PART TWO: IMPLEMENTING ANTICORRUPTION IN BULGARIA

[...] Introduction

Chapter One: Designing and Implementing Anticorruption Reforms

Coalition 2000 initiatives endeavour to establish lasting co-operation among representatives of the civil society, the public institutions, experts, advisors, and journalists, so as to ensure the specific contribution of NGOs. This Chapter is dedicated to the following main aspects of the initiative: **1. designing an overall institutional and legal anticorruption framework; 2. judicial reform, and 3. reducing corruption in the economic sphere.** Activities in each of these areas are underlied by the **need to strengthen civil society** and to reconfirm its involvement in developing anticorruption ethics. The formula of public-private partnership has been used directly both throughout the process of drafting and adopting the Action Plan (1998) and during its implementation (1998-2001).

1. Public-private Partnership in Designing an Overall Institutional and Legal Anticorruption Framework

The existence of operational institutional mechanisms within the political system and the civil society, based on clear and precise rules, is an essential condition for combating corruption. Legal and institutional prerequisites are needed to create a social and political environment hostile to corruption. In addition to their general preventative and stabilising effect, they make it possible to better define corrupt acts and incriminate them, while clearly regulating the procedure for detemining liability and the sanctions imposed for corrupt acts.

1.1 Public Administration Reform and Legislative Framework Development

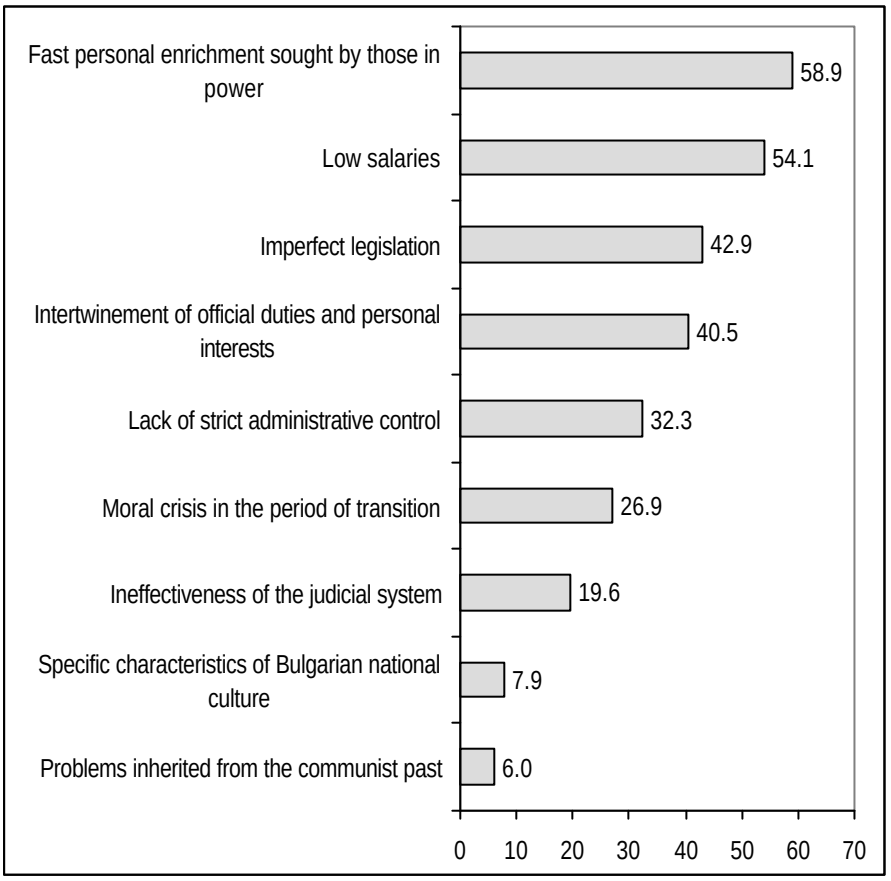
A) Action Plan Recommendations

The objectives of the recommended public administration reform and the specific steps for its implementation were formulated based on an assessment of the current status of both the central government and municipal administrations and of the spheres of Bulgarian society most affected by corrupt practices.

The major factors identified as conducive to corruption in the administrative machinery were the unregulated intertwining between public and private interests, the ambiguous criteria for delineating, and distinguishing between, the competencies associated with different government institutions and positions, the lack of professionalism among government employees, modern organisation, and the need for greater transparency in government. The main focus of public administration reform was the use of institutional

reform as a way to combat the factors that are conducive to corruption. Special emphasis was put on legislative measures, because flawed legislation facilitates the spread of corruption. The prevailing public opinion was in favour of this approach.

Figure 1. Major factors accounting for the spread of corruption (%)



Base N = 331

Source: Corruption Monitoring System, Business Elite Survey, January 2000

The spheres most often affected by corrupt practices, *e.g.* license issuance, the collection of government revenues (taxes, customs duties), monitoring and control, the award of public procurements, etc. influenced the determination of the scope of the measures and actions proposed. These were detailed in 16 points that can be brought under several large headings, (depending on the major issue at stake): 1) designing an legislative framework to optimise the structure and the powers of the administration (by *inter alia* regulating the status of civil servant) and putting in place legal and institutional safeguards to assure the transparency, accountability and control of that framework; 2) introducing specific statutory requirements for the work of the administration and, of the relevant procedures as well; 3) introducing internal rules and supervisory mechanisms, including

mechanisms to ensure accountability to and information for the public; 4) complementary measures.

1) To set up a relevant overall legislative framework, the following steps were recommended: to adopt an organic law regulating the work of the administration; to adopt a law on the civil servant; to put in place legislative measures to improve the administrative services; to reduce the number of permission and licensing regimes, so that permits and licenses only exist where strictly necessary; in addition, such regimes should only be introduced by laws, as opposed to secondary legislation, in order to guarantee a maximum degree of transparency and accountability; and finally to pass rules on the criminal, civil and disciplinary liability of civil servants in the event of corruption. The proposal to adopt an organic law for the administration derived from the need to establish an uniform structure of the state machinery and for an efficient control over its units, and the need to avoid overlapping between independent institutions (agencies) and the structures of various ministries, or between central and local authorities. The proposal to regulate the status of civil servants by virtue of a law identified specific anticorruption steps, such as preventing conflicts of interest, eliminating any next-of-kin relationships and nepotism, regulating the receipt of gifts, providing for the compulsory disclosure of income, imposing obligations to undergo the relevant training and qualification and to comply with certain rules of conduct. As regards the legal and institutional safeguards, particularly important were the proposals to set up a body in charge of investigating allegations of corruption and submitting them to the competent authorities for criminal prosecution (or alternatively make some of the existing bodies specialise for that purpose); to set up a public registry of the financial and property status of civil servants in senior positions; to set up units for handling complaints by citizens; to provide information and to develop PR within the agencies; and to make the units funded from extra-budgetary accounts fully accountable or close them.

2) As to the need for special statutory requirements for the work of the administration and the relevant procedures, the focus was on the development of regulations based on primary legislation. These should, among other things, set time limits for considering and pronouncing on a given issue, introduce clear procedures for the exercise of discretionary administrative powers, reduce to a minimum the chances for discretionary decisions, and provide for rotation among civil servants.

3) As regards the internal rules and monitoring mechanisms, the proposals were to adopt internal guidelines and instructions - specific, generally accessible and transparent - for the conduct of the administration in its relations with the citizens, to implement a system to assess the work of civil servants, including efficient in-house disciplinary procedures, and to set up specialised internal control units.

4) With respect to the complementary measures, the transfer of certain activities and services from the administration to the private sector was recommended in order to ensure administrative decentralisation and to lessen the chances and incentives for corruption within the central and bcal authorities. The purpose of such a recommendation was to create a competitive, more efficient and red-tape-free sector in the services market.

B) Assessment of Anticorruption Efforts and of the Measures Taken to Date. Future prospects

The analysis of certain changes made in the institutions and the legal mechanisms, and of the changes that could not be implemented, should be the point of departure in portraying the dynamics of anticorruption measures and depicting the future goals. Anticorruption efforts centred on the sphere most prone to corruption - public administration - and on the legislative framework for its operation. Emphasis was also laid on the possible mechanisms to ensure the distinction between the public and the private sector and to foster a transparent dialogue between them.

The period from end-1998 to early 2000 saw the adoption of a large number of legislative measures recommended in the Action Plan. According to the Plan, 2000 was the deadline to complete the legislative framework, to adopt the necessary regulations and to give a successful start to the enforcement of the new anticorruption legislation. Most of these measures were placed on the agenda of the government and were largely adopted under the pressure exerted by the civil society and due to the efforts of *Coalition 2000*. Certain external factors were also crucial in that respect, *viz.* the international commitments of the country, the conditions for accession to the European Union, etc.

It is worth mentioning the following **legislative measures** passed during the period in question:

- The **Law on Administration** (in force as of 6 December 1998) is quite detailed in distributing the powers between different bodies of the Executive, and setting out the structure of the administration and the organisation of its work. At the same time, however, the provisions concerning a number of key important issues in the fight against corruption are generally phrased and refer to specific laws, regulations or internal guidelines to be adopted later. As a matter of fact, most of these implementing instruments were not drafted and adopted as quickly as needed. While implementing the law, during the year 2000, organic rules were issued for the administration of the executive authorities. They had to bring about greater transparency in their work and dismantle the chances for corrupt conduct within the state machinery. However, the process of bringing those administrations into line with the law during the envisaged one-year period was not sufficiently

transparent. The same was true for numerous agencies and committees whose administrative structure had to meet the same rules.

Irrespective of the efforts of many NGOs, no functioning mechanisms were promptly put in place to ensure accountability to the public and information about the work of the agencies.

- Administrative service reform is in its initial stage now. In the beginning of November 1999, the **Law on Administrative Services to Natural and Legal Persons** came into effect. Its enforcement, however, has not produced the expected result yet. In fact, enforcement here is additionally impeded by the slow pace of public administration reform. Arbitrariness and abuse of individual interests can only be avoided on the basis of detailed and clear rules on the organisation and supervision of administrative services, coupled with procedural guarantees. For this purpose, and to bridge some inconsistencies between the regulations in force, the Corruption Assessment Report 2000 of *Coalition 2000* recommended that complaint and appeal procedures should be covered by a single piece of legislation based on the existing procedure for issuing and appealing against individual administrative acts (as set by *the Law on Administrative Proceedings*), while also drawing on the good solutions embedded in the *Law on Administrative Service to Natural and Legal Persons*.

The view of Coalition 2000 is that administrative proceedings should be codified, albeit partially. This would generate legal guarantees for the rights of private parties in their relations with the administration, ensure larger transparency and control of the workings of the administration, and reduce the scope of malpractice when administrative services are provided and received.

- The ***Law on Civil Servants*** (in force as of 28 August 1998) lays down the general requirements attached to the status of civil servants (which remain valid even if the status is acquired on grounds of special laws). It also sets out the appointment procedure, the rights, the duties and the liability (both disciplinary and financial) of civil servants. However, the persons qualifying as civil servants are not clearly defined yet. For example, persons working within the Administration of the Judiciary do not qualify as civil servants. Given the specificity of their work and their responsibility for the standard of the administration of justice, their status should be regulated specifically by introducing the necessary amendments to the *Law on the Judiciary*.

Several instruments of secondary legislation were adopted to implement the *Law on Civil Servants*: *Ordinance on the Official Status of Civil Servants* (in force as of 22 March 2000); *Ordinance No. 1 of 21 March 2000 on the Documents Required to take*

up position in the Civil Service (in force as of 26 March 2000), *Ordinance No. 1 of 22 January 2001 on the Civil Servants Register* (in force as of 15 February 2001). A Code of Conduct for Civil Servants has also been drafted but the draft deviates essentially from Recommendation No. R(2000)10 of the Committee of Ministers to Member States on codes of conduct for public officials and the annexed *Model Code of Conduct for Public Officials* (adopted by the Committee of Ministers of the Council of Europe at its 106th session on 11 May 2000). The differences lie mainly in the narrower scope of application (*e.g.* Bulgarian legislation does not regard as civil servants the members of political cabinets, deputy provincial governors and deputy mayors), the different interpretation of the concepts of loyalty and conflict of interests, the lack of duties to provide information in the context of access to public information, the lack of supervisory mechanisms to ensure observance of the Code, etc. Given these discrepancies, the current Bulgarian Code is insufficient to limit the discretion of the administration and to ensure wider transparency and accountability in its work.

In the meantime, an *Institute of Public Administration and European Integration* has been set up. A major component of its activities is to help improve the knowledge and skills of civil servants.

The **State Administrative Commission** has been formed as well (*Regulation No. 152 of 28 July 2000 on the Establishment of the State Administrative Commission with the Council of Ministers*, in force as of 1 August 2000; *Organic Rules of the State Administrative Commission* adopted by Regulation No. 259 of the Council of Ministers of 14 March 2000). By virtue of the Law on Civil Servants, the Commission should monitor comprehensively the observance of the status of civil servants and the performance of their duties. It is difficult to forecast how efficient this control would be, especially given the existing rule that the Commission may, but is not bound to, address mandatory instructions to the appointing authorities to make them rectify the irregularities pertaining to the status of civil servants.

The stakeholders of the Coalition 2000 process share the view that the steps designed to strengthen the status of civil servant and improve their professional competence should be combined as soon as possible with mechanisms that prevent the conflict of interests and with enhanced internal control, as both of these would have anticorruption effects.

In addition, the current rule which prohibits civil servants from making public statements on behalf of the administration needs to be detailed and applied in a differentiated manner. The rigorous implementation of this prohibition in its present form would isolate the public administration and inhibit transparency, thus kindling at least suspicions of corruption and giving ample room for media guesses and interpretations. In that respect as well, the lack of rules on the dialogue with the public should be rectified, in particular rules on communication with the media.

- The provisions on **financial and property liability** have been developed substantially. Their enforcement is crucial to cut off corrupt practices at the high layers of power. First, an obligation was imposed on civil servants to disclose their property. Afterwards, the ***Law on Disclosing the Property of Persons in Senior Government Positions*** was adopted (in force as of 13 May 2000). The duty to disclose is now incumbent on a wide range of individuals in senior government positions. The addressees of the law must declare annually their own income and property acquired during the previous year, and the income of their spouses and children under age.

The public register of persons obliged to disclose their property under the law is kept by the President of the Audit Office. The law determines who shall have access to the data in the register and sets out the procedure for obtaining such access. Though the provisions of this law more or less express good wishes, the public disclosure of compliance or failure to comply with the law is expected to have strong moral repercussions. These expectations were actually met once implementation of the law had started - even the announcement of the names of individuals who had not disclosed their income on time stirred public reactions that could become a major deterrent against corruption. Of course, the need to monitor compliance with the law would still be there, quite like the need for appropriate sanctions in the event of violation. It is too early to judge whether the obligation of civil servants to declare their property before the appointing authority (first upon taking office and then annually, by 31 March every year) would be a sufficient brake to corrupt practices and how operational compliance controls would be. It is obvious, however, that **the rules on property and financial disclosure** and their practical implementation are of major importance to the eradication of corrupt practices.

The rules on financial and property disclosure need to be developed further, while expanding the powers of the supervisory authorities and providing for stricter sanctions. The mechanism of public-private partnership - organising and participating in discussions, drafting specific proposals, etc. - should be used more rigorously to refine the categories of persons covered by the law, the access to the register, and the protection of personal data, and in the longer run - to make possible the transition to an electronic register.

- The long-awaited ***Law on Access to Public Information*** (in force as of 11 July 2000) was adopted as well. It is intended to put in place the legal prerequisites for greater transparency in the work of the public administration. The mere adoption of the law, however, would not create automatically the required technical, organisational and legal conditions for its efficient enforcement. First of all, the existing public registers are incomplete, sometimes mistaken and have not been kept so as to enable general access. There are no comprehensive information systems in almost

any area susceptible to corruption, *e.g.* real estates, customs, taxes, etc. Secondly, access to public information depends directly on some other instruments that are not adopted yet, *viz.* the *Law on the Protection of Personal Information* and the *Law on Official Information*. If concepts such as "official secret" are not clearly defined by law, it would be impossible to do away with the judgmental conduct of government agencies. This, in turn, may well impede the access to public information or make certain corrupt attitudes and practices recur. In addition, the protection of individuals against the abuse of their personal information possibly committed by the state or by third parties is impossible unless there are stringent rules, set out in a separate law, on the collection and processing of personal data and on the access thereto. EU directives are also based on the fundamental requirement that personal information should only be collected and processed on grounds of a law. In Bulgaria, various instruments of secondary legislation are now in force which serve as the basis to sustain different registration, permit and licensing regimes and to collect personal data. A number of private-law entities, *e.g.* banks, the Bulgarian Telecommunications Company, the National Electric Company, the district heating companies, etc., also collect personal data they need for their operations but there is no uniform legislative protection for those data.

The ever wider use of electronic data exchange and electronic communications in business deals and in the day-to-day relations between private parties, on the one hand, and between private parties and the administration, on the other hand, makes it even more urgent to respect the legal provisions concerning personal data protection.

- The existing draft ***Law on Combating Corruption and Financial Crime*** provides for a special State Agency for Combating Financial Crimes and Corruption. It should be set up as a specialised body with the Council of Ministers, *i.e.* within the Executive branch. The envisaged status and exceptional powers of that body within the Executive and the fact that corruption for the purpose of the law is confined to bribes and crimes committed upon fulfilling official duties have given rise to extensive debates on, *e.g.* whether the law would be efficient, if it would be compatible with the Constitution and whether it would duplicate some powers vested in already existing specialised authorities and bodies.

Based on the pros and cons of practices in other countries, and taking account of the situation in Bulgaria, Coalition 2000 would recommend that work should continue and efforts should be made to find better solutions in that respect.

- The newly-adopted ***Law on the Organisation of the Territory*** (in effect as of 1 April 2000), invited serious criticism among experts, guild organisations and private businesses already with its adoption. The debates concerned the numerous prohibitions contained in the law, the unclear criteria for issuing licenses and permits, the discrepancies or inconsistencies with other laws, the references to non-existent laws and, finally, the incentives for corruption the law allegedly creates.

As regards public administration reform, the experience gained between 1998 and 2000 has shown that *no legal or institutional prerequisites, that would be sufficient in volume or efficiency, exist yet to deter corruption. Regardless of the formal legislative progress, the sectors affected by corrupt practices have not shrunk substantially in real terms.*

The slow and inconsistent evolution of the legal framework of the reform, the lack of sufficient and sustainable legal prerequisites hostile to corruption affect directly the operation of government institutions and of the civil society, and hinder the development of a sustainable anticorruption institutional environment. The state still demonstrates a reflex of self-preservation and self-protection rather than a reflex to develop mechanisms protecting citizens and the society against the misuse of power. The democratic decentralisation of the state has not taken place yet. The amendments to the *Constitution* and the package of draft laws on local government, which had been planned for the period 2000-2001, were not enacted. The intent of these drafts was to make the municipalities more independent, also in terms of taxation. Unfortunately, this was not a publicly defended idea combined with specific solutions or objectives but a topic used mainly as a pre-election argument.

There has been no progress in transferring certain public functions to private subjects, notwithstanding the pressure and the demand on behalf of the private sector. A noteworthy example here is the proposal to pass a law empowering the guild organisations to issue all licenses, except for those bearing on national security, on public health or on activities covered by international treaties.

The transfer of some state functions onto non-governmental organisations is a feature of any modern democratic state. It is also a must for the development of an anticorruption pattern of relations between the state and the civil society in transition countries.

1.2 Setting up New and Improving the Existing Supervisory and Monitoring Institutions and Units

A) Action Plan Recommendations

Given that the existing supervisory and monitoring institutions and units are not always able to combat, on time and efficiently, the corrupt practices and the omnipotence of the administration and given that specialised institutions themselves are not by default immune from corruption, the general objective here was to enhance the role of some existing agencies and to set up new supervisory and monitoring institutions in an attempt to effectively deter corruption. The emphasis was placed on institutions outside the judicial system, that were quite different in status and functions, ranging from genuine supervision via monitoring or to intermediary involvement without any powers and resources. In particular, it was suggested to: 1) promote the role of the Audit Office as a supreme state authority exercising independent external (*ex-post*) control for the execution of the budgets approved by the National Assembly and by municipal councils; 2) enhance financial and tax controls, the specialised anti-money laundering control, and internal controls, foster interaction among the Audit Office, the previous State Financial Control, the tax administration, the customs authorities, the Ministry of Interior and the Judiciary, and put in place a single information system linking together supervisory agencies and law enforcement; 3) introduce the institution of the Ombudsman who should be vested with monitoring the administration of social processes and the work of public authorities.

1) The role entrusted to the **Audit Office** is fairly important and, hence, the proposed legislative amendments aimed at improving its operation: to take on board the European and international principles of external and internal control by, *inter alia*, avoiding redundant controls; to expand the forms and methods of macroeconomic control; to enhance the use of methods of current monitoring *vis-à-vis* the units controlled; to reinforce the *ex-ante* control exercised by the Audit Office; to develop its advisory functions; to improve its structure; to introduce clearer rules on its relations with other state agencies (the National Assembly, the Judiciary, Bulgarian National Bank, the State Financial Control) and promote interaction among them, while distinguishing between their respective control functions.

2) The following specific proposals were made for **legislative reform and institution building in the area of tax and financial control**: amendments to the tax legislation so as to clarify the powers of tax authorities and simplify taxation, ensure greater transparency of the internal regulations adopted by various institutions, and lower the taxes and the customs duties; amendments to the *Code of Civil Procedure* to ensure the speedier development and resolution of cases relating to defalcations and proper financial incentives for employees who contribute to the detection of tax offenders; developing a system to control the management of ministries and agencies and improving the internal financial control units; promoting interaction among the State Financial Control, the Audit Office, the tax administration, the customs authorities, the Ministry of Interior and the Judiciary by way

of adopting joint regulations and instructions; reconsidering the role of the State Financial Control to avoid duplication of its functions with those of the Audit Office; setting up a single information system linking supervisory and law-enforcement bodies; developing a system to control the management of ministries and agencies; reinforcing the internal financial control units at different agencies and organisations; enhancing the specialised anti-money laundering control, and expanding co-operation with the European Union and its member states (*inter alia* through measures relative to the introduction of the euro).

3) The recommendation to introduce the institution of the **Ombudsman**[1] came up in quest of new, out-of-court, mechanisms of monitoring and *sui generis* control of the vast area of governance and administrative operations which comprises, *inter alia*, the exercise of executive powers (administration in the narrow sense), the organisation and management of judicial administration, public services and the services provided by non-governmental institutions. This institution would not compete with or copy the existing traditional mechanisms but rather complement them when the division between public and private - an essential feature of the rule of law - has been transgressed, *i.e.* when public authorities or non-governmental institutions vested with certain public functions fail to ensure the free exercise of private rights and freedoms or disrespect, or interfere with, such rights and freedoms.

B) Assessment of Anticorruption Efforts and of the Measures Taken to Date. Future Prospects

The measures taken to enhance the anticorruption dimensions of supervisory institutions and to build up new institutions could be best assessed on the basis of the results achieved.

- The passing of the ***Code of Tax Procedure*** (in force as of 1 January 2000), put in place legal rules to prevent and detect tax offences, and to fight corruption within the tax administration. An Agency for State Receivables was set up which is endowed with powers to combat corruption. Internal control units were also formed. The foundations are there for the tax administration to function better but the desired anticorruption effect is not visible yet, despite the wide powers given to the

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[1] *The institution of the Ombudsman has been created and operates successfully, in one way or another, not only in its native land - Sweden - but at a pan-European level as well, within the framework of the European Union. It also exists in almost all European countries and in the whole Balkan region, except for Bulgaria and Turkey.*

tax authorities. Moreover, these powers have invited discussions on possible abuses and on the need for more serious guarantees to prevent such abuses.

The planned amendments intended to reduce the taxes would alleviate the tax burden on individuals and private entities alike and would foster tax compliance. Indirectly, they would also discourage the attempts to evade taxes through corrupt practices.

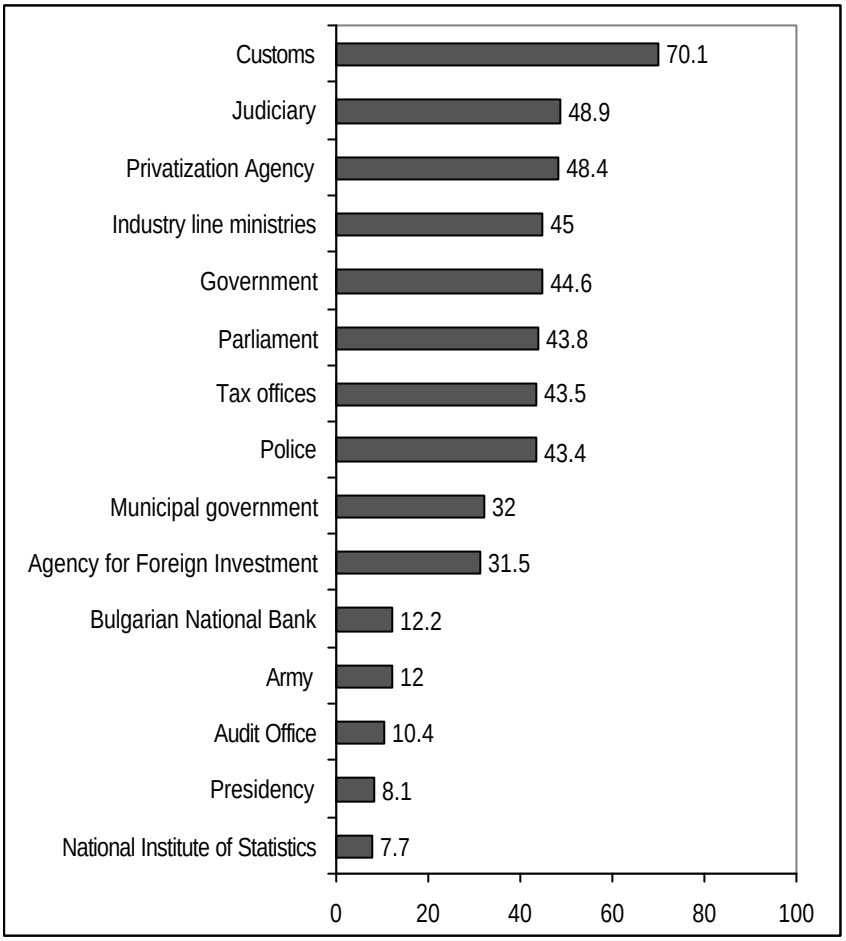
- The ***Law on State Internal Financial Control*** (in force as of 1 January 2001) introduced a modern financial control system based on the *ex-ante* internal control exercised by the Agency for State Internal Financial Control (Organic *Rules of the Agency for Internal Financial Control*, adopted by Regulation No. 35 of the Council of Ministers of 13 February 2001). Internal financial control within the meaning of the law should be combined with the external control of budget expenditure exercised by the Audit Office.

The need for enhanced supervision of how privatisation proceeds are spent has also come to the fore. Similarly, the rules on administrative and financial liability should be improved in this context.

- Some steps have been made to start aligning the legislative basis and the practice of the Bulgarian Audit Office with those of the Court of Auditors of the European Communities. The Audit Office is a major player in enforcing the *Law on Disclosing the Property of Persons in Senior Government Positions*, as the register under that law is in fact kept by the President of the Audit Office.

The supervisory powers of the Audit Office are indeed crucial to reduce corruption. Moreover, the prevailing public opinion is that the Audit Office is one of the least corrupt institutions in the country (Figure No. [2]). Hence, it is recommended to develop further the existing legal rules on the operations of the Office and to provide for some new legislative solutions. This recommendation concerns both the control entrusted to the Audit Office and the supervisory powers of the state internal financial control and the tax administration, in particular the powers of specialised tax compliance bodies. It would be necessary to establish clearer rules on their competencies and on their relations with other government agencies, such as the Judiciary, the Ministry of Interior, and the Financial Intelligence Unit (an agency with the Minister of Finance), and to improve interaction among them.

Figure 2. Level of the proliferation of corruption in the public institutions*



**The proliferation of corruption was assessed by 1-5 scale, where 1 means "Not proliferated at al"l and 5 - "Proliferated to the highest degree".*

The Figure 2 presents the share of respondents who mentioned options 4 and 5.

A fully-fledged system should be implemented to keep track of and control the cash flows that are not accounted for, as corruption-related money always takes the form of such flows. The speedier the reforms based on the above recommendations are, the less friendly the environment would be to corruption.

- The ***Law on Measures against Money Laundering*** **was amended and supplemented with effect as of 6 January 2001**. The amendments were necessary to align Bulgarian legislation with the Directive of the Council of Ministers of the European Union on Prevention of the use of the Financial System for the Purpose of Money Laundering. The amendments extended and specified the list of entities bound to apply anti-money laundering

measures. There are now specific rules on when customers need to be identified, on the identification procedure, on the procedures for storing and disclosing information, and on the protection of information. The Financial Intelligence Unit set up by virtue of the original text of the law was transformed into an agency, *i.e.* a legal entity with the Minister of Finance, funded through the State budget and having its seat in Sofia (*Organic rules of the "Financial Intelligence Unit" Agency*, adopted by *Regulation No. 33* of the Council of Ministers of 12 February 2001). More detailed rules were also inserted on the internal organisation and control exercised by the Minister of Finance and by the Director of the FIU. International co-operation is tackled as well.

Further improvements of the legal rules and their enforcement should result in reconfirming the role of specialised anti-money laundering control which should contribute to deterring and detecting any instances of corruption associated with this phenomenon.

- In September 2000, the Council of Ministers adopted **rules on the new Integrated Information System** that should bring together the data collected by the customs authorities, Ministry of the Interior and the judicial system. The system has been set up with the National Statistical Institute and should mirror the efforts of Ministry of the Interior, the Ministry of Defence, all investigation services, courts and prosecution offices in combating crime. The development of the system is in its initial stage now. There is no technical capacity yet to implement it on a full scale. Such capacity is urgently needed in the courts so that they could keep track of the development of cases and promptly register information on the outcome of litigation. Despite the fact that an interagency task force has been set up for this register, the latter is not yet operational.

The functining and effectiveness of the integrated information system would largely depend on the swift adoption of legal rules on official information and on personal data protection, as the lack of safeguards against the misuse of personal information entails significant risks of corruption, especially when data about large-scale crime are at stake.

Because of *Coalition 2000* initiatives and the joint work with government institutions, with a broad roster of experts and NGOs, it has become widely accepted that **a special institution, along the model of the ombudsman, should be introduced at the national level**. This institution should be outside the branches of power in order to monitor and control the administration and act as a brake upon corruption and arbitrariness that transgress the rights of individuals and their organisations. In 2000, the idea to set up a

specialised institution to supervise and monitor the administration (an ombudsman) - as a mechanism that would complement and parallel the slower judicial, administrative and other existing remedies - was embraced by representatives of core government agencies, members of Parliament, members of the Judiciary and of the Executive, and by the civil society. The concept paper and the *Draft Law on the People's Defender and on Civic Mediators,* developed within the framework of *Coalition 2000,* were widely discussed and publicised. The draft law was talked over at numerous public hearings organised by *Coalition 2000* in co-operation with the standing Parliamentary Committee on Human Rights, Religions and Citizens' Complaints and Petitions. Those hearings were attended by representatives of ombudsmen and similar institutions in Spain, Greece, Canada, scholars and experts from the country and from abroad, guests from other NGOs and international institutions (ABA/CEELI, the Parliamentary Centre of Canada, etc.).

The public hearings introduced in the practice of the Parliament, as a useful method to promote new ideas generated by the civil society and to improve legislation, were a major component of the public-private partnership model launched.

Due to the efforts of Coalition 2000, a number of public hearings took place on the Draft Law on the Ombudsman and on other elements in support of the drafting and advocacy process. The following of them were essential:

- *Public discussion "The People's Defender of Civil Rights and Freedoms and the Development of Efficient Local and Central Government Administrations", October 1999, Pleven.*
- *First public hearing on the Draft Law on the People's Defender (November, 1999), National Assembly, Sofia*. Organised jointly with the Committee on Human Rights, Religions and Citizens' Complaints and Petitions, and involving representatives of the Committee on Legal Matters and Anticorruption Legislation and the Committee on Public Health, Youth and Sports. Numerous recommendations and remarks were made by the participants. Mr Rovira, First Deputy to the People's Defender in Spain, and Canadian experts shared their views based on their experience in establishing the Ombudsman institution. The members of the drafting task force explained some of the legislative proposals.
- *International conference "Establishing the Ombudsman Institution: the Bulgarian Perspective" (November 24, 2000)*. Organised jointly with the Parliamentary Committee on Human Rights, Religions and Citizens' Complaints and Petitions, the American Bar Association / Central and East European Law Initiative, and the Union of Jurists in Bulgaria. Professor Nikiforos Diamandouros, Ombudsman of Greece, explained the Greek experience with the institution and offered extensive comments and recommendations on the Bulgarian Draft Law on the Ombudsman. Ms. Hanne Juncher, expert at the Directorate General of Human Rights, Council of Europe, briefed the participants about ombudsman-related activities within the Council of Europe. Bulgarian MPs appreciated NGOs' involvement in the development of the draft law and expressed their hope that a working piece of legislation would be adopted.
- *Second public hearing on the Draft Law on the Ombudsman, National Assembly (February 2001).*

The final version of the draft law was based on the public hearings held, the opinions expressed, the recommendations and the suggestions made. It was titled ***Draft Law on the Ombudsman*** and was presented to the National Assembly in November 2000 by a group of MPs. The draft provides for introducing an ombudsman and local mediators, and draws on the classical model of ombudsmen in other European countries while reflecting the necessary and possible specificity to tailor the institution to the conditions in Bulgaria. The

idea of the draft is to offer a new type of safeguard for the fundamental rights and freedoms of individuals citizens and their organisations, in parallel to other existing remedies, *e.g.* the traditional parliamentary mechanisms (mostly the parliamentary committees), the Constitutional Court, judicial and administrative review, the media, citizens' NGOs.

Because of the forthcoming elections, however, the draft law dropped out of the legislative priorities of the 38th National Assembly. Nevertheless, the public and political support for it is already there. The passing of this law would be the fruit of a successful public-private partnership and would build up a nation-wide mechanism plus local institutions that would operate on the basis of morality and integrity in resisting abuses by the administration, registering violations of the division between the public and the private sphere, and protecting citizens and their organisations. In some municipalities the partner organisations - the Center for the Study of Democracy and the Centre for Social Practices - have implemented under the auspices of *Coalition 2000* projects for appointing civil observers and civic mediators. These have shown the practical usefulness of such mechanisms for the benefit of the general public.

The start of public-private partnership to accomplish specific objectives in this area could be assessed as largely successful. On the whole, however, it appears that the public sector should make more efforts and demonstrate more willingness to adopt and implement decisions and monitoring mechanisms that may contribute to restraining more efficiently the major internal factors for corruption, developing an institutional environment intolerant to corruption and encouraging anticorruption attitudes and climate.

1.3 Developing the System of Public Procurement

A) Action Plan Recommendations

The main objectives in this area were to align existing legislation and practice with European standards, to speed up the award of public procurements and to enhance compliance controls. In view of the flawed original rules (the first *Law on the Award of Government and Municipal Procurements* of 1997 was repealed later). the suggested measures envisaged legislative amendments and an efficient and transparent system of awarding procurement contracts, handling complaints and arbitration.

B) Assessment of Anticorruption Efforts and Measures

The legislation on government and municipal procurement has been quite dynamic. The *Law on Public Procurement*, which came into force on 5 July 1999, repealed the previous *Law on the Award of Government and Municipal Procurement* (1997) which had proved to be quite inefficient. However, despite the proclaimed principles of openness and transparency, free and fair competition, equal opportunities for all bidders, etc., the new

law does not provide good enough safeguards. For instance, there is no clear-cut distinction between the three procedures introduced by the law (open procedure, short listing and negotiations) on the basis of accurate criteria, so the governmental and other contracting authorities still have relatively extensive possibilities to make decisions on the basis of expediency and discretion. Proper enforcement of the new law would need some organisational and administrative prerequisites. Failing this, it will share the fate of its predecessor. Moreover, the prevailing opinion among private businesses is that not only the law, as formulated now, but also its incompetent implementation by the contracting authorities discourage the business and are actually conducive to abuse and corruption. Solutions could be sought in the following aspects:

- greater transparency of the procedure of awarding public procurements and stricter performance controls;
- speedier and more efficient appeal procedures;
- revising the relations between the Audit Office, the State Financial Control and the Public Procurement Directorate at the Council of Ministers;
- quicker implementation of the public procurement register and making the information on that register fit to be used as evidence in court (on grounds of the existing *Ordinance on Keeping the Public Procurement Register*);
- setting a threshold for tender deposits;
- setting up an authority (*e.g.* a Public Procurement Agency) that will act as an out-of-court body to settle disputes between contracting authorities and bidders;
- gradually automating the award of contracts on the basis of new technologies and in line with the two proposals (submitted in May 2000) for EU directives on electronic procurements (some estimates suggest that by 2003, 20 per cent of public procurements in the EU would be made electronically).

Prompt reaction should be given to the criticism that the indispensable organisational, legislative (regulations) and administrative prerequisites are not yet in place to ensure the implementation of the principles proclaimed by the law, viz. openness and transparency, free and fair competition, a level playing field for all bidders.

1.4 Reforming the System of Political Parties and the Civil Society (Legal and Institutional Framework of the Third Sector)

A) Action Plan Recommendations

Based on the analysis of the specific reasons for political party-related corruption, the following measures were proposed for its eradication:

1) Enhancing the requirements for transparent overall operation of political parties.

2) Introducing a system of government funding for political parties.

3) Prohibiting local legal entities and foreign individuals and legal entities from making donations to political parties and related organisations.

4) Introducing mandatory requirements to ensure the transparent funding of political parties.

5) Full transparency of election campaigns.

6) Introducing detailed rules on relations between political parties and the State.

As constructive interaction between the political parties is usually impeded by uncompromising political struggles between them, special attention was paid to the possibility of NGOs to initiate a public dialogue to ensure a sufficiently wide support for these ideas, to devise a set of measures to foster transparency and accountability, and to establish a modern pluralistic party system.

Besides the recommendations to reform the political party system, which are an important component of the anticorruption strategy, the reinforcement of the civic control of anticorruption efforts was also tackled. This should include the development of a mechanism of continuous civic control *vis-à-vis* the authorities, based on clear rules providing for dialogue and interaction. Given the existing need to institutionalise the civic control of corruption within the public administration, political organisations and the judicial system, it was recommended to: improve the legal rules on the interaction between the administration and civil society structures; develop a modern regulatory framework on the legal status of NGOs; use appropriate training techniques to enhance NGOs' capacity to exert civic control over the work of public authorities, political organisations and the judicial system.

B) Assessment of Anticorruption Efforts and of the Measures Taken to Date. Future Prospects

The system of political parties is not yet based on principles and models that could make it fully transparent and independent of the state. The intertwining between political parties and the government in all societies tempts human beings to present political parties' interests as public interests and pursue them even through corrupt practices. The funding of political parties in Bulgaria has been awaiting its legislative framework for too long. Government funding should be urgently introduced in line with objective criteria and accountability, under strict rules that ensure the transparency of party finances in general, and during election campaigns in particular, in order to do away with corruption in political parties and cut off the unofficial linkage between political parties and private interests.

- The newly-adopted ***Law on Political Parties*** (in force as of 28 March 2001), contains a number of anticorruption provisions, *e.g.*: a prohibition for political parties to engage in economic activities and to have equity interests in commercial companies; an exhaustive description of possible own revenues; rules on the annual government subsidy which shall be granted to all political parties represented in the National Assembly (based on the number of votes cast in their favour), and to political parties not represented in the National Assembly but having received at least one per cent of all votes validly cast at the last general elections; rules entrusting the Audit Office with the overall supervision of the financial revenues and expenditures of political parties.

Despite the serious objections raised during the debate and the veto imposed by the President, the law-maker did preserve, albeit partially, the anonymous donations to political parties. Although donations are only possible in the cases explicitly listed in the law, the mere opportunity to make such gifts would undermine the complete transparency of political party finances and place a portion of these funds beyond control.

As political party legislation is directly connected with electoral laws, the new Law on Political Parties was actually passed on the eve of the last elections and right before the *Law on Electing Members of Parliament* was voted on. Because of the short time and the election campaign, the adoption of these laws was not accompanied by any democratic public debate.

The system of political parties needs a better legal basis that should enable the proper operation of institutional anticorruption mechanisms. At present, however, the party sphere remains conducive to corrupt practices. This could be attributed to a number of reasons, *e.g.*:

- the insufficient distinction between the government sphere and the political party sphere, between public and private interests;
- the lengthy absence of appropriate legislation on and traditions in developing lawful sources of funding and in controlling the finances of political parties and politicians;
- the inequality between political parties during the election campaigns, and the virtually non-existent conditions for transparent lobbying.

The slow progress in these areas sets back the reform of the party system and makes it impossible to distinguish between public and private interests.

The legal framework of the NGO sector, which is a must if we are to institutionalise and reinforce civil control against corruption, has developed at an even slower pace.

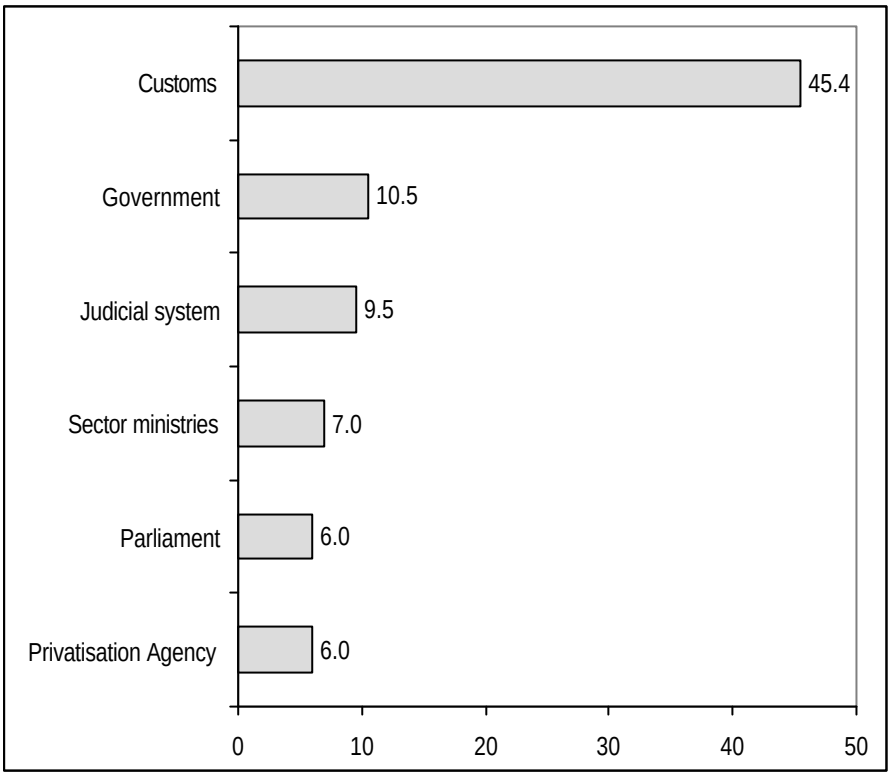
- After a delay of almost ten years, in September 2000 *the **Law on Non-Profit Legal Persons*** was finally passed (in force as of 1 January 2001). The law lists the categories of non-profit legal entities: public benefit or mutual benefit associations, and foundations. After their formation, public benefit associations should be entered in the Central Public Register at the Ministry of Justice. They are subject to annual audits: by 31 May every year, they should lodge at the Central Registry with the Ministry of Justice information on their activities and on any changes in their court registration; a list of the members of their managing bodies; certified annual financial statements or statements audited by a chartered accountant; annual reports; statements concerning any taxes, customs duties and other liabilities to the Exchequer; any amendments to their statutes or other constituent documents. The requirements for openness and control of the operations and finances of public benefit associations should pave the way towards preventing abuse and corruption.

Despite a promising beginning, there is no permanent efficient mechanism of civic control over the structures of power yet. The delay in setting up an adequate anticorruption legal and institutional environment in Bulgaria is still a major obstacle to establishing a democratic society and to ensuring the country's economic prosperity.

2. Public-private Partnership with respect to Judicial Reform

The consolidating objectives in establishing partnership in this area are to put in place the legislative and organisational measures needed to secure legal stability and confidence in the judicial system in Bulgaria, to provide conditions for greater openness and transparency in the administration of justice, to speed up court proceedings, to devise internal control mechanisms to counter the misuse of power and to build a system enabling those working in the judicial system to improve their professional skills. One of the headlines of the recommended judicial reform naturally derived from the need to divert any corruption from the judicial system itself and to insert a set of efficient sanctions to address the various forms of corrupt behaviour. Account was also taken of the fact that Bulgarian public opinion and the business circles perceive the judicial system as one of the six most corrupt institutions in the country (Figure No. 3).

Figure 3. The most corrupt institutions



Base N = 331

Source: Corruption Monitoring System, Business Elite Survey, January, 2001

The above general objectives also predetermined the main priorities of the reform: improving the legal basis of the reform, *i.e.* the relevant substantive and procedural laws (legislative reform *stricto sensu*); reforming the way in which the judicial system operates (court administration reform); bettering the recruitment of new magistrates and employees and improving their professional skills by training judges, prosecutors, investigators and court clerks.

The *Judicial Reform Initiative in Bulgaria* supported both the priorities of judicial reform and the view that it had to be accelerated. The initiative brings together eight NGOs, representatives of government agencies and international institutions, following the model of *Coalition 2000*.

The initiative was launched in March 1999 as a joint endeavour of the Association of Judges in Bulgaria; the Union of Jurists in Bulgaria; the Modern Criminal Justice Foundation; the Chamber of Investigators in Bulgaria, the Legal Initiative for Training and Development (PIOR), the Legal Interaction Alliance, the European Network of Women in Police –Bulgaria; the Center for the Study of Democracy, which also acted as a secretariat for the initiative; and representatives of the Legislature, the Executive and the Judiciary. The main objective of the initiative was to develop a detailed Program for Judicial Reform in Bulgaria (PJR) based on a broad consensus throughout the country.

A consensus-based document was drafted under the title **Program for Judicial Reform in Bulgaria**. It was discussed at a number of widely representative fora and was finally endorsed at a Policy forum held in May 2000. The Program identified the areas for priority action and contained specific proposals within the ambit of these priorities. It provides good ground for the future development of the judicial system in the areas in question.

The Program for Judicial Reform in Bulgaria has been developed by eminent Bulgarian lawyers and benefits from the combined efforts of government authorities, representatives of influential non-governmental organisations, and experts who have offered their expertise to ensure the future successful development of judicial reform in Bulgaria. In its various sections, the Program addresses all the issues that are deemed essential for a successful judicial reform.

"The ideas in the Program for Judicial Reform in Bulgaria, developed by the Judicial Reform Initiative, mirror the views of fellow lawyers and point to ways in which the judicial system should be changed in the context of Bulgaria's EU accession and the democratisation of the country."

Nelly Koutzkova, Chair, Sofia District Court

An important change in this area over the past two years has been the ever growing recognition of the need for judicial reform at the highest layers of state power. Under the impact of some objective trends inside the Judiciary and the pressure of the civic society, including the guild associations of magistrates, the Executive, which had previously rejected even the applicability of the term "reform" to the Judiciary, has come home to the inefficiency of the existing court administration, the problems with the administration of justice, the black spots in staff qualification and recruitment and, finally, the need to develop the legal framework of the judicial system.

2.1 Legal Basis of Judicial Reform

A) Action Plan Recommendations

In implementation of the objectives identified - to curb the conditions conducive to corruption to minimum and devise mechanisms for its prompt punishment - and based on the review of the legislation in force, some proposals for consistent legislative amendments were formulated.

In the area of **criminal law and criminal procedure**, the emphasis was laid on developing an overall concept for a new criminal policy and modern crime-prevention strategies that should be mirrored in a set of entirely new pieces of legislation, *viz.* a

Criminal Code, a *Code of Criminal Procedure* and a *Law on the Execution of Penalties*. The long-term goal is to modernise the legislation while gradually getting rid of the bad habit of making piece-meal amendments.

The following amendments to the ***Criminal Code*** were suggested (which could be used in the future new *Criminal Code* as well): to incriminate the so-called "new" offences, in particular economic crimes; to introduce more detailed rules on crimes against creditors, crimes committed on order from an organisation or group, drug-related offences and crimes committed by public officials; to decriminalise the crime of "provocation to bribery" (known as loyalty check) when such checks are intended to expose corrupted magistrates or other public officials; to introduce the penalty of forfeiture for property acquired as a result of corruption; to differentiate between criminal offences and misdemeanour and, based on that distinction, to reinforce criminal oppression for serious crime while alleviating substantially the penalties for misdemeanour; to introduce probation (a penalty served by working for the public benefit under administrative supervision, without isolating the sentenced person from his or her family or normal living environment); to expand the incentives for the law-abiding conduct of offenders, etc.

The proposed amendments to the ***Code of Criminal Procedure*** were subject to some major objectives, namely: creating conditions for openness and transparency in criminal justice while shifting the emphasis of the procedure to the court stage; enhancing the judicial review of the doings of pre-trial authorities; making the adversarial procedure more flexible by introducing mechanisms for the quick and cheap punishment of numerous petty offences and accelerating the prosecution of the most serious crimes. It was proposed specifically to: use simplified procedures to investigate acts that do not represent a particularly serious threat to the society; make it possible to suspend criminal prosecution and impose administrative penalties in the event of a court-approved plea bargaining in a wide range of cases, save for the most serious offences; transform some crimes from indictable offences prosecuted by the public prosecutor into offences prosecuted on the initiative of the victim (*e.g.* the offence of libel and slander through the media); enhance the tools that enable the parties to control the police, the supervisory authorities and the magistrates involved in criminal matters; introduce reasonably short time limits for delivering verdicts and for undertaking any procedural steps, etc.

As to **civil law and procedure**, the suggested amendments to current legislation in the commercial, contractual and other similar spheres were aimed at restricting to minimum the chances for corrupt behaviour.

The specific proposals with respect to substantive civil law and administrative law were tailored to the following objectives: simplifying the procedures for property acquisition; more transparency of commercial transactions, privatisation, concessions and other similar

activities when private interests are interwoven with state powers; introducing a less stringent regime for real estate transactions; shifting towards a simpler administrative procedure of company registration based on a minimum set of statutory requirements and without any possibility for the registrar to add new requirements; accelerating insolvency proceedings. Essential amendments were recommended to speed up court proceedings in civil, commercial and administrative cases. Some specific suggestions concerned the possible amendments to *the Code of Civil Procedure* and the *Law on the Bar* along the following lines: enhancing procedural economy, the discipline of all parties involved in litigation and speed when the parties exercise their procedural rights; improving the system of summonsing so as to avoid the deliberate adjournment of hearings; setting up institutions for alternative dispute resolution (voluntary arbitration courts, mediation), while making their acts fit to be executed by bailiffs; improving the enforcement procedure so that the rights recognised by the court could be exercised swiftly and effectively.

B) Assessment of Anticorruption Efforts and of the Measures Taken to Date. Future Prospects

Criminal legislation and criminal justice bear directly on corruption. They still develop, albeit on a piecemeal basis, towards introducing penalties adequate to the modern forms of crime, including corruption, and ensuring a speedier and more efficient administration of justice.

The amendments to criminal law over the past years have been impelled by the pressure of the civil society and by the need to match specific public needs, *viz.* to reinforce the oppression of organised crime and to provide rules on white collar crime. In 2000, two laws amending and supplementing the ***Criminal Code*** were passed.

- The **first amending law** (in force as of 21 March 2000), introduced stricter sanctions in spheres frequently affected by corrupt practices. The law concerned the fight against drugs trafficking and incriminated new elements of crime subject to severe penalties, *e.g.* instigating or forcing someone to use drugs. Imprisonment in the case of libel and slander was replaced with fine and these acts will now be prosecuted on the initiative of the victim only. Finally, the sanctions for motor vehicles thefts and smuggling were increased and the list of criminal offences in this area was extended.

- The **second law** which amended the *Criminal Code* (in force as of 27 June 2000) **increased the sanctions for bribery**. Aggravated elements of crime were introduced, as well as criminal liability for officials covered by immunity. Two new crimes were added: promising and offering a bribe. The elements of the "provocation to bribery" are now reformulated. Agreement by a public official to receive a bribe, and the actual receipt of a bribe by a

public official, were equally incriminated. Likewise, the scope of active bribery of foreign public officials was extended.

The latest amendments to the *Criminal Code* have provided a more extensive coverage of the major forms of corrupt behaviour but the results of the combat against its most serious instances are far from being satisfactory. Corruption-related offences are hard to prove, so **criminal-law measures against them should develop persistently**. Those measures should not be solely confined to sanctioning the guilty offenders but should also prevent corrupt practices, *i.e.* they should both deter such practices and encourage the public to maintain zero tolerance to corruption.

As a result of the studies made and the discussions held, the Coalition 2000 anticorruption initiative decided to put on the agenda of the public-private debate the improvement of the rules on bribery, which is usually perceived as a synonym to corruption, and to suggest amendments in the following areas:

- Differentiating the liability for bribery depending on the perpetrator: the list of persons who could possibly commit the offence of bribery has been extended by the *Criminal Law Convention on Corruption* of the Council of Europe which is ratified by Bulgaria. Thus, aggravated elements could be envisaged for passive bribery committed by persons working in the judicial system, both magistrates and the administrative staff, the bribery of municipal counsellors could be incriminated, etc.;
- Certain preliminary steps preparing for bribery could be incriminated as well, *e.g.* requesting a bribe;
- The "traffic in influence" could be incriminated once the legal framework of lobbying has been put in place;
- The list of perpetrators of passive bribery should be extended so as to supplement the previous extension made in 1999 when foreign public officials in international business transactions were covered.
- The offence of "provocation to bribery" (loyalty check) could be decriminalised if it is practised to expose corrupted public officials.

An important issue to be solved by a possible future amendment to anticorruption criminal rules concerns the immunity from criminal prosecution currently enjoyed by Members of Parliament and magistrates by virtue of the Constitution.

In the longer run, it would still be necessary to draft a brand ***new Criminal Code*** *based on a comprehensive new criminal policy and a well-designed strategy to crack down on the modern forms of crime.*

- In 1999, the procedural laws were amended to accelerate the administration of justice and improve its efficiency and transparency. The latest

amendments to the ***Code of Criminal Procedure***, in force as of 1 January 2000, are aimed at:

- reconfirming the prevailing role of the court and turning the trial into a central stage of criminal proceedings (in contrast to the pre-trial phase which is not public and is more likely to encourage corrupt practices);
- relieving the pre-trial phase of any unnecessary formalities and creating conditions for speediness and operational development;
- applying police investigation to a significant number of offences;
- building up a system of safeguards for citizens' rights, the most essential of them being the **judicial review** of measures to prevent absconding and other measures interfering with human rights;
- introducing adversarial court proceedings and restricting the *ex officio* intervention of the court;
- introducing **plea bargaining**, *i.e.* court-approved agreements between prosecution and counsel concerning the duration or the amount of penalty, as a procedural technique accelerating criminal prosecution and preventing the unofficial "arrangements" between defendants and magistrates.

The short period since the entry into force of the latest amendments to the ***Code of Civil Procedure*** has seen contradictory reactions by politicians and magistrates. Some political circles and certain groups within the public prosecution system have voiced reserves about the efficiency of the new rules and have criticised some of them, including *inter alia* the scope of police investigation, the deprivation of the procedural steps made by investigators of any evidentiary force, the squeezing of prosecutors' powers and the judicial review of all the decisions of prosecutors to discontinue criminal proceedings or to suspend the serving of imprisonment sentences. Some have suggested that, instead of accelerating criminal cases, the amendments have slowed everything down and corruption has now found shelter in the courts. The negative reactions against the amendments materialised into several draft laws aimed at abolishing those amendments which were presented to Parliament (and were voted on!) at the very end of its term of office. These drafts had been developed covertly and without taking account of the public debates on the issues at stake. The legal community, represented by its guild organisations (Association of Judges, Modern Criminal Justice Foundation, etc.) and most judges believe that judicial review of procedural steps at the pre-trial phase should be kept as this is an essential feature of any modern criminal justice system and a guarantee for an open procedure which is the best protection of individual rights. Opinions were expressed that the drafts in question are not in line with European standards, that the proposed system of criminal justice is inefficient and not backed up by solid funding. The hasty political decisions made just before the elections,

while neglecting the views of the legal community, of independent Bulgarian and foreign experts and of the whole civil society, could not but undermine the existing good fundamentals of public-private partnership in the area of judicial reform. Given the negative findings concerning the judicial system in the past few years found in the regular reports of the European Commission or announced by a number of other international organisations, such legislative solutions not only fail to contribute to a successful anticorruption strategy but also impede Bulgaria's progress towards accession to the European Union.

There is an obvious need to evaluate thoroughly the reasons for the inefficient operation of some of the disputable provisions, and to analyse objectively the case-law, which is the final test for the effectiveness of any rule. In parallel, a long-term strategy should be developed as a basis for the ***new Code of Criminal Procedure****. This instrument should ensure the openness and transparency of criminal justice, enable the quick and cheap punishment of acts that are less threatening to the society, and accelerate the proceedings for serious offences, such as the forms of corruption. The new code could abandon some of the provisions introduced in 1999 if the case-law reconfirms their inefficiency. It is recommended, however, to proceed to drafting a new code only after a certain period of time in which the new concepts and provisions introduced in 1999 would be put to the test, so that the case-law could approve or reject them. The new Code of Criminal Procedure should have a refined structure and cover the special surveillance techniques. It should also use unified modern terminology, change the law of evidence to emphasise on the safeguards against the arbitrary collection of proofs, etc.*

Civil and administrative legislation is not always directly concerned with corruption. Nevertheless, it can favour or deter its manifestation. The numerous amendments to the existing laws and the great number of new laws, which are sometimes inconsistent and give rise to contradictory case-law, may be conducive to corruption, especially when private interests are blended with government powers. Thus, it is necessary to adopt rules that would reduce those risks to minimum.

- A noteworthy piece of legislation in the field of property law is the ***Law on the Cadastre and the Real Estate Registry*** passed in 2000 (in force as of 1 January 2001). It is expected to be a major step enabling the shift from the current "owner-based" system of property registration to an "estate-based" system so as to provide genuine guarantees for the certainty of real estate transactions - an area characterised by significant instances of fraud and abuse.

- In 2000, the ***Commercial Code*** was amended and supplemented with effect as of 17 October 2000. One amendment - the new section 613b - is expected to improve the quality of justice in commercial cases and to have tangible anticorruption effects. It has introduced cassation appeals against

orders delivered in insolvency proceedings and against orders to discontinue such proceedings. This would bar the possibility to follow region-specific and divergent case-law, and to handle insolvency cases on the basis of local, non-legal, considerations. Thus, the Supreme Court of Cassation will now be able to exercise its constitutional powers as the final instance ensuring proper law enforcement.

- On 22 March 2001, the National Assembly passed the ***Law on the Electronic Document and the Electronic Signature*** (drafted by a group of experts at the Center for the Study of Democracy). The law will enter into force on 6 October 2001 and is expected to enhance the certainty and speed of electronic transactions and the electronic exchange of data in general. Its implementation in the relations between the public administration, on the one hand, and citizens, legal entities and merchants, on the other hand, would certainly step up the provision of administrative services, make lucid the whole procedure and narrow down, as much as possible, the possibility to solicit or offer bribes.

- The ***Law on Consumer Protection and on the Rules of Trade***, in force as of 3 July 1999, is the first instrument with provisions in this particular area. Already at the outset of its enforcement, some problems have come to light that should be resolved quickly. The law provides for the so-called *class actions* whereby affected consumers can collectively defend their interests by litigation. *The Code of Civil Procedure*, however, does not envisage such actions yet. This substantial gap should be filled through the relative amendment.

- The amendments to the ***Code of Civil Procedure***, in force as of July 1999, offered safeguards for the impartiality of the court, introduced summary proceedings, and confined insolvency proceedings to two instances. The amendments aim to restrict to minimum the groundless adjournment of hearings and the chances of parties to abuse their procedural rights. In particular, the following elements are envisaged:
  - accelerated procedure for summonsing the parties;
  - summary procedures for some disputes;
  - the so-called "appeal for delay" to ensure the judicial review of unsubstantiated delays in resolving court cases which simply prompt many parties to resort to bribery.

The latest amendments have not brought about any tangible acceleration of court proceedings since their enactment. Follow-up legislative amendments are

needed in this area in order to prevent any deliberate protraction of court cases and the abuse of procedural rights which may, directly or indirectly, foster corruption.

- According to the *Constitution* the state is liable for the damages inflicted on citizens by illegal acts and acts of omission or commission of the administrative and law enforcement bodies. However, the existing legal regulation, provided by the ***Law on State Liability for Damages Inflicted on Citizens*** in force since January 1, 1989, does not facilitate substantially the citizens in their quest for legal defence of their violated rights. The legal procedure is slow and complicated. The majority of the citizens are not acquainted with the procedure in which they can retain the liability of the State and to safeguard their rights. The existing legal provision is not sufficiently effective because the institution that has violated the rights of citizens has to explain to the citizens their rights and procedures.

- **Execution of judgements** is the part of civil procedure which puts an end to civil litigation but, unhappily, it remains the one that is least reformed. The clumsy and inefficient execution procedure, where corruption is anything but rare, negates any effort to improve the administration of justice. Amendments are needed urgently to make impossible the endless extensions of enforcement and to give more rights to creditors.

- The rules on **administrative procedure** are scattered across several pieces of legislation: the *Law on Administrative Proceedings*, the *Law on the Supreme Administrative Court*, some provisions of *the Code of Tax Procedure*, the *Law on the Organisation of the Territory*, *the Law on Administrative Offences and Penalties*, and a few references to the *Code of Civil Procedure*. These instruments were adopted at different times, under different social and economic circumstances, and are inconsistent with each other or, even worse, exhibit serious discrepancies. The lack of coherent rules on administrative procedure puts the citizens, the administrative authorities and the courts in an awkward situation.

It is recommended to adopt a Code of Administrative Procedure that would bring together and systematise the various types of administrative proceedings. That code will address in particular the following issues: legal criteria for the administrative acts excluded from judicial review; equality of the parties before the court with respect to evidence gathering; legal guarantees that administrative authorities would comply with court judgements (e.g. by introducing a more efficient system of fines and other sanctions, etc.).

- Despite the view - widely shared by professional lawyers - that **out-of-court dispute settlement** is both needed and useful, no particular steps

have been undertaken to introduce and establish alternative dispute resolution techniques.

- The development of solid legal foundations to combat corruption goes hand in hand with the alignment of domestic legislation to well-established international standards in this area. This would benefit both anticorruption efforts country-wide and Bulgaria's role in international co-operation aimed at preventing and detecting cross-border corrupt practices. The process of alignment has been triggered already. In 1999, Bulgaria signed three corruption-related conventions: the ***Criminal Law Convention on Corruption*** (Council of Europe), the ***Civil Law Convention on Corruption*** (Council of Europe), and the OECD ***Convention of Combating Bribery of Foreign Public Officials in International Business Transactions***. The first instruments ratified were the ***Civil Law Convention on Corruption*** whereby Bulgaria undertook to envisage in its domestic law efficient redress for persons having suffered from corrupt acts, and the OECD **Convention**. In line with the commitments under the OECD Convention, on 15 January 1999 a ***Law Amending and Supplementing the Criminal Code*** was adopted. The Code now defines the concept of "foreign public official" and giving bribes to foreign public officials in international business is a criminal offence. The penalty in this case is the same as for the active bribery of domestic public officials. In April 2001, the ***Criminal Law Convention on Corruption*** and *the* ***UN Convention against Transnational Organised Crime*** were ratified, as well as the *Protocol against the smuggling of Migrants by Land, Sea and Air*, and the *Protocol to Prevent Guppress and Punish Trafficking in Persons, especially Women and Children*, supplementing the *UN Convention against Transnational Organised Crime*.

In spite of this important step toward satisfying the special prerequisites, ***the measures adopted to align domestic legislation to the standards embedded in the anticorruption conventions are still insufficient****. This is true mostly for the definition of the forms of corruption, which should be clearer, for the criminal and civil liability for such acts, and for the protection of victims of corruption.*

The existing legislation has not been comprehensively screened yet. A detailed review would inevitably result in repealing some obsolete or contradictory legal rules, on the one hand, and introducing a modern and consistent legal basis, better aligned with European standards, on the other hand.

2.2 Reforming the Organisation of the Judiciary

A) Action Plan Recommendations

Echoing the need to improve and modernise the workings of the courts, the prosecution offices and the investigation services, the following main areas of activity were identified: developing and introducing automated document registration systems that would ensure the speedy and safe processing of files and provide citizens with prompt and easy access to the information they need; developing a system to allocate the cases to individual magistrates on the basis of objective criteria, while excluding any possibility to choose a specific magistrate for a specific case; rotation of magistrates and employees who work at units especially prone to corruption; introducing the team approach wherever the exercise of powers entails a higher risk of corruption.

B) Review and Assessment of Anticorruption Efforts

Judicial reform cannot be implemented through legislative changes alone. To consolidate independence, the organisation of the Judiciary should be modified, and the work of courts, prosecution offices and investigation services should be modernised.

- Judicial administration has been unduly neglected in the course of judicial reforms so far. It still relies on archaic principles and operates in a fashion and under conditions that nourish corrupt relations between administrators and citizens. Relative share of citizens who in their contacts with judicial administrators have been asked for money, gifts, or services is constantly high and substantionally exceeds those of investigators, judges and prosecutors (Table 4).

TABLE 4. "IF IN THE COURSE OF THE PAST YEAR YOU HAVE BEEN ASKED FOR SOMETHING IN ORDER TO HAVE A PROBLEM OF YOURS SOLVED, YOU WERE ASKED BY:"

	February 1999	*April 1999*	*September 1999*	*January 2000*	*April 2000*	*September 2000*	*January 2001*
	*%**	*%**	*%**	*%**	*%**	*%**	*%**
Customs officer	17,3	27,9	30,7	19,8	29,1	15,8	22,7
Police officer	22,3	22,8	25,9	23,4	19,5	24,0	18,9
Businessperson	13,4	12,0	12,8	13,7	11,9	9,7	11,6
Administrative staff from the judicial system	15,9	20,4	23,6	18,5	10,4	11,5	13,3
University teacher or official	12,4	9,5	16,2	10,1	12,6	13,9	13,2

Municipal official	15,6	11,5	18,0	11,3	11,7	10,3	11,2
Ministry official	5,4	6,7	7,6	3,2	3,7	7,0	8,9
Prosecutor	5,5	7,9	9,5	5,9	4,7	7,8	7,2
Tax official	9,5	6,6	12,1	8,4	7,8	8,3	6,4
Doctor	26,6	21,5	25,1	20,0	18,6	22,1	6,1
Judge	8,6	10,9	11,3	6,9	7,7	9,1	5,8
Criminal investigator	7,4	7,9	6,1	6,1	8,4	6,0	5,5
Member of Parliament	2,5	4,8	3,9	1,9	4,5	6,4	4,2
Banker	-	-	-	8,1	1,8	2,9	4,1
Teacher	3,4	4,8	5,0	4,9	3,0	5,5	3,7
Municipal Council member	8,9	8,6	5,7	6,7	5,6	3,2	2,1

** Relative share of those who have had such contacts, and have been asked for money, gifts, or services.*

Source: Corruption Monitoring System

There are no regulations on the work of the administration at the courts, the public prosecution offices or the investigation services. Numerous registers are being kept, most of them manually, the working conditions are primitive - a fact that makes it very difficult for the citizens and the barristers to obtain information and benefits bribery. The now existing *Ordinance No. 28* of 1995 Laying down the Functions of Servants at the Auxiliary Units and Registries of Regional, District, Military and Appellate Courts does not reflect the need to modernise and optimise court administration and its work. The draft amendments to this Ordinance prepared by the Ministry of Justice have not been adopted yet.

- A concept is currently being developed for automating the administrative work in the judicial system. This should result in: developing an uniform and compatible software product for the registration and processing of papers received at different units of the system; implementing an uniform software product for statistical data at all levels of the system; linking the information systems of different courts with each other and with the information systems of other institutions to enable the exchange and use of data (*e.g.* with encumbrances registration services, the tax authorities and the cadastre).

- Court administration reform is at an even earlier stage now. Work in courts needs to be organised in a new fashion so as to bridle corruption by

infiltrating greater openness and transparency in the administration of justice, by modernising and automating the work of court staff. The co-ordinated efforts in that respect started by setting up, in October 1999, an expert task force with the Supreme Judicial Council. It should devise an overall concept for the automation of court work on the basis of which a uniform software product should be developed to handle court papers. The successful implementation of these ideas would ease the access of individuals to information in courts, bring about transparency, and make possible the administrative and public oversight of that work.

"In order to increase the efficiency in the functioning of the Judiciary it is of major importance to create possibilities for out-of-court settlement of disputes, and to improve the work in administering the cases and the huge amount of written documentation that has to be traced. Therefore, an Integrated Information System has to be developed with the help of the Bulgarian state and international financial institutions".

Thomas O'Brien, Resident Representative, The World Bank, at the Policy Forum of *Judicial Reform Initiative* held in Sofia on May 17, 2000

3. Improving Staff Recruitment and Professional Skills

A) Action Plan Recommendations

Due to the lack of programmes designed to develop a certain pattern of professional and everyday conduct for magistrates matching the social status of their profession, the lack of a system to assess and recruit magistrates, the low professional skills of servants employed in the judicial system, and to a set of similar factors, *Coalition 2000* recommended the following steps to deter corruption: devising training programmes for newly appointed magistrates (including compulsory discussions on corruption); devising training programmes for experienced magistrates to discuss the latest amendments to the legislation in force; devising training programmes for court staff; drafting codes of ethics; developing objective promotion criteria while taking account of the results of any professional training undergone by the magistrate in question; introducing contests for appointment and promotion to senior positions in the Judicial system; co-ordinating appointment and promotion nominations with the magistrates working at the respective unit of the judicial system (who should be able to express their views by secret ballot); developing a system of collective acceptance of attestations for magistrates who have not completed three years of service in that capacity, *i.e.* who have not become irremovable; introducing a psychological test for applicant magistrates; setting up a Magistrate Training Centre.

B) Assessment of Anticorruption Efforts and of the Measures Taken to Date. Future Prospects

A successful fight against corruption should be based on a novel organisation of the Judiciary which would be impossible without well trained and highly qualified magistrates enjoying impeccable integrity, and without efficient court administration composed of good professionals immune from bribery. Thus, special efforts were made to put on the agenda, and in the focus of public debates, the need to carefully select magistrates and improve the professional skills of judges, prosecutors and investigators, to train court staff and to provide appropriate funding.

- In 1999, the first important steps were made to promote the professional skills of magistrates and enhance their ability to apply anticorruption legislation as part of their overall professional background. In April 1999, a **Magistrate Training Centre** was set up as a non-governmental organisation and became operational. The training programmes, however, are not yet developed enough to assist magistrates in detecting and sanctioning promptly the instances of corruption, nor are they sufficient to make them devise sustainable anticorruption patterns of behaviour for themselves. In addition to any further efforts in that respect, some amendments have to be made to the *Law on the Judiciary* in order to supply the training offered with statutory basis and to proclaim explicitly the commitment of the Ministry of Justice to the training process. Steps are also needed to ensure the qualification and training of court staff.

- As a body entrusted with appointing the members of and organising the Judiciary, the Supreme Judicial Council (SJC) has a key role in the recruitment and professional improvement of magistrates. However, the Council itself is still in need of a substantial institution building and of a strategy to solve a number of issues of paramount importance for combating corruption, such as:
  - developing and adopting transparent criteria for the appointment, promotion of and imposing administrative sanctions on judges, prosecutors and investigators;
  - developing a system of controls and standards of professional conduct to be observed by all magistrates, in particular by improving the procedure of lifting immunity from criminal prosecution, where necessary;
  - setting up a specialised unit in charge of investigating allegations of corruption within all the bodies of the judicial system.

Meanwhile, on 27 April 2000 an amendment to the *Law on the Judiciary* was passed which departed from the goals of the reform in that it deprived the members of the Supreme Judicial Council from the right to initiate disciplinary proceedings. This right has been retained to a limited extent by members of the Council by operation of law, *i.e.* the Chairman of the Supreme Court of Cassation (with respect to judges at the Supreme Court of Cassation and judges at the courts of appeal), the Chairman of the Supreme Administrative Court (with respect to judges working at that court) and the Attorney General (with respect to all prosecutors and investigators). Once the amendments came into force, all disciplinary proceedings against magistrates pending at that time were discontinued.

After a fairly difficult beginning, and further to a quite successful partnership in this area, in October 2000 draft amendments to the *Law on the Judiciary* were developed on the initiative of the Ministry of Justice and a number of NGOs. The working draft mirrored many of the core elements contained in the Action Plan of *Coalition 2000* and in the Programme for Judicial Reform. The draft amendments to the law (which is the organic law of Judiciary in Bulgaria) suggest contests as the fundamental method of appointing magistrates, provide for a magistrate status similar to the status of civil servants, and embody measures ensuring the institution building of the Supreme Judicial Council and its better co-ordination with the Ministry of Justice.

The draft amendments were discussed openly at a public hearing held on November 17, 2000, and co-organised by the Center for the Study of Democracy, the Ministry of Justice, the Union of Jurists in Bulgaria, ABA/CEELI, and the Legal Interaction Alliance. More than 100 representatives of all branches of the Judiciary, the National Assembly and various NGOs attended the hearing and shared their views on the amendments proposed.

Regretfully, despite the **public hearing** held and the opinions in support of the amendments, the draft did not make its way to Parliament. Instead, the National Assembly was presented with a draft law prepared by a group of MPs which was largely anti-constitutional and undermined the balance of powers - a principle underlying the organisation of any modern democratic state and of the European Union. During the last days of its term of office, the Parliament passed only some of those suggestions, mainly due to the negative reaction of certain NGOs and initiatives, such as the Association *of Judges in Bulgaria, the Chamber of Investigators, the Modern Criminal Justice Foundation, the Judicial Reform Initiative, experts from the European Union, etc.*

It is of the essence to further amend the Law on the Judiciary *so as to ensure the completion of many reform objectives. The overall judicial reform should match to the fullest possible extent the public needs for new legal regulation and for*

organisational change, in line with the new social and economic processes in the country and with the need for legal stability and confidence in the judicial system.

3. Public-private Partnership to Reduce Corruption in the Economy

Reducing corruption in the economic sphere is important primarily as this is the sphere most affected by "large-scale" corruption whereby immense national wealth is redistributed illegally. Distorting competition, corruption impacts adversely normal business operations; it places the economic agents in unequal conditions which could be detrimental to those of them having limited financial resources. It is extremely difficult to establish a public-private partnership to counter corruption in this sphere because of the reluctance of public officials to give up the unregulated flow of benefits, which usually goes unpunished, and because of the dual role of businesses which are both the victims of corruption pressure and the source of corruption.

Corruption in the economy flourishes due to the unlimited discretion of the administration, on the one hand, and because of the negative and unforeseen implications of economic reforms, on the other hand. Reforms are normally intended to redefine the role of government and its specialised institutions which form the institutional framework of transition, to transform the state-owned property through privatisation, to set conditions beneficial to market economy development, to devise successful patterns of interaction between public administration and private businesses, to promote the consolidation of market institutions and to encourage the self-regulatory functions of the private sector. One of the consequences, which bears most directly on corruption, is the extremely large share of the informal, or grey economy which exists in most countries in transition. In the view of many experts, the spread of the grey economy is due, among other things, to the numerous and inconsistent laws and regulations, the resistance of the Executive, the lack of experience and willingness to implement adequate legislative changes, etc.

"*As economies begin to liberalize, corruption may emerge within the very process of change. For example, privatization is a key policy component in converting a government-dominated economy into one driven by private initiative. However, this transition process can corrupt public officials when it is combined with a mixture of low government wages and economic stagnation. Clearly, it is pointless to oust leaders for governing a corrupt system if there are no changes made to that system. Simply educating government leaders is not enough…*

…Equally important is the fact that economic reforms and the adoption of a market-oriented economy also are associated to a great degree with lower levels of corruption. As noted in the text above, corruption flourishes in those countries where governmental decision-makers, especially those at lower levels in the government, have a great deal of discretionary authority. However, a market-oriented economy is not simply an economy where government gets out of the way. This is one of the great

myths hampering efforts to build sound economies in emerging markets. Rather, in a healthy market-oriented economy government plays a vital role in enforcing contracts, providing for a level playing field (antitrust and other pro-competition laws and measures), enforcing property rights, and a host of measures to ensure all firms are treated equally (domestic and foreign). Establishing these functions of government while reducing discretionary decisionmaking (usually behind closed doors) are a key part of both anti-corruption and building a sound market system."

John Sullivan, Executive Director CIPE in the Speech "Anticorruption Initiatives from a Business View Point", given at the Sixth Annual Harvard International Development Conference "Development as a Two-way Street: Merging Social Progress with Financial Profits" – April 8th, 2000

3.1 Privatisation

A) Action Plan Recommendations

Based on the understanding that privatisation is a key component in the transition from a centralised to a market economy, the anticorruption strategy developed in the Action Plan which set the following fundamental objectives: introducing transparency and accountability in the process of privatisation, setting up conditions for civic control and pressure by private owners (including the participation of civil society structures in designing rules on the interaction between economic agents); and decreasing the role of the administration.

The following specific measures and activities were recommended for the fight of corruption in the process of privatisation: 1) streamlining the privatisation mechanism by, *inter alia*, merging the existing privatisation bodies in a single authority which should be subject to centralized control; 2) accelerating privatisation and improving its transparency by wider use of tenders, auctions and stock exchange mechanisms, as opposed to negotiations with potential buyers; 3) enhancing post-privatization control; 4) imposing embargoes on potential investors found in disregard of their commitments under a previous privatisation contract and sanctions for failure to comply with contractual obligations, up to termination of privatisation contracts; 5) efficient monitoring, including civic control, of the post-privatisation status of transactions in which less than 100 per cent of the price is paid upon closing the contract; 6) introducing rules for transparency of privatisation decisions on all kinds of negotiations; 7) introducing rules on management-employee buyouts (MEBOs)-based privatisation.

B) Assessment of the Anticorruption Efforts and the Measures Taken to Date. Future Prospects.

The wider the state intervention in the economy and the larger the resources allocated and controlled by bureaucrats on all administrative levels, the wider the possibilities for corruption. The efforts to limit the corruption potential in the economy could be assessed by answering the following questions:

- how has the role of the state as a direct economic agent changed?
- how transparent and "clean" of corrupt practices are the mechanisms of ownership transformation?
- what happens in the area of post-privatisation control?
- what mechanisms have been put in place to manage state-owned property, including holdings of residual shares after divestiture?

Between 1998 and 2000 the share of state-owned property in the economy decreased substantially. In real terms this would means that the basis of corruption must have shrunk as by the end of year 2000 75 per cent of the state-owned assets subject to privatisation had been divested.

According to the Privatisation Agency and the Report on the Completion of the Privatisation Program (2000), 589 out of 673 transactions planned for 2000 took place. Of those completed, 429 were for entire enterprises and 160 concerned separate units of enterprices. The number of privatisation procedures launched in the period January – March 2001 is 21.

The decrease of the share of state-owned assets does not necessarily mean that opportunities for corruption have substantially decreased. As a matter of fact, the threat is still there as the state may withdraw from ownership but nevertheless retain certain mechanisms for control of the business. For instance, the state still owns substantial residual shares in partially privatised enterprises and the delay in the sale of residual shares is not at all free of corruption risks. In addition, some public officials are members of the governing bodies of companies with private majority shareholders which opens the door to undesirable informal links and possibilities to trade in the existing state-owned control.

The efforts to reduce corruption in the privatisation process should be assessed primarily from two perspectives: *privatisation procedures and post-privatisation control*.

- *Privatisation procedures*

The process of privatisation brings into a hub various political, economic, private and public interests, thus becoming especially vulnerable to corruption. The process itself is regulated by the *Law on Privatisation and Transformation of State-Owned and Municipal Enterprises*. Although it has undergone numerous modifications since its adoption in 1992, the myriad of amendments and additional regulations in this area have not uprooted the possibilities for corruption. The prevailing public opinion steadily perceives privatisation as an important source of illicit incomes, widely used by politicians and public officials (Table 5).

Table 5. Perception of the spread of corrupt practices in the business sphere

	January 2000		*October 2000*	
	Low spread	**High spread**	**Low spread**	**High spread**
Bribe-taking by public officials and politicians to influence the award of public procurements	11.2%	78.6%	7.1%	82.7%
Bribe-taking by public officials and politicians to ensure the successful outcome of privatisation tenders	6.6%	88.5%	5.0%	85.2%
Bribe-taking by public officials and politicians to issue licences or permits for lawful operations	7.2%	85.6%	10.7%	79.5%
Bribe-taking by public officials and politicians to ensure tax avoidance or evasion	19.9%	68.6%	19.6%	66.4%
Accepting money or gifts in order to perform official duties	19.6%	73.7%	15.2%	75.0%

Source: Corruption Monitoring System, Business Elite Survey, 2000

The first problem in the privatisation process is that there are various agencies in charge of it, namely the Privatisation Agency and the municipal privatisation agencies. This fragments privatization management and makes the entire process more opaque which, in

addition to the lack of clear rules and efficient judicial and financial controls, increases the opportunities for corruption.

The second problem in this area is the existence of a favourite privatisation technique. Regardless of any efforts to establish a public-private partnership in pursuit of transparency as recommended by *Coalition 2000*, negotiations with potential buyers still remain the preferred method of privatisation even for small enterprises. Negotiations with potential buyers take place in the dark and directly invite bribery - they allow for large-scale covert arrangements modifying the official parameters of the privatisation deal in question.

The second privatisation technique most prone to corruption is the management-employee buyout MEBOs. One third of all privatisation deals in 2000 were effected through this technique.

Statistical data suggest that out of 2532 privatisation deals made between 1997 and 2000, 1224 were MEBOs. Only in 2000, those deals accounted for one third of all 1235 transactions.

The current trend of decreasing the relative share of MEBOs could only be partially regarded as a positive one as this kind of deals is frequently substituted by direct negotiations with potential buyers.

The recommendations of local experts and the international financial institutions for a wider use of tenders, auctions and stock exchange techniques still remain just good wishes. In the best case scenario, these are just declarations of intentions in official government documents which are not implemented in practice.

In its major documents adopted as a follow-up to the Action Plan, Coalition 2000 has recommended that privatisation authorities apply open and public procedures subject to clear, fair and competitive rules. Particular attention should be given to the recommendation formulated at the Second Policy Forum (December 1999), namely to issue a general ordinance on the conduct of negotiations with potential buyers, which can finally regulate the use of this technique in the context of a changed approach to privatization.

- *Post-privatisation control*

The existing system of post-privatisation control offers no impediment to corruption. The owners of already privatised enterprises often receive inexplicable discounts from the administration, such as alleviating the investment commitments, reconsidering the clauses for keeping jobs and preserving the business profile, remitting liabilities, abolishing environmental requirements, etc.

The Audit Office is the authority that could exercise external post-privatisation control. The existing legislation, however, does not endow the Office with such powers. Moreover, the role of the Audit Office in post-privatisation control is mostly confined to cross-checking of the privatisation proceeds flowing into the Ministry of Finance. What is actually needed is control of specific privatisation deals.

Coalition 2000 recommends that a solution be sought in adopting clear and transparent post-privatisation rules and procedures which can cut off any corruption temptations currently cherished by the administration. These requirements are also valid for the control on concession agreements, especially in view of their long duration and the lack of any experience in this area as it is logical to assume that after the end of the privatisation process public officials would seek other possibilities to derive illegal benefits.

The efforts to implement consistent reforms so as to introduce sound principles of *corporate governance* have a serious anticorruption potential. According to John Sullivan, Executive Director CIPE in complience of internationaly accepted principles concepts that contribute to effective corporate governance include:

Instituting independent auditing;

Defining the concept of "conflict of interest" and how it affects members of boards of directors and senior management;

Strong independent boards of directors, with a strong audit committee and internal audit functions;

Laws and regulations guaranteeing shareholder rights, especially the rights of minority shareholders;

Established and accepted standards of financial accountability and transparency within firms;

Commitment to honest and fair dealings with all elements of the community employees, suppliers, customers, and neighbors.

When these processes are fully implemented, it becomes much more difficult for a company to pay a bribe, practice nepotism, indulge in illegal campaign financing, or indulge in other forms of corruption.

The existing practice and foreign experience have shown that the weaker and less efficient corporate governance, the greater the opportunities for corruption. In the opinion of leading experts, corporate governance systems depend on a set of institutions (laws, regulations, contracts and norms) which make self-governing firms the central element of a competitive market economy. These institutions make sure that the internal corporate government procedures adopted by the firms are enforced and that management is

responsible to shareholders(owners) and other stakeholders. The key point in this strategy is that the public and the private sector should work together to develop a set of binding rules which establish the ways by which companies govern themselves.

The efforts of *Coalition 2000* aimed at building up partnerships with representatives of public authorities and private businesses, including co-operation within the *Corporate Governance Initiative in Bulgaria* (**www.csd.bg/cgi**). The purpose of this initiative was to draft an Action Plan and a Corporate Governance Assessment Report, to organise joint forums, workshops and discussions.

This partnership is at its outset now and it would only aim at co-ordination of essential measures needed to develop the legal and institutional framework for sound corporate governance. The implementation of these measures is among the major tasks of this developing partnership. Its specific objectives should be formulated and pursued along the following lines: ensuring access to information about the structure of ownership and equity crossholdings, imposing severe sanctions for abuse of inside information, appointing external directors to the managing boards, regular independent audits of companies' accounts and disclosure of the results of such audits, building up an efficient legal and institutional environment to protect creditors' rights, etc. *Regardless of some steps already taken in this direction, corporate governance as a whole remains weak, especially in enterprises offered in the process of mass privatisation or privatised through MEBOs, and these enterprises represent a significant share of private business in Bulgaria.*[*]

"As suggested by the analysis, there are no clear rules and practices in Bulgaria to enable efficient governance and control. Thus far, the legal framework and the overall institutional environment have not produced a system that would ensure the efficient management of property to the benefit of all shareholders. One attempt to help these processes evolve in Bulgaria are the efforts of the Corporate Governance Initiative to implement the proposal of its fundamental document, Policy for Corporate Governance Development in Joint-Stock Companies in Bulgaria. Policy Recommendation Paper *(**www.csd.bg/cgi**). After its approval by all stakeholders at a forum held in the fall of 1999, the coming years should see the implementation of a number of specific measures to improve legislation and the case-law, to support the development of capital markets, to revitalise the presence of institutional investors, to offer training and provide information to minority shareholders*." (Corporate Governance and Control in Bulgaria, Center for the Study of Democracy, 2000).

[*] See *March 2001, IMF Country Report No. 01/54*.

Though "the stormy privatisation" is already over, the state still retains a significant presence in the economy. Further consistent efforts are needed to finish the process of divestiture soon enough, close the loopholes for corruption, regulate state intervention in private economic activities and government's role in corporate governance. The new Corporate governance mechanism should be adequate to the changes in the structure of ownership.

3.2. Conditions for private business development and corruption within the private sector.

A) Action Plan Recommendations

The objectives in this area are based on the understanding that the change in state ownership and the development of market relations need a novel legal and institutional framework to guarantee free entrepreneurship and less state intervention in the economy - conditions equally necessary for combating corruption. To achieve these targets, it was recommended to: 1) improve the enforcement of existing legislation (the *Law on the Protection of Competition*) and develop anti-trust legislation; 2) ensure the accelerated development of market infrastructure with an emphasis on regulated markets; 3) gradually proceed from licensing business activities to a registration regime for these activities; 4) liberalise foreign trade and the foreign exchange regime; 5) provide rights of control (self-regulation) to professional, trade, guild and specific-purpose associations of economic agents on the basis of their internal codes of ethics; 6) put in place and strictly adhere to regulations on the State and private economic agents.

As instances of large-scale corruption can be found in the private sector as well, the following recommendations and action guidelines were formulated in order to avoid the financial and economic consequences of corrupt practices and attitudes in the private sector: 1) building up an adequate legislative framework for private business development: norms and rules on the different types of economic activities that should guarantee the transparency and accountability of business practices; 2) consistent economic reforms in support of competition and private entrepreneurship; 3) introducing the concept of "financial status" in tax legislation and measures targeting tax evasion and corrupt behaviour; 4) efficient and prompt protection of the interests of private owners and entrepreneurs affected by defaulting contractual partners, fraud and other forms of unlawful behaviour, which can be done, *inter alia*, by creating specific rules on arbitration and settlement of legal disputes which are most typical of small and medium-sized businesses.

B) Assessment of Anticorruption Efforts and the Measures Taken to Date. Future Prospects

Again, in this sphere there is a strong corruption pressure – the persistence of unregulated payments in order to obtain authorisations, import and export licenses, etc.

comes to show that the withdrawal of the state from the economy and the efforts to reduce the bureaucratic procedures, to provide transparency and accountability still fail to yield the expected results.

In this context, the long-term objective of the *Coalition 2000* partners was to come up with measures which may reduce the corruption pressure on business. This pressure culminates in the growing number of licensing regimes and in the tax policy currently pursued. Further to these efforts and in the context of a wide public debate involving the business associations as collective intermediaries between businesses and the government, in 2000 a government policy was launched to abolish and alleviate restrictive regimes, in particular, the permit and licensing regimes (according to various sources, nearly 130 such regimes, out of a total of more than 400, have already been abolished). This trend, however, is not steady and irreversible, as parallel to the abolition of some regimes new ones have been introduced.

Public opinion polls on competitiveness, conducted according to the methodology of the World Economic Forum, have revealed the perceptions of business circles in the country regarding existing the impact of administrative barriers on the economy. In 2000, the index of administrative barriers to private business was 2.98, i.e. the situation in 2000 was worse than in the previous year as in 1999 the index was 3.53 (*Competitiveness in Bulgarian Economy. Annual Report 2000. Centre for Economic Development, Sofia, p. 51*).

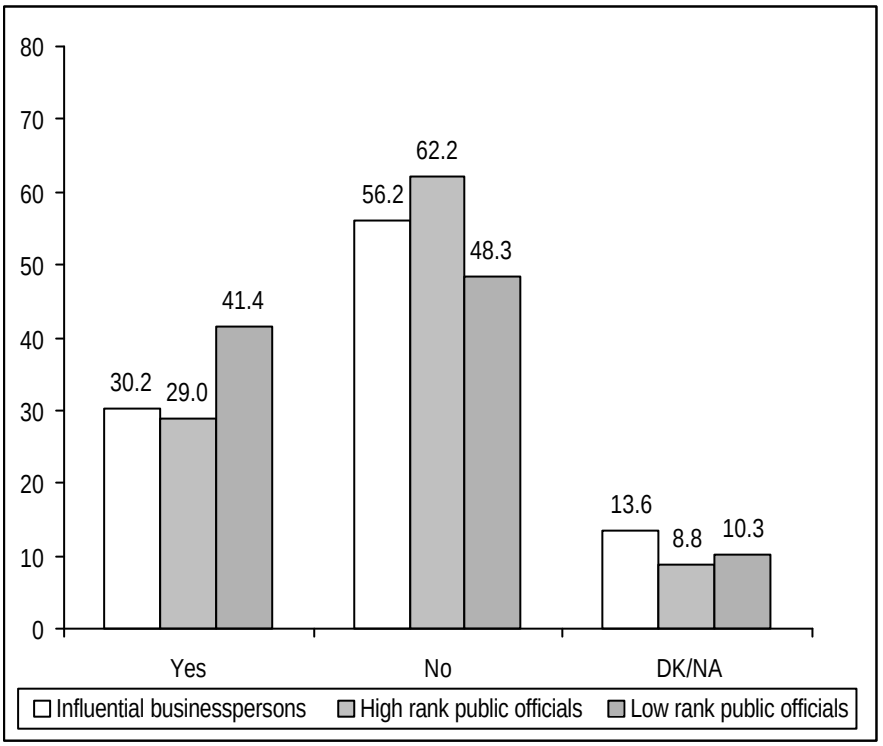
Thus, in spite of some positive steps to curtail the obstacles to business, a number of bureaucratic practices and administrative barriers to entrepreneurship, business and trade are still there. This process needs wider transparency and should rely on the interaction among actors within the private sector. The registration and co-ordination regimes need to be carefully reconsidered in the context of an overall coherent policy aimed at improving the business climate in the country.

With regard to taxation policies, efforts were made to establish a partnership in order to initiate a reduction of the tax burden so as to prevent tax evasion and increase tax compliance and make "compromising arrangements" between economic operators and tax inspectors less probable. *Nevertheless, no substantial progress has been made so far*.

The efforts to facilitate private business development could not be assessed as successful either. This finding is especially valid given the persisting scope and importance of the "grey economy". The share of that economy in Bulgaria over the past a few years has reportedly fluctuated between 32 and 35 per cent of GNP (some unofficial data suggest that the figures are actually higher) which creates a significant corruption potential. Similar lack of success has been observed in the efforts to fight smuggling.

One negative assessment is quite eloquent in that respect. It was given by economic managers in Bulgaria when asked about the efficiency of the anticorruption policy implemented by the government. (Figure No.6)

Figure No 6. Evaluation of the Commitment to Fight Corruption Among Civil Servants and Businessmen



Base N = 331

Source: Corruption Monitoring System, Business Elite Survey, January 2000

At the same time, one should not forget that private businesses are also frequently a source of corruption or at least sometimes they participate in the misuse of public power to the benefit of private parties. This distorts the country's economic development - foreign investors leave and domestic investors in small and medium-sized businesses either withdraw from the market or move to the informal sector.

As a result of the privatisation process, private business now prevails in the country. Nevertheless, the traditional leading role and functions of the State in the economy have not been replaced by adequate mechanisms or new functions. Another hot issue concerns the relations between the public administration and the private sector. The establishment of new market relations has indeed brought the dominant position of private business. This, however, necessitates a change in the functions of the administration, especially at those ministries in charge of the economy, and requires a new type of interaction and communication. The lack of clear rules on interaction and communication paves the way to

corruption and feeds the public suspicion that corruption really exists. If these relations are placed on a clear-cut legislative basis, this would foster business expansion and the development of a modern and efficient administration while effectively compressing corrupt behaviour.

Coalition 2000 believes that the success of any measures aimed at limiting the grey economy, smuggling and related corrupt practices would depend on the future co-operation based on public-private partnership in creating a more efficient legal and institutional environment, introducing a uniform information system inside the different agencies and among them, making public the preventive measures and the sanctions for smuggling. It would be essential to underscore the new practice of adopting rules and codes of ethics intended to bar corruption in the private sector itself - this practice gives tremendous opportunities to use self-regulation as a tool to resist both corruption and overregulation by the State. International co-operation and NGOs involvement in the monitoring and control of such criminal offences is also needed for this purpose.

* *

The experience gained in the development and implementation of the anticorruption strategy in Bulgaria based on public-private partnership model allows the following conclusions to be made regarding the two main components of this partnership, which can be referred to as "public" and "private" for analytical purposes.

With regard to the "public" component:

The state institutions are not yet sufficiently effective in combating corruption and protecting the citizens, nor do they can co-ordinate their efforts well enough. To a great extent the sector of non-governmental organisations is either mistrusted or neglected; it is often perceived as a potential enemy rather than as a natural partner. This finding is more or less true for all the three branches of power.

The **Legislature** still has to devise modern regulatory instruments in line with international standards to efficiently combat corruption while going beyond the narrow frame of the formal legalistic approach. The nuclei of democratic civic participation in the process of law-making should develop further and expand. As a body representing the nation, the National Assembly should initiate legislation to introduce working mechanisms in support of an institutional and legal environment hostile to corruption.

With regard to the **Executive**, there is little progress in terms of dealing with instances of corruption: the discretionary powers of the administration remain too vast and virtually uncontrolled, whereas the rights, obligations and procedures relating to these powers are not regulated clearly enough.

Other goals which still need to be accomplished are the unambiguous independence of the **Judiciary,** which should obey no one but the law, and the efficient operation of the judicial system. The lack of these components hampers democratic rule of law. Further reforms in this sphere should be implemented in order to provide serious guarantees for lawfulness and regain public confidence in the Bulgarian judiciary.

Dialogue and interaction between **central and local authorities** remain inadequate. There is no legal basis for a clear distinction between state and municipal competencies in a number of extremely sensitive areas exposed to corruption, such as public health, education, etc.

With regard to the "private" component:

The specific nature and evolution of the **non-governmental sector** and businesses in a transitional setting have led to the formulation of anticorruption strategies and their involvement in the implementation of those strategies. This, in turn, does not necessarily imply a broad civic participation in the anticorruption initiatives, although the experience over the past four years has seen growing civic participation and involvement at the local level. The social and economic hardships faced by most people in the country and the persisting corruption at all levels most often disillusion the citizens and put them in a deadlock, brings pessimism about the efficiency of civic participation and public-private partnership or feelings of helplessness and lack of protection from the institutions. On the other hand, their interests, problems and desires are not always directly addressed and adequately represented by the existing NGOs and businesses.

In general, non-profit organisations and businesses still fail to fulfill their role of intermediaries between individuals and institutions. Often they overlook the genuine needs of the individuals, or groups of individuals, in order to satisfy their own short-term needs and interests. Sometimes NGOs are simply not heard by the central or local authorities and become unable to exert pressure. Further emancipation of the NGO sector is a must for if it is to represent the real interests of the civil society – this would enhance its legitimacy in the dialogue with the public authorities.

In conclusion, the establishment and successful implementation of public-private partnership, as a democratic method of resisting corruption, would depend both on the further development (or further reform) of its public and private components, and on the close interaction and dialogue between them.