2. POLITICAL CORRUPTION

2.1. Dimensions of Political Corruption

Bulgaria has many of the features of a country affected by political corruption. Many national and international studies point out a high degree of illegitimate interconnectedness between the country's politics and economy[1]. Political corruption in the country takes multiple forms, but it is best exemplified by the following manifestations:

- **Lack of political morality and political responsibility:** necessary prerequisites to counteract political corruption;
- Purposeful **attempts to establish control over civil society organisations** – one of the most important elements of external political responsibility – by setting up quasi-NGOs and by co-opting existing ones in order to suppress criticism;
- **Tolerance of oligarchic organised crime,** which forestalls any progress in counteracting other types of organised crime;
- **Oligarchic control over the economy** and the use of public resources for the benefit of political parties or individuals.

Elements of Political Corruption

Political corruption is defined as the abuse of political power for private (personal or group) benefit, mainly in terms of material gains, status and wealth.

Political corruption affects political decision-makers, including politicians and high-level public officials, who are empowered to formulate state laws and determine the scope and content of rules and regulations. It can affect the following levels and positions:

- The executive branch: President, Prime Minister, ministers, members of and counselors of political cabinets, high public officials, including at domestic and foreign security services and the police;

[19] See the 2005, 2006, and 2007 Corruption Assessment Reports, Center for the Study of Democracy; the EC Cooperation and Verification Mechanism Reports on Bulgaria and Romania, 07, 2008; the EC Report on Bulgaria's EU-funds Management, 2008; the Corruption Perception Index 2008, Transparency International; etc.

- The legislative branch: Members of Parliament;
- The judiciary: members of the Supreme Judicial Council, heads of courts, prosecution offices and investigation services;
- Leaders of political parties (whether represented in Parliament or not);
- Local and regional government: mayors, regional governors, municipal counselors, etc.

Political corruption usually aims at:

- Public status and recognition;
- Personal enrichment (financially motivated corruption);
- Private and/or group benefits (for individuals, political parties, governments);
- Preservation and expansion of power.

Political corruption presupposes the violation of existing laws and established rules, but it could also spread via perfectly legitimate channels. Such is the case when national laws and rules leave loopholes or when legal provisions are circumvented, ignored or changed as is needed. Therefore, defining political corruption must necessarily take into account international standards as well.

Political corruption takes two basic forms. One entails the extraction of funds from the private sector and national resources. This form of political corruption occurs at the intersection of business and politics, where public and corporate funds are concentrated. The other form aims at the preservation and expansion of power (through favouritism and patronage It is associated with the process of political decision-making and election campaigns.

Corrupt extraction and accumulation of funds could involve:

- Bribery, “commission fees” and fees levied on the private sector;
- The extraction of funds from the private sector by means of taxation policies or customs procedures;
- Fraud and economic crime;
- The creation of opportunities for rent-seeking by political means;

- The creation of market opportunities by political means with the goal of serving the interests of businesses owned by the political elite or by crony oligarchic circles;
- Extra-budgetary transfers and the manipulation of privatisation deals;
- The provision of funding to political parties by the state, the private sector and the constituents.

Corrupt methods of preserving power could involve:

- Oligarchic control over the economy: setting up and maintaining clientelist networks;
- The practice of buying political and majority support from "independent" or opposition parties and politicians;
- The practice of buying particular decisions of parliamentary, judicial, regulatory and/or supervisory bodies;
- Favoritism and patronage in the distribution of public resources;
- Electoral fraud and the practice of buying constituents and their votes,;
- The use of public funds for political campaigns;
- The practice of buying the media and the civil society.

Source: Adapted from Political Corruption, Inge Amundsen, Christian Michelsen Institute, U4 Anti-Corruption Resource Centre

2.2. Political Morality and Political Responsibility

Political morality and responsibility, or the lack thereof, are among the most important factors that could enhance or inhibit corrupt relations and interests. In official explanations to recent alleged corruption scandals, officials have insisted that despite the fact that a "certain degree" of moral unacceptability (i.e. contradicting the public interest) exists, the decisions made perfectly comply with existing legislation. This applies most frequently to cases of transactions concluded on behalf of public sector entities with private companies which are strikingly unfavourable for the state. Legal compliance is then used to claim that political morality has not been abused and, respectively, that there are no grounds to claim political responsibility (resignations) from high-level civil servants and/or cabinet members for making morally unacceptable decisions.

Such a situation clearly demonstrates the lack of will to counter corruption at the highest political level. In this respect, **an emerging key feature of political corruption** in the country, which is growing more and more visible, is the justification of **actions of officials with the provisions of existing legislation** in combination with the use of the latter to deliberately grant benefits to private sector entities closely related to those in power. Along with the constant changes in legislation, the firm **political will to favour certain private interests by ostensibly legal means**[20] is being demonstrated. The officials involved in such transactions reject or blatantly disregard public opinion and political discontent (including at the international level).

Political corruption is not merely related to violating legal and ethical norms. It includes cases when laws and regulatory rules are manipulated in favor of corrupt interests, i.e. when laws and regulations aimed at serving specific private interests are adopted and/or implemented. In recent years, this phenomenon has been labeled as "state capture". The concept of "state capture" was coined by World Bank Institute experts, who tried to identify an integrated method of measuring the fusion of public and private domains. "State capture" refers to "the actions of individuals, groups, or firms both in the public and private sectors to influence the design of laws, regulations, decrees, and other government policy instruments to their own advantage as a result of the illicit and non-transparent provision of private benefits to public officials"[21]. "State capture" might be carried out by political agents within public institutions themselves, who could develop laws, regulations and policies in favour of private (corporate, political, criminal, community, etc.) interests.

In this situation, quite paradoxically, **the only barrier that could block corrupt interests is not the law, but political morality,** in both its internal and external dimension. This is because laws and regulations are applied selectively to the degree required by the political will stemming from political morality.

External and Internal Political Morality

The existence of **internal political morality** allows for the restraining and/or dismissing of high-level public officials who deliberately disregard the public interest by the political parties responsible for their recruitment.

Internal political morality is nonexistent if its is considered acceptable high-level officials to be motivated by the interests of groups and individuals closely related to the respective political formation. This usually results in the emergence and reproduction

[20] A typical example in this respect was the regulation of duty-free trade through the Duty-Free Trade Law, proposed by the Ministry of Finance and adopted by Parliament on December 18, 2006.

[21] *Anticorruption in Transition: A Contribution to the Policy Debate,* The World Bank, Washington, 2000, p. XV

of clientele networks, crony circles, company loops, etc., which permeate all public spheres and exploit it for private/party benefit. The existence of such relations, where corrupt party interests dominate over those of the public, has been clearly documented in the transition years (including during the rule of the incumbent government) and blocks the implementation of effective anti-corruption policies. This situation both generates destructive horizontal and vertical governance dysfunctions and counters the application of existing anti-corruption instruments and policies. Conversely, this is a factor, which "necessitates" that laws are enforced/applied and interpreted from the perspective of current party interests.

External political morality exists when the social and political systems create the necessity for those in power to properly respond to public opinion and attitudes by adopting solutions to arising problems in favor of the public interest. External political morality could become a corrective factor, if there are effective possibilities for the opposition to impute political and legal responsibility when the public interest has been abused.

The established practice in the years since 1989 has been to rarely pursue or effectively impute political and criminal liability; this falls short of public expectations and blocks the operation of the external political morality factor as the public is growing increasingly incapable of identifying an appropriate embodiment of this morality (a party, a group, a civil organisation, etc.). The difficulty in finding an embodiment of external political morality is closely related to both **the actions of the political class,** and **the effectiveness of the judiciary.** The small number of convictions and the non-enforcement of criminal liability against high-level officials have had a negative impact on the public assessment of the resolve of political leaders to fight corruption. Public perceptions of slackening political will generate distrust. Publicly debated cases of political corruption are perceived as the top of the corruption iceberg. Low confidence in public institutions deteriorates public perceptions about the spread of corruption among politicians, high civil servants and members of the judiciary.

The evolution of Bulgarian society in 2008 has demonstrated that signs of internal and external political morality are very difficult to find, and, respectively that the political will that would eventually emerge as a result cannot therefore be regarded as a factor restraining corruption interests. Public expectations for a tangible reduction of political corruption have remained unfulfilled. This is why political corruption remains an element of the social environment, which considerably increases the risk of abuse of public funds with all the negative consequences this abuse would have on Bulgarian society and the country's international image.

Introducing the concepts of internal and external political morality as the foundation of political will in the context of corruption analysis is

important, as their presence or absence is a factor, which considerably determines both the content of the legislation adopted and the degree to which laws are implemented by those in power. One of the most important keys to the efficiency of anti-corruption efforts is therefore the improvement of political process mechanisms in a way that would enhance internal and external political morality and respectively generate the political will necessary **to adopt and implement** laws promoting the public interest. This refers not only to electoral legislation, but also to the manner in which the parties in power and the opposition represent the interests of their constituencies. The effectiveness of mechanisms for seeking political responsibility in the periods between elections inside and between parties depends on the level of political morality, i.e. on the capability to subordinate specific political interests to the public interest. The absence of political morality results in parties ceasing to represent the public interest and re-focusing their priority to private (party or other) interests, thus ending up using power for their own objectives and needs.

2.3. Civil Society Capture

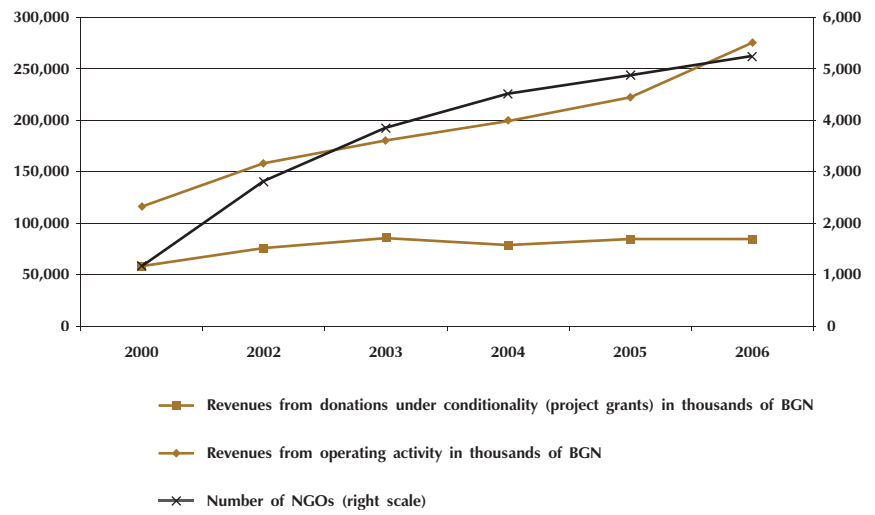
Non-government organisations (NGOs) are traditionally assessed, both according to victimisation surveys and people's perceptions, as the least corrupt when compared with other actors in the country's social and economic life. The increase in the proportion of citizens who believe that everyone or almost everyone in this sector is corrupt[22] from 18% to 32% of the population for the 2000–2007 period raises serious concerns. This suggests a serious disbalance in one of the most significant mechanisms of external political morality and is due to the following three sets of trends:

- over a period of eight years the **number of NGOs has increased five times,** which, however, is not an indicator of innovative social entrepreneurship, but of the fact that politicians and local authorities have perceived non-governmental organisations as **instruments for ostensibly legitimate extra income,** as tools for establishing political and personal circles of cronies, and a **safeguard against the loss of political power.** Slightly over 3/4 of MPs and the same proportion of ministers and heads of executive agencies, and over 90% of municipal mayors in Bulgaria are represented on NGO boards of directors[23]. Numerous other influential civil servants and members of political cabinets participate in NGOs operating in their respective fields of competence. Those NGOs offer paid training, receive state funding and exert policy influence. As a rule, these organisations have no websites or only publish scarce information about their activities, thus concealing their political ties.

[22] Source: *Corruption Monitoring System* and Vitosha Research, 2000–2006.

[23] The data is based on a survey on NGO board participation in the Ciela legal information system from the July-December 2008 period.

FIGURE 18. NGO DYNAMICS AND THEIR REVENUES (2000-2006)



Source: *National Statistical Institute*

- **NGOs' total turnover** of for this period **increased two and a half times,** despite the fact that that the share of grants (project funding subject to competitive bidding) shrank from 50% to 34% of total turnover between 200 and 2006. **NGOs'** share of **business activity** increased over seven times in absolute terms, and its relative share rose from 9% to 28% in the total revenues. This indicates that the nature of **NGO activities is changing,** approximating regular business ones, while at the same time it is subject to less regulatory supervision. Few NGOs are audited by internationally recognized firms or have split their business and non-profit functions by forming separate legal entities. Although **corporate philanthropy has developed considerably in recent years,** mainly in favour of supporting disadvantaged children or for covering expensive medical treatment abroad for various categories of patients, there is an ongoing risk of financing political parties through NGOs. This is another factor contributing to the growth of NGOs.

- With the gradual phasing out, since Bulgaria's accession to the EU, of bi-lateral and international donor programs sponsored by foreign governments and international organisations, the **Bulgarian government has come to play a crucial role in NGO funding.** EU and public funds distributed by the government and intended for NGOs in 2008 constitute almost 40% of the total project funding for 2006. Compare to the end of the 1990s, when the core project funding for NGOs came solely from foreign sources and was considerable: it equaled about 10% of all foreign financial inflows to the country. All weaknesses and **corruption risks related to strategic target-setting and public procurement are thus transferred to the NGO sector.** The state's administrative capacity to maintain market-based competition for NGO funding is very low. The absence of any priorities in providing public funding to NGOs

or the provision of large amounts of funding to newly or ad-hoc established NGOs, as well as attempts at project micro-management by the public administration, are indicative of this trend.

Clientelism and corruption in this area came to be broadly publicized in 2005, when the Bulgarian chapter of Transparency International pressed charges against officials from the Delegation of the European Commission in Bulgaria and the Ministry of Finance for manipulating the assessment of project proposals under the PHARE-Democracy Programme. Suspicions of corruption have not yet been allayed[24], whereas the European Commission continues to direct a large proportion of NGO-intended funding primarily via the government, which additionally enhances corruption risks.

Thus, using a variety of mechanisms, politicians and government officials have de facto established a **large circle of their own NGOs** which have no national, local or competitive experience, but nevertheless enjoy generous support and funding despite flagrant conflicts of interests.

This period also saw a considerable **penetration of the civil sector by organised crime,** mainly at the local level, through various types of NGOs – such as some focusing on ethnic issues, antiquities or dealing with European affairs and consultancy work. Another identified risk is **the proliferation of NGOs maintaining close ties to Russian oligarchs** and the non-transparent funding of certain NGOs operating close to the local authorities in the interest of these oligarchs.

Although this sector's turnover for 2007 and 2008 is estimated at just 350-400 million BGN per year – which equals the latest capital increase of the Bulgarian Energy Holding in December 2008 or the turnover of the Toplofikatsiya-Sofia heat distribution company, these trends may in the long run endanger the proper functioning of civil society and may have a lasting negative impact on democracy and the market economy in the country. Thereby, huge responsibility is borne by the government, by the country's compliance enforcement system, by legitimate civil society organisations, as well as by the European Commission.

To contain these threats, the Ministry of Justice proposed a radical **ban on high-level officials participating in the management of not-for-profit legal entities.** It further obliged a broad category of public officials to declare conflicts of interests in relation to such entities, pursuant to the newly adopted *Law on the Prevention and Detection of Conflicts of Interests*.

Experts estimate that the ban on participation in NGO management boards affects some 550 to 750 persons, although the time between the adoption and the coming into force of the law on 1 January 2009 has been too short to respond by convening general board meetings and submitting resignations, or reconsidering the relevant resolutions, so that

[24] *Anti-Corruption Reforms in Bulgaria: Key Results and Risks,* Center for the Study of Democracy, Sofia, 2007, page 63-64.

not natural persons, but the institutions they represent (municipalities, mayoralties, regional governments, ministries, state and executive agencies and certain other authorities) would sit on NGO management boards. Only a few individuals have declared their intention to promptly resign from the NGO management boards on which they sit, whereas many others may not even be aware of the requirement. It is of crucial importance for the Council of Ministers to effectively enforce the withdrawal from management boards of at least cabinet members and their appointees, and to ensure that non-compliance is met with administrative sanctions. If this does not occur (well before the elections in 2009), the impression will be created that the law has been adopted solely for the purpose of reporting the "achievement" to the EC, and that cabinet members are thus allowed, once their term expires, to effectively stay with the NGOs which they established while in office.

Such quasi-civil organisations are more accurately referred to as QUANGOs (Quasi NGO) or GONGOs (government NGO). Such organisations are typically registered by high-level public officials who, while still in office, use their status to divert resources to the NGOs in question and profile them so that upon exiting power they could manage to arrange for a haven for themselves. During their term of office, such officials might imitate the functioning of civil society and allocate funds to NGOs.

It is a widespread practice in Bulgaria to register similar NGOs at the address of the official institution where their heads are employed, and then to switch the registration to a different address once the respective NGO's first project is awarded. An important detail in this respect is that officials in such institutions, during their working hours and as a part of their official duties, work towards the development of such NGOs – they receive training, write projects and most probably implement them before being transferred to the NGO itself, on a higher salary.

Mayors of almost all municipalities in Bulgaria participate in NGOs. Reelection to serve a second term of office is correlated with participation in a large number of NGOs. Naturally, the most widespread associations are those between municipalities or mayors and sports clubs, leaving no doubts as to the nature of the organisation. The former practice is actually related to the mayors' term of office, while the latter usually depends on local peculiarities.

Local Government Quasi-civil Associations Receiving Rublic Funding[25]

The Kamchiyski Bryag Foundation (Avren), the Centre for Economic and Social Analyses and Strategies (Kardzhali) and the Ecological Stock-Breeding Association (the village of Tsenovo, Rousse Region)

[25] Some twenty similar examples (out of a total of 130 organisations funded under OPAC) have been described in articles in the *Capital Weekly* (as well as in internet forum comments on those articles)

were registered at the addresses of the respective municipalities. The three entities are beneficiaries under OPAC in the field of civil society development. The mayor of Avren participates in the management of the first organisation, and the second one used to be managed by the current mayor while he was deputy regional governor of Kardzhali. Currently it is managed by officials at the regional and municipal administration and a municipal councillor. The third NGO is more of an association of mayors or municipalities as the mayors of the Dolna Studena, Karamanovo, and Novograd villages sit on its board. It was registered only a few days before the deadline for submitting documents under the programme.

On average, mayors participate in four NGO management boards (whereas the average Cabinet member sits on three), with the maximum number of NGOs associated with a single mayor being eleven. Quite often mayors preside over more than one organisation, with the number sometimes reaching up to five or six. However, such involvement is rarely institutionalized by a resolution of the respective municipal council or publicly announced on the website of the municipality in question (the Kardzhali municipality is a good practice in point). The municipalities themselves are not sifficiently frequently represented on management boards of organisations; neither are mayors acting as their representatives. The Srednogorie Med (Srednogorie Copper) Industrial Cluster could serve as an example of good practice, as it is managed by the municipalities themselves (Panagyurishte and Pirdop), and not by the mayors in their individual capacity. This should be the preferred approach in all cases where public institutions are associated with or become members of a particular public-private partnership.

Organisations with little or no previous institutional experience, yet with high level public officials as members of their management boards not only receive grants (as mentioned above), but **take part in the elaboration of state policies under the guise of being independent civil associations,** and provide training to civil servants. An example in this respect is the Adaptation to Electronic Government Association, which just a few months after its registration became a member – one of five other members beside the government itself – of the Information Society Co-ordination Council, whose secretary sits on its management board. The association's project was listed as qualified under OPAC's first call for proposals intended for civil society organisations, though it never received funding due to the depletion of funds. According to media publications, it provides training, assists in the opening of laboratories, etc. An interesting detail about this prominent organisation is that, more than three years after it was established, it still has no website, and is managed by individuals who launched the first e-government portal (while minister Kalchev was still in office), and recently designed the national IT portal and carried out numerous other projects financed by the State Agency for Information Technologies and Communications (SAITC).

SAITC itself has become overblown with dozens of quasi-NGOs perceived as instruments of state policy, registered at the same address and/or managed by individuals from within the ranks of SAITC or with close ties to the organisation. The risks for good governance stem from **the practical absence of control over the activity of these non-profit legal entities on the part of regulatory bodies** (such as the Agency for State Financial Inspection or the National Audit Office). Neither are these entities subject to parliamentary control. They act in an environment of low transparency, especially as regards financial reporting since the *Law on Access to Public Information* does not apply to them. An additional risk is associated with the amount of BGN 15 million in expenditures during the last four or five years for management (in fact this constitutes a business transaction per se). The funds were provided to the UNDP by the government with no tender submission required, which constituted direct state intervention in the vanishing market for Internet clubs and in the market for training public administration officials. The VAT saved on these projects and the transfer of prestige from the UNDP to the state hardly suffice to offset the negative effects of the unstable network of tele-centres, under high risk of collapse[26] upon any significant decline in or reversal of funding.

This unhealthy environment for the operation of civil society organisations stimulates **a special type of entrepreneurship.** On the one hand, reference has already been made to people already in power, who often establish NGOs, and on the other, to the serial (crony or family-based) entrepreneurship involving the setting up of NGOs by people formally outside power, who are nevertheless involved in local party structures (party operatives, sponsors, candidate mayors and municipal counselors).

Ensuring the incompatibility of holding high level public office and participating in NGO management boards as well as subjecting non-profit legal entities to the obligation to declare conflicts of interests are certainly a step in the right direction. It is to be expected, however, that **attempts will be made to obstruct the application of the law and that pressure will be applied to change it before the elections.** At the same time, however, the law presents the General Inspectorate under the Council of Ministers, the Parliament and the judiciary with the opportunity to demonstrate the clear political will and capacity to deal with the issues of conflict of interests before their term of office ends.

Numerous other amendments to legislation and changes in the regulatory framework need to be adopted however in order to strengthen control mechanisms as well as mechanisms for determining political responsibility. Some **possible ways of reducing corruption risks as well as improving the operational environment of civil society organisations** include:

- Developing an overall long-term state strategy to govern the work of the state with NGOs, indicating priority areas and forms of funding and

[26] A large proportion of these tele-centres were effectively closed down in the period prior to the 2005 elections due to the lack of funding; they then had to be reconstituted as their former staff had already sought other jobs.

partnership. The strategy has to provide for transparent instruments for outsourcing to and ex post control by existing organisations with good capacity, instead of setting up new organisations;

- Barring organisations which are newly registered or do not have the minimum experience required under the priorities set forth in the respective operational program from benefiting from substantial public financing. It should be possible, however, to elaborate special programs for social entrepreneurship aimed at particular target groups, in order to offset the underdeveloped civil society structures in certain localities or among certain ethnic or age groups;

- Introducing more stringent transparency requirements as regards the activities, key teams involved, and financial reporting, including the need to publish financial audits on organisation websites, for those NGOs receiving public financing from the state budget or from EU structural funds;

- Improving considerably the capacity of the Ministry of Justice to maintain the Register of non-profit legal entities acting in the public interest and introducing a national electronic Register of Non-Profit Legal Entities similarly to the National Commercial Register. Currently, the Register is quite incomplete, with numerous errors, infrequent updates and frequently nonoperational functions (e.g. organisational reports reviews);

- Developing a methodology for the risk assessment of non-profit legal entities to serve the National Audit Office, the Agency for State Financial Inspection (ASFI)[27] and other regulatory bodies. The range of the non-profit legal entities to be inspected by the National Audit Office, in addition to including organisations receiving direct budget subsidies, may be widened to include entities that have been "institutionalised" by means of resolutions of municipalities, ministries or state agencies; entities directly under the control of the authorities, receiving direct or indirect funding from first- and second-level budget spending units or EU funds. The National Revenue Agency and the ASFI could also carry out joint inspections of non-profit legal entities, which simultaneously conduct business activities and receive funding from European projects, in order to prevent the duplication of funding for the same activity.

Good Anticorruption Practices: the Law on the Prevention and Detection of Conflict of Interests

Having in place rules preventing conflict of interests situations as regards high-level officials is a strong factor for the effective countering of corruption, including among high-level officials and

[27] In 2007 ASFI performed five NGO audits of a total of 525 inspections. However, its future audits need to include more quasi-NGOs.

politicians. Over the course of many years, in their evaluation of corruption and anticorruption reforms, experts from the Center for the Study of Democracy have repeatedly suggested that it is necessary to adopt a uniform legislative and regulatory framework dealing with conflict of interests prevention and incompatibilities of holding certain positions as well as that the provisions of certain special laws should be harmonised. On 16 October 2008, the Parliament adopted *the Law on the Prevention and Detection of Conflict of Interests,* to be enforced as of 1 January 2009. The law, which was drafted by the Ministry of Justice, is a needed instrument in the more effective counteraction of corruption. Based on modern European standards, it basically establishes a uniform legal framework on sensitive issues both as far as the state and the general public are concerned. From a political perspective, the adoption of the Law is a positive signal indicating Bulgaria's emerging political will and preparedness to undertake serious measures to curb corruption and to introduce long-overdue rules for dealing with conflict of interests. Some of the rules spelled out in the law relate to restrictions on holding public office, declaring professional incompatibility and private interests, actions to prevent conflicts of interest, restrictions following discharge from public office, restrictions on and bans from participation in public procurement procedures for the allocation of EU funds, the detection of conflicts of interest and the consequences thereof, whistle-blower protection, etc.

The scope of the law is quite broad: it is to be applied within all three branches of power, including central and local government structures. Because the different branches and levels of government have their specificities, however, it is necessary to define further and in greater detail the rules applying for each of them.

The general principles and rules for preventing conflicts of interest, establishing control mechanisms, as well as for determining the consequences of in cases of actual conflicts of interest, which the law outlines, are to be **further elaborated in special laws and the respective government regulations,** in view of the specific nature of each branch of power and the institutions and persons falling within the scope of the Law.

To meet the high expectations with respect to this Law, some of its obvious shortcomings need to be promptly addressed. Among those we could cite to the following:

- The general regulations in Article 5 on the restrictions on holding public office and the reference to "the Constitution or a special law" regarding positions and activities incompatible with public service, which is a retreat from earlier drafts of the same law containing express and detailed restrictions on holding public office;

- Article 19 of the Law provides relatively detailed rules on the discharge from duties of individuals holding public office; there are nevertheless gaps with respect to the various bodies responsible for initiating such discharges, as well as the applicable procedures;

- The exemption from the scope of these restrictions, following discharge from public duty, of a number of individuals holding public office, including Members of Parliament, the Chief Inspector and inspectors at the Supreme Judicial Council Inspectorate, judges, prosecutors and investigators. Given the enormous significance of these restrictions and the great number of well-known cases of conflict of interests among these officials, this is a cause of great concern;

- The application of this important law would supposedly overcome the weaknesses of the *Public Disclosure of Senior Public Officials' Property Law* identified in the process of its application and analyzed in previous Corruption Assessment Reports. For the law to become effective in practice, though, it is necessary for the leading institutions in each of the three branches of power to adopt specific rules and procedures to ensure that the principles governing the exercise of official duties, internal control on the possible restrictions for holding public office and the incompatibilities in the course of service, etc. can be implemented in reality.

2.4. Organised Crime and Political Corruption

Two years after Bulgaria's accession to the European Union, and at the outset of a serious economic crisis, the issue of organised crime and related issue of corruption are invariably subjects of public debate and are on the country's top political agenda. Assessing risks for Bulgaria in this area, while taking into account its relations with the European Union, requires an understanding of the structures and the current state of play of Bulgarian organised crime since organised crime is the major source of political corruption and a destructive factor for the internal and external political morality in the country.

There are three broad types of discernible criminal structures with different historical backgrounds, dynamics and dispositions towards the use of political corruption for facilitating their activities:

- **Violent entrepreneurs** (violent entrepreneurship groups) are the most clearly distinguishable segment of organised crime. **Violent entrepreneurship groups** are the Bulgarian version of the model known as the **"entrepreneurship of violence".** The political and economic stabilisation in 1997 put an end to the so called "golden age" in the entrepreneurship of violence. The process

of adaptation that followed led to the development of various corruption techniques and clientelist relations;

- **Deviant entrepreneurs** secure for themselves a **competitive advantage in the market by means of criminal structures.** Unlike ordinary companies, organised criminals of this kind obtain their market advantage via the nonpayment of duties, taxes, and charges as well as through criminal or illegal transactions. Historically, this type of organised crime emerged before violent entrepreneurs and oligarchs did. Deviant entrepreneurs were the first to apply large-scale corruption techniques with respect to civil servants, such as customs officers, police officers, tax officers, etc. Bribes allow them not only to freely operate in violation of the law, but also ensure that the work of competitors is also obstructed (e.g. when customs officers confiscate competitors' commodities, when extra or targeted tax audits are performed, etc.);

- **Political investors or oligarchs** represent the currently most influential kind of organised crime in Bulgaria which is most often associated with political corruption.

The term "oligarch" (oligarchs), by analogy with Russia and Ukraine, began to be used in Bulgaria in reference to the leaders of some of the biggest business groups. The introduction of this concept is designed to demonstrate the qualitatively different pattern of organised criminal behaviour of oligarchic structures as compared to the patterns associated with violent entrepreneurs. The use of the term "oligarch" is subject to considerable restrictions in the Bulgarian context. **Unlike countries like Russia, where the state directly shields the domestic market from foreign companies and ensures the monopoly or oligopoly status** of Russian companies, such efforts in Bulgaria are much more constrained. As a result, opportunities for Bulgarian oligarchs are much narrower due to the well established presence of international companies, especially after the country's accession to the EU. Very often, even after succeeding in acquiring control over some internal markets, Bulgarian oligarchic companies eventually resort to selling their business to foreign corporations or shrink in market share until finally becoming marginalized. However, there are certain sectors in the economy, highly dependent on municipal legislation and heavily dependent on state policies, which remain impenetrable to foreign investors without a suitable local partner. During the past several years such relationships could be observed in the granting of concessions over airports and seaports, in the establishment of law firms, etc.

Meanwhile, the concept of oligarchy seems to provide a suitable description of dozens of business structures in Bulgaria, which emerged along with violent entrepreneurs and managed to gain access to local and national resources by exerting influence over political elites, rather than by using violence. With entrepreneurs "selling" protection, the dynamics involved are bottom-up in nature, i.e. they use violence to appropriate the tangible assets they need and thus extort financial resources from small and medium-sized businesses. **Oligarchs,** on the

other hand, **tend to develop in a top-down fashion:** they gradually seize control of the state by controlling key political figures in the executive, the legislature and the judiciary, or by gaining control over the leadership of political parties,[28] or by assuming leadership positions in state-owned and mixed companies.

In the current environment in Bulgaria, the oligarchic model is a good explanation for the concentration of state economic resources in a handful of large entrepreneurs, who, by using politicians and political parties at the national level, continue to successfully redistribute resources for their own private benefit and to the disadvantage of the public interest. Control over public resources for the benefit of a small group of entrepreneurs is especially striking to observe at the **local level.** Local oligarchs can easily be recognized from among the population of any small, medium or medium-to-large town. Groups of two to six individuals (or families) have often succeeded in taking control not only over local government in the region, but also over representatives of the institutions of central government, such as the police, tax authorities, construction services, as well as local courts and prosecution offices.

Nowadays, Bulgaria's oligarchic structures are the **biggest "political investors".** The establishment of a democratic political system was followed by a prolonged initial period of political instability: eight governments changed places over the course of seven years (without taking into account the two interim governments). Therefore, until 1997 political formations had an exceptionally short temporal horizon and thus were easily susceptible to the offers of "political investors". In addition to becoming established at the highest levels of power like the government and the top structures of the ruling political forces, the oligarchic model has worked its way elsewhere by exercising influence over Members of Parliament, civil servants, and members of the judiciary. This symbiosis has subsequently allowed oligarchs to establish control over state-owned enterprises, to receive unlimited financing from banks, to import and export commodities without being subject to customs controls, to evade tax audits, to have all their disputes in court "favourably" resolved, to benefit from special treatment in laws, etc.

The above approach typically involves employing well-qualified civil servants – such as heads of ministry departments, directors of state-owned enterprises who, due the unstable political climate of the 90's, would often find themselves unemployed – in the companies controlled by the oligarch in question. The model entails a two-way process, as in the end **oligarchs become a recruitment factor for the high-level administration.** Assuming control over key positions in public institutions and state-owned enterprises is of strategic importance. Unlike politicians, who only exercise influence over a limited time span, civil servants or directors could be around significantly longer. As a consequence, a symbiotic model comes into being, where it is not clear where state ownership ends and where private ownership begins. Recently, oligarchs have also resorted more and more frequently to the use of offshore companies.

[28] In rare, yet recently widely publicised cases, this has even involved oligarchs assuming leadership positions in some parties.

By origin, the leaders of oligarchic organisations are most often former agents of the "State Security" secret services, or representatives of the former communist elite of *functionaries* (nomenklatura), or former heads of foreign trade missions (also largely associated with the secret services). Later, they were joined by successful deviant entrepreneurs, and having survived through a series of political and economic crises, these structures were transformed into today's oligarchic groups, which use their position to drain money from public and private banks, to conclude illegal privatization deals, thereby appropriating the assets of other oligarchic, violent, deviant and ordinary entrepreneurs.

TABLE 2. SOURCES, METHODS AND STAGES IN THE DEVELOPMENT OF ORGANISED CRIME IN BULGARIA

	Violent entrepreneurs (entrepreneurs selling violence and protection, violent entrepreneurship groups)	**Deviant entrepreneurs**	**"Political investors" (Oligarchs)**
Origins	1. Former athletes practicing wrestling, boxing and martial arts 2. Former Ministry of the Interior officials 3. Ex-convicts	1. Representatives of the "free market professions" during socialism, who had no educational background: taxi drivers, bartenders, warehouse keepers, waiters, etc. 2. Representatives of certain occupational groups, such as export traders, accountants, and lawyers, as well as students majoring in the respective fields 3. Former convicts	1. Former heads of enterprises 2. Former Communist Party Functionaries 3. Former Secret Service Officials
Methods	Use and sale of violence through large groups.	Use of networks to carry out criminal and semi-criminal operations, mainly relating to the import and smuggling of goods and to the leasing or purchasing of state or municipal property; obtaining bank loans (the so-called group of credit millionaires), etc.	Redistribution of national wealth utilizing newly established political elites; establishment of holding companies composed of multiple businesses; domination of financial institutions and capture of public financial institutions (including the Central Bank) and the media.

CONTINUATION OF TABLE 2.

	Violent entrepreneurs (entrepreneurs selling violence and protection, violent entrepreneurship groups)	**Deviant entrepreneurs**	**"Political investors" (Oligarchs)**
Co-operation between the three groups	Use of oligarchs to solve problems with law-enforcement and the judiciary; use of high-risk entrepreneurs as advisers, confidants and channels of profits and investment.	Use of violent entrepreneurship groups to gain market share or in case of problems with competitors and partners; partnerships between oligarchs to ensure access to markets, protection and assistance against the state.	Arbitrary use of violence against small businesses by (including the destruction of property and murders); using high-risk entrepreneurs (including through funding) for shady operations.
Markets	• Protection for shops, restaurants, company offices • Debt collection, violence, intermediation in disputes (arbitration between business structures) • Smuggling to/from Yugoslavia • Smuggling of excise goods – alcohol, cigarettes, gasoline • Burglary and theft, trafficking and trade in vehicles • Production of CDs, considerable investments in advanced technology • After the end of the embargo on Yugoslavia, attempts to make up for the loss of proceeds by controlling the most lucrative markets for smuggled goods (including drugs).	• Benefits from illegal entry into all possible markets: in commodities in short supply like basic foodstuffs, such as sunflower, oil and sugar, during the first months of the crisis (in the spring of 1990) • Import of second-hand cars and spare parts, as well as fraudulent vehicle registrations • Trading in real estate and speculative purchases, e.g. the purchase of municipal and state-owned housing facilities, sometimes even forcing the eviction of current tenants • Foreign currency exchange (including speculative transactions) • Involvement in black markets, including for prostitution and drugs	Capture of key markets through: • Establishing financial companies – financial houses, banks, etc. • Controlling entry and exit points • Establishing, capturing and controlling mass media • Gaining large market share of retail markets (establishing cartels) • Partnering with risk entrepreneurs and establishing holding companies operating in multiple markets • Creating strategic alliances with large multinational companies • Using connections to high-ranking administrative and political officials for tapping EU funds

By the time the country's political crisis had subsided and economic stabilisation had begun at the end of the 1990s, the currently existing structures of organised crime had started emerging. **The restructuring of organised criminal activity has been facilitated by the predisposition of all branches of power to compromise with the various types of organised crime.** While in the case of deviant entrepreneurs this was a somewhat logical step, due to the fact that the general public perceived them as representatives of the private sector, which had to adapt to the crisis environment, the direct and indirect arrangements with oligarch entrepreneurs and violent entrepreneurship groups entailed long-lasting negative consequences which can still be observed nowadays. By entering into such arrangements, the state agreed to legalize the existing economic structures on the condition that they terminate their criminal activity. In fact, oligarchic structures and violent entrepreneurship groups[29] were presented with the opportunity to carry on with most of their business activities undisturbed by the tax and police authorities or by the judiciary. Moreover, this has given a chance to organised criminal entrepreneurs to take part in the redistribution of the national wealth consecutively through privatisation, public procurement, concessions and the absorption of EU (including pre-accession) funds.

The characteristics of organised crime in Bulgaria determine the particular corruption instruments and techniques that organised crime groups employ. Organised crime groups most often employ **political corruption** in order to ensure freedom from inspections or regulatory oversight for their business operations in exchange for a "political contributions" to parties or individual political actors. These contributions are usually accomplished through legitimate companies and reliable intermediaries. The return on this "investment" takes the form of appointing to key positions preliminarily agreed individuals designated by the "investor". Even where there are no special appointees involved, the existing administration is quickly "reoriented", thus trying to avoid the risk of dismissal on political grounds. Several cases containing elements of **"political investment"** and involving organised crime groups became widely publicized over the past year:

- The first case involved a well-known businessman with investments in the energy, tourism, and retail sectors, who supported one of the incumbent government coalition parties and was the founder of a new political formation with aspirations to make it into the next Parliament, against whom the Prosecution Office pressed charges over involvement in large-scale VAT fraud. Sources from the MoI and the Customs Agency made it clear that this individual was one of the biggest actors in customs fraud, fraudulent privatisation deals, etc.

- The second case involved two businessmen supporting the ruling coalition, who were awarded an EU-funded project. Later on a complex criminal organisation was detected involving participants from Germany and Switzerland. The discovery was made in the

[29] Mostly related to "credit millionaires", the banks, which went bankrupt, and the liquidated state enterprises.

course of an investigation by the Customs Agency and the Chief Directorate for Combating Organised Crime, and was forwarded to the authorities in Germany.

The **use of violence** is one of the most important features of the relationship between corruption and organized crime. While violence was the primary method used to seize and defend/preserve positions in society and the economy, with the advance of social stabilization it lead to increased risk and was gradually replaced by corruption transactions. From the end of the 1990's a trend of **gradual decrease of the number of mass violence acts** (beatings, car bomb explosions, arson and the destruction of property) has been observed. Violent entrepreneurs started downsizing and even closing down their specialized violence forces (specialized brigades). Some of the members of these units were given the opportunity to work for their former bosses in the gray sector (tax and customs fraud), but without the need to resort to violent methods. Within purely criminal markets (car theft, prostitution, drug trade, collection of debts), where the use of violence is inevitable, efforts have been made to substantially reduce its scale.

The use of violence attracts public attention and is fairly costly to conceal. In order to preserve their status and position, organized crime groups started using **corruption instruments** with increasing intensity. New techniques like weekly (monthly, annual) payments, the employment of "loyal" officers in the police, investigation service and the prosecution emerged. As a result, public institutions gradually became involved in serving the private interests of a certain organized crime group while countering competing organized crime groups.

Corruption in the Security Sector

- Young professionals are placed in relevant security sector jobs, or special service officials and volunteers are hired to provide early information for a fixed monthly remuneration.

- Security officials maintain contacts with crime bosses for the supposed purpose of using them as informers. In reality, such relations (particularly with NSS and NSCOC officers) grant criminals the latitude to sustain their shady activities.

- Some security officials investigate sources and channels of leakage among corrupt inferiors linked with smugglers only in order to capture a share of the gains or to prevent such officers from further revealing discrediting facts.

- Election-time fundraising from criminal sources in exchange for "immunity" from investigations is particularly common.

- Certain private companies provide information to the special services, which, in exchange, help them monopolize the respective business sectors.

- Leading security sector positions are occupied by inexperienced political and economic appointees. As a rule, reshuffling at the highest levels is followed by staff and organizational restructuring involving expert officers and key unit directors. Often professionals of undisputed expertise are dismissed to prevent them from interfering in the threefold relationship between the security sector, political corruption and organized crime.

- The unofficial privatization of official information has become a profitable business for individual security officials. Information leaks to the media, on the other hand, are a means to sustain smear campaigns directed by corrupt officials in certain parties or by corporate interests. The public is often unaware that abuse of such information by those who hold it turns into racketeering of political and other public figures.

Source: Partners in Crime. The Risks of Symbiosis between the Security Sector and Organized Crime in Southeast Europe, CSD, 2004, p. 39

As organized crime groups block each other through their access to public institutions and cannot use violence to seize and control new territories or markets, a new phenomenon has emerged as a "problem-solving tool" – **contract killings.** This type of focused violence is associated mainly with representatives of the former violent entrepreneur groups, but some oligarchs and deviant entrepreneurs also use it because of the lack of effective investigation and the consequent atmosphere of impunity. Recently revealed facts demonstrate that many contract killings have a dominant economic motive: namely, the elimination of the competition. However, this economic competition tool attracts strong public and media attention, while the low rate of detection of contract killings and the high rate of homicide detection raises the question of whether this is due to low police and investigative capacity or is rather a result of **corruption/clientelist pressures on law enforcement authorities.**

There are almost no successful investigations of the more than two hundred contract killings committed over the past ten years. This situation has not changed since the country became member of the EU. Most often the police and the investigators have sufficient information, but the investigation is being blocked, dismissed, or has lead to no concrete results. Two scenarios are most common in this respect.

In the first scenario, **the investigation "crashes" at the primary level** due to a deliberately produced problem that disrupts the proper coordination along the police investigator – investigator (magistrate) – prosecutor procedural chain of the case in question. The methods employed to disrupt the normal course of investigations could range from a direct or indirect order from a higher level to the use of different tricks like deliberate negligence in commissioning expert analyses or summoning of witnesses, employing inexperienced investigators, staff reshufflings of "too active" officers, etc.

The second scenario involves exerting **political interference** motivated by the fact that the investigation could harm long-term "political investors", their political appointees, relatives, etc. In addition to cases of political interference in the work of the judiciary that have become publicly known, there are cases for which the information that has been provided by law enforcement authorities of other countries has not been used, because it has been blocked at the political level. One of the cases of political interference, which became publicly known because of an internal controversy at a high level in the Ministry of Interior, was the meeting between the Minister of Interior and the Galevi brothers (considered criminal bosses of Dupnitsa). One of the explanations publicized in the media was that the main reason for the meeting was an alleged attempt to stop the expected new wave of contract killings in the period immediately preceding the country's EU accession.

2.5. The Economy and Political Corruption

Bulgaria's accession to the EU has created numerous opportunities for the faster and more sustainable development of the Bulgarian economy, but at the same time has intensified the risk of **a short-term aggravation of institutional deficits and associated corruption**[30]**.** Inspections on the administration of EU funds in Bulgaria carried out by the specialized units of the European Commission have revealed a lack of administrative capacity, numerous violations of rules and procedures, a lack of control mechanisms and sanctions for violations, as well as evidence of political interference in the evaluation of project proposals and the approval of expenditures. These institutional shortcomings may have a strong negative effect on Bulgaria's development as the global economic crises deepens and as the **national budget and EU funds remain the only source of fresh funding in 2009.**

In the context of global recession and high levels of corruption in the Bulgarian economy, there is an imminent threat that a substantial part of the investments made over the last few years may deliver no benefits and may result in a faster and deeper contraction of economic activity, thus exacerbating the effects of the economic crisis in Bulgaria. That is why the Bulgarian government must undertake immediate and decisive actions to curb political corruption and strengthen governance mechanisms with respect to key corruption risk areas, which create favourable conditions for informal and illicit cash-flows in the economy. Namely, the government needs to:

- improve the transparency and efficiency public and EU funds management;
- apply European best practices in the management of public procurement, concessions and public-private partnerships;
- terminate the non-market management of state property involving exchanges of state-owned lands, forests and other assets;

[30] *Anti-Corruption Reforms in Bulgaria: Key Results and Risks,* Center for the Study of Democracy, Sofia, 2007.

- restrict the shadow economy by improving the rule of law and the effectiveness of regulatory bodies and control mechanisms.

Intensified pressure on the part of the EU for better governance practices and the continuing efforts of the anticorruption community in Bulgaria have led to successful **inroads into entrenched corrupt oligarchic relationships, such as the closing down of duty-free outlets along Bulgaria's land borders** in 2008[31]. Cases of high-level corruption demonstrating its pervasive nature were publicly disclosed, such as the concentration of considerable shares of the energy sector in business structures of unclear ownership, the capture by private interests of the Service for Combating Organised Crime (for example, by producers of high excise goods), conflicts of interests and grievous misuses of power in the management of the road infrastructure, non-market substitutions of state-owned lands and forests, concessions and public procurement.

The most striking manifestation of this process was **the capture of local power** in 2007 and 2008 in small, tourist resort municipalities by means of a growing number of business coalitions, including via buying votes, as well as by means of oligarchs taking control of locally established political parties. Conditions are there for political corruption to go full circle, whereby power is used to extract personal benefits while the wealth thus accumulated is in turn used to preserve political power. The vicious cycle of political corruption will be complete when wealth becomes the goal of power, while power becomes the goal of wealth. Each of the numerous rotations of this cycle risks the **criminalisation of the state.** Brought to its extremes, this tendency would translate into the cartelisation of the economy, the loss of the efficiency of markets of as well as of the effectiveness of state control mechanisms, which would dampen the entrepreneurial spirit of the nation.

The economic crisis, which is expected to hit rock bottom in Bulgaria in 2009, will be both a test and an opportunity for anticorruption reforms in the country. If corruption has played a predominant role in the accumulation and investment of capital during the years of growth, the recession might turn out to be deeper and might last longer than expected. The crisis provides an opportunity for reforming the sectors plagued by serious corruption problems which have negative repercussions for the overall economy, such as security provision, healthcare and education.

The manner in which **public funds are used in this election year** will determine the success or failure of the government's anticorruption policy. If funds are targeted to reform the most underdeveloped budget-funded sectors and increase their added value, this will be a sign of success. Should they be used instead to satisfy the growing demands of oligarchic business structures as well as to buy political influence among voters, this will exacerbate the problems of political corruption and could lead to Bulgaria's isolation in the European Union.

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[31] *Effective Policies Targeting the Corruption – Organized Crime Nexus in Bulgaria: Closing Down Duty-Free Outlets,* Policy Brief No 13, Center for the Study of Democracy, December 2007