PART TWO

REFORM IN CRIMINAL LAW AND PROCEDURE

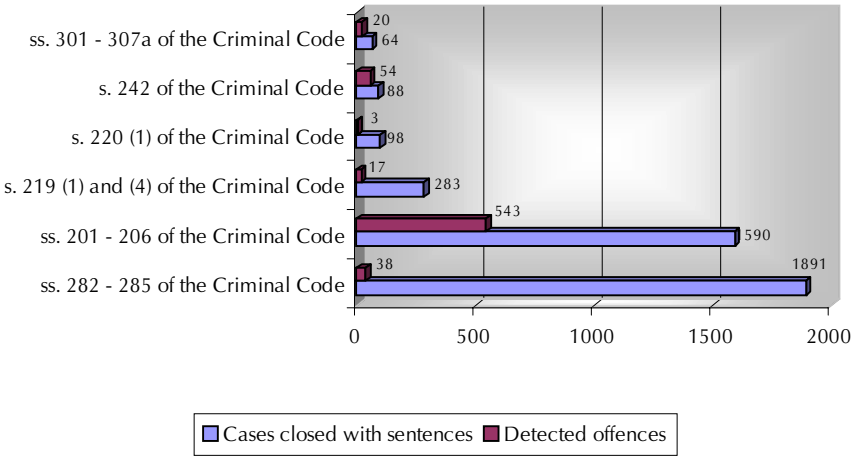
1. General

Criminal law, along with criminal procedure and the execution of penalties, is among the strongest instruments a state has at its disposal to suppress crime in general and corruption in particular. The major role attributed to criminal law in combating crime derives from the fact that, when implementing its criminal justice policy, any state pursues at least two objectives: to punish the perpetrators of criminal acts, including corrupt acts, on the one hand, and to deter and rehabilitate the perpetrators, and educate all other members of society, on the other hand.

The current system of criminal prosecution is in the main slow, unwieldy and inefficient. The crimes and the penalties provided for in the *Criminal Code* fail to mirror adequately what is a growing economic and conventional criminality in the modern setting of a market economy. The framework of criminal procedure, as embedded in the existing *Code of Criminal Procedure*, fails to provide sufficient mechanisms and guarantees for the swift and efficient closure of criminal proceedings with effective criminal judgments which, in turn, opens the door for exerting corrupt influences.

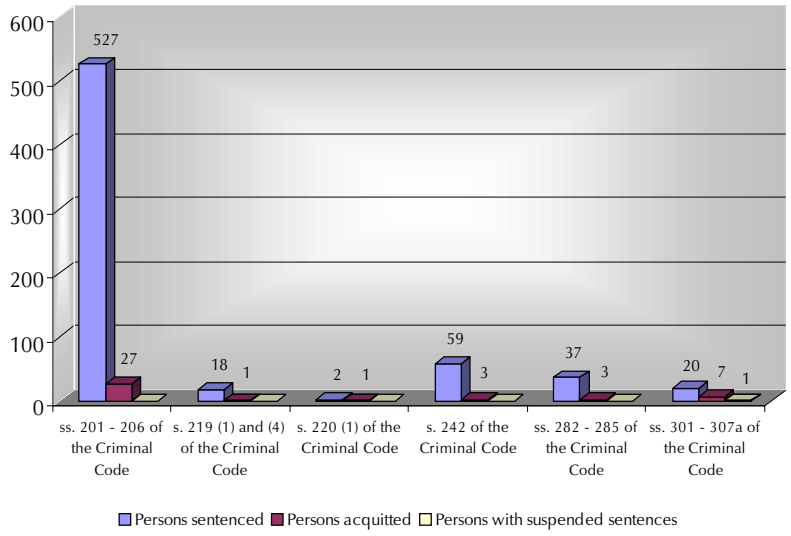
Over the past years, numerous legislative amendments have been made in an effort to modernize criminal law and procedure. Some of those amendments, however, were piecemeal and were often detached from any clear and consistent philosophy underlying criminal justice reforms. The major concern behind those amendments was to modernize domestic legislation and to bring it into line with the European requirements to respect human rights, while offering a swift and efficient administration of justice. Those objectives, though, have mostly remained unattained and this fuels the need to go on with reforms.

NUMBER OF CASES CLOSED WITH SENTENCES AND NUMBER OF PERSONS SENTENCED FOR OFFICE-RELATED CRIMES (SS. 282-285 OF THE CRIMINAL CODE), EMBEZZLEMENT (SS. 201-206 OF THE CRIMINAL CODE), GENERAL ECONOMIC CRIME (SS. 219-220 OF THE CRIMINAL CODE), SMUGGLING (S. 242 OF THE CRIMINAL CODE), AND BRIBERY (SS. 301-307A OF THE CRIMINAL CODE): YEAR 2002



Source: *Supreme Prosecution Office of Cassation*

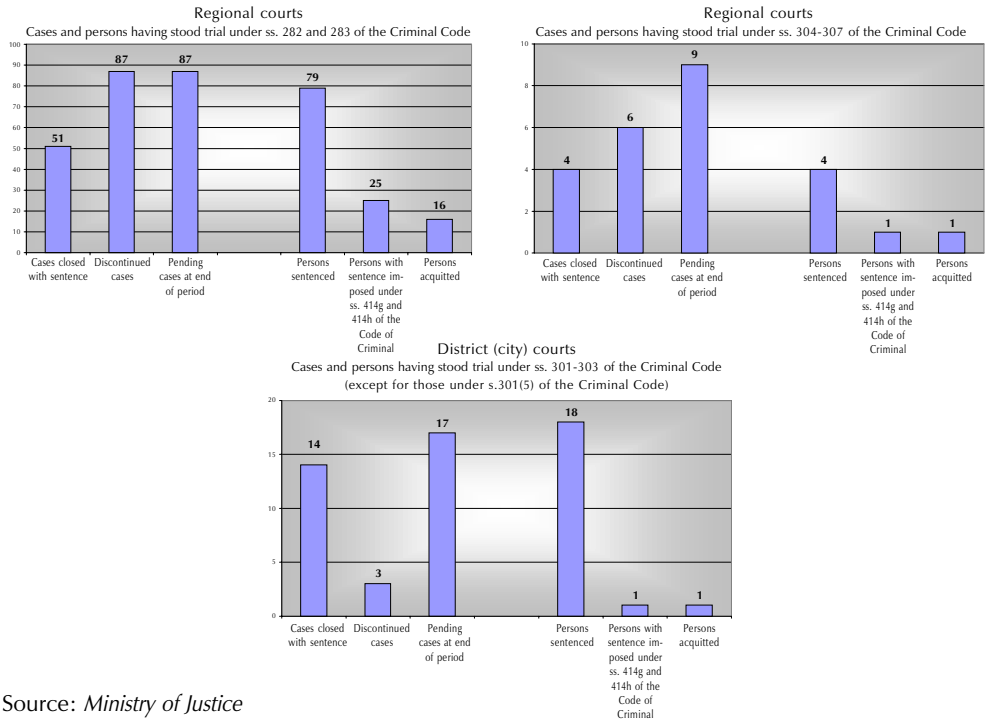
Reform in criminal law and procedure is preconditioned primarily by the constitutional



Source: *Supreme Prosecution Office of Cassation*

framework set out by the *Constitution* of the Republic of Bulgaria of 1991. A great portion of the legislative amendments in the area of criminal law, criminal procedure and the execution of penalties would depend directly on any ideas that might be drafted for future amendments to the basic law of the land, especially to its chapters on human rights and on the Judiciary.

NUMBER OF CASES AND NUMBER OF PERSONS SENTENCED FOR OFFICE-RELATED OFFENCES (SS. 282 AND 283 OF THE CRIMINAL CODE), AND BRIBERY (SS. 310-307 OF THE CRIMINAL CODE): YEAR 2002[8]



Source: *Ministry of Justice*

1.1. Problems in substantive criminal law

During the last few years, substantive criminal law has seen fundamental changes aimed at improving the prevention and prosecution of corruption-related crimes. Further to a series of amendments to the *Criminal Code*, the substantive criminal rules on corruption offences now seem to be very close to the relevant European standards. Along with the improvement of the legal framework of **bribery**, which is the most typical corruption crime, a number of other major

[8] Before the last amendments to *Code of Criminal Procedure* made in 2003 (SG, issue 50 of 30 May 2003), proceedings for office-related offences under ss. 282-283 of the *Criminal Code*, and for bribery under ss. 304-307 of the *Criminal Code* were within the competence of regional (first-tier) courts at first instance. After the amendments, the proceedings for those crimes have come under the jurisdiction of district (second-tier) courts at first instance.

corrupt practices have been incriminated as well, *e.g.* **trade in influence, bribes in the private sector**, etc. The rules on some offences that are often found to be directly linked to genuine corruption crimes have been improved as well, for instance **office-related offences, tax-related offences**, etc.

In spite of the essential legislative amendments to substantive criminal law intended to penalize corruption crimes, a significant number of magistrates still believe that the *Criminal Code* reveals serious gaps and drawbacks in that respect. 61 per cent of the magistrates interviewed think that the latest amendments have failed to provide full coverage of all social relations where corruption might occur, whereas 76.4 per cent are of the view that legislation in this area needs further improvement.

ASSESSMENT OF THE LATEST AMENDMENTS TO THE CRIMINAL PROVISIONS IMMEDIATELY INCRIMINATING VARIOUS TYPES OF CORRUPT PRACTICES (CRIMINAL CODE, SPECIAL PART):

	Yes	No	*Does not know/ No response*
The rules cover in full all social relations where corruption might occur	20.9	61.0	18.1
The penalties envisaged are proportionate to the incriminated offences	39.2	39.6	21.1
The legislation needs improvement in that respect	76.4	11.7	11.9

Source: CMS of *Coalition 2000*

- A pronounced weakness of the *Criminal Code* is the existence of numerous provisions, both in its General Part and in its Special Part, which have been **overturned** in whole or in part by the Constitutional Court **as anti-constitutional**. Although they are not applied, those provisions have neither been explicitly repealed, nor have they been modified to match the reasoning of the Constitutional Court.

- A topical issue that has been lingering for some time is **the accurate definition of the concept of „public official"**. This is of the essence in the context of corruption offences, as public officials form a major group of perpetrators for that category of crimes. While the latest amendments to the *Criminal Code* have extended the concept of public official in response to the *Criminal Law Convention on Corruption*, some groups of individuals from the private sector still come within the ambit of the definition.

- The fundamental weaknesses of the General Part of the *Criminal Code* relate to the **system of penalties**. That matter is currently discussed not only in Bulgaria but in a number of other countries as well, and recent developments have brought to the fore new forms of impacting on perpetrators, other than traditional criminal sanctions. An adequate system of penalties is crucial for the efficiency of criminal justice policy in any state, and even more so with respect to corruption offences.

It is notorious that Bulgaria is among the countries with most severe sanctioning systems in Europe and the law-maker mainly relies on **the penalty of imprisonment**, a method that fails to yield the much-hoped personal or general prevention. Foreign domestic laws exhibit a general trend to limiting the scope of that penalty, while giving priority to

pecuniary sanctions and to some new forms of engaging the criminal liability of offenders.

At the same time, the current system of sanctions includes some penalties that are far too outdated and inefficient. One example is correctional labor that could be imposed at times, on an alternative or cumulative basis, for some corruption offences (embezzlement by public officials, office-related offences, offences against the system of justice, etc.). As it was coined in a completely different social environment, that penalty is currently inapplicable for any practical purposes. Almost the same holds true for public reprimand: it lacks any state-related coercion, so its efficiency as a sanction is more than doubtful.

With the latest amendments to the *Criminal Code* (in force as from 1 October 2002), partial efforts were made to improve the system of penalties for corruption-related offences. With respect to the different forms of bribery and the new provisions on completely novel crimes, *e.g.* trade in influence, criminal fines were introduced and must be imposed as an alternative to, or on a cumulative basis with, imprisonment. The law-maker, though, failed to bring that approach to its logical end. Imprisonment therefore still remains the only possible sanction for many other offences that are connected in one way or another with corruption.

- Serious drawbacks impair the rules on the **criminal liability of juveniles**. No clear philosophy exists for a government juvenile delinquency policy that should be implemented through specific sanctions apt for the age of juvenile offenders. The existing sanctions for juveniles under the *Criminal Code* rather result from a merely mechanical adjustment of the general system of sanctions to offences committed by juveniles.

- The rules on **probation** introduced in the *Criminal Code* are fairly unsatisfactory and, moreover, their consistency with the *Constitution* could be reasonably questioned. Those rules make it possible to treat defendants unequally and unfairly when that penalty is imposed with the sentence and when the specific probation measures are individualized. In other words, under the existing provisions two persons having received the same sentence can actually be subjected to restrictions that differ in scope. That would nurture corrupt practices and risks to entail attempted manipulations of judges when they opt for probation, especially in the case of lighter sentences against which no cassation appeal lies.

When the rules on probation were in the process of adoption, a purely mechanic approach was applied of substituting probation in the Special Part of the *Criminal Code* for the penalties of compulsory resettlement or deprivation of the right to reside in a given village or town. That move was at odds with the fundamental principles underlying the individualization of penalties by the court and left open the question of how penalties other than probation should be applied, especially where the *Criminal Code* provides another penalty as an alternative to, or on a cumulative basis with, probation.

- **The system of the Special Part of the *Criminal Code* is inaccurate and inconsistent**. The numerous recent amendments to the Code reflect plenty of compromises in that respect and many offences are in

clearly unsuitable chapters. This is largely true of bribery which now falls under the heading of *Offences against the Operation of Government Agencies and Public Organizations*. Placing bribery in that chapter of the Code prevents the prosecution of corruption offences in the private sector, in public enterprises or even in municipalities. This finding is only confirmed by the imperfect rule of s. 225c of the *Criminal Code* which represents a rather underdeveloped framework of anti-corruption in the economic sector.

- The major changes in the legal framework of bribery brought about by the latest amendments to the *Criminal Code* consisted in introducing some new forms of *actus reus*. Their content, though, remains basically unclear. This could seriously inhibit the development of case-law and open the door for arbitrariness.

- Bulgarian criminal law still fails to address the issue of **corporate criminal liability**. Many corruption offences are committed exactly to the benefit of legal entities which, nonetheless, cannot be efficiently sanctioned under any piece of existing legislation in Bulgaria.

1.2. Problems in criminal procedure

The existing pitfalls in investigating and prosecuting crime in general, and corruption in particular, are mainly due to the low efficiency of criminal procedure which prevents the state from pursuing its criminal-law claim on time.

In the last years, a series of legislative amendments have been undertaken in criminal procedure and many of them have divided the legal community in their opinions. Although some of the amendments to criminal procedure have been incoherent, the red threads of the reform are visible and can be said to mirror the established international standards, the progress made in different legal systems and the experience of practitioners involved with criminal procedure. The major goal of the amendments to the *Code of Criminal Procedure* was to draw the right balance between the reliable guarantees for human rights and the efficient administration of justice. That goal, however, remains largely unattained, so reforms should continue. The most desirable approach would be to draft an entirely new *Code of Criminal Procedure*, although the Bulgarian law-maker has generally stuck to the right ideas in the

SPREAD OF CORRUPTION AT VARIOUS STAGES OF CRIMINAL PROCEEDINGS

	%
Preliminary police inquiry (steps undertaken outside the context of formal criminal proceedings)	15.9
Police investigation	19.6
Preliminary proceedings	15.6
Trial	19.4
Other	1.1
Equally spread at all stages	10.6
No corruption exists in criminal proceedings	4.4
Does not know/No response	13.4

Source: CMS of *Coalition 2000*

amendments to criminal procedure throughout the years. A new Code would help overcome the inevitable difficulties of implementing a fundamental reform in a piece of legislation adopted in 1974 and based on a philosophy other than that underlying the reform itself. Those problems are illustrated by the existence of contradictory, mutually exclusive procedural structures, the difficult „co-existence" in the same law of ideas of rather different natures, the inaccurate system of the Code, to name but a few. Hence, a new *Code of Criminal Procedure* would be the best approach to reform in criminal procedure. On the other hand, though, that should not be regarded as an absolute precondition for the success of reforms. It is indeed more important to enshrine in domestic legislation the right ideas than to have a new law at any price. The laws of many European countries, such as Germany, France, Belgium, etc., whose procedural rules are centuries-old, incorporate the most progressive ideas of effective criminal justice and offer genuine guarantees for the protection of human rights.

In May 2003, the National Assembly passed the next-in-a-row *Law on Amending and Supplementing the Code of Criminal Procedure* with a number of provisions intended to speed up the development and completion of criminal cases. The most important of those amendments could be summarized as follows:

- Further to earlier 2002 amendments to the *Criminal Code*, the so-called **mixed proceedings** (public-private proceedings) were introduced. In those cases, for some offences under the *Criminal Code* the criminal procedure is initiated by the victim's lodging a complaint with the public prosecution, but once the public prosecution decides to prosecute, the proceedings can no longer be discontinued at the request of the victim. For other offences, the proceedings are discontinued if the victim requests so prior to the start of inquiry by the court of first instance. This approach certainly serves two fundamental objectives: while the will of the victim is taken into consideration, the criminal justice system is partially relieved from its enormous workload.

- The possibility was abolished to bring civil claims at the pre-trial stage of criminal proceedings.

- The **preliminary police inquiry** was abolished, so it is no longer a prerequisite for instituting preliminary criminal proceedings where no sufficient data exist that an offence was committed. Under the amendments, when urgent investigation steps have to be made, the preliminary proceedings shall be deemed instituted as from the date of the official warrant stating that the respective investigative step has been undertaken.

The preliminary police inquiry, which was an extra-procedural activity, had virtually gone away from the initial idea of the law-maker to allow for an operational, quick check as to whether or not sufficient data exist to institute formal criminal proceedings. In a number of instances, the preliminary police inquiry took longer than the formal criminal procedure itself. In that way inquiries not only became an impediment to the timely start and closing of criminal proceedings but turned into a tool to discredit citizens and torment them, or even to exert corrupt pressure.

- The original rules on **plea bargaining** were restored by repealing the improvident earlier amendments made in 2001.

The instrument of plea bargaining was introduced with the amendments to the *Code of Criminal Procedure* in force as of the beginning of 2000 and quickly grew into a flexible procedural method accelerating criminal prosecution and barring corrupt practices in the relationships between accused and magistrates. The information about the criminal cases closed in 2000 shows that 36.6 per cent, or more than one third of the total number of cases resolved in that year ended by plea bargaining. The amendments to the *Code of Criminal Procedure* made in 2001 narrowed beyond reasonable limits the possibilities to use that vehicle and actually made it inapplicable as a means to quickly satisfy the criminal-law claim of the state towards the offender and to meet the victim's demand for redress. The rules were therefore changed again and the texts repealed in 2001 were reinstated.

- The right of the accused was introduced to request the court, after the expiration of a certain statutory time limit from the submission of the indictment (two years in the case of indictment for a serious offence, and one year in any other case), to hear his case on the merits.

- The **original rules on police investigation** were restored by repealing the pointless amendments made in 2001.

After police investigation was initially introduced, in 2000 nearly five times more police procedures ended with opinions to refer the matter to court, compared to the year before, and the time of investigating the offences was reduced about five times on average. Criticism of the new legislation was mainly generated by the fact that many of the police officers empowered to conduct those proceedings lacked the required legal background which sometimes affected adversely the quality of police investigation work. The amendments to the *Code of Criminal Procedure* made in 2001, however failed to address the problems identified but, on the contrary, reinforced the sort of procedural formalism which seriously hindered police investigation, while depriving it of its inherent operational nature, quickness and efficiency.

- The possibility of the judge-rapporteur and of the court of first instance to **discontinue the trial and remit the case to the public prosecutor** for further investigation on grounds of serious procedural violations is now solely confined to those cases where the violations in question has resulted in limiting the procedural rights of the accused or of counsel for the defense.

- The amendments enabled the court to impose a fine of up to 500 Levs on any party, witness or expert whose failure to appear without good reason has resulted in adjourning a hearing.

- The possibility was abolished for public prosecutors to bring a new indictment for the first time before the court of appeal.

- **The possibility of public prosecutors was abolished to appeal at three instances against the order of the court to remit a case to the pre-trial stage, and the possibility to appeal at three instances**

against the warrants of the public prosecutor to discontinue the criminal proceedings. That provision, which was introduced with the amendments to the *Code of Criminal Procedure* in 2001, virtually blocked the criminal procedure and its abolition was a must so that the development and completion of criminal cases could be accelerated and, hence, corruption be suppressed.

The most recent amendments to the *Code of Criminal Procedure* display some shortcomings as well. First of all, the change of jurisdiction for some categories of cases did not match the competence of the investigative authorities supposed to deal with those cases. Thus, smuggling cases were placed within the competence of district (second-tier) courts at first instance but the power of customs inspectors to investigate such cases was also retained. An explicit rule of the *Code of Criminal Procedure* provides that all cases falling within the jurisdiction of district courts must be investigated by investigators through the machinery of preliminary proceedings. To rectify that inconsistency, a new *Law on Amending and Supplementing the Code of Criminal Procedure* was passed (SG, issue 57 of 2003). The same law addressed the problems that had arisen in practice further to the changes in jurisdiction for some cases. Regardless of the well-known principle that newly-adopted rules of criminal procedure must apply to all pending cases, the law-maker expressly provided that the cases pending before the courts should be completed under the previous procedural rules. Another problematic issue was the impossibility of the „corresponding bodies of MoI" (which are not police inspectors) to undertake urgent procedural steps that could formally launch the procedure and remain relevant at all subsequent stages of the proceedings. Nonetheless, it cannot be reasonably argued that the authorities in charge of combating crime are deprived of the rights to use special investigation techniques. The *Code of Criminal Procedure* and the *Law on Special Investigation Techniques* invite the opposite conclusion: any possibility exists to use special investigation means and even a step forward has been made as demonstrative evidence obtained in compliance with the *Law on Special Investigation Techniques* can now be used in criminal procedure.

Pre-trial proceedings are not a problem-free area either, as the public prosecutor has the power to take the criminal case over from the investigator for an indefinite period. This results in delaying the investigation and even in futile investigations as some procedural steps are precluded when a substantial period of time has lapsed. As the public prosecutor is the master of pre-trial proceedings (*dominus litis*), he or she can either give instructions that are binding on the investigative authorities or conduct investigative steps himself or take over the investigation case. The unlawful practice referred to earlier may be rectified through the interference of a superior prosecutor, and this is actually the idea behind a strictly hierarchical structure for the prosecution office. The newly-introduced norm of s. 239a of the *Code of Criminal Procedure* which enables the accused to seek, after the expiration of a certain time as of the bringing of the indictment, that his case be heard in court on the merits, is another legal ground that might be used, in combination with efficient disciplinary arrangements, to rectify such illegal practices.

The existing *Code of Criminal Procedure* is flawed in that **the public prosecutor is able to modify the charges at first instance**. It is quite right for the public prosecutor to be the *dominus litis* at the preliminary, pre-trial stage where evidence is gathered and the prosecutor should decide on

WHY ARE CORRUPT ACTS (OFFERING BRIBES, TRAFFIC IN INFLUENCE, ETC.) UNDERTAKEN *VIS-A-VIS* THE FOLLOWING CATEGORIES OF OFFICIALS?

Public prosecutors	**Yes %**
To discontinue the criminal proceedings	63.4
To institute / to fail to institute pre-trial proceedings or preliminary police inquiry	49.3
To bring / to fail to bring an indictment before the court	27.8
To remit the case for further investigation without good reason	23.3
To fail to carry out certain procedural steps where under an obligation to undertake them	19.8
To exert improper influence	17.0
Other	1.5
No corrupt acts are carried out	4.6
Does not know/No response	12.3

Investigators	**Yes %**
To carry out or to fail to carry out certain procedural steps relative to investigation	59.5
To suspend the investigation or to propose its discontinuance	56.2
To exert improper influence	28.0
Other	2.2
No corrupt acts are carried out	6.2
Does not know/No response	13.2

Source: CMS of *Coalition 2000*

whether or not to bring an indictment against the offender before the court. In court proceedings, however, the public prosecutor is not but a party placed on an equal footing with other parties to the proceedings. The possibility for prosecutors to modify at trial the indictment they have brought themselves places them undeservedly in a privileged position, provides an incentive to investigate inattentively and to refrain from efficiently monitoring the objectivity, comprehensiveness and completeness of the investigation and, finally, results in submitting ill-founded indictments to the court. In addition, the prosecutor is put *ex lege* above all other parties to the proceedings, and this sometimes benefits the exertion of corrupt influences.

Another major reason for the procrastination of criminal procedure, already at trial, is the introduction of **three regular court instances** and the impossibility to „skip“ any of them. This turns the challenging of court acts into a sluggish and complex process which prevents the timely entry into force of criminal judgments, inhibits unduly the progress of cases, and invites frequent resorts to corrupt pressure.

1.3. Problems in the rules on the execution of penalties

The latest amendments to the *Law on the Execution of Penalties* enacted in 2002 introduced numerous changes, so as to better the legal framework of the execution of penalties. The law now covers a number of instruments and methods previously governed by secondary legislation. Substantial portions of the law were brought into line with the requirements of European and international law.

In spite of the recent amendments, the current legal provisions suffer a number of weaknesses which prevent the efficient execution of sentences and are often conducive to corruption.

Firstly, problems exist with the rules on serving **the sentence of imprisonment** and these could be summarized as follows:

- Inaccurate rules on the rights and obligations of convicts and of prison administration. This provides incentives to attempt to corrupt prison staff at lower levels.

- Deficiencies in the rules on health care services to be provided in prison facilities which make it possible for the stays at medical rooms and accommodation at hospitals to be frequently related to the use of corrupt influences.

- Inefficient monitoring of the work of prison administration.

As regards the arrangements for the execution of penalties other than imprisonment, particular attention is warranted by the **lack of any rules on the execution of the new penalty of probation**, recently introduced with the amendments to the *Criminal Code* of 2002. The provisions of the *Criminal Code* on probation must enter into force on 1 January 2004 but the non-existing framework for the execution of that penalty will block its efficient use, as both the procedure and the conditions for its enforcement remain obscure.

2. The objective of reforms in criminal law and procedure

Reform in criminal law and procedure is aimed at **building up a modern and efficient system for the investigation and prosecution of criminal offences, including corruption, and introducing efficient legislative mechanisms that enable the prevention of corruption in the context of criminal prosecution itself**.

A prerequisite for the successful attainment of those objectives is to root the reform of criminal law and procedure in **a conceptually sound philosophy underlying a new criminal justice policy, and in modern crime-deterring strategies**. That new philosophy should form the basis to adopt novel ***Criminal Code, Code of Criminal Procedure*** **and** ***Law on the Execution of Penalties*** which should provide for new legal structures, use uniform terminology and have coherent systems.

Meanwhile, given the complexity of that process and the lengthy period of time it needs, reforms could continue even within the framework of the existing pieces of legislation. It is indeed more important to have a law with a modern and up-to-date philosophical background, than to have a brand new law. Good examples here are furnished by the legal systems of many contemporary countries where legal instruments passed more than two centuries ago impress as they look completely modern and adequate. Priority, therefore, should be given to the urgent inclusion in the Bulgarian legal system of those ideas and structures which reflect the existing general trends of reform in criminal law, criminal procedure and penitentiary work world-wide. In that way, reforms will gradually

take place in the existing legislation, while the new legislative instruments are in the making.

3. Proposed reforms

3.1. Proposed reforms in criminal law

To uproot the existing problems in the field of criminal law, the following measures should be undertaken:

- Carrying out a **thorough review of the case-law of the Constitutional Court that concerns either the General or the Special Part of the *Criminal Code***. The provisions which have been found anti-constitutional must either be amended in light of the reasoning offered by the Constitutional Court or else be repealed, should their fixing prove impossible.

- **Refining the definition of „public official"** in order to adjust the inconsistencies in its content.

- **Extending the scope of the penalty of fine** so as to cover a number of office-related offences driven by self-interest which could, in essence, represent acts of corruption.

- Reconsidering whether or not the penalty of **correctional labor** should remain in the system of sanctions, and devising new content for the penalty of **public reprimand**.

- Inserting a completely new **system of penalties for juveniles** who are not seldom the perpetrators of corrupt offences. This could be achieved through the required amendments to the *Criminal Code* or through a separate piece of legislation addressing the delinquent acts (criminal or other offences, misconduct) committed by juveniles. The emphasis here should be on rehabilitation measures and on the concern to reform juvenile offenders, while the idea of punishment should move to the background.

- The concept of **probation** should be refined in terms of both theory and legislation. It should be clarified if probation is to be regarded solely as a penalty and what content it should have exactly, or should it rather be extended and also become applicable to individuals released earlier or to parolees or to those conditionally sentenced, or even be used as a measure for non-absconding.

- **A completely new structure for the Special Part of the *Criminal Code*** should be developed. That part should bring to the fore the priorities of criminal-law protection and the system of its chapters should be structured by object of assault.

- **Bribery** in Bulgarian criminal law should be given a **better location**.

The inclusion of bribery in a separate chapter of the *Criminal Code* would make it possible to provide extensive rules on that offence which could be applied to the fullest extent, regardless of whether or not the offences have been committed within state bodies and public organizations. In parallel to defining the systematic location of the rules on bribery, the title of the division (or chapter, if there is a separate one on bribery)

where those rules will be inserted should be revised, as those provisions should cover not only bribery but also trade in influence.

- Improving further the legal framework of bribery by **clarifying the elements of the new forms of *actus reus*, *i.e.* „requesting a gift", „accepting an offer of a gift", „accepting a promise of a gift"**. Although these forms of *actus reus* have been taken over from the *Criminal Law Convention on Corruption*, they are not entirely novel in Bulgaria and most of them existed already at the time of the first Bulgarian *Criminal Law*, back in 1896.

- Introducing **a clear and accurate definition of the concept of „benefit"** so as to avoid any suspicion that criminal repression is extended unreasonably. The new understanding of the object of bribery also necessitates that s. 307a of the *Criminal Code* be reworded, while specifying that any object of bribery shall be forfeited where it constitutes a tangible benefit.

- **Adding police inspectors to the group of officials who are deemed to occupy responsible positions**, so as to regulate their criminal liability accordingly.

- **Updating the rules on some other offences (*e.g.* document-related crimes)** which often times are connected with or conceal the commission of genuine corruption offences.

- Providing statutory rules on **corporate criminal liability**.

To resolve that matter, one of two paths might be followed. Firstly, due to the notable specificity of corporate liability which differs a lot from the criminal liability incurred by individuals, instead of amending the *Criminal Code* to introduce corporate criminal liability it might be better to draft **a separate law on corporate liability** that would enable the easy forfeiture of benefits derived from or received through criminal activity. That approach might be especially fruitful in suppressing the financing of terrorism and would have a substantial preventative effect with respect to tax- or securities-related offences, etc. The second option is to envisage, **within the *Criminal Code* itself, specific administrative liability for legal entities**, while defining in parallel those individuals who would incur criminal liability for the unlawful activities in which a legal person is involved.

- While the existing legal rules on corruption crimes in the *Criminal Code* largely match modern standards, there is no decisive will yet to apply the new criminal legislation and to improve the capacity of courts and law enforcement to suppress corruption. Some possible measures along these lines might be to timely introduce training programs for police officers and magistrates, and to align the interpretation the courts give when enforcing the new legislation with the explanatory reports attached to the relevant international instruments.

3.2. Proposed reforms in criminal procedure

Reform in criminal procedure should be governed by several **principles**: promoting trial as the central stage of criminal procedure; accelerating the development and completion of proceedings in criminal cases; respect for the mandatory international standards that ensure the efficient administration of justice, while providing reliable guarantees for the rights of citizens.

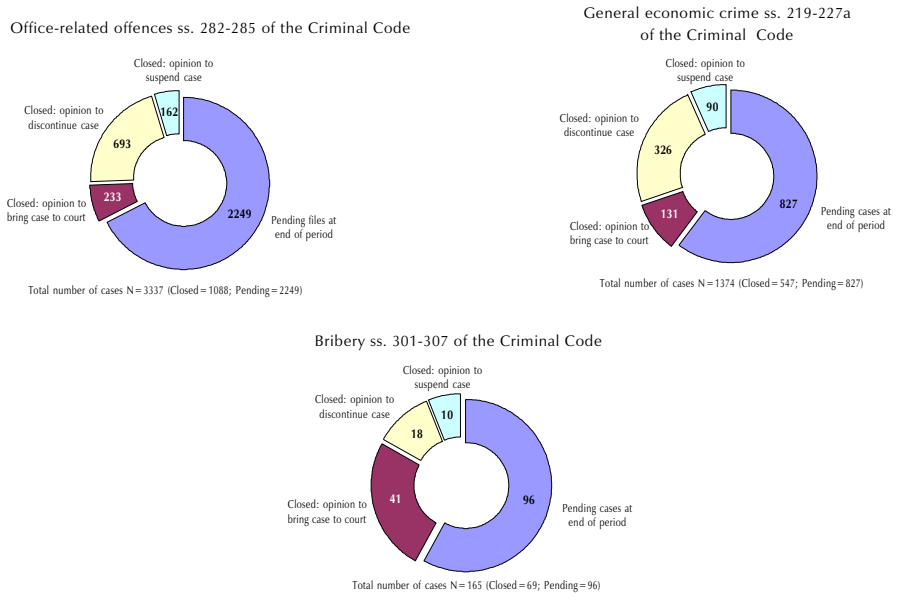
To attain the objectives of reform in criminal procedure, the following measures should be taken:

- Accelerating criminal proceedings by **extending the number of cases where no pre-trial proceedings take place** but the procedure is initiated and develops under the rules on criminal cases prosecuted on complaint by the victim.

- Regulating **preliminary proceedings** (which are one form of pre-trial proceedings) on the model of police investigation, while keeping the procedural formalities only to the extent necessary to guarantee the rights of the individuals concerned and the reliability of evidence.

- Introducing additional **measures to ensure the quick development of investigation** by reducing to a minimum the number of pre-trial procedures lasting for years.

NUMBER OF INVESTIGATION FILES FOR OFFICE-RELATED OFFENCES (SS. 282-285 OF THE CRIMINAL CODE), GENERAL ECONOMIC CRIME (SS. 219-227 OF THE CRIMINAL CODE), AND BRIBERY (S. 301-307A OF THE CRIMINAL CODE): YEAR 2002

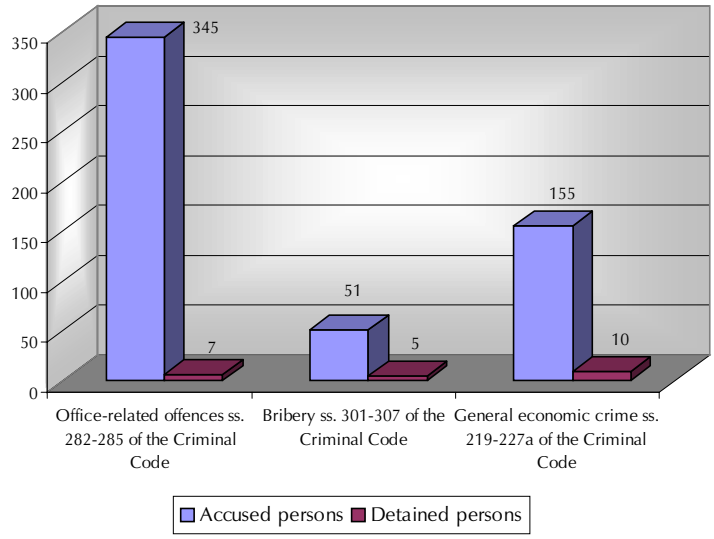


Source: *National Investigation Service*

Some of the possible measures to speed up investigation would be to introduce deadlines the expiry of which would bar the submission of the case to court (a solution that is found in a number of foreign domestic legal systems) or to shorten the duration of coercive measures. The law-maker has already made an important step on the right track with the new section 239a of the *Code of Criminal Procedure* which entitles the accused to seek that his case be heard in court on the merits.

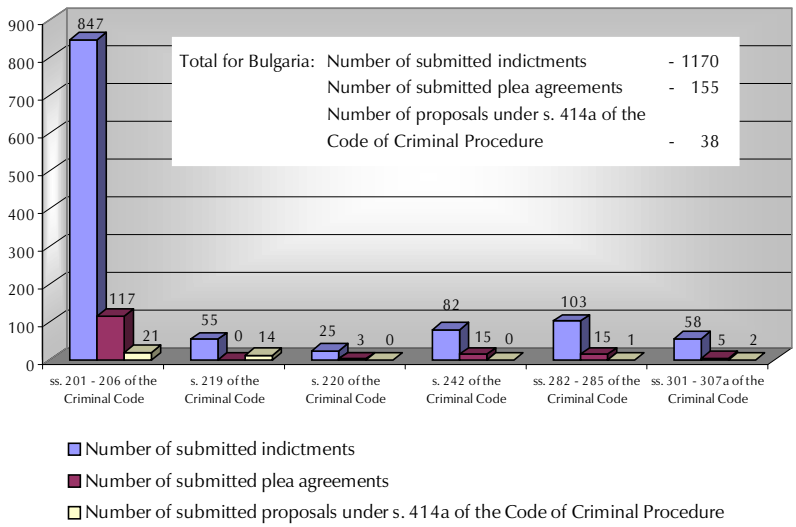
- Improving the rules on the other form of pre-trial proceedings, *viz.* **police investigation**.

NUMBER OF ACCUSED AND DETAINED PERSONS IN PROCEEDINGS FOR GENERAL ECONOMIC CRIME (SS. 219-227A OF THE CRIMINAL CODE), OFFICE-RELATED OFFENCES (SS. 282-285 OF THE CRIMINAL CODE) AND BRIBERY (SS. 301-307A OF THE CRIMINAL CODE): YEAR 2002



Source: *National Investigation Service*

NUMBER OF INDICTMENTS, PLEA AGREEMENTS AND PROPOSALS UNDER S. 414A OF THE CODE OF CRIMINAL PROCEDURE IN PROCEEDINGS FOR EMBEZZLEMENT (SS. 201-206 OF THE CRIMINAL CODE), GENERAL ECONOMIC CRIME (SS. 219-220 OF THE CRIMINAL CODE), SMUGGLING (S. 242 OF THE CRIMINAL CODE), OFFICE-RELATED OFFENCES (SS. 282-285 OF THE CRIMINAL CODE), AND BRIBERY (SS. 301-307A OF THE CRIMINAL CODE): YEAR 2002



Source: *Supreme Prosecution Office of Cassation*

As to police investigation, it is compelling to limit the opportunities of public prosecutors to transform police investigation into preliminary proceedings. As a matter of practice, this is sometimes a disguised means to procrastinate the pretrial procedure beyond any reasonable limit. Such practice fails to benefit the victim or the accused, does not contribute to finding out the real facts or achieving the objectives of criminal procedure, and finally invites attempts to exert corrupt influences.

Amendments are also needed to the rules on **trial**. Bulgaria complied with the requirements of the *European Convention fot the Protection of Human Rights* and *Fundamental Freedoms* as regards „fair trial" a long time ago. Reforms are therefore needed at this stage primarily to ensure the quick development of trials, along the following lines:

- **Keeping at a minimum the instances where the court remits the case to the prosecutor**. This should help speed up the proceedings and their completion, and to reign in corruption.

- **Changing the rules on summoning** so as to relieve the court from the duty to summon and provide for an obligation on each party to ensure the appearance of its own witnesses. Such a change would promote the

adversarial nature of trials and the equality of arms.

- Introducing stricter requirements to parties to invoke their evidence on time provided that after a certain statutory deadline each party should have to submit good reason for any request to invoke new evidence. The procedural discipline of parties is certainly crucial for accelerating the proceedings but it should not be brought to unacceptable extremes that prevent the establishment of the real facts and are at odds with the inherent peculiarities of the process of proving a case.

- **Revisiting the current possibility of prosecutors to modify the charges at trial**. Should that power of prosecutors be limited, the quality of preliminary proceedings would improve and it would be much easier for the court to hear the case.

- **Improving the legal rules on appeals** so as to accelerate criminal proceedings.

Several possibilities exist to amend the rules on appeals under the *Code of Criminal Procedure*. On the one hand, parties may be provided with an option to **„skip" some appeal instances** and directly lodge a cassation appeal. For example, where the parties have no disagreement as to the facts and after the time limit to refer the matter to the court of appeal has lapsed, they could lodge a cassation appeal provided that the problem at hand relates to an alleged erroneous application of the law. Another option would be for **criminal judgments delivered by a court with jurors to be subject solely to cassation appeal but not to appeal before lower instances** (*i.e.* district courts and/or courts of appeal would be skipped). A third option is also there, namely to provide that **cassation appeals shall constitute an exceptional remedy**, rather than a regular means of review. In other words, after the expiration of the time limit to lodge appeals with the competent higher court, or after that court delivers judgment, the act of the first instance would still be subject to cassation appeal but shall meanwhile enter into force and be executed, unless the court orders otherwise.

- Introducing various types of **differentiated procedures**. Such procedures are widely used in Europe and in the US and enhance the efficient administration of justice in criminal cases. In most of those jurisdictions traditional (general) criminal procedure would be an exception, rather than the rule. By putting in place new, alternative methods and paths for deciding a matter on the merits many cases would be diverted from the traditional proceedings. That path for reform has been recommended by the Council of Europe[9] and by the United Nations, and this has proven to be an efficient legislative approach to accelerating the procedure in almost all domestic legal systems.

The differentiated forms that might be implemented in Bulgaria are *e.g.* transaction, criminal warrant, victim-offender mediation organized by the prosecutor, and numerous other schemes known as efficient and useful

[9] See *e.g.* Resolutions of the Committee of Ministers of the Council of Europe Nos. R (84) 5, R (86) 12, R (87) 18, etc.

tools in most of the modern legal systems. Those new rules should certainly be taken over very carefully, while strictly respecting Bulgarian national traditions, the national mentality and perception of legal regulation and the prevailing socio-economic relations in the country.

- Rethinking the principle of legality at the point of bringing the indictment to court. A possibility here is to provide for **discretionary powers of prosecutors** to make a case-by-case evaluation of whether bringing the indictment to court would serve the state or the public interest. For example, where the offence is petty, the offender pleads guilty and is prepared to remedy the damage, a public prosecutor should be able, with the victim's consent, to decide whether to proceed to trial at all.

- Introducing the so-called **pre-trial hearings** which are known to the common law system and to a number of European countries (*e.g.* Italy). That instruments enables the accused to request the court[10] to assess the well-foundedness of the charges and, hence, spares the trial in cases where the indictment is not really supported by the evidence on the file.

3.3. Proposed reforms in the execution of penalties

Reforms in the execution of penalties should continue along the following main lines:

- Refining the rules that lay down **the procedure and the conditions for relocating accused individuals detained on remand from investigation arrest places to prison facilities**.

The conditions in investigation arrest places, which anyway form part of the penitentiary system, are much worse than those in prisons. Therefore, accused and defendants often times strive to be transferred from detention places to prisons which, in turn facilitates the attempts to exert corrupt influences. An efficient measure to suppress corruption in that respect would be to provide detailed rules on when such transfers would be admissible and on the possible duration of a transfer. Along with the legislative changes, however, specific measures must be taken to improve the conditions in investigation arrest places and to bring them closer to those in prisons.

- **Putting in place detailed legal rules on the rights and obligations of convicts, of individuals detained on remand and of supervising and security officers at the penitentiary facilities**.

- **Improving the system of control over those steps of the administration** that might affect the rights of sentenced persons. An important requirement here is to enhance public control on the operation of penitentiaries, *e.g.* by creating a system of checks and inspections in prisons and correctional houses while involving the NGOs concerned.

[10] In the United States this is the trial judge, as it is not that judge but the jury who decide on guilt, whereas in Italy, for example, this is the investigative judge as he is not involved in hearing and disposing of the merits.

- **Improving the system of medical service in penitentiary facilities** in order to reduce the cases of convicts being accommodated in hospitals outside the penitentiary system. Accommodation elsewhere should only be possible in serious cases where no treatment can be offered in prison.

- **Urgently adopting rules on the execution of the penalty of probation**. Once those rules are drafted, a careful thought should be given to the possible setting up of probation hostels within the penitentiary system, on the model of open prison hostels.