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The Introduction of a Specialized Anti-Corruption Service back on the Anti-Corruption Agenda

Introduction

On the eve of Bulgaria's EU accession significant results in prosecution and punishment of high level political corruption are still outstanding. In this context, the idea for creating an independent specialized anti-corruption service again became a topic in the anti-corruption agenda.

Genesis of the idea and initial vision

In January 2003 the President of the Republic Georgi Parvanov proposed the idea of establishing a separate independent service for countering corruption. Such a service, according to the President, should be organized along the following principles:

- It should be an independent civil institution assigned with the same scope of functions like some of the services of the Ministry of Interior, and empowered to take part in the investigation of corruption crimes, committed by a small circle of senior government officials (e.g. from the President of the Republic down to the district governors and all persons enjoying immunity).
- The head of the service should be elected by the parliament for a term of office different from the one of the National Assembly to prevent a newly elected parliament from replacing him/her.
- The officials of the service should be comparatively small number but at the same time provided with all necessary conditions to perform their duties, including appropriate remuneration and personal safety guarantees.
- Any data collected by the service should be sent to the prosecution office, where a decision should be made on whether to commence proceedings.
- The service should present an annual report on its activities to the parliament.

The recent developments

Despite the positive opinions received after its first presentation the idea was never developed into a detailed concept and no legal provisions were drafted. The proposal was gradually abandoned until 2006, when the establishment of an independent anti-corruption service appeared once again on the agenda.

- The President of the Republic reaffirmed his position on the necessity of establishing such a body in order to achieve better results in countering high level political corruption.
- The new Prosecutor General Boris Velchev, who chaired the President's legal council at the time the idea was initially launched, was also supportive. According to him, such a service would be more effective against political corruption than the bodies of the Ministry of Interior, because measures in this area might affect high level politicians from both the ruling parties and the opposition.²

Best practices

Other countries worldwide have considered the option of introducing an independent anti-corruption agency as well.¹ Few of them, however, have established specialized services empowered to directly investigate corruption crimes, the best examples being Hong Kong and the state of New South Wales in Australia.

In countries like France, Slovenia, Serbia and Montenegro, etc. there are anti-corruption bodies (agencies, councils or commissions) whose main tasks are limited to centralized collection of information, assistance to other governmental authorities and preparation of analyses and policy recommendations. In Bulgaria the governmental Commission for Prevention and Countering of Corruption has the same scope of activities.

Finally, some countries like Italy, Spain and Romania have established specialized anti-corruption prosecution offices. Bulgaria has undertaken steps in that direction as well. The Prosecutor General has created an internal anti-corruption unit directly subordinated to him, with plans in the long run to introduce a third Deputy Prosecutor General responsible for corruption and organized crime (an option requiring legislative changes).

- The idea received strong support by the Prime Minister Sergey Stanishev and the Minister of Interior and Chair of the Commission for Prevention and Countering of Corruption Rumen Petkov. The two of them together with the Prosecutor General even agreed on a deadline (October 2006) for the service to be set up.

¹ To help identify the best practices implemented in this area CSD developed and disseminated a research paper *The Establishment of Special Anti-Corruption Bodies: Overview of the International Practice* (the full text of the analysis is available in English at <http://www.csd.bg/bg/fileSrc.php?id=179>) and held a series of experience-sharing public events such as the round table *Independent Agency for Combating Corruption: Romanian Experience* (March 28, 2003, a summary of the discussion is available in English at <http://www.csd.bg/artShow.php?id=11357>) and a video dialogue with the Hong Kong Independent Commission against Corruption (May 19, 2003, a summary of the event is available in English at <http://www.csd.bg/artShow.php?id=687>).

² For further details see the speech of the Prosecutor General at the Eighth Anti-Corruption Policy Forum held by CSD on March 22, 2006 (<http://www.csd.bg/artShow.php?id=6923>).

The debate: pros and cons³

Indeed, the existing mechanisms for combating corruption do not ensure timely and effective detection and punishment of corruption practices, which is illustrated by the extremely small number of persons sentenced for such crimes. Based on data available through the Corruption Monitoring System of CSD, the average monthly number of corruption transactions in 2005 was about 120-130.000. In the same time the number of convicted individuals for typical corruption offences (e.g. bribery and crimes related to official capacity) in the first half of the same year was barely 72.⁴ Furthermore, no high level politicians, government officials or magistrates have been sentenced for corruption in this country so far. The lack of effective mechanisms for combating corruption among senior government officials and persons enjoying immunity together with the absence of sufficient guarantees for political independence of the bodies investigating and prosecuting corruption crimes explain the even poorer results in terms of punishing high-level political corruption.

In such an environment new measures, including institutional ones, are needed to improve the counteraction to corruption. The establishment of an independent anti-corruption service remains one of the options in this respect.

Such a solution would have certain advantages:

- It would allow concentrating the fight against corruption among senior government officials and politicians within a single body, thus optimizing its effectiveness.
- Corruption crimes committed by senior government officials would be detected by an authority that is independent, i.e. not subject to any political influence or protection.
- The prompt detection of corruption crimes would make the collection of evidence more effective, which in turn would facilitate the work of the prosecution office and the courts.
- The existence and operation of such an independent body for combating corruption would have strong preventive effect upon the senior government officials, since they will no longer rely on “politically secured comfort”.

³ With the active support of CSD the idea of creating an independent anti-corruption service was publicly discussed on several occasions allowing for numerous opinions both in favor and against the proposal to be put forward. The major event – a round table *Establishing a National Agency for Combating Corruption: Pro and Contra* (February 25, 2003) – brought together MPs, representatives of the government, magistrates, non-governmental organizations and experts. A summary of the discussion is available in English at <http://www.csd.bg/artShow.php?id=11356>.

⁴ See *On the Eve of EU Accession: Anti-Corruption Reforms in Bulgaria*, Center for the Study of Democracy, 2006, p. 62.

A proposal similar to the one for establishing an independent anti-corruption service was formulated by CSD a few years ago as well. It envisaged the introduction of a public official (or a team of such officials), elected by the parliament and empowered by the law to exercise prosecutorial functions as regards political corruption and internal corruption in the judiciary.⁵

The establishment of a specialized anti-corruption service raises some serious concerns as well. Apart from the fact that the initiative would be a rather expensive effort in terms of financial resources, there is a risk of allowing spread of corruption within the new service. From this point of view, building the capacity of the already existing institutions dealing with corruption (primarily the judiciary and the other law enforcement

bodies) rather than creating a new service with similar functions seems justified as well.

Recommendations

- The powers of the new service should not interfere with the constitutionally declared powers of the prosecution and the investigative authorities to investigate and prosecute criminal offences, including those related to corruption.
- The independence of the service from political influence should be sufficiently guaranteed.
- The service should be granted the power to use special intelligence means.
- The information collected should be confidential and no public access should be provided to it.
- The establishment of the new service should proceed simultaneously with the necessary reforms in the three branches of the judiciary (the courts, the prosecution and the investigation).

Conclusion: next steps

To keep the momentum of the reopened public debate and the considerable support in favor of the establishment of an independent anti-corruption service it is now necessary to proceed further with the elaboration of a detailed concept and drafting of the respective legislation. However, if this initiative is to be further developed the process should continue in public-private partnership that would allow the active involvement of the civil society.

⁵ See *Judicial Anti-Corruption Program*, Center for the Study of Democracy, 2003, p. 13.