

**CORRUPTION MONITORING OF
COALITION 2000**

(The Judicial System)

May-June 2003



2. METHODOLOGY

Target group and sample size: The survey was conducted among 454 representatives of the judiciary:

Judges - 179

Investigators - 149

Public prosecutors - 126

Survey method: standardized face-to face interview.

Fieldwork: 21 April – 20 May 2003

1. SPREAD OF CORRUPTION

GENERAL SPREAD OF CORRUPTION ACROSS INSTITUTIONS

Similar to the general population and the business community magistrates hold the opinion that the most corrupt institution in Bulgaria is *the customs* and customs officers. The institutions that rank after them as most affected by corruption are *the healthcare system, the authorities issuing various permits, the Ministry of Interior and its agencies and the government*.

Table 1.

Spread of corruption across institutions according to magistrates (%)

In the customs / among customs officers	68.3
In healthcare (health insurance fund, the territorial expert medical commissions)	29.3
In permit issuing authorities (Institute of Hygiene and Epidemiology, the state veterinary control service, the fire and emergency service, construction permits etc)	26.4
In the Ministry of Interior and its agencies (including traffic police)	25.3
In the Government / among ministers / deputy ministers	21.6
In the municipal / district administration	19.8
In the Parliament / among MPs	19.4
In the tax institutions / among tax officials	17.6
Among officials in the central state administration / in ministries and state agencies	16.3
In big business / among financiers / bankers / managers / the well-to-do	9.3
In the judiciary / among judges/ public prosecutors/ investigators	8.1
Everywhere	4.2
Among attorneys at law	2.6
In the education system	1.5
There is no corruption in Bulgaria	0.7
Other	0.7
Don't know / No answer	3.1
In the presidency/ among presidency officials	0.0

Base: All respondents (N=454)

Magistrates tend to assess the spread of corruption among their occupation as rather low – only 8.1% of them rate *judicial authorities* among the three most corrupt institutions. Population in general perceives the issue differently, ranking the judiciary as the second most corrupt institution in the country.

Tabale 2.

Assessment of the population concerning institutional spread of corruption

(Respondents have indicated up to five responses to “General spread” and up to three to “Ministries and state agencies” and “Judicial system”; this is why the sum of percentages exceeds 100.)

	May 2002	October 2002	January 2003	May 2003
General spread				
In customs. Among customs officers.	33,2	30,4	53,3	50,0
In courts. In the judicial system. In jurisdiction. Among attorneys.	23,5	28,5	48,2	42,9
In the Ministry of Interior (traffic police, investigation service)	20,6	19,9	28,6	30,6
Ministries and state agencies				
Customs Agency	12,6	10,9	31,2	31,2
Ministry of Justice	15,0	18,1	33,5	31,0
Privatization Agency	22,0	22,5	27,2	24,7
The Judiciary				
In all branches of the judiciary	3,5	5,4	33,5	34,4
Court, legal proceedings	29,1	32,1	27,5	29,1
Prosecution	26,2	32,0	26,2	25,3
Investigation	15,7	15,7	18,4	17,6
Other institutions related to the judiciary				
Attorneys, notaries	15,3	16,2	24,9* 7,4**	21,8* 8,0**

* Spread of corruption among attorneys

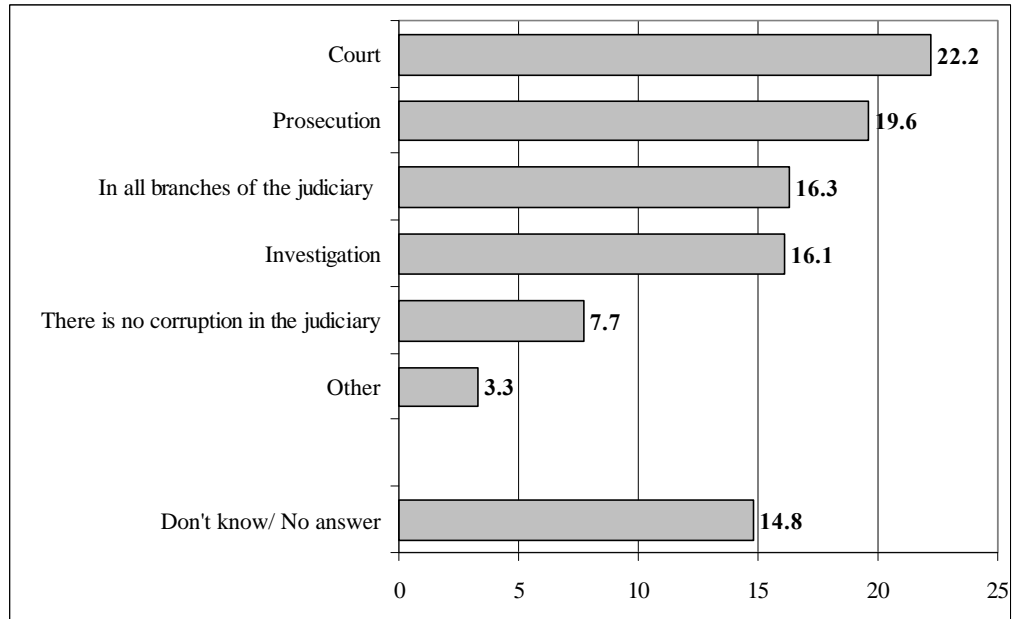
** Spread of corruption among notaries

SPREAD OF CORRUPTION IN THE JUDICIARY

One in two magistrates considers that opinions about high levels of corruption in the judiciary are unjustified.

The *court*, however, ranks the most corrupt when the separate units of the judicial system are assessed by magistrates as a whole (*Figure 1*). This opinion is much more strongly upheld by prosecutors and investigators.

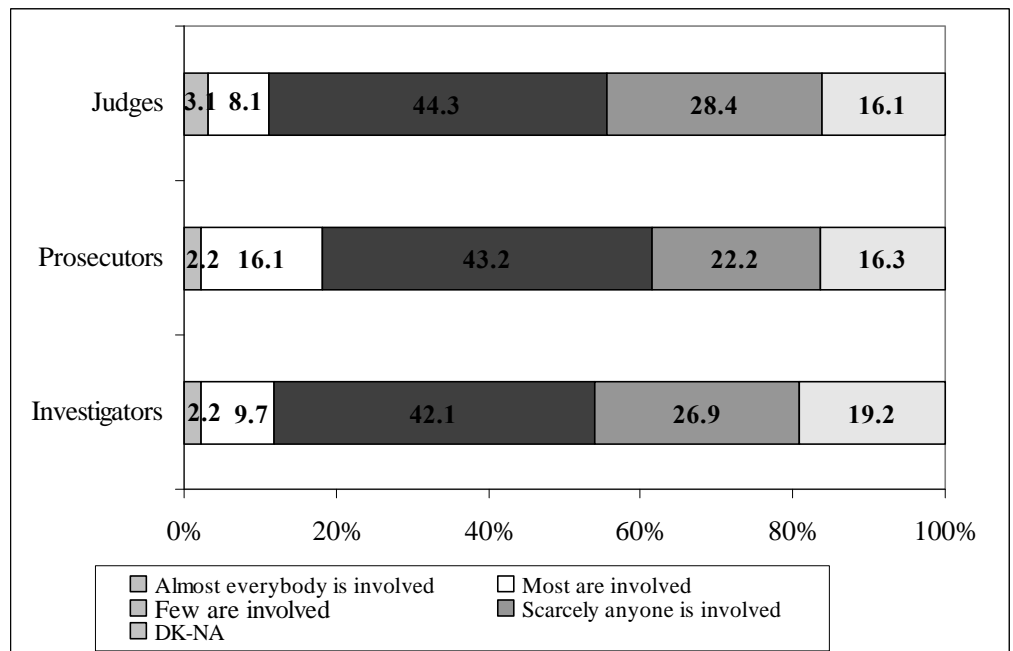
Figure 1
Spread of corruption across units of the judiciary (%)



Base: All respondents (N=454)

Prosecutors are considered the most corrupt community according to the estimates of each separate judicial unit. That nearly all or most of them are involved in corruption was the opinion of every fifth respondent, while every tenth expressed the same opinion with respect to judges and investigators. (Figure 2)

Figure 2.
Spread of corruption across groups of magistrates (%)



Base: All respondents (N=454)

All three categories of magistrates are inclined to make negative assessments with respect to the other two groups and never to the group they belong to. Prosecutors are partially an exception since a larger portion of them will hold the opinion that nearly all or most prosecutors are involved in corrupt practices (7,9% of all prosecutors against 2,8% of all judges and 4,7% investigators) (Table3).

Table 3.

Assessment of respondents about the spread of corruption across groups of magistrates (%)

Magistrate	Spread of corruption among: (Relative share of answers “Nearly all or most are involved”)		
	Judges	Prosecutors	Investigators
1. Judge	2.8	17.4	19.0
2. Prosecutor	11.9	7.9	10.3
3. Investigator	20.8	28.2	4.7

The tendency to transfer responsibility to the other units of the judiciary is again displayed in assessments of the types of criminal and civil proceedings.

With respect to criminal proceedings one in four *judges* claims that corruption is most widely spread in *preliminary proceedings*, while one in five thinks this happens during *police investigation*. *Prosecutors and investigators* in contrast, indicate the trial phase as the one at which corruption in criminal proceedings is concentrated.

One in four respondents claims that the civil adversarial proceedings is most susceptible to corrupt practices. This opinion is upheld primarily by representatives of the prosecution and the investigation while judges perceive non-contentious proceedings as most prolific in corruption.

Table 4.

Types of civil procedure with a wide spread of corruption by groups of magistrates

	During the adversarial proceedings	During collateral proceedings	During executory proceedings	During non-contentious proceedings	Other	Equally spread across all types	There is no corruption in civil procedure	Don't know / No answer
Judge	15.1	5.6	15.1	21.8	1.7	10.6	8.9	21.2
Prosecutor	27.8	5.6	16.7	11.1	0.8	7.9	5.6	24.6
Investigator	19.5	6.7	12.8	6.7	0.0	17.4	0.7	36.2

With respect to the spread of corruption among officials from the judicial system magistrates and the adult population display contrasting opinions – 37,5% of the population think that most judiciary officials are involved in corruption (Figure 3), while the portion of magistrates who share the same notion is as low as 2,4%. Almost two thirds of the respondents have replied that in the unit they represent there are hardly any corrupt officials or no such at all (Table 5).

It should be noted that magistrates' assessments are mainly based on personal observations and experience as well as interaction with their colleagues, whereas the opinion of citizens is significantly influenced by the media.

Table 5

Spread of corruption in the unit of the judiciary to which respondents belong (%)

Nearly all <u>officials from the judiciary</u> are involved	0.2
Most <u>officials from the judiciary</u> are involved	2.2
A small number of the <u>officials from the judiciary</u> are involved	18.7
Nearly no one <u>from the judiciary</u> is involved	32.4
There are no <u>officials from the judiciary</u> who are involved	30.0
<i>Don't know / No answer</i>	<i>16.5</i>

Base: N=454

Figure 3

Assessment of the population about the spread of corruption among administrative officials in the judicial system (% , May 2003)



Base: N=1077

In contrast to citizens and the business community who gather information about the spread of corruption from the media, magistrates have first-hand experience and observe the process directly. The *media* do not play an important part in the formation of their opinion. Assessment and perception of corruption and its distribution in the judiciary are shaped through *informal communication channels* (contacts with acquaintances and colleagues), as well as the observed *disparity between the incomes of certain magistrates and their disproportionately high standard of living*.

FACTORS FOR THE SPREAD OF CORRUPTION IN THE JUDICIARY

The low remunerations of magistrates and judicial officials are stated to be the main source of corruption in the judiciary. The majority of respondents indicate that they belong to the middle or lower values of the poverty-prosperity scale. One of the chief motives for their recourse to "alternative sources of income" are expectations for better remuneration. The moral crisis

of society in recent years complements the picture to create sufficient prerequisites for corruption pressure susceptibility.

Magistrates admit that *there are gaps and deficiencies in the legislation of the country* as well as *a lack of efficient internal control mechanism and a penalty system in the structures of the judiciary* that could curb corruption. (Table 6)

Table 6.

Factors influencing the spread of corruption in the judiciary (%)

Low remuneration of magistrates / judicial officials	55.3
Moral crisis in the transition period	43.2
Deficiencies in the legal basis	36.1
No effective mechanism for internal control and penalties	35.7
Intersection of official duties of the magistrates and their private interests	31.1
Ambitions for fast enrichment	25.1
The political affiliation of the magistrates / judicial officials	16.1
Sense of unassailability / immunity	15.0
<i>Other</i>	2.6
<i>Don't know/ No answer</i>	4.2

Base: N=454

2. CORRUPT PRACTICES

MAIN OBJECTIVES OF CORRUPT PRACTICES

The objectives that corrupt acts target are predetermined by the specific activities of the different groups of magistrates, their professional duties and the range of power they are authorized to use (*Table 7*).

Table 7.

Purpose of corrupt acts by groups of magistrates and officials in the judicial system (%):

<i>Judges</i>	
To render a verdict/judgement with a predetermined content	69.6
To dismiss / suspend action without legal grounds	39.6
To delay the hearing of a case	40.1
To protract, accelerate or influence in another way entry into the commercial register	27.5
To exert undue influence	15.4
Other	1.5
No corrupt act is taken	4.6
<i>Don't know/ No answer</i>	9.5
<i>Public prosecutors</i>	
To dismiss criminal proceedings	63.4
To start/not start pre-trial proceedings or preliminary examination	49.3
To submit/not submit a bill of indictment	27.8
To remand a case for further investigation without legal grounds	23.3
Not to exercise procedural action in cases when they are obliged to	19.8
To exert undue influence	17.0
Other	1.5
No corrupt act is taken	4.6
<i>Don't know/ No answer</i>	12.3
<i>Investigators</i>	
To take or not take up certain actions of investigation	59.5
To stop investigation or propose its termination	56.2
To exert undue influence	28.0
Other	2.2
No corrupt act is taken	6.2
<i>Don't know/ No answer</i>	13.2
<i>Court administration</i>	
To engage / not engage in certain actions related to the processing of legal papers and documents	55.9
To allow breaches in the serving of subpoena and other legal papers	53.7
Other	3.1
No corrupt act is taken	7.7
<i>Don't know/ No answer</i>	16.5

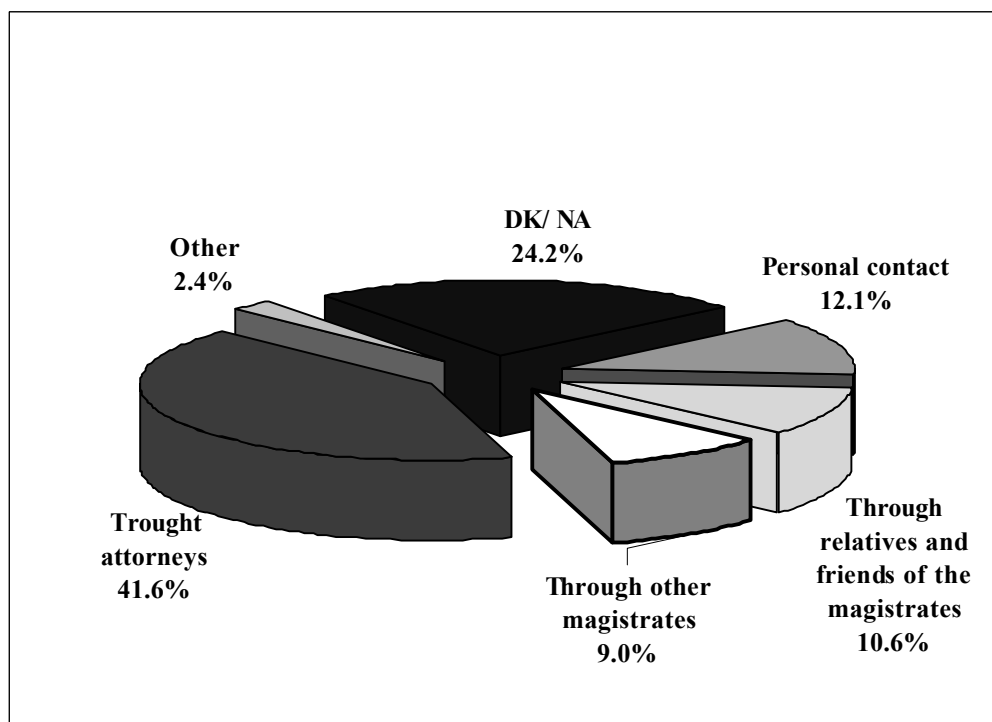
WAYS OF CONDUCTING CORRUPT PRACTICES IN THE JUDICIARY

Corruption deals between magistrates and other interested parties are predominantly performed through the agency of *attorneys*. They are the people mediating between individual citizens and the structures of the judiciary, extending this function to corruption deals as well.

The social network based on kinship, friendly or professional relations is another means for conducting corrupt practices (Figure 4).

Figure 4.

Ways in which interested persons conduct corrupt practices



Base: N=454

EXPERIENCE IN RELATIONS WITH CITIZENS

Besides general factors affecting the spread of corruption, there are a number of other prerequisites in the daily relations between magistrates and citizens influencing the corruptedness of magistrates and judicial officials.

The dominant number of magistrates consider that *citizens' expectations to the work of the judiciary are usually extremely high*. More than half of the magistrates think that the majority of citizens *do not know their rights well and are dissatisfied with the work of the magistrates*. The disparity between expectations and actual rights results in "unofficial" resolution of disputes by means of various corrupt practices (Table 8).

Table 8.

How often do the citizens you come into contact in execution of your professional duties: (%)

	Usually	Sometimes	Rarely	Never	<i>Don't know/No answer</i>
Have excessively high expectations to magistrates and their work	56.2	28.0	8.1	2.6	5.1
Not know their rights	52.4	31.5	11.9	2.0	2.2
Display dissatisfaction with the work of magistrates	34.6	47.1	14.1	2.0	2.2
Prefer to engage in corrupt acts instead of arguing for their rights in legal ways	15.4	34.6	26.9	8.8	14.3
Think that they can attain their goals by offering money or gifts	12.6	30.4	32.2	15.2	9.7
Behave rudely or impolitely to judicial officials or magistrates	9.5	37.4	42.7	6.8	3.5

Base: N=454

PARTICIPATION OF MAGISTRATES IN CORRUPT ACTS

In their contacts with magistrates citizens tend not so much *to directly offer money or gifts* as to *indicate they are ready to offer money or bribes if this is necessary or demanded from them.*

Citizen have declared their readiness to engage in corrupt practices much more often to *judges* than to the rest of the magistrates.

Since the question about corruption deals is understandably an indirect one no definite conclusions can be drawn from it concerning the corruptedness of the different groups of magistrates. *Public prosecutors*, however, have most often been involved in corruption deals that have become known to their colleagues - 22,2% of magistrates who have interacted with colleague prosecutors declare that in most or some of the cases they have been informed about their involvement in corrupt acts. (*Table 9*)

Table 9.

Frequency of the cases in which magistrates have been notified that their colleagues or other judicial officials have received money, gifts or favours in order to carry out or refrain from certain acts concerning their professional duties

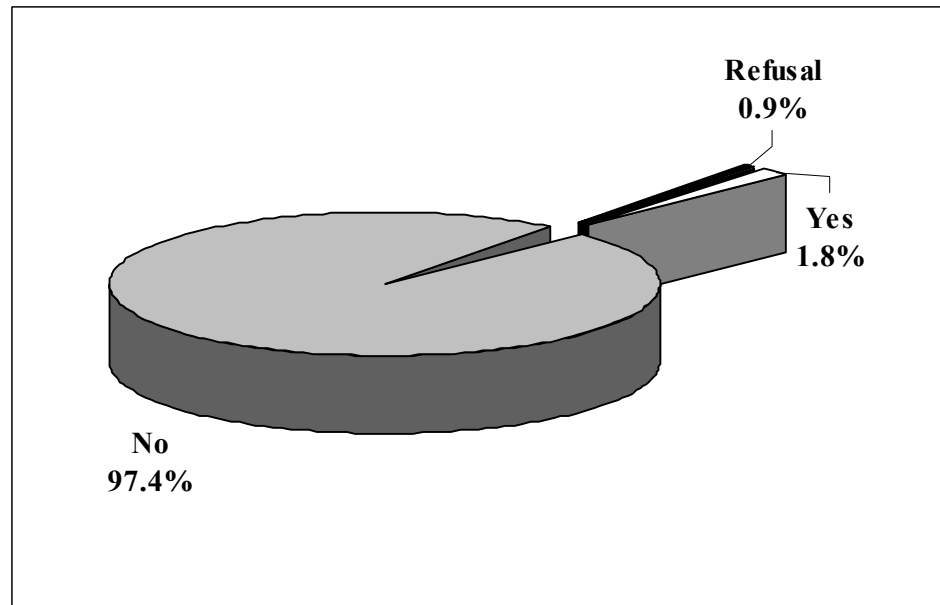
	In most cases	In some of the cases	Total
Judges	1.9	15.3	17.2
Public prosecutors	4.1	18.1	22.2
Investigators	1.7	14.4	16.1
Judicial officials	2.3	10.7	13.0

Base=those that have been in contact with the relevant group of magistrates or judicial officials

Only 1,8% of the magistrates included in the survey have admitted to personal involvement in corruption deals. Those that have been personally involved are frequently persons over 50 years of age or working in medium-sized towns (with population between 20,000 – 99,999 people). Representatives of the judiciary who have openly admitted to have received bribes define their private social and financial standing as above the average. Representatives of district or regional public prosecution offices are involved in corruption to a greater extent than magistrates working in other institutions.

Figure 5.

Personal involvement of magistrates in corruption deals during the last year



Base: N=454

One in two magistrates (53,3%) is aware that acceptance of money or a gift from an interested person would lead to assuming some kind of obligation to that person.

Faced with the hypothetical situation of being offered money or a gift, over 90% of respondents declare they would certainly not accept a bribe to resolve an issue since such an act is incompatible with their status. Over three fourths (78,2%) of magistrates declare to be ready to take measures against corrupt acts. This reveals that with respect to their values magistrates disapprove of corruption and are prepared to collaborate to its curtailment for other reasons besides fear of possible negative consequences.

The most probable consequence from incrimination of a magistrate for participation in corrupt acts indicated by respondents is *the withdrawal of immunity and starting criminal prosecution*. More than half of the respondents also mention *the possible dependency of the magistrate on the bribe giver*. (Table 10)

The number of actual accusals and official investigations into cases of magistrates involved in corrupt acts is still excessively low.

Table 10.

Possible consequences for magistrates who have accepted money or a gift from citizens to in order to carry out or refrain from certain acts concerning their professional duties (%)

His/her immunity will be withdrawn and criminal prosecution against him will be initiated	54.8
He/she will be dependent on the person who gave the bribe or in whose interest it was given	54.2
Disciplinary charges will be brought against him/her	35.2
Compromising material against him will be used to exert undue pressure	33.7
There will be no negative consequences	8.8
<i>Other</i>	2.6
<i>Don't know / No answer</i>	4.2

Base: N=454

3. ANTICORRUPTION MEASURES

According to magistrates the most important measures that should be undertaken to curb corruption are in the sphere of pay raise and tighter criteria for personnel recruitment (Table 11).

Table 11.

Measures to be undertaken in order to reduce corruption in the judiciary (%)

To raise the remuneration of magistrates / judicial officials	69.4
To introduce stricter criteria for the selection of magistrates	68.7
To modify the structure of the judiciary as well as improve accountability, control and penalization mechanisms	35.0
To adopt an effective continuous training system aiming to raise the skills level of magistrates	33.9
To adopt a mechanism of job rating and bind its results with the magistrates' career development	32.8
To encourage magistrates to make public their findings about misdemeanors in the judiciary	25.1
<i>Other</i>	4.4
<i>Don't know/ No answer</i>	0.7

Base: N=454

Other measures considered feasible on the way to curbing corruption in the judiciary are the *obligation for magistrates to declare their property before the*

National Audit Office as well as *the use of alternative dispute resolution means*. The establishment of a specialized unit with the Supreme Prosecution of Cassation that would investigate signals for corruption is also considered a prospectively effective measure.

Over half of the responding magistrates (52,6%), state that corruption curtailment measures can be implemented exclusively through legal reforms without constitutional amendments.

The question whether the centralized structure of the public prosecution office provokes corruption did not receive unanimous responses – the shares of diametrically opposite opinions are nearly equal. The distribution of responses among magistrates, however, indicates that the majority of judges and investigators consider this unified structure as conducive to corrupt practices among prosecutors and other officials at public prosecution offices. Public prosecutors, however, are of the reverse opinion. (*Table 12*)

Table 12.

Impact of the existing unified and centralized structure of the national public prosecution office on corruption within it according to the different groups of magistrates (%)

	Yes	Rather yes	Rather no	No	Don't know/No answer
Judge	26.3	29.1	27.4	8.4	8.9
Public prosecutor	5.6	10.3	30.2	50.0	4.0
Investigator	26.2	31.5	24.2	9.4	8.7

Base: N=454

Magistrates that think changes should be introduced in SJC (the Supreme Judicial Council) (61,2%) indicate the following drawbacks and necessary reforms in the institution: *the way SJC's make-up is determined, the establishment of a higher degree of publicity and transparency in its work and the setting up of an information system for control*.

The proposals concerning SJC's make-up have to do primarily with the political attachment of its members. The frequency of responses about measures to improve SJC's work is as follows: *making the National Assembly quota invalid* (22 responses); *making the quotas for the three units of the judiciary equal* (18 responses); *selecting SJC members solely from the respective units of the judiciary* (17 responses); *authorizing representatives of the judiciary to carry out the SJC selection procedure* (12 responses) and *eliminating the influence of political parties* (12 responses).

The proposal to introduce an institution of asset forfeiture (including blocking and confiscation) provoked contradictory reactions. On the one hand, magistrates think this would be an effective means to counter corruption. On the other hand, three out of every four respondents suspect that no sufficient guarantees have been envisaged against possible misappropriations. (*Table 13*)

Table 13.

Assessment of the proposal to introduce an institution of asset forfeiture (including blocking and confiscation)

	Yes	No	<i>Don't know/ No answer</i>
This would be a mechanism for fast blockage and confiscation of assets acquired through criminal activity and would thus help fight corruption effectively	70.0	18.3	11.7
This is a good idea, but no sufficient guarantees are envisaged against possible misappropriations	75.8	11.9	12.3
This would not help fight corruption at all	19.8	61.0	19.2

Base: N=454

The judiciary underscore the necessity to improve the legal basis with respect to corpus delicti in the special provisions of the Criminal Code concerning the incrimination of various types of corrupt acts.

Table 14.

Assessment of the latest changes of the corpus delicti in the special provisions of the Criminal Code concerning the incrimination of various types of corrupt acts.(%)

	Yes	No	<i>Don't know/ No answer</i>
Incorporates all possible social relations in which corruption is possible	20.9	61.0	18.1
The envisaged penalties correspond to the incriminated acts	39.2	39.6	21.1
More improvements should be made of the legal basis in this respect	76.4	11.7	11.9

Base: N=454

The weaknesses of pre-trial and trial phases that favour acts of corruption during opening, administration and termination of cases are described by magistrates as follows: *inefficiency of the police forces resulting in low crime discovery rates, failures in preliminary proceedings, deficiencies in the material and procedural regulations and flaws in their implementation.*

All three groups of magistrates agree that police are inefficient in uncovering crimes and that there are numerous flaws in the material and procedural regulations favouring corruption in preliminary and judicial proceedings. (Table 15)

Regarding the operation of the three separate units of the judiciary, magistrates once again tend to transfer responsibility and assign the blame to the other two groups. Judges tend to make the most extreme assessments of all – seven out of nine respondents consider failures in preliminary proceedings as the most serious barrier to uncovering acts of corruption, whereas 34.9% of prosecutors and 30.2% of investigation officers claim that the reason is the inefficiency of courts.

Table 15

Problems associated with corruption during preliminary proceedings according to groups of magistrates (%)

	Judge	Prosecutor	Investigator
Deficiencies in the material and procedural regulations	53.1	56.3	55.0
Flaws in the implementation of existing regulations	36.3	27.0	28.9
Inefficiency of police forces resulting in low crime discovery rates	57.0	55.6	58.4
Failures in preliminary proceedings	69.3	44.4	17.4
Inefficiency of courts	6.1	34.9	30.2
Infringement of procedures on collection, examination and assessment of evidence under the Penal Code on the part of courts	36.3	38.1	30.9

Base: N=454