedure, and to all rules of substantive and procedural civil law that might indirectly affect the reasons for the spread of corruption and its suppression.

The second group includes the fundamental provisions of the Constitution concerning the judiciary, and the rules of the *Law on the Judiciary* which regulates the structure and the main principles of organization of the judiciary as embedded in the Constitution (status of magistrates, powers of the Supreme Judicial Council, relationship between the judiciary and the executive).

C.1.1. Criminal Law and Procedure

Bulgarian criminal legislation contains no definition of the concept of „**corruption**". While this term is most frequently associated with bribery, its real scope may be delineated by reference to the crimes connected with the **misuse of power and official position that entail the erosion of statehood and the substitution of personal benefit for the public interest**. Therefore, the criminal law understanding of corruption should include, along with bribery and trade in influence, also malfeasances and other offences (*e.g.* embezzlement by public officials, document forgery, mismanagement of public property, some tax offences) where those are connected with or aim at disguising or concealing a corruption offence *stricto sensu*.

The 2002 legislative amendments relating to the prosecution of corruption extend the list of possible corruption-related crimes. Those amendments formed part of the government anti-corruption strategy and of the program for its implementation and match Bulgaria's commitments under some international anti-corruption instruments, including the Council of Europe *Criminal Law Convention on Corruption* , the OECD *Convention Against the Bribery of Foreign Public Officials in International Business Transactions*, and the UN *Convention against Transnational Organized Crime*. The need for such amendments had been highlighted already in the recommendations of *Coalition 2000* made in its Corruption Assessment Report 2001.

- *Measures undertaken*

On September 13, 2002, the National Assembly passed a *Law Amending and Supplementing the Criminal Code* (amendments in effect as of October 1, 2002). The idea of the amendments was to improve the rules on punishing bribery, embezzlement by public officials, documentary fraud, organized crime, trafficking in human beings, terrorism and cybercrime. The new rules reflect the aspiration to construct a modern legal framework with sanctions for corruption crimes. For that purpose, the existing elements of various crimes were refined (*e.g.* the scope of the *corpus delicti* of bribery, the various forms of *actus reus* in the event of bribery, the type and amount or duration of the penalties), new offences were added (trade in influence) and the list of possible perpetrators of bribery was extended (incriminating the bribes in the private sector, the bribery of arbitrators, the passive bribery of foreign public officials and extending the concept of a „foreign public official").

The most substantial amendments that bear directly on the prevention and prosecution of corruption, in line with international standards, could be summarized as follows:

- **Improving the fundamental elements of the criminal offences known as „active" and „passive" bribery by providing legislative coverage of all forms of *actus reus* and adequate penalties** (making and accepting a proposal for or promise of bribe, art. 301(1) and art. 304(1));
- **Including the intangible benefits in the *corpus delicti* of bribery**. This change brought to an end the misunderstanding that only a material benefit could be used for bribery. This extension of bribery is a positive step towards covering a wider range of corrupt practices;

TABLE 4. SPREAD OF CORRUPTION BY OCCUPATION (%)

	Relative share of responses „Almost everybody or most are involved" (%)							
	January 2000	April 2000	Sept. 2000	January 2001	October 2001	January 2002	May 2002	October 2002
Customs officers	77,0	78,6	75,2	74,3	77,3	74,2	70,8	79,2
Judges	48,5	56,0	50,1	50,6	56,4	55,0	50,8	63,0
Prosecutors	46,3	54,4	51,3	50,7	54,8	55,4	51,0	63,0
Lawyers	54,8	51,9	52,9	50,3	55,0	55,5	52,5	62,3
Police officers	51,9	50,5	54,3	51,0	53,7	47,0	50,7	59,6
Tax officials	53,9	51,0	53,7	47,3	51,6	51,2	41,9	58,0
Criminal investigators	41,0	48,0	43,8	43,5	48,4	48,0	43,1	57,5
Members of Parliament	45,0	55,1	51,7	52,6	43,5	47,8	39,2	56,2
Doctors	42,5	40,9	43,6	27,0	46,8	45,7	52,3	54,9
Political party and coalition leaders	37,5	45,0	43,8	39,1	40,8	43,0	33,0	54,0
Ministers	45,3	53,4	55,0	52,3	41,2	45,4	35,6	50,8
Municipal officials	45,0	46,5	41,6	35,9	39,6	39,4	30,0	49,1
Business people	48,5	51,4	42,3	43,6	42,2	41,6	41,4	48,9
Ministry officials	47,9	55,1	49,7	43,9	45,8	47,1	36,7	48,3
Mayors and Municipal Council members	32,5	35,2	32,1	30,9	26,3	31,8	23,4	48,3*
Administrative officials in the judicial system	42,0	45,2	40,2	36,8	41,7	41,1	36,5	45,0
Bankers	20,9	38,8	33,5	35,6	32,5	31,7	29,5	37,2
University professors or officials	29,4	29,3	28,1	21,6	27,4	27,7	29,8	33,4** 23,1**
Representatives of non-governmental organizations	16,2	18,2	23,9	18,2	19,8	21,8	15,3	21,4
Journalists	10,6	14,1	13,9	11,3	10,5	12,2	9,5	15,3
Teachers	9,5	8,2	10,9	5,8	9,3	9,7	9,8	13,9

Source: CMS of *Coalition 2000*.
* Assessment of Mayors and municipal councilors have been merged since October 2002
** Since October 2002 the spread of corruption assessments have been split for „University professors" and „University officials".

- **Enlarging the concept of „foreign public official"** (art. 93(15)) and **incriminating the passive bribery of such officials**, along with the active bribery (art. 301(5)), in conformity with the Council of Europe *Criminal Law Convention on Corruption*. This change brought under the notion of foreign public officials also the individuals holding an office in international parliamentary assemblies or international courts;

- **Extending the list of special perpetrators of bribery**. Besides public officials and expert witnesses, passive bribery is now punishable when perpetrated by **arbitrators** (art. 305(1)). A special offence was included to enable the penalizing of **attorneys-at-law** who give or accept undue benefits in order to help a specific case be resolved in favor of the other party to the proceedings or to the detriment of their own client (art. 305(1) and (2)).

- Aggravated offences are envisaged for the active and passive bribery of **judges, public prosecutors, investigators or jurors** (art. 302(1) and art. 304a). The provisions, though, do not include police investigators who are the competent pre-trial authorities in a great number of criminal cases.

- **Circumstances under which active bribery would not be criminal were limited** (art. 306). With the new amendments, criminality can only be withheld if two conditions are met simultaneously: the perpetrator of active bribery should have been blackmailed by the public official and the perpetrator should have immediately and voluntarily notified the authorities of the bribe given.
- **Introducing fines as penalties in cases of bribery** (in addition to imprisonment). This has to do with the self-interest involved in that crime which is in fact an illegal transaction.
- **Incriminating bribery in the private sector**. The new provision inserted in Chapter Six, „Crimes against the Economy", of the Special Part of the *Criminal Code* (art. 225c) now provides a basis for the prosecution of passive and active bribery in the private sector. **Passive bribery** is defined as requesting or accepting an undue gift or another benefit or proposal for or promise of such a gift or benefit in order for an act to be performed or omitted in violation of the duties of the perpetrator in the course of business operations. **Active bribery** in the private sector means giving, offering or promising a gift or another benefit to persons engaging in business operations so that they would break their duties. Acting as an intermediary for giving or accepting a bribe in the private sector is also punishable.

The criminalization of bribery in the private sector has ensued from the fact that so far the *Criminal Code* could not be adequately applied to bribery in the economy. Placing anti-bribery rules in the chapter „Crimes against state authorities and public organizations" suggested that the rules are inapplicable to the giving or acceptance of undue gifts or benefits to or by someone involved in business operations. It was thus made impossible to suppress corruption in the private sector, including the field of public procurement. Hence, **the creation of a legal framework to combat bribery in the private sphere is crucial**.

- **Incriminating trade in influence**. The *Criminal Code* now covers for the first time the trade in influence. This exists in Bulgaria and is based on a tri-partite corruption relationship where a person having a real or supposed influence on a public official „trades" in that influence in return for a benefit from someone seeking such influence. The new rule makes punishable the request, acceptance, giving or promise of an undue benefit for the purpose of influencing a public official in relation to his or her office, and the giving, promising or offering of an undue benefit to a person claiming that he or she could influence public officials so as to conduce them to have a specific behavior in the context of their office (art. 304b).
- **Introducing a special regime for the embezzlement of EU funds**, along the standards of the *Convention on the Protection of the Financial Interests of the European Communities*. The amendments introduced two aggravated offences - embezzlement by a public official where the moneys misappropriated are from funds of the European Union or have been provided to Bulgaria by the European Union (art. 202(2), point 3) and document forgery where the property obtained is derived from such funds (art. 212(3)). Thus, heavier penalties are envisaged for a most dangerous corrupt practice, *viz*. misappropriation of European funds - a problem frequently raised

by the European Commission in relation to moneys allocated from EU funds. The measure is not only intended to sanction this serious form of embezzlement by public officials but has also come in response to an important international commitment undertaken by Bulgaria.

- *Corruption and the problems of global security*

An important portion of the amendments to the *Criminal Code* concern areas which, in the context of the globalization of security concerns, pertain to combating corruption - **terrorism, organized crime, trafficking in human beings and drugs, cybercrime**. The perpetration of those offences often involves corruption or the offences themselves facilitate various forms of corrupt behavior.

- *Terrorism and organized crime*

The possible link between organized crime and terrorism, on the one hand, and **corruption**, on the other, attracts increased attention. On the one hand, criminal groups and terrorists use corruption as a vehicle to influence the activity of government and, hence, the economic and political stability of states. On the other hand, corruption fosters poverty and instability and is one of the reasons for the existence of political and religious extremism that fuels terrorism.

To pursue their criminal business, crime syndicates in the country apply corruption schemes as regards the structures of power, including law enforcement authorities. By assisting criminal operations, corrupt civil servants in turn get involved in organized crime.

The combination between **transborder crime and corruption** is particularly dangerous as it underlies the existing illegal trafficking routes across the country that could be used, *inter alia*, for the infiltration of terrorists. After September 11, greater attention is devoted to the link between drugs trafficking, money laundering and terrorist acts. As Bulgaria is on the so-called „Balkan drugs way", it is especially vulnerable to trafficking from Asia and the Middle East.

Corruption of Bulgarian public officials could thus turn into a **problem of international security**. This was evident in the case of the illegal export of goods with possible dual use from a factory of the state owned *Terem* company in Targovishte where civil servants were suspected in concluding a criminal transaction in arms destined ultimately for an embargoed country.

The amendments to the *Criminal Code* added special provisions with respect to **terrorism and the financing of terrorism** (art. 108a), in line with the anti-corruption instruments of the European Union, the *UN Convention against the Financing of Terrorism*, and the relevant Resolutions of the UN Security Council. Besides, the amendments to the *Criminal Code* provide for prosecuting the establishment, management of and participation in a terrorist group; the preparation of terrorist acts, and the threat to carry out such acts. **Confiscation** is envisaged of the property, or of a part thereof, belonging to the perpetrators of terrorist acts and to the persons funding their operations. With such a harmonized legal basis Bulgaria is able to be actively involved in anti-terrorist actions around the globe.

In addition, in June 2002 the government presented to the National Assembly a *Draft Law on Measures against Financing of Terrorism* (draft

prepared by the Ministry of Interior). The draft lists measures to combat the funding of terrorism, sets out the organization for and control of their application, and lists the administrative sanctions for failure to implement those measures. The bill was drafted in line with *Resolution 1373 (2001) of the UN Security Council* and with due consideration of *Council Regulation (EC) No. 2580/2001 of December 27, 2001 on the specific restrictive anti-terrorist measures against some individuals and legal persons*.

While the fact of the draft law has to be welcomed, as it forms an integral part of the efforts of Bulgaria to actively contribute to preventing and suppressing any forms of terrorist activity, a number of critical remarks would be appropriate as well. Firstly, the specific measures should be better defined (freezing sums of moneys, financial assets and property of the natural and legal persons placed on a special list; prohibition to provide sums of money, financial assets and financial services to those individuals and entities; proclaiming invalid the transactions and the operations carried out with frozen sums of money, financial assets and property of persons on the list and the provision of money and financial services to those persons).

Legal guarantees are needed to avoid any possible abuse of power by the authorities, and any interference with the rights of individuals and organizations, in the event of an automatic freezing of the assets and property of persons who are parties to criminal proceedings but had not been convicted. Thus the mechanism could be also used in favor of private economic interests. Given the slow pace at which a criminal procedure develops, the provisions of the draft law, if not further specified, may inflict irreparable damage to some individuals, organizations or entire economic groups. Unclear legal rules on the actions to be undertaken by the state authorities and the lack of swift and efficient control of their steps may well nurture corruption and the exertion of pressure on persons that are „in the money".

Criticism is also invited by the possibility for any person to file information with the Minister of Interior without any restriction in terms of official, banking or trade secrecy, without being bound by „liability of violation of other laws". Moreover, the application of the law could be frustrated if there are no rules to ensure the anonymity of the reporting individual or institution. Hence, the controversial texts should be rephrased and made consistent with the laws in force in the country and with the principles of the rule of law.

As regards the need to pass adequate legislation on the **prosecution of organized crime**, it is worth mentioning that the *Criminal Code* now defines the concept of „organized crime syndicate" (art. 93(2)). The legal definition of organized crime is in line with the *EU Joint Actions of 1998 for incriminating the participation in a crime syndicate in the Member States of the European Union*, and with the *UN Convention against Transnational Organized Crime* (ratified by Bulgaria). This is also true of the amendments that provide for criminal repression in the event of setting up, managing and participating in an organized crime syndicate (art. 321).

- *Trafficking in human beings*

In 2002, Bulgarian criminal law was brought in conformity with the standards of the *Protocol concerning the trafficking in human beings, especially women and children* that complements the *UN Convention on Transnational*

Organized Crime (both instruments were ratified by Bulgaria) and the *EU Joint Actions of 1997 against the trafficking in human beings and the sexual exploitation of children*. As a result, a new section, „Trafficking in Human Beings", was inserted in the *Criminal Code*. The National Assembly passed at first reading a *Draft Law against the Illegal Trafficking in Human Beings* that aims to prevent the trafficking in human beings and ensure assistance to victims. The draft corresponds to the latest international and European acts and instruments. The adoption of that new law and its enforcement would help provide better protection and assistance to the victims of illegal trafficking and improve the co-operation between the central and municipal authorities, on the one hand, and the NGOs, on the other hand, so that a nation-wide policy could be developed in this area.

- *Cybercrime*

The wide access to and use of information technologies in various spheres of public life has entailed the use of such technologies for the purpose of corrupt practices. Computer crimes increasingly become a prerequisite for or the result of various corrupt acts. The adoption of relevant criminal provisions and their effective enforcement would bring down the general level of corruption.

An important segment of the amendments to the *Criminal Code* concern the **incrimination of violations of the global access to computer information data or to the use of information systems and services**. Therefore, definitions were introduced in the criminal law in line with the *European Convention on Cybercrime* (soon to be ratified by Bulgaria) and a new chapter, „Computer Crime", was added. It contains rules on the criminal prosecution of various acts against the security, inviolability and proper operation of computer systems and computer information.

- *Required legislative amendments*

The amendments to the *Criminal Code* made in 2002 are a **serious step** towards bringing the Bulgarian criminal law into line with international standards, both in terms of the range of incriminated corruption offences and in terms of the type and amount or duration of the penalties envisaged for the perpetrators. Regardless of the numerous changes, however, **a number of issues should be addressed as they still need to be regulated**:

- **The clarification of the concept of „public official"** is still a topical issue, as the current definition also covers some persons in the private sector.
- **Police investigators should be urgently added to the category of individuals considered to occupy responsible official positions**, so that they could held liable in that capacity.
- **The title of the section „Bribery" in the *Criminal Code* should be modified** as it now covers both bribery and trade in influence.
- The expanded scope of the subject of bribery should go hand in hand with **an accurate and unambiguous definition of the term „benefit"** that should exclude any doubt that criminal repression is unduly intensified. The new approach to the *corpus delicti* of bribery also entails a new formulation of art. 307a. It should be specified that the *corpus delicti* of bribery is forfeited for the state where the benefit is material.

In addition to the current penalties, **fines should be introduced not only for bribery but for a number of other malfeasances motivated by self-interest** as they may also be corruption acts in their nature.

The existing rules on corruption offences in the *Criminal Code* largely meet modern standards. Thereafter, a decisive will is needed to implement the new criminal legislation and to enhance the capacity of law enforcement and the courts to combat corruption. For that purpose, training programs for police officers and magistrates should be introduced. Adequate interpretation of the new rules by the courts is especially important for their enforcement, as is the co-ordination between court caselaw and the explanatory reports to the relevant international instruments.

C.1.2. The Role of Criminal Procedure in Combating Corruption

The existing procedural difficulties and obstacles in the process of investigation and prosecution of any crime, and corruption in particular, require relevant amendments to the *Code of Criminal Procedure* to enhance the efficiency of criminal proceedings and ensure the timely defense of the prosecutorial interest of the state.

Although no such amendments were made in 2002, in November the government prepared and presented to the National Assembly draft amendments to the *Code of Criminal Procedure*. The draft suggested the following important changes:

- Provisions to **accelerate the development and closure of criminal cases** (reducing the number of cases remitted by the courts to the public prosecution, changing the rules on the appeals against warrants of public prosecutors to discontinue the proceedings, etc.) in order to improve the combat against crime and corruption in the criminal process.
- **Reinstatement of the rules on police investigation (that were in force in the beginning of 2000) free from the redundant procedural formality of the amendments made in 2001.** This legislative approach should enhance the swiftness, the operational capacity and the good results of police investigation.
- **Reinstatement of the rules on plea bargaining**. This new institute had been successfully introduced in Bulgarian law in the beginning of 2000 and later became a flexible tool to speed up criminal prosecution and to resist corruption.
- **Introduction of the so-called private-public proceedings** in order to free the courts, the prosecutors and the investigating authorities from some of their workload. Such proceedings existed in Bulgarian law at the end of the 19th century and many European countries are familiar with them. The term is used to denote a procedure that develops based on a bill of indictment but can only start following a request by the victim.
- **The defendant will be able, after a period of time substantially exceeding the maximum term of investigation, to request the court to hear his or her case on its merits** (new art. 239a). Hence, a statutory mechanism will exist to prevent corruption in the judiciary. Defendants are subjected to numerous restrictions -

measures for non-absconding, other forms of procedural coercion, etc., and the law should enable them to seek the timely hearing and resolving of their cases by the court. The proposed rule should serve as an incentive for the public prosecution to finalize the pre-trial stage on time, within the statutory time limits, and should reduce the opportunities for lengthy investigations in contravention of the law as a method to exert corrupt pressure on the defendants.

The draft presented by the government triggered contradictory reactions among the magistrates. According to some opinions, the future amendments to the *Code of Criminal Procedure* should ensure time limits for investigation, submitting the bill of indictment to the court and finalizing the court stage, coupled with strict personal liability for failure to observe the deadlines. They should also limit the instances of remitting cases for additional investigation (remittance by prosecutor to investigator or by court to prosecutor) and a simplified procedure should be made available to arrest suspects and accused having committed serious offences. The Supreme Prosecution Office of Cassation, in turn, believe the proposed new rules in the *Code of Criminal Procedure* would not contribute to speeding up criminal prosecution but would rather affect adversely the work of the prosecution offices. Some representatives of the Supreme Prosecution believe the legislation should guarantee the key role of public prosecution at the pre-trial stage and ensure better co-ordination among public prosecutors, investigators, policemen and experts in various areas to collect fit evidence.

The diverse views about and the contradictory reactions to the draft, as it stands now, solicit an **in-depth discussion on all proposals**, including that to elaborate a brand new *Code of Criminal Procedure*.

C.1.3. Civil and Administrative Substantive Law and Procedure

The reforms of civil and administrative law and procedure could significantly foster the prevention of corruption in the administration of justice. In that sphere, however, appropriate legislative solutions are still being sought, whereas the enforcement of the existing legislation has not exhibited ostensibly its anti-corruption potential.

- *Measures undertaken*

The amendments to the *Code of Civil Procedure* (in force as of November 11, 2002) brought about a number of rules intended to improve civil proceedings, primarily in terms of accelerating the procedure and ensuring procedural economy of time and effort, to make the administration of justice more efficient and **shrink the chances for corruption as a result of the lack of reliable protection in the case of slow and inefficient procedure**:

- Chapter 12a of the Code was amended by **extending the list of cases that may be handled in summary proceedings**. Similarly, now more cases are not subject to appeal before the Supreme Court of Cassation in order to prevent that court from being overloaded with petty cases and to speed up their resolving. Differentiated criteria have been introduced for the quantum of the claim depending on the type of case (civil or commercial).

- **A new ground for cassation appeals was added, *viz*. unjustified judgment**, thus providing stronger guarantees against incorrect judgments made by lower court instances.
- The Supreme Court of Cassation now has **fewer opportunities to remit cases** back to the court of appeal. This should stop the endless „circulation" of cases between those two tiers of the system. If the second judgment is appealed against, the Supreme Court of Cassation shall decide the case on its merits.
- **Considerable amendments were made to the execution proceedings**. This is a „corruption-friendly" area that had remained almost unreformed over the past 13 years. The court of appeal can now issue a writ of execution based on a judgment subject to interim enforcement. A new ground for execution was added - the excerpts from the Central Pledge Register; that would extend the chances of companies to finalize more quickly the process of enforcement. Appeals against the steps taken by the bailiff were streamlined as they are now only possible before one instance (the district courts) and the court has to pronounce on the appeal within 30 days. There are more detailed rules on the public sale of movables and real estate. Detailed provisions will govern the execution against securities, including dematerialized ones, and against stakes and interests in commercial companies. This also creates better opportunities for a swift procedure and for the efficient protection of the interests of creditors.

The intention is that the latest amendments should speed up and improve civil proceedings and the execution proceedings in particular, and better protect the interests of the parties, thus helping **confine corruption in the administration of justice in civil cases**. At the same time, people could be a bit skeptical in their expectations, as the amendments are to be implemented by unreformed courts which work with very few judges, all of them overloaded, most of them lacking a solid professional background, without enough court rooms and equipment, with scarce budget and along with the painful issue of the security of court buildings and access thereto. In addition, the chances of parties to procrastinate the cases, including through corrupt means, have not been fully eradicated.

The *Draft Law on the Forfeiture to the State of Any Property Acquired by Criminal Activity* prepared by the Ministry of Interior gave rise to heated debates. Two key measures suggested in the draft are noteworthy:

- A **complementary financial sanction** is introduced in addition to, and independently of criminal liability. Any asset worth at least 30,000 levs that has been acquired directly or indirectly through criminal acts (terrorism, drugs trafficking, smuggling, money laundering, trafficking in human beings, bribery and fraud) shall be forfeited in favor of the state, provided that the acquisition should not be returned to the victim.
- A **summary procedure** (the so-called „**special proceedings"**) is envisaged for freezing and seizure in view of future forfeiture. The proceedings start on the initiative of a district prosecutor or on the basis of information notified by the bodies of the Ministry of Interior or the Ministry of Finance. The proposal of the public prosecutor

should be published in the State Gazette before the court has formed an opinion on whether on not a given criminal activity and an acquisition are necessarily linked.

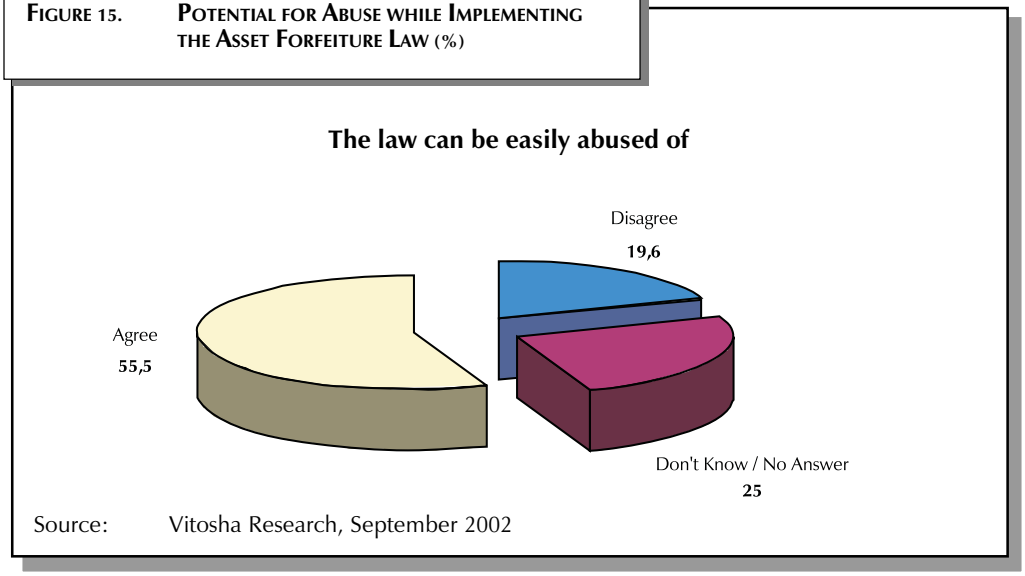
The following proposals of the draft leave room for criticism:

- The obligation to apply summary proceedings not only when criminal proceedings have been instituted for the above-listed offences but also when „sufficient data exist that an asset has been acquired directly or indirectly from criminal activity connected with other offences, but which cannot be forfeited for the state by virtue of the *Criminal Code*".
- Those proceedings would be applicable to third parties as well, i.e. those who acquired the property seized, unless the asset was acquired for consideration and the third party acted in good faith.
- The retroactive effect of the law and the rules on the burden of proof.

Although the draft provides for a mechanism to quickly forfeit and freeze assets obtained from criminal activities and may enhance the efficiency of the combat against crime, it does not provide any guarantee against the possible illegal use of the measures to favor unlawful economic or political interests. Indeed, the intended effect of the law could turn into its opposite - instead of preventing and sanctioning corruption, it may well nurture it.

The public opinion poll and the evaluation made in the course of the public debates on the draft law have revealed the high percentage (nearly 90 per cent of the interviewees) of approval and support for the measures proposed. The explanation could be attributed to the public awareness of the need for stricter and quick measures against expanding crime. At the same time, despite the large-scale approval of the draft law and the understanding about its positive potential to improve the business climate, there is still a high percentage of respondents who tend to see a lot of possibilities for abuse.

FIGURE 15. POTENTIAL FOR ABUSE WHILE IMPLEMENTING THE ASSET FORFEITURE LAW (%)



Source: Vitosha Research, September 2002

- *Forthcoming and indispensable amendments*
  - *codifying administrative procedure*

A number of steps were taken in 2002 to limit the possibility to circumvent the laws while resorting to corrupt means. In order to introduce uniform criteria, procedures and control in the existing rules on administrative procedure by way of its **codification**, **a thorough review** was made **of the system of administrative justice in Bulgaria**. The resulting Interim Report contains data about the nature and volume of cases in the pipeline, and the number of ad-

ministrative acts issued and appealed against under the *Law on Administrative Proceedings* or in some special procedures. To arrive at an efficient and modern system of administrative justice, it is recommended to consolidate the judicial review proceedings by enacting a single *Administrative Code* (a recommendation also made by *Coalition 2000* in its previous Corruption Assessment Reports) and complement it with a set of administrative courts with special jurisdiction. The system of administrative justice should be rearranged from beginning to end in order to protect the rights of citizens against infringements by the administration and to put in place a framework for external review that should improve the work of the administration.

The proposals to set up courts of special jurisdiction follow the same logic. The operation of **specialized administrative and commercial courts** may be of key importance for the efficient functioning of the central and local authorities and also resist corruption in the administration. According to these proposals, specialization would result in improvement, swiftness and good organization of administrative justice, the consolidation of case-law and the reception of international and European standards.

- *corporate administrative liability*

After the amendments to the *Criminal Code* were enacted, the most serious deficiency in terms of penalizing corruption is the lack of rules on **corporate administrative liability** for corruption crimes that the heads of legal entities commit in the interest of the respective entity. The introduction of this type of liability (given the theoretical obstacles to introducing corporate criminal liability and the inapplicability of the law of torts to engage civil liability in the event of corruption) **remains the sole way to sanction corporate corruption**. The need for quick legislative steps along these lines stems from the commitments under some anti-corruption conventions ratified by Bulgaria (*OECD Convention*, Council of Europe *Criminal Law Convention on Corruption*) and from the duty to bring Bulgarian law in line with the EU *acquis communautaire*. Bulgaria has been urged to do so by the European Commission (see the *Regular Report on Bulgaria's progress towards accession*, 2001), the Council of Europe (the GRECO report 2002) and the OECD (evaluation of the Corruption Task Force of 1999).

Although the government has included the relevant task in the *Program for the Implementation of the National Anti-Corruption Strategy*, no amendments to the *Law on Administrative Offences and Penalties* have been put forward yet to envisage financial sanctions for legal entities on account of criminal offences committed by their managers.

- *commercial law*

Previous amendments to the legal rules on commercial insolvency have not entailed any acceleration of the insolvency proceedings. The number of long pending insolvency cases and of new insolvency proceedings remains too large. The substantive and procedural rules on insolvency should be changed so as to limit the conditions for seeking quicker and more appropriate court orders and judgments by way of corrupt practices. The *Draft Law Amending and Supplementing the Commercial Law*, submitted to the National Assembly in December 2002, has rules to accelerate the insolvency proceedings and makes some proposals with respect to corporate governance (enhancing the legal guarantees for the participation

of minority shareholders of general meetings of shareholders, management and supervision in joint-stock ventures, and rules to avoid conflicts of interests), so as to restrict the possibilities for abuse and increase transparency. Changes in this area are especially important for the development of corruption-free commercial and business operations in the country, but any such changes should be carefully thought over and discussed with all stakeholders. That would help arrive at rules meeting practical needs and evade the turbulence of frequent changes generating instability and insecurity.

Although the review of the legislation that forms the legal basis for the anti-corruption operation of the judicial system in 2002 showed some clear progress, the **pace and the quality of changes** as a whole remain **unsatisfactory**. The same finding applies to all legislative instruments forming the general legal environment for handling corruption, in particular those that regulate the work of the administration and the business environment. This is further illustrated by public opinion polls - according to the public, in 2002 the deficiencies in the existing legislation were an important factor that, in addition to inefficient law enforcement, contributed to the wide spread of corruption.

C.2. Organization (Structure and Governance) of the Judiciary. Its Role in Combating Corruption

The reforms of the judiciary that concern the structure, governance and principles on which it is based and operates have not resulted in an efficient model of law enforcement and administration of justice despite their key role in successfully counteracting corruption. Since the beginning of 2002 the search for new solutions in that respect has been persistently linked to the idea to amend the Constitution. Decision No. 13 of the Constitutional Court delivered at the end of 2002 (see above) has only reiterated that perception. As the debate for constitutional amendments would still have to go through a long process of finding generally acceptable solutions, at least two points should be kept in mind: **firstly**, the existing constitutional model has not been completely exhausted yet and, up until any amendments are passed, it still enables a good deal of stronger anti-corruption measures; and, **secondly**, the anti-corruption potential of many of the latest amendments to the *Law on the Judiciary* that were declared anti-constitutional should be reproduced in new legal provisions, while duly taking into consideration the decision delivered by the Constitutional Court and its reasons.

C.2.1. Governance

The result of the implementation of anti-corruption legislation and measures within the judiciary depend on the improvement of the administrative management and on the model of interaction and distinguishing between the judiciary and the executive.

The amendments to the *Law on the Judiciary* established the requirement to set up a **reporting system within courts, public prosecution offices and investigation services, adopting codes of ethics for magistrates and employees in the judicial system,** etc. By Decision No. 13 of 2002, the Constitutional Court declared anti-constitutional the provision obliging the Minister of Justice to draft **an annual consolidated report on the work of the bodies of the judiciary** (on the basis of the annual reports and statistical information submitted by the courts, the public prosecution

and the investigation services) and to present it to the National Assembly after discussion at the Supreme Judicial Council. This requires an appropriate solution for introducing an accounting system, which is in compliance with the constitutional principle on the mutual checks and balances in the operation of the three branches of power, without affecting the independence of the authorities administering justice.

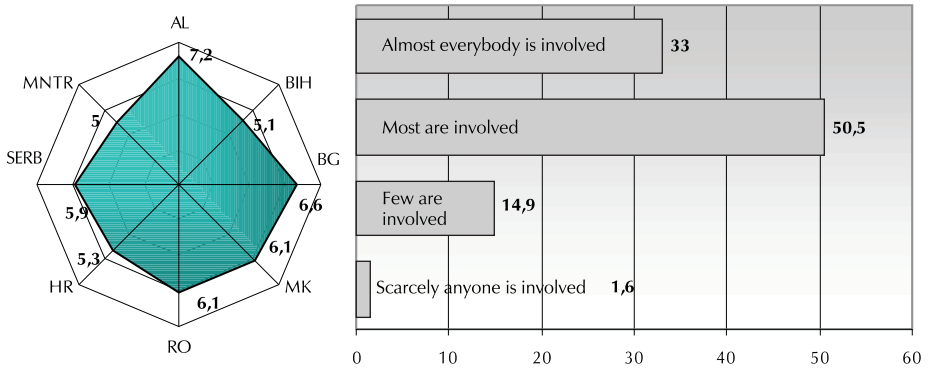
Likewise, the attempt to redefine the powers of the Supreme Judicial Council as a body governing and representing the judiciary, and the powers of the executive as represented by the Minister of Justice gave rise to serious debates, and even to accusations that the government would interfere with the judiciary. The recommendations for the institution-building of the Supreme Judicial Council set out in the Corruption Assessment Report 2001 are still valid. A number of measures are directly related to the fight against internal corruption and to the new powers of the Supreme Judicial Council: introduce wider **openness and transparency** in the work of the Supreme Judicial Council, develop its capacity to set **standards for the timely and good work** of the different elements of the judiciary, **the disciplinary proceedings against magistrates**, the building up of an **information control and co-ordination system**, the reinforcement of the **administrative and managerial capacity**.

It is quite necessary to free the relations of the judiciary with the National Assembly and the government from any political influence. Solving that issue also forms part of the constitutional problems about the composition of the Supreme Judicial Council and the structure of the judiciary. The recommendation that the work of the judiciary and its units should be more transparent remains unchanged.

C.2.2. The Role of the Court, the Public Prosecution and the Investigation in Combating Corruption

The improvement of the structure of the judiciary and the interaction among its major components are very important for **the successful investigation, detection and prosecution of corruption**. Finding a solution to this problem should take into account the **specificity of the anti-corruption measures at different structural units**. Under the Constitution present, the judiciary consists of the courts, the investigation and the public prosecution. This is in fact the hottest issue: should the public prosecution and the investigation remain within the judiciary, or should the public prosecution move to the executive and the investigation to either the public prosecution or the Ministry of Interior. The „cons“ derive from the different functions of the current three branches of the judiciary and are based on the concept of „judiciary“ which traditionally comprises only the courts. The „pros“ stem from the risk of the public prosecution becoming politically dependent if it became part of the government. As regards the proper location of the investigation services, account should also be taken of the need to have guarantees for independence and the need for efficient interaction with law enforcement. In historical aspect, the currently criticized constitutional model, that was chosen in 1991, resulted from an aspiration to guarantee the widest possible independence of the public prosecution and the investigation, given the negative experience with their full subordination and politicization in the former totalitarian state.

FIGURE 16. SPREAD OF CORRUPTION AMONG JUDGES* (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, October '02

Source: CMS of *Coalition 2000*, October 2002; SELDI, January 2002
(*) Note: The maximum value of the index is 10.0 indicating the highest possible level of corruption. The minimum value is 0.0 indicating total absence of corruption.
Legend: AL - Albania; BIH - Bosnia and Herzegovina; BG - Bulgaria; MK - Macedonia; RO - Romania; HR - Croatia; SERB - Serbia; MNTR - Montenegro.

The general structure of the judiciary cannot be changed unless the Constitution is amended. However, the Constitution does not provide for any detailed rules on the public prosecution and the investigation. It is thus possible to **amend the *Law on the Judiciary*** and find solutions that would entail wider accountability, independence of political turmoil, better transparency and interaction. The lack of compulsory international or European standards about the way in which a judicial power should be structured means that a good solution could be found to match the Bulgarian conditions.

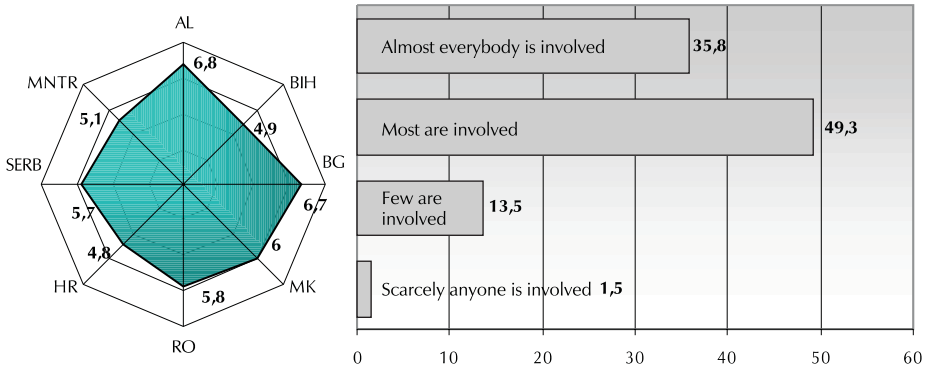
The problems of the investigation and the public prosecution in the context of the anti-corruption dimensions of judicial reform deserve a special emphasis not only because they currently form part of the judiciary on an equal footing with the court. The key reason is that, due to the nature of their functions, their work is and is supposed to be - much less public and open. Therefore, in addition to the general anti-corruption measures, specific anti-corruption guarantees are necessary for those bodies. Moreover, their work directly reflects on the way in which courts administer justice.

- *The public prosecution*

The need to undertake reforms with respect to the public prosecution and inside the public prosecution has remained a topical issue in 2002.

The amendments to the *Law on the Judiciary* put the regional, district and appellate prosecutors under an obligation to compile and submit to the Inspectorate with the Ministry of Justice **information about the opening and movement of cases** (art. 115(3)), whereas the Prosecutor General has to draft an **annual report on the work of the public prosecution** and submit it to the Minister of Justice for inclusion in the annual report on the work of the judicial system (art. 114(6)). The previous restriction that prevented the Inspectorate with the Minister of Justice from scrutinizing the activities of the Prosecutor General, the Supreme Prosecution Office of Cassation and the Supreme Administrative Prosecution Office was abolished. As those amendments were declared anti-constitutional, the need for well-thought **guarantees for transparency and accountability in the work of the public prosecution remains**.

FIGURE 17. SPREAD OF CORRUPTION AMONG PROSECUTORS (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, October '02

Source: CMS of *Coalition 2000*, October 2002; SELDI, January 2002

Given that public prosecution has a uniform and centralized structure, every prosecutor is subordinate to his or her superior and all prosecutors are subordinate to the Prosecutor General. The Supreme Prosecution Office of Cassation insists that the existing hierarchical structure and governance should be preserved, the reason being that these features guarantee the uniform application of the Constitution and the laws throughout the country and protect prosecutors at the local level from political or other influence incompatible with the interests of criminal justice. This approach is criticized for offering no mechanism for accountability of the Prosecutor General and no legally formulated forms of subordination as well as for the existing practice of orders of superior prosecutors to be given orally without being documented, which creates opportunities for informal pressure inside the public prosecution system.

The need for a **mechanism that guarantees the accountability and responsibility of the Prosecutor General** has been better articulated over time, albeit divergent views as to whether the Prosecutor General should report to the National Assembly or the Supreme Judicial Council or the Ministry of Justice, or if it would be appropriate to oblige the Prosecutor General to answer parliamentary questions. While these issues relate to the possible changes in the structure of the judiciary as set out in the Constitution, some of them could also be solved within the framework of the existing model and should not be delayed. The public prosecution concentrates a tremendous volume of information and power resources, so the **measures of self-control appear insufficient** to ensure the lack of abuse, nor is it sufficient for the steps to make it more transparent to be solely initiated by the prosecution. Regardless of the place of the public prosecution in the system of state authorities, **statutory and institutional guarantees are necessary for independence, transparency and accountability**.

A series of anti-corruption measures were undertaken inside the public prosecution. **Three specialized investigation units** were set up within the Supreme Prosecution Office of Cassation: **on malfeasances and corruption, on organized crime, and on economic crime and money laundering**. The measure is aimed at improving the methodological guidance and increasing the effectiveness of the investigation of this group of offences.

The Supreme Prosecution Office of Cassation has launched **special monitoring of all corruption-related crimes**. As regards the most typical of all corruption offences - bribery - the district and appellate prosecution

offices collect and summarize information and provide it on a monthly basis to the Supreme Prosecution Office of Cassation which, in turn, consolidates all data and proposes specific measures to accelerate the investigation of cases. In addition, information is regularly gathered on other corruption-related crimes as well, *e.g.* in banking and in the privatization area.

A **special unit** has also been set up composed by prosecutors from the Supreme Prosecution Office of Cassation with the main task to receive, assign and investigate **any complaint of corruption that citizens have submitted** to the office. However, the required steps have not been undertaken to make the citizenry aware of that opportunity. The public is not familiar with the working procedures of that unit, nor with the duties and responsibilities of the prosecutors working there.

According to the data of the Supreme Prosecution Office of Cassation, from January 1 1999 to July 31, 2002, 910 individuals were sentenced for corrupt practices. Of them, 80 were sentenced for taking bribes, as follows: twenty in 1999, twenty-five in 2000, twenty-five in 2001, and ten in the first half of 2002. At present, there are reportedly 601 pre-trial proceedings against persons having committed corruption offences. Despite the lack of a single information system and of a uniform approach to the number and type of crimes referred to as „corruption-related", the statistical data give some idea about the volume and the results of the work of the judiciary. There are, however, no data about the discontinued and pending proceedings. There is no information about corruption offences committed by magistrates either.

In view of improving the organization of public prosecution and enhance its role in combating corruption, it is recommended to study and analyze the foreign experience of setting up **special structures to investigate serious**

TABLE 5. OFFENDERS WITH SENTENCES THAT HAVE COME INTO EFFECT IN CORRUPTION-RELATED CASES 1999 - JULY 31 2002

Period	Provision of Criminal Code									Penalties Imposed				Executed Penalties	
	201-205	219	220 para 1	224	228	257	282-285	289	301-307a	Effective imprisonment	Conditional sentencing	Penalty	Others	Effective imprisonment	Others
1999	89	10	1	0	0	0	10	0	20	11	80	37	2	11	2
2000	210	8	2	0	1	1	32	0	25	15	161	99	4	15	2
2001	222	21	2	0	0	1	36	0	22	17	146	126	13	19*	8
January - July 31 2002	153	3	1	0	2	4	21	0	14	19	105	72	2	19	1
Total	674	42	6	0	3	6	99	0	81	62	492	334	21	64*	13
Acquittals 1999 to July 31 2002													106		
Defendants in pending, 1999 to July 31 2002													601		

Source: Supreme Prosecution Office of Cassation (based on data supplied by district prosecution offices)
* One person is wanted for the execution of the penalty

instances of corruption. Especially interesting along these lines is the National Anti-Mafia Directorate founded in 1992 in Italy as a central authority in charge of coordinating the investigation and prosecution of organized crime. In response to some corruption-related scandals in Spain, in 1995 a special prosecution was set up there within the general prosecution service in order to investigate corruption-related economic crimes. The office started its operations in 1996 and brings together the efforts of public prosecutors, tax inspectors, policemen. That combination of diverse skills and the specialized training of the members of the unit make them very flexible in the investigation of corruption crimes. The work of the office is also appreciated as it provides a better ground for the investigation of corruption offences than ordinary prosecution offices at the local, provincial or regional level could provide. Recently a separate structure was also set up in Romania, *viz*. the Anti-Corruption Prosecution. It forms part of the national prosecution service which is subordinate to the executive. Given the dynamics of corruption-related crime in Bulgaria, the question of whether a new unit could be set up inside the public prosecution and be vested with powers to specifically combat corruption deserves to be discussed.

- *The investigation*

The amendments to the *Law on the Judiciary* changed yet again the structure of investigation in Bulgaria. The **National Investigation Service** was restored (it had existed until 1998) as a body managing the other investigation services from an administrative and financial point of view and providing them with methodological assistance. According to the amendments, the National Investigation Service should have specialized departments for the investigation of cases that are particularly complex and of crimes committed abroad. The Director of the National Investigation Service is given the power to coordinate the investigation operations of the district services and their interaction with other government agencies.

In order to be efficient, however, the amendments to the *Law on the Judiciary* should be coupled with the corresponding amendments to the *Code of Criminal Procedure* that should reflect the new structure of investigation and the powers vested in the reinstated National Investigation Service. The existing rules of that Code mirror the old organization of the investigation when it was directly subordinate to the public prosecution and had very limited possibilities to get actively involved in the investigation of serious offences. The data of the National Investigation Service reveal that in 2002 the Prosecutor General used 27 times his power under art. 172a(3) of the *Code of Criminal Procedure*, *viz*. to assign crimes that are complex in fact or in law to the National Investigation Service (compared to only two such cases assigned to the former Specialized Investigation Service in 2001) but this is far below the real capacity of the service. Amendments are needed which should enable the National Investigation Service to organize the investigation of serious crimes under the procedural control of the public prosecutor.

To make the investigation of corruption crimes more efficient, additional measure are needed along the following lines: developing methodological instructions for the investigation of corruption crimes; introducing special monitoring by the National Investigation Service of corruption-related pre-trial proceedings; improving the joint operations with the bodies of the Ministry of Interior in the investigation of serious corruption crimes.

TABLE 6. MAJOR INVESTIGATION INDICATORS

Indicators	Malfeasances (art. 282 - 285 of the Criminal Code)				Bribery (art. 301 - 307 of the Criminal Code)				General economic crime (art. 219 - 227a of the Criminal Code)	
	1999	2000	2001	I semester 2002	1999	2000	2001	I semester 2002	2001	I semester 2002 г.
1. Unclosed from earlier periods	2487	2533	2634	2509	183	151	127	113	1278	1120
2. Newly instituted	915	818	828	388	75	43	46	21	469	163
3. Received, reopened and transformed	72	164	128	100	10	12	18	12	105	63
4. Total cases in proceedings	3474	3515	3590	2997	268	206	191	146	1852	1346
5. Closed with a recommendation:	818	848	1009	536	86	74	75	38	707	339
- to bring to court	212	264	251	112	51	43	49	19	170	75
- to discontinue proceedings	497	475	612	333	23	21	16	11	442	212
- to suspend proceedings	109	109	146	91	12	10	10	8	95	52
6. Remaining open at period end	2556	2630	2512	2435	174	126	113	107	1120	987
7. Accused persons:	338	380	323	164	60	53	57	20	193	85
- arrested	10	9	3	4	12	5	4	2	1	8
- foreign nationals	1	4	0	0	0	0	0	0	3	0
8. Damages inflicted (BGN)	6443573802	219878016	198147366	10736028	22091312	97021	14962	700	21740874	3424571
9. Additional damages found (BGN)	291215080	2372	30752	0	3960000	0	0	0	9255869	0
10. Damages redressed (BGN)	306248438	938226	158667242	1847945	15462312	88675	7282	260	5072807	22
11. Collateral provided (BGN)	16496119	28065	146491	0	5000000	0	1560	0	0	0
12. Signals	95	260	408	159	10	11	12	1	162	80
13. Cases assigned by Prosecutor General									2	27

Source: National Investigation Service

The place of investigation in the structure of the judiciary is still an open issue which should also be addressed in the discussion of the future constitutional amendments. In addition to other proposed amendments, it is suggested that investigation should be removed from the judiciary and made part of the Ministry of Interior. Possible future changes along these lines, however, should be backed by adequate guarantees for the **independence** of investigators when they conduct preliminary investigation in criminal cases and by powers that enable them to **manage and supervise other bodies performing procedural steps or functions in the criminal process**.

C.2.3. Institutions outside the Judiciary that Affect Directly its Operation

The measures to reform the judicial system in view of combating corruption are still isolated from the measures to reform the institutions whose activities are directly linked to the functioning of that system. At the same time, the debate over judicial reform has made it clear that a number of institutions outside the judicial system may play a key part, positive or negative, for the anti-corruption efforts of courts, public prosecution offices and investigation services. Seen positively, this fact fosters the search for more efficient forms of cooperation and interaction to prevent and detect any corrupt acts. The drawbacks are mainly connected with the existence of corrupt practices outside the process - i.e. before or in parallel to the steps undertaken by the investigation, the public prosecution and the court. Besides the direct negative impact on the public perception of a high level of corruption and on the trust in the institutions designed to combat corruption, those drawbacks may directly inhibit the work of the judiciary.

- *The Ministry of Interior in the combat against corruption*

The work of Ministry of Interior (MoI) as a whole and of the **National Police Service** in particular, directly bears on the efficiency and promptness of those bodies of the judiciary that are involved in the criminal prosecution of corruption crimes. In 2002 no flexible legislative solutions were adopted for the place and role of police investigation, for improving its contribution to the operational capacity, procedural economy and better quality, for preserving or abolishing the preliminary police inquiry and its link to the institution of police investigation. The advantages and disadvantages of police investigation proceedings, as analyzed in the Corruption Assessment Report 2001 on the basis of the case-law relating to the amendments to the *Code of Criminal Procedure* made in 2000 and 2001, were taken into consideration in the new draft amendments to the Code which provide for more sophisticated rules on police proceedings. It is still necessary, however, to improve the legal knowledge of police investigators (a total of some 12 000 officers) so as to ensure efficient investigation within the confines of the law and the collection of fit evidence. All this would substantially improve the work of all components of the judicial system - investigation services, public prosecution offices and the courts.

To make anti-corruption work more efficient, **the status of the specialized anti-corruption unit at the National Service for Combating Organized Crime** was changed (it is no longer a „sector“ but a „department“) and its

operational staff was doubled. The department has the function of combating corruption both within MoI and in the state and local administration.

During the first half of 2002 the services of the Ministry of Interior detected 1089 malfeasances and 34 cases of bribery. While malfeasances come third in percentage terms among all economic crimes (14.3 per cent) and are often connected with corrupt practices, bribery is rather insignificant (just 0.5 per cent).

TABLE 7. EXPOSED CORRUPTION CASES

First semester	Malfeasances (art. 282-285 of the Criminal Code)	Bribery (art. 301-307a of the Criminal Code)
2001	1 197	38
2002	1 089	34

Source: Ministry of Interior

The above data are rather in-house statistics on the rate of detection of corruption. However, the criteria on which those statistics are based remain unclear. This fact, along with the **lack of links to investigation, prosecution and court statistics**, makes it impossible to get a more precise view about the detection of corruption crimes and the extent to which they are punished. Because of the lack of essential indicators, it is not possible to see where the weak point in the enforcement mechanism is - the police, the investigation, the public prosecution or the court. The different statistics kept by different units and bodies of the judiciary are not based on the same indicators or system, so the data tend to be incomplete and contradictory. The required transparency is not present either.

Hence, it is urgent to put in operation the **single information system for combating crime** provided for in the *Law on the Judiciary* in order to ensure proper interaction and the exchange of data relative to the suppression of crime among the institutional information systems of the bodies of the judiciary, the National Assembly, MoI, the Ministry of Defense, the Ministry of Justice and the Ministry of Finance. A single system would report the data about the registration, investigation and prosecution of crimes, including corruption-related ones, and would also facilitate the work of law enforcement and the courts, narrow down the room for speculation and unauthorized use of information about the fight against crime. It would also provide consolidated information on the dynamics of crime, the criminal process and the execution of penalties on the basis of uniform criteria.

As far as the area of justice and home affairs is concerned, the draft **EU Treaty Establishing a Constitution for Europe** prepared in 2002 requires the harmonization of the legislations of Member States as well as closer cooperation between police and justice. Debates are currently under way to set up institutions like a European Border Guard and a European Public Prosecutor, and introduce a European arrest warrant. As a EU candidate country, Bulgaria should do its best to harmonize its domestic laws with EU legislation before joining the Union and to enhance the professional skills of people working in the field of justice and home affairs. Especially important for the combat against domestic and transborder corruption is

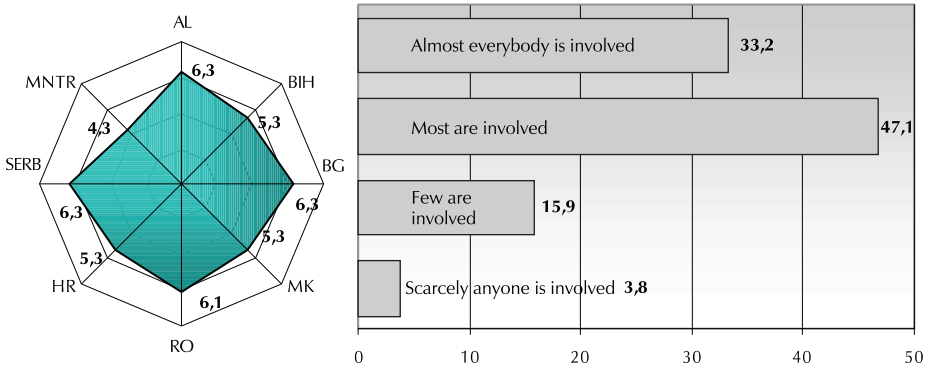
the fact that Bulgaria will become an external border of the Union and should thus meet the EU criteria for security and efficient administration of justice.

Besides the police, various tasks in combating crime are entrusted to the National Service for Combating Organized Crime, the National Security Service (in the event of corruption affecting the security of the country), the National Border Police Service (in protecting the state borders and other areas, as defined in the statutes, where it operates), the territorial structures of the National Police Service, the National Security Service and the National Service for Combating Organized Crime at the regional Directorates of Interior and the Metropolitan Directorate of the Interior. The efficiency of their work is often of great importance for preventing corruption and assisting the bodies of the judiciary to detect and prosecute corruption-related crimes.

- *The Bar*

The debate over the anti-corruption dimensions of judicial reform helps consolidate the view that some attorneys-at-law assist, in a number of cases, the spread of corrupt practices in the judicial system and in the administration. Those attorneys either act as **intermediaries** or benefit themselves while falsely pretending that they are corrupt intermediaries. In order to put an end to those negative phenomena, the Bar should tighten its control.

FIGURE 18. SPREAD OF CORRUPTION AMONG LAWYERS (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, October '02

Source: CMS of *Coalition 2000*, October 2002; SELDI, January 2002

At the end of 2002, a *Draft Law on the Bar* was introduced in the National Assembly. The draft reflects an aspiration to improve the reputation of the legal profession and remove the drawbacks in the work of the Bar. Many of the proposed changes in the legal framework of the Bar are directly or indirectly focused on achieving those goals. Strict criteria shall be implemented for access to the legal profession, *e.g.* a legal apprenticeship period of at least two years and a successful Bar admission exam. Assistant-attorneys will be introduced. The duties of attorneys under the law shall be extended and members of the guild will have to abide by **a number of ethical rules and norms of conduct in order to sustain the trust and respect that are vital to the profession**. The **disciplinary procedures** for failure to comply with the statutory duties and the code of ethics have been improved. There are rules on the associations of attorneys and on the obligation of attorneys to provide **free legal assistance** to persons lacking resources or entitled to

alimony or support money.

Some criticism could be addressed on account of the lack of a wider professional and public debate on the proposed amendments, and the slow process of passing the new draft.

Another lingering issue concerns the possibilities **to reduce the excessive workload of the judiciary** as this factor often delays the proceedings and sometimes even worsens the administration of justice and opens the door for corrupt practices to accelerate the process. In that respect, **alternative dispute resolution (ADR) means** are still underused. Forty to sixty per cent of disputes in countries with firmly rooted and well functioning judicial systems are resolved through ADR. The court should only deal with matters of principle that concern human rights, criminal offences, large material claims, and not waste time with disputes that might be resolved more quickly by arbitrators or mediators. NGOs could greatly help advertise and introduce the means of alternative dispute resolution.

C.2.4. The Status of Magistrates. Professional Skills and Recruitment

The status of magistrates (judges, public prosecutors and investigators) depends on the procedure for their appointment and is based on the principles of independence, irremovability and immunity from criminal prosecution. Recognition of and compliance with that status largely predetermines their conduct in the process of combating corruption, either in their capacity as members of the judiciary who investigate or prosecute corruption, or as possible perpetrators of corrupt acts.

- *Criteria for appointment and obtaining irremovability. Qualification*

There are not yet uniform methods and criteria to organize competitions when appointing judges, or to monitor their work before their becoming irremovable or their promotion. The amendments to the *Law on the Judiciary* provided a system of measures to ensure respect for the status, to improve the professional skills and the recruitment and selection of magistrates. Some of those amendments, however, were declared anti-constitutional, which calls the necessity for finding their substitutes.

- **Competitions** were partially introduced for the appointment of magistrates. The law requires that a competition must be held when junior judges and public prosecutors are appointed, and in the cases of initial appointment at an office within the judiciary when there is no applicant from the bodies of the judiciary, up until a competition has been advertised (art. 127a). Competitions are also required for the appointment of bailiffs (art. 150(3)) and judges in charge of registering collateral (art. 160(3)) where there are more than one applicants. Members of the court staff should also be appointed after a competition (art. 188a). At the end of 2002 the first centralized competition was held to appoint junior judges, prosecutors and investigators on the basis of *Interim Rules* adopted by the Supreme Judicial Council. Nonetheless, the required guarantees are not yet in place that the competitions would be transparent enough and their results would be objective.
- The **evaluation of magistrates** was introduced as a mandatory

requirement to become an irremovable magistrate. The amendment which provided that a negative evaluation should form a ground to remove the magistrate from office for lack of aptitude to perform the professional duties was declared anti-constitutional.

- An issue that remained unsolved concerns the introduction of **terms of office and rotation** for the senior administrative positions in the bodies of the judiciary (art. 125a). The principle of rotation was rejected already during the discussions on the draft law at the National Assembly. The rule that provided for strict terms of office was declared anti-constitutional with the motive that it went counter to the principle of irremovability of magistrates. The dissenting opinion attached to the decision of the Constitutional Court emphasizes that the irremovability of a magistrate should guarantee his independence in the performance of his duties, rather than his capacity of a manager or leader.
- The **qualification of magistrates** was covered by specific rules. As of January 1, 2003, a **National Institute of Justice** would be set up as an institution under public law. It would be in charge of providing professional training to magistrates, bailiffs, judges for the registration of collateral, court officials and the officials at the Ministry of Justice (art. 35f). As the provision for setting up the Institute with the Minister of Justice was declared anti-constitutional, this leaves open the question about the status of the institute and will frustrate its establishment.

Professional training may also be offered by specialized non-profit public benefit legal persons, with the approval of the Supreme Judicial Council. So far, the only institution that has been successful in training practicing magistrates is the Magistrates Training Centre set up in 1999 as a non-governmental organization. Amendments should ensure sustainability of the training. The future curricula should necessarily include training in the application of anti-corruption legislation. In more general terms, the training should help educate the magistrates in values and principles like impartiality, independence, intolerance to corruption, etc.

- An **obligation** was imposed on **all magistrates to declare their income and property** both upon appointment and annually thereafter. The declarations shall be filed with the National Audit Office under the *Law on Property Disclosure by Persons Occupying Senior Position in the State* (art. 135(2)). Compliance with that obligation would foster transparency and would also act as a deterrent, indeed a moral one, to corrupt behavior. The practice in application of this rule has confirmed this expectation.
- There are provisions on **ethical rules for magistrates** that should be adopted by the respective guild organizations and approved by the Supreme Judicial Council. The importance of those rules is twofold. Firstly, they must be taken into consideration when evaluating whether the applicant judge, prosecutor or investigator has the moral and professional qualities to be appointed at the respective position (art. 126(2)). Secondly, the violations of professional ethics rules form a ground to make the magistrate in question disciplinary liable (art. 168(1), point 3).

The gradual implementation of some of the above measures started at the end of 2002 and will have to be reconsidered in view of the decision

of the Constitutional Court.

The difficulties in embedding the status of magistrates generally stem from the structural problems of the judiciary under its current model. As judges, prosecutors and investigators have different functions and powers, they could hardly be given the same status. **The status of judges, prosecutors and investigators differs in practice**, due to the different degree of transparency in the recruitment, appointment and promotion policy, and due to the different hierarchical links that exist. Hence, **independence, irremovability, responsibility and immunity should be covered by a clearer and differentiated legislative solution**. This would be largely possible even in the framework of the existing structure but any future change in that structure will cast additional light on the different legal status of judges, prosecutors and investigators.

Measures are also needed **to make disciplinary proceedings more efficient**. Besides the need to specify the types of disciplinary offences and the penalties they entail, various proposals are being discussed, *e.g.* to set up a **specialized unit** with the Supreme Judicial Council to deal with corruption in the judiciary, to introduce an **independent prosecutor** to be appointed by the Supreme Judicial Council who would not be subordinate to the Prosecutor General and would investigate crimes committed by magistrates. Other proposals suggest that other bodies, *e.g.* the Parliament, the Minister of Justice, etc., should create such units or appoint such officials in the context of constitutional reforms currently debated. Unlike disciplinary proceedings, however, where the panel is composed from among SJC members by drawing lots, the resolution of court cases involving magistrates is much more difficult. Another debatable question is should - and if so how - a panel of judges be formed.

- *Limiting immunity from criminal prosecution*

The need to refine the exemption from criminal liability and the immunity of judges, prosecutors and investigators from criminal prosecution is still under discussion within the legal community and among the general public. Limiting the immunities from criminal prosecution was an issue raised by the European Commission in its 2002 *Regular Report on Bulgaria's progress towards accession* and by the Group of Countries against Corruption (GRECO) in its report on Bulgaria released in May 2002. The problem is not confined to Bulgaria but is typical of most countries in transition and is raised primarily in the context of efforts to prevent and combat corruption in the judiciary.

The major statutory changes in that respect stem from the latest amendments to the *Law on the Judiciary*. They modified the procedure for lifting the immunity of magistrates and envisage that proposals for lifting the immunity can now be made with respect to **all magistrates, including the Prosecutor General**, plus that such **proposals may be tabled by one fifth of the members of SJC**. That change was declared anti-constitutional with the motive that such proposals could only be tabled by the Prosecutor General as the public prosecution has the function to indict and engage the liability of perpetrators of crimes. This view could be opposed by saying that lifting the immunity does not form part of criminal prosecution; it is only a prerequisite for such prosecution.

A growing number of magistrates share the opinion that **immunity should be limited in a more dramatic fashion**, *e.g.* it should be possible to lift it

for any crime, not just for serious intentional crimes as is the case now, and **functional immunity** should be introduced, *i.e.* a magistrate should only be free from liability in his or her direct work.

It is noteworthy that the immunity of magistrates is primarily a constitutional issue and cannot be solved on the initiative of the judiciary or through government action alone. It can even less be handled by a decision of the Constitutional Court. Finding a solution about immunity and independence, however, should not be an end in itself. Such a solution should indeed aim to make the administration of justice completely free from corruption.

C.2.5. Court Administration. Funding for the Judicial System

The reform of the court administration, the improvement of the technical infrastructure and better funding of the judiciary would have a strong anti-corruption effect. The current organization of work of the court administration, the deplorable conditions in which the bodies of the judiciary, and their administrations, operate the serious underfinancing of the judiciary are all conducive to corruption and may easily prevent the investigation and prosecution of corruption-related crimes.

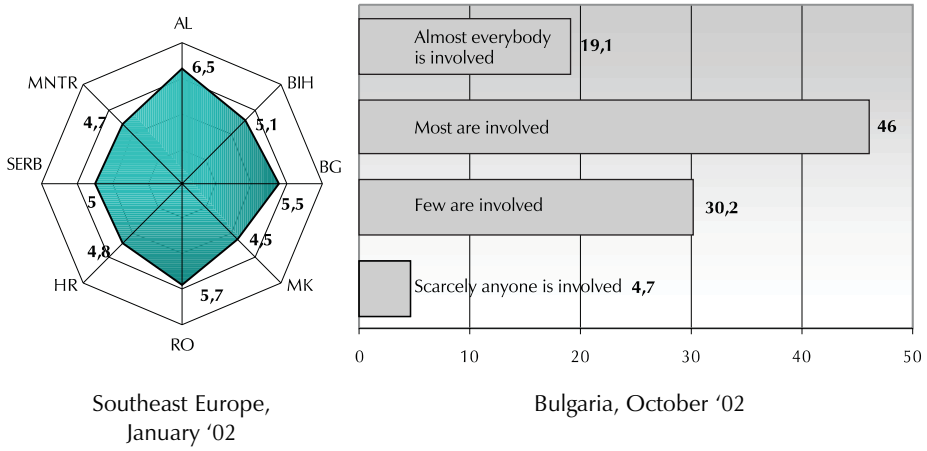
The amendments to the *Law on the Judiciary* govern the status of officials in the administrations of the bodies of the judiciary (court staff). Court staff should also be appointed on the basis of competition and this is to be applied in practice. The forthcoming enactment of internal ethical rules and mechanisms for compliance therewith would enhance the guarantees that court officials would pursue a corruption-free behavior.

The legislative amendments and the practical measures adopted to date provide partial solutions to some urgent issues but are insufficient to implement an entirely new approach to the administration of the bodies of the judiciary. Such an approach should include **case, document and staff management systems, objective criteria and transparency in the assignment of cases (assignment should not be done through discretion) and files, the provision of reliable information on their movement**, etc. The implementation of that approach is necessary to eradicate the reasons for the undue delays of cases and get rid of the corruption pressure exerted on the administrations of the bodies of the judiciary on behalf of private parties, to substantially assist the work of magistrates and to free them from purely administrative and technical tasks. For that purpose, a new piece of secondary legislation should be issued replacing the obsolete *Ordinance No. 28* and consistent with the amendments to the *Law on the Judiciary*.

Although court staff and train-the-trainers seminars are regularly held, a system of measures is still required for the **recruitment and training of court staff**.

Bringing the budget of the judiciary in line with its needs and the improvement of the technical basis and the security of the judicial system are two short-term priorities in the *Strategy for Reform of the Judiciary in Bulgaria*. As far as the budget is concerned, a specialized unit is to be set up by the Ministry of Finance and SJC that would draft and submit the annual budget for the judiciary. The amendments to the *Law on the Judiciary* furthered the principle that the budget of the judiciary would be

FIGURE 19. SPREAD OF CORRUPTION WITHIN THE JUDICIAL ADMINISTRATION (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, October '02

Source: CMS of *Coalition 2000*, October 2002; SELDI, January 2002

autonomous, as the judiciary should be independent. Thus, the Supreme Judicial Council prepares a draft annual budget and presents it to the Council of Ministers for integration with the Draft Law on the State Budget. The Council of Ministers is not entitled to change the budget; it can only express its opinion thereon before the National Assembly. The legislative procedure to discuss and adopt the government *Draft Law on the Budget of Bulgaria in 2003* stirred an open conflict between SJC and the magistrates, on the one hand, and the government, on the other, as the latter included in the draft law its own draft budget for the judiciary instead of the draft budget prepared by the Supreme Judicial Council. The view of the magistrates is that the draft budget for the judiciary proposed by the government fails to ensure the necessary financing for the normal functioning of the judicial system and for the reforms envisaged in the amended *Law on the Judiciary*.

That development clearly demonstrated the **lack of working mechanisms of inter-institutional communication, of coordinating the steps to be undertaken and on preventing inter-institutional conflicts**.

Due to the insufficient funding, the improvement of the technical infrastructure is in a deadlock. For the same reason, the **specialized security and guarding unit** to be set up with the Ministry of Justice under the amended law would hardly be able to operate efficiently in the near future. That unit indeed has to guard all court buildings, maintain the order therein and guard judges, prosecutors, investigators and witnesses. It also has, however, to assist the bodies of the Judiciary with summoning, with the execution of judgments, with the compulsory bringing of some persons to the court buildings, etc. The performance of those additional functions would not only foster security but would contribute to speeding up the proceedings and preventing the corrupt practices ensuing from the slow operation of the system.

If the poor working conditions of magistrates and court officials, the lack of technical equipment and of adequate security persist, they will continue to be factors that slow down the work of the judiciary and benefit corruption.

C.2.6. Registration System

The inefficient system of court registration in Bulgaria is one of the factors for the high level of corruption in the courts. The existing registers in

Bulgaria are mainly decentralized and are kept on paper. Some courts have introduced electronic information systems on an experimental basis but the entries in such systems entail no legal effects. As the information in the registers becomes more voluminous, it is less accessible and its handling becomes slower, if not impossible. This, in turn, puts in place conditions for **strong corruption pressures both to register some facts and to obtain information from the registers**. The procedure of registering legal persons at the company divisions of the courts is non-contentious and non-adversarial. Judges are virtually unable to review the legality of all the decisions subject to registration, *e.g.* those for changes in the governing bodies of commercial companies. Work at the company divisions of courts has no uniform standards for the promptness and reliability of the registrations and entries made and these entries could even be influenced by non-magistrates (e.g. secretaries). Persons participating in registration proceedings say that there is a tacit „fee" for such services in a number of courts. This situation not only hinders the normal development of business and turnover but fuels the steady public perception that the judicial system is corrupted.

To meet the needs of society and the economy, the registration system should be centralized, exist in an electronic form and enable the making of entries and the provision of information by telecommunications, by electronic means online. The persons would thus be able to inform within hours any third party of newly-arisen and registered facts. Third parties would be able to check the real situation with the register almost at the time of the transaction. That would reduce to minimum the chances for unlawful moves in relation to registration and receipt of information.

An appropriate way to modernize the system of registration and restrict corruption is to replace the registration in court with registration at the **Central Register of Legal Entities**. This could be done through an institution of public law (state agency) attached to a central government institution (Ministry of Justice, Ministry of Economy, etc.). When the central register is put in place, it will form the basis for building up an **Electronic Registries Center**.

The Central Register of Legal Entities would combine the relevant details of all legal entities governed by private law and state-owned enterprises (save for political parties and trade unions). The Register of Legal Entities may be merged with the Central Pledge Register. A single register would thus concentrate the information about persons and the collateral they provide, so as to avoid the unnecessary duplication of functions between the commercial register and the pledge register that might entail errors and inconsistencies. In the longer run, the Register of Legal Entities might be merged with the real estate registers under the umbrella of the Electronic Registries Center. This could only happen, however, after the national electronic cadastre has been completed and transformed into a single national data-base.

The transition to a Central Register of Legal Entities and an Electronic Registries Center, and the possible future adding of the real estate register would be a strong anti-corruption incentive and would shrink the opportunities for unlawful practices that might affect the work of the registers.

D. CORRUPTION IN THE ECONOMY

In the case of weak institutions, low administrative capacity and lack of traditions, the state's interference with the economy results in conflicting public and private interests, which create favorable environment for corruption. In this relation the spheres most susceptible to corruption risks in Bulgaria are: the state's intervention in the economy both as a shareholder and a regulator, fiscal policy, public procurement, customs, privatization and post-privatization control, and the underground economy. Introducing adequate and transparent public sector management and ensuring free competition in the private sector are the basic prerequisites for an effective anti-corruption policy in the economy.

Corruption in Transition - the Bulgarian Case

The absence of basic economic rules, combined with the state monopoly over economic resources and the slow privatization and restructuring created a favorable environment for the appearance of corruption in the beginning of transition. The lack of political will, vision and know-how for carrying out economic reforms in Bulgaria in the beginning and mid 1990s prolonged the institutional vacuum and led to two major cycles of siphoning public resources into private hands.

The first one constituted of decapitalization and unregulated privatization of state-owned enterprises through the control of their entry and exit resources by private enterprises.

The second one involved the use of financial institutions for lending to related parties, who never returned the loans.

The unregulated concentration of economic power in private hands paved the way for the development of underground economic activities, money laundering and corruption. Powerful economic groups realized their interest in preserving the *status quo* and launched attempts to capture the state through the corruption of public officials.

D.1. State Intervention in the Economy and Corruption

Economic policy liberalization and restraint of direct government intervention in the economy through subsidies and administered prices promote competition and limit the possibilities for administrative pressure and corruption. In the case of Bulgaria, where administrative and institutional capacity for the implementation of existing economic rules is still low, any further increase of state intervention in the economy is likely to create additional incentives for embezzlement and corruption.

In 2002 the government introduced several controversial measures for

intervention in the economy, which reduced business environment transparency and increased corruption incentives. The most notable among these were:

- the imposition of higher import duties for certain products;
- the introduction of subsidies for grain producers and exporters;
- the sale of bankrupt state-owned shipbuilder to another state-owned enterprise - the Bulgarian Maritime Fleet.

Such measures benefit closed-group economic interests and present a suitable precedent for future pressure on government policies. Therefore, the Bulgarian government should try to ensure adequate enforcement of existing rules before introducing new ones.

State aid is one of the major channels of government intervention in the economy. The lack of transparent rules and criteria for state aid disbursement, coupled with low administrative capacity, increase the risks of private interest pressure and misuse of public funds. After a long delay, in 2002 Parliament has adopted a *Law on State Aid* (LSA) (State Gazette no. 28/2002), which regulates the rules and conditions for control over state aid disbursement, as well as for evaluation of its compliance with the principles of free and fair competition. **The provisions of the law and the introduction of a public state aid registry are prerequisites for more transparency and better control over government decisions in this area**. However, it is still early to give a definitive evaluation of the actual LSA enforcement as practical implementation is limited. So far, the *Commission for Protection of Competition* (CPC), which is authorized by law to control state aid, in practice only registers and analyzes government decisions on subsidizing. The administrative capacity of the Commission to implement the law's provisions should be strengthened considerably to reach levels of effective control over state aid decisions. The Government should also take appropriate measures to insulate CPC's decisions against possible corruption pressures from interested parties. In this regard Parliament should consider introducing stricter fines for administrative offences and eliminating CPC discretionary power to exempt certain economic agents from obligations under the law. State aid for public monopolies did not decline in 2002, although the Government had taken explicit obligations to reduce it. As percent of GDP state aid in Bulgaria is not higher than the EU countries average but it might be expected that its distortionary effect on the economy is higher due to the poorer administrative and economic development of the country. The establishment of a new state-owned airline carrier with public resources in 2002 might create undesired state aid increase for the sector in the future. At the same time this would increase direct state intervention in the economy and would raise doubts of protection of particular private interests through public resources.

A major channel for state intervention in the economy, which is not regulated by the *Law on State Aid*, is the subsidizing of farmers and agricultural producers. Justified public suspicion of fraud and corruption in the past calls for careful monitoring and control over public agricultural subsidies. The amendments to the *Law on Support for Agricultural Producers* (LSAP) (State Gazette, no. 96/2002), which have been adopted by Parliament in 2002, are not definitive towards reducing the corruption

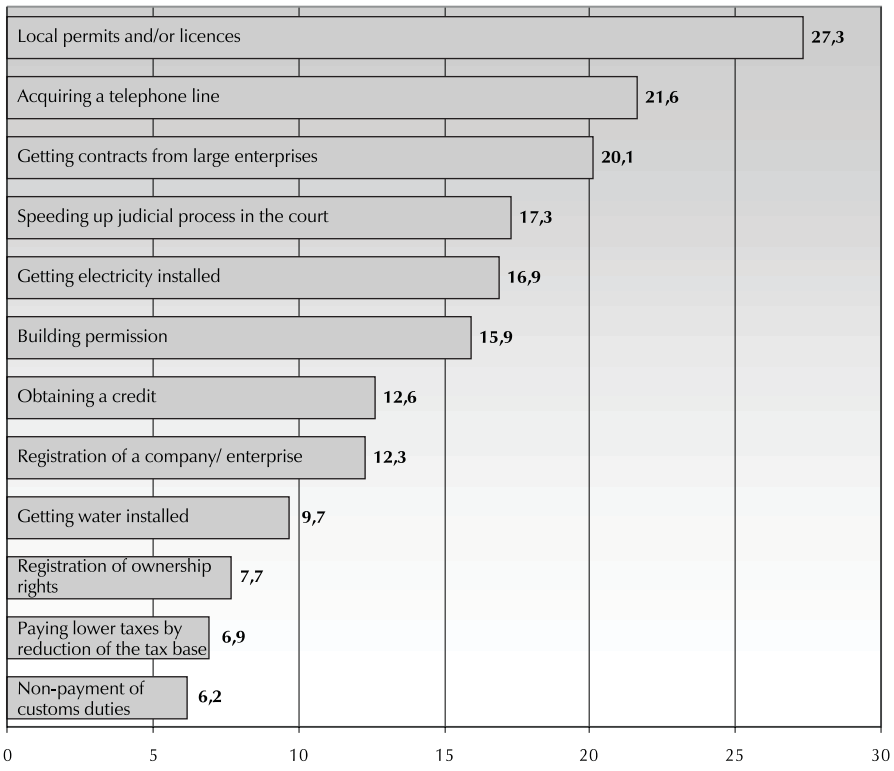
potential in the area of agricultural aid. On one hand, they reduce the risks of corruption by defining more precisely the goals and responsibilities of *State Fund Zemedelie*, taking into account the specific requirements of SAPARD EU pre-accession program. On the other hand, the amendments stipulate an increase in financing for the *Fund* (from 0.15% to 0.5% of GDP) and grant preferences to registered agricultural producers. As there is no visible improvement in the *Fund's* administrative capacity, this increases the potential for corruption. The Government should adopt with priority the following measures to curb corruption in agricultural support:

- **define a ceiling** as percent of GDP for state agricultural support;
- publicize widely the *Annual Report on the State and Development of Agriculture*, which stipulates annual agricultural subsidies;
- strengthen considerably the administrative capacity for internal financial control of *State Fund Zemedelie* and the *Ministry of Agriculture and Forestry*.

The existence of public or private monopolies in the economy distorts free market forces and leads to the concentration of considerable resources in few economic agents, which is a powerful prerequisite for the appearance of corruption. Surveys of small and medium-sized enterprises (SMEs) show that **corruption pressure from public and private companies with considerable market power remained high in 2002. There is no notable progress in state monopolies liberalization, which preserves possibilities for corruption in their customer relationships.** The areas most often reported by SMEs for requiring additional unregulated payments are fixed line telephone and electricity supply. In this relation, the government and the responsible ministries should, in parallel to gradual liberalization, embark on measures for improvement of internal control enforcement rules and administrative sanctions in public monopolies.

The lack of adequate administrative capacity and experience in anti-trust regulation enforcement, and the low financial and

FIGURE 20. SERVICES CONCENTRATING SMES' INFORMAL PAYMENTS (RELATIVE SHARE OF SMES, WHICH MADE INFORMAL PAYMENTS IN ORDER TO OBTAIN SERVICES) (%)



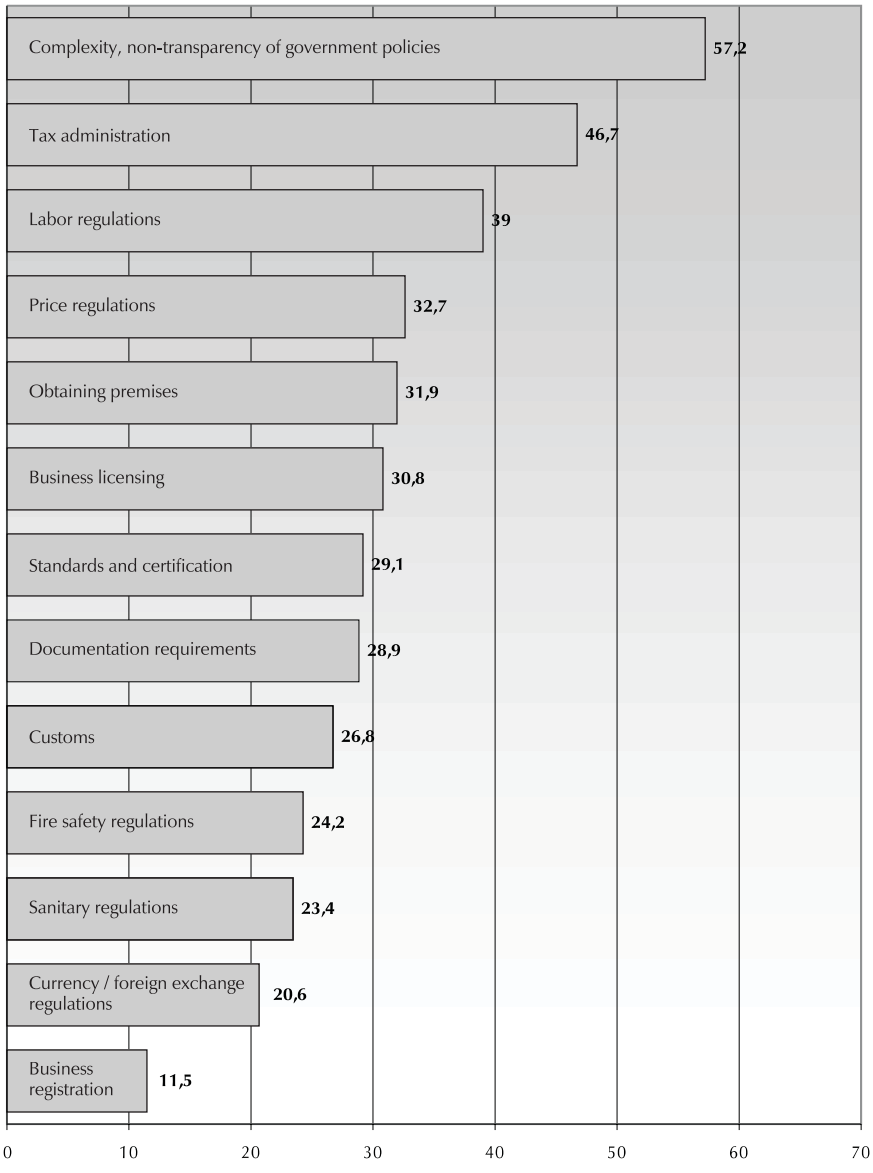
Source: Vitosha Research, Integra, Corruption in Small and Medium-Sized Enterprises, June 2002.

material sanctions imposed for breaching the existing regulations, result in ineffective protection against excessive market power concentration. In 2002 the Government launched legislative efforts to increase CPC powers. In November the Council of Ministers adopted a *Draft Law on Amendments to the Law on Protection of Competition*, which contains two major anti-corruption provisions:

- An increase in CPC's authority to block excessive horizontal and vertical market concentration in the economy;
- Stricter parliamentary control over CPC's activities.

The amendments, however, are still pending in Parliament.

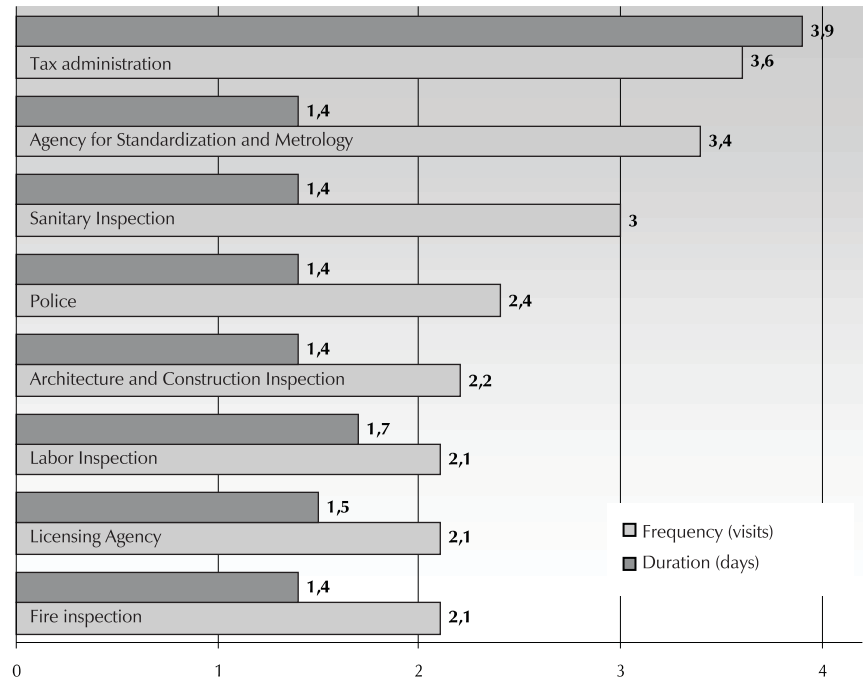
FIGURE 21. REGULATORY CONSTRAINTS TO BULGARIAN BUSINESS (% OF COMPANIES, WHICH DEEM PROBLEMS „SERIOUS" OR „EXTREMELY SERIOUS")



Source: „Self-Assessment of Administrative Barriers to Investment: Results of the Administrative and Regulatory Cost Survey" FIAS, November 2002

Limiting the freedom of economic activity through burdensome state regulation concentrates additional power in state administration and is a source of corruption. Government's policy towards business regulation in Bulgaria remains unfocused and unclear. **Government's regulatory intervention in the economy is considerable and remains one of the major sources of corrupt practices.** In May 2002 the Council of Ministers decided to ease 120 and abolish 74 of the existing 360 regulatory regimes. But by the end of 2002 there was no information that any part of this decision had been practically enforced. Meanwhile, new licensing and permit regimes constantly come into force. The number of regulatory regimes creates only a small part of the corruption problem in this area. **Bureaucratic administration** and frequent and long personal contacts between authorized officials and business management are the

FIGURE 22. FREQUENCY AND LENGTH OF INSPECTIONS IN BULGARIA



Source: „Self-Assessment of Administrative Barriers to Investment: Results of the Administrative and Regulatory Cost Survey" FIAS, November 2002

major motives for businesses to offer bribes. Regime administration has not improved in 2002, although work on the supply of better administrative services and the creation of one-stop shops continues. Bulgaria's accession into the European Union implies a further increase in regulatory regimes. Therefore, Bulgaria needs a clear national business regulation policy and an adequate administrative capacity for quick and transparent enforcement of existing regimes. Otherwise, corruption in regime administration will persist, or even increase.

Regulation and Corruption in Construction Building

The problem with business regulation concerns all industries but is most visible in construction building. The existing legislative framework in the industry creates favorable environment for the development of corruption. Corrupt practices exist along the whole process of constructing a building - it starts with obtaining design permits, goes through the actual construction of the object and ends with the inclusion of the building into the official town infrastructure. Practical experience shows that, on average, construction businesses need 3 months to obtain all permits (more than 8) for starting an investment project. Additionally, it takes another 4.5 months to obtain final approval for the launch of the project. At the same time the *Law on the Structure of Territories* stipulates that all these activities should be completed within a month. This pressures investors into seeking illegal means of obtaining permits and shortening proceedings, most often though offering bribes.

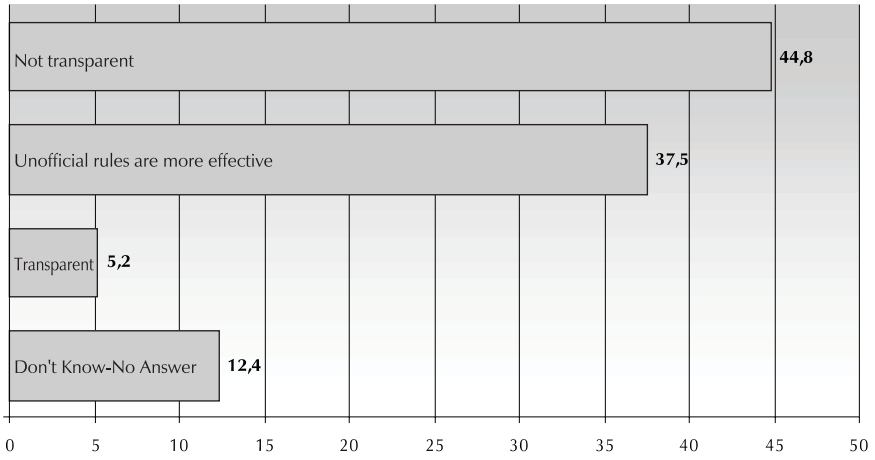
D.2. State - Business Relations. Corporate Governance and corruption

The lack of advanced corporate governance culture and legitimate mechanisms for access of competing economic interest to the process of national economic policy building lead businesses to exert increased corruption pressure on government decisions.

Bulgarian businesses, especially SMEs, are poorly informed about future government intentions and about the implementation rules of governmental regulations and initiatives. The information policies of different ministries and agencies lack coordination and consistency. The *Register of the Administrative Structures and the Acts of the Administrative Bodies*

was updated in 2002 but the information it provided remained well below business needs. The lack of readily available information on governmental intentions and initiatives in the economy leads to **information asymmetry between the administration and the business. This creates administrative monopoly on information resources, which is a strong tool for corruption pressure on businesses**.

FIGURE 23. TRANSPARENCY OF RULES AND CRITERIA OF ADMINISTRATIVE PROCEDURES (%)



Source: Vitosha Research, Integra, Corruption in Small and Medium-Sized Enterprises, June 2002.

The work on improving corporate governance has a strong anti-corruption impact because it **reduces demand** for corrupt practices. Good corporate governance means: more transparency and responsibility in company and management activities; no potential conflicts of interest; adequate protection of minority shareholders' rights; responsible management of remaining state shares in privatized enterprises; and existence of professional and ethical rules for curbing corruption.

The *Law on Amendments to the Law on Public Offering of Securities* (LPOS) adopted in 2002 has been the **major contribution** for the year **towards improving corporate governance in Bulgaria**. They improve significantly the following groups of relations, which have been haunted by corruption for years - capital increase; investor protection; bid mechanisms; and information disclosure. Additionally, the amendments upgrade the status, functions and authority of the *State Securities and Exchange Commission* (SSEC).

The actual anti-corruption impact of the amendments cannot be assessed yet because of scarce practical implementation. So far there have been no indications whatsoever that companies have accepted and implement these favorable amendments, nor that SSEC and business associations have managed to introduce effective self-regulations with anti-corruption potential. For the time-being good corporate governance codes are the exception rather than the rule. Government discussions about the amendments to the *Commercial Code's* insolvency regulations and about the introduction of a new chapter on *Corporate Governance* are a positive, though belated, step in the right direction. These are pending Government obligations under the *National Anti-Corruption Strategy*.

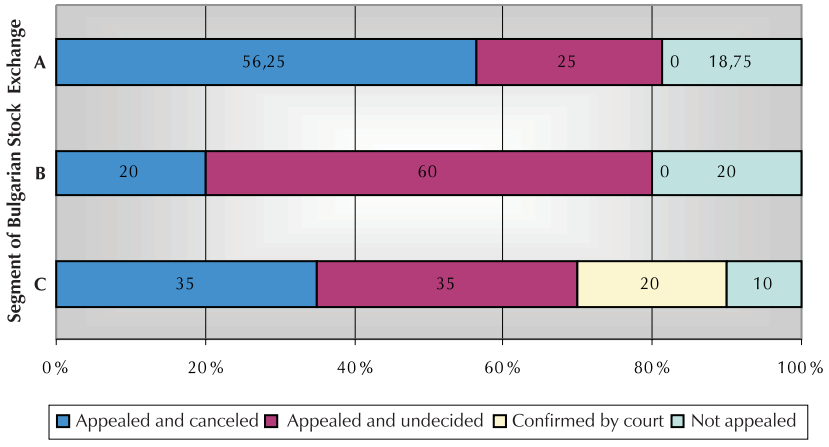
The amendments to LPOS introduce mandatory issuance of freely transferable and tradable rights to capital increase, which will give considerable protection to minority shareholders. Although it is too early to assess the full impact of this particular change it is indicative that **there have been no reports on misuse of capital increases in 2002**.

Additionally the amendments ensure more instruments for the protection of minority shareholders' and investors' rights - stricter rules for bidding and public company delisting mechanisms; less possibilities for illegal use (siphoning) of company assets by management; and increase in the controlling authority of the shareholders meeting.

For the first time Parliament introduced a clause in LPOS, which **requires that at least 1/3 of the management or supervisory boards' members of public companies be independent**. Independent members will guarantee minority shareholders' rights, which will bear direct effect on the improvement of Corporate Governance and hence on the anti-corruption measures. New texts in the law **regulate conflicts of interest**, which together with the provision of insider information, are considerable potential sources of corruption.

Another positive amendment to LPOS is the obligatory introduction of the position Director for Investor Relations. Thus, the changes to the Law create favorable conditions for corporate management boards to serve in the best interest of the company, rather than in their own or that of the major shareholder.

FIGURE 24. DISTRIBUTION OF PANEL SANCTIONS FOR DISCLOSURE FAILURES (%)



Source: OECD, Second Meeting of the South Eastern Europe Corporate Governance Roundtable.

In 2002 Parliament adopted several clauses particularly aimed at improving public company transparency. Public companies will have to submit more frequently their financial reports, provide faster ad hoc information to SSEC and compile their balances according to the International Accounting Standards. SSEC's capacity to enforce these changes will be critical in revealing their anti-corruption potential.

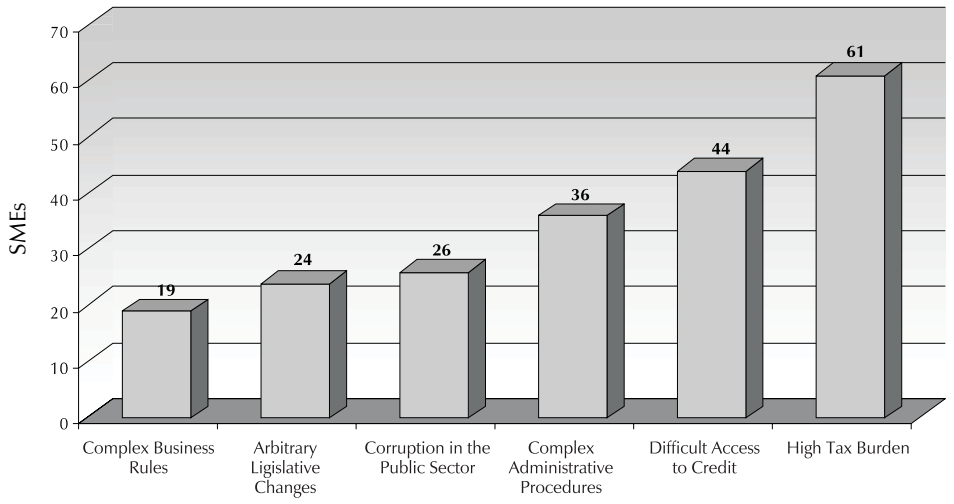
SSEC's record of enforcement capacity is rather poor. In 2001 it failed to sanction 85.7 % of all violations of information disclosure regulations on Section A of the Bulgarian Stock Exchange (BSE). Almost all sanctions imposed by SSEC are taken to court and in only 20-30 % of the cases fines become effective. Court proceedings take on average over two years.

D.3. Public Expenditure Management, Tax Policy, Gray Economy and Corruption

Lack of transparency in the accumulation and redistribution of public resources through the budget distorts market functioning and results in the emergence of gray economy and corruption. Low administrative capacity to manage and control state revenues and expenditures magnify these distortionary effects in Bulgaria. In this regard there are several major areas, in which corruption pressures exist: enforcement of tax, social security and customs laws, public procurement mechanisms, redistribution of municipal resources through the central budget, and health care funds management.

D.3.1. Taxes, Social Security Burden and Gray Economy

FIGURE 25. MAIN IMPEDIMENTS TO SME DEVELOPMENT* (%)



Source: Vitosha Research, Integra, Corruption in Small and Medum-Sized Enterprises, June 2002

(*) Note: The sum of percents exceeds 100 because the respondents gave more than one answer.

High taxes and social security contributions, in association with opaque and ineffective administration, lead to the emergence of a big gray sector in the economy and hence of corruption. In 2002 the Government reduced only marginally the tax and social security burden, which remained rather high for a transition economy. There has been no change in the level of unrecorded economic activity, which according to different estimates ranges between 25% and 40% of GDP. Unrecorded company turnover form the bulk of unofficial payments (bribes) in the economy. The share of the gray economy and its corrupt practices can be best reduced through **a combination of tax and social security contributions reduction and improvement in company reporting.**

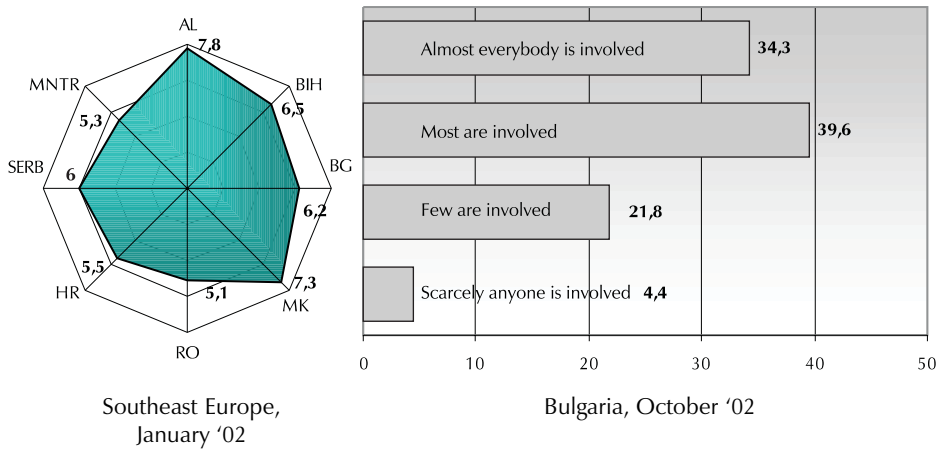
Corruption pressure remains high in the areas of tax administration and enforcement. The major reasons behind such unfavorable score are:

- Frequent changes in tax legislation, which do not leave enough accommodation time for economic agents and the administration;
- Rich possibilities for administrative discretion in tax law enforcement;
- Constant and long tax inspections, which are costly to companies and leave a lot of room for personal interaction between company managers and tax administrators;
- Low opportunity costs of tax evasion through corrupt practices for both businesses and tax administration officials;

- Lack of adequate personal safety protection for tax administration officials;
- Insufficient administrative capacity for proper implementation of existing tax rules and regulations.

The tax changes introduced by the Government through the *Law on State Budget for 2003* follow a strategy for **reduction in direct and increase in indirect taxation reliance**. Such strategy, however, **does not eliminate corruption pressure but only redirects its impact inside the tax administration**. The Government should put more efforts to improve tax administration mechanisms. Like in previous years, in 2002 Parliament adopted the amendments to tax legislation at its last seating for the year. This last minute decision-making creates favorable conditions for preference seeking and increases the instability of the business environment. It seems that Government changes its tax policy stance to allow more tax breaks and preferences, which will result in more corruption should there be no adequate improvement in tax administration's collection and control capacity.

FIGURE 26. SPREAD OF CORRUPTION AMONG TAX OFFICIALS* (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, October '02

Source: CMS of *Coalition 2000*, October 2002; SELDI, January 2002
(*) Note: The maximum value of the index is 10.0 indicating the highest possible level of corruption. The minimum value is 0.0 indicating total absence of corruption.
Legend: AL - Albania; BIH - Bosnia and Herzegovina; BG - Bulgaria; MK - Macedonia; RO - Romania; HR - Croatia; SERB - Serbia; MNTR - Montenegro.

In 2002 the *Ministry of Labor and Social Policy* (MLSP) and the *Ministry of Finance* (MoF) initiated the **introduction of social security contribution floors** for the different branches and professions. The Government claims the measure will increase National Social Security Fund revenues. While the latter is very possible, the floors **might also bring business flight into the gray economy with an increase of corruption in the overseeing administration**, especially in the short run. The true costs of social security contribution floors will only be fully assessable in 2004. However, it should be noted that MLSP succeeded in minimizing the distortionary effects of the measure by forcing direct negotiations between employers and trade unions who managed to agree on their 2003 levels.

In 2002 the government adopted measures, which have real potential to reduce corruption in the tax and social security area in the medium run:

- a detailed tax policy for the 2003 - 2005 period;
- a *Law on National Revenue Agency*. The Agency will collect most public revenues. It is planned to start operation in the beginning of 2005;

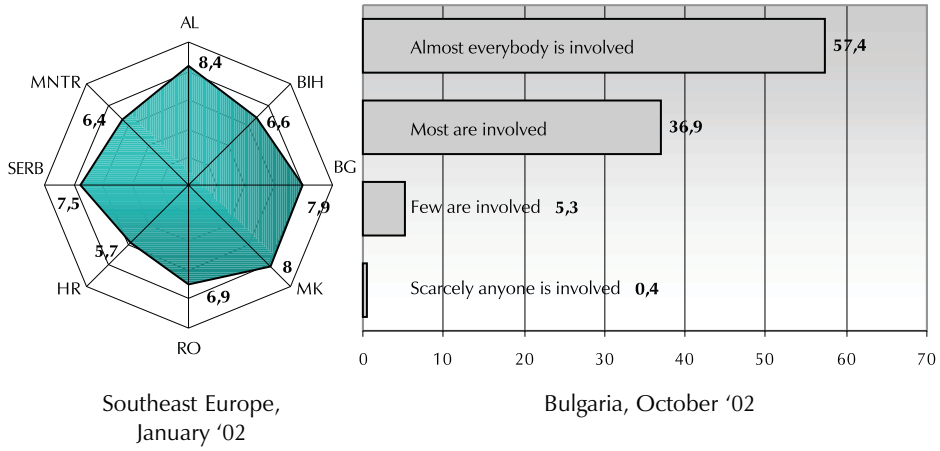
- consultations with stakeholders on future tax legislation changes;
- better coordination between the *Ministry of Finance* and the *Ministry of Interior* to improve tax collection.

Additionally, MoF declared that it had launched a campaign to check whether the values of luxury property and declared incomes of its owners match. The successful completion of this campaign will demonstrate political will and administrative ability in the Government to cope with pervasive tax evasion. According to MoF data the budget loses annually above BGL 1.1 bln. in social security and personal income tax revenues from evasion, while unpaid company tax liabilities towards mid-2002 have amounted to BGL 928 mln.

D.3.2. Customs and Corruption

Globalization and the continuous increase in international trade flows render the *Customs Agency* a control point of significant economic resources and increase the potential risks of power abuse and corruption. The *Customs Agency* collects the bulk of value added tax, which is the primary budget tax revenue. Additionally, evading VAT and customs duties through corrupt practices gives companies considerable competitive edge over their rivals, which stimulates the offering of unofficial payments to customs officials.

FIGURE 27. SPREAD OF CORRUPTION AMONG CUSTOMS OFFICERS (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, October '02

Source: CMS of *Coalition 2000*, October 2002; SELDI, January 2002

Despite launched customs reforms in the beginning of 2002, society preserved its opinion that corruption is wide spread among customs officials. An indirect proof that being a customs officer „pays off" is the unusually high demand for customs jobs. In 2002 38 people applied for 1 customs officer place, while the country average ratio was 25/1. At the same time in a number of surveys conducted during the year businesses pinpoint unfair competition, which in its greatest part comes through illegal imports, as one of the major setbacks to their development.

The activities of *Crown Agents* consultants were the basic tool of Government's efforts on reforms and countering corruption in the customs system in 2002. Although it is rather early to give conclusive assessment of Crown Agents' effectiveness, the results they have achieved in 2002 seem to be modest:

- most of the existing channels and schemes for gray imports are still operational. Some of them have been modified to adapt to changes in customs control mechanisms (e.g. import of fruits and vegetables from Turkey, Greece and Macedonia, fuel imports, „Chinese imports“);

- increase in revenues is not exceptional but follows the trend of the last four years;

- the first results from the functioning of mobile groups for customs control produce skepticism among observers about their effectiveness.

Still there have been a number of **positive signs** in 2002, which directly or indirectly point to a decrease in the customs corruption potential:

- customs fraud detection increased by 70% on the previous year;

- contraband channels lost political protection;

- the Government and the EU closed the Customs Union negotiation chapter;

- an *Ethics Code for Customs Officials* was adopted;

- the *Customs Agency* increased its internal control capacity through its participation in projects with anti-corruption elements financed by the World bank and EU;

- the *Customs Agency* signed a memorandum of understanding with the *Ministry of Interior* and the *State Internal Financial Control Agency*.

Accelerating reforms and increasing their combined positive effect necessitate the practical implementation or completion of a number of measures, part of which have been included in the *National Anti-Corruption Program*. The following several steps should be launched with priority:

- **Developing new forms of cooperation between law enforcement agencies to stop and prevent contraband, trafficking, illegal imports and corrupt practices that go with them.** New, contemporary models of cooperation between customs authorities and the *Ministry of Interior* and the *National Investigation Service* should be introduced to replace the bureaucratic and ineffective mechanisms of the past;

- Ensuring information exchange between customs and tax authorities through the **introduction of mandatory mechanisms for constant juxtaposition of data from customs and tax declarations** to ensure maximal compliance;

- **Completing and launching the Bulgarian Integrated Customs Information System.** Additionally, a system for mutual exchange of information should be created between Bulgarian border customs points and those of neighboring countries;

- The *Customs Agency* should regularly release publicly its financial results.

D.3.3. Public Expenditure Management and Corruption

In view of the low administrative capacity for management and control of public expenditures reducing their overall amount would lower corruption pressure in the country. The *Law on State Budget of Republic of Bulgaria for 2002* sets consolidated non-interest expenditures at 38% of GDP, which is a 1% increase over 2001. The level of central and local government expenditures remains high for the particular stage of development of the economy and the state administration. Their level is appropriately lowered to 36% of GDP for 2003. However, the actual expenditures at the end of the year will most probably stand at 2-3 % higher. At the same time according to National Statistical Institute data government consumption expenditure was 9.8% of GDP (BGL 1.4 bln.) for the first half of 2002, unchanged over 2001. **This level is considered appropriate to prevent excessive corruption and should not be exceeded in the future. At the same time the government should undertake more decisive action to cut the overall state burden, measured by non-interest expenditures to GDP, to below 30%.**

Like previous years, 2002 witnessed a **series of irregularities in budget resources management, which create an environment favorable to corruption**:

- Budget organizations have not made sufficient efforts to collect their receivables;
- The government has redistributed considerable budget surpluses without relevant authorization from Parliament;
- Additional resources have been made available to organizations, over and above their budgets.

In view of the above Parliament should considerably strengthen the controlling authority of the *National Audit Office*. At present the latter can only detect and describe offences. It should be authorized to stop irregular use of public resources and to indict those responsible. The *State Internal Financial Control Agency* (SIFCA), which has greater executive powers, is still too slow to react and in many cases it detects offences only after the respective terms of limitation for administrative liability have expired.

On the positive side, the government has taken some measures to improve the transparency of the budget procedure for 2003, which would allow better control over **public spending decisions**:

- The preparation of budget 2003 has begun earlier than in previous years;
- All primary budget authorizing offices have been required to present their own three year expenditure frameworks, subject to centrally determined ceilings;
- The *Report on Budget 2003* is more detailed and complete than any one in the past.

More **measures should be introduced to guarantee long-term containment of corruption risks in the area of public spending**:

- Completion MoF and primary budget authorizing offices' capacity for strategic programming of expenses;

- Considerable improvement of accounting transparency and strengthening of accountability for budget surpluses redistribution;

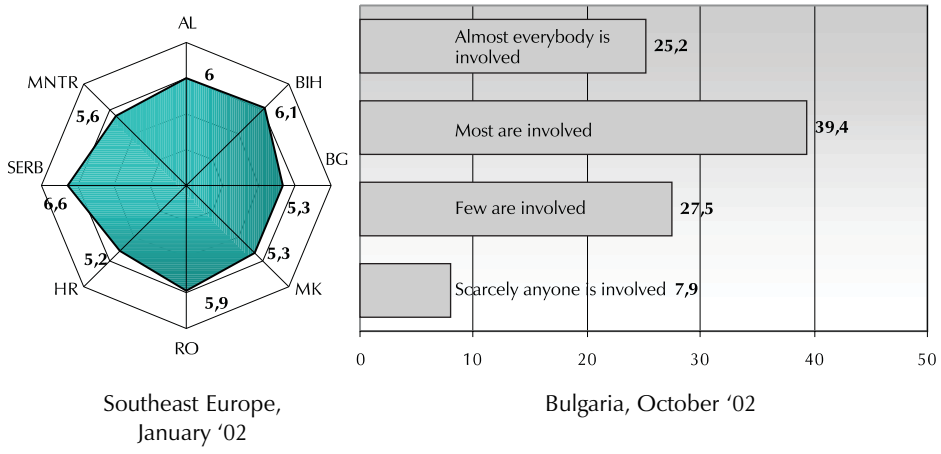
- Strengthening SIFCA and *Central Audit Office's* supervision and control functions. The Office's recommendations should be obligatory for all state entities;

- Improvement of financial management capacity at the local level (especially in small municipalities).

Public opinion continues to associate with corruption and abuse two main areas of significant public resource spending and redistribution - **municipal budget adjustment and health care**.

The central government has been adjusting municipal budgets for years, through a complex mechanism of subsidies, which enables direct political control over local governments and creates favorable prerequisites for the use of public resources for party purposes. The Government has preserved this mechanism in 2002. With view of reducing its corruption potential, local governments should be allowed to develop local revenue sources and use them fully, while central and local spending responsibilities should be clearly defined. In 2002 the Government adopted a *Strategy for Financial Decentralization*, which lays the foundation for solving the above-identified problems. However, its practical implementation has been delayed until 2004, which shows the government's willingness to retain its control on local level before the local elections due in the fall of 2003.

FIGURE 28. SPREAD OF CORRUPTION AMONG DOCTORS (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, October '02

Source: CMS of *Coalition 2000*, October 2002; SELDI, January 2002

According to *Ministry of Healthcare* data for 2002 **unofficial payments in the healthcare system amount to BGL 200 - 260 mln. (i.e. about 20% of government spending on healthcare)**. Additionally, experts from the *National Health Insurance Fund* estimate that between BGL 10 mln. and BGL 20 mln. (5-10% of total budget costs) of reimbursement payments for medicines have been absorbed through fraud. This data exemplifies the **huge corruption potential of the healthcare system in its present state. In view of containing this potential concentrated and consistent efforts are needed in several directions**:

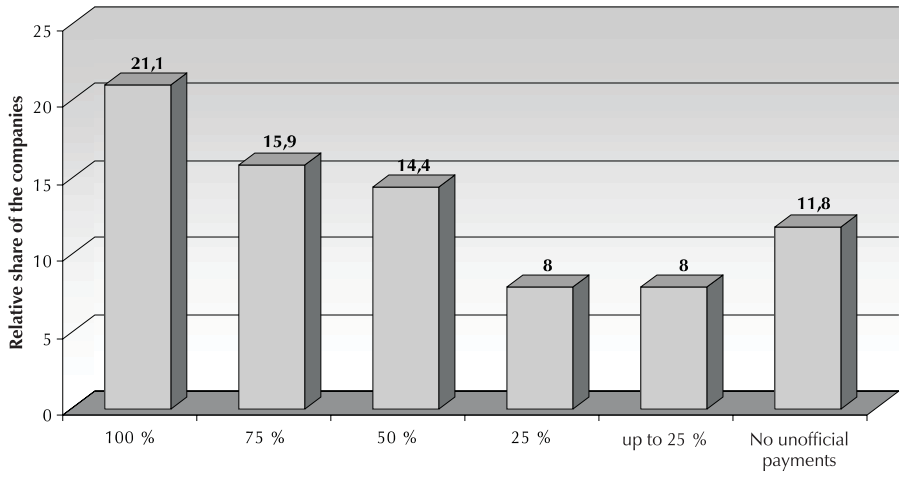
- Gradual increase in healthcare budget under strict observance of financial discipline;

- Improvement of specialized doctors' remuneration;
- Reduction in the number of hospitals and transition to a single source healthcare financing;
- Introduction of stricter and more effective control over reimbursement of medicines costs, in view of their substantial rise in the future;
- Creation of favorable conditions for supply of private healthcare services, including private healthcare insurance.

D.3.4. Public Procurement and Corruption

Public procurement is the major mechanism for channeling public funds and resources to the private sector. The substantial amount of funds being transferred and the inadequate administrative control in Bulgaria render public procurement as one of the major corruption risk areas. Therefore, public procurement must be thoroughly regulated and its administration should be transparent and competent.

FIGURE 29. RELATIVE SHARE OF AWARDED PUBLIC PROCUREMENT CONTRACTS FOR WHICH COMPANIES MADE INFORMAL PAYMENTS



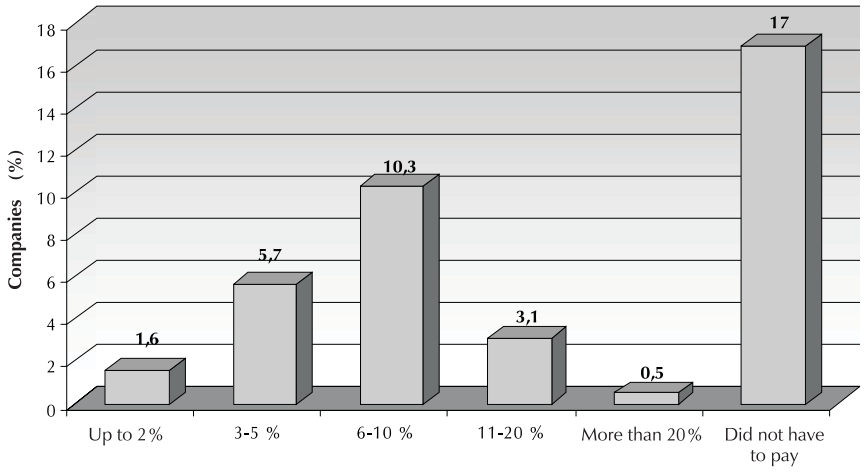
Source: Vitosha Research, Integra, Corruption in Small and Medium-Sized Enterprises, June 2002.

For the past several years public procurement in Bulgaria has amounted to above BGL 1 bln. a year. **According to business surveys public procurement contracting is a major source of corruption in the country, which generates considerable unofficial revenues for state administration officials**. Conservative estimates put the figure of unofficial payments for 2002 at BGN 15 mln. Furthermore, corruption in public procurement is systemic - more than half of companies who have taken part in public procurement tenders state that they have made unofficial payments to receive every second contract.

Irregularities in public procurement contracting are especially severe in Bulgarian municipalities. These require additional attention in at least two directions:

- Improvement of the administrative capacity for public resource management in Bulgarian municipalities;
- Strengthening control mechanisms (both preliminary and subsequent) of public procurement.

FIGURE30. AVERAGE SIZE OF INFORMAL PAYMENTS MADE TO OBTAIN PUBLIC PROCUREMENT CONTRACTS AS A RELATIVE SHARE OF THE CONTRACT VALUE



Source: Vitosha Research, Integra, Corruption in Small and Medium-Sized Enterprises, June 2002.

It is important that these measures be implemented before the completion of fiscal decentralization.

In April 2002 Parliament adopted a *Law on Amendments to the Law on Public Procurement* (LPP) (State Gazette no. 45/2002). The main amendments with anti-corruption bearing are:

- **Improved transparency and control** mechanisms through better access to evaluation committees' records; precise specification of contracting procedures; improved publicity rules; faster court appeal mechanisms; and a wider use of commodity exchanges;
- **Optimization and reduction in time periods** for public procurement announcement; for drawing statements on offences; and for dispute resolution;
- **Provisions for more competition** through broadening and precise specification of legal object and subjects under LPP; definition of tender documentation pricing mechanisms; separating participation and execution guarantees; and banning contracting without specified time limits.

There is still not enough data to assess objectively whether these new law provisions have been effectively enforced in the practice.

In spite of good legislative progress in 2002, more measures should be taken to curb corruption in public procurement, the most important of which are:

- Establishing an independent *Agency on Public Procurement* responsible for the overall execution and monitoring of public procurement;
- The *Central Audit Office* and the *State Internal Financial Control Agency* should be authorized to perform **preliminary control** over public procurement, i.e. before contracting. Additionally, their efforts should be better coordinated;
- **Complex procurement cases**, in which only part of the activities envisaged fall under the application scope of LPP, **should be better regulated**. In such cases law provisions should be applied even if only one of the activities falls into the scope of the law;
- Evaluation committees' technical skills should be improved, while their members' administrative and criminal liability should be defined more clearly.

D.4. State Asset Management, Privatization and Post-Privatization Control

According to public opinion polls state asset management, privatization and concessions continue to be the areas most burdened with corrupt practices in 2002.

In the beginning of 2002 Parliament adopted a *Law on Privatization and Post-Privatization Control* (LPPC), which replaced the old 1992 privatization law. The new law aims at transparent, fast and economically effective privatization under equal investor treatment. It contains a number of **anti-corruption elements**:

- It repeals all preferences given to any class of investors;
- It institutes the practice that non-monetary means of payment can only be used in sales of a specified list of enterprises;
- It introduces more transparent sales methods - public tender, auction, publicly announced competition and offering of shares through the stock exchange
- It defines the *Privatization Agency* as the only body authorized and responsible for privatization;
- It stipulates the introduction of public registries on privatization and post-privatization control.

The new privatization model has already proven its transparency and fiscal effectiveness. In 2002 privatization revenues have amounted to BGL 207 mln. from 262 deals. Transparency and absence of corruption allegations is rewarding, as has been best proven in the banking privatization of 2002. In an open and competitive procedure, the *Banking Consolidation Company* has succeeded in attracting the third largest EU bank to acquire 80% of Biochim Bank for EUR 82.5 mln.

However, only a limited part of LPPC's anticorruption potential materialized in 2002. Practically none of the bylaws to LPPC has been adopted in the stipulated two months period. The government's inability to enforce the law's provisions in time resulted in sluggish privatization and failure of the privatization program for 2002. This in return has increased opportunities for interested parties to adjust to the new situation and indirectly has raised the corruption potential in privatization. A good example in this direction is the slow and difficult execution of the biggest privatization deals for 2002 - those of *Bulgartabak* and *Bulgarian Telecommunications Company*. The court's controversial intervention in both cases, to stop sales to internationally recognized foreign investors, has left doubts of the existence of political intervention and corruption in the judiciary. At the same time the *Privatization Agency* has failed to provide convincing enough proof that no conflict of interest or any wrongdoing has occurred in the two deals. In addition to delays in LPPC's enforcement, in 2002 Parliament adopted a number of amendments to the existing privatization texts, some of which seem to serve specific private interests and might be connected to corruption. Especially worrying in this respect are actions attempting to include more enterprises in the list of non-privatizable ones. *International fair, Plovdiv* has already been added to the list and MPs have persistently demanded that the *Bulgarian Maritime Feet* and the *Bulgarian River Fleet* be included too.

TABLE 8. IMPLEMENTATION OF THE ANNUAL PRIVATIZATION PLAN BY NOVEMBER 31, 2002

Indicators	Plan	Report	Implementation Ratio
Deals	349	71	**20,3%**
Minority Packages	315	48	**15,2%**
Payments Contracted (thous. BGN)	748 493	316 558	**42,3%**
Privatization Costs (thous. BGN)	25 277	5 612	**22,2%**

Source: Privatization Agency

LPPC regulates the establishment of an **Agency Post-Privatization Control Agency (PPCA) - a specialized governmental body to oversee and control the proper execution of buyer obligations undertaken in privatization contracts.** PPCA has been established with a six months' delay and still lacks adequate financial backing**. PPCA has considerable controlling powers**, which in combination with an explicit ban on renegotiation of privatization deals might be a **prerequisite for corruption pressure from buyers.** To avoid such pressures the government should:

- Ensure maximal transparency of PPCA's functioning;
- Supply the Agency with an adequate technical base and resources to perform its duties.

In 2002 the *Post-Privatization Control Agency* presented its first report on the observation of buyers' contractual obligations undertaken in 2 500 deals concluded in the 1993 - 2001 period. In spite of the many contractual offences detected the probability that the state will recover at least part of the estimated losses is very low taking into consideration that many of the envisaged enterprises have already undergone substantial changes. **However, bearing in mind that privatization has been one of the major channels for money laundering, the report should be used by the prosecution to check incorrect buyers.** Until the end of 2002 the prosecution has examined 210 privatization deals and has sent to court 86 of them. No court decision has yet been taken on any of them.

TABLE 9. ESTIMATED BUDGET LOSSES DUE TO BUYERS' FAILURE TO FULFILL CONTRACTUAL OBLIGATIONS IN THE PERIOD 1993 - 2001.

Estimated Losses	Mln. BGN
Reduction in contracted prices	6.7
Reduction in agreed level of investment	280.8
Default on agreed level of investment	480.0
Default on price payments	77.8
Default on interest and penalty payments	38.3
Labor obligations penalties	103.0
Other penalties	60.0
Total	1046.6

Source: Agency for Post-Privatization Control

The delays in the privatization process lead to the preservation of state's participation in the management structures of enterprises, which might lead to corruption pressures in two directions. First, the ruling party might use management board seats to pay back for electoral support. Second, the participation of state administration representatives in company management creates strong

vested interests for delaying privatization further. **The problem with management and advisory board assignments of administration officials has not been resolved in 2002.** It is even more acute in big Bulgarian municipalities. The upcoming local elections in the fall of 2003 might make things even worse. In 2002 some MPs have proposed that state officials be banned from participation in more than one management or supervisory board, while their salary is limited to not more than two times the country average. Politically appealing as they are, such proposals will not solve the problem but will only alter the forms of corruption.

Concessions and big infrastructure projects are areas, which contain substantial corruption potential, because they transfer exclusive rights of public resource management into private hands for considerable periods of time and they still lack adequate legal framework. The government should ensure more transparency in both areas in view of their significant increase in the coming years.

The lack of clearly-defined rules for concession-granting and low subsequent control on their execution has resulted in 2002 in a number of public scandals and contract breaks in cases of municipal utilities and coastal strips concessions.

The upcoming privatization and concession-granting in the energy sector has already raised concerns and corruption allegations. In 2002 the respected German multinational *RWE* has declared that there have been groups in the *Ministry of Energy* (MoE), who backed private interests to prevent its daughter company *Rheinbrown* from obtaining a mining concession on the *Maritsa-Iztok* coal mines. In spite of MoE declarations that it strictly abides by the new *Law on Concessions*, the apparent inconsistency between its actions and that of some MPs and the stated governmental policy for attracting more quality investors in the country, raises justified concerns of existing corrupt practices in this area. Moreover so, the rest of the candidates who have stated their willingness to obtain this concession are being closely associated by society with corruption in other areas in the past.

Similarly, private interests seem to raise corruption concerns and to block the Bulgarian participation in the *Bourgas - Alexandrupolis* oil pipeline construction. The apparent support of a high ranking official from the *Ministry of Regional Development and Public Works* for one of the candidates to the project, as well as the public concession of the Minister that he has resigned because he has been unable to contain corruption within the Ministry, show that urgent anti-corruption measures are needed in this area.

D.5. Black Economy and Corruption

Organized crime is clearly the most important source of grand (political) corruption. Therefore, if the government aims at coping with corruption in the long run, it should concentrate on containing the black economy.

From the second half of the nineties, **organized crime has undertaken the following steps towards its integration into the**

Bulgarian business and politics:

- through privatization, control of imports and exports, racketeering, establishing monopolies in a number of the most profitable economic sectors, etc.
- redistribution of the profit from economic activity (import and export of raw materials and commodities, wholesale of agricultural and industrial production, financial institutions, tourism, etc.).
- control over the „black economy" (revenues from petty crime, car theft, drug trafficking and drug distribution, prostitution, human trafficking, counterfeiting of money and securities, etc.).
- venturing into new methods for financial crime (cyber crime, credit card fraud, etc.)
- creation of durable corruption networks through redistribution of „dirty money" among the lobbies of the organized crime in government structures.

Source: Center for the Study of Democracy, The Economy of Crime, Discussion Topics for international conference in November 2002

In 2002 the government has launched efforts to block some of the main sources of finance for the organized crime in Bulgaria, through customs reforms and improvements in the work of specialized units to the *Ministry of Interior*. In view of sustaining good results in countering corruption and the black economy, the g**overnment should considerably improve coordination between government institutions. Additionally the Government should strengthen anti-money laundering measures and ensure their effective implementation**. Parliament's delay to adopt the *Law on the Amendments to the Law on Measures against Money Laundering* creates possibilities for organized crime to conceal important tracks.

The legislative framework for countering organized crime has not been improved in 2002. In this relation the following laws should be adopted and/or amended with priority:

- *Law on the Financing of Political Parties* **-** all sources of financing to the political parties should be clearly defined and publicly known;
- *Draft Law on Publicity and Registration of Lobbyists and Lobbying Activity* - it should guarantee full transparency of lobbying activities;
- *Draft Law on the Forfeiture to the State of Property Acquired through Illegal Activities* - it should ensure an adequate and transparent mechanism on forfeiture of property acquired through illegal means, while guaranteeing property rights.

* * *

In response to increased public pressure, in 2002 the Government has undertaken **a series of anti-corruption initiatives** in the economy. Relatively few of them, however, have been put to practice. Their

combined effect on limiting corruption can be assessed as **moderately positive**. In this view further efforts in a number of areas are needed to complete reforms:

- Improve administrative capacity to implement and control government intervention policies in the economy;
- Reform of the judiciary to reduce the scope of its discretionary judgments in the economy;
- Priority completion of the legislative and institutional framework for countering organized crime;
- Ensure strong consensual political support for reforms, as improved effectiveness in limiting corruption might lead to increased counteractive pressures from hurt economic agents.

E. THE ROLE OF CIVIL SOCIETY

E.1. Non-Governmental Organizations

E.1.1. Public-Private Partnership against Corruption

The past year was again marked by a tendency towards ever-increasing role of civil society in **formulating the public anti-corruption agenda**. The involvement of the various NGOs and mass media in establishing the priorities of public counteraction of this phenomenon was driven by both the activeness or (in their role of facilitating civic involvement) failure to act of state institutions. In this respect the anti-corruption potential of civil society in turn reflects the elevated status of corruption-related issues in the context of the country's EU and NATO integration.

The anti-corruption priorities of civil society generally coincide with the goals set in the *National Anti-Corruption Strategy* adopted by the government in October 2001. In the course of 2002 representatives of the non-governmental anti-corruption initiative *Coalition 2000* and other independent experts took part in a Working Group to discuss the *Program for the Implementation of the National Strategy to Fight Corruption* and to outline an Action Plan with specific proposals and forms of cooperation between state institutions, non-governmental organizations, and the media. Measures were envisioned to create a favorable environment and conditions for broad public commitment against the manifestations of corruption, to elaborate joint plans for extended cooperation, special programs for involvement of national and private media in anti-corruption awareness-raising activities, etc.

These intentions, however, were not followed up by specific action. The clearly formulated task of securing proper channels to inform the institutions and the public about the results of the anti-corruption efforts failed to be implemented. This comes as yet another argument in favor of **reinforced civic control not only at the stage of defining the anti-corruption objectives, but equally over the real actions of the respective state institutions**.

Civic anti-corruption initiatives using monitoring and independent assessment are becoming an established social practice. One positive implication of the otherwise alarming fact that 90% of the funds raised from donors for the „third sector" come from abroad is that, on the one hand, Bulgarian NGOs have managed to assert their autonomy *vis-a-vis* the state, and on the other hand, that they have become part of a transnational mechanism to monitor the reforms and respectively, to assess the anti-corruption actions of the authorities in this country. Despite the limitations of their scope, these initiatives and the respective projects help set standards of transparency and accountability in certain particularly high-risk sectors and activities in terms of civic rights and interests.

The focus on human-rights implications of anti-corruption, along with a

sustained critical distance from the authorities, has been characteristic of the Bulgarian Helsinki Committee, a member of the International Helsinki Federation for Human Rights. The civic organization Transparency without Borders is in turn part of the international network specializing in the anti-corruption sphere, Transparency International.

Another, more ambitious type of partnership could be defined as „trilateral partnership" - i.e., **anti-corruption partnership between international donors, their Bulgarian non-governmental counterparts, and the respective state institutions in this country**. One instance of such partnership has been USAID's three-year Open Governance Initiative project, launched in 2002, which brings together the efforts of the *Coalition 2000* and state institutions. What is characteristic of this type of public-private partnership is that it unfolds in the context of the anti-corruption reforms in state structures, such as the National Audit Office and the Public Procurement Directorate with the Council of Ministers. Furthermore, it aims at harmonizing, to the extent possible, the priorities of state institutions and those of civil society. Such „trilateral cooperation" reflects the common anti-corruption interests of civil society, state institutions, and foreign partners, who support the strategic areas of the reform in Bulgaria. It should be noted that the partnership is not solely confined to funding, but also involves drawing on the experience and know-how that a structure of the scale of USAID is in position to mobilize.

Leading non-governmental organizations such as the Foundation for Local Government Reform and the National Association of Municipalities in Bulgaria have been instrumental for the implementation of a number of **pilot projects on transparency, accountability, and good governance** (such as the establishment of Municipal Information Centers, the computerization of municipal administrative services, and the introduction of comprehensive service at one office).

Another positive outcome of partnership has been the establishment of the mandatory financial accountability procedure, which proceeds in line with European standards and comprises auditing of the projects by international auditors. Thus the anti-corruption projects are themselves implemented in accordance with the accountability standards established in the practice of the advanced democracies and in this sense, constitute a model of transparency in this important sphere.

E.1.2. *Coalition 2000* Activities

In 2002 the non-governmental anti-corruption initiative *Coalition 2000* carried out a number of activities to expand the transparency and accountability of the public sector and enhance the anti-corruption potential of civil society:

- The **monitoring of public perceptions and attitudes to corruption** continued. The quarterly Corruption Indexes of *Coalition 2000* enjoy unswerving interest on the part of the public, the media, and the political elites. Their announcement becomes a media event with a tangible impact.

- In terms of the **anti-corruption public awareness campaign**, the past year was marked by a shift of the emphasis to specialized publications dealing with specific problems related to corrupt practices and anti-

TABLE 10. ***COALITION 2000* ACTIVITIES IN THE PERIOD 1999 - 2002**

***Coalition 2000* Activities**	**Total 1999-2002**
Information days	19
Radio broadcasts	25
TV programs	5
Clean Future Newsletter	7
Round Tables	60
Anti-corruption readers	9
Other publications	13
Public discussions and seminars on the introduction of the Ombudsman institution, international conferences	19
Public discussions on anti-corruption draft laws, codes of ethics, and anti-corruption projects	8
Monthly electronic newsletter	38
Corruption Assessment Report	4
Policy Forum	4

corruption activities.

- At the same time, the **educational component of anti-corruption** has been assuming increasing importance in its own right. Preparing the second edition of the *Anticorruption* handbook and the training of experts for the needs of the higher education system will help incorporate anti-corruption topics and lectures in the system of secondary education and in civil society lecture series.

- The expert and consultative capacity of *Coalition 2000* was drawn on in the preparation and implementation of **awareness campaigns on the new laws on the electronic signature, on political parties, on the newly adopted amendments to the *Criminal Code* and the *Law on the Judiciary***. In this way, and as a result of anti-corruption cooperation with a number of European and international organizations, public pressure was exerted to adopt the principles of transparency and accountability in political life in this country.

- What proved most successful was the long-term cooperation between experts from the third sector and from state institutions within the framework of **working groups on crucial problem areas of corruption and its counteraction**. In the course of the year a Task Force on the Gray Economy and Corruption was set up in addition to the already existing Task Force on Trafficking and Corruption. Thus a **consultative mechanism is emerging for assessment and estimation of the entire cycle of the economy of crime**: from the gray and black (illegal) imports, through the shadow economy and the corrupt redistribution of criminal money, to its reintegration in the official economy using money-laundering mechanisms.

Results of the Mechanism for Assessment of the Economy of Crime

Two *Coalition 2000* studies dealing with the connection between trafficking and corruption were published in the course of the year.

Smuggling in Southeast Europe examines the processes of transborder crime in the context of the Yugoslav conflicts. More specifically, it explores the evolution of state/party monopoly over trafficking in

the post-Yugoslav states to secondary privatization of the trafficking channels by those who were initially the executors of the political will of their party and military leaderships. The alarming fact is pointed out that a tacit alliance seems to be emerging in the Western Balkans between the shadow structures of the individual states and national communities. Within this scheme Bulgaria plays the role of an intermediary in international trafficking, connecting the Middle East and Asia with the Western Balkans, and from there, with Central and Western Europe.

Corruption, Trafficking, and Institutional Reform is a study that further explores a number of topics considered in an earlier publication of 2000. It contains the first classification of corruption levels and practices in customs. There is also an expert assessment of the scope of trafficking by product category. The study finally assesses the anti-corruption reform within the system of the Ministry of Interior and in customs and makes recommendations about ways to improve coordination and enhance the efficiency of the measures to intercept transborder crime.

Both studies have been published in Bulgarian and English and are available at www.anticorruption.bg.

- The new stage in the implementation of **anti-corruption initiatives at a municipal level** included monitoring of the gray areas of corruption risk in local government and in the municipal administration of a number of Bulgarian towns (public procurement, use of municipal property, processing of citizens' complaints about corrupt practices, municipal privatization, and others).

- The active involvement of *Coalition 2000* in the public debate on one of the most topical issues in domestic and international politics - **the fight against terrorism and organized crime** attracted considerable public attention. Public discussions were initiated focusing on the correlation between organized crime and corruption and on the need for new models of counteraction. There was broad public response to a number of forums organized by *Coalition 2000* with the participation of representatives of state institutions, independent experts, and the media. These included the public discussion of the draft law for the amendment to the *Law on the Judiciary*, the presentation of the *Draft law on measures against the financing of terrorism*, the discussion on the *Draft law on asset forfeiture*, round tables with the participation of emblematic figures in the fight against corruption and organized crime, such as European Parliament Member Antonio Di Pietro, French Investigating Judge Eva Joly, and others.

- In the course of 2002 the efforts of *Coalition 2000* to **introduce the ombudsman institution in Bulgaria** acquired a new dimension. Whereas in the previous phase the Coalition focused on the elaboration of a draft law, in 2002 it made successful efforts to implement mechanisms of the ombudsman type on a local level. On the initiative of *Coalition 2000*, a number of Municipal Councils decided to introduce local ombudsmen or civic mediators. The practical implementation and experience on a local level are of great importance for the adoption

of this democratic institution in Bulgaria and for the adoption of the respective legislation.

- Relatively recent are the efforts of non-governmental organizations to launch **public-private partnership in the sector of security reform**. Anti-corruption is becoming an issue that brings together the interests of the reforming law-enforcement authorities, some non-governmental organizations such as the Center for the Study of Democracy, and their international partners.

E.1.3. Problems and Challenges Facing Civic Organizations

Along with the good practices, the third sector is also faced with certain **structural weaknesses in its anti-corruption activity**:

- The poor coordination between the analytical centers and foundations in the anti-corruption sphere.
- The limited duration of a number of anti-corruption projects, which is not conducive to making these issues a strategic priority of the respective non-governmental organizations.
- The inadequate coordination between the international organizations sponsoring anti-corruption projects, which impedes the more effective support of the third sector, and others.

The non-governmental sector itself continues to generate corrupt practices. In the course of the year under review there was a succession of publications in the media containing allegations against certain foundations dedicated to supporting the Roma communities in Bulgaria. The articles criticized the redistribution of donor funds, a considerable portion of which have allegedly not been spent on the implementation of the respective project goals.

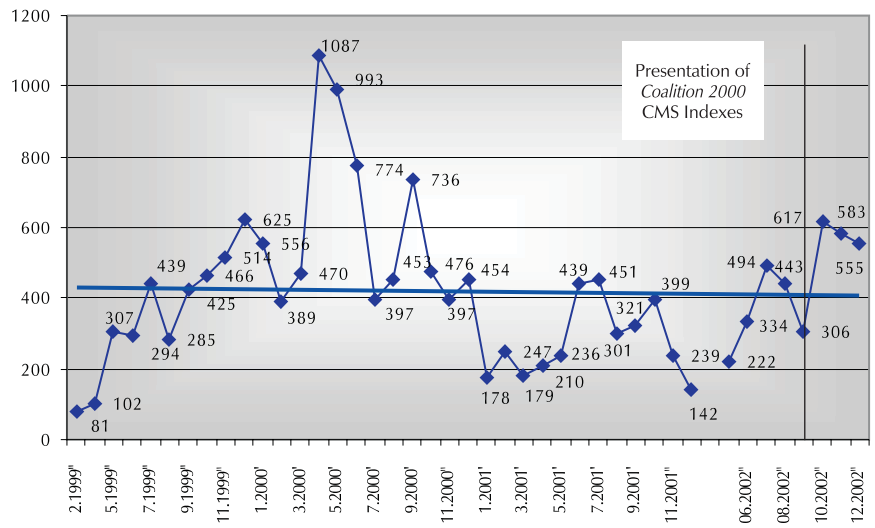
It should be equally noted that some civic organizations make use of their platforms and professed public goals in the self-interest of their members while achieving minimum social impact with the projects they work on. There is a continuing tendency towards token activities by some NGOs, which skillfully adjust to the priorities of the financing organizations and are becoming ever more expert in the bureaucratic jargon when reporting their otherwise quite modest activities. In the absence of sufficiently effective control over project implementation by the financing organizations, there emerge conditions for corruption-related abuse in this sector.

E.2. Media, Information Environment, and Anti-Corruption

In 2002 the media covered a number of corrupt practices, which were the subject of journalistic investigations, analyses, and commentaries. A great many of the cases exposed and investigated actually started from and through the media. What is more - **investigative reporting continues to prove more effective in exposing corruption-related crimes** than the competent authorities, despite its limited instruments and capabilities.

In the sphere of **political corruption**, attention was largely focused on the investigations of privatization deals initiated by the prosecution, as well as assumptions of corruption in connection with the activity of the government.

FIGURE 31. MONTHLY NUMBER OF ARTICLES ON CORRUPTION IN THE PRESS*



Source: CMS - media monitoring
(*) Note: No monitoring has been carried out in the period January - April 2002.

More specifically, the media stressed the following problems of systematic corruption:

- the enduring influence of organized crime over the mechanisms of power;
- the corrupt practices sustained by the very authorities bound to intercept, investigate, and punish acts of corruption (law enforcement and the judiciary);
- the continuing existence of a multitude of registration and licensing regimes;
- the practice of legitimate personal gain by public officials, including from the top ranks, through participation in state owned company boards of directors;
- the adoption of legislation that gives rise to doubts about outright lobbying or even „clientelism".

In addition, the media were also concerned with the **reasons for the poor impact of the government's anti-corruption activities**, among which:

- the coordination problems between the different bodies counteracting corruption;
- the discrepancy between the declared intention to expose large-scale corruption crime and the modest achievements of the executive in this respect;
- certain appointments raising doubts about corruption.

Most of the publications and programs, however, dealt primarily with corrupt practices in the lower ranks of public officials (about corrupt police and customs officers and others). This may actually indicate an objective decrease of the instances of political corruption. At the same time, there are additional reasons for the reorientation of a number of journalists towards exposure of cases of abuse of public office in the lower ranks of the administration, and more notably:

- fear of criminal prosecution;
- lack of support from law enforcement, the administration, and the judiciary;
- shortage of resources, time, and funds;

- concerns about possible pressure and covert reprisal against the media themselves;
- lack of transparency in the top ranks of power.

In addition to these obstacles, the **work of the reporters is still impeded by the poorly regulated and obscure legal and institutional environment** in which the media operate and develop. The more notable **problems** in this respect are:

- Impeded access to information, often labeled „classified" and „official or state secret" without sufficient grounds.
- The possibility still exists to compel reporters to disclose their sources of information.
- Administrative obstacles to obtain the information needed;
- Deficiencies in the registers.
- Poor interaction with both the law enforcement authorities and the judiciary system - the two basic units in counteracting and punishing corrupt practices.
- Continuing inertia on the part of the competent authorities, who rarely initiate proceedings themselves based on journalistic reports and revelations despite the possibilities offered by the *Criminal Procedure Code*.
- The practical application of the *Law on the Access to Public Information*, which was adopted two years ago, has proven controversial. This piece of legislation is supposed to help remove some of the obstacles before investigative and anti-corruption reporting, all the more that it explicitly lays down journalists' right not to disclose their sources. However, journalists come up against a number of difficulties when invoking this Law and in some situations are confronted with even greater obstacles than before. One emblematic case was the government's failure to promptly allow access to the transcripts of Council of Ministers sessions. There have been dozens of other cases when requests for access to public information actually led to court action.
- The remaining two legal acts on public information were adopted in 2002 - *Law on the Protection of Personal Data* and *Law on the Protection of Classified Information*. Neither of the two laws or some of the by-laws regulating their application were implemented effectively in 2002. There are warranted fears that the two laws and the accompanying by-laws could actually impede even further the access to information and pose yet another obstacle before investigative reporting.
- The *Law on Radio and Television* still contains a provision allowing the **disclosure of a source of information**. Another problem in the same law is the provision that „radio and television operators cannot create and disseminate programs containing information about citizens' private life without their consent". „Private life" is defined as „a person's life in its family, health, and sexual aspects". The law nevertheless allows „reference to information in the public interest about the private life of persons vested with public authority or citizens whose decisions have an impact on society".

- Another group of problems were related to the performance and professional advancement of journalists active in this sphere. There was a tangible **shortage of qualified and motivated journalists** covering the corruption / anti-corruption thematic cycle.

In this connection, a number of **obstacles and weaknesses within the media** themselves need to be brought up for public debate:

- Lack of practical experience among a considerable number of the journalists covering this subject;
- Inadequate legal awareness of some of the journalists;
- A strong inclination to sensational reporting, tolerated and even encouraged by the editorial policy of many periodicals;
- Insufficient responsibility when making corruption-related revelations, the reluctance to double-check the reported facts, exaggeration and manipulation of the data, etc.
- The high „rate of mortality" of journalistic revelations owing to the quest for ever-new sensations and scoops, the lack of sufficient motivation to complete the investigations and/or reluctance of the reporters to confront the persons exposed;
- Instances when the media are used for personal or inter-institutional settling of scores;
- The emergence of symptoms of degradation of the media's independence and the subjection of the editorial policy of some of them to group or corporate interests;
- The imposition of a tacit editorial taboo (or reporters' auto-censorship) on cases of violations and abuse of power by law-enforcement authorities or the judiciary.

The overcoming of the existing weaknesses and obstacles to investigative reporting require efforts in the **following areas**:

1. **Improving the professional qualification of journalists through various educational initiatives**:
   - Organizing legal courses for investigative reporters and representatives of the media concerned with corruption;
   - Anti-corruption courses for media representatives similar to the lectures envisioned for public officials;
   - Creating special awards for journalists with major contributions to the fight against corruption, as proposed in the 1998 Anti-Corruption Action Plan of *Coalition 2000*.

2. **Improving the interaction between the media and state institutions**
   - Improving the cooperation between the judiciary and law-enforcement authorities on the one hand, and the media, on the other, including by the creation of special information units;
   - Setting up hotlines and joint „complaint offices," both within the respective state institutions and the media themselves;
   - Publicly disclosing each proven case of corruption, particularly in the higher ranks of power.

3. Improving anti-corruption cooperation between the media and non-governmental organizations

An important development in this respect was the launch in 2002 of the **anti-corruption monitoring of the media within *Coalition 2000***. The main goal of the monitoring is to determine the intensity of media coverage of the corruption problem and to assess the role of the media in shaping public opinion and attitudes to this phenomenon. A database was created for the purpose, with daily entry of items from all of the media monitored and weekly, monthly, quarterly, and annual media monitoring reports. The anti-corruption monitoring will help journalists follow the evolution of corruption revelations, as well as their coverage in the media.

This activity will also allow the creation of an **ongoing calendar of corruption disclosures,** making it possible to monitor the reactions of the media and the concerned authorities after the initial corruption revelations. Such an initiative will further help the journalists keep up-to-date about the status of the individual corruption cases and get background information on the exposed facts.

Anti-Corruption Pressure Group

The Anti-Corruption Pressure Group is a project of the ACCESS Association - Sofia (2001-2002) using media publications to refer cases of committed corruption-related crimes for prosecution. The project combined civic control over law enforcement with partnership between a civic group and the prosecution. Files were opened on the basis of the 57 articles referred by the Group, as follows: preliminary proceedings were initiated in 2 cases; preliminary investigations were initiated in 19 cases; official decline to launch preliminary proceedings was issued in 5 cases and the files were closed; in 7 cases it was established that there were pending or overdue investigations.

The cases referred for prosecution under the project were based on the findings of a specialized media monitoring of specific instances of corruption. This type of monitoring involved selection and analysis of specific reports of corrupt practices brought out in the media.

F. INTERNATIONAL COOPERATION

The general international consensus on the significance of corruption in development, and in particular in the process of transition to democracy and market economy, continued to hold ground in 2002. The interest of the international community did not diminishing in this area; on the contrary, it became more focused, specialized and prioritized.

Nevertheless, apart from the legal provisions of international legal instruments, international **benchmarking in anti-corruption** continued to be problematic. Levels of corruption, and effectiveness of anti-corruption policies, in the members of the international organizations which are working out common legislation in this area - the UN, Council of Europe, OECD, the European Union - still varies significantly. This makes the elaboration of universally accepted definitions of the scope of corrupt practices - let alone their international enforcement - a continuing challenge. Both the manifestations and sources of corruption differ considerably from country to country and among regions making universal anti-corruption prescriptions difficult to design.

Benchmarking difficulties are also linked to another persisting problem faced by international efforts in this area - the reluctance to look into **cross-border sources** of corruption, particularly in regions such as South-east Europe where levels of economic development, institutionalization of democracy, as well as the international affiliations of countries vary significantly.

At the same time, a welcomed trend has been emerging lately with respect to the acknowledgement of the **linkages between trans-national crime and corruption**. In the post September 11 context addressing this linkage acquires an even more poignant urgency.

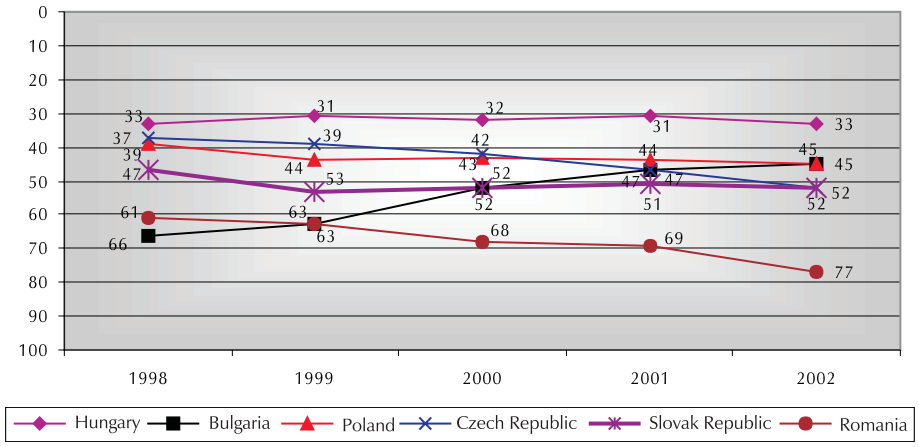
F.1. International Perceptions of Bulgaria's Anti-Corruption Progress

As noted in the Corruption Assessment Report 2001, there is tangible trend among Bulgarian policy makers to acknowledge the value of international anti-corruption cooperation. This has continued in 2002, particularly in the context of the progress made by the country in its ranking in the Corruption Perception Index of Transparency International. In the late 1990s, Bulgarian governments, as well as other CEE governments, were rather skeptical of the merits of making anti-corruption a priority for government policy as this was seen as compromising the country's efforts to meet requirements for membership in the EU and NATO. Public awareness campaigns and discussions were seen as tarnishing Bulgaria's international image with all its perceived negative consequences - diminished investor interest, international peer monitoring, etc.

Bulgaria has improved its ranking in the Corruption Perception Index of Transparency International. In fact, Bulgaria is the only EU applicant country to steadily improve its rating in the TI Corruption Perception

Index in the past few years. From 66th place in 1998, Bulgaria is now at 45th place out of 102 countries ahead of countries such as the Czech Republic, Latvia and Slovakia.

FIGURE 32. RANKING OF SOME EU APPLICANT COUNTRIES ACCORDING TO THE TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTION INDEX



Source: Transparency International, Corruption Perception Index
http://www.gwdg.de/~uwvw/

In contrast, the annual Transition Report for 2002 of the European Bank for Reconstruction and Development (EBRD) states that there was a significant increase in the incidence of corruption in Bulgaria. „This suggests that the burden of corruption has been partly reduced by economic growth and rising sales while some of the fundamental factors that contribute to corruption remain“ (p.28). According to EBRD's Business Environment and Enterprise Performance Survey the percentage of companies making bribes frequently has increased from 23 in 1999 to 32.8 in 2002. The average „bribe tax“ (the proportion of sales that are paid in the form of unofficial payments to officials) as a percentage of annual firm revenues has increased from 1.3 to 1.9. This should be viewed against the trend of a reduction of the unweighted average of this type of burden. It should be noted that the survey shows some surprisingly wide variations among countries (e.g. the percentage of firms making bribes frequently for Georgia is almost three times that of Armenia, while Yugoslavia has half that of Bulgaria).

F.2. International Anti-Corruption Monitoring and Evaluation

Bulgaria has undertaken a number of international commitments with respect to countering corruption. It has acceded to the leading international instruments in this area, notably the **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions** and the Council of Europe **Criminal Law Convention on Corruption** and **Civil Law Convention on Corruption**. Bulgaria has also continued to cooperate actively with the auxiliary and monitoring bodies of the CoE and OECD conventions, in particular with GRECO and the Working Group on the OECD convention.

In 2002, GRECO completed the first round of its evaluations, including for Bulgaria, of the compliance of the member states and the Bulgaria consented to the second phase of OECD's Working Group evaluation. Added to several years of corruption assessment made in the European Commission's annual Regular Report, this should provide a good opportunity for some conclusions of the impact of international corruption monitoring.

The adoption of the provisions of a number of advanced international anti-corruption documents is indicative of the political will in Bulgaria to

adhere to modern anti-corruption standards. At the same time, there is a risk that a kind of „legal optimism" could blur the sharpness of the anti-corruption response.

An apparent contradiction highlights this risk: although, for example, all EU member states score better than Bulgaria in the TI Corruption Perception Index (and for all intents and purposes could be said to be relatively less corrupt), the majority of these countries have not ratified the Council of Europe's **Criminal Law Convention on Corruption**, while Bulgaria has been among the first countries to do so.

Two conclusions could be drawn from this. The first one is by now commonplace, namely that the adoption of legal provisions is by no means a guarantee against widespread corruption. **The gap between the adoption of modern anti-corruption legislation in Bulgaria and the effectiveness of its implementation**, if persisting, threatens to undermine the rule of law in general by making regulations seem irrelevant to society and the business.

The second one, however, is that countries aspiring to EU and NATO membership, such as Bulgaria, could be required to adopt anti-corruption standards not part of many EU states' legislation. This should have certain implications for the international monitoring efforts in this field.

Most importantly, the **monitoring mechanisms should be capable of adapting the requirements of effectiveness and objectivity**. The fact that the publication of monitoring reports by international institutions makes significant impact domestically should increase the requirements that their conclusions and recommendations be both specific and acknowledge benchmarking difficulties. In particular, this could mean:

- adopt a **system of indicators that objectively demonstrate progress made by the country** through measures, actions, policies or strategies in the field of transparency, governance and accountability. The European Commission, for example, is increasingly using such indicators since its Report in 2000 when it referred to „persisting rumors";
- create **synergies with other recognized monitoring systems** including national ones (*Coalition 2000*'s Corruption Monitoring System is a good example);
- mutual monitoring mechanisms should include an independent expertise into their evaluation work. This would ensure: a) the **consistency of the quality of evaluation** (which now depends on the particular team and varies); b) that **diplomatic considerations do not undermine objectivity of conclusions.**

An example of the limitations of peer monitoring mechanisms is the provision of Article 15 of the **GRECO** statue which states that evaluation reports shall be confidential. Nevertheless, the report for Bulgaria, adopted in May 2002, was made public. As it was drafted in September 2001 it does not reflect some developments in the anti-corruption environment in the country (e.g. the adoption of the government action plan). It correctly highlights some deficiencies of the anti-corruption infrastructure in Bulgaria (the lack of a system of collection and processing of data with regard to the investigation, prosecution and adjudication of corruption offenses; the need to redefine the role of the investigation service with

respect to other law enforcement institutions, etc). Still, the report could have been expected to make more specific recommendations.

The second round of **OECD's monitoring of Bulgaria** in the framework of the Convention on Combating Bribery of Foreign Public Officials started in 2002. The evaluation focused on the capacity of government agencies trusted with the enforcement of the implementation of the provisions of the Convention. Bulgaria's participation in the Working Group on the Convention contributes significantly to the capacity of the administration to put into practice modern anti-corruption standards although the bribery of foreign officials may not be among the highest corruption risks in Bulgaria.

As the focus of assistance of the **European Commission** is on helping the harmonization of rules and enhancing the capacity of the national administrations to enforce them, it has focused on exclusive cooperation with executive agencies. Nevertheless, in the last few years the potential of civil society in areas such as corruption monitoring and awareness building have received growing acknowledgement by the Commission. This appreciation is evident, arguably for the first time in Bulgaria, in the 2002 Regular Report of the European Commission on Bulgaria's progress towards EU membership.

> The Government undertook a serious consultation exercise with NGOs and donors on the preparation of the Strategy and the Action Plan, and these bodies will be involved in implementation. The strong role of NGOs is to be welcomed. Measures are aimed at preventing as well as tackling corruption. However, on some important aspects of the strategy, such as decentralisation, the improvement of local governance, and the establishment of improved mechanisms for financing political parties, there is no detail as yet on concrete measures and deadlines.
>
> **European Commission Regular Report 2002, p. 26**

In 2002, the **Open Society Institute** undertook an evaluation effort aimed at mapping corruption and anti-corruption policies in the ten CEE countries aspiring for EU membership. One of the reasons prompting this exercise was the formalistic approach both by the candidates and the EU itself in this area. The report on Bulgaria highlights law enforcement and judiciary aspects and lack of conflict of interest and lobbying provisions.

> The EU accession process has been one of the most important influences on the development of anti-corruption policy, and anti-corruption is clearly recognised by the Government as a condition for both EU and NATO accession. Pressure from the European Commission was instrumental in encouraging the Government to produce the National Strategy, and anti-corruption policy has been an important part of the Accession Partnerships. The Commission has provided increasing assistance for the development of anti-corruption policy.
>
> **Corruption and Anti-corruption Policy in Bulgaria, OSI, pp.82-83**

In 2002, Bulgaria participated in the negotiations for the **United Nations Convention against Corruption.** Discussions of the best monitoring mechanism of the Convention have been part of these negotiations. A number of views have been expressed on this issue, ranging from states that consider that it is necessary to envisage in the text of the Convention provisions providing for a mechanism to monitor implementation to those that have not yet expressed clear positions on the issue or have more restrictive approach. In this context, the **Bulgarian government should take a more active role by putting forward proposals for a monitoring mechanism** that takes into account lesson learned from previous experience in this area. Such a mechanism should include three main elements - annual meetings of the State Parties to the Convention, a Committee of international experts (subsidiary body) and a new more active role of the Center for International Crime Prevention.

F.3. International Anti-Corruption Assistance to Bulgaria

The most significant development in this area was the launch of the Open Government Initiative project, implemented in the framework of an agreement between the Bulgarian government and the US Agency for International Development (USAID). The project focuses on building the capacity of key government agencies, as well as civil society organizations to prevent and tackle corruption. Within it, assistance will be provided in the fields of the transparency and accountability of public finances and public procurement, as well as to the process of *Coalition 2000*.

The latter is in continuation of the public-private partnership approach adopted by USAID in this area. It is also indicative of a growing appreciation of building coalitions of stakeholders in order to ensure the effectiveness of the provision of international assistance.

Little progress has been made on a problem identified in the Corruption Assessment Report 2001 - namely that results of the EU assistance provided, mostly under the national Phare program, are not sufficiently transparent. The European Commission is supporting a number of twinning projects that have a potential anti-corruption effect - with the Prosecutor General's office, with the Bureau of Financial Intelligence, National Audit Office, and others. Important as the twinning mechanism is for enhancing administrative capacity, it needs to be supplemented with other types of assistance (e.g. such that allow replication in other beneficiary institutions, including non-governmental) in the field of anti-corruption to ensure its wider impact. As noted in previous reports, the planning of the Phare program assistance priorities still lacks adequate transparency and excludes various stakeholders (business, NGOs, media, etc) whose participation in anti-corruption efforts could be a guarantee of the sustainability of reforms. Further acknowledgement is needed of the fact that corruption - unlike most other areas of EU technical assistance - requires extra efforts to be made for ensuring the support of these stakeholders for anti-corruption programs as well as outreaching to the public.

In the *Second Country Cooperation Framework for Bulgaria (2002 - 2006)* the fight against corruption and the support to the judicial reform has been identified as a major priority for **United Nations Development Programme (UNDP).** In July 2002 UNDP and the Ministry of Justice started a joint project „Comprehensive Review of the Administrative Justice System in Bulgaria", which is implemented in cooperation with

the Supreme Administrative Court and with the financial support of UNDP and the British Embassy. Its main objective is to help reduce systemic corruption by enhancing the transparency and accountability of the public sector through external control over the activities of state administration.

At the request of the Minister of Justice UNDP and the Center for the Study of Democracy started the development of a *Judicial Anti-Corruption Programme (JACP),* which will focus on the role of the Judiciary for preventing and combating corruption. In particular, the *JACP* will identify areas that require reform and will formulate recommendations for enhancing the legal stability and the confidence in the Judiciary in Bulgaria

Two general **World Bank** Governance and Public Sector Reform missions and one specialized Anti-Corruption Mission visited Bulgaria in 2002 to discuss the main issues and offer policy advice to the major stakeholders form the government, the respective non-governmental sector and the key donors in the area. As a result of these missions a two-day workshop „The Role of Anti-Corruption Commissions and Agencies in Reducing Corruption" was organized in cooperation of the government Anti-Corruption Commission. Discussions addressed the three key functions of each anti-corruption commission: - investigation, prevention and public outreach and education. A set of conclusions and recommendations was drafted, which was submitted to all the parties concerned in the area.

* * *

In 2002, positive developments took place as regards **coordination of international assistance** in the field of anti-corruption. A welcomed effort was made by the government to harmonize the various aid projects implemented by the international donor community in Bulgaria. In March the Minister of the Economy announced the launch of a new Donor Assistance Coordination Mechanism with thirteen jointly co-chaired working groups. The Bulgarian Team of the Working Group on Anticorruption, Transparency, Accountability is chaired by the Deputy Minister of the Interior with the development partner being UNDP. Still, certain overlapping existed in 2002 between the projects of some donors in the field of anti-corruption and little effort was made to multiply the results of successful projects.

F.4. Regional Aspects

As noted in previous Corruption Assessment Reports the cross-border aspects of corruption in Southeast Europe have not always been readily acknowledged by Bulgarian governments. For example, Bulgaria opted out of the **Stability Pact Anti-Corruption Initiative** for fear of being tied down to the Western Balkans agenda rather than the EU and NATO enlargement one.

Nevertheless, in 2002 the international community, including Bulgaria, focused particular attention to the cross-border aspects of organized crime and related corruption. The Bulgarian government has shown heightened sensitivity to the threats posed by regional organized crime and its impact on corruption. In November 2002, the Bulgarian Minister of Interior participated in a European Union-led conference on organized crime in

Southeastern Europe in London. The conference, which was organized by the British Home Office, adopted a final statement outlining what it calls a joint coordinated effort by the international community and the countries in the region to tackle organized crime.

Thus, the understanding of the implications of regional instability on corruption in the countries region has been growing. In 2002, the **Southeast European Legal Development Initiative (SELDI)** published an assessment of corruption in SEE which emphasized its trans-national sources.

* * *

It is commonly argued that criminals, including the perpetrators of corruption-related offenses, are always at least one step ahead of law-enforcement authorities. This observation is all the more pertinent to societies that are in the process of radical transformation of property ownership without the adequate rule of law.

The Bulgarian experience suggests that it is not possible to drastically restrict corrupt practices without transparency and democratic control over the operation of the judiciary and the institutions upholding law and order. Anti-corruption measures need to start with severing the links between organized crime and the authorities trusted with opposing it. Completing such a task requires a high measure of coordination and the concerted efforts of all three branches of power.

As the processes of Bulgaria's integration in NATO and the European Union gain momentum, corruption can no longer be treated as a national problem alone. Furthermore, the pre-accession mechanisms are assuming an ever more important role in creating the legal and institutional preconditions for reducing the corruption risk. This is equally the aim of the efforts of civil society, which has been making headway in its combined role of partner and staunch critic of the institutions of the state.