

3. WAYS TO CURB TRAFFICKING AND RELATED CORRUPTION

3.1. LEGAL METHODS

Two generally accepted methods of combating crime in general, and trafficking and corruption in particular, are coercion and persuasion. It should be noted, however, that they are not universal and hence not apt to offering an overall solution of the problem. A number of other methods also exist, including state institutions, NGOs and movements, citizens, international organizations, etc. The use of a wide range of methods and forms to combat these crimes is necessitated by the fact that they are conditioned by social, political and economic, rather than only legal factors. This is why the task to limit corruption and trafficking to acceptable parameters, which are controllable by the state and society, is not a simple one.

From a purely legal point of view, as an approach, coercion consists in punishing a person who has committed a crime or administrative infraction. This approach may be discussed from several perspectives.

The first is to improve the relevant provisions of the Criminal Code and of administrative and tax legislation by broadening the scope of legally regulated public relations connected to corruption and trafficking in order to prevent their spread and the resulting greater public danger.

The analysis of the legislative regulation of combating corruption and trafficking in Bulgaria, as well as world experience show that the excessive criminalization of trafficking and corruption (mainly bribery) and excessive sanctions cannot and do not in and of themselves lead to the desired decrease in the number of committed crimes or infractions. This is why, both on a theoretical and a purely practical level, the question whether the acts should be criminalized or whether administrative penalties should be imposed, according to administrative procedure remains open.

The coercive effect on infringements in the discussed cases consists in imposing punishments for a committed crime, for a committed administrative infraction, or the application of coercive administrative measures.

Which of these approaches should have priority depends on the specific assessment of the situation in the country. Excessive criminal repression as a result of criminalization of most acts and greater sanctions cannot be regarded as the most correct approach in the specific case and in criminal law policy, despite such a trend in recent years. One recommendation is to increase sanctions for public officials in the customs administration or for persons who systematically engage in the traffic of goods across our borders, whilst increasing the cumulatively imposed fine.

As far as trafficking and corruption are linked with the demeanour (action or inaction) of officials not only from the customs administration, it is advisable to increase the criminal sanctions for officials who have acted illegally in order to ensure benefits to themselves or to their relatives or to prejudice third parties' interests, which may result or have already resulted in serious harms, or when the deed is done by a person on highly responsible position. When the loyalty of an official is under question, a procedure, which is not provided in the Criminal Code or in the Law for Administrative Offences and Penalties (LAOP) may be applied. It does not require evidence envisaged in the Code of Criminal Procedure for a committed crime, or

those envisaged in LAOP for an administrative offence. A substantiated doubt of corruption or involvement in smuggling should suffice to restrict or withdraw the powers of the respective official. Such practice may be deemed temporary and exceptional. For its application a perfect procedure should exist that takes account of the international experience, especially that of Great Britain, the right of every citizen to practice the occupation that he had chosen, Bulgarian traditions, the necessity to avoid politization of professional activity, etc.

At the same time, the reduction of tariffs rates, the possible quantitative restrictions, the elimination of licenses and other factors conducive to offences become more and more imperative.

The adoption of a differentiated approach in determining the type and size of sanctions depending on the job description of the offender in combating corruption and trafficking with legal means would lead to better results. The argument in defense of this stand is that large-scale smuggling and the corruption associated to it are done under the "umbrella" of high-ranking persons in the state hierarchy or political leaders belonging to different lobbies.

Administrative sanctions should be applied more widely due to the fact that the proceedings proving the infraction and the imposition of administrative penalties are greatly simplified. In trafficking and corruption, fines and barring a person from the right to exercise a given job or activity could be much more effective in mass cases of low public danger than the punishments for crimes provided in the Criminal Code. This is also true of property sanctions, imposed according to an administrative procedure.

The approach of coercion in combating corruption and trafficking also means that both the objects and any means used are confiscated for the Exchequer [23].

The effective application of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime ratified by the National Assembly on April 1, 1993 (SG, No. 31 of 1993) and of the Law on Measures against Money Laundering* , passed by the National Assembly in 1998, would be an unquestionable contribution to the fight against corruption and trafficking. The main purpose of this act is to prevent and detect the actions of natural and legal persons aimed at laundering money derived through or in connection with a crime [24].

The other basic approach in combating corruption and trafficking is persuasion. It is linked with the preventive function of law. The very criminalization of an act or declaring it an administrative infraction is preventive in nature. It is expressed in the fact that the knowledge of a crime or infraction and the responsibility carried for committing them motivate citizens to abstain from a certain type of behavior to avoid being punished.

Regardless of the public importance and the spread of trafficking and corruption, as well as the high degree of public danger of those acts, persuasion can be applied successfully in adopting legal norms providing for incentives and legal norms with a favorable effect on the offender, as a possibility to broaden its area of application.

The application of the method of persuasion can be multiplied not only in combating corruption and trafficking, but also in view of a number of other related crimes, such as office-related crimes, documentary crimes and certain crimes against the administration of justice.

* In 1996 the National Assembly adopted the Law on Measures against Money Laundering, repealed by a law of the same name of 1998.

The method of persuasion, outside its purely legal formal character, can be applied by using traditional forms, involving citizens and public organizations, and with the help of the mass media. The education of children and young people is of particular importance.

3.2. ORGANIZATIONAL AND STRUCTURAL REFORM

The other forms of counteraction can be organizational, organizational-methodological or structural and include different incentive measures. This presupposes the creation of a better work organization of special teams whose activity is directly linked to smuggling and corruption, detection of violations and crimes and measures for drawing up certifying documents, reducing the terms of investigation and imposing due sanctions, barring and preventing infringements in time. The amendments and additions to the Criminal Code of Bulgaria (State Gazette, issue 706/1999) that entered into effect on January 1, 2000 aim to simplify the pre-trial procedure and to shorten sufficiently the terms for investigation. These amendments have increased the number of officials, conducting pre-trial proceedings in the form of preliminary investigation. The investigation of some 80 % of the crimes is consigned to the Police and the customs. The crime "smuggling", when committed by Bulgarian nationals, is investigated by customs officers. With the adoption of the Taxation Procedure Code (State Gazette, issue 103/1999, in force from January 1, 2000) a solid, although late, legal framework was created for the public relations in the field of tax legislation. This would help solidify the pillars of the state and to create conditions for a better organized and effectively functioning tax administration as a guarantee against corruption and smuggling.

The considerably increased procedural powers in respect to the imposition of administrative penalties and the enforcement of coercive administrative measures are a serious guarantee in combating corruption and trafficking.

The amendments to the Law on Collection of Government Receivables (SG, No. 26 of 1996), introduced by the Taxation Procedure Code, caused a Government Claims Agency to be set up with the Ministry of Finance. Its powers are regulated by Articles 85-90, as well as by the Rules of Organization of the Agency, approved by the Council of Ministers, and offer great possibilities to combat corruption and detect incomes from smuggled imports.

At the same time, it is becoming increasingly necessary to reduce the tariff rates, introduce quantitative restrictions, restrict licensing regimes and other incentives for committing violations.

The overall activity of the General Tax Directorate (GTD) is regulated by the TPC and the Rules of Organization. An Inspectorate Division, directly subordinate to the head of the General Customs Directorate, has been set up in the GCD with subdivisions to the level of District Customs Divisions [25]. In addition, an Internal Control Department with five tax directorates in Sofia, Plovdiv, Varna, Bourgas and Veliko Turnovo has been created with the General Tax Directorate. The organizational structure of internal control is devolved to the level of regional tax directorates. Representatives of internal control work in some territorial tax directorates although they are on the payroll of the regional tax directorates.

The main functions of GTD internal control are defined in Article 241 of the Taxation Procedure Code and the Rules of Organization.

The main functions of the tax control officers are to ascertain the loyalty of tax administration officials, to investigate signals and complaints, and to conduct regular (planned, routine) inspections and preventive activities. Such structures with special powers exist also in other state bodies whose activity is linked with combating corruption and smuggling.

On the other hand, it should be kept in mind that when structural teams with control functions are subordinate to the leaders of a given department or team, their effectiveness is reduced, and the likelihood of violating the principle of objectivity and independence is increased.

The following measures could be recommended:

1. Creating a uniform information system and database to make possible the checks of the documents accompanying the goods.
2. Introducing a system to quickly inform competent bodies of pending criminal or administrative proceedings against a specific person, including whether they have previously been punished for crimes, sanctioned for administrative infractions, or whether any coercive administrative measures have been imposed.
3. Creating a system for a simplified check of the material and financial status of officials who are suspected of having committed or committing acts associated with trafficking and corruption.
4. Broader application of the system of stimulating customs officials and encouraging persons detecting customs or currency violations, currently regulated in Article 14 of the Customs Code.

3.3. ORGANIZATIONAL AND METHODOLOGICAL FORMS

The organizational and methodological measures applied by the special bodies – customs administration, border police, finance and tax administration, the Financial Intelligence Unit, a Government Claims Agency, magistrates' authorities - should be aimed at:

- a) quality selection, personnel training and retraining;
- b) developing methodologies to detect the different kinds of crimes;
- c) studying the mechanisms of committing different violations, summarizing the results and presenting the analyses to the Regional Customs Houses.

3.4. CUSTOMS REFORM

The reform in Bulgarian customs is of particular importance for the successful restriction of transborder crime. It is carried out through the statutory framework, work organization, internal control and international cooperation.

It may be claimed that the legal framework in customs activity has been improved in the late 90s. The enacting of the Customs Code (SG, No. 15 of 1998) also necessitated certain amendments to the Law on Banks. The heads of the General Customs Directorate and of the Regional Customs Houses were enabled to receive the necessary information about persons guilty of a violation, established by a writ of the customs administration.

A new, third level, customs legislation is currently being developed and entering into force – instructions, ordinances, etc. The Internal Control Instruction and the Code of Ethics of the Bulgarian Customs Administration will have a direct bearing on the fight against corruption and other unlawful actions of customs officers. They will be jointly elaborated with experienced customs administration officers and experts in the EU countries and of Eurocustoms.

A Regulation of the Council of Ministers of the Republic of Bulgaria of 1999 and the Law on State Property compel all customs officers to declare their property status every year.

In accordance with the provisions of Article 7, paragraph V of the Law on State Property and Article 10, paragraph 2 of the Customs Code, customs officers should fill out declarations in accordance with the restrictions of these acts applicable to civil servants and customs officers in particular.

Measures to cut short corruption linked with trafficking are also taken in the sphere of internal control. Special structural teams for internal checks and control of any corrupt activities of customs and tax officials have been set up in the system of the Ministry of Finance and in the General Customs Directorate (GCD) and General Tax Directorate (GTD) in particular.

As a compulsory component of the reform, it is recommended to devolve both internal control and disciplinary proceedings to grassroots management level – customs offices.

With regard to work organization, measures have been taken to restrict corruption and other unlawful actions of customs officials, as well as to tighten work discipline. The main ones include:

- introducing a two-tier (and in some cases three-tier) control scheme in the customs handling of goods;
- regular rotation of customs officers;
- withdrawing personal customs seals and transfer to a different job, not linked with customs control, of customs officers against whom preliminary proceedings have been instituted under the procedure of Chapter Twelve of the Code of Criminal Procedure until the pronouncement of the respective competent authorities;
- a special regime of keeping personal customs seals has been introduced;
- cash in excess of BGN 100 and/or foreign currency carried by employees in customs, customs bureaus and customs checkpoints during office hours must be declared.

The following measures are introduced since January 2000:

- personal IDs which will be prominently displayed on the uniforms of customs officers;
- special mail boxes will be put up on the premises of customs, customs bureaus and checkpoints for signals and complaints of passengers, carriers, shipping agents, company representatives, etc.;
- hotlines will be opened in customs offices (one in the respective customs office and one in the GCD Inspectorate Division) for signals and complaints.

Due to the initial stage of the reform, it is still difficult to say how these measures will reflect on the practical activity of customs. A mandatory condition for an objective assessment is to make it with the participation of non-governmental anti-corruption and human rights organizations, as well as to make it accessible to the public.

The reform includes measures for improving the interaction with other state institutions. Constant interaction is being realized between the General Customs Directorate (above all the Inspectorate Division and “Customs and Currency Violations”) and other competent state bodies – courts, prosecution offices, investigation services, Ministry of Interior, tax administration, etc. – for a more effective fight against corruption and other unlawful actions of customs officers. The interaction includes regular contacts with the bodies of the Judiciary and the Executive, exchange of information and joint inspections with the relevant bodies. The received informa-

tion about offenses and violations (excluding disciplinary ones) is passed on to the relevant Prosecution Office (e.g. joint inspections for smuggled imports of sugar, spirits, etc.)

The continued carrying out of the reform would require the introduction of modern work standards and principles for customs officers: simplifying and facilitating a number of customs procedures, decreasing the role of the subjective factor, guaranteeing greater transparency of customs activity, etc.

Updating the processes of collecting, processing and use of information would be of great importance in improving the work of customs. The future information system should include the following:

- Continued establishment of special investigation and intelligence structures in the customs offices, improving the work of these structures, creating conditions for their better functioning through the introduction of new methods of work, improving material facilities and implementing new special technical equipment.
- Creating new information files and databases about customs violations and offenses and ensuring constant exchange of information in real time between the different agencies, directly involved in the fight against customs violations and offenses.
- Improving the coordination between the customs offices, infrastructure and communication means.
- Encouraging the exchange of information among customs administrations and improving international cooperation.
- Using the existing legal framework for exchanging information among customs administrations at international level. (The Republic of Bulgaria has to accede to the Nairobi Convention on the Prevention, Investigation and Restriction of Customs Violations.)

3.5. MEASURES IN THE CONTEXT OF LEGAL AND INSTITUTIONAL REFORM

The recommended measures comprise part of the legal and institutional reform for the creation of modern management structures and mechanisms within in the context of the country's European integration. In the legal aspect, for example, the Anti-Corruption Action Plan of *Coalition 2000*, adopted in 1998, contains general guidelines for the continued development of the judicial system, which directly affect the problem under discussion [26]. In particular, the following may be proposed:

- Reform of substantive criminal law by reformulating provisions concerning offence-related crimes, fraud, including consumer fraud, introducing a broader definition of the concept of benefit in the crime of bribery, criminalization of the actual demand for unlawful benefit (which has already been initiated), criminalization of preparations for corrupt action realized by two or more persons, sanctioning legal persons who permit criminal practices in their activity.
- Decriminalization of the crime of "inciting to bribery" under certain prerequisites, as well as in cases in which the aim is to expose corrupt senior high-ranking civil servants, magistrates and other public officials.
- Legislative regulation of the sanction of "confiscation" of property acquired as a result of corruption, including if transferred to third parties in order to be retained.

The legislative regulation of the funding of political parties and the transparency of their financial activity would be extremely important in reducing political corruption and cutting off any smuggling channels associated with it. The creation of an adequate legal framework in this key sphere would also reflect favorably on the establishment of democratic institution in the country by differentiating the state and party sphere, creating conditions for the development of legal sources of funding and control over the finances of parties and politicians, etc [27]. The legislative development of the financial property status of civil servants and national representatives is also linked with the solution of this problem. Conversely, the postponement of the adoption of a relevant law helps broaden corrupt practices involving these categories of persons.

In addition, NGOs have proposed the creation of an institution outside the system of power for monitoring and control of the administration, that would act as a deterring factor against corruption and arbitrariness which violate the rights of citizens and their organizations. A bill for the introduction of a special institution like the Ombudsman (People's Defender) at national level was drafted in 1999 within the framework of *Coalition 2000*. The possible adoption of an Ombudsman Act would create prerequisites for the functioning of a mechanism, complementing and accompanying the other present remedies and would help to establish civic control.

On the other hand, it is necessary to further develop the reform in the public administration and clearly define the role of the state and its institutions, including control mechanisms and institutions called upon to combat corruption (the Audit Office, the bodies of State Financial Control of the Tax Administration, national services in the structure of the Ministry of Interior, etc.). The valid rule here is that the special internal control bodies in the state administration, whose immediate tasks are to combat corruption and smuggling, should be either completely independent or have double subordination, structured in a uniform system and subordinate to an independent body such as, for example, an agency with broad administrative and jurisdictional powers.

An important prerequisite for the continued success of the reform in the public sector is the adoption of a modern law on the access to public information, which would overcome departmental isolation and would contribute to transparency and publicity in the state sector. This requires an accurate definition of "state secret" and the creation of a regime of transparency and publicity in the activities of the state institutions.

The continued reform in the judicial system reflects directly on the infractions and crimes discussed here. The measures to speed up the administration of justice and increase its efficiency and transparency could help overcome its present sluggishness. In particular, the continued harmonization of legislation with the standards of anti-corruption conventions would be of great importance. (In 1999, the Republic of Bulgaria signed three conventions regulating the fight against corruption: the Criminal Law Convention on Corruption of the Council of Europe, the Civil Law Convention on Corruption of the Council of Europe and the Convention on combating bribery of foreign public officials in international business transactions of the Organization for Economic Cooperation and Development. Only the third convention has been ratified, in fulfillment of the commitments in accordance with which the Law to Amend the Criminal Code was adopted by the National Assembly on January 15, 1999. It created the concept of "foreign public official" and established bribery of a foreign public official in international commercial transactions as a criminal offence. The same sanctions as for active bribery of a "domestic" public official apply in this case.

3.6. STRENGTHENING OF INTERNATIONAL COOPERATION

The very nature of the dyad of corruption and trafficking presupposes international cooperation as the only chance to achieve definite positive results. This is so because smuggling is invariably a crime, which affects at least two states.

Bulgaria is a party to a number of international instruments related to trafficking and corruption. According to Article 5 of the Constitution these instruments take priority over domestic legislation [28]. At the same time, by virtue of the European Convention on Legal Assistance and the provisions of Chapter 22, Sections Two and Three of the Code of Criminal Procedure, Bulgaria is involved in considerable international cooperation for legal assistance in criminal cases at the request of third countries.

Table 2 shows that in the years 1998 and 1999 Bulgaria responded to 28 requests for legal assistance, including 13 from Ukraine, two from Cyprus, five from Russia and one each from Turkey, Britain, Poland, Latvia, Norway, Spain and Romania. Eight of those requests concerned the trafficking of narcotic substances. All other requests concern different goods as listed, as well as those in the column "unnamed". In accordance with the provisions of the Law on the Judiciary, the requests for legal assistance are handled by the Specialized Investigation Service.

According to the Law on Measures against Money Laundering, the Ministry of Finance is obliged to inform the concerned bodies abroad "about initial offenses and related money laundering crimes to which the Bulgarian Criminal Code does not apply". This information is provided by the Ministry of Justice; the Financial Intelligence Unit with the Ministry of Finance being informed in writing in these cases (Article 21, paragraph 2 of the Implementing Regulations of the Law on Measures against Money Laundering).

The activity of the National Central Bureau of Interpol – Ministry of Interior, is another form of international cooperation through which inquiries are made and information requested about the registration of persons against whom preliminary proceedings have been instituted in Bulgaria. Such inquiries about foreign citizens are also handled by the Bulgarian special bodies, including the bodies of the judicial system, in case of requests addressed to Bulgaria.

Cooperation through the Interpol is particularly important. It enables the much more quicker receipt of information than with a request for legal assistance where the procedure is complicated. In addition, bodies and institutions not included in the judicial system can also receive information from Interpol. These bodies include Internal Control of the General Customs Directorate, Internal Control of the General Tax Directorate, the Financial Intelligence Unit, the Government Claims Agency with the Ministry of Finance, etc.

A specific form of cooperation among the special bodies in charge of combating crime, including the fight against trafficking and corruption, is the Working Group on Law Enforcement set up with the Ministry of Interior. It has been functioning for a second year with the participation of representatives of the US Administration, the Ministry of Interior, the Prosecution Office, the Courts, the Investigation, the Customs Administration and the Financial Intelligence Unit.

On a practical level, direct contacts between the investigation services and, above all, between the Specialized Investigation Service and the liaison officers accredited with the respective embassies in Sofia, are especially useful.

Substantial opportunities exist for the development of regional cooperation. International projects can be developed within the framework of the Stability Pact for South Eastern Europe, and specifically within the framework of the Pact's Third

Table, concerned with issues of security, corruption and cooperation in the sphere of justice and internal affairs. In February 2000, Bulgaria, together with another six countries in Southeast Europe, signed an agreement for the fight against corruption within the context of cooperation under the Stability Pact (Anti-Corruption Initiative For South Eastern Europe).

Multilateral interaction in cutting short transborder crime is part of another official document: the Goodneighbourhood Charter signed in Bucharest in early February 2000 as part of the Southeast European Cooperation Initiative (SECI). An Agreement on Cooperation to Prevent and Combat Trans-Border Crime was also signed in 1999. It provides different forms of cooperation between the law enforcement bodies of the countries in the region: exchange of special information, cooperation in mastering modern technical means and methods, effective coordination, etc. [29].

Bulgaria is party to a number of bilateral instruments on legal assistance, as well as to a number of bilateral agreements on combating corruption and trafficking [30].

The *Fight against Corruption in Bulgarian Customs Administration* project is to be launched in early 2000. It will be implemented jointly with specialists from the customs administrations in France and Britain, as well as with Euro-Customs. The project involves working out an Internal Control Instruction, Code of Ethics, etc. Special technical equipment will be supplied for the needs of the internal control bodies and employees will be trained [31]. In June 1999 the General Customs Directorate joined (through the Inspectorate Division) the Joint Program of the Council of Europe and the European Commission *Octopus II*.

Contacts have been established and information is being exchanged with the customs administrations of neighboring countries, as well as with the EU member states.

The main task facing all Bulgarian institutions committed to combating trafficking and corruption is to make full use of existing international mechanisms and forums for the solution of the most urgent problems in this sphere. Making the national efforts for coming to grips with the cited negative trends in transborder crime in Bulgaria, which are part of the international combating of this phenomenon, is the obvious goal of the various ways of cooperation with other countries, international organizations and special agencies.

3.7. THE ROLE OF CIVIL SOCIETY

One can define the NGOs mission in countering trafficking and corruption in two directions: monitoring and control. The biggest advantage of civic monitoring and control over the departmental supervisory functions lies in the independence of the third sector. Therefore Bulgaria's politicians have to wake up to the truth that civic control does not have an alternative and no reforms in government could compensate for its absence.

- In the sphere of monitoring this cooperation can take the form of agreed cooperation between state institutions (e.g. the General Customs Directorate) and NGOs for conducting regular sample studies to determine the origin of different types of goods. The next step would be to combine the results of sample studies and checks of the available commodity stock according to a statistical principle defined in advance. (For example, a check of one in every 100 companies in the BULSTAT register.) The reasoning here is to make checks in areas where sample statistics show the greatest discrepancy between the import of certain types of goods and their availability. (A mechanism for the prevention of smuggling through sample methods could be developed further.) (See 2.4)

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- The control sphere necessitates the inclusion of representatives of non-governmental and human rights organizations and in particular for monitoring signals of abuses when crossing state borders (these signals are now dealt with by the General Customs Directorate).
 - The next step would be to guarantee the assistance of competent bodies in establishing independent civic control to check violations in the immediate border zone or within the scope of customs inspections.
 - Civic organizations should be given the entire information, collected in different studies and through complaints, to be published as a website and/or in periodic publications (newsletters). This would contribute to the transparency and publicity of the work of the competent bodies and, hence, generate public support for the measures taken to curb trafficking and corruption.