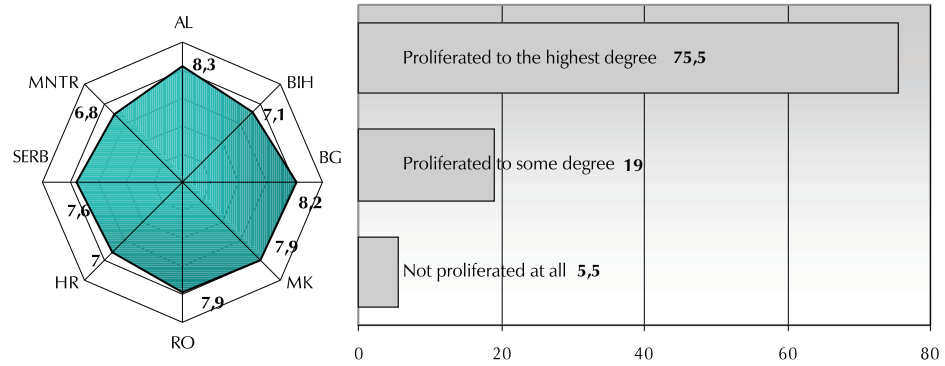
C. JUDICIAL REFORM AND ITS ANTI-CORRUPTION DIMENSION

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.

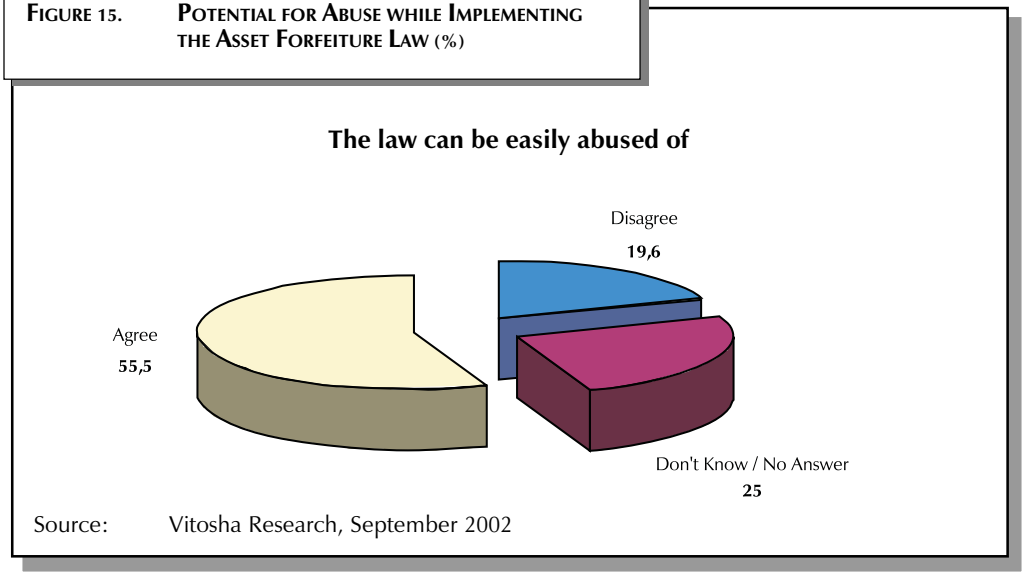
The following proposals of the draft leave room for criticism:

- 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.

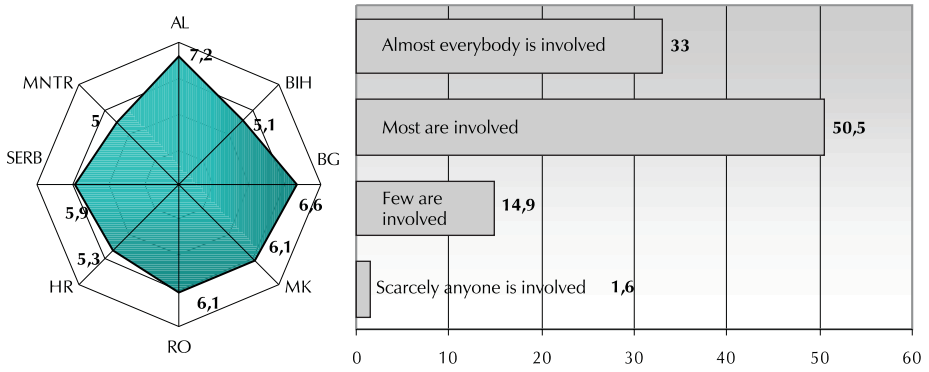
Likewise, the attempt to redefine the powers of the Supreme Judicial Council as a body governing and representing the judiciary, and the powers of the executive as represented by the Minister of Justice gave rise to serious debates, and even to accusations that the government would interfere with the 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.

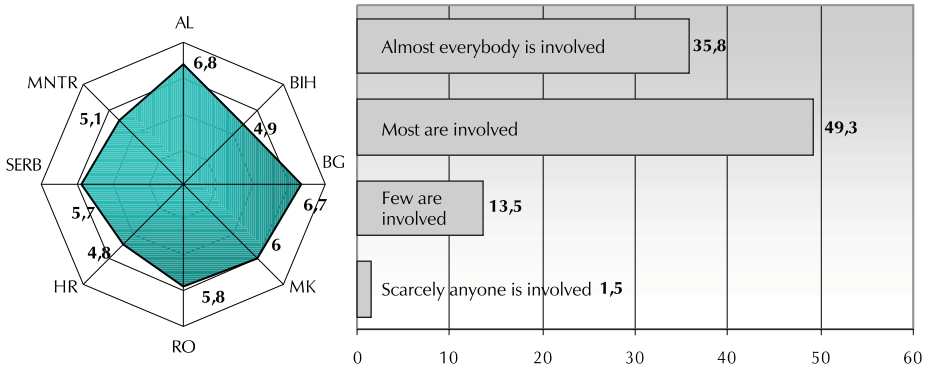
The problems of the investigation and the public prosecution in the context of the anti-corruption dimensions of judicial reform deserve a special emphasis not only because they currently form part of the judiciary on an equal footing with the court. The key reason is that, due to the nature of their 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

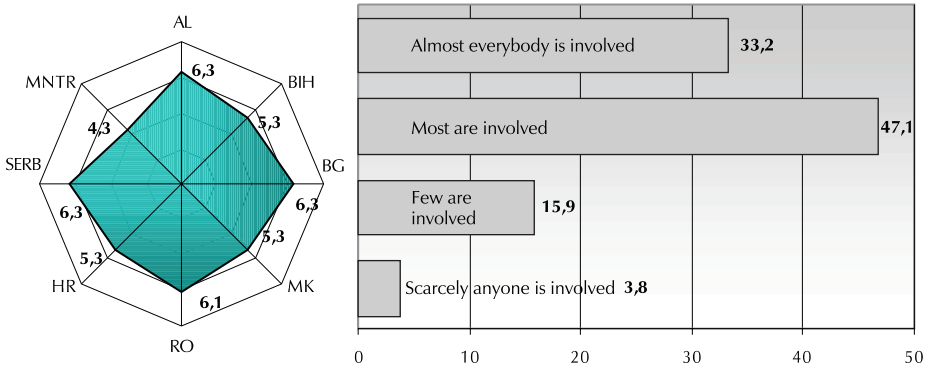
the fact that Bulgaria will become an external border of the Union and should thus meet the EU criteria for security and efficient administration of justice.

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.

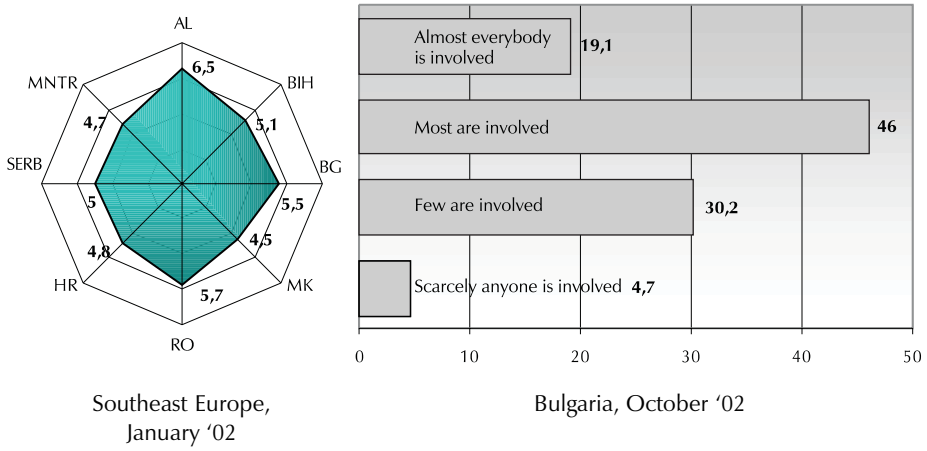
The amendments to the *Law on the Judiciary* govern the status of officials in the administrations of the bodies of the judiciary (court staff). Court staff should also be appointed on the basis of competition and this is to be applied in practice. The forthcoming enactment of internal ethical rules 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.