ANTI-CORRUPTION REFORMS IN BULGARIA

KEY RESULTS AND RISKS

CENTER FOR
THE STUDY OF
DEMOCRACY

This is the eighth Corruption Assessment Report providing an overview of the state and dynamics of corruption in Bulgaria and Bulgarian anti-corruption policy. It analyzes the main results and risks of the anti-corruption process from the period immediately preceding Bulgaria's accession to the EU through to the first months of EU membership.

The report builds on regular monitoring of the spread of corruption, its trends, evaluations of the anti-corruption efforts and initiatives implemented by government institutions and by civil society, as well as a number of suggestions and recommendations on anti-corruption measures, including considerations related to the administration of EU's structural funds.

In addition to the main corruption indexes which have consistently displayed lower values throughout 2006 and early 2007, the report draws on authoritative international surveys to assess corruption levels in Bulgaria in comparison to EU member states.

Furthermore, Bulgaria's EU member status demands that national anti-corruption initiatives are implemented in close coordination with EU and international efforts in this area. Therefore, corruption would be most appropriately measured and assessed by a common EU benchmarking methodology as the most reliable yardstick for international comparisons.

USAID FROM THE AMERICAN PEOPLE

This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of the CSD and do not necessarily reflect the views of USAID or the United States Government.

ISBN: 978-954-477-146-1

Center for the Study of Democracy
5 Alexander Zhendov Str.
1113 Sofia
tel.: (+359 2) 971 3000
fax: (+359 2) 971 2233
csd@online.bg
www.csd.bg

CONTENTS

INTRODUCTION

Almost a decade ago, the Center for the Study of Democracy launched the anti-corruption initiative *Coalition 2000*, as a public-private effort to counter corruption in Bulgaria. In 1998, the Coalition published an Anti-Corruption Action Plan "Clean Future" for Bulgaria. In the same year, the European Commission published its first Progress Report on Bulgaria's preparations for EU membership. Later, the Corruption Assessment Report was introduced as a comprehensive evaluation process looking into both the prevalence of corruption and the delivery of government policies. The series of Corruption Assessment Reports as an annual culmination of *Coalition 2000*'s overall efforts in the last decade have succeeded in:

- placing anti-corruption high on Bulgaria's political agenda, and
- providing essential input into the emergence of the necessary anti-corruption infrastructure in Bulgaria in terms of strategies, legislation and institutions.

The best practices of Bulgaria's experience were applied in other transition countries and utilized by international organizations as feasible approaches to mainstreaming anti-corruption monitoring on a wider scale.

The present Corruption Assessment Report offers an overview of the spread of corruption and the trends current throughout 2006 and early 2007–a period marked by EU accession as a pivotal event in recent Bulgarian history–and outlines the **new risks and challenges** that the government and society will have to face in tackling corruption. **The factors fostering corruption are of increasingly international nature** and need to be confronted through initiatives with the joint participation of EU states, so as to produce an anti-corruption effect of matching scope. Therefore, the report focuses on the international dimensions and challenges to anti-corruption.

The forms and dynamics of corruption in the last decade are rooted in several clusters of **structural factors in present-day Bulgarian society**:

- the country's political model, the will of the political parties and elites and the available mechanisms of civil society monitoring;
- the level of development of economic institutions and the rules governing economic enterprise, the presence of monopolies in entire economic sectors, and the level and dynamics of overall economic development;

- the sustainability and effectiveness of the rule of law, and the efficiency of the judiciary and law-enforcement as evidenced in their capacity to detect and punish offences;

- the level and scale of organized criminality and the extent to which it has penetrated the institutions of the state, political life, the economy and civil society;

- the scale and efficiency of civic counteraction to corruption.

The dynamic of these factors determines the major corruption trends in Bulgaria. Various domestic and international studies of recent time have captured similar patterns of corruption's level and structure. The major conclusion drawn with the help of both *Coalition 2000*'s Corruption Monitoring System as well as the most authoritative international surveys is that **corruption practices in Bulgaria (notably administrative corruption) are on the decline**. According to a number of international indexes, **corruption in Bulgaria stands at a level comparable to that of EU Members such as Italy, Slovakia, Latvia, Lithuania, and the Czech Republic** or with particular indicators **even lower than Greece, Poland, and Romania**. The trend of growing corruption victimization observed in 2004–2005 has been reversed as indicated by the lower number of bribes paid by the general population and businesses. Compared to November 2005, businesses were victimized twice as rarely in the beginning of 2007.

It is especially important that **reduced corruption in Bulgaria has been achieved in a context of a lower level of economic development compared to any EU country** which is an indication of highly intensive anti-corruption efforts.

Notwithstanding positive developments, rates of corruption remain high in Bulgaria and are still above EU average. In contrast to the significant decline of administrative corruption among the general population and the business sector, **political corruption** involving members of the government, MPs, senior state officials, mayors and municipal councilors **remains a serious challenge yet to be tackled**. Following the completion of privatization and the decrease of discretionary customs control zones along the country's borders as it joined the Union in 2007, **the management of state assets (including land, public works, and other property) together with public procurement and concession granting mechanisms are becoming the key areas of political corruption risks**.

The government's efforts to curb corruption among elected officials and senior civil service are perceived as lacking and ineffective. There is a growing body of public opinion that political corruption is on the rise, almost institutionalized in the corrupt networks that came to be known as "loops of companies". Coupled with the amelioration of major social problems such as poverty and unemployment, this has driven **Bulgarians for the first time in the last decade to identify corruption as currently the gravest problem in society**.

Changes to the penal law have harmonized national legislation with applicable international anti-corruption legal instruments but have not generated the expected sharp increase in corruption-related trials and convictions. Neither harsher restrictions to prevent **conflicts of interest** and personal enrichment through public office, nor stricter sanctions for breaches of official duty, including removal from office, have been introduced. Corruption-related offences account for a negligible share of the total number of crimes detected and punished in Bulgaria. Many proceedings end at a rather early stage of the criminal process and over 60 per cent of them do not even make it to court but get terminated already at in pre-trial phase. Only around a quarter of the preliminary proceedings launched go all the way to a verdict.

These facts highlight the relevance of recommendations made in previous Corruption Assessment Reports that 'soft' anti-corruption measures (awareness campaigns, training public sector employees, codes of ethics, etc) have exhausted their potential. **There are new challenges and efforts must shift to correcting the structural and institutional deficiencies that breed corruption** with a special focus on the efficiency of the judiciary and law enforcement, on an unyielding enforcement of anti-corruption rules, and on effective criminal sanctions for corruption.

The government's criminal justice policy is all the more relevant in light of EU membership whereby Bulgaria must meet certain cooperation and security commitments. Given the current environment of virtual impunity for political corruption, there is a real threat that **the opportunities of EU membership will be hijacked by private interests**. This may revive administrative corruption, especially with the likely forthcoming freedom from strict international monitoring and its disciplining effects on the government. The capacity of the Bulgarian state, business and civil society in countering corruption will be tested by the degree to which the management of EU funds in the period 2007–2013 would be effective and transparent. Depending on Bulgaria's preparedness for administration and co-financing, the EU will have allocated between 500 million and one billion levs already by the end of 2007 and this amount will be increased by over 600 million levs annually from 2007 to 2009. Thus, **corruption risks** would rise in proportion to the rapidly increasing funding fuelled by several other factors. The Bulgarian government and administration still lack sufficient **capacity to design and deliver public policies** as exemplified by the delayed and imprecise measures for the implementation of the 2007–2013 EU-funded operational programs. The absence of clear public policies and priority areas facilitates the emergence of **corrupt networks** of government officials, the administration and companies to channel EU money towards certain businesses and the **creation of cartels** in lucrative economic sectors. As an EU Member Bulgaria will have fewer mechanisms available to regulate the business environment as any domestic anti-corruption effort will be contingent on the level of corruption among the country's main commercial and investment partners.

Public–private partnerships remain integral to the success of **the anti-corruption process** after Bulgaria's EU accession. The government's

Strategy for Transparent Governance, Prevention and Countering of Corruption 2006–2008 has set forth the framework for this partnership, while competent public bodies, such as the Commission for Prevention and Countering of Corruption and the Parliamentary Anti-Corruption Committee, have continually drawn on civil society experience to design and implement anti-corruption measures.

The standards against which anti-corruption progress is evaluated are constantly being raised alongside growing public demands and expectations. Domestic corruption levels from the recent past are no longer the appropriate yardstick to measure Bulgaria's performance. As both the mechanisms of corruption and its effects are increasingly international, it will be EU and international best practices that will set the standard. Therefore, the next logical step in this process is **the development of EU's own methodology for benchmarking corruption**. Having an EU corruption benchmarking instrument would significantly enhance the credibility of EU's policies in this area and would strengthen the effectiveness of anti-corruption initiatives both at home and in the EU.

1. SPREAD OF CORRUPTION IN BULGARIA IN 2006-2007

In 2006, the monitoring of the spread of corruption in Bulgaria took on a specific social and political connotation. It was a year marked by intense efforts to prepare the country for accession to the European Union. It was to be established to what extent the efforts of the Bulgarian government institutions, civil society, business, and media had met the commitments of tangibly curbing corruption. The situation registered in 2006 also outlined Bulgaria's position at the time of joining the community of the advanced European states and constituted a frame of reference for assessment of the country's subsequent progress in reducing corrupt practices. Furthermore, Bulgaria's EU accession put the assessments of the spread of corruption in a new context. The factors shaping corruption and its implications increasingly take on international dimensions and transcend the national framework. The domestic anticorruption initiatives and their impact are ever more dependent on concerted international efforts to curb corruption. In its turn, this calls for a new approach to assessing and measuring corruption based on common all-European standards allowing for reliable international comparisons.

In this new situation, the data obtained from the Corruption Monitoring System (CMS)[1], which has been used to study the structure and dynamics of corruption for ten years now, make it possible to outline more clearly the new challenges before anticorruption policies and actions. The most notable findings regarding corruption levels and trends can be summed up in several general conclusions:

Firstly, **the alarming tendency noted since 2004 of increasing corruption victimization** (as measured through the incidence of corruption-related payments made by businesses and private individuals) appears to have been reversed. Compared to November 2005, the level of corruption victimization of business dropped by half. The index reflecting this level fell from 1.1 to 0.5.[2] With the general population, the drop in the value of this index is smaller and it reached 0.6.

Secondly, **the number of businesses and citizens experiencing corruption pressure from the administration is dropping**. The value of the synthetic index showing the level of corruption pressure on business organizations fell from 2.1 (November 2005) to 1.4 (January 2007). The corruption pressure exerted by public sector officials over Bulgarian citizens equally came down to a level of 1.5. Yet, the corruption pressure on citizens by certain occupational

[1] The CMS methodology is presented in detail in *Clean Future. Anticorruption Action Plan. Monitoring. Corruption Assessment Indexes,* 1998.

[2] The maximum value of this and all other indexes referred to hereinafter is 10 (highest level of corruption victimization) and the minimum value is 0 (absence of corruption).

groups (e.g. doctors, police officers, magistrates) remained unchanged or even increased.

Thirdly, the perceptions of the Bulgarian citizens and company managers regarding the state of the social and business environment in terms of corruption are improving. The value of the index reflecting the **perceptions of the spread of corruption dropped** from 6.0 (November 2005) to 5.4 (January 2007) in the economy, and among the general population – from 6.9 to 6.5.

Fourthly, **Bulgarian citizens and entrepreneurs demonstrate increasing confidence that it is possible to significantly curb corruption in this country**. The value of the index on the expectations of the business community regarding the possibility to reduce corruption displayed a positive change from 5.8 in 2004 to 5.1 in January 2007. Among the general population, the optimistic outlook that corruption can be curbed marked a slighter increase - from 5.7 to 5.5.

Fifthly, **corruption is less commonly perceived as an effective problem-solving instrument** by Bulgarian citizens and company managers. The index reflecting the dynamics of these attitudes displayed a positive change and dropped from 5.6 in 2004 to 4.7 in January 2007 in the economic sphere, and from 7.1 to 6.5 among the population.

Against the background of these positive developments, there also emerged some alarming tendencies. Unlike the perceived drop in administrative corruption both in business and among the population, **grand political corruption** (among members of the government, MPs, mayors) **was perceived as growing**. The opinions of the business community about the government's efforts in the sphere of anticorruption remained critical and the latter were deemed insufficient.

In contrast to the unsystematic corruption deals, **organized corruption is on the rise and increasingly takes place within corruption networks** that have come to be known as "loops of companies". The suspected concentration of corruption among top government officials and politicians is supported by the data pointing to a concentration of corruption within a more limited number of companies, while the size of corruption-related payments in connection with securing public procurement contracts is increasing.

1.1. Levels and Dynamics of Actual and Potential Corruption

When analyzing corruption levels in this country two main aspects are distinguished – the levels of actual and potential corruption. Acts of corruption that have taken place are designated as actual corruption while the solicitation of corruption transactions[3], as potential. The level of the latter reflects the amount of corruption pressure exerted by those

[3] The term "corruption transaction" refers to any instance of informal giving of money, gifts or favors by citizens or businesspersons regardless of the sphere where this occurs – the legislative, executive, or the judiciary branches of power; public services; business; the civil sector.

soliciting bribes or other benefits. The level of actual corruption is largely measured by three indicators:

- Frequency of acts of corruption;
- Number of corruption transactions for a period of time;
- Size of corruption payments.

Corruption Victimization of the Population and the Business Sector

The general levels of actual and potential corruption are measured by two synthetic corruption indexes:

1. **Involvement in corruption transactions.** This index is calculated based on the frequency of self-reported instances when citizens and businesses informally provided money, gifts, or favors in order to have a problem solved. It reflects the level of actual corruption in the country over a definite period of time.

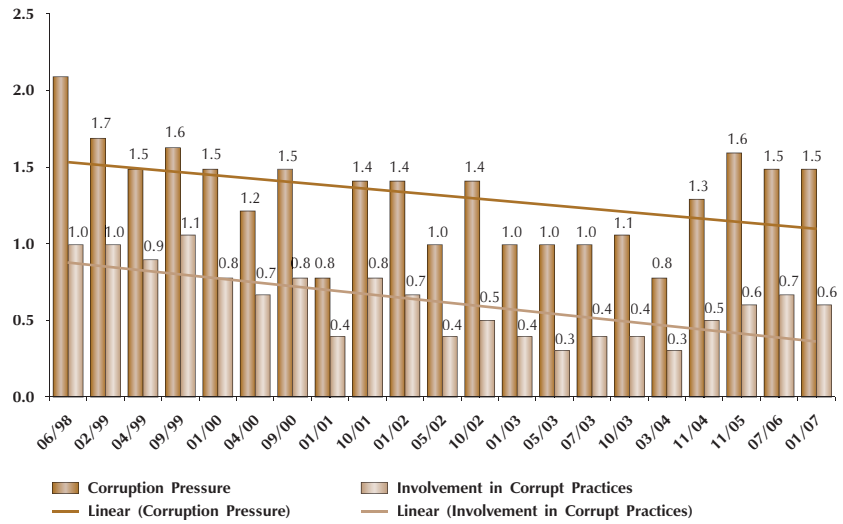
2. **Corruption pressure.** It is constructed on the basis of the frequency of self-reported cases when citizens and businesses were asked for money, gifts or favors in order to have a problem of theirs solved. It reflects the level of potential corruption in this country over a period of time.

These two corruption indexes do not reflect opinions, assessments, or perceptions, but self-reported involvement in specific types of acts of corruption. The corruption indexes concern primarily the so-called "petty" (administrative, unorganized) corruption occurring in citizens' interaction with public sector employees and officials at the lower levels of the public administration. Information about "grand" (institutional, political) corruption is generally not obtained by representative surveys of the population and only to some extent by surveys of the business sector.

Source: Corruption Monitoring System

The main tendency marking the period 1998-2007 has been the gradual decline in both real and potential corruption among the Bulgarian population *(Figure 1)*. In 2004-2005, however, there appeared some alarming indications of increased numbers of corruption transactions. In January 2007, the **Involvement in Corruption Transactions** index again displayed lower values both in business and among the general population.

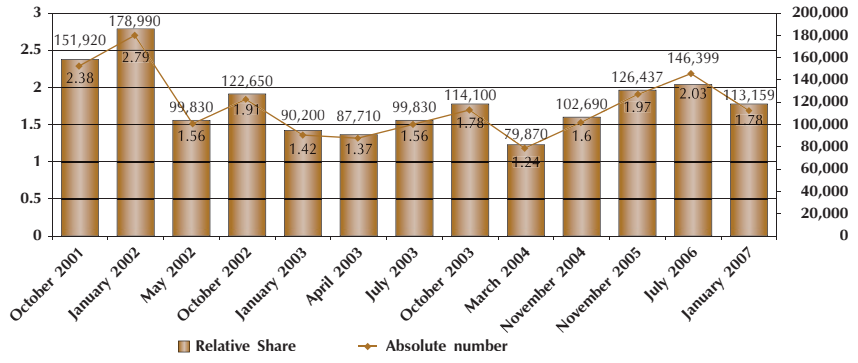
FIGURE 1. DYNAMICS OF THE INVOLVEMENT IN CORRUPTION TRANSACTIONS AND CORRUPTION PRESSURE INDEXES – POPULATION (MIN = 0, MAX = 10)*



Source: *Vitosha Research/CMS*

(*)The minimum index value is 0, when no corruption transactions at all have been concluded and the maximum is 10 - when all citizen interactions with the administration involve a corruption element.

FIGURE 2. AVERAGE MONTHLY NUMBER AND RELATIVE SHARE OF CONCLUDED CORRUPTION TRANSACTIONS[4]



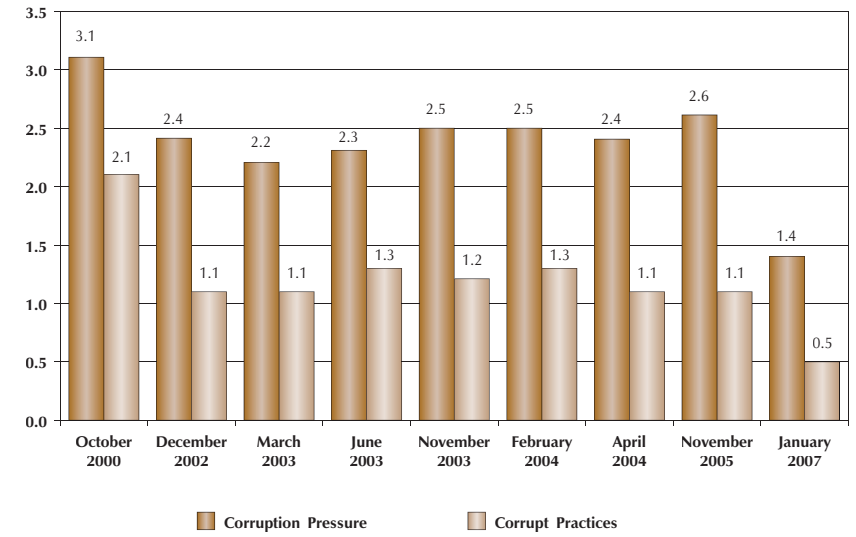
Source: Vitosha Research/CMS

Whereas in 1998-1999, the average monthly self-reported cases of involvement of adult Bulgarian citizens in corruption transactions amounted to 180-200 thousand, in the period July 2003 – March 2004, their number ranged about 80-90 thousand per month *(Figure 2)*. In 2005, the instances of corruption pressure by public employees and the actually concluded corruption deals reverted to the higher average values (around 140 thousand a month) characteristic of the earlier 1999-2001 period. **In early 2007, the average monthly number of corruption transactions in which Bulgarian citizens were involved dropped to 110-115 thousand.**

The index of actual corruption has been falling more substantially in business than among the general population – from 1.1 in November 2005 to 0.5 in January 2007, i.e. the level of corruption victimization has dropped by half *(Figure 3)*. Corruption pressure by the administration on companies has been weakening, too. The value of the index showing the level of corruption pressure dropped from 2.1 (November 2005) to 1.4 (January 2007). With the loosening of corruption pressure on companies, ever fewer businesspersons say it is an established practice in their sector to make extra informal payments in running their business. Equally on the decline are the assessments of the incidence of informal payments and the share of those who believe the number of corruption transactions is growing.

[4] The calculations of the number of corruption transactions are based on the data from the population census of March 2001, according to which the Bulgarian population aged 18 and over was 6,417,869 and thus 1% of the sample represents 64,180 people.

FIGURE 3. DYNAMICS OF THE INVOLVEMENT IN CORRUPTION TRANSACTIONS AND CORRUPTION PRESSURE INDEXES – BUSINESS (MIN = 0, MAX = 10)



Source: *Vitosha Research/CMS (Corruption Surveys of the Bulgarian Business Sector)*

Base: *All respondents*

1.1.1. High-Risk Occupational Groups as Regards Petty Corruption

The level of corruption victimization is unevenly distributed across the various occupational groups, with some of them perceived as exerting significant corruption pressure *(Table 1)*. In early 2007, it was highest among doctors, police[5] and customs officers. These emerge as the highest-risk occupational groups in terms of petty, administrative corruption. Relatively high and even growing is the corruption pressure exerted by magistrates, ministry officials, the fiscal administration, mayors, and municipal councilors. Positive changes, in varying degrees, were registered in the groups of university lecturers and secondary school teachers, and the lowest corruption pressure was still found to be exerted by representatives of non-governmental organizations.

[5] There is a reduction in corruption propensity among Ministry of Interior officials which could be attributed to the measures for enhancing professional ethical standards and discipline. In the period 2002-2006 a total of 412 officers had been dismissed for corruption, while files on 224 officers had been sent to the prosecution.

TABLE 1. CORRUPTION PRESSURE EXERTED OVER THE POPULATION BY OCCUPATIONAL GROUPS* (%)

	November 2004	November 2005	January 2007
Doctors	22.5	26.2	30.1
Police officers	22.2	27.7	26.7
Customs officers	13.8	22.1	23.8
Lawyers	16.5	22.0	18.9
Prosecutors	5.1	1.2	14.3
Investigators	5.0	1.3	13.3
Judges	5.8	3.4	11.7
Ministry officials	6.3	8.2	11.5
Tax officials	5.1	8.1	11.3
University lecturers	12.6	15.3	10.7
University employees	9.0	10.1	9.8
Mayors and municipal councilors	6.6	6.5	9.8
Municipal officials	10.3	9.5	9.5
Politicians and political party leaders	5.0	2.5	7.7
Secondary school teachers	6.2	6.0	4.0
NGO representatives	1.3	1.5	2.5

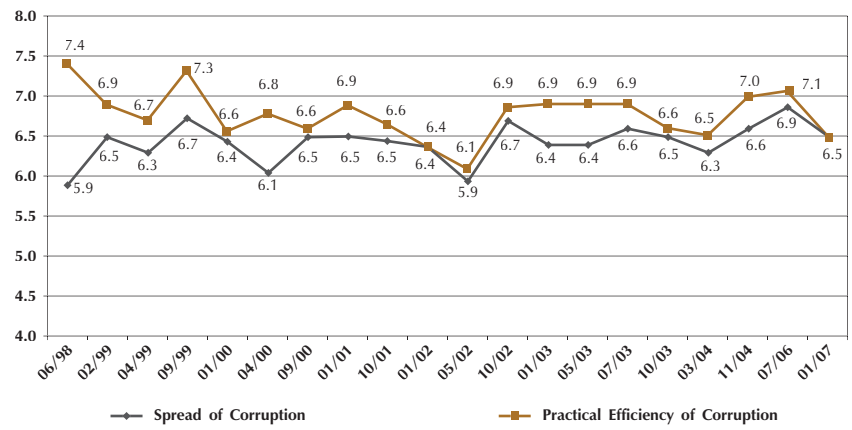
Source: *Vitosha Research/CMS*

(*) Proportion of those who have interacted with the respective group over the past year and have been asked for money, gifts, or favors.

1.2. Assessments of the Spread of Corruption by Citizens and the Business Community

In line with the registered decline in corruption victimization in this country, public perceptions of the spread of corruption in Bulgarian society have also changed in 2007 *(Figure 4)*. Citizens appear less tolerant of corrupt practices and less susceptible to involvement in corruption transactions. They are also less inclined to accept as normal various forms of corruption and to resort to corruption as a problem-solving tool.

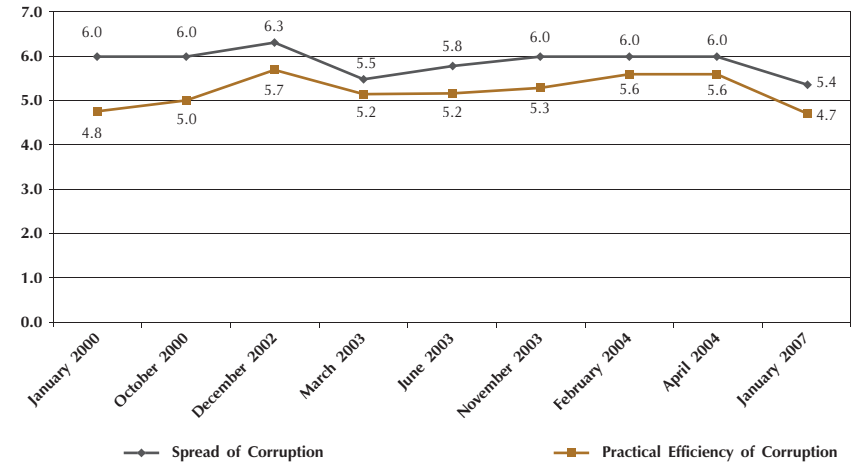
FIGURE 4. ASSESSMENTS OF THE SPREAD OF CORRUPTION AND ITS PRACTICAL EFFICIENCY BY THE PUBLIC



Source: *Vitosha Research/CMS*
Base: *All respondents*

Similar conclusions are suggested by Bulgarian businesspersons' opinions about the spread of corruption in the economy *(Figure 5)*.

FIGURE 5. ASSESSMENTS OF THE SPREAD OF CORRUPTION AND ITS PRACTICAL EFFICIENCY BY THE BUSINESS COMMUNITY



Source: *Vitosha Research/CMS (Corruption Surveys of the Bulgarian Business Sector)*
Base: *All respondents*

1.2.1. Heightened Public Sensitivity to Grand Political Corruption

In Bulgaria, there still prevail public perceptions that corruption is a widespread phenomenon at all levels of government and in all areas of public life. Bulgarian citizens' assessments of the spread of corruption among the various occupational groups show that **people's subjective assessments do not match the data about actual acts of corruption and corruption pressure exerted** *(Table 2)*. For example, politicians, MPs,

ministers, and magistrates are perceived as being more involved in corrupt practices than evidenced by the data about acts of corruption committed and corruption pressure exerted by them. The firmly entrenched assumption that they are corrupt in some cases even grows stronger and the negative assessments of the spread of corruption in these groups increased in late 2006. The explanation for these **divergences between actually committed acts of corruption and the predominating negative public perceptions of the spread of corruption** can be sought along several lines:

Firstly, the assessments of the spread of corruption are greatly influenced by moral, ideological, and political factors. They rather reflect citizens' attitudes to and **trust in the performance of government authorities** and assess their efficiency. In this sense, the low level of trust in the institutions of government in turn aggravates public perceptions of the corruptibility of Bulgarian politicians, high-ranking government officials, and magistrates.

TABLE 2. PUBLIC PERCEPTIONS OF THE SPREAD OF CORRUPTION AMONG THE VARIOUS OCCUPATIONAL GROUPS * (%)

	November 2005	January 2007
Customs officers	71.8	78.0
Judges	59.3	67.5
Prosecutors	57.1	66.9
Police officers	56.1	65.4
Lawyers	54.7	64.5
Doctors	54.5	64.1
Tax officials	53.5	63.8
MPs	53.4	63.8
Politicians and political party leaders	51.6	62.7
Ministers	51.1	61.7
Investigators	50.5	60.3
Mayors and municipal councilors	47.5	58.0
Ministry officials	44.4	50.8
Municipal officials	43.4	43.8
University lecturers	29.9	32.3
NGO representatives	26.6	31.7
Secondary school teachers	14.4	15.7

Source: *Vitosha Research/CMS*

(*) Proportion of respondents who said "nearly all" or "most" are involved in corruption

TABLE 3. BUSINESS MANAGERS' ASSESSMENTS OF THE SPREAD OF CORRUPTION AMONG THE VARIOUS OCCUPATIONAL GROUPS * (%)

	April 2004	January 2007
Customs officers	81.1	67.8
Politicians, political party leaders	54.4	58.3
MPs	51.4	57.0
Mayors and municipal councilors	47.1	53.3
Ministers	45.4	52.3
Prosecutors	51.0	51.5
Judges	52.7	51.3
Police officers	56.0	50.8
Tax officials	51.1	50.8
Investigators	44.0	47.5
Doctors	50.2	45.0
Ministry officials	41.6	44.5
Municipal officials	47.1	43.5
Lawyers	50.0	42.7
Administrative officials in the judicial system	33.4	42.5
Businesspersons	37.0	39.7
NGO representatives	23.9	30.4
Bankers	33.2	25.9
Journalists	14.2	12.3

Source: *Vitosha Research/CMS (Corruption Surveys of the Bulgarian Business Sector)*

(*) Proportion of the respondents who said "nearly all" or "most" are involved in corruption

Secondly, **corruption transactions in the sphere of political corruption** all too often are of voluntary rather than coercive nature and are associated with significant gains for both parties involved. The established clientelist networks underlying this type of corruption make admission of involvement in such transactions rather unlikely.

Thirdly, the public exposure of a number of corruption scandals and allegations of corruption against high-ranking officials and politicians that fail to be proven in court and do not entail any formal consequences affect adversely public assessment of the political government's resolve to counter corruption. The public's belief that **there lacks resolute political will to fight corruption does not affect the indicators measuring corruption victimization levels but generates public distrust** of high-ranking government officials and politicians. This is another reason for the unfavorable public opinion about the prevalence of corruption among the members of the political elite.

The shift of public attention to political corruption is particularly conspicuous among business managers *(Table 3)*. According to their subjective perceptions, this type of corruption is on the rise whereas administrative corruption (for ex., among customs and police officers, tax and municipal officials) is on the decline.

1.2.2. Types of Corruption Affecting Business

The financing of political parties and election campaigns, privatization, nepotism and public procurement procedures are being noted by the business managers as the most common areas for the occurrence of corrupt practices *(Table 4)*. About two-thirds of the business managers believe corruption is very widespread in these areas. A considerable proportion of business representatives point

to the prevalence of corruption in connection with tax evasion, ensuring a favorable outcome of litigations, etc. In the past two years, however, there has emerged a positive tendency of perceived decline in all of the more common corrupt practices in which businesses are typically involved.

TABLE 4. SPREAD OF VARIOUS CORRUPT PRACTICES IN BUSINESS (%)

Corrupt practices	December 2002		November 2003		April 2004		January 2007	
	Low spread	High spread	Low spread	High spread	Low spread	High spread	Low spread	High spread
Financing of political parties and of election campaigns for the advancement of private agendas	8.1	**81.3**	5.2	**75.8**	8.3	**79.0**	1.1	**68.7**
Nepotism in the appointment of family and friends to high office	4.0	**85.1**	5.3	**83.3**	8.5	**81.0**	1.3	**68.2**
Acceptance of bribes by officials and politicians in conducting privatization tenders	4.0	**85.1**	3.1	**83.8**	4.8	**80.1**	1.1	**63.0**
Acceptance of bribes by officials and politicians to influence the granting of procurement contracts	5.1	**82.3**	4.3	**81.2**	5.6	**76.1**	1.8	**59.7**
Acceptance of money or gifts to secure favorable outcome of criminal trials	5.1	**82.3**	8.6	**60.4**	9.2	**60.4**	1.9	**52.3**
Acceptance of bribes by officials and politicians in issuing licenses or authorizations for legal activities	8.1	**81.3**	7.8	**79.6**	14.8	**74.3**	2.5	**43.7**
Acceptance of money or gifts in performing official duties	15.7	**73.8**	14.7	**73.0**	17.1	**68.8**	3.8	**38.3**
Acceptance of bribes by officials and politicians in connection with tax evasion or deductions	18.5	**67.7**	17.6	**65.6**	22.2	**61.3**	4.9	**28.7**

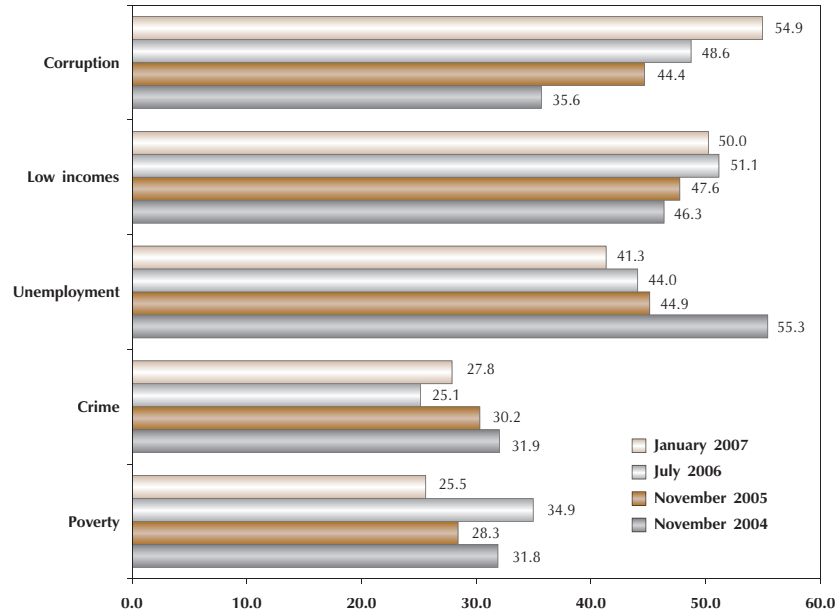
Source: *Vitosha Research/CMS (Corruption Surveys of the Bulgarian Business Sector)*
Base: *All respondents*

1.3. Public Values and Attitudes to Corruption

1.3.1. Public Significance of Corruption

Since 1998, corruption has invariably been perceived as one of the gravest problems faced by Bulgaria. In 2004-2007, as a result of the stable macroeconomic situation in the country and rate of economic growth, and the active social policy of the government, concerns such as unemployment and poverty diminished in urgency. However, the importance of corruption as a problem of society rose and in early 2007 it was ranked first on the public agenda in this country.

FIGURE 6: RELATIVE IMPORTANCE OF CORRUPTION AS A PROBLEM OF SOCIETY (%)*



Source: *Vitosha Research/CMS*

Base: *All respondents*

**Proportions of respondents who cited the respective problem as the most critical concern of Bulgarian society*

The priority of corruption as a social problem is sometimes played down with the argument that subjective assessments all too often are at odds with the actual corruption situation. However, the data indicate that **public perceptions quite closely match the achievements or failures in the various sectors of society**. Thus, for instance, the positive developments in terms of alleviating poverty and unemployment were accompanied by a matching decline in their perceived public importance. Yet, public perceptions of corruption display different dynamics. Though paradoxical at first glance, the coexisting trends of decline in corruption victimization of the population and the business sector and heightening public sensitivity to corruption can be accounted for along several lines. First of all, the public's higher expectations for a tangible curbing of corruption still remain unmet and the drop in the actual level of corruption is deemed insufficient. Secondly, the public appears rather critical of the effectiveness of government anti-corruption policy and its will to curb corruption in its midst. Thirdly, public opinion hardly discerns any practical steps to expose and punish political corruption. The corruption-related public scandals have so far not led to any convictions. Against the background of the high expectations and the proclaimed European standards of transparency of governance and uncompromising stance on abuse of power, the realities are rather disappointing to a large portion of the Bulgarian population.

1.3.2. Public Intolerance of Corruption

The Corruption Monitoring System incorporates two sets of indicators of corruption-related values and attitudes:

1) level of tolerance of various forms of corruption;

2) citizens' inclination to resort to corrupt practices to solve arising problems.

Corruption Indexes of Public Attitudes to Corruption

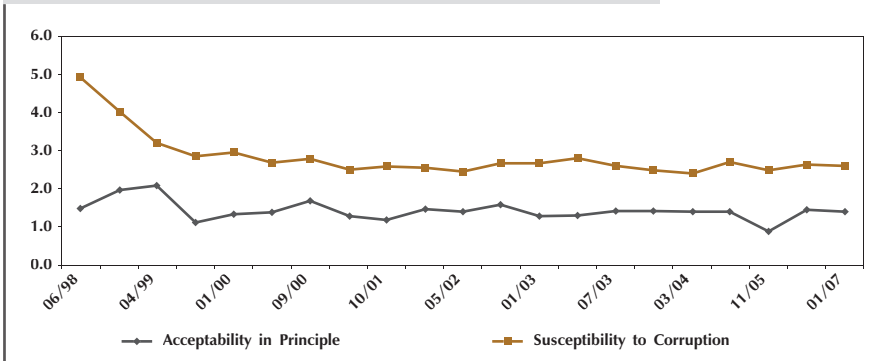
1. **Acceptability in Principle of Corruption** – reflects the degree of acceptability within the value system and tolerance of corruption in various areas of the public sector;

2. **Susceptibility to Corruption** – assesses the inclination of citizens and business representatives to resort to corrupt practices in addressing private problems.

Source: Vitosha Research/CMS

In the period covered by regular monitoring of the values of these two corruption indexes, there has emerged a trend towards growing moral rejection of corruption *(Figure 7)*. Since 2001, public tolerance of the forms of corruption has remained essentially unchanged at a relatively low level.

FIGURE 7. ACCEPTABILITY IN PRINCIPLE AND SUSCEPTIBILITY TO CORRUPTION (POPULATION)[6]

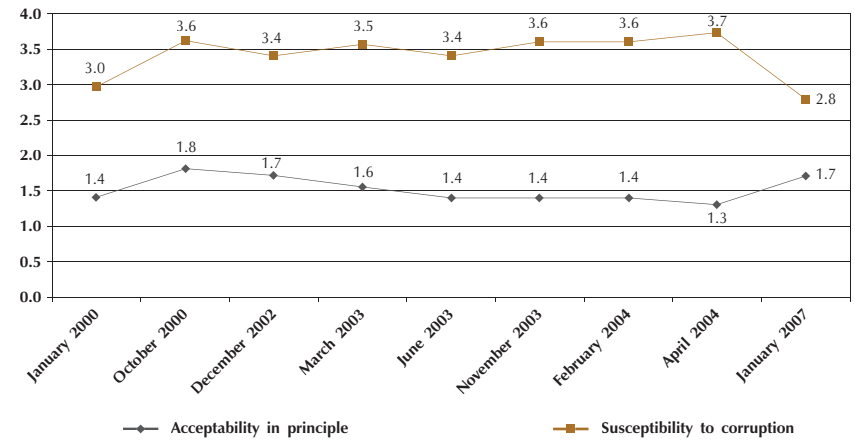


Source: *Vitosha Research/CMS*
Base: *All respondents*

Business managers' inclination to engage in corruption transactions has been declining, too, with the value of this index reaching an all-time low for the entire period covered by the monitoring *(Figure 8)*. At the same time, the business sector demonstrates growing tolerance of certain soft forms of corruption (a free lunch, gifts offered to public sector employees, providing various favors, etc.).

[6] *The indexes assume values from 0 (minimum) to 10 (maximum). The minimum value is obtained when various corrupt practices are deemed unacceptable or when no one is inclined to resort to corrupt practices in their interaction with the administration.*

FIGURE 8. ACCEPTABILITY IN PRINCIPLE AND SUSCEPTIBILITY TO CORRUPTION (BUSINESS)



Source: *Vitosha Research/CMS (Corruption Surveys of the Bulgarian Business Sector)*
Base: *All respondents*

1.4. Corruption in Bulgaria: the International Comparisons

The monitoring and measuring of corruption does not only have a national, but also an international comparative aspect. In this sense, it is important to assess the spread of corruption in Bulgaria in relative terms compared to other countries, including within the European Union. The international comparative surveys make it possible to better identify the corruption-related problem areas in the individual countries, as well as any existing good anticorruption practices.

International Comparative Surveys of Corruption

Although there is no clear-cut, uniform definition of corruption and its forms are constantly evolving, in the past few years, considerable experience has been accumulated in the implementation of international comparative surveys of corruption.

1. The International Crime Victim Surveys (ICVS) have been conducted since the late 1980s and make it possible to assess acts of crime, including corruption, on the basis of their objective parameters rather than perceptions. In Bulgaria, ICVS has been conducted three times since 2002 within the framework of the National Crime Survey (NCS) by the Center for the Study of Democracy and Vitosha Research.

2. Based on the methodology of the international victimization surveys, the EU International Crime Survey was implemented in 2005. In 2007, it is expected to be conducted in Bulgaria, as well, thus providing a reliable foundation for assessment of the country's position in terms of the rate of various criminal, including corrupt, practices.

3. Since 1995, the international anticorruption organization Transparency International (TI) has been publishing its annual Corruption Perceptions Index (CPI), and since 1999, the Bribe Payers Propensity Index (BPI). Notwithstanding the reservations expressed by a number of experts concerning the methodology of calculation of the TI corruption indexes, they make it possible to conduct international comparative studies of the rate of corruption depending on the perceptions of businesspersons, experts, risk analysts, and citizens.

4. The World Bank has been conducting surveys of enterprises assessing the economic environment and the obstacles to business development. These surveys also collect data about the rate of corrupt practices and their impact on the business environment. Bulgaria was included in the World Business Environment Survey (WBES) carried out in 2001, and in all three regional surveys of the countries in transition - Business Environment and Enterprise Performance Survey (BEEPS) in 1999, 2002 and 2005. The data from these surveys have served as the basis for three World Bank reports on corruption in transition countries[7].

5. In 2006, Bulgaria was included for the first time in the ranking of the Institute for Management Development (IMD) in Lausanne, assessing the competitiveness of the economies of 61 countries. It incorporates a component reflecting the rate of corruption[8].

All of these international comparative surveys help answer the question: "Where does Bulgaria find itself in terms of the rate of corruption?"

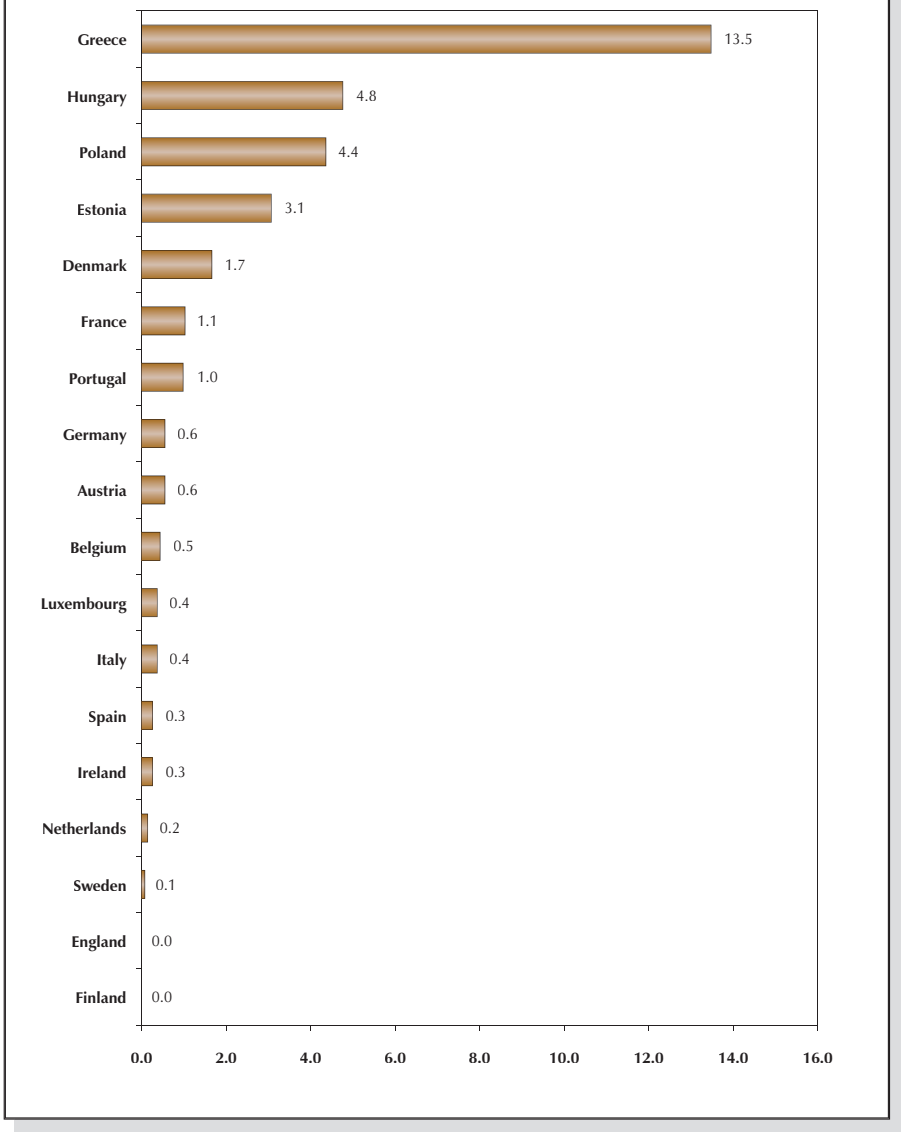
Based on the data from the EU International Crime Survey of 2005, it was found that a high rate of corruption is not only characteristic of the new EU members.

---

[7] *Anticorruption in Transition. A Contribution to the Policy Debate*, The World Bank, 2000; *Anticorruption in Transition 2*, The World Bank, 2003; *Anticorruption in Transition 3*, The World Bank, 2006

[8] IMD World Competitiveness Yearbook, Lausanne, Switzerland, 2006, p.377

FIGURE 9: PROPORTION OF SELF-REPORTED CASES OF CORRUPTION IN SOME EUROPEAN COUNTRIES (2004)[9]



High levels (above the EU average – 25) of corruption victimization are registered in Greece, Poland, Hungary, Estonia[10]. The proportion of cases of corruption in Bulgaria, as registered by the National Crime Survey (NCS), dropped from 10.9 in 2001 to 7.9 in 2003 and to 7.2% in 2006, which is below the level found in older EU member countries such as Greece.

Similar data were registered by the annual corruption perception indexes (CPI) published by Transparency International.

[9] The surveys in the various countries were conducted in 2005. In Bulgaria, it was carried out in 2004. The respondents were asked the question: "Corruption among government and public officials is known to exist in some places. In the past year [2003 for Bulgaria; 2004 for the rest], has it ever happened to you for a public official (e.g. customs officer, police officer, inspector) in your own country to ask for or expect you to offer a bribe for a service?"

[10] *The Burden of Crime in the EU, A Comparative Analysis of the European Crime and Safety Survey* (EU ICS), 2006, p.55; www.europeansafetyobservatory.eu/euics_rp.htm

TABLE 5. CORRUPTION PERCEPTIONS INDEX (CPI) * IN SOME EUROPEAN COUNTRIES

Country	2006	2005	2004	2003	2002	2001	2000	1999	1998
Levels of corruption in some EU countries									
Finland	9.6	9.6	9.7	9.7	9.7	9.9	10.0	9.8	9.6
Denmark	9.5	9.5	9.5	9.5	9.5	9.5	9.8	10.0	10.0
Sweden	9.2	9.2	9.2	9.3	9.3	9.0	9.4	9.4	9.5
Netherlands	8.7	8.6	8.7	8.9	9.0	8.8	8.9	9.0	9.0
Hungary	5.2	5.0	4.8	4.8	4.9	5.3	5.2	5.2	5.0
Italy	4.9	5.0	4.8	5.3	5.2	5.5	4.6	4.7	4.6
Czech Republic	4.8	4.3	4.2	3.9	3.7	3.9	4.3	4.6	4.8
Greece	4.4	4.3	4.3	4.3	4.2	4.2	4.9	4.9	4.9
Bulgaria	**4.0**	**4.0**	**4.1**	**3.9**	**4.0**	**3.9**	**3.5**	**3.3**	**2.9**
Poland	3.7	3.4	3.5	3.6	4.0	4.1	4.1	4.2	4.6
Romania	3.1	3.0	2.9	2.8	2.6	2.8	2.9	3.3	3.0
Levels of corruption in the Balkan countries									
Croatia	3.4	3.4	3.5	3.7	3.8	3.9	3.7	2.7	NA
Serbia	3.0	2.8	2.7	2.3	NA	NA	NA	NA	NA
Bosnia and Herzegovina	2.9	2.9	3.1	3.3	NA	NA	NA	NA	NA
Macedonia	2.7	2.7	2.7	2.3	NA	NA	NA	3.3	NA
Albania	2.6	2.4	2.5	2.5	2.5	NA	NA	2.3	NA

Source: Transparency International

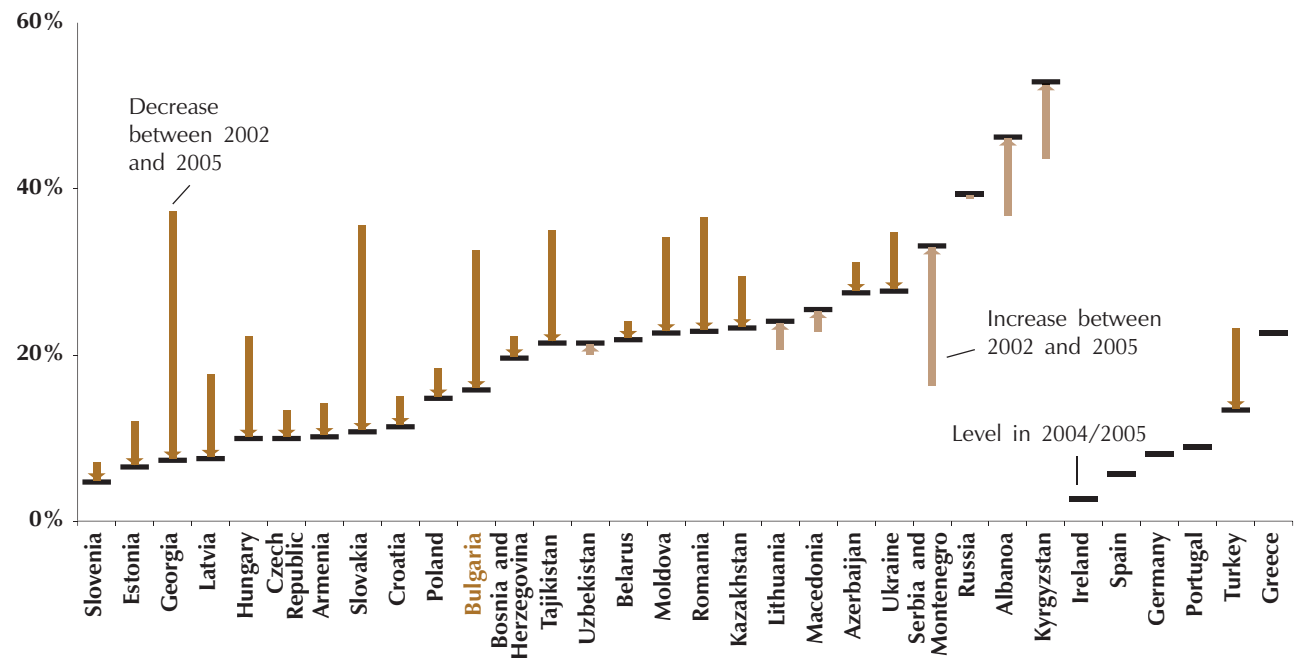
**CPI measures corruption levels in a given country as perceived by businesspersons and risk analysts ranging from 10 – low level of corruption – to 0 – extremely high level of corruption.*

The TI data on the 1998-2006 period indicate that from a country with systematic corruption problems (index lower than 3) Bulgaria is turning into a country with moderate corruption level. By 2006 data, Bulgaria finds itself in the same group (CPI values from 4.0 to 4.9) as Greece, Slovakia, Latvia, Lithuania, the Czech Republic, and Italy. More unfavorable values were obtained for other EU member countries, such as Poland (3.7) and Romania (3.1). Far more serious corruption problems are faced by the countries of Southeast Europe– Croatia (3.4), Serbia (3.0), Bosnia and Herzegovina (2.9), Macedonia (2.7), Albania (2.6)[11].

The World Bank report *Anticorruption in Transition* 3 (2006) presents comparative data on corruption levels in the countries of Central and Eastern Europe from the Business Environment and Enterprise Performance Survey conducted among close to 10,000 companies.

[11] www.transparency.org/policy_research/surveys_indices/cpi/2006

FIGURE 10. BRIBE FREQUENCY*, BY COUNTRY, 2002 AND 2005[12]



*Percent of firms indicating bribes are frequent.

Source: *BEEPS 2002, BEEPS 2005*

Bulgaria is among the countries displaying the most significant drop in the number of cases when businesspersons paid bribes in connection with their activity. Bribery in the economy in Bulgaria is less frequent than in countries such as Greece, Lithuania, and Romania, and is comparable to the rates found in Poland, Turkey, and Portugal.

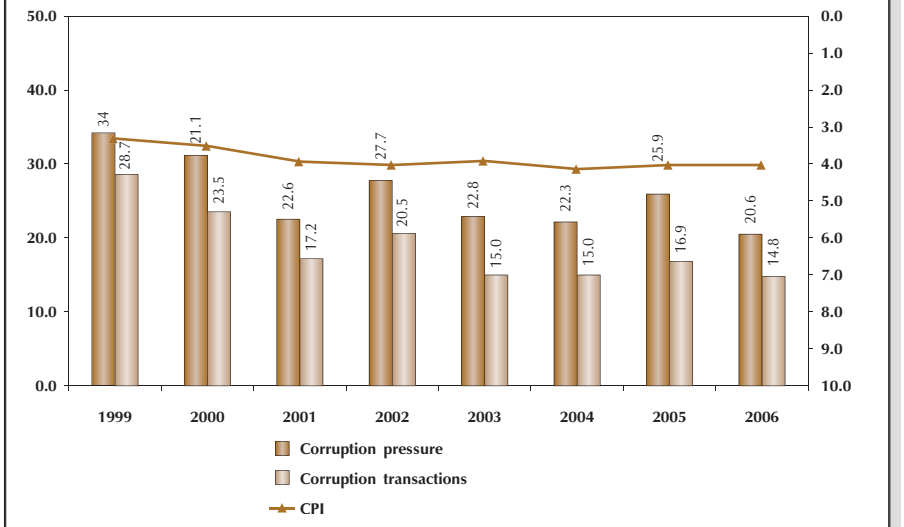
The national and international surveys of corruption conducted in this country in recent years have reported similar tendencies and findings.

The chief conclusion of all authoritative national and international surveys is that **the rate of corruption in Bulgaria has been on the decline. Its level is in fact comparable with that in a number of old and new EU member countries such as Italy, Slovakia, Latvia, Lithuania, Czech Republic, and under several indicators, it is lower than in countries such as Greece, Poland, and Romania**.

It is equally important to note that the **curbing of corruption in Bulgaria has been achieved in a context of a lower level of economic development which is an indication of higher intensity of anticorruption efforts**. Notwithstanding the favorable tendencies and the achieved drop in corrupt practices in this country, corruption levels in Bulgaria are still higher than the EU average.

[12] World Bank (2006): *Anticorruption in Transition 3: Who is Succeeding ... and Why,* Washington, DC, p. 11.

FIGURE 11. AVERAGE ANNUAL INCIDENCE OF CORRUPTION TRANSACTIONS AND CORRUPTION PRESSURE OVER BULGARIAN CITIZENS AND CPI FOR BULGARIA[13]



Source: Vitosha Research/CMS and Transparency International

The standards for assessing anti-corruption progress are getting higher and, rather than comparisons to the past, they are increasingly based on European practices. The study and analysis of corruption and the collection of viable information about its dynamics are crucial for the implementation of successful prevention and control policies. Thus, the **elaboration of a special European Union methodology for assessment and measurement of corruption**, as has been the practice of the European Commission in other areas, would be a next logical step. The adoption of modern diagnostic tools would significantly enhance trust in EU policy against corruption and would contribute towards improved effectiveness in the implementation of international standards.

[13] Average annual figures for the incidence of corruption transactions or corruption pressure have been provided for each year in the period 1999-2004 due to implementation of more than one survey in the respective years.

2. CORRUPTION AND SHADOW ECONOMY – RISKS FOR THE EU INTERNAL MARKET

Notwithstanding the reduction of the administrative corruption and the shadow economy by 2007, Bulgarian entrepreneurs deem that **political corruption in Bulgaria remains unchanged**[14]. The actual impunity of political corruption and the lack of capacity of the Bulgarian government to put together and implement transparent public policies create the real threat that the benefits offered by the country's EU membership would be captured by few politically connected elites. Such a development could revive administrative corruption after the new EU-internal rules are mastered. By the end of 2007, the disciplining effect of rigorous external monitoring on the Bulgarian government's activities on anti-corruption will be removed, while the demand for public resources (funds from the budget, land and real estate) and the volume of the resources at the government's disposal will grow.

The experience from previous waves of enlargement has demonstrated that **EU membership does not automatically results in a reduction of political corruption**. The financial and economic stability guaranteed through the EU membership generates a huge inflow of financial resources to the poorest Member States. These are channeled into the few sectors which ensure high rates of return and liquidity: typically, tourism and real estate. This trend reinforces the corruption pressure on the government to redistribute the scarce resources to local businesses which are politically connected and non-competitive on the European market, through public procurement, concessions, real estate and land swaps. The same is also true for the business environment in the individual Member States. Although competition on the EU internal market is expected to reduce the administrative barriers to business, the lack of sufficient political accountability in some new democracies leads to monopolization of certain lucrative business activities through legal corruption[15]. As far as Bulgaria is concerned, very indicative in this respect is the legislation adopted in 2006 to regulate the privileged position of duty-free shops with regard to the trade in excise goods.

Since the privatization process has been completed and the customs monopoly control at the national borders was removed in 2006 and

[14] See Table 3 in section 1.2. above.

[15] The term "legal corruption" has been introduced by Daniel Kaufman from the World Bank Institute, defining it as the opportunity for the political elite to hide corruption away from the population in the form of legislative provisions ensuring the possibility for payments between businesses and politicians. The most widely spread form of legal corruption is seen by Kaufman in the granting of preferences with regard to public procurement and other public resources. See Kaufman, D., P. Vicente, *Legal Corruption,* February 2006.

2007, there remain two major instruments for political corruption – **the management of public property (including land and buildings) and the awarding of public procurement contracts and concessions**. As mentioned in last year's Corruption Assessment Report[16], public procurement, including the management of EU funds, will be the main corruption risk factor for Bulgaria in the years to come. The exposure of massive corruption and fraud in the district heating company (Toplofikatsia) in Sofia, the political scandals concerning the concession on the Trakia motorway, the irregularities surrounding the construction of the new terminal of Sofia Airport, and the delayed and inefficient use of the pre-accession financial instruments are just few of the cases in 2006 that come to show that these areas continue to be susceptible to corruption pressure and political influence. Similar are the conclusions of the World Bank and the International Monetary Fund, emphasizing that the lack of adequate policies for structural changes in the Bulgarian economy could substantially limit the effect of the use of EU funds[17]. Experience shows that if EU funds are used inefficiently (i.e. through corruption), their positive impact would be limited to the demand side of the economy and would be short-lived. If there are no structural changes to strengthen the capacity of the supply side, EU funding could lead, in the long-run, to higher inflation, making Bulgarian goods more expensive and reducing the competitiveness of the economy, increasing aid dependence and undermining the efforts to improve governance[18]. Research at the World Bank[19] and the Organization for Economic Cooperation and Development[20] reveals that **the European Union, too, lacks uniform practices to curb corporate corruption and corruption in public procurement, which means Bulgaria will not face strong enough pressure to improve governance in these areas**.

By 2007, the administrative and tax barriers to doing business in Bulgaria have been reduced and the stable economic growth continues to generate further opportunities for the development of Bulgarian enterprises. As a result of the aggregate impact of all these factors, **the shadow economy and its diverse forms of manifestation have been reduced**. Nevertheless, the Bulgarian business environment continues

---

[16] *On the Eve of EU Accession: Anti-corruption Reforms in Bulgaria*, Center for the Study of Democracy, Sofia, 2006.

[17] The World Bank, *Country Assistance Strategy for the Republic of Bulgaria for the Period FY07 – FY09*, May 16, 2006. International Monetary Fund, Country Report No 06298, August 2006.

[18] International Monetary Fund, *Bulgaria: Selected Issues and Statistical Appendix*, IMF Country Report No. 06/299, August 2006.

[19] The World Bank, *Anti-Corruption in Transition 3: Who is Succeeding and Why*, 2006, notes, for instance, that the level of corruption in public procurement in Germany is comparable to that in the new EU Member States.

[20] The Organization for Economic Cooperation and Development strongly criticized the UK for the discontinuation of the anti-corruption investigation of the British company BAE Systems for corruption allegations involving public officials in Saudi Arabia in order to obtain public procurement orders in the military sector. According to Transparency International, France, Portugal and Italy in this order stand in the lower half of the 30 largest exporting countries whose companies offer the greatest number of bribes abroad. Most of the action brought so far against EU companies under the OECD *Convention on Combating Bribery of Foreign Public Officials*, has been initiated in the United States, although 2006 saw some further corruption scandals in several European transnational companies.

to be relatively less competitive than the EU average[21]. The continued increase of excise duties and the granting of exclusive rights on duty-free trade at Bulgarian borders create prerequisites for a rebound in the shadow economy in cigarette, alcohol and fuel smuggling and for using the illicit profits thereof for maintaining political protection. The continued high taxation of labor without any prospects for its reduction during the first year of EU membership, coupled with the ongoing crisis and citizens' distrust in main public services, such as health and education, imply that **high informal or undeclared employment in the country will persist**.

Bulgaria's EU membership means also less opportunity for the Bulgarian government to control the elements of the business environment in the country and more channels for spill-over of influence from and to the Member States which stand closest to Bulgaria in economic terms. This is particularly relevant to the labor market and the development of business culture in the country; nearly half of the fixed capital of Bulgaria is under the control of business organizations incorporated in other Member States, and some 10 % to 20 % of the labor force of the country as estimated by the Centre for the Study of Democracy are already on the gray internal market of the EU. These developments imply the existence of **spill-over of corruption culture and practices**, which have already been observed in 2006 and 2007, including in the use of the EU pre-accession funds.

2.1. Business Environment, Shadow Economy and Corruption

The reduction of the level of the shadow economy and corruption in Bulgaria's business sector in 2006 and 2007 was a sign of the improved business environment in the country and the broader opportunities for market development available to Bulgarian entrepreneurs after the country's EU accession. This trend could also be traced in the reduced susceptibility of Bulgarian businesses[22] to corrupt practices; their expanded economic opportunities make them more confident in their independence from the actions of the national government[23]. The scale of reduction of corruption and the shadow economy in the Bulgarian business sector is the result of the complex interaction between the national and European policies undertaken in this field and the impact of the international business environment on the Bulgarian markets.

2.1.1. Corruption and Foreign Trade

Corruption is a structural factor for international trade and investment[24]. Until the mid 1990's, many EU Member States treated the payment

[21] *Global Competitiveness Yearbook*, IMD, 2006.

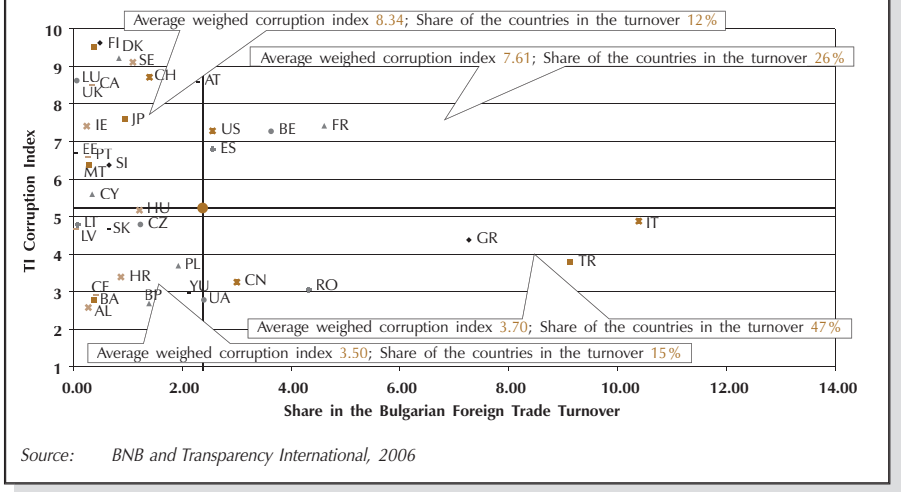
[22] For the purposes of this report, the term stands for all companies registered and doing business within the territory of Bulgaria.

[23] See section 1.3, Public Values and Attitudes to Corruption.

[24] See Graf Lambsdorff, Johann, *An empirical investigation of bribery in international trade*, 1997 and Smarzynska, Beata and Wei, Shang-Jin, *Corruption and the Composition of Foreign Direct Investment: Firm-Level Evidence*, World Bank Working Paper 2360, The World Bank, Washington D.C.2000.

of bribes abroad as a tax deductible expenditure. Thus many countries actually tolerated corruption as a strategic instrument for new markets penetration. For the big exporting nations, corruption, political influence and intelligence agencies played an essential part in the entry into a number of markets in the world, their development and defense. Empirical studies prove that there is a statistically significant correlation between the levels of corruption in importing and exporting countries and their trade portfolios and investment decisions; they prefer markets with similar features of the business environment, thus maintaining the corruption status quo in the respective country. Therefore, especially within the framework of a customs and monetary union, the level of corruption and the state of the business environment respectively determine the quality of investment and trade projects to be implemented in a given Member State. On the other hand, **the potential impact of the anti-corruption reforms of each individual Member State are dependent on and constrained by the average levels of corruption of its major trade and investment partners**.

FIGURE 12. CORRUPTION AND FOREIGN TRADE OF BULGARIA



Source: *BNB and Transparency International, 2006*

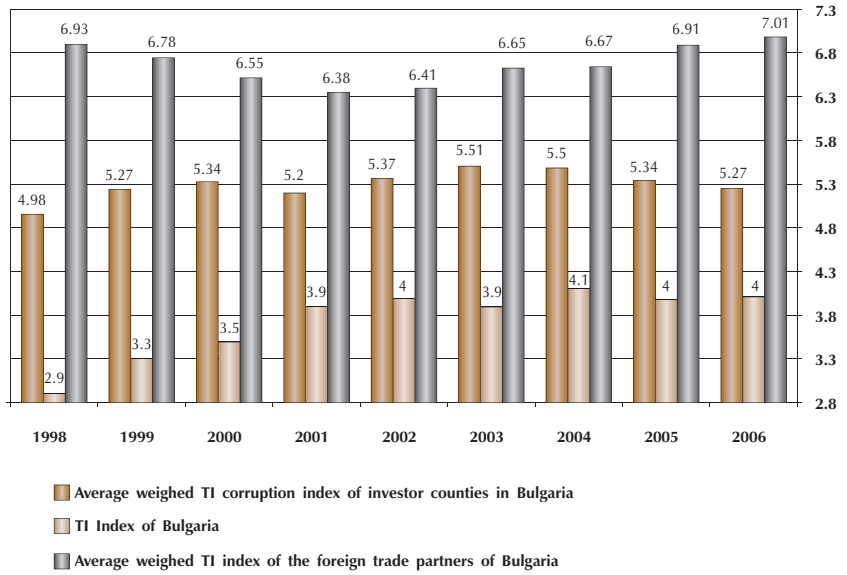
According to the ranking of Transparency International two-thirds of the Bulgarian foreign trade volume had an average weighed TI corruption index equal to that of the country itself in 2006, i.e. the positive anti-corruption impact of foreign trade on the business environment of the domestic economy was very limited. Some 40 % of Bulgaria's foreign trade in 2006 was generated by more corrupt countries, which probably resulted in the spill-over of bad business practices into the country and restricted the potential impact of the anti-corruption reforms pursued by the Bulgarian government *(Figure 12)*. Given the expected relative increase of trade and investment activities with Russia, Turkey, China, Greece and Italy, the unfavorable trend from the period 2003 - 2006 towards reduction of the average corruption index of Bulgaria's foreign trade partners will be retained in 2007.

Unlike trade, foreign direct investment in Bulgaria produced a positive anti-corruption effect. Over the period from 2001 to 2005 there was an increase of the average investment-weighed index of Transparency International for investor nations in Bulgaria by 10 percent. Nevertheless, the fact that the five largest investors in the country feature Italy, Greece and Cyprus (with a total of 31 % of the investments in the country for the last 15 years), which display some of the highest corruption levels within the European Union[25], is indicative of the limits of the potential impact of domestic anti-corruption reforms. Without any prejudice

[25] *The Burden of Crime in the EU, A Comparative Analisys of the European Crime and Safety Survey (EU ICS), 2006, p. 55.*

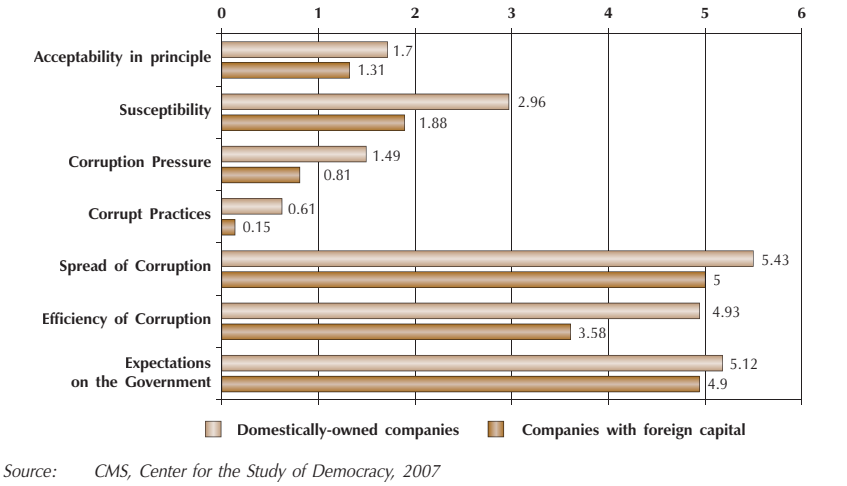
to the responsibility of the national government for the success or failure of anti-corruption reforms in Bulgaria, these and other empirical studies show how important it is to undertake concerted anti-corruption reforms at the EU level. **The lack of clear mechanisms to promote good governance and to punish corruption at the EU level leads to substantial discrepancies in the functioning of the Internal Market**, which undermine the very essence of its four freedoms.

FIGURE 13. CORRUPTION AND FOREIGN ECONOMIC RELATIONS



Source: *BNB and Transparency International, 2006*

FIGURE 14. CMS CORRUPTION INDEXES AND FOREIGN INVESTMENT IN BULGARIA



Source: *CMS, Center for the Study of Democracy, 2007*

The tendencies in the impact of foreign investment on the business environment at the macro-level in Bulgaria can be traced down to the micro-level. The companies with foreign participation in Bulgaria are exposed to less corruption pressure on the part of the public administration (their corruption pressure index is twice lower on the average) and are much less involved in corrupt practices (their corrupt practices index is four times lower on the average) in comparison to domestically-owned companies *(Figure 13 & 14)*. On the other hand, over the last five to seven years there have been **many cases of multinationals operating in Bulgaria, which circumvent the ban on bribery of foreign country officials through a flexible system of local partnerships, including those with the Bulgarian government** in the implementation of big public projects. Diverse mechanisms have been employed for this purpose, ranging from circumvention of the public procurement legislation in large-scale purchases[26], through public-private partnerships with the establishment of joint ventures with obscure financial perspectives[27],

[26] Typically justified through the possession of exclusive rights, such as software copyrights.

[27] Implemented either through non-transparent contribution of public property into a joint-company, such as in the cases of Universiada Hall and the Plovdiv Fair, or through the assignment of the management of public projects to donor organizations without any competitive bidding so as to circumvent the provisions of the Public Procurement Act and to ensure more flexible management from the perspective of the relevant line ministers.

to open conflicts of interest in the coordinating authorities of pre-accession funds. In these cases, much better coordination is needed among the law enforcement and judiciary authorities of several Member States in order to effectively combat this type of crime. The alleged bribes which the German corporation Siemens used to obtain public procurement contracts and lucrative investment deals, including those in EU Member States, amounted to EUR 75 million annually – a sum which is substantial for the size of smaller countries[28].

2.1.2. Corruption and Shadow Economy

In 2006 and 2007, the downward trend for administrative corruption in doing business in Bulgaria has continued. The most substantial reduction over the last three years has been observed in unofficial payments for company registration, for obtaining permits and licenses, and in the relations with the utility monopolies. The smallest relative decline in administrative corruption has been registered with regard to unofficial payments in court proceedings and the issuance of building permits *(Table 6)*. On the one hand, this has been the result of the series of administrative reforms aimed at reducing the regulatory burden, improving the services to taxpayers, and the introduction of administrative electronic company registration outside of the courts as of 1 July 2007. On the other hand, external and internal pressure for the identification and punishment of specific culprits for administrative corruption has rendered the low and medium levels of corrupt administrative officials without political protection the most vulnerable, which has produced a disciplining effect on them thus reducing administrative pressure on companies.

TABLE 6. SHARE OF THE BULGARIAN COMPANIES WHICH MADE UNOFFICIAL PAYMENTS FOR THE FOLLOWING SERVICES (%)

	November 2003	April 2004	January 2007
Registration of a company	2.9	2.5	0.5
Installation of a telephone post	4.5	2.9	0.8
Interaction with company departments in courts	2.4	2.1	1.0
Connecting to water supply	2.1	2.5	1.0
Connecting to power supply	4.8	3.8	1.8
In court proceedings	3.6	4.4	3.0
Obtaining of permits and licenses	8.6	8.2	3.0
Obtaining of building permits	7.8	4.6	3.8

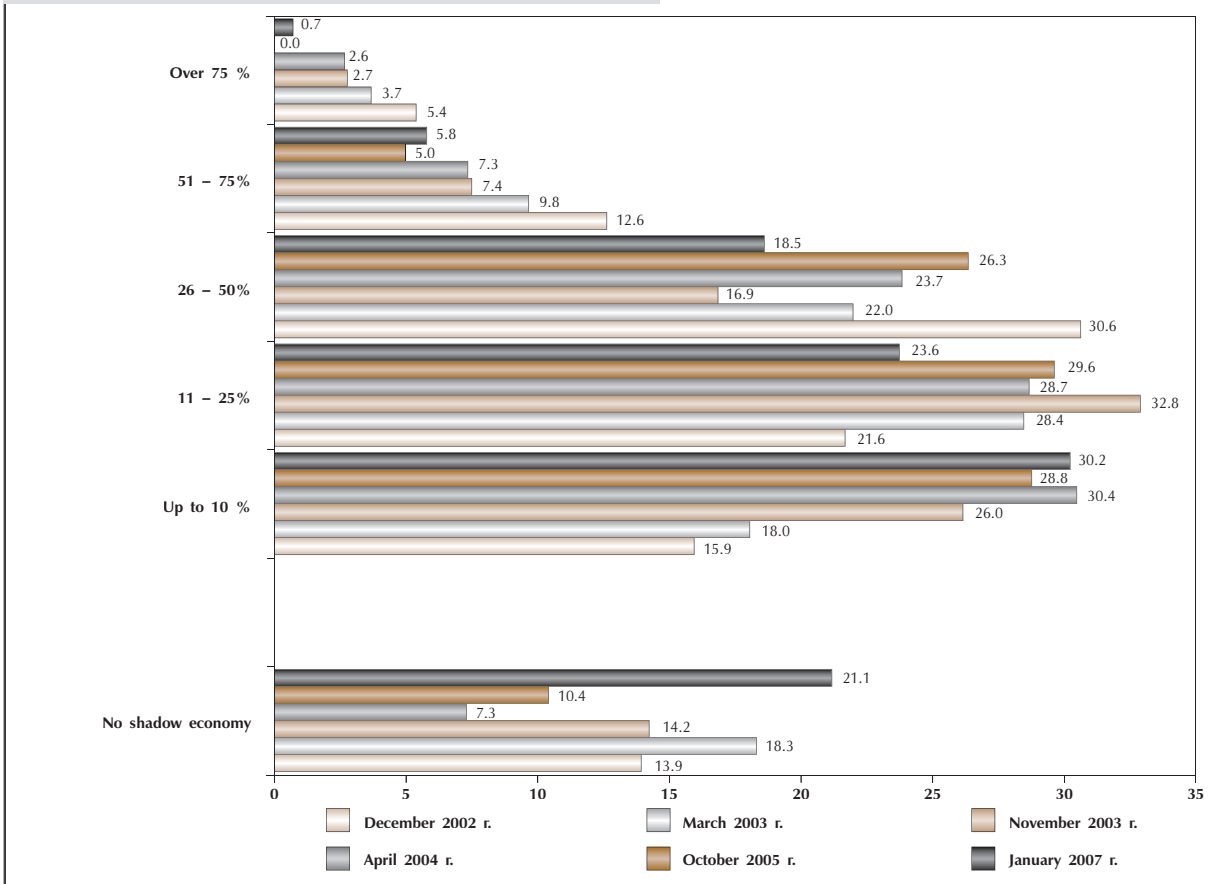
Source: *Vitosha Research CMS*
Base: *All respondents*

Similarly to corruption, the shadow economy continues to shrink in Bulgaria. Over the period 2002 – 2007, the share of the shadow economy in the various economic sectors of the country has been reduced from 29 % to 17.1 %, i.e. **in 2007, approximately one in five levs of the economic turnover remains in the shadow economy** *(Figure 15)*. Another important conclusion from the available data is that perhaps a certain portion of GDP growth over the past years has resulted from the surfacing and official

[28] *At Siemens, Witnesses Cite Patterns of Bribery*, by David Crawford and Mike Esterl, The Wall Street Journal Europe, January 31, 2007.

registration of shadow economic activities. Hence the real economic growth rates might have been lower than those officially registered, which does not bode well for the long-term competitiveness of the Bulgarian economy. The shadow economy continues to be a serious source of corrupt payments and, at the same time, provides grounds for reinforcing the policy of penalties and fines and greater administrative pressure favored by the Bulgarian government. **By 2007, some twelve to fifteen billion levs[29] or 25-30 % of the GDP[30] is generated through the shadow economy of the country**. Hence although the shadow economy has been reduced for the last five years its absolute size remains worrisome and is indicative of persistent institutional deficits in the country's business environment. For the further reduction of the impact of the shadow economy to take place, the Bulgarian government should accompany the policies of liberalisation and reduction of tax rates by mesures to strengthen the institutional capacity in: the support of competitive market mechanisms for the delivery of public services; the judiciary; the formulation of long-term objectives and policies; etc.[31]

FIGURE 15. GENERAL ASSESSMENT OF THE BUSINESSES OF THE SHARE OF THE SHADOW ECONOMY IN THE RESPECTIVE SECTOR IN BULGARIA



Source: *Vitosha Research*

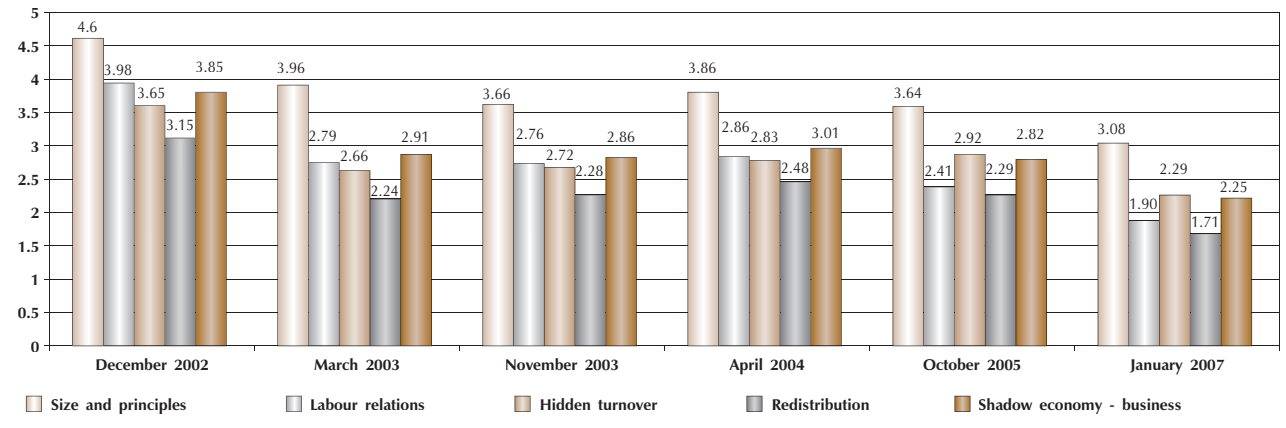
[29] The Bulgarian lev is pegged to the euro at 1.95 levs to the euro.

[30] About a half of this amount is registered by the National Statistical Institute in accordance with specific methods, which means that the shadow economy beyond the statistical registries is smaller.

[31] Detailed specific measures for the reduction of the shadow economy in Bulgaria are laid down in the previous editions of the Corruption Assessment Report since 2002 and in the special publication on the topic *The Shadow Economy in Bulgaria,* Centre for the Study of Democracy, 2004. Many of the measures suggested there and then are still on the agenda.

As to the main manifestations of the shadow economy according to the CMS business indexes, **the most serious problem in Bulgaria continues to be the under-reporting of turnover**. With regard to labor, the downward trend of undeclared employment without labor contracts continues. However, the relative reduction of undeclared employment of contracts with hidden clauses (employment contracts in which the actual remuneration is higher than formally stated) is smaller *(Figure 16)*. According to Vitosha Research surveys in 2006, **the real average monthly wage in the country was at least 600 levs[32] though the official figure put it at some 400 levs**. This discrepancy between official and unofficial levels of payment in the country reflects, on the one hand, the relatively high social security burden in Bulgaria, but, on the other hand, the lack of trust on part of the citizens and the businesses in the services they pay for in such spheres as social care, education and healthcare. Bulgaria's accession to the European Union is likely to bring about partial transfer of informal employment to other Member States – a process which is already underway. The poor coordination and cooperation of the national tax administrations of the Member States create conditions for failure to report income received outside the home country. A reversal of the positive trend of reduction of the shadow economy can be expected in 2007 with regard to the hiding of turnover and the VAT abuses. Reports on the VAT revenues during the first two months of the country's EU membership showed poorer than expected performance even though planned VAT revenues for the 2007 budget had been conservative.[33]

FIGURE 16. DYNAMICS OF THE BUSINESS INDEX OF THE SHADOW ECONOMY AND ITS COMPONENTS



Source: Vitosha Research

The growing economic integration of Bulgaria in the EU and the gradual improvement of the administrative capacity and the remuneration of the national bureaucracy will lead to further reduction of the administrative corruption and the related shadow economy. At the same time, businesses deem that **the spread of political corruption in the**

[32] *Biggest Cities Review: Regular Report on the Price of Labor,* Industry Watch and Vitosha Research, Autumn 2006.

[33] Interview of the Executive Director of the National Revenue Agency before Nova Television, 15 March 2007.

professional groups related to it is on the rise[34]. There is a growing tendency for the administrative apparatus to be partially replaced or sidestepped by appointments in the political cabinets and advisers to the ministers; sometimes even directors of directorates learn from the media about joint initiatives of their political bosses with private companies. The replacement of public administration with structures and networks of politically, economically or personally loyal individuals and organizations which are not constitutionally or legally regulated, **poses the real threat of the creation of elite cartels and clans**[35] and the involvement of the administration into political corruption. The most visible manifestation of this trend in Bulgaria is the Political Council of the ruling coalition which, without any democratic legitimacy (one of its members does not even hold an election position), actually replaces the Council of Ministers in the decision-making process concerning some of the most important matters of government policy[36]. Such trends make it more difficult to reduce the shadow economy and administrative corruption as political corruption disguises them in formally legal shapes. For example, there are signs of the replacement of administrative corruption by **emerging elite cartels in the duty-free trade and the management of state-owned and municipal land and property, as well as public procurement:**

- As early as 2001, the Center for the Study of Democracy published reports, which revealed that the state budget was losing hundreds of millions of levs through smuggling carried out by duty-free shops and petrol stations. The surveys in the biggest cities of the country showed that up to 90 % of the imported cigarettes had labels indicating that they had been bought at duty-free shops. **The model of duty-free shops** relies on illegally returning to the country excise goods for duty-free sale (i.e. sale in which no excise tax or VAT is due).

  In 2002, the Bulgarian government launched measures to bring the excise duties rates up to the average EU level, which made smuggling through duty-free shops and petrol stations even more attractive. Year after year duty-free sales of fuel break record levels, the biggest one reported in 2005, when annual sales reached 500 million levs. Similarly, budget losses from the smuggling of duty free cigarettes have been growing since 2002 but the record year was 2006 in the wake of the substantial increase of the excise tax on cigarettes.

[34] See Table 3, section 1.2. Perceptions of Citizens and Businesses of the Spread of Corruption in this report.

[35] The corruption of *elite cartels* is practiced and supported by the maintenance of networks of political, economic, military, bureaucratic, and ethnic or community elites, depending on the specific culture of the country. Unlike cartels, in the case of *oligarchs* and *clans* power and the corrupt access to it are dominated by government officials or enterprising businessmen who are powerful personalities mastering many followers. According to expert studies, Bulgaria and Romania are in the group of countries characterized by corruption of *oligarchs and clans*. Poland and Hungary are in the group of countries with corruption of elite cartels. See Johnston, Michael, *Syndromes of Corruption: Wealth, Power and Democracy*, Cambridge University Press, 2005.

[36] See the Address of the President of the Republic after the oath-taking ceremony at the National Assembly, 19 January 2007: "In this respect, I would like to note that I do not find it proper to close the decision-making on key issues and even specific issues to the narrow circle of the Political Council. The replacement of democratic procedures – a process I observe in both government and opposition – can turn into a factor for growing mistrust in politics".

Cigarette sales of duty-free operators increased by over 380 % in 2006 *(Table 7)*, without any relevant increase of the passenger flow.

These excessive duty free sales are registered against the background of the requirement of the European Commission to close duty-free shops at the Bulgarian land borders after the country's accession to the EU on 1 January 2007. The lobby (cartel) of duty-free operators has managed to effectively preserve the status quo. Indicative of **the substantial influence of this shadow business on Bulgarian politics** is the fact that no political faction represented in Parliament opposed the bill which ensured the functioning of duty-free operators even after Bulgaria's EU accession. Moreover, there is no other country, except for Turkey, which has duty-free shops and petrol stations at the Bulgarian borders. **Thus during the first months of 2007 duty-free shops and petrol stations continued to harm the budget of the country at the same rate which was observed in 2006, i.e. approximately 300 to 400 million levs in losses annually**.

TABLE 7. TURNOVER OF DUTY FREE SHOPS AT BULGARIAN BORDERS

Year	Packs of cigarettes sold	Cigarettes sold – statistical value (levs)	Alcohol sold – net weight (kg)	Alcohol sold – statistical value (levs)	Passenger flow registered at the Bulgarian state borders
2001	61,241,433	95,717,500	1,413,227	19,959,969	15,302,434
2002	46,119,000	84,831,963	1,191,953	14,941,031	17,183,454
2003	61,154,267	116,437,862	1,166,377	17,201,439	18,963,469
2004	87,643,200	152,356,553	1,420,344	20,877,585	21,392,003
2005	88,602,733	145,823,774	1,743,964	25,550,355	22,807,386
2006	**339,734,333**	**559,202,707**	**2,451,012**	**33,882,982**	**23,252,594**

Source: Customs Agency and General Directorate of the Border Police

- After the completion of the privatisation process and with the beginnign of the real estate market boom in the Bulgarian biggest cities and resorts over the recent years, **state-owned and municipal lands and property have become the public resources in the highest demand and most exposed to corruption pressure**. The investor pressure for the acquisition of state-owned and municipal land will grow steadily after the country's EU accession. The experience of pervious EU enlargements has shown that corrupt deals for the acquisition of land and the construction and operation of property in the new Member States lead to a snowball effect in the number and volume of the bribes offered.

  In 2006, the Bulgarian media revealed many details concerning land swaps in the country. All of them followed a similar pattern: first, state-owned land around high-value resort areas is swapped for private property located in less attractive or lower-priced parts of the country; second, the

private individuals or companies pursuing the swaps are closely related to the political elite (local and national) with the greatest number of swaps being carried out in the last days before the expiration of politcal terms of office; third, after the swaps, the status of the land is changed with the help of decisions of local municipal councils, if necessary, which substantially increased the price of the land. For the last three years, the Ministry of Agriculture and Forestry has swapped over 800 hectares. Since the prices of land range from 4 to 400 levs per sq. m., depending on the location of the land, the opportunities for excess profits are quite big. For example, **the re-sale of those 800 hectares swapped for the recent years at an assumed margin of 100 levs between the acqusition and selling prices can bring revenues of 800 million levs**. However, the price margins in such swaps are likely to be higher since the land acquired is typically part of larger investment projects.

The experience of other EU Member States reveals that the swaps of land and real estate, together with the management of public procurement and concessions, will be a major corruption problem in the years to come. Therefore it has to be tackled in all its complexity and in connection with the construction and tourist sectors. The vigorous protests of land owners against the boundaries of the EU NATURA 2000 Programme for the protection of natural diversity and the hesitant and untimely response of the Bulgarian government to the dsiputes arising in this connection are indicative of the serious comercial and social interests intertwined in this sphere at both national and local levels. Hence **a detailed analysis of corruption risks in this sphere is urgently needed to identify and to adopt effective counter-measures**.

2.2. Corruption in Public Procurement

The *Strategy for Transparent Governance, Prevention and Countering of Corruption 2006-2008* identifies public procurement as the sphere with the highest corruption pressure. Together with concessions, public procurement is the main channel for directing public resources to the private sector which makes it most attractive for political corruption and abuse. Usually, corrupt practices in public procurement are intended to channel public resources to a specific, predetermined contractor by violating the rules of competition to the detriment of public interests and for the personal benefit of a given political or administrative official. Corruption affects not only contract award procedures but also the implementation where the contracting authority may choose to ignore deviations from the officially agreed parameters of the contract.

2.2.1. Level and Spread of Corruption in Public Procurement in Bulgaria

The value of the public procurement contracts awarded in 2005-2006 was 15,176 million levs[37] which is about 17% of the GDP generated

[37] Net of VAT.

in these years. This number gives a somewhat distorted picture of the actual size of the public procurement market in Bulgaria since more than a half of it was accounted for by a single transaction, i.e. the contract for the construction of the two units of the Belene Nuclear Power Plant (NPP) worth 7,817 million levs which was concluded in 2006. Therefore the figures concerning the public procurement market are presented here with and without the NPP contract. Leaving Belene NPP aside, the value of the public procurement contracts signed in Bulgaria accounted for some 8% to 9% of the country's GDP *(Table 8)*.

TABLE 8. TOTAL VALUE OF PUBLIC PROCUREMENT CONTRACTS IN BULGARIA 2005-2006 (MLN LEVS)

	2005	2006	2006*
Total Value	3,296.0	11,879.8	4,061.8
Share of GDP	7.9%	24.7%	8.5%

**Without Belene NPP; GDP forecast for 2006 is 48 billion levs*

Source: Public Procurement Agency (PPA), National Statistical Institute and own calculations

FIGURE 17. STRUCTURE OF THE PUBLIC PROCUREMENT MARKET IN BULGARIA 2005-2006 (% OF ALL CONTRACTS)

Source: PPA

The increased corruption risk in public procurement is largely associated with the fact that this market is strongly dominated by construction works. In 2006, construction works accounted for 83% of the total value of all contracts but a longer period of monitoring would probably reveal that such a high percentage is rather an exception due to the contract for Belene NPP. Leaving that aside, **construction works have accounted for half of the total value of the public procurement contracts signed in Bulgaria for the last two years**. One-third of all contracts relate to the supply of goods and about one-sixth cover the provision of services *(Figure 17)*. The major groups of goods procured in Bulgaria are pharmaceuticals, equipment and fuels. The largest share in the public consumption of services is taken up by business services, waste management and environment protection, as well as repair and maintenance works.

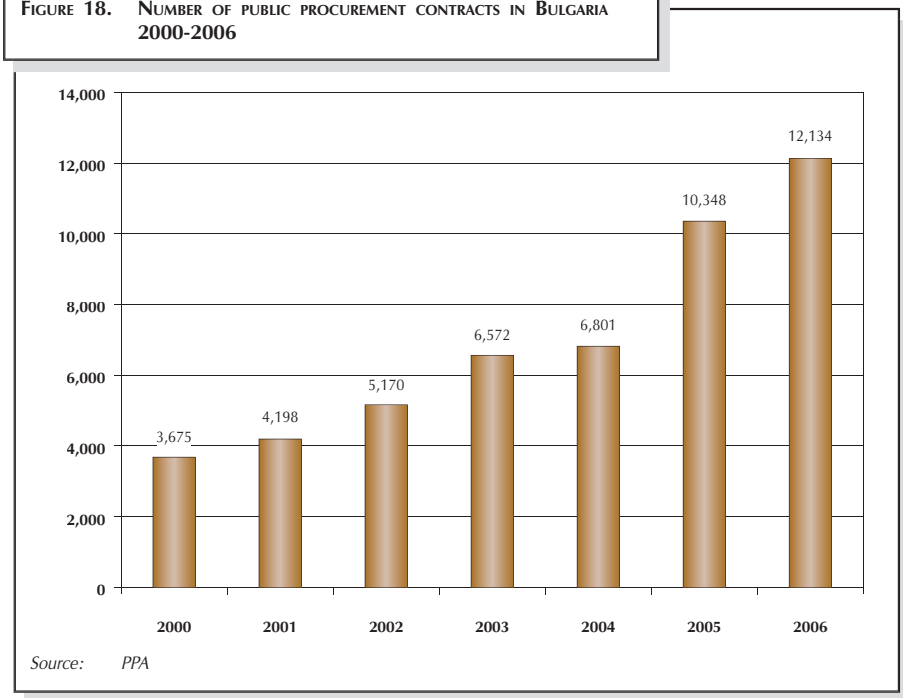
These figures relate to the *registered* public procurement market in Bulgaria. The actual size of the market in public procurement is 20% to 25% larger[38]. It includes transactions which are not subject to registration (for instance, those related to national defense and security), as well as transactions which are subject to registration but have not been registered

[38] For the purposes of the assessment of the corruption risk in the public procurement market, it is defined here as the consumption of goods, services and construction works in the public and utilities sectors for which the law envisages the application of public tendering procedures for the awarding and implementation of contracts. In other words, the definition does not cover public consumption in which the choice of a supplier or a contractor does not require any procedure by law. The existing Bulgarian legislation reads that these are public procurement contracts worth less than 100,000 levs in the case of construction works or 30,000 levs in the case of the supply of goods or services.

for various reasons. Last but not least, it includes transactions concluded without any tender procedure regardless of legal requirements for that. Thus **the size of the public procurement market in Bulgaria** today can be estimated at approximately **10% to 12% of GDP**, i.e. 4.4 - 5.5 billion levs in 2006 and 6 - 7 billion levs in 2007.

The difficulties in the assessment of the volume of the public procurement market in Bulgaria are partially due to its high growth rates and the fact that it is far from its equilibrium state. Two years ago, the average annual size of the public procurement market was put at 1.8 - 2 billion levs (5 % of GDP)[39]. Today it is at least 2.5 times larger. Figure 18 displays the almost quadrupling of the number of contracts between 2000 and 2006. Part of that growth resulted from the increase in the registered contracts and perhaps covered mainly lower value market segments. Therefore growth rates were more modest in value terms but they were equally impressive. These high growth rates of the value of public procurement contracts in the initial years of Bulgaria's EU membership will continue, coming closer to the EU public procurement average market size of 16.3% of GDP. Moreover, growth will be further fuelled by the drive for Bulgaria to overcome quickly gaps in its basic, communication and environmental infrastructure to meet the requirements of the European internal market. This is the purpose of the substantial amount of EU funding to be allocated to Bulgaria in the first 7 years of its EU membership and distributed via the public procurement procedures. The public procurement market can be expected to grow by an average of 6% to 7% per annum during the first seven years of membership. According to the most conservative estimates (i.e. without sizable transactions of the Belene NPP type), this implies that the average annual volume of the market will reach 6 - 7 billion levs in 2007-2008.

FIGURE 18. NUMBER OF PUBLIC PROCUREMENT CONTRACTS IN BULGARIA 2000-2006



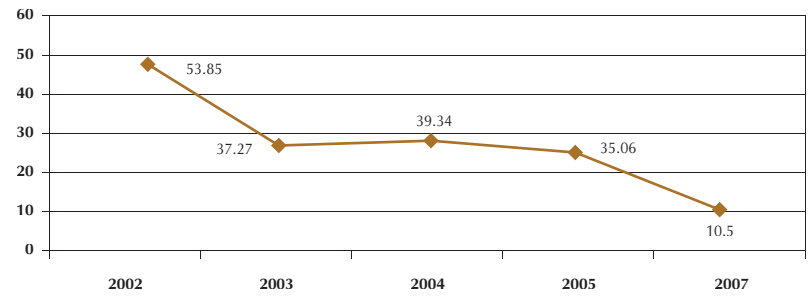
Source: PPA

It is only natural for this large and very dynamic market in the Bulgarian economy, which offers many opportunities for excessive profit and non-market and/or non-regulated income, to generate strong incentives for both suppliers of goods and services and contracting authorities to resort to corrupt behavior.

The data from the Corruption Monitoring System (CMS) of the Center for the Study of Democracy point to a downward trend in the number of companies which have made unofficial payments in public procurement tenders. Five years

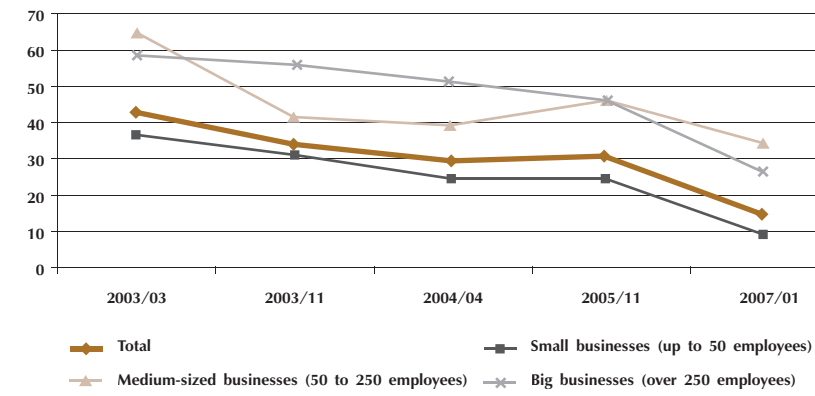
[39] See Bulgarian Industrial Association (BIA) *Public Procurement Monitoring: The Most Common Violations and Corrupt Practices*, Sofia, p. 4 (http://www.bia-bg.com/files/ZOP-broshura-2005.rtf).

FIGURE 19. PERCENTAGE OF COMPANIES WHICH RESORTED TO BRIBES IN PUBLIC PROCUREMENT PROCEDURES



Source: Vitosha Research

FIGURE 20. SHARE OF THE BULGARIAN COMPANIES WHICH PARTICIPATED IN PUBLIC PROCUREMENT PROCEDURES (% OF THE RESPECTIVE ENTERPRISE GROUP)

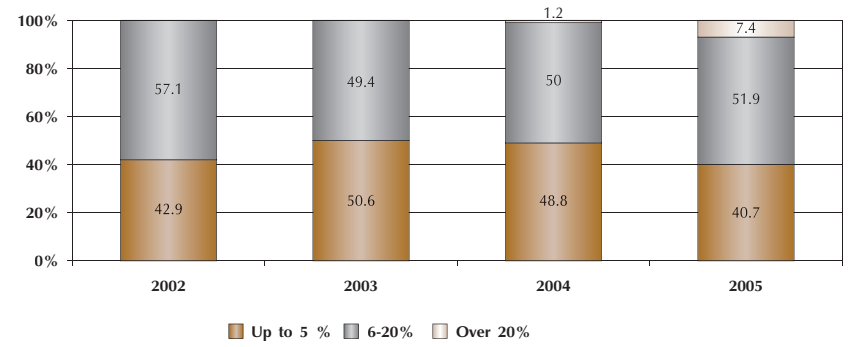


Source: Vitosha Research. The month and the year indicate the time of the survey, reflecting the experience of respondents from the previous year.

ago, every other company participating in a public procurement procedure admitted that it had to pay a bribe; in 2005, one in three companies shared such an experience, while in 2007 only one in ten companies paid a bribe in public procurement *(Figure 19)*.

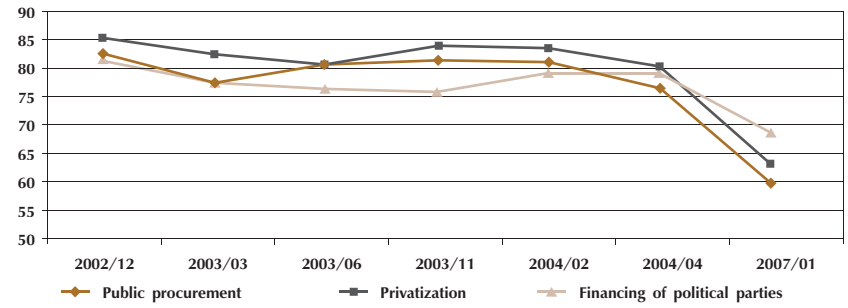
However, some qualifications need to be made to these positive results. Other CMS indicators point out that instead of being indicative of reduced corruption in the public procurement in Bulgaria these numbers might hint on the institutionalization of corruption, i.e. **its migration from the medium administrative to the higher political levels of the executive power** and its transformation from occasional deals to closed corrupt networks known as "loops of companies," discussed in section 1 of this report. Several arguments tend to tilt the balance to the latter conclusion. *First*, the suspected concentration of public procurement corruption into the higher levels of government is corroborated by the reduced number of participants in public procurement tenders in Bulgaria. Fewer and fewer companies, especially new entrants, take part in the announced procedures. Since 2003, the share of the companies which have participated in public procurement procedures has fallen by two-thirds: from 42% in 2002 to 14% in 2007 *(Figure 20)*. It has become a common practice for **companies to take part in public procurement procedures only when they have guarantees that they will be the winners**. Conversely, random players relying on unbiased ranking drop out. This assumption is supported also by the reported success rate of bidders. Winners (those awarded public procurement contracts over the period 2004 – 2006) were close to 100% of those which had taken part in a public procurement procedure at least once. This high success rate might somewhat distort the perceived level of concentration of suppliers to the public sector since each company might have participated in several procedures so that to win at least one. A more accurate measurement is the ratio between the number of contracts awarded and the number of participations. Even by that measure the rate of success is quite high – on average over 60% (the number of contracts compared to the number of procedures per company). The success rate is 52%

FIGURE 21. SIZE OF THE BRIBE AS A PERCENTAGE OF THE PUBLIC PROCUREMENT CONTRACT (% OF COMPANIES WHICH PAID A BRIBE TO GET A PUBLIC PROCUREMENT CONTRACT)



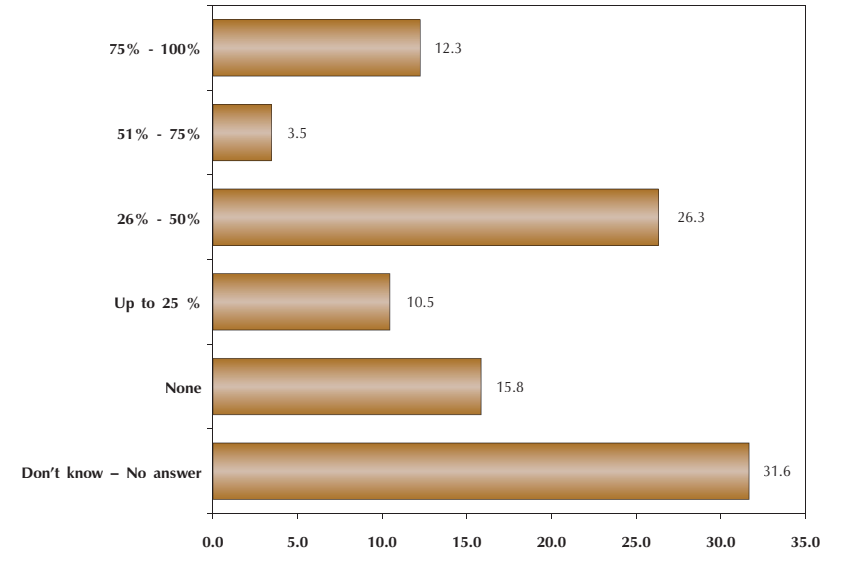
Source:: Vitosha Resarch

FIGURE 22. PERCEIVED SPREAD OF CORRUPTION IN PUBLIC PROCUREMENT ACCORDING TO THE BULGARIAN BUSINESS (% OF THE COMPANIES WHICH RESPONDED THAT IT IS WIDESPREAD)



Source: Vitosha Research

FIGURE 23. SHARE OF DISCREDITED PUBLIC PROCUREMENT PROCEDURES IN BULGARIA (% OF THE PARTICIPANTS IN PUBLIC PROCUREMENT WHO HAVE REPORTED THE RESPECTIVE SHARE OF PROCEDURES IN THEIR INDUSTRY AS DISCREDITED)



Source: Vitosha Research

for construction works, 60% for the supply of goods, and 63% for the supply of services. This is indicative of the relative lack of competition for public procurement awards.

Second, **the size of the bribes has increased** *(Figure 21).* Finally, it should be remembered that the victimization surveys underlying the CMS give the best reflection of the personal involvement in corrupt practices where respondents perceive themselves as victims. In other words, they reflect the intensity of administrative corruption in the public procurement sphere. Their capacity to gauge the political corruption in public procurement is limited; there businesses are accomplices rather than victims.

This is confirmed also by the CMS indicators, which show the assessment, rather than personal involvement, of entrepreneurs of the level and spread of corruption in public procurement. Although there are signs of a decline, 60% of the Bulgarian companies still assess corrupt practices in public procurement as "widespread" *(Figure 22).*

In fact, 84% of the participants in public procurement tenders have come across discredited procedures *(Figure 23)* and they perceive the frequency as quite high. 42% of the Bulgarian entrepreneurs assess the share of discredited procedures in their industry at more than 25%, and one in eight companies states that procedures are strictly followed in less than 25% of the cases *(Figure 23).*

Besides sociological (soft) data, there are some hard data proving the relatively high levels of

corrupt practices and corruption risk in public procurement. For instance, **a good measure for the substantial corruption risk in this sphere is the share of regulation violations actually detected by Bulgarian internal audit authorities** *(Table 9)*. The relative share of discredited procedures in public procurement in Bulgaria in value terms is more than 50% according to the findings of internal auditors. In 2005, the Bulgarian Public Internal Financial Control Agency (PIFCA) audited 6,399 procedures (some 60% of all registered) at a total value of 1.2 billion levs and found out violations of procedures in 1,609 cases at a total value of 567 million levs. Some three-quarters of the revealed violations refer to small scale public procurement which account for only 9% of the violations in monetary terms. Over 91% of the value of revealed irregularities were for procedures regulated by the *Law on Public Procurement* (LPP)[40]. Furthermore, the internal audit found that authorities failed to hold public procurement procedures, although the grounds for holding them existed, to the amount of 98.5 million levs. This adds up to a total of 666 million levs in violated procedures and failure to hold procedures in 2005 or 56% of the value of all procedures checked by PIFCA. **Such a high level of non-compliance can hardly be explained with procedural mistakes only** as a result of legal incompetence or administrative inertia and lack of interest. Instead, it rather testifies to widespread corrupt practices.

TABLE 9. FINDINGS OF THE INTERNAL AUDIT ON PUBLIC PROCUREMENT IN BULGARIA

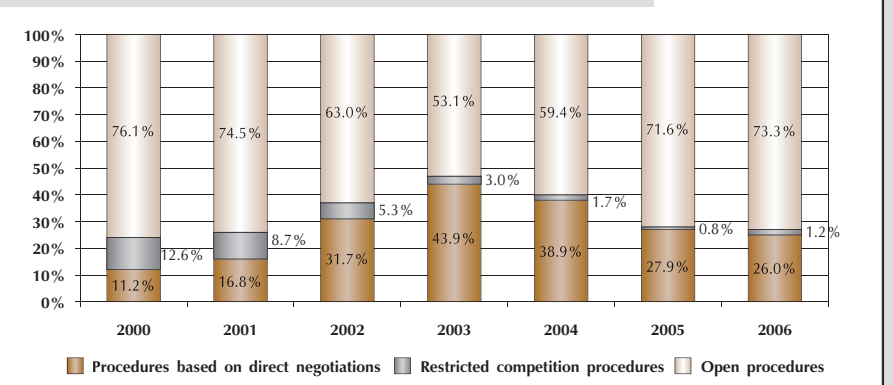
	2003		2004		2005	
	Number	Million levs	Number	Million levs	Number	Million levs
Registered procedures (1)	6,572		6,801		10,583	3,296
Audited procedures (2)	6,096	729.1	5,624	988	6,399	1,200
Number of violated procedures	1,941	350	1,479	249.5	1,609	567.0
Number of revealed violations:			2,154		2,551	567.0
Under the Law on Public Procurement					651	515.3
Under the Regulation on Awarding Small Scale Public Procurement					1,900	51.7
Cases in which no public procurement procedures were initiated though they were due	820	85	484	79.8	641	98.5
Total violated and non-initiated procedures (3)	2,761	435	1,963	329.3	2,250	665.5
Share of audited in total procedures (2/1)	92.8%		82.7%		60.5%	36.4%
Violated/audited procedures ratio (3/2)	45.3%	59.7%	34.9%	33.3%	35.2%	55.5%
Violated/registered procedures ratio (3/1)	42.0%		28.9%		21.3%	20.2%

Source: *PPA, PIFCA*

[40] See Report of the Public Internal Financial Control Agency for 2005, Sofia, May 2006, http://www.advfk.minfin.bg/files/docs3_2005.pdf.

More valuable - from the corruption risk assessment perspective - are the figures about the share of public procurement procedures based on direct negotiation, i.e. without competitive bidding, in value terms. The estimates for 2005-06 *(Figure 24)* reveal that it is much higher than their share in the total number of procedures[41]. However, the data cover only a short period of time and, besides, they include the Belene NPP deal. Therefore they are used here rather as a point of departure in the corruption risk assessment and not so much as the basis for any firm conclusions.

FIGURE 24. SHARE OF PUBLIC PROCUREMENT CARRIED OUT THROUGH OPEN OR CLOSED TO COMPETITION PROCEDURES (% OF THE NUMBER OF CONTRACTS SIGNED IN 2000 – 2006)



Source: Public Procurement Register (2000-2004); Public Procurement Agency (2005-2006). Negotiation procedures in 2005 and 2006 include those involving negotiations with and without announcement under the Law on Public Procurement and negotiations with invitation under Regulation on Awarding Small Scale Public Procurement.

Another indicator of the corruption risk level in public procurement is **the share of the contracts signed through various forms of negotiation with the contractor allowed under the law, i.e. without full prior disclosure of the parameters of the procurement in advance**. First and foremost, it should be pointed out that such procedures are not only provided by law but, in the case of some complex transactions, they are desirable to guarantee the best protection of public interest. From the entry into force of the *Law on Public Procurement* in 1999 to its amendment of 2004, however, the share of procedures employing negotiations rather than open competition tenders trebled, reaching a peak of 44% in 2003 before falling back again *(Figure 24)*. It is necessary to point out that this growth could possibly be the result of a more diligent reporting compliance (i.e. entering of the transactions in the Public Procurement Register). Nevertheless, these figures come to show that **corruption pressure is concentrated largely in the negotiation type procedures of public procurement**. The experience with the amendments of 2004, however, clearly shows that it can be substantially reduced through more strict regulations concerning the application of these procedures.

2.2.2. The Cost of Corruption in Public Procurement

The issue of the economic cost of corruption in public procurement is important from the perspective of the ex-ante impact assessment, i.e. the selection of anti-corruption instruments, and the ex-post assessment of their efficiency.

[41] The Public Procurement Register does not provide such statistical information for 2000-2004 (prior to the establishment of the Public Procurement Agency). The PPA data used here cover the period from 1 October 2004 to 30 June 2006.

First and foremost, corruption in public procurement causes **direct fiscal damage** due to the artificially inflated prices of supplies, which include excessive profits for the suppliers and the corruption income of the responsible officials. The corrupt interaction does not necessarily lead to excessive costs. More often than not even the corrupt overcoming of competition in open tender calls for lower delivery prices. Then the excessive profit for the supplier and the bribe for the contracting authority result from the compromises with the quality and the parameters of the supply contract. In other words, there are no excessive fiscal costs but there are **welfare losses** because society does not receive the public goods in the quantities and with the quality it has paid for. Quite frequently these compromises could lead to higher costs in the operation or consumption of the goods and services supplied under a particular public procurement contract, i.e. transfer of budget spending forward in time or further to other institutions, beyond the time-line of the specific tender.

The accurate assessment of the fiscal cost in the form of excessive spending or loss of social welfare in public procurement is a difficult exercise based on many assumptions. A somewhat useful point of departure is the information from the Bulgarian internal audit agency with regard to the reported violations as set out in *Table 9*. The total value of the infringements of statutory requirements in 2005 was approximately 666 million levs or 56% of the total value subject to internal audit in the public procurement sphere. If this percentage is extrapolated to the estimated size of the whole public procurement market (4 - 5 billion levs in 2005), the total value of violated procedures would reach 2.2 – 2.8 billion levs.

This amount reflects the value of infringed procedures but not the value of the violations themselves, i.e. it is not equal to the fiscal damage caused by corruption. The fiscal cost of corruption is equal to the excessive rent - or profit - derived by representatives of the contracting authority and the contractor for their personal benefit due to the suppression of competition. The differential between the market price of the supply of the procurement and its tendering price (or the discrepancies in the quantity and quality of the procurement respectively) constitutes the real loss for society. The excessive rent/profit generated by corruption and the lack of competition, although more visible at the level of individual transactions, is difficult to calculate at the macro-level. If we assume that it is divided equally between the parties to the corrupt deal, then the losses for the budget would be double the amount of bribes in this sphere. According to CMS of the Centre for the Study of Democracy in 2005, the average size of the bribe in public procurement accounted for about 7 % of the value of the contract[42]. This implies that, in the conservative scenario, the average amount of the excessive profit generated by corruption and the lack of competition in public procurement is approximately 15% of the total value of the procurement market in Bulgaria. Since the value of infringed procedures is 2.2 – 2.8 billion levs, **the losses resulting from abuse in the public procurement sphere would range between 330 million levs and 420 million levs annually for 2005 - 2006**.

[42] *On the Eve of EU Accession: Anti-Corruption Reforms in Bulgaria,* Center for the Study of Democracy, Sofia, 2006, p. 26.

The estimated amount of the losses should be considered as underestimated for a number of reasons. *First*, it reflects a conservative estimate of the potential size of the public procurement market at 4 – 5 billion levs. *Secondly*, it is based on a quite optimistic estimate of the efficiency of internal audit in Bulgaria. In other words, it builds on the assumption that the frequency of violations in the procedures outside the scope of the audit is similar to that in the audited procedures. In fact, if there was an efficient risk assessment and management system, the degree of deviation in the audited procedures should have been even higher than in the rest of the procedures. In this case, a lower estimate for the total number of irregular public procurement procedures would apply, say 40 – 45% of the contracts awarded. This, however, would only be a realistic assumption in the case a politically independent inspection with proven professionalism and integrity existed in Bulgaria.

According to the latest available internal audit report, the procedures audited in 2005 accounted for some 60% of all procedures but only 36% of their total value *(Table 9)*. Some 75% of all detected violations were small-scale public procurement, as defined by the law, but they accounted for only 9% of the violations in value terms. Thus the **internal audit covers primarily the small-scale procurement market segment, which usually involves only administrative corruption risk**. Such a biased distribution of internal audit administrative resources towards small-scale procurement generates some doubts as to the political independence and the professional approach of the Public Internal Financial Control Agency. If these doubts are well-grounded, an assumption on a higher percentage of infringed procedures in value terms is due and would probably be closer to actual levels.

Last but not least, the assumption concerning the amount of the rent/profit derived from corrupt practices in public procurement could also prove quite conservative. International studies show that the size of the bribe is usually very small compared to the benefit it provides for the supplier in public procurement. Moreover, in the case of political corruption, **the classical cash kick-back has limited application**, giving way to **other types of benefits**: support and financing for election campaigns, appointment after resigning from a government or administrative position[43], scholarships for close relatives, safeguards against criminal prosecution[44], etc. If this is the case, the more realistic estimate for the excessive profit generated by corruption on the public procurement market in Bulgaria could amount to 25% to 30%, which effectively doubles the assumption on the damage caused to society.

To sum up, if we abandon all conservative assumptions underlying the above mentioned optimistic estimate of **the fiscal losses from corruption in public procurement, they could reach 1 billion levs annually, i.e. some 20 - 25% of the size of the market or approximately 2.4%**

[43] For example, the publicly commented case of the appointment of a minister and a deputy minister in a telecom operator immediately after the expiration of their term of office during which they made decisions to the benefit of the telecom.

[44] For example, the appointment of persons with serious charges of corruption and links with organized crime to diplomatic posts abroad.

of GDP. All this leads to the conclusion that the actual size of the losses from public procurement corruption tends to come close to this level and it is commensurate to the size of the expected Cohesion and Structural Funds for Bulgaria.

Besides the direct fiscal damage of public procurement corruption, the public sector sustains losses from a possible **relocation of budget spending to less transparent spheres** with the aim of avoiding public control. Similarly, the sectors which have priority for Cohesion and Structural Funds financing (infrastructure investments and regional development, environment, energy) become an arena for acute political struggles to gain control over the EU resources and the national co-financing. In all these cases, it is actually corruption opportunities that determine the allocation of scarce public resources in the economy, diverging them from their most efficient uses.

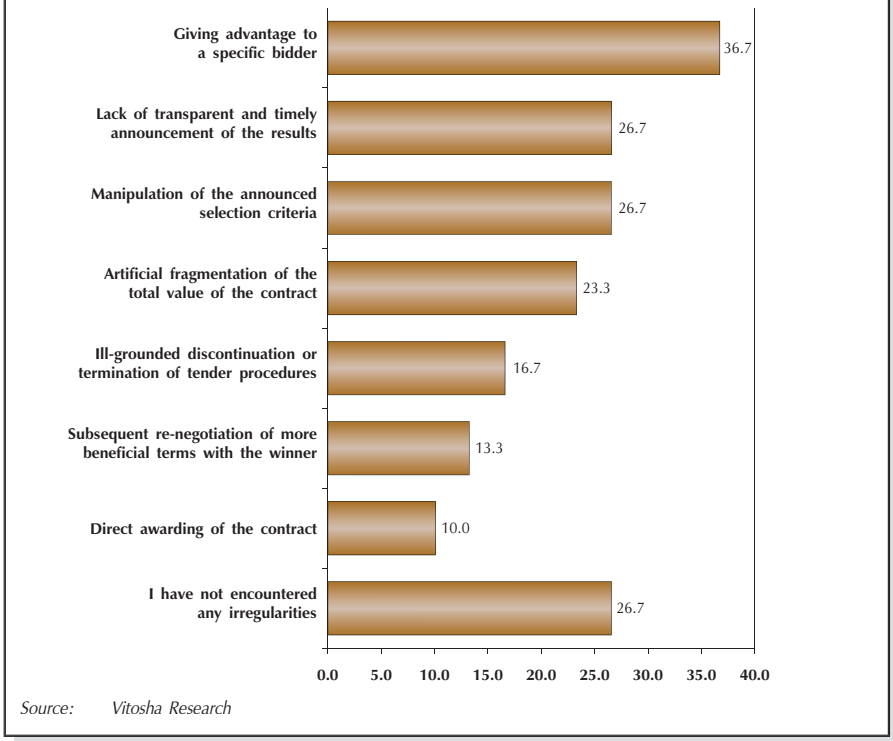
Corruption in the public procurement sphere not only generates losses for the public sector but also inflicts **economic damage to the private sector**, which might be much greater and longer lasting than fiscal damage. The direct economic damage is associated with the losses of bona fide traders who could be more productive than those who win tenders through grafting. Because of corruption the market cannot recognize and reward their productivity. Market distortions occur and generate disincentives on the supply side and hence the damage is partially transferred to consumers through the prices charged on the market. Corruption in public procurement could also function for attaining oligopoly on some markets, where the excessive profit generated from the public sector make it possible for corrupt companies to sell to private consumers at lower prices and thus crowd out the other, especially smaller firms from the market. Hence the heavier damage which corruption in public procurement causes to small and medium-sized enterprises.

Another indirect cost for fair businesses is **the increase in the administrative costs for participation in public tenders**. This is the result of the attempts by the public authorities to apply more and more administrative measures to curb corruption and abuse which increases the compliance costs for the companies, especially smaller ones.

2.2.3. Areas of Increased Corruption Risk in Public Procurement

Most of the abuses in the public procurement field occur in the awarding procedures. These are the stages in which the tender documentation is prepared and bids are ranked. According to the CMS survey of January 2007, the most common infringements of rules, which participants in public procurement procedures in Bulgaria encounter are related to the ensuring of undue advantage to specific bidders, the lack of transparency or manipulation of the announced assessment criteria, etc. *(Figure 25)*.

FIGURE 25. WHAT WERE THE MOST COMMON IRREGULARITIES YOUR COMPANY ENCOUNTERED IN PUBLIC PROCUREMENT PROCEDURES? (% OF THE RESPONSES)



Source: *Vitosha Research*

What follows is a non-exhaustive summary of **the typical tools for restricting the range of participants and directing the outcome of the tender procedure to the benefit of a specific participant in public procurement in Bulgaria**.

Direct non-compliance. The direct non-compliance is still widely spread through contracts awarded without any tendering or competitive bidding procedure in violation of the law. Although this type of violation is observed mainly in the case of small-scale procurement of authorities in education, health and local government, the total effect of such violations is not small at all. In 2005, for example, PIFCA detected failure to hold due procurement procedures in cases worth 98.5 million levs, up from 80 million levs in 2004. In other words, **about one-fifth of the value of all reported violations is due to brazen disrespect of the law**. Even if we assume that the detection rate is much higher in this market segment due to the direct nature of the violation and the relative lack of political protection in comparison to big supplies, the relative weight of this type of violations in the total volume of damage (including the non-detected damage) seems significant. It is indicative of the insufficient deterrent effect of the sanctions compared to the benefits of the corrupt action. Although the action is most likely to be detected, the effective sanctions seem so soft that they could hardly compare to benefits. An additional motive for such behavior in the specific case of school headmasters and hospital managers is the low level of salaries and the diluted control shared by the central and local government, which makes them feel immune to penalties.

Circumvention of the law. Another way of awarding public procurement contracts to pre-determined bidders is by breaking them into smaller parts, which fall below the tendering thresholds stipulated by the law, allowing the public authority to go for direct awarding. One of the techniques to modernize the public procurement system in this country has been the raising of these thresholds in order to reduce the compliance costs for businesses in small-scale procurement. As a result, the current thresholds for obligatory tendering in public procurement are 100 thousand levs for construction works and 30 thousand for the supply of goods or services. These thresholds seem high for Bulgaria because they leave one quarter to one third of the public sector consumption beyond the scope of the *Law on Public Procurement*. The law can be circumvented also through

the choice of direct negotiations with an alleged single bidder instead of resorting to an open bid procedure. The most typical arguments in such cases refer to an alleged exercise of certain exclusive rights, e.g. software copyrights. **Whereas the fragmentation of contracts is often a sign of administrative corruption, the circumvention of the law through resorting to direct negotiations is typically connected to political corruption.**

Abuses in the definition of the parameters and technical specifications of public procurement procedures. It becomes increasingly difficult in most cases to ignore or circumvent the tender procedures prescribed by the *Law on Public Procurement*. Thus corrupt contracting authorities use an alternative set of tools to direct the procedure so that the preferred bidder wins. One of the tricks employed is to put down in the bidding requirements such parameters and specifications of the procured product or service, which though not essential for the quality of the public good provided rule out some bidders from the competition or directly prejudice the outcome. This is quite a widely used method in Bulgaria. Although it is relatively easy to detect it, it remains relatively unpunished. It is one of the methods which obviously hamper fair competition but it is rarely punished as a violation of the law. It is usually applied when the contractor is selected in advance at political level and the stakes are so high that neither the supplier can afford to lose nor the tendering authorities can afford the risk of failure for the conduct of an outright sham procedure with a pre-determined outcome.

Abuses in the definition of the shortlisting and selection criteria. An alternative and not so overt instrument for directing the tender to the desired outcome, but also with a less clear result, is the definition of such selection criteria which leave sufficient room for subjective judgment and manipulation of results. Usually this is achieved by enhancing the share of qualitative indicators at the expense of quantitative ones, such as price and other measurable technical parameters. Some criteria could be too abstract or outright useless for the assessment of the relevance of the supplied product to the pubic consumer's satisfaction. Examples of such criteria are "quality of the proposal" or "vision for the development of the sector"[45].

Others are related to the **assessment of the supplier rather than the supplied good or service**. These are for example all so-called **"guarantees" for the capacity of the supplier** to deliver the procured product in connection with specific experience, annual turnover or participation in similar tenders. The logic of such insurance on the part of the contracting authority is acceptable to a certain extent but, in practice, it restricts competition and confines the public procurement market to a narrow range of pre-selected eligible bidders. It leaves out companies which could offer better and more innovative solutions but lack the required eligibility.

[45] BIA *Public Procurement Monitoring: The Most Common Violations and Corrupt Practices*, Sofia, p. 18 (http://www.bia-bg.com/files/ZOP-broshura-2005.rtf).

Even the quantitative parameters of public procurement can be deliberately manipulated to make direct comparison of bids more difficult and to increase the chance for applying administrative discretion in the selection procedure. Last but not least, even the price, which typically weighs a lot in the assessment (most frequently it forms more than 50 % of the final evaluation result), is only one of the cost elements. Manipulative pricing can often display publicly only the immediate costs of a facility without taking account of potential increase in the operational costs of the facility in the future. A more objective criterion would be the direct comparison of the overall net present value of alternative projects. It includes also the discounted future expenditures for the maintenance and operation, including warranty support, spare parts, consumables, etc.

Manipulation of the assessment and ranking. Next, even if all selection criteria are well specified, the end result can still be manipulated to the benefit of one or another bidder. A kind of guarantee against such practices seems to be the use of a pre-selected formula to calculate the final assessment comprising of all the quantitative and qualitative indicators with their respective weights. However, contracting authorities in Bulgaria rarely provide any written argument or statement to explain the assessment of the various components of the bid and the ranking. Thus the scores by individual criteria can be manipulated and adjusted to a desired final ranking. It is possible to do so because the individual components are not assessed and announced independently from one another, and also because the final assessment is not the result of independent expert appraisal.

Lack of transparency in the announcement of the bids and the ranking. The lack of transparency with regard to the parameters of the bids in tender procedures creates opportunities for further adjustment and improvement of certain bids before the final ranking is announced. Such a blackout is a condition and invitation to resort to corrupt manipulation of the tender procedure.

Other barriers to participation in public procurement. Sometimes the costs for participation in the tenders are artificially inflated to discourage 'accidental' players. Although the Bulgarian law does allow the price of the tender documentation to exceed its production cost, in most cases it resembles more a participation fee rather than a charge to cover actual costs. In some cases it is excessive and functions as a filter at the input stage of the tender procedure. Similar barriers are also the **unrealistically short deadlines for submission of bids**, which can only be observed only by companies which have been tipped off in advance. This corrupt practice is related to leakage of information about the terms of reference to the benefit of a preferred supplier.

Cancellation or discontinuation of tender procedures. Last but not least, if all these measures cannot ensure the victory of the preferred supplier, the contracting authority might terminate the procedure, citing as excuses either lack of financing or discrepancies between the bids and the terms of reference. In most cases, there are no clear arguments to support

such decisions and fair participants are left only with the incurred costs of bidding in the tender procedure and with a general feeling of distrust the official rules of the game. Such negative experiences from the participation in irregular procedures act to restrict competition and expand further the range of companies prepared to pay bribes in public procurement procedures.

All the above corrupt practices employed in Bulgaria are related to the directing and awarding of a contract to a preferred supplier ensuring personal benefits for the public officials representing the contracting authorities. They cover the stages of the preparation of the tender documentation and the ranking of the bidders in accordance with the announced criteria. But corruption risk in the public procurement sphere in Bulgaria does not end there. The stage of the implementation of public procurement contracts is not protected against the risk of abuse and corrupt practices either.

Implementation of the contract. The most widely spread corrupt practices at the implementation stage of public procurement in Bulgaria is the re-negotiation (reduction) of the qualitative parameters of the contract or their outright neglect, or even the change in the price terms. Thus the contractor who has paid a bribe is able to offer much higher quality at a lower price in the bid, knowing that these bidding parameters are intended only to beat away the competitors and can be changed during the implementation phase. Indeed, the amendments to the *Law on Public Procurement* of 2004 tried to put barriers to the common practice of signing annexes to the contracts intended to change the initial terms of the public procurement contact. But, at the same time, **the law does not include any provisions to ensure control over the implementation of the contract in accordance with the terms and conditions of the tender**. In fact, LPP regulates the process until the signing of the contract. If there are no changes to the contract, the control over its implementation is left beyond the scope of the law.

The data of the internal audits in Bulgaria show that **the corruption risk increases in line with the size of the public procurement value**. Big corruption comes where big money is. Nevertheless, the public debate on this issue was focused for quite some time on the thresholds set out in the LPP and the negative effect of their increase. Most of the internal audit resources were also allocated in this area. Out of the 2,551 violations established in 2005, 1,900 were in the category of low-scale procurement but their total value was 51.7 million levs, i.e. 9% of the total value of uncovered irregular procedures. This distribution of the risk comes to support the idea that, from the viewpoint of the efficiency of control and business costs in the supply of goods and services to the public sector, **it is better to raise the public procurement thresholds and to allocate the available administrative resources for the enforcement of the law into the biggest transactions**. The optimal internal audit coverage target could be the transactions which constitute 60% to 70% of the value of all procurement contracts signed. At present, the share of the audited procedures is some 30% to 35% in value terms.

2.2.4. Reduction of the Corruption Risk in Public Procurement

The optimization of the regulations of public procurement tends to be considered more or less completed in Bulgaria. The most common argument is that the national legislation is almost fully harmonized with the *acquis communautaire*. Such an assertion should be accepted with some reservations. First, there remain some essential discrepancies between the national legislation and European standards. Second, the high levels of corruption risk and corrupt practices in this sphere reveal that the harmonization is not an end in itself but only a tool in the fight against corruption. The main objective of the harmonization of the Bulgarian domestic legislation with the *acquis* is to ensure the free movement of goods, services, people and capital within the European single market. Insofar as these freedoms are related to transparency, free and fair competition, and equal treatment of the suppliers of goods and services, they imply and require a corruption-free business environment. Moreover, the harmonization of the European legislation in the public procurement sphere is not a one-off act but a dynamic process of reflecting the continuous market challenges in the national legislation.

Recent developments of the public procurement legislation in Bulgaria

The Bulgarian public procurement legislation has been substantially improved in the harmonization process and many prerequisites for corrupt practices have been reduced. In accordance with the *acquis communautaire*, the existing *Law on Public Procurement* specifies three major principles underlying the legal regulation of public procurement: openness and transparency; free and fair competition; and equal treatment and non-discrimination. They shape the framework which this analysis uses to assess the efficiency of the public procurement legislation in Bulgaria.

The scope of the public procurement legislation has been substantially changed. It has been expanded horizontally to cover not only conventional procurement authorities (government institutions and organizations) but also public law entities and the utilities, regardless of whether they are public or private. The expanded scope with regard to the contracting authorities promotes the equal treatment and competition on the public procurement market.

On the other hand, the scope of the law has been reduced with regard to the thresholds for its application. The modern understanding of legislative efficiency is increasingly concerned with the transaction costs for the contractors. In accordance with the EU Directives, the public procurement regime in Bulgaria has been liberalized. The thresholds above which the LPP applies have been almost trebled to 1.8 million levs for construction works, 150 thousand for the supply of goods, and 90 thousand for the provision of services. Below these lower limits much easier procedural rules apply as laid down in the *Regulation on Awarding Small-Scale Public Procurement (RASSPP)*. The thresholds below which no special procedure is required at all have been substantially increased *(Table 10)*.

TABLE 10. THRESHOLDS IN PUBLIC PROCUREMENT PROCEDURES (IN LEVS, NET OF VAT)

Type of procurement	Under the LPP	Under the RASSPP	No special procedure required	
			3 quotes required	3 quotes not required
Construction works	Over 1,800,000	100,000 - 1,800,000	45,000 - 100,000	Below 45,000
Supplies of goods	Over 150,000	30,000 - 150,000	15,000 - 30,000	Below 15,000
Services	Over 90,000	30,000 - 90,000	15,000 - 30,000	Below 15,000
Design competition	Over 30,000	10,000 - 30,000		Below 10,000

Source: LPP, RASSPP

The purpose of these changes has been to facilitate the work of contractors and to lower their costs for participation in the procedures. At the same time, however, they have created more opportunities for **discretionary and non-competitive selection of suppliers**.

A similar divergent effect has been produced by the change of **the legal framework** concerning **the types of public procurement procedures**. The set of tools at the disposal of the contracting authorities has been substantially enriched in the recent years. On the one hand, its transparency has been boosted with the introduction of e-tenders and stock exchange trading. But, on the other hand, there has been a tendency to expand the application of direct negotiations. The existing legal framework provides for such instruments in the awarding of public procurement contracts and purchase of goods and services as competitive dialogue, direct negotiations with or without prior notice, dynamic supply systems, and framework agreements. All these forms are characterized by more or less restricted access of all bidders and more discretionary powers of the contracting authorities in the selection of the supplier/contractor. They increase the risk of corruption in public procurement in Bulgaria. This, however, does not come to say that they should be ruled out from the legal framework of public procurement.

From the perspective of public interest and maximum competition, it is important to ensure that there is equal treatment not only of the contractors but also of the contracting authorities in the public procurement process which have to compete on a level playing field with the other consumers in the private sector. Last but not least, it is important that the costs of both the public and the private sectors do not exceed the public benefit from the competitive awarding of public procurement contracts. These two principles of economic efficiency, which tends to be somewhat underestimated in practice, ensure that the public sector will not consume goods and services at prices which are higher than market prices. The problem is that they do not always imply solutions concurrent with the objective to provide maximum guarantees against corruption. This challenge becomes increasingly pronounced in the context of the development of the knowledge-based economy and the need for selection among high-tech solutions with high information asymmetry between suppliers and consumers.

This calls for new commercial practices in public procurement. **Alongside transparency and competition** (which should take the lead in non-differentiated products) **public authorities should increasingly rely on partnerships, trust, information and expertise**. In other words, the procedures involving direct negotiations serve public interest much better than conventional public tender procedures for the supply of many high-tech goods and services provided that there are no abuses. In this context, the challenge for the Bulgarian anti-corruption policy is to strike a **proper balance between the corruption risks and constraints of the procedures and their economic efficiency**. Thus, the issue at stake is not to outlaw direct negotiation procedures but to restrict the possibilities for undue application of these procedures. This makes the tasks of control in this sphere more difficult and requires greater weight on the checks of **economic efficiency** along with **legality considerations**.

More specifically, the legal framework of public procurement in Bulgaria needs careful review from the perspective of corruption risks along the following lines:

- **Contract Implementation**

The existing legal framework of public procurement covers only the selection procedures up to the time of the signing of the contract. The only safeguard against subsequent abuses is the ban on amending contracts after their signing. The purpose of this provision is to restrict the practices which were quite common until recently to sign annexes to the contracts so that to alter the parameters on the basis of which the contract was awarded.

However, the LPP provides **no guarantees and control mechanisms against abuses in the implementation phase**. There exist substantial risks of deviation from the agreed parameters of the contract with the tacit consent of the contracting authority, in particular in construction works and services which account for half of the value of all contracts in Bulgaria. Such corrupt practices remain outside the remit of financial audit control and sanctions for that matter.

- **Appeal**

The access to and the efficiency of legal remedies are among the most important guarantees against abuses in the public procurement sphere. Notwithstanding the drastic changes, the efficiency of appeal remains the most contentious issue in the Bulgarian legal framework on public procurement. After the unsuccessful assignment of arbitration functions to the Public Procurement Agency under a previous version of the *Law on Public Procurement*, today most experts are quite pessimistic as to the assignment of administrative appeal functions to the Commission for Protection of Competition (CPC). The arguments against such an arrangement vary from reasoning that first-instance proceedings cannot be assigned to a non-judiciary body to reasonable doubts that the CPC can never master the same capacity as the 112 district courts to examine appeals.

The appeal procedure before the CPC does not leave much chance to the plaintiff. If the latter does not want or cannot achieve suspension of the procedure, for which a CPC decision and a collateral equal to 1% of the value of the procurement contract are required, the plaintiff could simply be preempted by the signing of the contract which makes it necessary to bring the case to the court and prove damage as a result of the selection of another contractor.

Access to legal remedies in Bulgaria remains quite limited. This is due, to a certain extent, to the gaps in the definition of the term "lawful interest" and the lack of the legal figure of the class action in the Bulgarian legislation[46]. It is a paradox that many acts of the highest bodies of the executive power cannot be challenged in court by anybody because for this to happen the claimant has to prove personal, direct and immediate interest in the repeal. This has been the consistent practice of Bulgarian courts since 1976[47]. For example, the decisions concerning the largest investment projects supported or launched by the government of Bulgaria cannot be challenged at all because according to the prevailing Bulgarian court practice they do not affect any specific individual personally. **The paradox is that precisely the decisions which affect everybody cannot be attacked by anybody.** This is particularly relevant to projects in the energy sector. Each of them is worth hundreds of millions of euro and has financial, environmental and social consequences to be borne and paid by all consumers and taxpayers, including those unborn yet, for decades to come. Therefore each consumer of public services, or each taxpayer respectively, should be entitled to attack unlawful acts and/or actions of government authorities and monopolies. In this regard, a tangible step forward is the provisions on the principles underlying the lawful interest in attacking administrative acts under the new *Code of Administrative Procedure* (more specifically, Art. 147, para 1 and Art. 186, para 1). It is for the first time that the Bulgarian law-makers explicitly recognize the right of individual citizens or organizations whose rights, freedoms or lawful interests have been affected or could be affected to appeal against individual or statutory administrative acts.

Appeal mechanisms should be improved in the context of the new *Code of Administrative Procedure* and the functioning of the recently introduced administrative courts. The EC is also drafting a directive on appeal. In any case the existing arrangements are far from being optimal and they certainly are not final.

---

[46] For more details see *Corruption in Public Procurement*, Centre for the Study of Democracy, 2007 (forthcoming).

[47] At that time, Ruling No. 4/76 of the Supreme Court was adopted to summarize and streamline practices in the application of the *Law on Administrative Procedures* of 1971. That ruling gave guidance to the administrative process doctrine for decades, including the subsequent interpretative judgments relevant to the understanding of the lawful interest in challenging administrative acts.

- **Control**

The ex-post institutional control is entrusted to three agencies. The Public Procurement Agency at the Ministry of the Economy and Energy is responsible for the overall coordination and conduct of tender procedures. It keeps the Public Procurement Register (PPR). The National Audit Office performs an external audit function, i.e. it supervises the lawfulness of public procurement procedures However, it has no powers to impose sanctions when violations are detected; it can only advise the Parliament and the Ministry of Finance of such violations. The internal audit is assigned to PIFCA. It has greater powers to check not only the compliance with the legislation but also the quality and results of public procurement procedures. The process of absorption of national budget resources and EU funds will be monitored and audited also by internal auditors at the contracting authorities pursuant to the two new laws adopted in the beginning of 2006: *Law on the Internal Audit in the Public Sector* and *Law on the Financial Management and Control in the Public Sector*. Still, it is **necessary to have intense public scrutiny over the internal audit efficiency**. In this sense, it is necessary to use a modern risk assessment system and to expand the scope of auditing to include bigger public procurement transactions. This would allow internal audit and control to cover 60% of the value of all public procurement contracts at the contract implementation phase. Currently, it covers some 60% of the number of all contracts which account for about one-third of the total value.

- **Sanctions**

The applicability of criminal prosecution and deterrence of corruption in the public procurement sphere are somewhat limited. The reasons lie in the very nature of criminal law which is interested in behaviors that depend wholly or primarily on the ability to exercise conscious judgment and on the right of choice of the individual. Bribery is even more difficult to investigate, especially when it is indirect (through one or more intermediaries) or when it is paid within the framework of an organized group. As a result, **criminal abuse in the public procurement sphere in Bulgaria remains unpunished thus blocking all possibilities for deterrence**. The only possible outcome is the criminalization of conspiracy in the economy and the more persistent prosecution of money laundering.

The system of administrative sanctions laid down in detail in the existing *Law on Public Procurement* also deserves attention. Indeed, it explicitly provides for personal liability for the violations but the penalties are rather modest compared to the likely benefits of the corrupt action and can hardly be an effective barrier to corruption and abuse. For example, if the contracting authority unlawfully fragments the procurement in order to circumvent the requirements of the law or fails to observe statutory deadlines, the fine for the responsible official ranges from 200 to 1,000 levs; the penalty for technical specifications giving advantage to a specific bidder is up to 1,000; the penalty for allowing discrepancies between the bid and the contract is up to 3,000; and the penalty is

up to 5,000 levs when the contract is awarded without a procedure or a contract is altered (or the signed contract diverges substantially from the framework agreement). In reality, all kinds of violations are quite difficult to establish because the penalty for failure of a public official to keep the documentation is only up to 1,000 levs. If the contracting authority awards the contract directly to a corruptor and destroys the documentation in the case of negotiations or a competitive dialogue, it is very difficult to prove the fault and corruption. The failure to submit the documents to PIFCA controlling authorities is punished with a fine of 100 to 200 levs. It is appropriate for the sanctions to be expressed as a percentage of the value of the public procurement contract; otherwise they are regressive, i.e. they encourage violations of bigger contracts because the percentage of the penalty is smaller in the total value of the violation.

Strengthening of the Administrative Capacity

Corruption-proofing of public procurement mechanisms not only calls for legislative changes but also critically depends on the strengthening of the administrative capacity to enforce them. The answers to these challenges in the Bulgarian anticorruption agenda would hardly come from outside Bulgaria, although the tendency to wait for the adoption of the respective EU directives and regulations for some of them (e.g. appeal) is understandable.

Adjusting administrative practices to changes in the legislation takes some time. Due to the dynamic nature of the Bulgarian public procurement legislation over the period from 1999 to 2007, the contracting authorities did not always manage to adjust their work to the new legislative requirements. However, as more experience is gained in the public procurement sphere, the time needed for adjustment is shortened. The most important achievement is the established organizational culture to use public procurement as a tool of the respective policies.

Most public administrations and other contracting authorities have used the time after the adoption of the latest version of the *Law on Public Procurement* for their own institutional development and strengthening of the administrative capacity in the public procurement sphere. Specialized public procurement units have been set up either specifically for this purpose or for the performance of other administrative functions as well. This has produced a positive impact on the accumulation of experience and specialized knowledge in the field of public procurement.

The application of the LPP and the RASSPP in their latest versions leaves less room for circumvention. Parallel to the growing public intolerance to corruption, this reduces the opportunities for practicing the familiar forms of corruption and the introduction of new ones. In order for this trend to deepen, public procurement policies should develop along the following lines: adoption and implementation of ethical rules in the public procurement sphere; elaboration of public procurement strategies (policies) and corporate plans of each administration, which is a contracting authority, and strengthening of the administrative capacity

to work on international projects with partial or predominant external financing with a view to the access to the EU funds.

The introduction of **internal rules for ethical behavior of the employees in public procurement** is not yet widely discussed in Bulgaria. The *acquis* guarantees transparency and equal treatment of participants in public procurement procedures but everyday practices tend to deviate from these requirements, e.g. preferences are given to national participants or the applicable law is circumvented. It is codes of conduct that can reverse such negative trends and guide towards behavior conforming to the European and national public procurement legislation. Ethical rules should fill in the gaps in the Bulgarian public procurement legislation and help the proper understanding and interpretation of statutory provisions, as well as encourage their efficient application. **The codes of conduct rules could serve as a criterion to assess the quality of administrative work.** Their use for the purposes of the certification systems in the public administration could prove a powerful impetus not only to adopt them but also to implement them in the administrations' daily operations.

Last but not least, for the strengthening of the administrative capacity in public procurement it is very important that the Bulgarian government **gradually removes the channels for political influence in the contracting departments of public authorities** through the development of a transparent and merit-based appointment system and by making the medium-level management in these administrations more independent. This refers also to the appointment of public procurement commission and their rules of operation. Their members should be independent from the respective political cabinets. All these measures can be accompanied by the appointment of compliance monitoring officers who could supervise the enforcement of the legislation and the codes of conduct in close interaction with civil society organizations and the media. Such positions could be introduced in the inspectorates of the public sector contracting authorities but also at utility regulators.

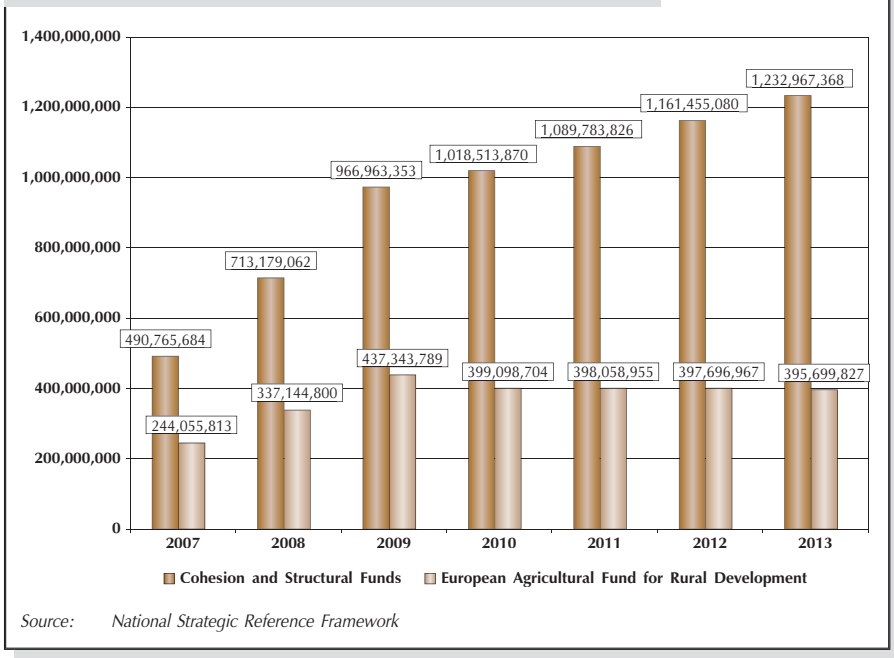
2.3. Transparency and Expected Impact of the Management of EU Funds in Bulgaria

The analysis of corruption in public procurement in Bulgaria generates justified concerns about the efficiency and transparency of the use of resources from the EU funds, which the Bulgarian government will distribute over the period 2007 – 2013. As early as 2007, the EU resources at the disposal of the Bulgarian government might reach 500 million to 1 billion levs, depending on the absorption capacity of the administration and the availability of co-financing for the projects from the national budget. These resources will increase by more than 600 million levs annually on the average over the period 2007 – 2009 *(Figure 26)*. The corruption risks related to such a quick and substantial increase of public finances are reinforced by several additional factors:

- The lack of capacity of the Bulgarian government to put together public policies has left it to the Bulgarian public administration to work out the specific measures, activities and projects within

the operational programs (the main programming documents for disbursing EU funds) for the management of the EU funds. The Bulgarian government has only adopted a most general vision on the national development over the period 2007 – 2013, which has not been complemented by specific policy guidelines. The vacuum between this broad vision and the specifics of individual actions and measures under the operational programs, i.e. the lack of clear and prioritized public policies, increases the **risks for the development of corrupt relations among politicians, the administration and businesses, for channeling EU resources to prearranged winners, and for the emergence of cartels in specific areas**. The lack of written public policies in the areas of EU funding implies that it is very difficult to judge whether the financing of a given activity is a response to a public need or it serves only specific vested interests. It has been widely announced in the Bulgarian media since the beginning of 2007 that there is preparedness to absorb 350 million levs from the EU funds over the period March – September 2007, without any clarity as to how such huge resources could pass through competitive tendering procedures, at the same time allowing sufficient time for applicants to prepare.

FIGURE 26. INDICATIVE ANNUAL ALLOCATION OF THE EU FUNDS FOR BULGARIA 2007 – 2013 (€)



Source: National Strategic Reference Framework

- The requirement for national co-financing of EU funding allocated to various policy areas means that the increase in public resources should be accompanied by either a substantial improvement of the administrative efficiency in the management of public resources or a strengthening of the administrative capacity *(Table 11)*. The gradual introduction of program budgeting since 2002 has created favorable conditions for better planning of the national budget resources, as well as for an objective assessment of the efficiency in the spending of public funds. It was for the first time in 2007 that all Bulgarian ministries prepared their programming budgets, which revealed the very low policy formulation capacity of the Bulgarian government: the programming budgets did not follow any specific policy priorities but instead compiled a set of measures suggested by the various ministry directorates without even attempting to integrate them into a consistent and logical whole. The spending of budget resources without any distinct organic linkage to an

officially adopted policy creates **opportunities for the development of clientele-type relations between individual directorates at the ministries and private organizations**. Therefore the good practice of program budgeting should continue, seeking opportunities to improve the capacity of ministries to formulate public policies and to reduce public spending on the basis of more efficient use of resources. According to the Country Assistance Strategy for Bulgaria of the World Bank over the period 2007 – 2009 and the latest review of the Agreement with the International Monetary Fund in 2006, there is room for substantial cuts in public finances, which could release human resources and financing, which for example could be used for preparing better projects for European financing.

- **Several Bulgarian executive agencies, which have been designated as managing authorities for EU funding, including the Central Finance and Contracting Unit, have not been accredited yet (end of March 2007) by the European Commission for decentralized management of EU resources,** i.e. they are not allowed to approve the disbursement of EU funds yet. Although there were similar delays in the countries of the previous wave of EU enlargement in 2004, they increase corruption risks as they shorten the span of time between the announcement of the tendering procedures and the deadlines for the implementation of the activities under the tenders. The delays generate deficits both in the capacity of the public administration to process the tender applications and on the side of the bidders who do not have the time to prepare adequately unless they have been tipped off in advance. Such delays bring about many opportunities for corruption and abuse. Indicative in this respect was the experience with the management of pre-accession funds in Bulgaria in 2006, when the calls to tender and subsequent short-listing of bidders were delayed by six to nine months. For example, in the very last days of December public tenders worth dozens of millions of euro were announced with implementation deadlines by the end of 2007. A further problem aggravating corruption risks in EU financing is **the lack of transparency in the relations between the Bulgarian public administration and the European Commission, including its Delegation/Representation in Bulgaria**. Thus pre-accession funds are allocated on the basis of non-transparent negotiations between two administrations – the Bulgarian and the European one which determine each step in the process of preparation and approval of the resources within the framework of the disbursement of EU funds. Both administrations are motivated to spend the resources in full in order to be able to defend their own budgets in the future. The delays in the spending of the resources[48] often results from the desire of either administration to assert its own

[48] *Report on the findings of the performance audit of the main stages in the preparation for EDIS in the implementation of PHARE and ISPA projects at the Ministry of Finance, the Ministry of the Environment and Water, the Ministry of the Economy and Energy, and the Ministry of Transport for the period from 1 January 2005 to 31 March 2006*, National Audit Office of the Republic of Bulgaria.

view, including the selection of specific projects and/or bidders, on their absorption. This structure of the incentives, coupled with **the lack of effective judicial oversight and redress of the activities of the two administrations, generates an exceptionally favorable environment for corruption**. In the course of time a specific institutional culture of intended miscommunication and irresponsibility has developed between the two administrations, which, unless adequate measures are undertaken, is a cause for serious concerns over the efficient use of EU funds in the period 2007 - 2013.

TABLE 11. INDICATIVE ALLOCATION OF THE AVERAGE ANNUAL NATIONAL AND EUROPEAN SPENDING BY SECTORS[49] (€ MILLION, 2006 PRICES)

Sectors	Average annual resources 2007-13 (plan)		Average annual resources 2004-2005 (actual)		Growth rate
	National + EU	National	National + EU	National	National + EU
Basic infrastructure	**657.9**	**365.1**	**463.0**	**320.1**	**134%**
Transport	223.5	148.4	156.0	134.1	143%
Telecommunications	14.3	9.1	21.7	21.7	66%
Energy	159.1	1.2	134.0	1.1	119%
Environment and water	205.8	153.8	137.0	119.0	151%
Health	55.2	52.5	44.5	44.2	124%
Human resources	**226.0**	**111.9**	**94.1**	**74.9**	**240%**
Education	101.6	60.9	45.5	39.8	223%
Training	104.2	43.1	37.8	31.4	276%
Research and technological development	20.1	4.8	10.8	3.8	186%
Productive environment	**396.3**	**183.0**	**137.0**	**129.7**	**289%**
Industry	100.2	15.5	2.9	1.4	3,455%
Services	263.2	162.0	132.0	127.7	200%
Tourism	32.9	5.4	2.8	0.5	1,175%
Others	**72.0**	**60.0**	**43.5**	**43.5**	**166%**
TOTAL	**1,352.2**	**720.1**	**768.0**	**568.3**	**176%**

Source: National Strategic Reference Framework

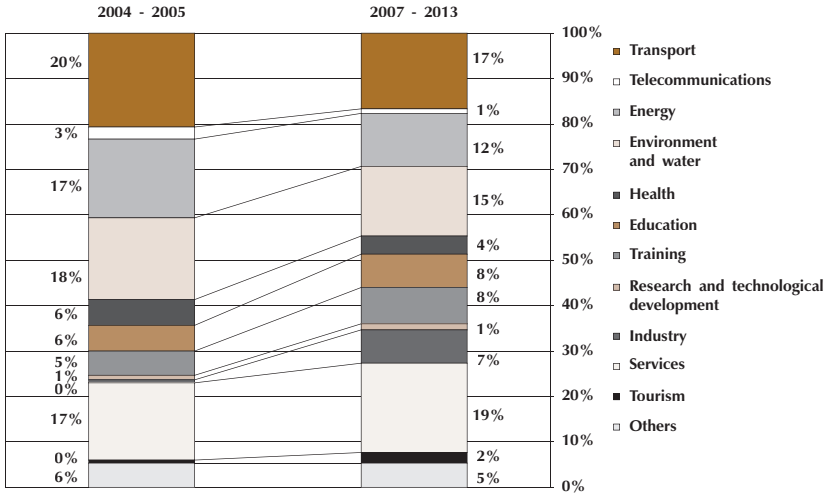
[49] *The National Strategic Reference Framework* adopted by the Council of Ministers on 21 December 2006 refers to these resources as "public or other equivalent expenditure for the Convergence of Regions objective".

- Bulgarian businesses and other eligible organizations have only limited capacity for absorption of EU funds[50]. The Bulgarian economy is already operating close to its potential (there is an obvious shortage of skilled personnel), and a number of international organizations, including the European Commission, have warned against overheating. This creates a credible threat that businesses and the economy as a whole can effectively absorb the planned increase in EU financing, which might lead to crowding out of private investment. **In such an environment it will be easy for corrupt political interests to siphon resources through shell companies or organizations specifically incorporated to absorb EU funds in Bulgaria**. Thus the EU funds could end up being used for setting up and maintaining elite cartels based on legal corruption, restricting the competitive access to resources for all other companies.

The analysis of the structure of the planned allocation of resources from the EU funds, as presented in the *National Strategic Reference Framework (NSRF)*, the main document guiding the disbursement of EU funding, reveals the existence of a multitude of corruption risks at the macro-level. The biggest average annual increase of spending of national and European public funds is envisaged for the production sphere, i.e. for direct impact on the private sector. For example, the average annual resources allocated for the industry will increase 34 times, and for the tourism 11 times. It is very likely, especially in tourism, one of the industries with the best profitability in the private sector, that **EU funding be used to replace commercially viable projects thus pushing out of the market commercially competitive but politically not connected companies**. This is particularly relevant to the initial stages of the allocation of EU funding, when the administrative capacity will be the weakest *(Figure 27)*. **The NSRF does not provide for any clear cut linkage between the planned allocation of resources and clearly formulated public policies.** Although this situation is similar to the one in the other new EU Member States, a more precise and policy-based allocation of the resources could reduce the opportunities for corruption and reinforce the positive effect of the resources spent. While it is understandable to seek maximum absorption of EU resources during the first year, even at the price of a higher corruption risk, it is necessary to gradually shift the thrust to the development and fine tuning of policies intended to channel resources into spheres with longer-term impact and rates of return, where businesses find it more difficult to invest, such as education, technological development, and innovation. At the same time, the experience with the management of the EU pre-accession funds in Bulgaria shows that the reduction of corruption risks in the absorption of EU funds calls for greater accountability and transparency in the relations between the national authorities and the European Commission, including its local Representation. It is important to put in place a reliable and independent system to monitor the attainment of the planned national targets for the management of the EU funds in close collaboration between the highest audit institutions of Bulgaria and the EU and the non-governmental sector.

[50] *Bulgarian SMEs and their Participation in the Structural Funds*, Ministry of the Economy and Energy, Vitosha Research, 2006. *Assessment of the capacity of non-governmental organizations and businesses to participate in the absorption of the EU Structural Funds and the Cohesion Fund*, UNDP, Bulgaria, 2006.

FIGURE 27. INDICATIVE CHANGE IN THE PRIORITIES OF THE BULGARIAN GOVERNMENT AS REFLECTED IN THE SHARE OF THE VARIOUS SECTORS IN THE AVERAGE ANNUAL FINANCING FROM NATIONAL AND EU FUNDS OVER THE PERIOD 2007 – 2013



Source: *USRF.*

Corruption risks within the EU funding instruments and mechanisms

Being the guardian of the EU Treaties and the key institution in the enforcement of the standards of the Union requires a high degree of transparency and accountability by the European Commission. By implication, this applies to its Delegations and Representations in member and candidate countries, in particular in instances where these are instrumental in monitoring the compliance with EU's good governance standards. To this end, it is important that the image of these institutions is impeccable.

Still, there is a concern among Bulgarian civil society that the EC Delegation/Representation in Sofia might have failed in a number of occasions to achieve the standards of transparency it advises Bulgarian institutions should live up to.

Unresolved corruption allegations. In 2005 the Chairman of Transparency International - Bulgaria accused the officer in charge of civil society at the EU Delegation, of corruption and clientelism in relation to the management of the Phare Civil Society Program. Documents disclosed by the media showed how expert evaluations of project proposals had been manipulated to ensure the awarding of the contract to the "right" candidate. This case provided strong evidence that the grants to the civil society organizations in Bulgaria might have not been allocated through a competitive bidding but seemed rather a result of a compromise between decision-makers in the EU Delegation and in the Bulgarian Ministry of Finance, each of them defending their own clientele.

As a result of the public scandal ACCESS Foundation, a leading Bulgarian anti-corruption outfit, surveyed 250 Bulgarian civil society organizations who had been awarded Phare grants. One third of the respondents admitted that the selection procedures under the Phare Civil Society Program "lacked any transparency". Despite these allegations, no action to clean the image of the Delegation had been taken thus far.

Lack of adequate oversight mechanisms. A serious deficiency of many programs funded by the EU in Bulgaria favorable for corruption was the lack of adequate oversight. On the one hand, according to the applicable EU rules and procedures if the contracting authority was a national institution any appeal for errors or irregularities was subject to the beneficiary country's national legislation. On the other hand, the relevant Bulgarian legislation and related case law excluded any funding from international organizations, including the EU, from any domestic supervision, including judicial control.

Conflict of interest risks. In the second half of 2006, the European Commission's Directorate-General for Enlargement carried out an Extended Decentralised Implementation System audit of the of procedures and structures related to the implementation of all the National Programs in Bulgaria. Subject to audit were the Implementing Agencies for the EU assistance programs.

Among the initial findings of the auditors was a potential conflict of interest in the appointment of the Head of the Financial Unit of the Central Finance and Contracts Unit (CFCU) at the Ministry of Finance. Apparently, a former employee of a Greek consultancy firm was appointed Head of Unit of the CFCU three weeks after leaving the firm. This happened at a time of evaluation of a tender in which the consultancy was among the bidders. Two months after this appointment, the consultancy - Planet SA – was awarded the contract.

In a letter (dated November 30, 2006, the date of award of the contract) quoted in the auditors' report[51] the Delegation of the European Commission denies the existence of any conflict of interest in this case, contrary to the findings of the Commission's auditors. Particularly worrying in this case is that even EU institutions (in this case the then Delegation of the European Commission), which the public expects to be the guardian of the integrity of the spending of EU funds in Bulgaria, failed to act.

[51] *Final Audit Report on the Request by the Republic of Bulgaria for the Conferral of Management of Aid Under Extended Decentralisation,* Brussels, 19 January 2007, p.50

3. STATE INSTITUTIONS IN THE FIGHT AGAINST CORRUPTION

In 2006, the institutions of the state focused primarily on fulfilling the urgent requirements for Bulgaria's accession to the EU. One persisting challenge of Bulgaria's membership of the Union was, among others, the attainment of specific results in preventing and combating corruption. All the three branches of power had to live up to serious commitments in that respect, including the promise to achieve genuine interplay among the anticorruption units existing inside each of those branches.

3.1. The Legislature

An assessment of the efficiency of the 40th National Assembly in terms of preventing and combating corruption should comprise the way in which the parliament's fundamental function, viz. lawmaking, is fulfilled as well as the operation of some specialized parliamentary mechanisms, such as the standing and ad hoc committees, and the institutions elected by the parliament and vested with supervisory and monitoring functions.

3.1.1. Anti-Corruption Legislation and Lawmaking

- In 2006 the *Law on Political Parties* was amended to take on board the recommendations of the European Commission to Bulgaria formulated in the Commission's Monitoring Report of 16 May 2006, and to meet the public expectations for wider transparency and control of political parties' funding.

The newly-introduced requirement for members of the governing and supervisory bodies of political parties, and for the representatives of such parties, to disclose their property, income and expenditure, both within the country and abroad, following the procedure set out in the *Law on Property Disclosure by Persons Occupying Senior Positions in the State* (article 30(3) of the *Law on Political Parties*) can certainly be evaluated as a positive step. This requirement, however, does not apply to political parties which do not receive government subsidies. Those parties, albeit not represented in parliament, may have power in the local governments and this in itself requires that their income and assets be disclosed (article 30(4) of the *Law on Political Parties*).

A number of changes have been made relative to the property and funding of political parties. Thus, a political party's own income may now also include yield from securities; the previous restrictions on the level

of donations that may originate from the same natural or legal person have been dropped off and the amount of government funding available to political parties has gone up. Allowing political parties to earn income from securities, however, runs the risk of making the avoidance of the prohibition on business operations easier. It could also prompt businesses to find new ways of influencing political parties.

A noteworthy sign of progress is the newly-introduced ban on political parties to receive funds from the following persons or entities:

– commercial companies with over 5 % of government or municipal interest or related persons from companies where the state has shares providing for special rights, as well as from state-owned or municipal enterprises, and

– bidders and participants in a public procurement procedure which has not been closed, where the deadline for appeals under the *Law on Public Procurement* has not expired; the same prohibition applies to any contractor under a public procurement contract as well as to the legal entities involved in privatization procedures.

Under the rules, the necessary publicity should be achieved via the website of the National Audit Office (hereinafter NAO) and information disclosed should cover the donors as well as the type and level of donations made. Likewise, an obligation has been introduced for political parties to file with the NAO a list of the natural and legal persons having made donations, the level or value and the purpose of such donations, plus a separate list of the not-for-profit legal persons acting as donors if a member of a governing or supervisory body of a political party or their children or spouses are founders and/or members of the governing or supervisory body of that legal person. The financial reports of political parties receiving government funding should be forwarded to the National Revenue Agency (hereinafter NRA) which should audit them in conformity with the *Tax and Social Security Procedure Code*. Political parties having failed to file their statements should be audited as well. At the same time, although the financial statements are to be filed with the NAO, which should audit and publish them in its bulletin and on the internet, the NAO has not had the practice of verifying the accuracy and comprehensiveness of the financial documentation it is provided with. Only the files that are affected by formal irregularities make their way to the NRA. Moreover, it is impossible to cross-check the source of funding if the political party has *prima facie* fulfilled its obligation to draw up a financial report which appears to be impeccable at first glance.

In order to encourage more substantial progress in the practice of funding political parties and to enhance public trust in that process, control over the implementation of the legal framework has to be strengthened and the framework itself should be further developed along the following lines:

– some existing sources of political party funding should be legalized and some of the existing legislative restrictions should be removed;

– the potential diversity of the forms of funding should be taken into account, including the different forms of contributions made by third parties (basically legal entities), e.g. transport services, provision of halls and offices, printing services, access to digital media, outdoor advertising, etc. If these are explicitly mentioned in the law and are regarded as lawful donations, the effects would be positive indeed, provided that such donations are tied to matching - and reasonable - taxation rules. That would also facilitate the traceability of the funds in the context of other statutory requirements, such as the prohibition on political parties to obtain funding from foreign governments or from foreign legal persons;

– cash payments should be restricted and brought down to the possible minimum.

- After several years of legalistic and political obstructions, on 24 March 2006 the National Assembly passed the *Law on the Commercial Register*. Its entry into force (1 July 2007) is expected to dramatically suppress any corruption-related pressures as regards company registration. In the meantime, a veto imposed by the President of the Republic has been overcome. The entry into force of the law would mark the beginning of a radical reform in company registration in this country, as the court-based incorporation of companies will be replaced by an administrative system of company registration whose core will be the Central Electronic Commercial Register to be kept by the Registry Agency with the Minister of Justice. The issuance of secondary legislation on the collection, storage of and access to information in the commercial register, complements the legal framework designed to bring forth a modern, reliable, easily accessible, efficient, swift, and corruption-proof system of company registration. That would enable the implementation of European standards and of the best practices existing in Europe and the world over. In addition, district courts would be relieved from the burden of processing company registration files. Although an essentially administrative task, company registration files stand for more than half of the average number of cases resolved by district court judges. A mighty resource would thus be freed as many highly-qualified judges would be able to concentrate on the administration of justice alone.

Advantages of the Central Electronic Commercial Register

- Quick registration that will take place virtually instantaneously
- Simplified registration procedures
- Much safer registration procedure
- Reliability of the information involved

- Transparency and publicity of the register and free access thereto and to the information it contains
- Avoiding the duplication of information and consolidating all the existing registers into a single nation-wide register
- Lower costs and expenses of the parties concerned
- Possibilities for a future merger with other central electronic registers and bringing any registered particulars relative to persons or estates in an Electronic Registries Center

The advantages of the Central Electronic Commercial Register would alleviate the burden on Bulgarian businesses and foreign investors and curb substantially the corruption associated with court-based company registration. Nonetheless, the feedback from various institutions, including the courts, remains ambiguous. The criticism ranges from genuine fears of a possible chaos during the transfer of the registers from the old place to the new one up to the sheer reluctance of some persons to lose the opportunities for additional "facilitation" payments. Hence, there are some important conditions for the reform to succeed: it is indispensable to have adequate support on the part of the state and the business community, to speed up the finalization of the legislative and technological setup and the procurement of equipment, and to provide for the necessary staff and for the training of the officials responsible for the registration. In fact, the delayed drafting of secondary legislation and the lacking technical preparedness to do the job (irrespective of the tendering procedures held and the funding allocated by the EU whose purposes and results have not been directly related to the overall concept of the reform) might not only slow down but even undermine the reform from the outset.

Technological basis of the registration reform

In December 2004, the Ministry of Justice held a tendering procedure for the computerization of the judiciary under the EU PHARE Program. Greek bidder Intracom whose bid amounted to EUR 900,000 was selected as the contractor for Lot 3 – Development and Implementation of a Unified Register System that should bring together the current registers of pledges and the commercial register. As of April 2006, however, despite the fact that the system covered by the tender has been introduced in all district courts, except for that in Burgas, it actually operates only in the district courts of Pazardzhik and Sofia, and at the Central Register of Not-for-Profit Public Benefit Legal Entities kept by the Minister of Justice.

Source: Bulgaria's position paper (21 April 2006) on the European Commission's monitoring report.

- The enactment of new procedural laws, viz. the *Administrative Procedure Code* (hereinafter APC), the *Criminal Procedure Code* (hereinafter CPC), and the drafting of the future *Code of Civil Procedure* (hereinafter CCP) have been aimed to accelerate the administration of justice and improve its efficiency, in parallel to lowering the level of corruption in general and within the judiciary.

  – The newly-adopted *Administrative Procedure Code* (in force as from 12 July 2006, except for its part on court proceedings, which is in force as from 1 March 2007) is the first thorough instrument designed to codify administrative proceedings in Bulgaria. It provides for the deployment of a comprehensive system of regional administrative courts and has introduced a possibility to streamline the case law of the courts through everyone's power to seek from the Supreme Administrative Court an interpretative decision on any matter that has turned out to be resolved inconsistently by different courts. This possibility is a crucial vehicle to guarantee the stability and impartiality of justice as such interpretative decisions are binding on the courts. Moreover, the existing case law of the Supreme Administrative Court itself is inconsistent. The reasons for this situation may be attributed to the varying levels of professionalism the different judges have, as well as to their possible involvement in corruption schemes.

    At the same time, the APC has failed to proclaim an important principle - that of implied consent, which would have substantially reduced the number of administrative cases. Instead, the code reiterates the major principle of administrative penalties which are to be imposed by the Minister of State Administration and Administrative Reform. The solution of having 28 regional administrative courts is equally inconsistent with the need for providing access to justice in administrative cases (such access could be ensured even if the regional administrative courts were fewer) and is rather the incarnation of personal ambitions cherished by some Members of Parliament and a few other players. The regional administrative courts are expected to assume responsibility for the majority of cases, including the appeals against acts signed by ministers, thus alleviating the workload of the Supreme Administrative Court. The jurisdiction of those courts should also cover disputes relative to concessions and tendering procedures. Such disputes are currently handled at first instance by the Commission for Protection of Competition. The Commission apparently lacks the capacity for this task which, moreover, brings it closer to special jurisdictions prohibited by the *Constitution*. The decisions of the Commission for Protection of Competition may be appealed against before a three-member panel of the Supreme Administrative Court. Under the fully-fledged system of justice in administrative cases to be established, it would be a **legal and factual absurdity for those disputes to remain within the competence of a centralized out of court regulatory body such as the Commission for Protection of Competition.**

In addition, the requests to repeal different provisions and regulations issued by the executive bodies will henceforth be dealt with at two instances. Administrative justice is an instrument of paramount importance and its anti-corruption potential should be strong enough to ward off the temptations to have some corruption schemes legitimized by way of involving the justice system therein.

– April 2006 saw the entry into force of the CPC (in force as from 29 April 2006) which had been passed hastily and non-transparently, and has been seriously challenged already before it had taken effect. The enforcement of the CPC after its effective date has brought to light problems which have already triggered discussions and proposals to amend the text - extremely short deadlines for investigation; transferring almost all the investigations to the police without ensuring adequate staffing and level of professionalism; lack of clarity as to the institute of the supervising prosecutor, to mention but a few.

– The Draft *Code of Civil Procedure* has been adopted at first reading. Leaving aside the debate about whether the adoption of a new code is a must, or the effects pursued could rather be achieved by amending the existing code, the new procedural rules generate many expectations for positive changes in the realm of civil litigation, in particular that the process would speed up and improve, while those involved would find it more difficult to behave corruptly. The following solutions featuring in the draft could be singled out: focusing the procedural efforts on the first instance thus ensuring swift and exhaustive first-instance proceedings; review of court judgments by means of limited appeals or restricting the admissibility of new facts and evidence before the court of appeal (the court of appeal should only admit new evidence where the requesting party invokes new facts); and cassation appeals based on the preliminary selection of admissible cases, with the necessary prerequisites for the swift progress of the review proceedings, etc. All this is expected to curtail the excessive workload of the Supreme Court of Cassation so that it would be able to focus on interpretation - a *sine qua non* if court case law is to be uniform across the country. The enactment of the CCP would also boost the reform of the enforcement of claims whose institutional debut was the enactment and entry into force of the *Law on Private Enforcement Agents* back in 2005 (in force as from 1 September 2005).

3.1.2. Conflicts of Interest and Corruption

As to the **legal framework concerning the restrictions to carry out specific activities (incompatibilities) and the conflicts of interest**, clear-cut positive developments are only found in few specific spheres:

- The *Law on Amending and Supplementing the Law on Administration* (in force as from 25 March 2006) seeks to prevent conflicts of interest in two ways:

  – By **introducing incompatibilities for single-member bodies of the executive, members of collegiate bodies, district governors and their deputies** (article 19(6) of the *Law on Administration*). The progress here is serious and noteworthy as this is the first time that general rules of primary legislation have been enacted to affect the highest political levels of the administration (so far, this area has been covered by various special laws). Unfortunately, the **incompatibilities are confined exclusively to doing business and participation in a company's supervisory, governing and controlling bodies** (except for those with state or municipal interests). No restrictions exist on work under service contracts in return for honoraria. Similarly, **there is no clear-cut legislative mechanism for the mandatory divestiture of powers** where a person holding any of the above-listed positions proves to have engaged in an incompatible arrangement (see article 19a(2) of the *Law on Administration*).

  – By **setting up an Inspectorate General within the administration of the Council of Ministers** (article 46a of the *Law on Administration*). The Inspectorate General is directly subordinate to the Prime Minister and acts as a Secretariat of the Commission for Prevention and Countering of Corruption with the Council of Ministers. The key emphasis in the Inspectorate General's work is to examine reports of conflicts of interest or other breaches of official duty, as well as any received reports of corruption affecting an executive body or a civil servant with managerial functions. While the aspiration to have the fight against corruption and the conflicts of interest institutionalized at the highest level of the executive should be supported, the staffing of the Inspectorate General – only six individuals on the payroll – **fails to provide genuine guarantees** that this structure would have the administrative capacity required for its efficiency (Annex 3 to article 88(2) of the Organizational Rules of the Council of Ministers and Its Administration).

- The recently adopted *Administrative Procedure Code* enshrines a number of basic elements of relevance to the conflicts of interest:

  – **Provisions on the principle of impartiality.** To ensure the implementation of that principle, article 10(2) of the APC prevents from participating in the proceedings any official who has a vested interest in their outcome or is related to an interested party in a way that may spark off well-founded doubts of his or her impartiality.

– **General rules on recusation** (article 33 of the APC). Wherever a ground for recusation exists, the removal of an official from participation in the proceedings should be done either of that official's own motion or at the request of a participant in the proceedings. Recusation should be invoked immediately upon the requesting party's becoming aware of the ground for such reclusion and should be decided on by the immediate superior.

– **Court proceedings to establish conflict of interest** (Chapter Fifteen, Section I of the APC). It should be underscored that for the first time now anyone whose rights and lawful interests have been affected may request that a judge at the respective administrative court declare the existence of conflicting interests. Rather unreasonably, **the scope of this proceeding is confined** to the conflicts of interest affecting civil servants (article 251(2) of the APC). Thus, **the cases of conflicts of interest affecting the political levels of the administration** – government ministers and executives, their deputies and the members of political cabinets – remain beyond the purview of the rule. **The binding nature of the court's finding** of a conflict of interests **does not readily transpire** either: under article 253(1) of the APC, the court shall "notify the competent authority so that the necessary steps could be undertaken". These two drawbacks would certainly detract from the purported effectiveness of the proceedings in question.

Conflict of Interests Defined

Paragraph 43 of the Transitional and Final Provisions of the APC inserted a new paragraph 4 in article 29a of the *Law on Civil Servants* (hereinafter LCS). Although the text is not located among the additional provisions of the law, where it belongs, in essence it is a legal definition of the concept of conflict of interest. The language mirrors an utterly casuistic approach which is not typical for such definitions. Thus, according to article 13 of *Recommendation No. R (2000) 10 of the Committee of Ministers to the Member States on codes of conduct for public officials* "Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties." Similar definitions exist in the legislations of Portugal, Lithuania, Latvia, Russia and other countries. Under the Bulgarian provision, in order for a conflict of interest to occur, two conditions should be present simultaneously:

- a civil servant, or a person related to a civil servant, should have not terminated, or should have acquired after their appointment, the capacity of a sole trader, partner, procurator, member of a governing or supervisory body of a commercial company;

- that commercial company/sole trader should carry out transactions or bid for or perform a public procurement contract as a contractor with the legal entity with whose manager the civil servant has a civil service relationship.

The first condition refers to one sole scenario involving a civil servant's personal/private interests, namely the business sphere. **Thus, matrimonial and next-of-kin relationships, political influences or the holding of other positions in government are actually excluded as possible reasons for conflicts of interest.** The second condition narrows down unreasonably the possible scope of conflicts of interest, i.e. they may only arise in respect of bidding for, entering into and/or performing public procurement contracts. **This leaves out some extremely important areas which represent a higher risk in terms of conflicts of interest and, hence, corruption, e.g. the granting of concessions, licensing, registration and authorization schemes, or the selection and recruitment of those working in the administration.**

Overall, the scope of the concept of conflicts of interest defined in article 29a(4) is inconsistent with the tools embedded in the CSA for the management of such conflicts, e.g. the provisions on the incompatibilities applicable to civil servants which should bar potential conflicts of interest (article 7(2) of the CSA), and on recusation in the event of an occasional conflict (article 29a(2) of the CSA), which are much wider. As this definition would play a major part in the proceedings evolving from requests to declare conflicting interests (article 250 of the APC), such a narrow vision would certainly not contribute to identifying the genuine conflicts, widely varied as they are in real life, as it fails to provide for reliable tests for their detection.

As regards Members of Parliament, there are still no adequate legal rules on avoiding conflicts of interest. Even patent situations of incompatibility and conflicts of interest alone are sufficiently scandalous to undermine the reputation of the nation's supreme representative body. The negative and demoralizing effects of such parliamentary coziness, the lack of guarantees for impartiality and objectivity also spill over to other state institutions, and to the whole society. First, because the Members of Parliament pass the country's legislation; second, as they elect the leaders and, at times, also the members of many other state institutions; and, third, as unlike the anonymous civil servants, the MPs are well-known and may only find shelter behind their own untouchability.

A Parliamentary Ethics Committee was set up for the first time in the 40th National Assembly with the key task to put in place ethical rules of conduct and measures for their observance. It was made the lead committee for the *Draft Law on the Ethical Norms in the Work of Members of Parliament* presented to parliament in April 2006 but that draft has not even made it to first reading yet. Currently, there are only a few isolated rules in effect which have a restricted scope and are scattered among different pieces of legislation, i.e. articles 101-103 of the *Rules of Organization and Activity of the National Assembly* and article 8 of the *Annex to the Financial Rules on the Budget of the National Assembly*. These provisions are far from exhaustive and are not worded in an accurate and specific language. Thus,

article 101 of the *Rules of Organization and Activity of the National Assembly* fails to proclaim any restriction on the amount of additional remuneration (honoraria) received under service contracts (regulated by civil law), nor any prohibition on that remuneration becoming the primary source of income for an MP. By the same token, no attention is given to the possible conflict of interests between the work of an MP and the civil-law relationships in which he or she might be involved. The rule on gifts contains no deadline and fails to define the total value of the gifts that an MP might be permitted to accept.

The provision of the *Law on Property Disclosure by Persons Occupying Senior Positions in the State* is equally broad – as representatives of different institutions file statements with the public registry – and fails to reflect the nature or the specificity of the different positions, nor does it deal with the business contacts of those people and the potential conflicts of interest there.

As regards the Members of Parliament, it is urgent to enact specific and detailed rules which echo the exceptional responsibility vested in them by virtue of their position as well as existing European standards applicable to Members of Parliament.

- **Rules of conduct around the world.** In the **United States**, both chambers of Congress – the Senate and the House of Representatives – developed their Codes of Official Conduct as early as the beginning of the 1960s and these, with minor changes, are still in effect today. Ever since, every member of the Senate or the House, before taking office, swears an oath to abide not only by the Constitution but also by the rules of parliamentary ethics. The committees on standards of official conduct are set up on the basis of parity and have unfettered powers to inquire into and check the deeds of every single member of Congress who has allegedly failed to comply with the standards enshrined in the codes of conduct.

  The codes themselves are based on the premise that a public office is a public trust, which is the most important condition for Congress to function effectively. Quite like the *International Code of Conduct*, the US instruments contain rules on the prevention of conflicts of interest, members' financial disclosure, the gifts that members and their families are entitled to accept. Besides, however, they also introduce a number of rules on campaign finance, the use of congressional resources, foreign trips, constituent casework, and the relationships with the executive bodies and agencies. As a result, in a country known for its traditional skepticism of written laws a solid body of formal standards has evolved and exists, and any violation may entail exceedingly negative consequences, including the disqualification of a member of Congress.

  In the early 1980s similar ethics codes were adopted in **Canada, Australia** and a number of other countries, whereas the **United Kingdom** followed suit by first adopting a *Code of Conduct*

applicable to both houses (in 1995) and later on replacing it by separate codes for the House of Commons (approved in July 2005) and the House of Lords (adopted in July 2001). These rules made it incumbent for the first time upon Members of Parliament to abide by, *inter alia*, certain principles of behavior, such as selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Further, that was the first time that attention was given to the reasoning applied by Members of Parliament when pursuing legislative initiatives and addressing questions and queries to Cabinet members.

The first *Code of Conduct* adopted by the UK Parliament has influenced **many European states** which opted to incorporate some of its solutions in the rules of procedure of their own parliaments or to adopt their own ethics codes. In either case, these instruments have the effect of laws and may only be amended following a special procedure set out for that purpose rather than upon the expiry of the respective parliament's term.

Resolution 51/59 of 1996 of the **United Nations General Assembly** was used to adopt an *International Code of Conduct for Public Officials*. It urged all Member States to enhance accountability and transparency in governance, inter alia by introducing codes of conduct for public officials at different levels. The *International Code of Conduct* proclaims the following principles: prevalence of public interests over any private or political interest in any situation; a public office is a position of trust and the breach of trust undermines the reputation of the entire institution rather than that of the particular individual; public duties must be performed efficiently, effectively and impartially while equally observing the letter of the law and its spirit; the power, authority or information vested in or available to public officials may at no times be abused. As regards the implementation of these principles, the UN *International Code of Conduct* prescribes a system of rules to avoid conflicts of interest, to ensure financial disclosures by public officials, to regulate the acceptance of gifts and the use of official information. Under the influence of that resolution, a number of countries have adopted rules in the same vein over the past decade, both for their Members of Parliament and for government officials.

- **Rules of conduct in the European Union.** The **European Commission** adopted a *Code of Good Administrative Behaviour* in order to guarantee the independence of its members, to regulate their supplementary activities and also to reinstate its image after the events in 1997 when the whole Commission was forced to resign on allegations of corruption. The code attaches particular importance to the financial disclosures by Commissioners and to the regulation of Commissioners' relationships with businesses and NGOs. Following suit, the European Parliament amended its Rules of Procedure to include a chapter on *Members' financial interests, standards of conduct and access to Parliament* which has similar provisions.

The adoption of a series of new and important laws in the course of the past year or two has displayed a few persisting deficiencies of the lawmaking process which are responsible for the poor quality of the legislative texts passed and not infrequently are conducive to the penetration of improper group or other interests. Therefore, in addition to the efforts to improve legislative drafting and to make lawmaking more transparent, rules are needed on the conduct of Members of Parliament so as to protect public interests and place them above anything else and to ensure their prevalence over the private interests of members of the legislature.

3.1.3. Parliamentary Anti-Corruption Committee

The Standing Anti-Corruption Committee of the 40th National Assembly has affirmed itself as the most pro-active anti-corruption parliamentary committee to date. Within the ambit of its powers, the Committee has been operating along three main lines: **legislative amendments; parliamentary control;** and **inquiries into specific reports and allegations of corruption.**

The Committee has examined the submitted proposals to amend eight laws relevant to areas prone to intense corruption risks, such as privatization and post-privatization control, state and municipal property, VAT, public procurement, etc. Other than that, the Committee's agenda has been adjusted to include other proposed amendments bearing on the financing of political parties, lobbying, the restriction on cash payments, the ratification of the *United Nations Convention against Corruption*, etc.

In terms of its function of exerting parliamentary control, the Committee took stock of the developments in important areas which it deemed to be exposed to corruption and in need of legislative changes. Some of the major fields in respect of which the committee exercised its control powers referred to: VAT-related corruption schemes and frauds; problems of privatization and post-privatization control; pricing and other problems in the marketing of medicinal drugs and substances; flawed case law of the State Commission for Gambling; corruption-fuelling conditions embedded in the EU-funds allocation procedures; improper exchanges of state-owned agricultural lands and forests in return for private land; corruption environment at the State Reserve and Wartime Reserve Agency; operation of the customs authorities and corruption activities of customs officers; implementation of the National Anti-Drug Strategy 2003-2008 and its Action Plan, etc.

Decision No. 23

The Anti-Corruption Committee, in its meeting held on 13 April 2006, has made the following

Decision

1. As to the examination of a report alleging violations at the National Border Police Service:

   1.1. It determines that the National Border Police Service has created conditions conducive to corruption activities, as a result of its failure to introduce measures for well-regulated accounting for state duty stamps within its units.

   1.2. It determines that the penalties imposed on officials fail to match the violations committed and insists that the Minister of Interior undertake the requisite steps.

   1.3. It insists that the management of the National Border Police Service should regulate not only the passport and visa controls applicable to Turkish citizens but also those applicable to any other foreign citizens in order to eradicate any conditions for corruption acts.

   1.4. It shall provide the materials associated with the reported violations at the National Border Police Service to the Prosecutor General.

2. ...

Source: Report of the Anti-Corruption Committee adopted unanimously at the Committee's meeting of 24 August 2006 by Decision No. 36, presented to the National Assembly on 1 September 2006 and adopted at the Plenary Sitting of 28 September 2006.

- When examining specific reports and allegations, the committee determines itself the procedure to be followed. Reports raising issues of general validity are discussed at committee meetings whereas those affecting specific individuals are threshed out at expert level. In 2006, the Anti-Corruption Committee examined 690 reports of alleged corruption; public meetings were held and specific decisions were taken in 15 high-profile cases. In addition, the Committee made inquires of its own motion into facts and corruption-related stories released in the mass media or reported by the National Audit Office. The Committee also set up seven temporary offices for receiving alerts from citizens: five on general issues (two in Sofia plus one each in Dobrich, Blagoevgrad, and Ruse) and two thematic (VAT-related corruption schemes and VAT draining, and issues of medicinal drugs policy).

The Parliamentary Anti-Corruption Committee has reinforced its cooperation with the civil society. The **Civic Advisory Board** created with the committee and bringing together representatives of lead NGOs involved in the fight against corruption has continued to actively contribute to committee's proceedings on different topics, e.g. lobbying, marketing of medicinal drugs, reducing the use of cash payments, VAT-related frauds and VAT draining, abuses accompanying the absorption of EU funds, etc.

The Civic Advisory Board initiated the establishment of a **mechanism to coordinate the operation of the three major anti-corruption bodies in the country** which function within the legislature, the executive, and the judiciary. Further to the consultations performed, a set of rules was developed[52] which, when officially signed on 9 June 2006, became the basis for uniting the efforts of the three bodies and might contribute to the avoidance of duplication of activities and functions and to the achievement of concrete results.

3.1.4. The Ombudsman of the Republic of Bulgaria

The ombudsman institution, conceived as an additional mechanism for the protection of human rights and a guarantee for good administrative service delivery and countering of corruption, has existed in Bulgaria since recently. The lengthy debate about its pros and cons delayed the passage of the relevant law for years, the drawbacks of the legislation and the prevalence of political bargaining delayed the timely election and constitution of the institution, and the lack of commitment on behalf of the executive to provide for appropriate working conditions for Bulgaria's first ombudsman hindered the timely launch of his operations.

Despite all challenges and delays, as of early 2006 the ombudsman has been making ever more tangible contributions to the efforts to protect human rights and to combat corruption. The following facts merit particular attention:

- The ombudsman established cooperation with the Parliamentary Anti-Corruption Committee based on a Memorandum of Understanding between the Ombudsman and the Committee signed on 16 February 2006. The interplay between the two institutions has materialized in a number of important ways, e.g.:
  - exchanging information on corruption-proofing of existing legislation and proposing the indispensable adjustments;
  - cooperating in the examination of individual instances of corruption;

[52] *Rules on the coordination and interaction, in the context of anti-corruption activities in the Republic of Bulgaria, among the Anti-Corruption Committee at the Fortieth National Assembly, the Council of Ministers' Commission for Prevention and Countering of Corruption, and the Anti-Corruption Commission at the Supreme Judicial Council*

- proposals from the ombudsman to place certain draft laws, including anti-corruption ones, on the Committee's agenda;

- participation by the ombudsman in Committee discussions on various draft laws;

- joint anti-corruption initiatives with the civil society.

- The ombudsman has also cooperated with the government Commission for Prevention and Countering of Corruption. The ombudsman was added to the institutions responsible for the implementation of the *Strategy for Transparent Governance, Prevention and Countering of Corruption 2006-2008*. He is equally involved in the pursuit of the following measures:

  - developing several draft laws of anti-corruption relevance, such as the laws on lobbying, on the declassification of the State Security files, on the energy supply, etc.;

  - assessing the implementation of the *Concept Paper on Enhancing Administrative Service Delivery based on the One-Stop Shop Principle*;

  - developing internal administrative procedures to provide assistance and encourage compliance with the recommendations of the national ombudsman;

  - preparatory steps for devising a mechanism of interaction between the national ombudsman and the local public mediators with a view to preventing and countering corruption.

The ombudsman has also actively supported the establishment of good governance in agriculture, an area where corruption practices have abounded. In that respect, the Memorandum of Understanding between the Ombudsman and the Ministry of Agriculture and Forestry has paved the way to joint endeavors by both institutions, e.g. joint review of the legal framework and of the legal and administrative procedures applicable to restitution and the ownership of land, as well as joint examination of individual complaints of maladministration and corruption.

Once the third amendment to the *Constitution* empowered the ombudsman to refer matters to the Constitutional Court, he actively availed of this new power between the end of 2006 and early 2007. Complaints have already been submitted to the Constitutional Court concerning the alleged unconstitutionality of several legislative acts which seem to violate important individual rights and might invigorate abuse or corruption. The following are particularly worth mentioning:

- The complaint against the right of heating supply companies to collect money owed by their customers only based on statements of amounts due (right enshrined in article 154(1) of the *Law on Energy*). The problem here is that the consumers have no legal

possibility whatsoever to claim damages against the heating supply companies on any extra-judicial ground, let alone statements of amounts owed or paid. It is the ombudsman's view that any heating supply provider is placed in a more advantageous position than any customer. This violates article 56(1) of the *Constitution* as heating supply providers are in a privileged position compared to their customers. The 7-day deadline in which consumers may challenge a bill before the court is not a genuine remedy as the invoice contains no evidence of whether or not the heating whose payment is sought was actually supplied; whether or not the methodology of calculating the amount was properly applied; whether or not the distribution of expenses amongst different consumers in the same building was fair enough, to mention just a few problems. The ombudsman believes that article 154(1) of the *Law on Energy* also runs counter to EC competition rules as the companies which provide heating supply services are placed in a more beneficial position than the companies engaged in any other business. The disputed rule also infringes article 19(2) of the *Constitution* which purports to ensure a level playing field for all businesses and to prevent monopolistic abuse. Based on the complaint by the ombudsman, the Constitutional Court opened Constitutional Case No. 10 of 2006.

- A complaint to declare the unconstitutionality of articles 143(4) and 186(1) of the *Administrative Procedure Code*. The provisions in question deprive the majority of citizens of any possibility to challenge before the Supreme Administrative Court instruments of secondary legislation, regulations and ordinances, and reserve that right only for concerned or affected parties. The ombudsman has invoked the inconsistency of the said provisions with article 4(1) of the *Constitution* which proclaims the principle of the rule of law by stating that governance shall be based on the accurate compliance with the *Constitution* and the laws. The ombudsman invokes arguments to the effect that the contested provisions are inconsistent with the fundamental right of defense proclaimed by article 56 of the 1991 *Constitution of the Republic of Bulgaria* and with the right of every citizen and legal entity to appeal against administrative acts, as enshrined in article 120(2) of the *Constitution*. According to human rights lawyers the disputed amendment restricts the constitutional right of citizens and introduces procedural censorship plus a solvency test. Moreover, the people whose appeals are dismissed will be paying the costs of the proceedings incurred by the government, including attorneys' fees. A constitutional case was instituted based on that application and the latter has been admitted for consideration on the merits.

- The ombudsman challenged a text of the *Law on Value Added Tax* (in force as from 1 January 2007) according to which VAT shall be charged on income earned by representatives of the professions, including attorneys' fees and the fees charged by notaries and enforcement agents. The complaint seeks a declaration by the Constitutional Court to the effect that article 3(2) of the law is

unconstitutional, inasmuch as it reads "as well as the practice of a liberal profession, including that of a private enforcement agent and a notary". The reasoning advanced by the ombudsman is that, while the occupation of a lawyer, notary or private enforcement agent is not a business operation and does not generate added value, charging their services with VAT would affect virtually every single Bulgarian citizen. The legal certainty which notaries guarantee in different types of transactions in commercial turnover, the enforcement which the state has entrusted to private enforcement agents, the legal defense offered by lawyers are all intrinsic elements of a state governed by the rule of law. For those activities, which are intimately connected with the operation of the system of justice in general, the citizens pay taxes to the government, so they should not be forced to pay VAT as well. Constitutional Case No. 1 of 2007 was instituted based on that complaint and the latter was admitted to consideration on the merits.

The ombudsman's steady efforts to protect human rights and to exercise independent control of the administration can also contribute a great deal to curbing political and administrative corruption. For that purpose, the following is deemed necessary: a more active cooperation with the civic organizations in the field of anti-corruption; full-swing operation of the newly-established Public Advisory Board with the ombudsman, a mechanism created to inquire into cases of maladministration, so as to identify the presets for corruption and ease its prevention and suppression, with the involvement of the civil society and of a vast range of experts; joining efforts with the local public mediators; adopting and strictly adhering to **internal procedures** obliging the administration to provide the ombudsman with any assistance and to abide by his recommendations. That would certainly contribute to affirming the institution of the ombudsman as a **genuine guarantee of human rights and a shield against corruption trespasses to those rights**.

3.1.5. The National Audit Office

An important activity of the NAO which bears directly on the fight against corruption is its control of political parties' funding. The majority of political parties registered in this country fail to comply with the statutory requirements and avoid submitting the required reports of their financial operations. The data of the NAO suggest that in 2006 only 63, out of a total of 357 political parties, sent in their financial reports for the previous year. The remaining 294 parties either failed to report at all or filed reports inconsistent with the prescriptions of the *Law on Political Parties*. In contrast to previous years, however, the NAO now has an effective tool to penalize the blameworthy political parties. Since the changes in the legal regime of financial control introduced by the new *Law on Political Parties Act* (in force as from 1 April 2005), the NAO has been issuing certificates of the financial reports submitted to it as from the date of registration of the political party in question but for no more than three years before the certificate date. The lack of such a certificate

bars the respective political party from participating in the elections as the document is a *sine qua non* for its registration by the Central Elections Committee. This means, in practical terms, that all the 294 political parties which failed to produce their reports for 2005, would be able to participate in elections in 2009 at the earliest and only if they submit on time their financial reports for the years 2006, 2007 and 2008. This sanction, coupled with the power of Sofia City Court to dissolve a political party which has not participated in elections for more than five years, is expected to legitimately lower the number of political parties. Last but not least, this would get in the way of using bogus political parties as vehicles for corruption and money laundering.

Specifically designed to serve the fight against corruption are also the powers of the NAO vis-à-vis the public disclosures owed by individuals in senior public positions. This specific instrument, which was introduced by the *Law on Property Disclosure by Persons Occupying Senior Positions in the State* in 2000, aims at making transparent the financial status of senior civil servants and of magistrates. Although the list of reporting individuals under the law has been extended by several successive amendments, the disclosure obligation only applies to the respective individuals, their spouses, and their children under age. The anti-corruption potential of the law is thus somewhat mitigated as plenty of possibilities to conceal income through other related parties remain beyond its scope (e.g. parents and/or other relatives).

The sole positive trend has been the decreasing number of cases where reporting individuals fail to make disclosures or disclose the relevant information after the statutory deadline.

TABLE 12: DISCLOSURE REPORTS BY INDIVIDUALS OCCUPYING SENIOR POSITIONS IN THE STATE

Year	Public officials		Judges, prosecutors and investigators	
	Reporting individuals	Individuals having failed to disclose	Reporting individuals	Individuals having failed to disclose
2001	721	40	–	–
2002	751	86	3,312	32
2003	1,986	18	3,397	3
2004	2,249	35	3,588	3
2005	2,152	3	3,777	8

Source: *Bulletin of the National Audit Office under the Law on Property Disclosure by Persons Occupying Senior Positions in the State*

On 1 January 2007, the next round of amendments to the law took effect after their passage by the parliament in September 2006. These refined the list of reporting individuals to bring it into line with other laws, and a number of new categories were added, i.e. members of the political cabinets of the chairpersons of state agencies and of the district governors; members of the governing bodies of the National Social Security Institute (only the governor of the institute was required to report before); directors of the local health insurance funds; other individuals subject to a statutory requirement to this effect, etc. In order to facilitate the identification of newly-appointed or newly-released officials falling within the purview of the law, the heads of the respective authorities

are now duty-bound to notify the NAO within 14 days of issuing the respective order (to appoint or release the individual concerned). Likewise, the deadlines for making the annual disclosure filings and for modifying the information initially provided therein have been shortened.

The amendments to the law have brought to an end the frequently criticized limitations on access to the public disclosures register. Access to the details on the register is now available to anyone, without any restrictions, rather than to a few state bodies and the media represented by their senior editors as it was the former arrangement (which, however, will still apply to disclosure statements filed before 31 December 2004). Still, it is not clear to what extent the new procedure would work in practice. Under the law, unlimited access may be obtained in one of two ways: under the *Law on Access to Public Information* or via the website of the NAO which should show all the statements filed plus the names of those who failed to make a disclosure. The explanatory report accompanying the draft law read that "at present the National Audit Office has no technical, administrative and financial capacity to establish the required information system to release the data on the web which might necessitate that the effect of the amendments be postponed". This actually means that access to the public register is currently only possible under the *Law on Access to Public Information*. The latter, however, states that such access may be refused if the interests of a third party are affected and that third party has not expressly consented in writing to the provision of the information sought.

Another major change has been the long-awaited **verification of the content of all disclosure reports**, a measure that had been repeatedly proposed by a number of civic organizations. No such verifications took place before January 2007 which made the disclosure a merely formalistic obligation detached from any form of control. After the amendments, the law already requires the NAO to conduct a documentary verification to corroborate the accuracy of the facts reported in the statement and subject to registration at, notification to or certification by another body. The verification process does not apply to disclosures made before 1 January 2007 and in fact consists in matching the information in the disclosure statement filed by the reporting individual with any information that individual may have provided to other bodies where the same details had to be registered, notified or declared. Should a mismatch be found, the NAO should notify the executive director of the National Revenue Agency who should then launch an inspection or an audit. Despite the positive estimation the introduction of verification deserves, its effective application may be doubted given the scarce resources of the NAO, including its limited staff. In that respect, adequate steps should be made to align the capacity of that institution to the novel powers vested in it. One is also perplexed by the provision that, in relation to pecuniary amounts, receivables and debts in excess of 5,000 levs (or foreign currency equivalent) the verification of the reported facts shall end with a finding of compliance even in the event of a mismatch provided that the difference between the amounts reported to different bodies does not exceed 10,000 levs. Given that the number of reporting individuals for 2005 was next to six thousand (and is even higher in

respect of 2006), this provision means that in a certain context the state could actually turn a blind eye to violations worth up to 60 million levs, and these violations might as well be related to corruption.

The amendments also heightened the sanctions for failure to make a disclosure on time, a measure designed to encourage the reporting individuals to abide by the statutory deadlines. While on the whole very few reporting individuals fail to file their disclosure statements, many times the filings are made after the deadline which frustrates the work of the NAO, especially given its new power to verify the accuracy of the facts declared *(Table 12)*.

3.2. The Executive Branch in the Fight against Corruption

3.2.1. Commission for Prevention and Countering of Corruption

At the outset of 2006, the Council of Ministers approved of a *Strategy for Transparent Governance, Prevention and Countering of Corruption 2006-2008*, and an implementation program for 2006. To ensure the controlled and coordinated implementation of the strategy, the government issued a decision of 2 February 2006 whereby it set up the Commission for Prevention and Countering of Corruption which replaced the previous anti-corruption structure whose official name was Anti-Corruption Coordination Commission. The following important legislative and institutional measures have been taken to ensure the pursuit of the measures in the strategy and of its goals:

The new wording of article 46 and the newly-introduced article 46a of the *Law on Administration* reveal an aspiration to provide for a stronger role of the internal control units in terms of monitoring the operations of the administration and preventing corruption.

Under the first provision, the inspectorates within the ministries should be directly subordinate to the corresponding government minister and shall have *inter alia* the powers to analyze the efficiency of the administration's work; monitor compliance with the administration's internal rules and regulations; propose the initiation of disciplinary proceedings in the event of established violations of official duties, including violations of the *Code of Conduct for Officials in the State Administration*; carry out inspections based on reports, applications and complaints alleging unlawful or incorrect acts or omissions of members of the administration.

In parallel, an Inspectorate General has been set up within the Council of Ministers. It is directly subordinate to the Prime Minister and should coordinate and support the controlling activities of the other inspectorates and propose to the Prime Minister, for his approval, methodological guidance to enhance the functions and the working procedures of those inspectorates. Some of the most essential powers of the Inspectorate General are to examine **reports of conflicts of interest** and other violations of official duties, **to examine allegations of corruption involving executive bodies and civil servants in managerial**

positions, to conduct inspections and inform the Prime Minister of its findings, etc.

What lies behind the total of 115 cases (32 complaints, 10 applications and 73 alerts, including anonymous ones) received by the Inspectorate General between 31 March and 31 December 2006, and what are the results of the inspections carried out? The working of the Inspectorate General is not open and transparent enough, so it hardly lends itself to any objective appraisal. The inspectorates at the different ministries have websites with broad information on their functions and on the ways in which matters can be referred to them but the sites do not display details of any specific proceedings or their outcome. The websites of the Ministry of Foreign Affairs and the Ministry of Interior form the only positive exceptions.

While the fight against high level corruption is a key focus of the government strategy, more than one year following its adoption many individuals who may be defined as holding top positions within the executive remain beyond the reach of any immediate control and sanctioning. On the one hand, the Inspectorate General and most of the inspectorates lack capacity and, on the other hand, there is this want for adequate legal framework and government will to really crack down on high level corruption. Thus, based on a recommendation from the European Commission two documents were developed. The first one is the *Program for the Transparent Operation of State Administration and of Persons Occupying Senior Positions in the State* drafted by the Minister of State Administration and Administrative Reform in conjunction with the Minister of European Affairs. The second relevant document was the *Code of Ethics for Individuals in Senior Positions in the Executive Branch*.

Individuals in Senior Public Positions under Bulgarian Law

The persons holding senior positions in the executive branch are defined in different ways in the *Code of Ethics for Individuals in Senior Positions in the Executive Branch* and in the *Law on Property Disclosure by Persons Occupying Senior Positions in the State*. Under the Code, those individuals are deemed to be the Prime Minister; the deputy prime ministers; the ministers; the deputy ministers; the district governors and their deputies; the chairpersons of state agencies and their deputies; the chairs, deputy chairs and members of state commissions; the executive directors of implementing agencies and their deputies; the heads of government institutions created by virtue of a law or of a regulations of the Council of Ministers and performing functions associated with the exercise of the executive power; the heads of political cabinets, and the parliamentary secretaries. The Law, on its part, furthers that list by adding all the members of political cabinets; the secretaries general in the administration of the executive, the mayors and deputy-mayors of municipalities and boroughs, the directors and deputy directors of the security services and services in charge of public order, and so on and so forth. These have been unduly excluded from the scope of application of the rules of ethics.

This only feeds the impression that many measures existing on paper are only a formalistic response to external pressure but do not intend the genuine introduction of more stringent restrictions with respect to all those individuals so as to prevent actual or potential conflicts of interest and the reaping of undue benefits from one's official position, nor do they provide for severe sanctions, in particular removal from office, in the event of violations. Similarly, no convincing case law has been developed on the enforcement of the existing, albeit deficient, legal rules on conflicts of interest at lower levels, including the 2004 *Code of Conduct for Officials in the State Administration*.

Assessing the efficiency of anti-corruption policies and of the trends in the spread of corruption is a key element of the strategy. In the implementation plan of the strategy for 2006 provision was made for the development of a system of indicators to monitor the level and efficiency of its fulfillment. Based on the cooperation between the Commission for Prevention and Countering of Corruption and the civil society, a monitoring system, developed by the Center for the Study of Democracy, was adopted in mid 2006.

Monitoring System

The Monitoring System (MS) consists of several basic components and aims to assess several aspects of the anti-corruption policies and measures of the government.

First, assessment of the progress made by the government and the other bodies of the executive (ministries, agencies, departments, services, etc.) with the implementation of the measures envisaged in the program. This aspect of the MS measures the implementation progress of sets of concrete tasks. The basic indicators for assessing the implementation in this respect are: availability of the laws, programs, analyses, plans, measures, etc. envisioned for development; relevance of the measure adopted; timeframe compliance/non compliance of the respective measure; implementation progress; quality of the elaborated laws, programs, analyses, plans, measures, etc.; quantitative indicators measuring the outcome of the adopted measure; effectiveness.

Second, assessment of the progress towards the goal set forth in the program and/or strategy – decrease of the level of corruption. This result directly depends on the degree to which the policies and measures envisioned in the strategy are relevant to the achievement of its main goal. The basic instrument in this respect is the system of indicators and measuring tools known as the Corruption Monitoring System (CMS). The CMS is a tool for assessing the level of administrative corruption in the relations between government institutions on the one hand, and the citizens and the business community, on the other.

The third component of the MS measures the progress of achieving the European standards of good governance (the progress made in

short-term or long-term perspective). It consists of tools assessing the actual functioning of the administrative authorities in the country. The main idea behind such an assessment is that it represents an independent evaluation of the operation of the administration measuring the level to which the administration delivers its services to the citizens. The reason for introducing such an assessment is that the administration should not self-assess itself but should rather be assessed on the basis of the satisfaction of the users of its services (the citizens and the business community).

The assessments of the MS will rely on information collected through the following basic methods:

- *expert opinions* (assessments and analyses by independent experts and representatives of non-governmental organizations and civil society associations);
- *self-assessments* by the institutions and agencies involved in the implementation of the strategy and the program;
- analysis of data from *official statistical surveys*, the information systems of various government agencies, national and international surveys;
- *national representative surveys* of the population and the business community;
- *service delivery surveys* of the users of administrative, social, health and education services;
- *mystery customer service* for public services;
- monthly *monitoring of publications in the press, radio and television*.

Source: *Monitoring of Anticorruption Reforms in Bulgaria,* Center for the Study of Democracy, Sofia, 2006

3.2.2. Commission for Establishing Property Acquired through Criminal Activity

The Commission for Establishing Property Acquired through Criminal Activity (hereinafter CEPACA) was formed in 2005, following the entry into force of the *Law on the Forfeiture to the State of Property Acquired through Criminal Activity* (in force as from 29 April 2005). The purpose of that law was to introduce new tools for cutting off the economic roots of crime, in particular top-level corruption, and to make those tools applicable as against the assets of individuals and entities, and against assets derived from crime abroad where the criminal activity in question falls outside the criminal jurisdiction of Bulgaria.

The Commission for Establishing Property Acquired through Criminal Activity is a specialized state authority in charge of inquiring into the property of certain individuals in respect of whom the conditions depicted in the law are satisfied, i.e. acquisitions of substantial value which can be reasonably presumed to have criminal origin, where a criminal prosecution has started for any of the criminal offences under the *Criminal Code* listed exhaustively in the law (e.g. terrorism, terrorist financing, money laundering, preparation to commit money laundering and criminal association for that purpose, etc.), or where the criminal proceedings have been terminated or suspended or cannot be instituted.

CEPACA operates as a college consisting of five members. They are appointed or elected, as the case may be, for a term of five years by different bodies: the chair is appointed by the Prime Minister, the deputy-chair and two members are elected by the National Assembly, and one member is appointed by the President. Due to its **mixed formation**, the Commission does not fully fit either in the legislature or in the executive branch. The Commission is expected to draw up a yearly report of its activities and present it, up until March of the subsequent year, to the National Assembly, the President of the Republic, and the Council of Ministers. This is where the provisions on its reporting obligations end.

Regardless of the initial delay in the provision of its facilities and equipment, the Commission now avails of considerable human and financial resources, i.e. fully-fledged general and special administration structured into functional and territorial directorates, and a budget of 5,747,000 levs for 2006 and 7,982,000 levs for 2007.

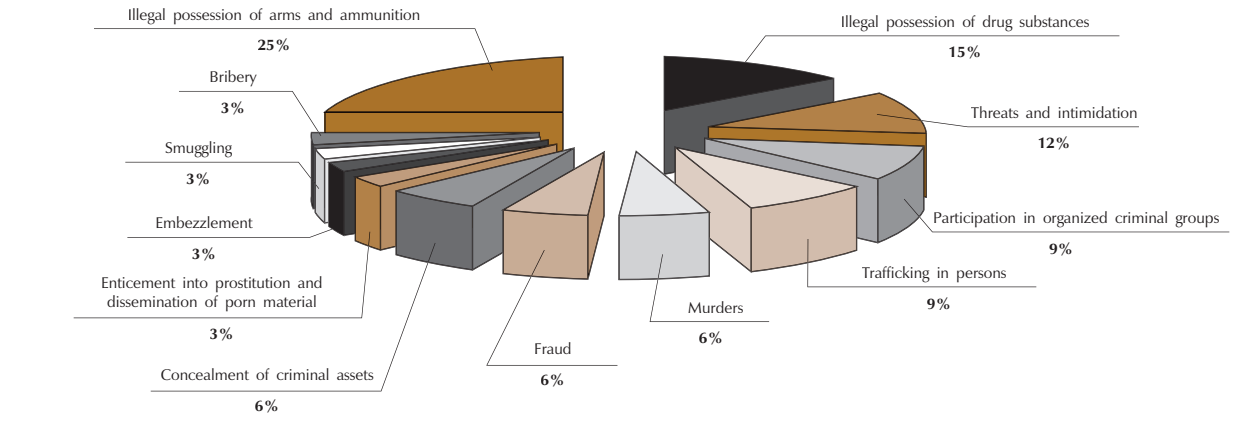
In 2006, the Commission received a total of 38,947 notifications, of which:

- 26,596 notifications from courts concerning individuals convicted for criminal offences within the scope of the *Law on the Forfeiture to the State of Property Acquired through Criminal Activity*;
- 1,245 notifications concerning individuals convicted in 2006;
- 8,706 notifications from pre-trial authorities concerning individuals subject to criminal prosecution for relevant offences, or concerning substantial property which can be reasonably presumed to have criminal origin where no criminal proceedings could be launched or the proceedings opened have been suspended or terminated;
- 2,400 notifications concerning individuals against whom criminal proceedings started in 2006.

During the same period, the inspectors at the Commission's 11 territorial directorates processed notifications concerning 21,483 individuals (55 %),

15,329 of which were falling outside the scope of the law (71 % of the notifications handled). Throughout that period, the Commission instituted **100 proceedings to establish property**, acquired through criminal activity, and in **42 of them a decision was made to seek court-ordered injunctions** by filing reasoned requests. The Commission submitted a total of 51 reasoned requests for injunctions to 18 different district courts across the country *(Figure 28)*. Three refusals by the courts to order the injunctions sought were successfully challenged by the Commission before the relevant court of appeal; in one case the respondent challenged the injunction before the Supreme Court of Cassation which upheld the order of the court of appeal. Out of all Commission's requests for injunctions, 16 were challenged by the respondents and all these appeals were dismissed by the corresponding court of appeal. In 2006, the Commission distrained 169 real estates and attached 73 motor vehicles; it also garnished the equity of 17 commercial companies and the shares of two more. The underlying value of the injunctions ordered at the Commission's request stood at 21,771,057 levs in that year.

FIGURE 28: REASONED REQUESTS FOR INJUNCTIONS FILED BY THE CEPACA IN 2006, BY TYPE OF OFFENCE



Source: Commission for Establishing Property Acquired through Criminal Activity

During the period in question, the Commission brought a total of **12 lawsuits seeking the forfeiture of criminal assets** worth a total of 3,985,870.40 levs *(Table 13)*.

An important factor for the effective interaction between the commission and the other institutions which are relevant to the outcome of its work is the instruction governing the interaction in the event of criminal assets confiscation signed in September 2006 by the Commission's chair, the Prosecutor General, the Director of the National Investigation Service, and the Ministers of Interior and of Finance.

In order for the tools existing in the legislation to be used efficiently, the legislative provisions, including those on the relationship between the *Law on the Forfeiture to the State of Property Acquired through Criminal Activity* and some other laws, in particular the *Law on Measures against Money*

TABLE 13: REASONED REQUESTS FOR FORFEITURE TO THE STATE OF PROPERTY ACQUIRED THROUGH CRIMINAL ACTIVITY FILED BY THE CEPACA IN 2006

Civil Case No.	Court	Application amount
Civil case No. 75/2006	Pleven District Court	389,634.97 levs
Civil case No. 112/2006	Lovech District Court	103,800 levs
Civil case No. 2475/2006	Sofia District Court	390,157.16 levs
Civil case No. 84/2006	Ruse District Court	259,781 levs
Civil case No. 171/2006	Gabrovo District Court	187,700 levs
Civil case No. 10191/2006	Haskovo District Court	170,900 levs
Civil case No. 849/2006	Stara Zagora District Court	458,000 levs
Civil case No. 2/2006	Pleven District Court	190,786 levs
Civil case No. 195/2006	Lovech District Court	80,810 levs
Civil case No. 2968/2006	Plovdiv District Court	832,462.27 levs
Civil case No. 732/2006	Sliven District Court	756,747 levs
Civil case No. 231/2006	Blagoevgrad District Court	165,092 levs

Source: *Report on the activities of the Commission for Establishing Property Acquired through Criminal Activity for the period January – December 2006, Sofia, 2007*

Laundering, the procedures for ordering injunctions, etc., need some fine-tuning. A revision of the status of the Commission is also recommended. The quota-based principle of appointing/electing its members may have aimed to endow it with an inter-institutional or even supra-institutional nature but the actual result has rather been lack of accountability similar to other bodies constituted on the quota-based principle. The Commission could be composed entirely by the National Assembly or by the Council of Ministers but it should be clear to whom the Commission reports and what would be the effects of its failure to perform or of the delayed or imprecise performance of its duties. The fears that the Commission's composition might be politicized, should such an approach be taken, are hardly well-founded as even now the parliament elects three of the Commission's members and its decisions are made by a simple majority, i.e. they need three votes to be validly taken.

3.2.3. An Independent Anti-Corruption Agency: the Pros and Cons

The unsatisfactory results of the fight against corruption, and political corruption in particular, have rekindled the public debate about whether or not an independent anti-corruption agency should be created. Advanced for the first time by the President of the Republic in early 2003, the idea to set up such a structure could long not raise the support it needed to materialize. It was only in 2006, when the President reiterated his proposal that the other relevant institutions came back on track to some extent. The idea to create an independent anti-corruption agency was endorsed by the Prime Minister and by the Minister of Interior who chairs the Commission for Prevention and Countering of Corruption. It was also embraced by the then newly-elected Prosecutor General who thought that only such a body could effectively pursue the onslaught upon political corruption as any steps in that respect would affect by definition high level politicians from both the ruling majority and the opposition, amongst others. In spite of the political will thus declared, which was demonstrated even by fixing a deadline for the independent

agency to be created (October 2006), no practical follow-up ensued. This notwithstanding, the lingering problems of the fight against political corruption and the persisting lack of criminal cases against magistrates and senior civil servants dictate compellingly that the setting up of such a service or another machinery, for example a **specialized anti-corruption prosecution office**, be seriously discussed both at expert level and with the public at large.

3.3. The Judiciary and Law Enforcement in the Fight against Corruption

The bodies of the judiciary and law enforcement implement directly the state's criminal justice policy in the field of anti-corruption and have a very specific part to play in the detection and punishment of corruption crimes. This part has gained in importance in the context of Bulgaria's membership of the European Union and is connected with the enforcement of the *acquis communautaire*, with the cooperation, security and other related commitments Bulgaria has subscribed to in its capacity as a European Union Member State. The unresolved problems of justice and home affairs, combined with the new challenges ahead keep the need for further reforms in this area high on Bulgaria's agenda.

„Now there is much better cooperation between the police and the public prosecution which is vital for bringing to justice those guilty of crime. The courts, however, must accelerate the proceedings. Arrests are not sufficient in themselves, we are expecting sentences. This is crucial... We will note in our report that more has to be done in the fight against small-scale corruption, money-laundering and the link between money laundering and organized crime, the public murders, the need to speed up the investigation process..."

Source: Mr. Franco Frattini, Vice-President of the European Commission and Commissioner for Freedom, Security and Justice, at a press conference during his visit to Bulgaria, Sofia, 19 February 2007.

Different aspects of the judiciary formed the core of three, out of a total of four, amendments to the *Constitution* enacted over the past four years. The novice constitutional texts, however, do not result from a coherent, comprehensive philosophy of judicial reform. Rather, they have been drafted and passed on a piece-meal basis and to respond to various remarks and recommendations in connection with Bulgaria's accession to the European Union.

The first amendment (2003) adjusted the rules on the guaranteed tenure and immunity of judges, prosecutors and investigators, and introduced terms of office for the administrative managers of the bodies of the judiciary. The third amendment (2006) made the changes necessitated by the enactment of the new *Criminal Procedure Code*, in particular the role of the prosecutor as the *dominus litis* at the pre-trial stage and the curtailed powers of the investigative bodies within the judiciary, after

more than 90 per cent of the investigations had been transferred to police investigators at the Ministry of Interior. Two of the amended rules, article 129(4) (providing a *sui generis* impeachment for the three senior administrative heads of the judiciary, i.e. a possibility for the President of the Republic to remove the chairs of the Supreme Court of Cassation and of the Supreme Administrative Court, and the Prosecutor General, on a proposal from, among others, one fourth of the Members of Parliament backed by a majority of two-thirds of all MPs) and point 5 of the new article 130a (empowering the Minister of Justice to check the organization relating to the institution, progress and ending of cases) were declared unconstitutional by the Constitutional Court. The fourth amendment, enacted in early 2007, introduced full **functional immunity** (i.e. judges, prosecutors and investigators shall be free from criminal prosecution or civil liability only in respect of actions undertaken in their official capacity and of the acts they have issued provided, however, that they have not committed any intentional indictable offence in either of these contexts). Explicit provision has been made for the following **powers of the Supreme Judicial Council** (hereinafter SJC): to adopt the draft budget of the judiciary; to appoint, promote, demote, transfer, and remove from office judges, prosecutors, and investigators; to impose the disciplinary sanctions of demotion and removal from office on judges, prosecutors, and investigators; to organize the qualification of judges, prosecutors, and investigators; to hear and adopt the annual reports submitted by the Supreme Court of Cassation, the Supreme Administrative Court, and the Prosecutor General on the enforcement of the laws and on the operation of courts, prosecution offices and investigative bodies, and to present those reports to the National Assembly. The fourth amendment envisioned the setting up of an **Inspectorate with the SJC** to consist of an Inspector-General and ten inspectors. The Inspector-General shall be elected by a majority of two-thirds of the Members of Parliament for a term of five years, whereas the inspectors shall have 4-year terms of office.

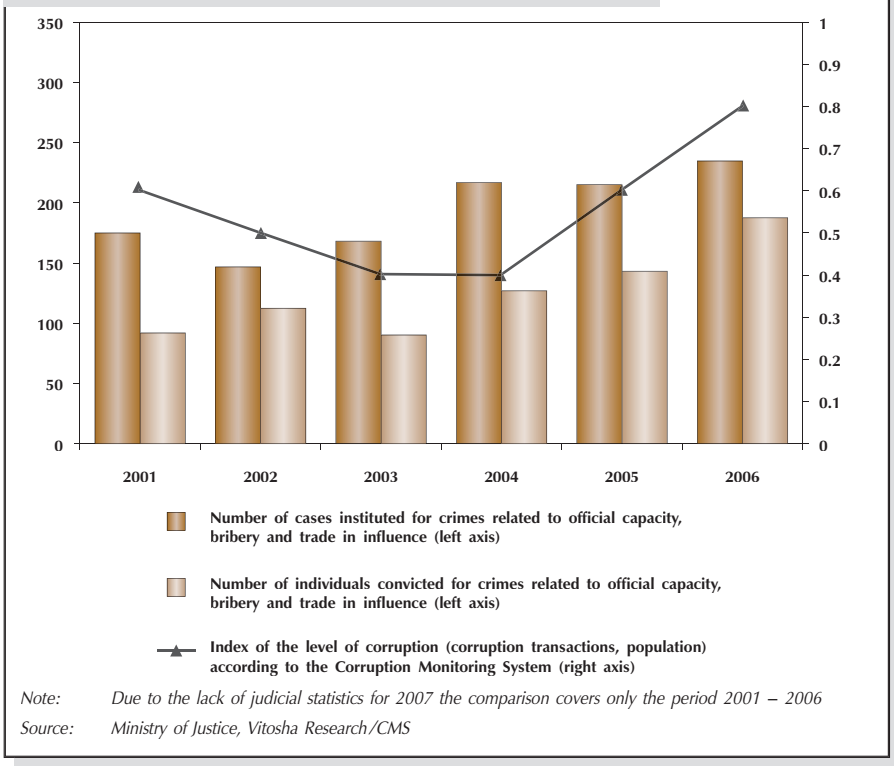
The key power of the Inspectorate with the SJC is to monitor the operations of the bodies of the judiciary, with no interference whatsoever with the independence of judges, jurors, prosecutors or investigators in the exercise of their functions. The Inspectorate shall act of its own motion or on the initiative of citizens, legal entities or state authorities, including judges, prosecutors, and investigators. The provisions require the Inspectorate to submit an annual report of its activities to the SJC as well as to make referrals, proposals and reports to other state authorities, including the competent bodies of the judiciary. The information on the Inspectorate's proceedings shall be public. At the same time, leaving aside the members' election by a qualified majority, there are no guarantees whatsoever for the proclaimed independence of that new structure or against its possible interference with the independence of the judiciary, and there are even less guarantees for its accountability and efficiency. Other questions may be raised for good reason as well, such as how the functions of the newly-introduced Inspectorate would correlate to those of the existing inspectorate for the public prosecution office; or if it is really appropriate to have all the three branches of the judiciary controlled by the same body; or whether that body does

not reproduce the model of the judiciary itself with the common management of its three branches, often labeled "erroneous", and so forth. It is clear even now that the specific provisions of the future *Law on the Judiciary* would hardly answer these questions. Paradoxically, despite the numerous suggestions to introduce external and independent control over the functioning of the judiciary so as to strike a better balance between the three branches of power in the state, the solution chosen is to create a body that has no counterpart in any other country, that is certainly unprecedented in the earlier constitutional tradition of Bulgaria, and whose powers might eventually be used to address some negative phenomena and consequences in the judiciary but cannot do away with their underlying reasons.

Judicial reform remains one of the most sensitive spheres in terms of the requirements posed by the European Union. When assessing the circumstances and the dynamics of that reform, however, two factors should be born in mind: firstly, its results are largely predetermined by, *inter alia*, the action or inaction of the institutions belonging to all the three branches of power; and, secondly, the reforms in the three separate branches of the judiciary itself – the courts, the public prosecution, and the investigation – are marked by each area's own problems and dynamics, and are interdependent, which requires not only general but also specific solutions.

3.3.1. Efficiency of the Enforcement of Anti-Corruption Criminal Legislation

FIGURE 29: CRIMINAL PROCEEDINGS FOR CORRUPTION OFFENCES AND DYNAMICS OF THE INDEX FOR THE SPREAD OF CORRUPTION (2001-2006)



Note: *Due to the lack of judicial statistics for 2007 the comparison covers only the period 2001 – 2006*

Source: *Ministry of Justice, Vitosha Research/CMS*

Despite the chain of reforms implemented in recent years to enhance the efficiency of the state's criminal justice policy corruption crime and political corruption in Bulgaria have gone unpunished for all practical purposes. The increase in the number of criminal cases between 2002 and 2006 and of individuals convicted of corruption offences still does not correspond to an increased number of instances of corruption as well. Thus, despite the enhanced efforts on the part of the state in line with the public expectations, the proportion between the number of corruption transactions and of criminal cases for corruption actually remains unchanged. This means that the preventive effect of the criminal justice policy re-

mains the same and there is indeed no intensification of the criminal prosecution *(Figure 29)*.

The data analysis makes it clear that, still, **a tiny fraction of the occurring corruption transactions are actually detected, investigated and punished** by the competent authorities. Thus, the results of the Corruption Monitoring System suggest that by July 2006 the average monthly number of corruption transactions had been 147,616 (compared to 126,437 in November 2005). At the same time, Ministry of Justice data show that in 2006 a total of 233 court proceedings were launched country-wide for corruption offences (compared to 214 throughout 2005) and 188 individuals were convicted (compared to 143 in 2005). According to the data provided by the National Statistical Institute, in total, from 1996 to 2005 Bulgarian courts issued only 669 convictions and sentenced 657 persons for the most typical corruption offences – bribery, trade in influence and crimes related to official capacity.

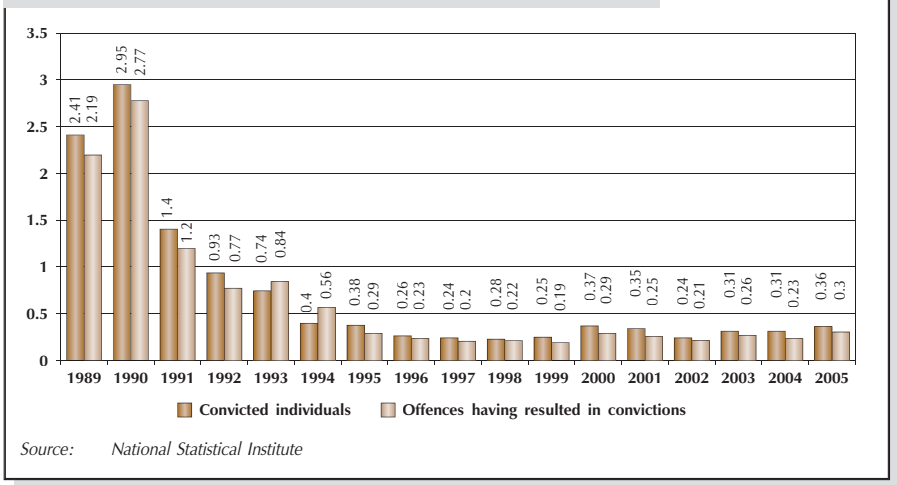
Judicial Statistics

The detailed and objective statistics about the performance of state authorities in terms of detecting, investigating into and punishing crime in general and corruption in particular are vital to identifying the existing deficiencies, enhancing the operations of the state machinery and formulating the government policy in response to crime. In Bulgaria, though, this matter is still unduly neglected. Due to the lack of uniform criteria for the collection of data, each institution defines itself the indicators it will use, the period to be covered by its statistical reports, etc. The data thus could not be compared or crosschecked and becomes virtually unusable. For example, for the year 2005 the data of the National Statistical Institute show that 93 individuals have been convicted for bribery and crimes related to official capacity, while according to the Ministry of Justice their number is 143 (for the year 2004 these numbers are respectively 127 and 68, for 2003 they are 90 and 75, etc.). The indicators selected by each institution create certain difficulties as well. For example, the Ministry of Justice collects information on the number of corruption related offences having fruited in verdicts but does not collect statistics on whether these are convictions or acquittals. The penalties imposed (especially non-custodial ones) are reported in different ways depending on where the information comes from the regional courts or the district courts. In some cases, the data provided is broken down by type and degree of offence whilst in others it covers entire divisions of the *Criminal Code*. Last but not least, the information is inherently inconsistent which raises doubts as to its reliability (for example, a report from the Ministry of Justice on criminal proceedings at regional courts stated that at the outset of 2002 there had been one unfinished criminal case for bribery in the private sector under article 225c of the *Criminal Code* but the provision of article 225c itself was enacted in 2002!).

The lack of reliable statistics on the detection, investigation into and punishment of crime bring to mind once again the problems with the **Unified Information System against Crime** which has been expected to emerge for nearly ten years now. As early as December 1997, the parliament adopted a decision whereby it obliged the government and the National Statistical Institute, in conjunction with the judiciary, to develop and implement such a system. Rules on the operation of the system were first added to the *Law on Statistics* (1999) and then moved to the *Law on the Judiciary* (2002), with the Ministry of Justice shown as the institution in charge. Throughout that period, various government strategies, programs and plans set different deadlines for the implementation of the system but most of those were never met.

Corruption-related offences account for a virtually negligible share of the total number of criminal offences detected and punished in Bulgaria. Against the backdrop of an ever rising total number of criminal cases and convicted persons in the country over the past years, corruption-related offences have a share of less than 0.5 % of all sanctioned criminal offences *(Figure 30)*. This is a clear sign that the state's criminal justice policy is not efficient in suppressing corruption unlike some forms of crime in other spheres of public life.

FIGURE 30: RELATIVE SHARE OF VERDICTS FOR AND INDIVIDUALS CONVICTED OF BRIBERY, TRADE IN INFLUENCE AND CRIMES RELATED TO OFFICIAL CAPACITY FOR THE PERIOD 1989-2005 (PER CENT)



Source: *National Statistical Institute*

The expectations that the improved substantive criminal norms would entail more efficient criminal prosecution of corruption related crime have not materialized. The efforts of the state on this front have brought forth major amendments to the *Criminal Code*, as far as corruption-related offences are concerned:

- More heavily punishable forms of crimes related to official capacity were introduced in connection with privatization, restitution and licensing regimes or with organized crime (1997) as well as crimes committed by those in charge of activities involving drug substances and precursors (2000);

- The rules on bribery were substantially changed which entailed higher penalties, criminalization of the making or acceptance of a proposal for or promise of a bribe, and the fine-tuning of the provocation to bribery to the effect that the person provoked to give or accept a bribe now also faces criminal liability (2000).

- The scope of bribery was extended to include intangible benefits and heavier penalties were introduced for bribery committed by judges, prosecutors, investigators, jurors, arbiters or attorneys-at-law (2002);

- The trade in influence was equally criminalized as a new corruption offence (2002).

Anti-Corruption Instruments and Policy of the European Union

As from 1 January 2007, a number of EU instruments directly bearing on the fight against corruption are binding on Bulgaria. They, together with some conventions developed by other international organizations, represent the EU legal framework to suppress corruption. The framework actually comprises three major clusters of instruments:

1. Legal instruments

1.1. Protection of Financial Interests

- Convention on the Protection of the European Communities' Financial Interests 1995 and the Explanatory report thereon
- Protocol of 27 September 1996 to the Convention on the Protection of the European Communities' Financial Interests 1996 and the Explanatory report thereon
- Protocol of 29 November 1996 on the interpretation of the Convention by way of preliminary rulings, by the Court of Justice of the European Communities
- Second Protocol of 19 June 1997 to the Convention on the Protection of the European Communities' Financial Interests

1.2. Officials of the European Communities or officials of Member States

- Convention on the Fight against Corruption involving officials of the European Communities or officials of Member States of the European Union 1997 and the Explanatory report thereon
- Council Decision 2003/642/JHA of 22 July 2003 concerning the application to Gibraltar of the Convention on the Fight against Corruption involving officials of the European Communities or officials of Member States of the European Union

1.3. Private Sector Corruption

- Joint Action of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector (repealed)

- Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector

2. Policy Statements

- Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a comprehensive EU policy against corruption (COM (2003) 317 final)
- Annex 1 "The Hague Programme – strengthening freedom, security and justice in the European Union" of the Presidency conclusions of the Brussels European Council of 4/5 November 2004
- Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years – The Partnership for European renewal in the field of Freedom, Security and Justice (COM (2005) 184 final)
- Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (Press Release 8849/05 Justice and Home Affairs Council, Luxembourg, 2-3 June 2005)
- Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on Developing a Strategic Concept on Tackling Organised Crime (COM (2005) 232 final)

3. Legal Instruments of Other Bodies

3.1. Council of Europe

- Council of Europe Criminal Law Convention on Corruption 1999 (ETS No. 173, published, SG, issue 73 of 26 July 2002)
- Council of Europe Civil Law Convention on Corruption 1999 (ETS No. 174, published, SG, issue 102 of 21 November 2003)
- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption (ETS No. 191, published, SG, issue 35 of 22 April 2005)

3.2. OECD

- OECD Convention on combating bribery of foreign public officials in international business transactions 1997 (published, SG, issue 61 of 6 July 1999)

3.3. United Nations

- United Nations Convention of 12 December 2000 against transnational organised crime (published, SG, issue 98 of 6 December 2005)
- United Nations Convention against Corruption 2003 (published, SG, issue 89 of 3 November 2006)

In implementation of the recommendations of the Group of States against Corruption (GRECO) with the Council of Europe and of the OECD Working Group on Bribery, legislative rules have been enacted to provide for corporate liability for offences committed to the benefit of the respective legal entity, including corruption offences. The new provisions enacted by the amendments to the *Law on Administrative Offences and Penalties* in September 2005 envision fines of up to 1 million levs for legal entities which have been enriched or would have enriched themselves by certain types of criminal offences, where those offences were committed, incited to or aided and abetted by the legal entity's senior officers, representatives, governing bodies members or other officials or employees. The sanctions are to be imposed by the district courts on a proposal from the competent prosecutor and the judgments shall be subject to appeal solely before the respective court of appeal. The practical enforcement of the new texts is still limited and the effects of the changes cannot be assessed objectively. It is worth noting that the list of crimes for which the legal entities unjustly enriched can be held liable does not include all corruption offences. Thus, most crimes related to official capacity remain beyond the scope of the law (the only scenario on the list is the situation where officials use their status to obtain an illicit benefit for themselves or for a third party).

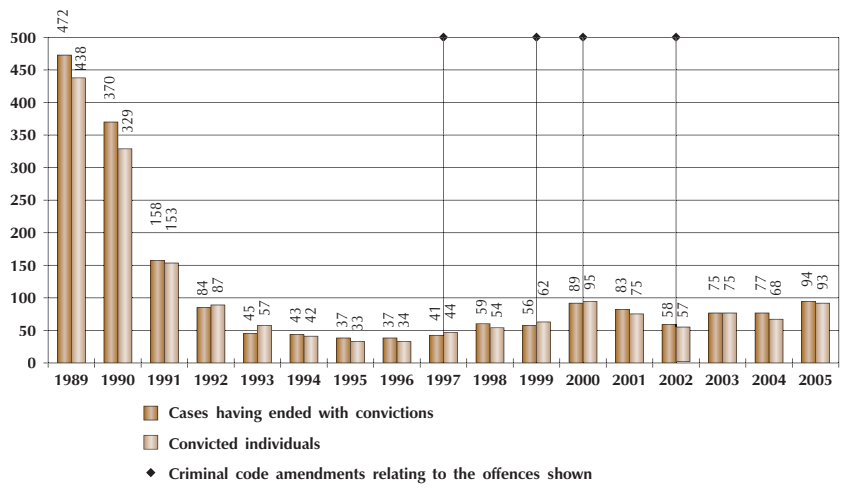
The Ratification of the United Nations Convention against Corruption

On 3 August 2006, the National Assembly ratified the *United Nations Convention against Corruption* which was signed by Bulgaria on 10 December 2003. The Convention has been operational since 14 December 2005 but, on account of its belated ratification, it is only in effect for Bulgaria as from 20 October 2006. Nonetheless, the Bulgarian legislation, practices and institutional framework match to a very high degree the standards enshrined in the convention which is the most comprehensive legally binding anti-corruption instrument developed so far. The text embraces a multi-disciplinary approach and has rules on the prevention and criminalization of corruption, on international cooperation, on the recovery of assets acquired through corruption, on technical cooperation and the exchange of information. It also provides for an implementation mechanism.

The legislative amendments enacted in relation to the punishment of corruption crime have propelled the harmonization of Bulgaria's domestic legislation with the current international instruments designed to combat corruption. None of those amendments, however, has impelled the increase in the number of cases and convictions aspired at *(Figure 31)*.

No doubt, the challenges inherent in the detection of and investigation into corruption related crimes, which ensue primarily from the mutual interests of the parties involved in a corruption transaction, are a major factor for the continued inability of the state to adequately sanction

FIGURE 31: NUMBER OF CONVICTIONS AND CONVICTED INDIVIDUALS FOR CRIMES RELATED TO OFFICIAL CAPACITY, BRIBERY AND TRADE IN INFLUENCE (1989-2005)



Source: National Statistical Institute

corruption. Often it is easier for the investigative authorities to detect and prove any other offence connected with a corruption transaction than the transaction itself. This, however, limits the possibilities to detect and punish corruption offences, especially where corruption practices as such are disconnected from any related criminal or other offence.

The introduction of some **new methods for the collection of evidence** by the new *Criminal Procedure Code* (enacted in 2005, in force as from April 2006) was an attempt to surmount the problem of proving corruption related and some other difficult-to-be-shown offences. The new methods, which include undercover officer (an officer of the competent services, authorized to make or keep contact with a controlled individual with a view to obtaining and uncovering information about serious intentional crimes and the organization of criminal activity), controlled delivery (import, export, carrying or transit transportation by the controlled individual through the territory of the country of an object of a criminal offence, with a view of detecting those involved in a trans-border crime) and trusted transaction (conclusion by an undercover officer of an apparent sale or another type of transaction involving an item with a view to gaining the trust of the other party involved in it) have been successfully used in a number of countries and form part of the international legal assistance in criminal cases. The scope of the new methods, however, is severely limited as they have been defined as "special intelligence means" and may only be used in relation to serious intentional crimes (i.e. offences which entail under the law imprisonment longer than five years, life imprisonment or life imprisonment without parole). Indeed, most corruption practices are defined by the *Criminal Code* as serious offences, but some of them are not and are therefore not eligible for the novel methods of evidence gathering. This is true, for example, for the mediation for and provocation to bribery, for all instances of bribery in the private sector, for some crimes related to official capacity, as well as some forms of trade in influence (offering, promising or giving a present or any undue benefit to a person claiming that he or she may exert influence). The new investigative techniques are inapplicable to all these corruption crimes for which we have the lowest number of triggered proceedings in general (information from the Ministry of Justice suggests that, since the criminalization of private sector bribery in 2002 until the end of 2006, only ten criminal cases were launched for this category of offence and only ten defendants were convicted). Moreover, there is still a want for well-prepared experts who would successfully employ the special intelligence means devised to detect, investigate into and prove corruption. It ought to be emphasized that overall, other than the use of

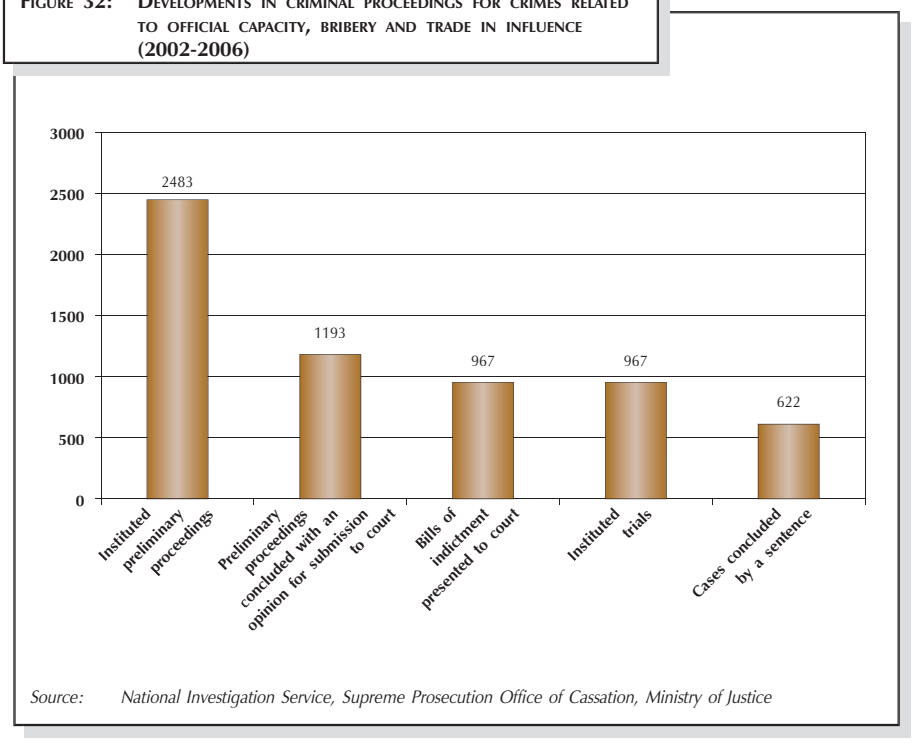
special intelligence means, the existing legal framework on the provocation to bribery effectively inhibits the detection of corruption.

The small number of criminal cases for corruption offences increases the perception of impunity for corruption crime in the country. Therefore, albeit modern and harmonized with international standards, the criminal legislation fails to effectively hit its targets: it neither contributes to punishing the actual perpetrators of corruption offences, nor deters potential offenders. Such a climate of impunity translates into a slim public confidence in the efficiency of the judiciary and law enforcement and in itself helps perpetuate corruption.

The mismatch between the quality of substantive criminal legislation and the practical results in terms of detecting, investigating into and punishing corruption crime makes it apparent that the fundamental problems of the state's criminal justice policy relate primarily to the enforcement of the criminal rules in practice. The lack of ostensible results from the otherwise serious amendments to the *Criminal Code* sends a clear message that substantive law is not sufficient in itself to score successfully in the fight against corruption. Inefficient enforcement virtually negates the efforts made to draft and enact modern criminal norms and converts the legislation from a strict system of rules to punish the perpetrators of crimes into a compilation of wishful texts disjointed from any genuine criminal sanctions.

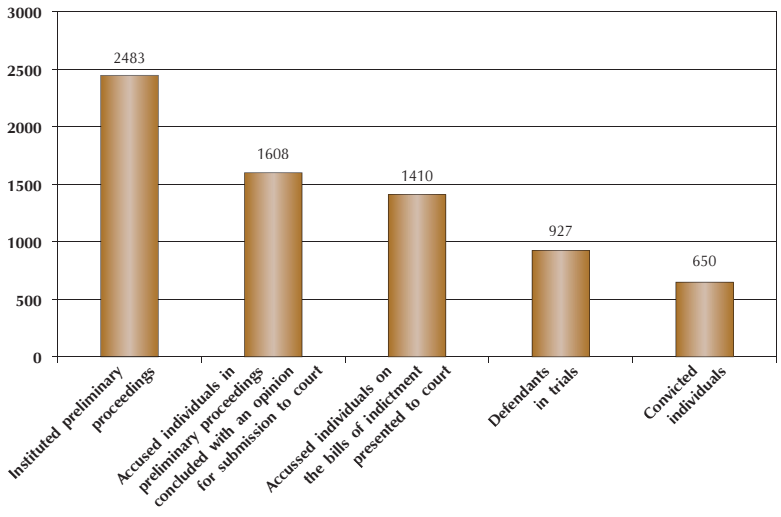
The review of the work of different state authorities involved in the detection, investigation into and punishment of corruption demonstrates that even the scanty pre-trials initiated for corruption offences do not entail convictions by default. Many proceedings end at a far earlier stage of the criminal process. Some of them do not even make it to court but get terminated already at the pre-trial phase with no results *(Figure 32 and 33)*.

FIGURE 32: DEVELOPMENTS IN CRIMINAL PROCEEDINGS FOR CRIMES RELATED TO OFFICIAL CAPACITY, BRIBERY AND TRADE IN INFLUENCE (2002-2006)



Source: National Investigation Service, Supreme Prosecution Office of Cassation, Ministry of Justice

FIGURE 33: DEVELOPMENTS IN CRIMINAL PROCEEDINGS FOR CRIMES RELATED TO OFFICIAL CAPACITY, BRIBERY AND TRADE IN INFLUENCE (2002 – 2006)



Source: National Investigation Service, Supreme Prosecution Office of Cassation, Ministry of Justice

As shown by statistical data, varying numbers of cases end at different stages of corruption related criminal proceedings. The final calculation is that only around one-forth of the preliminary proceedings launched go all the way to a verdict and only 40 % of the individuals indicted at the pre-trial stage are later punished by virtue of a final conviction. Although the reasons for these results are specific and vary from one stage of the process or from one institution involved to another, the outcome eloquently shows how the complex and expensive (in terms of finance and staffing alike) machinery of the criminal process is used in vain in a colossal number of cases.

The cost-benefit of bribery

Researchers apply various approaches and formulas to calculate the benefit of giving/taking bribes[53]. By using that experience together with data from official statistics and the results of CMS one could calculate under what conditions bribery in Bulgaria would become unprofitable.

For instance, by using official statistics for the year 2006 and based on the criminological survey *Court Case Law on the Enforcement of the Rules on Bribery, articles 301-307a of the Criminal Code, During the Years of Transition (1989-2003)* published by the Ministry of Justice the average value of a bribe in Bulgaria could be estimated to amount to 312 levs. Although at present conditional verdicts prevail (i.e. the punishment is initially postponed for a certain period of time

[53] See: Celik, G., *To Give In or Not To Give In To Bribery? Setting the Optimal Fines for Violations of Rules when the Enforcers are Likely to Ask for Bribes*, University of British Columbia, Department of Economics, Vancouver, BC.

and is executed only if the convict commits another crime during that period) for the purpose of this calculation it is assumed that the average penalty is one year of imprisonment. Since the average monthly salary in Bulgaria for the year 2006 was about 400 levs then one year of imprisonment would be equal to 4,800 levs of future earnings. Assuming that finding a new job would be more difficult after the verdict and the serving of the penalty the probable losses from such a verdict could increase up to several times, e.g. if the person could not find a job for two years he/she would lose 14,400 levs.

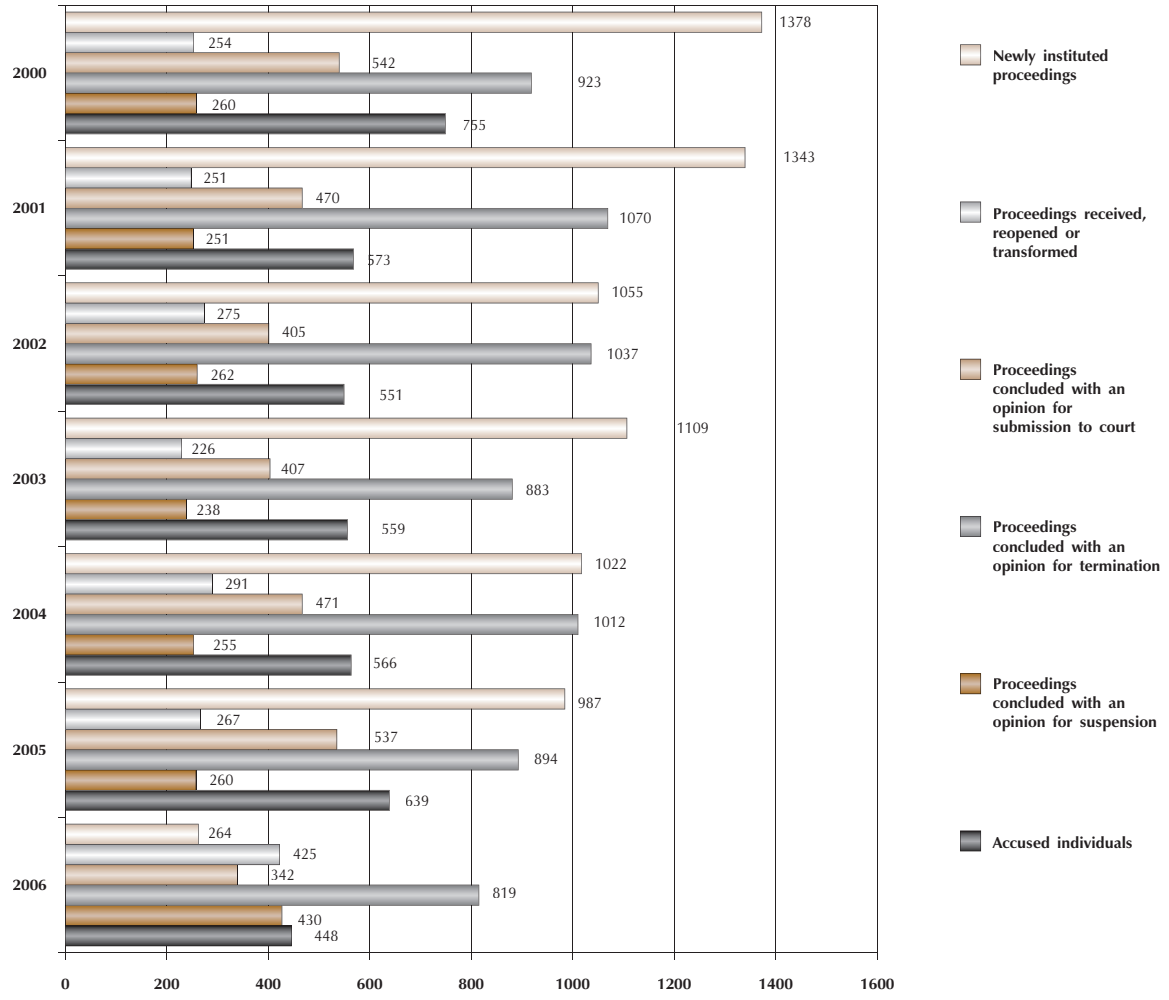
For the one bribing, the bribe would be economically profitable if the value of the benefit received (e.g. a fine evaded) is higher than the sum of the bribe plus the respective penalty foreseen for bribing multiplied by the probability of its enforcement. For the one receiving it, the value of the bribe is the benefit received, while the "expenses" include the respective penalty multiplied by the probability of its enforcement. Applying this formula to the available data shows that each bribe exceeding 0.34 levs is economically profitable for a bribe taker in Bulgaria taking into account the chances for the person to be prosecuted. For those who bribe, it would make economic sense to do it if the benefit received in this way exceeds the amount of the bribe by at least 0.34 levs.

These calculations rely on certain strong assumptions but nevertheless provide an additional alternative approach to measuring the efficiency of the criminal prosecution of corruption in Bulgaria. They confirm the necessity for improving criminal legislation and its consistent implementation in order to make bribery economically unprofitable in this country.

Before the new *Criminal Procedure Code* entered into force in April 2006, the major investigative authorities handling corruption offences were the investigators at the National Investigation Service and at the district investigation services. The investigation authorities within the judiciary channeled almost all pre-trial proceedings for the most typical corruption offences (crimes related to official capacity, bribery, trade in influence, etc.). At that time, the officers of the Ministry of Interior were competent to investigate into such offences only by way of exception, in the form of police investigation or summary police proceedings.

Data released by the National Investigation Service for the period 2000-2006 indicates that the number of preliminary proceedings for corruption offences (crimes related to official capacity, bribery and general economic crime) that have ended by an opinion to submit the case to court are two to three times less than the proceedings having ended by a recommendation to have the case terminated or suspended *(Figure 34*). In practice this means that in most cases the steps undertaken and the evidence gathered by the investigative authorities do not provide a solid basis to continue the case by pressing charges and maintaining the indictment in court, so the investigative body itself chooses to propose that criminal prosecution be abandoned.

FIGURE 34: BASIC INVESTIGATIVE INDICATORS RELEVANT TO CRIMES RELATED TO OFFICIAL CAPACITY, BRIBERY AND GENERAL ECONOMIC CRIME (2000-2006)

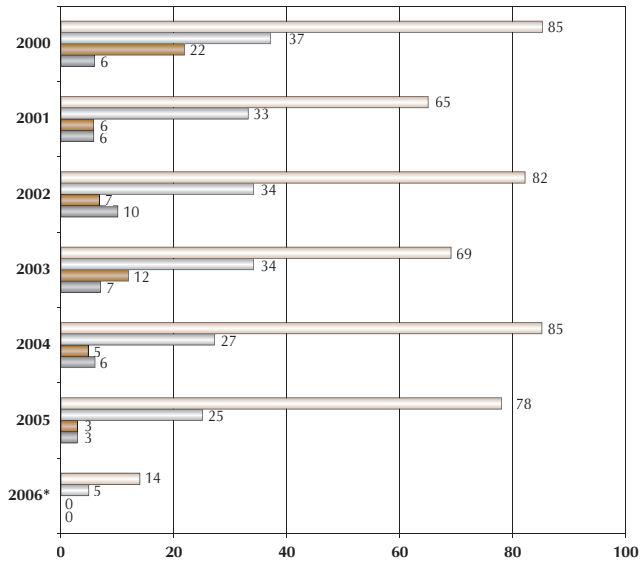


Note: *Following the entry into force of the new Criminal Procedure Code in April 2006 the powers of investigators to deal with corruption related crimes are limited only to offences committed by persons enjoying immunity, members of the Council of Ministers or civil servants from the Ministry of Interior as well as crimes committed abroad.*

Source: *National Investigation Service*

Following the reforms of the pre-trial stage implemented through the adoption of the new *Criminal Procedure Code*, the powers to investigate almost all categories of criminal offences, including corruption ones, were transferred from the investigative authorities in the judiciary into the hands of Ministry of Interior police investigators. Before that, Ministry of Interior officers only had jurisdiction over a limited number of corruption offences (primarily crimes related to official capacity) for which the law envisaged inter alia police proceedings in the form of police investigation or summary police proceedings *(Figure 35)*. However, since April 2006 police investigators have the power to investigate all corruption related crimes except for offences committed by persons enjoying immunity, members of the Council of Ministers or civil servants from the Ministry of Interior and crimes committed abroad, which remain in the domain of the investigation services.

FIGURE 35: POLICE INVESTIGATIONS AND SUMMARY POLICE PROCEEDINGS FOR CRIMES RELATED TO OFFICIAL CAPACITY, BRIBERY AND TRADE IN INFLUENCE (2000-2006)



Note: *The data for 2006 refer only to the period until the end of April.*

Source: *Ministry of Interior*

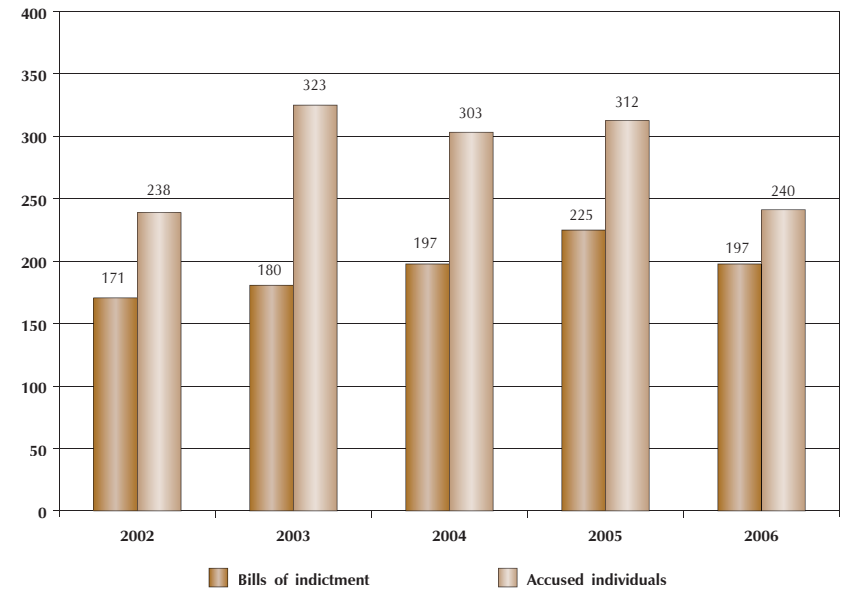
Reporting Allegations of Corruption

In 2006 the Ministry of Interior received 8,230 allegations of corruption. The largest number – 359 – concerned officials of the Ministry of Interior, 141 were against municipal officials, 88 related to the judiciary, 21 were relevant to the sphere of education. 130 of the reports concerning the Ministry of Interior were confirmed, 30 of them were forwarded to the public prosecution office while investigation is still in progress in respect of 48 referrals.

Source: *Statement by the Minister of Interior and Chair of the Commission for Prevention and Countering of Corruption at the Round Table on Benchmarking Corruption in the European Union, Brussels, 14 February 2007*

Changes in criminal procedure bear directly on the work of the public prosecution as well. By transforming the prosecutor into a lead figure of the pre-trial stage the Bulgarian lawmaker has actually vested the responsibility for the swift and good-quality conduct of the investigation exactly in the public prosecution. On the other hand, whether or not a criminal case (including any corruption offence) would proceed from pre-trial to trial virtually depends on the prosecutor alone. Such a key role attributed to the prosecution system not only increases its responsibilities but also makes it one of the links in the chain of criminal process most likely to be exposed to corruption pressures.

FIGURE 36: BILLS OF INDICTMENT AND ACCUSED INDIVIDUALS AT THE PRE-TRIAL STAGE IN CASES FOR BRIBERY, TRADE IN INFLUENCE AND CRIMES RELATED TO OFFICIAL CAPACITY (2002-2006)



Source: Supreme Prosecution Office of Cassation

Since 2002 (the year where the Supreme Prosecution Office of Cassation started collecting and summarizing statistics on the work of the public prosecution in corruption related cases) until the end of 2006, the prosecutors presented a total of 970 bills of indictment against 1,416 accused individuals for crimes related to official capacity, bribery or trade in influence *(Figure 36)*. At the same time, the number of indictments presented to court was nearly 20 % lower than the number of pre-trials concluded by an opinion to submit the case to court. Another worrying fact is that the public prosecution has not presented bills of indictment in respect of more than 10 % of the accused individuals in those pre-trials which ended by an opinion to submit the case to court. The reasons for that discrepancy may be either positive (e.g. resort, albeit still limited, to the possibility to plea bargain the case) or negative (deficient work done by the investigative bodies, mistrust by the prosecutor of the quality of the materials provided by investigators, possible existence of corruption practices, etc.). This problem needs to be addressed even more seriously given that, after the entry into force of the new *Criminal Procedure Code*, almost all crimes are now investigated by police investigators from the Ministry of Interior who do not possess yet the skills and the extensive experience of the investigators from the judiciary.

The Public Prosecution in the Fight against Organized Crime and Corruption

The **Specialized Department to Combat Organized Crime and Corruption** at the Supreme Prosecution Office of Cassation, which was set up by order of the Prosecutor General dated 23 March 2006, oversees and supervises the legality of the pre-trial proceedings relating to pending files and cases for criminal offences that flag up elements of organized crime and/or corruption. The department consists of three sections, viz. an anti-organized crime, anti-corruption, and anti-money laundering section.

The head of the department maintains direct contacts with the Ministry of Interior and, where necessary, puts together joint teams to inquire into allegations or to work on instituted cases.

The head of the department issues, with the approval of the Prosecutor General, a circular letter laying down the procedure for setting up specialized anti-organized crime and anti-corruption units within Sofia City Prosecution Office and at the district prosecution offices.

As regards the **countering of corruption**, the department has introduced special reporting arrangements and monitors the files and cases against Members of Parliament, government ministers and their deputies, the heads and members of independent institutions set up by virtue of laws, the heads of state and implementing agencies and commissions and their deputies, district governors and their deputies, the mayors of municipalities with a population over 100,000, judges, prosecutors, investigators, senior officials of the Ministry of Interior and the Ministry of Defense, as well as public officials who have allegedly mismanaged EU funds.

The department is directly subordinated to the Prosecutor General. The head of the department and the prosecutors working therein are prohibited from taking instructions from any other prosecutor and from providing other prosecutors with any information about the department's work. The mass media receive information from the head of the department in person, with the authorization of the Prosecutor General.

Source: Order No 905 of 23 March 2006 issued by the Prosecutor General

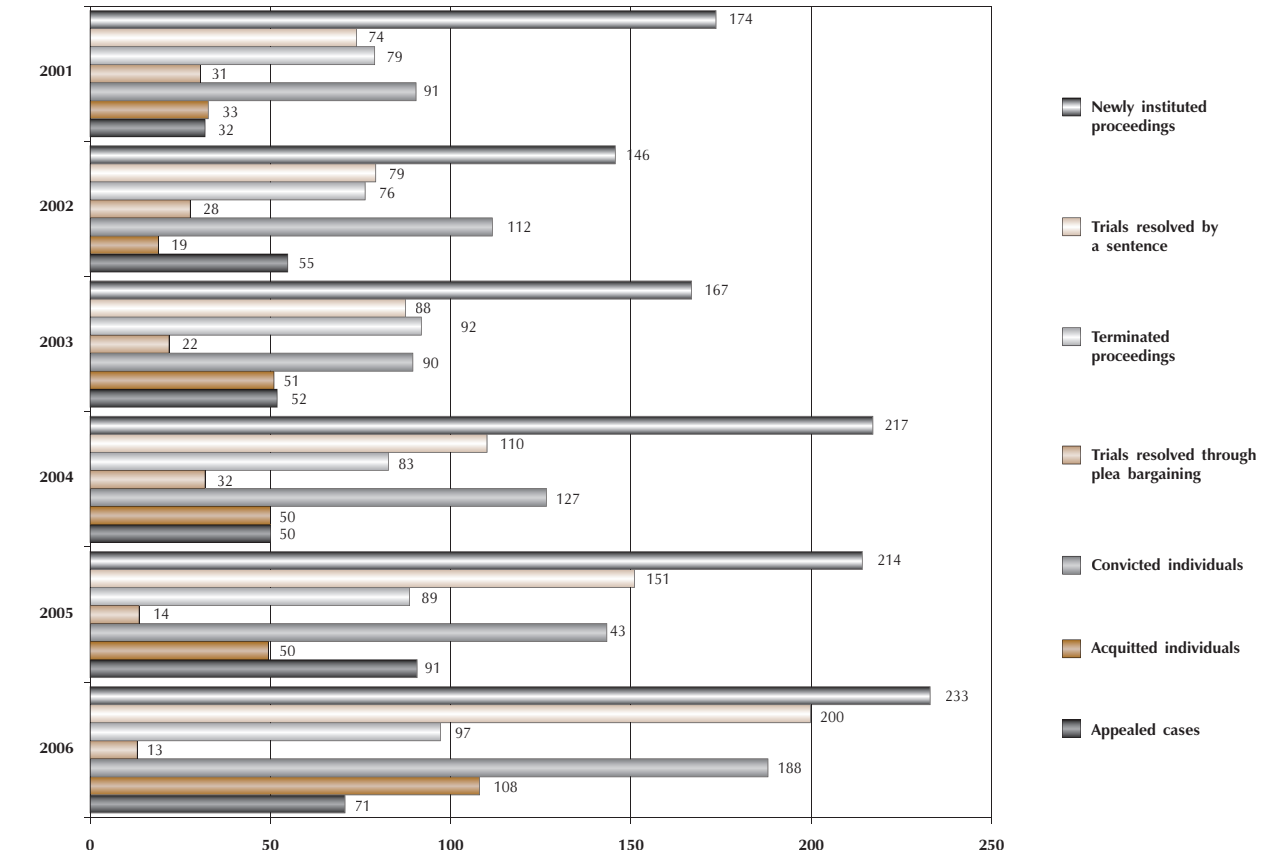
As regards the trial stage of the criminal process, the situation is not fundamentally different and the same alarming trends observed at the pre-trial stage can be discerned. Between 2002 and 2006, only 64 per cent of the total number of instituted trials ended by the courts' issuing a verdict and almost 30 per cent of the defendants were not convicted.

While the number of verdicts issued for corruption offences has been growing, the share of discontinued proceedings and acquittals remains high *(Figure 37)*. On the one hand, this demonstrates that in many cases the work of the investigative authorities is not efficient enough, as the case is presented to court through a bill of indictment but is nonetheless terminated or results in an acquittal. The large number of acquittals also implies criticism of the work of the public prosecution which masters the pre-trial investigation and maintains the indictment at trial. In addition, the spread of corruption amongst judges cannot be excluded *a priori* as a possible reason for the lean number of convictions for corruption.

The numbers concerning the administration of justice for corruption offences invite some other disturbing conclusions. There has been a persisting trend for only lighter cases of corruption to go to trial and eventually yield convictions. This is evidenced both by the level of the penalties imposed (mainly up to 3 years imprisonment) and by the large number of conditional sentences which shows that the convicted persons had never been sentenced to imprisonment before. Between 2001 and 2006,

only 28 perpetrators of corruption offences were sentenced to a period in prison longer than three years. Although the 2000 *Criminal Code* amendments extended (based on recommendations from, *inter alia*, civil society) the scope of the penalty of fine and it was made applicable to many corruption offences, including the different forms of bribery, the courts have imposed fines only sparingly to date. Of equally insufficient application is the penalty of disqualification envisaged for many corruption offences, although it could have a mighty deterring effect, especially where the convicted person is a public official.

FIGURE 37: TRIALS IN CASES FOR BRIBERY, TRADE IN INFLUENCE AND CRIMES RELATED TO OFFICIAL CAPACITY (2001-2006)



Source: Ministry of Justice

Court Case Law in Criminal Proceedings for Bribery

In 83 % of the cases, the convictions for bribery were only issued against one defendant, in 11 % of the cases they were issued against two defendants and in 6 % of the cases they were against three or more defendants. Criminal cases were instituted around one year and a half after the commission of the offence, on average, and the verdicts were issued another half a year later on average. In 64 % of the cases the defendant pleaded guilty. The first instance courts found the defendants

guilty in 94 % of the cases and innocent in 6 % of the cases. 74 % of those convicted were found guilty of passive bribery, 25 % – of active bribery and 1 % – of mediation to bribery. The most frequently imposed penalty was imprisonment – 71.6 % (with deferred execution in 81 % of the cases) followed by disqualification from holding a particular position or practicing a particular profession (42.1 %), fines (18.3 %), correctional labor (4.8 %), and confiscation (0.8 %). Of the verdicts at first instance, 84 % were challenged by the defendant, 3 % were appealed against by the prosecutors and 13 % took effect without being brought before the second instance. Out of the verdicts appealed against by either the defendant or the prosecutor, 56 % were fully upheld on appeal, 32 % were upheld partially, and 12 % were repealed. Of the verdicts and criminal judgments made by second-instance courts, only 13 % were challenged before the Supreme Court of Cassation (94 % challenged by the defendants and 6 % challenged by the public prosecutor). In 98 % of the cases, the bribe consisted in money and in 1 % of the cases it took the form of another tangible benefit or service. The amount of the corruption transaction was up to $150 in 51.7 % of the cases, between $150 and $500 in 22.4 % of the cases, $500 to $1,000 in 7.7 % of the cases, $1,000 to $5,000 in 11.2 % of the cases, $5,000 to $10,000 in 4.2 % of the cases, and the amount was in excess of $10,000 in 2.8 % of the cases. Of the convicted individuals, 81 per cent were males and 19 % were females. 40 % of the offenders had a university degree, 3 % had college education, 35 % had secondary education, 18 % had primary education, 3 % had elementary education, and 1 % were uneducated. In 98 % of the cases the perpetrators were Bulgarian nationals, 76 % of them were married, 84 % had jobs. Of all those convicted, 92 % had never been sentenced for another crime before.

Source: *Criminological survey: Court Case Law on the Enforcement of the Rules on Bribery, articles 301-307a of the Criminal Code, during the years of transition (1989-2003), Ministry of Justice*

3.3.2. Initiatives and Measures against Internal Corruption in the Bodies of the Judiciary

The measures to prevent and counter internal corruption within the judiciary are implemented through various mechanisms and tools some of which apply to the system as a whole while others only operate in specific branches of the system.

The Anti-Corruption Commission with the SJC was created in 2004 with a view to prevent and suppress instances of corruption within the judiciary. In harmony with its powers under the *Rules of Procedure of the Supreme Judicial Council and Its Administration*, the Anti-Corruption Commission for the judicial system, which is accountable to SJC, examines complaints

from citizens and state authorities against alleged corruption behavior of judges, prosecutors and investigators.

According to statistical data, between 17 December 2003 and 5 July 2006 a total of **172 complaints** were received of which **160 came from natural persons and 12 from legal entities**. Measures were taken in respect of **87 complaints**, and on grounds of article 20(5) of the *Rules of Procedure of the SJC and Its Administration*, the competent authorities were notified so as to conduct the inspections and checks. The Anti-Corruption Commission replied to **52 complaints** while advising the complainants of the respective measures taken in response to the allegations. **33 complaints were left unanswered**, as the questions raised went beyond the competence of the Commission and at the same time there was evidence that the complainant had also contacted the competent authority.

Alerts from the Anti-Corruption Mailboxes Located in the Buildings of the Courts, Public Prosecution Offices and Investigation Services

By Decision of the Supreme Judicial Council (Minutes No. 21 of 3 May 2006), in line with article 20, point 7 of the *Rules of Procedure of the SJC and Its Administration*, an electronic register was set up for the alerts made by citizens through the anti-corruption mailboxes in the buildings of judicial bodies across the country. Between 9 December 2005 and 5 July 2006, **44 instances of corruption** in the judiciary were reported, all of them to the Anti-Corruption Commission at the SJC. On grounds of article 20, point 5 of the *Rules of Procedure of the SJC and Its Administration*, **24 alerts** were forwarded to the competent authorities for inspections. Six written replies were received describing the outcome of the inspections conducted by the respective administrative managers. The complainants received replies to **15 alerts**, with specific opinions expressed by the SJC Anti-Corruption Commission and the statutory measures undertaken. **Three alerts** were examined and dismissed due to the lack of statutory ground for the SJC Anti-Corruption Commission to intervene, and/or the lack of proof of corruption engaged in by the magistrates or court staff at the respective court.

In addition to preventing conflicts of interest, **fair access to the profession and to career promotion is a major corruption preventive tool in the administration of justice**. Nevertheless, the measures in that respect have not generated the expected results yet.

Thus, the adopted ordinances governing the career development of magistrates – *Ordinance on the Professional Appraisal of Judges, Prosecutors, and Investigators, and Ordinance No. 2 of 28 June 2006 of the Supreme Judicial Council laying down the procedure for conducting competitions for judges, prosecutors, and investigators* – are not applied in a way that guarantees observance of the rules. The competition based principle of recruitment and access to the profession continues to be tampered with

by acquaintances, kinship, and not infrequently, political considerations. The meetings of the Supreme Judicial Council are now public but serious criticism can be voiced of the transparency and objectivity of proceedings at the supreme administrative structure of the judiciary.

Conflicts of interest are often encountered in the system of the judiciary and within its supreme authority.

> In December 2005, 92 judges from regional courts sent an open letter to the SJC against the absurdly quick promotion of a regional judge – the son of an SJC member from the parliamentary quota – who was appointed to Sofia City Court after having worked as a regional judge for less than a year.
>
> In May 2006, 26 junior judges wrote an open letter, endorsed by the Bulgarian Judges Association, to the SJC on the appointment as a junior judge at Sofia City Court of someone who had not passed the competition for junior judges but had been ranked as a junior investigator in Stara Zagora and then directly appointed junior judge in Sofia. A good sign in that case was the support offered by a group of junior prosecutors to the initiative of junior judges.

Openness and transparency in the operation of the judiciary are important guarantees against internal corruption. In that respect, there has been a positive trend towards a **more open public prosecution**. After the new Prosecutor General took office (February 2006), a process of gradual changes has been deployed within that system. The proclaimed principles of the process are: **accountability to parliament and society, wider openness and transparency, control by the public, political neutrality**. The reforms and modernization of the public prosecution have already yielded results in some areas, although the process is not entirely problem-free and consistent and visibly needs to continue. The internal inspections and audits that were carried out identified different violations. The sanctions imposed for them varied from demotion to removal from office and may well translate into criminal prosecution. The relevant decision-making powers in that respect are vested in the SJC, which operates in its old composition, and this explains to some extent the prudent proposals for measures and sanctions to be adopted and imposed. None the less, the new approach taken on board by the Prosecutor General has gradually started producing effects in this area, too.

In February 2007, a magistrate was detained for the first time: the Deputy District Prosecutor of the town of Oryahovo Dimitar Ninov, was accused of crimes related to official capacity and corruption. The prosecutor allegedly delayed and terminated dozens of proceedings, some of them relating to customs fraud. In line with the latest amendments to the *Constitution*, Ninov was arrested without the need to seek the lifting of his immunity as a magistrate by the Supreme Judicial Council.

Prosecutor Ninov concealed over 40 cases in order to spare the accused individuals from criminal prosecution. The cases were most diverse – from smuggling to fraud, and then to thefts, blackmailing, restitution of land, etc. The searches and seizures have unveiled next to €22,000 and 8,000 levs dispersed across some 50 hiding places.

After many years of excessive secretiveness, during the past year the website of the public prosecution provides detailed information on its operation – anything from audit reports to internal regulations and documents is on the web. The Inspectorate at the Supreme Prosecution Office of Cassation, which was a separate unit before, has grown into a sector in the administrative department but is subordinated directly to the Prosecutor General. The inspectorate has powers to conduct inspections based on any complaints and reports received, even anonymous ones, and to handle allegations of corruption referred through the anti-corruption mailboxes in the public prosecution offices, the Ministry of Interior and the penitentiaries. Allegations against judges and prosecutors are inquired into as well. After the Inspectorate was set apart as an independent internal control structure within the system of the public prosecution, for less than half an year it received close to 1,000 complaints, compared to just about 300 per year before. At the same time, the audits at the Supreme Prosecution Office of Cassation and at various prosecution offices throughout the country have resulted in the National Investigation Service's launching seven pre-trial proceedings against prosecutors for breach of their official duties[54].

Any reform processes notwithstanding, corruption crime, including internal corruption, is difficult to detect and prove. This is an additional impediment to the efforts to counter political corruption and crime in general.

[54] See *Prosecutorial Reform Index for Bulgaria,* June 2006, American Bar Association, Legal Initiative for Central Europe and Eurasia, p. 41.

BULGARIA IN THE EUROPEAN UNION: THE NEXT STAGE OF ANTI-CORRUPTION MONITORING AND ASSESSMENT

Corruption has been a major preoccupation during the 2004 and 2007 enlargements of the European Union and continues to dominate the agenda of the initial period of Bulgaria and Romania's membership. Not being in the core of EU's *acquis*, anti-corruption was a relatively new matter to tackle and, in contrast to other areas of EU competence, it had little specific guidelines to offer applicant countries. Still, the significance of transparent and accountable government for the functioning of the EU internal market and the delivery of its core policies required that anti-corruption be made one of the key requirements for membership.

In this process, the European Commission advanced its capacity to **evaluate anti-corruption progress**. Following an initial focus on adherence to international standards and acceding to major conventions, attention later shifted to meeting specific good governance targets. Member states have also contributed to understanding corruption and recommending action through the mechanism of peer reviews.

Nevertheless, **identifying anti-corruption progress remains largely arbitrary.** Corruption – and this is true not just within the EU but worldwide - remains a fluid concept, signifying different things to different people. More importantly, it is an evolving concept.

In its initial Progress Reports, the European Commission was skeptical about the measurability of corruption[55]. Afterwards, in its 2003 Communication on an EU anti-corruption policy (its latest so far), the Commission believed an EU monitoring mechanism of corruption would be redundant, referring instead to the existing ones such as OECD, GRECO, etc. These, however, were designed to evaluate compliance with the provisions of the respective international conventions and did not attempt to assess the effect of anti-corruption measures on corruption. Thus, the focus was still on *input* indicators (nominal compliance to anti-corruption regulations, procedures, etc) rather than *output* indicators (impact on corruption).

By 2006 it was clear that the transposition of international legal standards into national legislation would not suffice. Although Bulgaria had acceded to and integrated into its law the provisions of all major international anti-corruption instruments (Bulgaria is among the few non-OECD

[55] "Whilst it is hard to know its extent, the persistent rumours about corrupt practices at various levels of the administration and the public sector in themselves contribute to tainting the political, economic and social environment.", *2000 Regular Report from the Commission on Bulgaria's Progress Towards Accession*, 8 November 2000, p. 17

members to have ratified its Convention on combating bribery among foreign officials while not all EU member states had ratified it), concerns about corruption in the country remained. The emphasis needed to shift towards measuring impact.

As a result, in the September 2006 Report the Commission presented the Bulgarian government with new anti-corruption guidelines - a number of targets and/or tasks, which the Commission called benchmarks - to be completed by a certain date thus signifying the commitment of the government to anti-corruption reforms.

Thus, by implication the Commission signaled the need of a much more sophisticated tool for evaluating governance reform and progress among member-states – benchmarking. Unlike the targets/tasks set by the Commission for Bulgaria (and Romania), true benchmarking requires the availability of an instrument to **measure performance** which in turn is checked against an agreed standard or best practice (a benchmark). Applied to (anti)corruption this would imply the assessment of the impact of government policies on the prevalence of corruption, as well as public values and attitudes. **Diagnosing the state of corruption** and obtaining reliable information about its dynamics are crucial to the implementation of successful **prevention and control policies within the EU**.

* * *

The Bulgarian civil society-led experience in assessing anti-corruption progress has brought policy institutions and researchers both domestically and at European level a step closer to the development of a methodology for benchmarking corruption which could be the foundation of a future EU anti-corruption and good governance policy. Such a policy is warranted, above all, by the need "to reduce all forms of corruption, at every level, in all EU countries and institutions and even outside the EU."[56]

The evolution of the EU's policies in the area of anti-corruption suggests that the next logical step in this process is the **development of EU's own methodology for benchmarking corruption**, as has been done in other areas important to the functioning of the Internal Market. This would entail a capacity to diagnose the spread of corruption through a common measurement technique and comparing it against a certain best practice standard. Having such a diagnostic tool would be instrumental in the run up to the 2008 EC Communication on a comprehensive EU policy in this area and would tie in with the work of the EC's expert group on crime statistics.

Adopting a common corruption measurement methodology would offer a number of advantages:

[56] Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee On a Comprehensive EU Policy Against Corruption, COM/2003/0317 final

- It would provide **verifiable data about the prevalence of corruption** and an insight into the mechanisms of corruption through the experience of the victims;

- It is **context-neutral** and could be utilized in any political, social or cultural environment thus being useful both during future enlargements and in countries where the Union provides assistance;

- It would allow **international benchmarking** to take place which is particularly useful in assessing the impact of international legal instruments;

- It is an instrument for **risk assessment** as it provides information about the worst affected sectors of the public administration;

- It is an important overall indicator of the effectiveness of the Internal market and can be used as a fine instrument for targeting outstanding challenges.

* * *

What gets measured gets done. Having an EU corruption benchmarking instrument would strengthen the **effectiveness** of the promotion of anti-corruption standards at home and in the countries where the EU provides good governance assistance. It would allow the Commission to acquire reliable detailed information for its evaluation efforts and to tailor its recommendations for action to specific local environments.

An advanced instrument for corruption diagnostics would significantly enhance the **credibility** of EU's policies in this area. Anchoring assessments in hard data would significantly enhance the Union leverage in bringing about change as it would deprive corrupt governments of deniability about the magnitude of corruption in their countries.