C. LEGISLATIVE REFORM: THE STATE OF AFFAIRS AND CHANGES REQUIRED TO COMBAT CORRUPTION

The betterment of existing legislation and the development of legal instruments to combat corruption would result from improved quality, transparency and accessibility of the legislative process. The National Assembly should play a key part in countering corruption in the country by putting in place viable feedback arrangements with all of the institutions called upon to enforce and implement the laws passed, in particular the judiciary, and by reducing to a minimum any chances for institutional corruption and conflict of interests. The Standing Parliamentary Anti-Corruption Committee set up at the end of 2002, unfortunately, has not yet appeared to be an efficient anti-corruption device and has not commenced any tangible measures to eradicate corruption transactions or the conditions conducive to their occurrence.

Quite like before, almost no steps were undertaken in 2003 to ensure a productive fight against the major internal factors of corruption, to develop an institutional environment apt to prevent corruption in the process of law-making, or to compel the members of parliament to observe corruption-barring attitudes and conduct. The *Draft Law on the Ethical Norms Applicable to the Work of the Members of Parliament*, presented in 2002, never saw the light of day, nor was a standing parliamentary ethics committee set up. The required degree of transparency of the income and property of members of parliament, including the funding of their election campaigns, has remained equally remote.

When legislative instruments used by the judiciary to combat corruption are reviewed, serious deficiencies are revealed. Magistrates share this view as they regard imperfect legislation as the third most important factor contributing to corruption within the judiciary. The formulation of a legal framework and the day-to-day practice of law-making have suffered a number of setbacks. The frequent passage of new laws is not preceded by serious analysis, wide public hearings or the elaboration of an overall philosophy for the legislation in question in line with the priorities of society and the acts already in place. Legal instruments are adopted or merged in a somewhat automated fashion, without a consistent conceptual basis and, more often than not, draft laws are approved as a result of external pressure or for the purpose of protecting specific private interests.

While amendments to Bulgarian legislation in recent years have introduced internationally recognized anti-corruption instruments and standards, no sufficient measures have been adopted to ensure their efficient implementation. In December 2003, Bulgaria signed the *UN Convention against Corruption*, the first ever universal legal treaty in this area. The convention focuses on the prevention of corruption and the repatriation of illegally-

acquired and -exported capital. Many of the standards of the convention have already been embedded in Bulgarian law in the process of harmonizing domestic legislation with Council of Europe and OECD anti-corruption conventions. Nonetheless, the timely ratification of that convention would enable the country to partake in the technical assistance mechanism provided therein. The convention currently leaves open the issue of compliance monitoring. Bulgaria should therefore become actively involved in the development of such machinery under the Convention, especially in light of the relevant experience gained so far.

The question about the quality of, and the need for, serious changes to improve the process of justice is still on the agenda. It touches upon the organic rules of the judiciary, as well as on the major legal instruments that the bodies of the judiciary must use. These are in particular substantive criminal law and criminal procedure which bear directly on the criminalization, detection and prosecution of corruption-related offenses, and civil and administrative law and procedure which should, directly or indirectly, create conditions unfavorable for corruption in the judiciary and in society.

C.1. Criminal Law Instruments Used to Combat Corruption

Criminal repression is among the most powerful tools a state has at its disposal to suppress corruption. The major role attributed to criminal law instruments in combating corruption derives from the fact that, when implementing its criminal justice policy, any state pursues at least two objectives: to punish the perpetrators of criminal acts, including corruption acts; and to deter and discipline not only the perpetrators but all other members of society.

The current system of criminal prosecution is, for the most part, slow, unwieldy and inefficient. On the one hand, the crimes and the penalties specified in the *Criminal Code* fail to adequately mirror what is a growing criminality in the modern setting of a market economy. On the other hand, the framework of criminal procedure, as embedded in the existing *Code of Criminal Procedure*, fails to provide sufficient mechanisms and guarantees for the swift and efficient closure of criminal proceedings with effective criminal judgments which, in turn, opens the door to corruption influences. According to information provided by the Ministry of Interior, the difficulty in implementing criminal repression as provided for in the *Criminal Code*, especially in cases not directly linked to bribery (the most typical corruption crime) is among the key criminogenic factors that exacerbate the spread of corruption.

TABLE 17 NUMBER OF CASES OF BRIBERY AND OFFICE-RELATED CRIME, FIRST HALF OF 2003[13]

Offenses (section of the *Criminal Code*)	Cases to be tried		Closed cases		Duration of proceedings		Appeals	Pending at end of period
	Pending at beginning of period	Newly instituted	Closed with sentence	Discontinued	Up to 3 mounths	Over 3 mounths		
Regional courts								
§. 255c	-	2	2	2	-	2	-	-
§ 282 & 283	90	77	33	53	32	54	32	81
§ 304-307	12	6	7	2	5	4	2	9
District (city) courts								
§ 301-303	18	10	7	2	2	7	3	19
Military courts								
§ 301-303	7	6	4	3	4	3	1	6

Source: Ministry of Justice

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

Those objectives, though, have mostly remained unattained. This fuels the need to go on with reforms so as **to build up a modern and efficient system for the investigation and prosecution of criminal offenses, including corruption, and to introduce efficient legislative mechanisms that enable the prevention of corruption in the context of criminal prosecution itself**.

A prerequisite for the successful attainment of those objectives is to root the reform of criminal law and procedure in **a conceptually sound philosophy underlying a new criminal justice policy, and in modern crime-determent strategies**. That new philosophy should form the basis to adopt **new *Criminal Code, Code of Criminal Procedure,* and *Law on the Execution***

[13] Before the last amendments to the *Code of Criminal Procedure* made in 2003 (in effect as of June 3, 2003), proceedings for office-related offenses under § 282-283 of the *Criminal Code*, and for bribery under § 304-307 of the *Criminal Code*, were within the competence of regional (first-tier) courts at first instance. After the amendments, the proceedings for those crimes have come under the jurisdiction of district (second-tier) courts at first instance.

TABLE 18 NUMBER OF PERSONS SENTENCED FOR BRIBERY OR OFFICE-RELATED CRIME, FIRST HALF OF 2003

Offenses (section of the *Criminal Code*)	Total number of persons tried	Acquittals	Sentenced persons								Persons with penalty under § 414g of the *Code of Criminal Procedure*
			Total	Imprisonment				Fine	Correctional labor	Other penalties	
				Less than 3 years		3-15 years	Over 15 years, life imprisonment or life imprisonment without parole				
				General	Suspended						
Regional courts											
§ 225c	-	2	-	-	2	2	-	-	-	-	-
§ 282 & 283	89	33	33	14	13	2	-	16	1	-	11
§ 304-307	10	-	8	1	1	-	-	7	-	-	-
District courts											
§ 301-303	16	8	8	4	2	1	-	-	-	1	-
Military courts											
§ 301-303	6	2	2	1	1	1	-	-	-	-	-

Source: Ministry of Justice

of Penalties, which should provide for new legal structures, use uniform terminology, and have coherent systems. Meanwhile, given the complexity of that process and the lengthy period of time it needs, reforms could continue successfully even within the existing pieces of legislation, thus allowing the reform of the legislative framework to gradually take place while the new legal instruments are in the making.

C.1.1. Criminal Law

- *The state of affairs: Measures undertaken to date*

Corruption is a phenomenon that goes beyond the narrow confines of bribery. It is also connected with many other types of criminal activity occurring in virtually all segments of the economy and government. For example, the Supreme Prosecution Office of Cassation has a system of monitoring corruption-related offenses where it employs a working definition of corruption embracing all forms of abuse of power that have as their purpose or effect the attainment of benefits for an individual or a group. That broad definition covers the different forms of embezzlement by public officials (§ 201-205 of the *Criminal Code*), general economic crime (§ 219, 220 and 224 of the *Criminal Code*), the offenses in different economic sectors (§ 228 of the *Criminal Code*), smuggling (§ 242(3) of the *Criminal Code*), tax offenses (§ 257 of the *Criminal Code*), office-related crime (§ 282, 283 and 283a of the *Criminal Code*), the enticement of public officials working at a pre-trial body or at the prosecution or the court into encroaching upon

their duties in the administration of justice (§ 289 of the *Criminal Code*), all forms of bribery and trade in influence (§301-307a of the *Criminal Code*), and offenses by public officials (§ 387 of the *Criminal Code*).

During the last few years, substantive criminal law has seen fundamental changes aimed at improving the prevention and prosecution of corruption-related crimes. Given the series of amendments to the *Criminal Code*, the substantive criminal rules on corruption offenses now seem to be very close to the relevant European standards. Along with the improvement of the legal framework of **bribery**, which is the most typical corruption crime, a number of other major corruption transactions, such as **trade in influence or bribes in the private sector,** have been incriminated. The rules on some offenses that are often found to be directly linked to genuine corruption crimes have been improved as well, for instance **office-related offenses and tax-related offenses**.

From January to the end of September of 2003, the Supreme Prosecution Office of Cassation obtained from over half of the district prosecution offices and from five military prosecution offices in the country information about a total of 51 preliminary proceedings instituted under § 310-307a of the *Criminal Code*; over the same period, the investigation of 32 cases had been finished, and 21 of those had been brought to court with bills of indictment.

Between January and September 2003, the prosecution offices across the country instituted a total of 1526 preliminary proceedings based on the rules of the *Criminal Code* that come under the working definition of corruption. During the same period, a total of 226 cases were finalized by the prosecutors and brought to court with bills of indictment.

Source: Supreme Prosecution Office of Cassation

In September 2003, the Council of Ministers presented the National Assembly with latest *Draft Amendments to the Criminal Code*, which were voted on by the parliament at the first reading on September 25, 2003. Some of the changes considered are directly or indirectly linked with the fight against corruption, the most essential of them being:

– The introduction of texts to cover **unauthorized access to classified information** and to modernize the provisions relative to the protection of state secrecy, in line with the *Law on the Protection of Classified Information* enacted in April 2002. Access to classified information is a sphere where offenses are often immediately linked to the existence of corruption transactions.

– The streamlining of criminal rules on **illicit foreign trade in arms or in dual-use articles and technologies**. The legislation currently covers only situations where such foreign trade occurs without due authorization. The changes will extend the scope of the rules to any illicit trade that occurs contrary to prohibitions, restrictions or sanctions imposed by the UN Security Council, the Organization for

Security and Cooperation in Europe or the European Union, or by virtue of bilateral or multilateral international treaties to which Bulgaria is a party, or further to secondary legislation passed by the Council of Ministers. In addition, the draft proposes to incriminate the intervention as an intermediary in foreign trade transactions in arms or dual-use articles or technologies, even where the transaction itself has taken place outside Bulgaria.

The bulk of the proposals are in fact designed to **refine the criminal provisions on money laundering**. Changes are indeed necessary, as those offenses pose a heightened threat to society. In particular, it is crucial to effectively prevent the placement of funds derived directly or indirectly from criminal activities into commercial turnover. It is also necessary to bring Bulgarian law in harmony with the Council of Europe's *Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime* (in effect for Bulgaria as of 1993), the special recommendations of the Financial Action Task Force, and with a number of directives in this area adopted by the Council of the European Union. Money laundering-related crime is a frequent corollary of corruption transactions, so the successful enforcement of the new rules would materially contribute to cracking down on corruption. The draft amendments relate to several main aspects:

– Introducing **new forms of *actus reus* (criminal acts or omissions) for the offense of money-laundering**, such as: concealing the origin, location, movement or actual rights in property which the perpetrators know or assume to have been acquired through or in relation to a crime; and the acquisition, receipt, possession, use, transformation or assistance in any manner with the transformation of such property.

– **Extending the scope of application of anti-money laundering criminal provisions** to cases where the crime through or in relation to which the property was acquired falls outside the criminal jurisdiction of Bulgaria.

– Expressly conferring on the state the **power to confiscate not only the immediate object of a crime but also any property into which that object has been transformed**.

In December 2003 the National Assembly adopted two ratification laws in relation to the Council of Europe's *Criminal Law Convention on Corruption*: one for ratifying the *Additional Protocol to the Convention* signed by the country on May 15, 2003, and the other for withdrawing the reservations, made by Bulgaria in accordance with Article 37, paragraph 1 of the convention. The *Additional Protocol* envisages that each party shall adopt such legislative and other measures to establish as criminal offenses under its domestic law the active and passive bribery of arbitrators and jurors. In fact, such measures have already been undertaken in Bulgarian criminal law even before the signing of the *Additional Protocol* and the offenses in question have been incriminated by the amendments to the *Criminal Code* of September 2002. The same amendments made possible the withdrawal of the reservations as well.

- *Required legislative amendments*

TABLE 19 **ASSESSMENT OF THE AMENDMENTS OF SEPTEMBER 13, 2002, TO THE CRIMINAL PROVISIONS IMMEDIATELY INCRIMINATING VARIOUS TYPES OF CORRUPTION TRANSACTIONS (CRIMINAL CODE, SPECIAL PART):**

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

Source: CMS of *Coalition 2000*

In spite of the essential legislative amendments to substantive criminal law intended to penalize corruption crimes, a significant number of magistrates still believe that the *Criminal Code* reveals serious gaps and drawbacks in that respect. According to 61% of the magistrates interviewed, the latest amendments, passed on September 13, 2002 (in force as of October 1, 2002), have failed to provide full coverage of all social relations where corruption might occur, whereas 76.4% are of the view that legislation in this area needs further improvement.

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

– **Refining the definition of "public official"** in order to adjust the inconsistencies in its content. While the latest amendments to the *Criminal Code* have extended the concept of "public official" in response to the Council of Europe's *Criminal Law Convention on Corruption*, some groups of individuals from the private sector still come within the ambit of the definition.

– **Extending the scope of the penalty of fine** so as to cover a number of office-related offenses driven by self-interest which could, in essence, represent acts of corruption. With the latest amendments to the *Criminal Code* of 2002 partial efforts were made to that effect since the penalty of **fine** was introduced as an alternative or a complement to **imprisonment** imposable for different forms of bribery and for the newly-criminalized trade in influence. This approach should also be applied extensively to many other corruption-related offenses for which imprisonment remains the only possible sanction.

– Reconsidering whether or not the penalty of **correctional labor** should remain in the system of sanctions, and devising new content for the penalty of **public reprimand**. These penalties were coined in a completely different social environment and can hardly be enforced now, hence the need for their modernization or abolition.

– Improving the legal framework of **probation**, given its deplorable wording and its doubtful conformity with the *Constitution*. This makes it possible to treat defendants unequally and unfairly when that penalty is imposed with the sentence and when the specific probation measures are individualized.

– **The offense of bribery** should be given a better systematic location by its inclusion in a separate chapter of the *Criminal Code*. The title of that specific division (or chapter) should be revised as well in light of the fact that it will cover both bribery and trade in influence.

– Introducing **a clear and accurate definition of the concept of "benefit"** and re-wording § 307a of the *Criminal Code* to specify that any object of bribery shall be forfeited where it constitutes a tangible benefit.

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

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

– Providing statutory rules on **corporate "criminal" liability**. Many corruption offenses are committed to the benefit of legal entities which, nonetheless, cannot be efficiently sanctioned under any piece of existing legislation in Bulgaria. To resolve that matter, one of two paths might be followed: one is drafting a separate law on corporate liability that would enable the easy forfeiture of benefits derived from or received through criminal activity; and the other is envisaging, within the *Criminal Code* itself or within the future *Code of Administrative Procedure*, specific administrative liability for legal entities, while defining in parallel those individuals who would incur criminal liability for the unlawful activities in which a legal entity was involved.

While the existing legal rules on corruption crimes in the *Criminal Code* largely match modern standards, there is no decisive will yet to apply the new criminal legislation and to improve the capacity of courts and law enforcement to suppress corruption. In this respect, it is of utmost importance that an adequate case law on the implementation of the new provisions on bribery and other corruption-related crimes, adopted in 2002, be established that is in compliance with the *Explanatory Report* on the Council of Europe's *Criminal Law Convention on Corruption*.

C.1.2. Criminal Procedure

• *The state of affairs: Measures undertaken to date*

In the last years, a series of legislative amendments have been undertaken in criminal procedure and many of them have divided the legal community in their opinions. Although some of the amendments to criminal procedure have been incoherent, the red threads of reform are visible and can be said to mirror the established international standards, the progress made in different legal systems, and the experience of practitioners involved with criminal procedure. The major goal of the amendments to the *Code of Criminal Procedure* was to strike the right balance between reliable guarantees for human rights and the efficient administration of justice.

TABLE 20 MAJOR INVESTIGATION INDICATORS, FIRST HALF OF 2003

Indicator	Office-related crimes (§ 282-283 of the *Criminal Code*)	Bribery (§ 301-307 of the *Criminal Code*)	General economic crime (§ 219-227 of the *Criminal Code*)
Unclosed from earlier periods	2250	96	826
Newly instituted	364	28	141
Total cases in proceedings	2667	126	1000
Closed with a recommendation— —to bring to court —to discontinue proceedings —to suspend proceedings	 519 122 325 72	 29 16 8 5	 213 53 140 20
Remaining open at period end	2125	96	771
Accused persons— —arrested —foreign nationals	166	16 4 1	71 2
Damages inflicted	BGN 11 514 234	BGN 19 681	BGN 4 858 833
Additional damages found			
Damages redressed	BGN 112 137	BGN 1000	BGN 13 570
Collateral provided			BGN 393 000
Cases assigned by Prosecutor General to National Investigation Service (first half of 2003): 16			

Source: National Investigation Service

In May 2003, the National Assembly passed yet another *Law on Amending and Supplementing the Code of Criminal Procedure* (in effect as of June 3, 2003) with a number of provisions intended to speed up the development and completion of criminal cases. The most important of those amendments could be summarized as follows:

– Further to earlier 2002 amendments to the *Criminal Code*, the so-called **mixed proceedings** (public-private proceedings) were introduced. In those cases for some offenses under the *Criminal Code* the criminal procedure is initiated by the victim's lodging a complaint with the public prosecution but, once the prosecutor decides to prosecute, the proceedings can no longer be discontinued at the request of the victim. For other offenses, the proceedings are discontinued if the victim requests so prior to the start of inquiry by the court of first instance.

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

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

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

– The right of the accused to request that the court, after the expiration of a certain statutory time limit from the submission of the indictment

TABLE 21 SPREAD OF CORRUPTION AT VARIOUS STAGES OF CRIMINAL PROCEEDINGS

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

Source: CMS of *Coalition 2000*

(two years in the case of indictment for serious offenses, and one year in any other case), hear his or her case on its merits, was introduced.

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

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

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

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

– The possibility of public prosecutors to appeal at three instances, against the order of the court, to remit a case to the pre-trial stage, together with the possibility to appeal at three instances, against the warrants of the public prosecutor, to discontinue the criminal proceedings, was abolished.

The imperfect wording of the new texts of the *Code of Criminal Procedure*, which changed the jurisdiction over customs-related offenses, necessitated the urgent passage of a new *Law on Amending and Supplementing the Code of Criminal Procedure* (in force as of June 24, 2003) to rectify the inconsistencies. The amendments brought that category of cases within the jurisdiction of regional (first-tier) courts again. Under the previous regime, those offenses were subject to the jurisdiction of district (second-tier) courts, but customs inspectors had the power to investigate them, contrary to the explicit provison of the *Code of Criminal Procedure* that cases heard by district courts at first instance must be investigated by investigators through the machinery of preliminary proceedings. The amendments also empowered the National Investigation Service to investigate offenses committed by officials enjoying immunity or by members of the Council of Ministers. Also refined were the rules on the employment in criminal proceedings of evidence collected subject to the *Law on Special Intelligence Means*.

A detailed analysis of the major advantages and drawbacks of the amendments to the *Code of Criminal Procedure* enacted in 2003, and of their anti-corruption potential, is offered in the *Corruption Assessment Report* of 2002, and the *Judicial Anti-Corruption Program* of 2003.

- *Required legislative amendments*

The latest changes in the *Code of Criminal Procedure* fail to comprehensively resolve existing problems with the investigation and prosecution of corruption-related crime. The poor efficiency of criminal procedure prevents the state from pursuing its criminal-law claims on time, and, therefore, compels further reforms along the following lines:

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

– Regulating **preliminary proceedings** on the model of police investigation, while keeping the procedural formalities only to the extent necessary to guarantee the rights of the individuals concerned and the reliability of evidence. The higher degree of procedural formalism is a key factor conducive to the spread of corruption, so doing away with at least some of that formalism would restrain the chances of exerting corruption pressure.

– Introducing additional **measures to ensure the quick development of investigation**; for example, by introducing deadlines, the expiry of which would bar the submission of the case to court, or by shortening the duration of coercive measures. The timely closure of investigation would thus be encouraged and the possibilities to apply corruption pressure will diminish materially.

– Improving the rules on **police investigations** by limiting the opportunities of public prosecutors to transform police investigations into preliminary proceedings. As a matter of practice, that prosecutorial power is a means to procrastinate the pre-trial procedure beyond any reasonable limit, thus inviting attempts to exert corruption influence.

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

– **Changing the rules on summoning** so as to relieve the court from the duty to summon and provide for an obligation on each party to ensure the appearance of its own witnesses, as well as introducing **stricter requirements to parties to present their evidence on time** provided that after a certain statutory deadline each party should have to submit good reason for any request to present new evidence.

– **Restricting the current possibility of prosecutors to modify the charges at trial** in order to improve the quality of preliminary proceedings and facilitate the hearing of cases by the court. The

TABLE 22 **"WHY ARE CORRUPTION ACTS (OFFERING BRIBES, TRADE IN INFLUENCE, ETC.) UNDERTAKEN *VIS-À-VIS* THE FOLLOWING CATEGORIES OF OFFICIALS?"**

Public prosecutors	
To discontinue the criminal proceedings	63.4%
To institute/to fail to institute pre-trial proceedings or preliminary police inquiry	49.3%
To bring/to fail to bring an indictment before the court	27.8%
To remit the case for further investigation without good reason	23.3%
To fail to carry out certain procedural steps where under an obligation to undertake them	19.8%
To exert improper influence	17.0%
Other	1.5%
No corruption acts are carried out	4.6%
Does not know/No response	12.3%
Investigators	
To carry out or to fail to carry out certain procedural steps relative to investigation	59.5%
To suspend the investigation or to propose its discontinuance	56.2%
To exert improper influence	28.0%
Other	2.2%
No corruption acts are carried out	6.2%
Does not know/No response	13.2%

Източник: СМК на *Коалиция 2000*

possibility for prosecutors to modify at trial the indictment they have brought themselves places them undeservedly in a privileged position, thus sometimes inviting corruption pressure.

– **Improving the legal rules on appeals** so as to accelerate criminal proceedings. The existence of three regular court instances prevents the timely entry into force of criminal judgments, unduly inhibits the progress of cases, and encourages parties to resort to corruption pressure. Several possibilities exist to amend the rules on appeals. For instance, providing the parties with an option to "**skip" some appeal instances** and directly lodge a cassation appeal after the time limit to refer the matter to the court of appeal has lapsed; or excluding the opportunity for **criminal judgments delivered by a court with jurors to be subject to appeal before any lower instance**; or providing that **cassation appeals shall constitute an exceptional remedy**, i.e., after the expiration of the time limit to lodge appeals with the competent higher court, or after that court delivers judgment, the act of the first instance would still be subject to cassation appeal but shall meanwhile enter into force and be executed, unless the court orders otherwise.

– Introducing various types of **differentiated procedures** such as transaction, criminal warrant, victim-offender mediation organized by the prosecutor, and numerous other schemes known to be efficient and useful tools in most modern legal systems.

– Rethinking the principle of legality at the point of bringing the indictment to court. A possibility here is to provide for **discretionary powers of prosecutors** to make a case-by-case evaluation of whether

bringing the indictment to court would serve the state or the public interest.

– Introducing so-called **pre-trial hearings** which enable the accused to request that the court assess how well-founded the charges are and, hence, spare the trial when the indictment is not really supported by the evidence in the file.

– Improving the rules on **witness protection** by putting in place efficient mechanisms to guarantee the personal safety of witnesses, so as to motivate the active involvement of citizens in the fight against corruption.

C.1.3. The Role of the Ministry of Interior in Detecting and Preventing Corruption

The successful fight against and prosecution of corruption offenses largely depends on how efficient the Ministry of Interior (MoI) is in detecting the offenses committed, and on the degree of cooperation between the MoI and the bodies of the judiciary.

Preliminary information provided by the MoI shows that 1348 cases of office-related crime and 67 cases of bribery were detected during the period January - November 2003.

Compared to the same period of the year before, office-related crime clearly saw a substantial reduction, while bribery increased, although slightly. Office-related crime, however, which often goes hand in hand with corruption, is the fourth-most wide-spread economic offense (10.3%), while the relative share of bribery is virtually insignificant (just 0.5%).

TABLE 23 STATISTICS ON DETECTED CORRUPTION-RELATED CRIMINAL OFFENSES

January - November	Office-related crime (§ 282-285 of the *Criminal Code*)	Bribery (§ 301-307a of the *Criminal Code*)
2002	1808	58
2003	1348	67

Source: Ministry of Interior

The key prerequisite to promoting the effectiveness of the MoI in the fight against corruption is to implement adequate ways and means to resist corruption within the Ministry itself. The MoI has made important steps in that respect in recent years by, among other things, improving the overall organization of corruption-preventive and detection efforts, updating its internal anti-corruption regulations, ensuring the structural independence of the specialized units in charge of combating corruption, improving its in-house supervision and control, and improving its work with the media in providing information on established instances of corruption.

During the year 2003, inquiries into corruption-related offenses were carried out and closed on 307 MoI officers identified in information received by the Ministry. The initial information was confirmed in relation to 171 officers. As

a result, disciplinary proceedings were launched against 73 officers, administrative proceedings were opened against 99 officers, and the files of 49 officers were submitted to the public prosecution. The analysis of the existing data on corruption inside the MoI has shown that the key factor that influences the occurrence of corruption is the sheer amount of classified information, which is often disclosed or exchanged because of corruption considerations, and the desire for subsequent benefits in different forms. To eliminate the prerequisites and conditions causing the phenomenon of corruption, measures are being implemented to increase inter-agency control and to create preconditions for intolerance to corruption actions among MoI staff.

In the long run, the anti-corruption efforts of the MoI will depend on the objectives and the tasks identified in the *Draft Program for the Implementation of the National Anti-Corruption Strategy, 2004-2005*. The main aspects of those efforts will be: the efficient implementation within the MoI of best practices and European standards in preventing and combating corruption; the continued development of a comprehensive MoI system of structural units in charge of fighting in-house corruption and corruption in the central or local administration; the enhanced capacity to detect, investigate and combat corruption; reinforced professional integrity and better career opportunities for MoI officers; and updating the anti-corruption training programs offered to the staff.

C.1.4. Execution of Penalties

- *The state of affairs: Measures undertaken to date*

The execution of penalties is of the essence for the success of any country's criminal policy. It is through the execution of criminal penalties that the perpetrators of crimes, including corruption-related ones, are effectively punished. On the other hand, the preventative effect sought by criminal repression can only be attained through the efficient execution of criminal sanctions. Finally, the execution of penalties is still an area where various corruption transactions seem to thrive.

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

- *Required legislative amendments*

In spite of the recent amendments, the current legal provisions suffer a number of weaknesses which prevent the efficient execution of sentences and are often conducive to corruption. The following amendments should be considered absolute necessities in overcoming those weaknesses:

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

– Putting in place detailed legal rules on the **rights and obligations of convicts, of individuals detained on remand, and of supervising and security officers at the penitentiary facilities** so as to restrict the attempts to corrupt prison staff at lower levels.

– **Improving the system of control over those steps of the administration** that might affect the rights of sentenced persons, and enhancing public control of the operation of penitentiaries.

– **Urgently adopting rules on the execution of the penalty of probation** which was introduced by the amendments to the *Criminal Code* of 2002. The provisions of the *Criminal Code* on probation entered into force on January 1, 2004, but the non-existing framework for the execution of that penalty may block its efficient use.

C.2. Civil Law and Procedure

The numerous legislative amendments in recent years have not always been judicious and consistent, and have translated into contradictory case-law—a trend that persisted in 2003. This situation fails to foster the prevention of corruption in civil justice, while the application of the laws in force is deprived of the required anti-corruption strength.

The disturbing findings about the situation with civil law and procedure (including the enforcement of judgments and the provision of collateral) generate the need for **a swift and radical anti-corruption reform** with respect to civil procedure, and for a further systematic, coherent and consistent development of substantive civil law. To outline the parameters of that development and the specific reforms to be proposed, it is necessary to identify the existing problems and to carry out a serious and in-depth analysis of all the factors that impede the problem-free development of a modern civil turnover in the establishment of a free market economy and under the rule of law.

C.2.1. Civil Law: The State of Affairs

• *Property law*

In the field of property law, the main areas of corruption pressures could be said to exist in **notarial law and in the system of registration of real estate transactions.**

The imperfect rules on the operation of private notaries seriously undermine the notarial form of authentification and often pave the way to corruption or serve as an incentive to crime in civil relationships or in the course of court proceedings.

The existing system of registration fails to provide for **genuine guarantees and certainty** in the case of real estate transactions. The lack of reliability and legal certainty frequently results in fraud, abuse and corruption transactions.

• *Commercial law*

I**n the field of commercial law**, as well, there are legislative prerequisites that invite acts directly or indirectly connected to corruption:

– *Company law*

Despite the high level of harmonization of Bulgarian company law with EC company law that has been attained, **no satisfactory degree of certainty has yet been achieved** in commercial and economic turnover. Nor has the law been shown to be transparent and corruption-free. Such an objective has been pursued with the amendments to the *Commercial Law* passed in June 2003, in particular the detailed regulation of the **companies' transformation** and the refined provisions aimed to **divert the conflict of interests**. Some of the provisions of the *Law Amending and Supplementing the Commercial Law* endeavor to **improve corporate governance** (better legal guarantees for the participation of shareholders in the general meeting, improved corporate management and supervision rules, and avoidance of conflict of interests). While these norms are inspired by a desire **to restrict the possibilities for corruption and to enhance transparency**, it is still too early to predict their effectiveness.

– *The legal framework of corporate insolvency*

Previous amendments to the rules on corporate insolvency have not resulted in any material acceleration of insolvency proceedings. **Therefore, the potential for attempts to obtain judgments more quickly by resorting to corruption methods persists**. References to the rules on execution laid down in the *Code of Civil Procedure* also provoke complications and delay the proceedings. The number of cases instituted in previous years and of newly-opened insolvency proceedings remains excessive. The inadequate and inefficient amendments made so far urge a fundamental and substantial reworking of insolvency proceedings, as these are now endlessly inefficient and formalistic, and constitute a major source of corruption.

The latest amendments in the *Commercial Law* are designed to rectify a major portion of those defects. The introduction of new specific rules and presumptions applicable when proving the inability to discharge one's debts, the decisive shortening of most procedural time limits, and the provision that cases shall be heard at two court instances only, are all aimed at ensuring the required speed of insolvency proceedings. Some other amendments are targeted at eradicating the corruption methods employed by the key players in any insolvency procedure, *viz*. trustees. Applicants who wish to be added to the list of trustees must now pass a theoretical and practical exam, a new system exists for the payment of trustees' emoluments, and trustees must take compulsory insurance with respect to their damage liability in cases in which they fail to fulfill their duties. The previous references to the rules on enforcement in the *Code of Civil Proceedings* have been replaced with comprehensive new norms on the judicial sale of a debtor's pool of assets.

• *The system of company incorporation*

The status of company incorporation forms part of the problem of registration in general, as addressed in detail in the *Corruption Assessment Report*

2002. The inefficient system of court registration in Bulgaria is among the factors that fuel corruption in the courts on a virtual daily basis.

• *Labor law*

Significant progress was made in 2003 in combating unequal treatment of individuals, which often instigates corruption in labor relations. The *Law on the Protection against Discrimination* (in effect as of January 1, 2004) almost entirely incorporated the recommendations made in the *Judicial Anti-Corruption Program*:

– A legal definition was provided of **direct and indirect discrimination**.

– An explicit rule was enacted to proclaim the principle of **equal pay** for equal work or for work of equal value.

– A **court procedure** was introduced to protect the right of citizens to equal treatment.

– The **burden of proof** in cases where discrimination is alleged will shift onto the employer.

This means that Bulgarian labor law has been almost fully harmonized with European anti-discrimination instruments. This finding has in fact been confirmed in the *Regular Report on Bulgaria's Progress towards Accession*, produced by the European Commission in 2003.

• *Civil liability for criminal offenses*

The *Draft Law on the Forfeiture to the State of Property Acquired through Criminal Activity* (prepared by the MoI in 2002) has kindled heated discussions on the subject. The process of taking into account the relevant recommendations and presenting the draft to parliament, however, has been delayed by more than a year.

A number of provisions in that draft should be left out as they allegedly neglect the role of the court and contravene the *Constitution* and domestic legislation, as well as the *European Convention on Human Rights* and other similar instruments. The draft may be reworded in such a way as to avoid the violations of individual rights and freedoms in the course of its future enforcement, while observing the following guarantees:

– **Confining the scope** of the law **to offenses that involve organized crime and pose an excessive level of threat to society**, i.e., smuggling, traffic in persons or drugs, traffic in weapons, corruption of senior public officials, etc.

– **Defining with precision the grounds for the institution of proceedings** (sufficient evidence that the property in question was really acquired as a result of criminal activity).

– **Making a shrewd determination of the competent bodies** that will be given the power to confiscate the property, and introducing **effective**

TABLE 24 **OPINION ON THE POSSIBLE INTRODUCTION OF FORFEITURE BY THE STATE (INCLUDING FREEZING AND SEIZURE) OF PROPERTY ACQUIRED THROUGH CRIMINAL ACTIVITY**

	Agree	Disagree	Does not know/No response
It would be a device to quickly forfeit and freeze assets derived from criminal activity, thus contributing to a more efficient suppression of corruption	70.0	18.3	11.7
A good idea but no sufficient guarantees against possible abuse	75.8	11.9	12.3
It would not contribute to deterring corruption	19.8	61.0	19.2

Source: CMS of *Coalition 2000*

monitoring mechanisms for the operations of those bodies, including judicial review.

– **Providing guarantees for the protection** of those who will eventually be affected by the enforcement of the law, especially third parties.

C.2.2. Civil Procedure: The State of Affairs

Being a general technique of protecting substantive legal relationships, civil procedure is also a key tool to resist corruption transactions.

In 2003, however, no substantial measures were undertaken to improve the framework of civil procedure and to free it from its sluggishness and inefficiency or from the corruption transactions abundant in all of its segments.

Some of the key reasons for the failures in civil procedure are **inefficient or completely lack of criminal repression** which opens the door to all sorts of abuse in the determination of civil claims, and **the lack of working mechanisms for attaching disciplinary, administrative or civil liability** to unlawful behavior. A sustainable public disrespect for justice is also perceived, this in itself being a negative factor of particular weight.

The following problems of civil justice deserve notable attention:

– **The existence of three instances** entails in most cases lavish proceedings where the functions of the first and the second instance largely overlap and procedural discipline is poor as evidence can be submitted even when the case is reheard by the instance of cassation. There are no good reasons why all cases should be handled by all the three instances, and it is especially unacceptable for the facts of a case to be established by two consecutive instances with similar powers in that respect.

– **The frequent occurrences of irregular summoning** and the infinite avoidance tactics the parties employ are key contributors to the excessive length of the proceedings. Despite several amendments since 1997, myriad possibilities to delay the procedure are still there.

– **The process of enforcement** was substantially modified by the amendments to the *Code of Civil Procedure* enacted in November 2002 with the aim of improving and accelerating the proceedings.

TABLE 25 SPREAD OF CORRUPTION IN THE DIFFERENT SEGMENTS OF CIVIL PROCEEDINGS (%)

Adversarial litigation	20.0
Collateral proceedings	5.9
Enforcement proceedings	14.8
Non-contentious litigation (including registration proceedings)	13.9
Other	0.9
Equally spread in all segments	12.1
No corruption exists in civil proceedings	5.3
Does not know/No response	27.1

Source: CMS of *Coalition 2000*

Those amendments, however, have not included a thorough elimination of the existing deficiencies, and their expected corruption-deterring effects have not yet materialized.

– Under the existing framework, the major share of **enforcement and collateral proceedings,** which largely predetermine the economic contents and the efficiency of legal protection, fall within the jurisdiction of district courts and the disputed facts can never again be invoked before the Supreme Court of Cassation. It should not be forgotten that it is much easier for corruption transactions to occur at the local level.

According to the survey conducted among magistrates, one out of four respondents believes that corruption is most widespread in adversarial civil litigation. This opinion is mainly shared by public prosecutors and investigators, while judges are convinced that corruption exists in non-contentious litigation (including registration proceedings) and enforcement.

C.2.3. Required Legislative Amendments

Legislative amendments are needed that will have a **comprehensive impact on all factors** which hinder modern and efficient administration of justice in civil cases. The result should be lawful and fair court orders and judgments of impeccable quality.

- *Amendments to commercial law*

Further amendments in this area are necessary for the development of corruption-free commercial and economic operations in the country. Those changes, however, should be carefully considered and discussed with all stakeholders. This would help establish a statutory framework matching the everyday needs and avoid the turbulence of frequent amendments that generate instability and uncertainty.

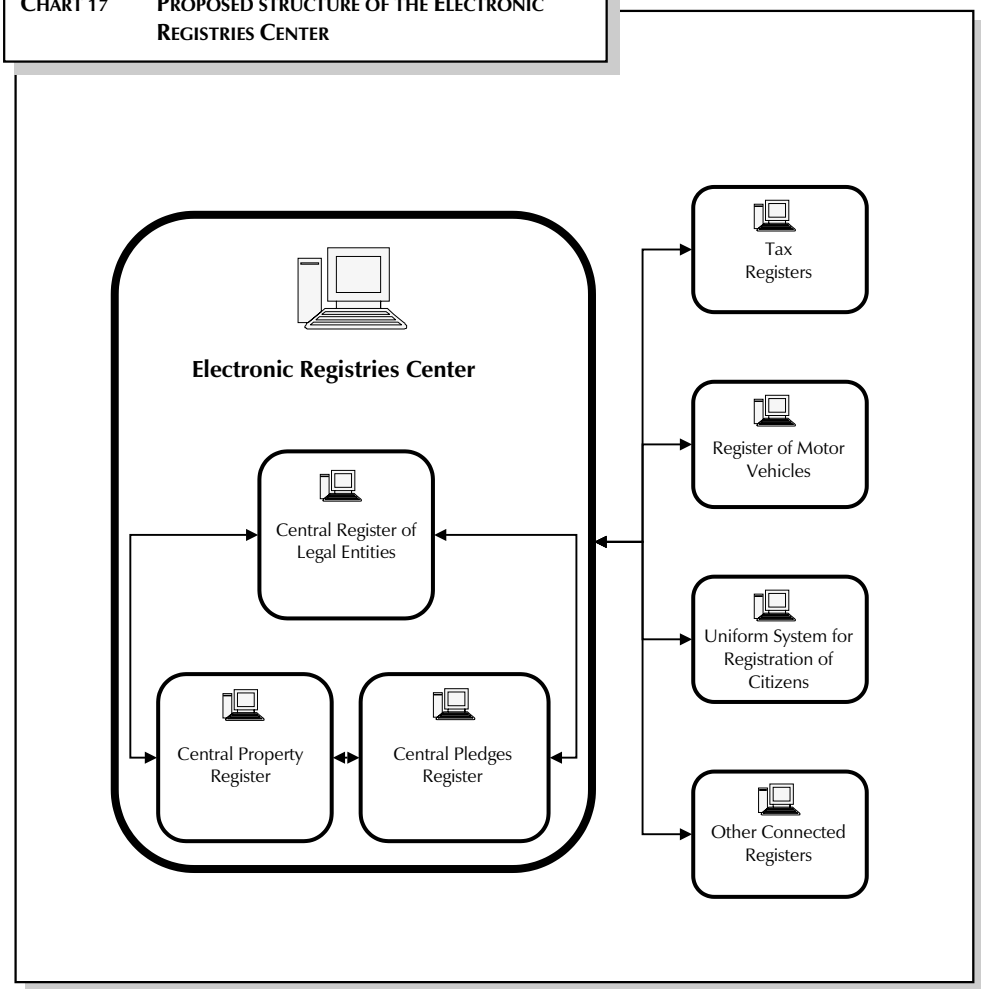
- *Registration reform*

The *Corruption Assessment Report 2002* formulated the key proposals for registration reform (centralization, introducing administrative registration procedures, transforming the registries system into an electronic net, and gradual expansion of the possibilities to upload and download information elec-

tronically). In 2003, those suggestions were refined in the publication *Opportunities for Establishment of Central Register of Legal Persons and Electronic Registries Center in Bulgaria*. This was a report produced by the Task Force on Registration Reform with the Center for the Study of Democracy, and it met with wide approval among the business circles, a number of government agencies, and NGOs.

- *Amendments to labor law*

CHART 17 PROPOSED STRUCTURE OF THE ELECTRONIC REGISTRIES CENTER



The issue of equal treatment is of vital importance to the reduction of corruption transactions in the context of labor relationships. The good intentions that underlie the anti-discrimination measures embedded in the *Law on the Protection against Discrimination* need to be complemented by some specific arrangements:

– Proposals for **practical steps** aimed at the abolition and prevention of discrimination with respect to employment and the professions should be presented.

– **Work of comparable value** should be provided for and a list of supplementary payments should be drawn up to uphold the equal pay principle.

– The idea of setting up **specialized labor courts** warrants serious attention. This would help reduce the pressure to commit corruption acts, as case-law would become consistent and the hearing and determination of cases would become much speedier. It is advisable to reconsider the number of instances hearing labor disputes, while reserving the cassation proceedings for only some groups of cases.

- *Amendments to civil procedure*

The entire paradigm of existing three-instance civil proceedings should be revisited in light of the need to curb the possibilities of influencing magistrates by corruption means. The following suggestions are made in this context:

– Introduce **regular two-instance proceedings, with a possibility for an extraordinary review** by the Supreme Court of Cassation of all aspects of the substantive and procedural rules involved in a case, while carefully developing the criteria for allowing such reviews. This would be attained if the Supreme Court of Cassation stopped acting as a regular instance and *extraordinary review* is introduced similar to the *review by overview procedure* that existed before. Alternatively, the Supreme Court of Cassation could keep its nature of a third regular instance with a possibility to pronounce selectively. The possibilities to remit the case back for rehearing by the lower instance should be brought down to a minimum. The proceedings under § 231 *et seq*. of the *Code of Civil Procedure* should be kept in place.

– An alternative would be to keep the regular three-instance proceedings but **sharply reduce the number of cases where the Supreme Court of Cassation would pronounce** (it should, 1) ensure the accurate and uniform application of the laws by all courts when it comes to fundamental issues of law-enforcement, or, 2) pronounce on cases where very large public or financial interests are at stake).

– If the three-instance regular procedure is kept (regardless of whether the Supreme Court of Cassation would be empowered to pronounce selectively), parties should be allowed **to "skip instances"** where the appeal only concerns the correct application of substantive rules.

– The number of instances involved in the recognition and enforcement of foreign judgments needs to be reconsidered as well.

– **Proceedings at first instance should be seriously revisited** by introducing a **compulsory exchange of memoranda between the parties before an open hearing is scheduled**. The parties should be obliged to make all of their relevant allegations and induce any evidence at their disposal before they appear in the courtroom for an open hearing.

– One possible effect of that approach would be a larger number of settlements at the outset of the process. Depending on the evidentiary material collected prior to the court stage, the court should have the power to instruct (or in some cases oblige) the parties to resort to **mediation or conciliation** with the help of qualified experts. Some courts in the country (Plovdiv, Assenovgrad) are already applying such practice. A *Draft Law on Mediation* is being discussed by the Council of Ministers and is to be submitted to the National Assembly in 2004. This could make the number of settlements even larger. At the same time account should be taken of the potential for corruption that would be inherent in such an arrangement.

– It is necessary to rethink the rules on the **statements made by the parties to a case**. The current situation where the parties can factually "conceal the truth or state untruth" in the process, without any liability, is grossly unacceptable from the point of view of modern requirements. Any opportunity should be excluded to submit evidence (other than new facts or newly-discovered or newly-created

evidence within the meaning of § 231 of the *Code of Civil Procedure*) after the exchange of memoranda and papers between the parties. That, however, should be achieved by precluding the possibility of inducing evidence later, rather than by imposing sanctions (as the latter are usually inadequate or simply not applied).

– The rules on the various types of **evidentiary means** should be updated. This is especially relevant in light of the latest technological developments, e.g., the large-scale use of the Internet, and the introduction of e-signatures and e-commerce. On the other hand, abuse of the existing rules has reached disproportionate dimensions.

– The **role of expert witnesses** in the proceedings should be reconsidered by introducing guarantees, including an *Ethics Code* for expert witnesses, so as to ensure that they will act in good faith.

– The rules on the **modifications of the claim** should be adjusted by adding an explicit mention that a plaintiff "may modify or complement his or her claim".

– **The keeping of minutes** at open court hearings should be expressly reformulated. Given the modern technical methods of recording the statements of parties, witnesses and experts, it is no longer appropriate for the proceedings to be recorded "under the dictation" of the presiding judge. This is especially inappropriate with respect to witness testimony as witnesses face criminal liability for false statements.

– The provisions on the **award of costs and expenses** should be improved by stipulating that contingency fees payable in future shall be subject to reimbursement as well.

– The rules on **fast-track proceedings** should be revisited, including those on **appeals against delays**. Such appeals should be lodged with the president of the court where the case is pending, and this route should also be available in proceedings before the Supreme Court of Cassation (if the current workload of that institution remains unchanged).

• *Summoning and serving notice*

The rules on summoning and those on serving notices and other court papers should also be fundamentally revised by making the following amendments:

– The **initial summoning for hearings** should be based on new provisions. The requirement that the initial summoning of all legal entities should take place at the address of their management must be refined. As to natural persons, there should be a rule for the situation in which the summonsing officer is physically unable to contact the addressee of the summons as the entrance of the building is not readily accessible.

– The person who signs the summon should be required to enter in it all of his or her names and his or her address (for that purpose, an

amendment to the existing framework should empower the summonsing officer to check the signatory's identity papers).

– **Serious liability should result from any failure of summonsing officers** to issue the summons as prescribed by law. It should be explicitly stated that such offenses would entail "disciplinary dismissal." This proposal is based on the existence of the widespread practice of summonsing officers receiving bribes—which largely exceed the fine they face—in order not to summon a party properly.

– Where the case is adjourned and the next hearing is not immediately scheduled, **the party should take care to inform him- or herself of the date of the next hearing**.

– **It is appropriate to think about pronouncing the judgments in civil cases in an open hearing** (and both parties should be aware of the date of the hearing). In this case, it would become unnecessary to serve the party with a notice that the text of the judgment and its reasons are ready, as this is a major factor contributing to procedural delays.

– A rule should be introduced that, if an individual cannot be found at his or her permanent address for more than 15 days, the summons should be left at the municipality in question and summoning should be deemed regular.

– Another option is also open to discussion, namely for the court papers to be served by **out-of-court entities**, subject to detailed agreements with the court and to strict requirements (Great Britain and France serve as good examples of the efficacy of this practice). The court would thus be relieved of excessive technical work, whereas the contractors would have the motivation and the interest to perform well and on time.

Finally, it is recommended to introduce the principle that, once a party has been properly summoned for the case, that party should bear the burden of informing him- or herself about the development of the proceedings up until their end through all regular instances. This would certainly require the supply of technical equipment and facilities for the remote provision of information to the citizens who need it.

• *Collateral proceedings and enforcement*

It is mandatory to uphold the rights of those seeking protection in collateral and enforcement proceedings by allowing review by the Supreme Court of Cassation (as restricted and selective as that review might be). In relation to that the following steps are suggested:

– The rules on **allowing and obtaining collateral** should be fundamentally changed by taking account of the fact that security may be necessary regardless of the type of action brought.

– The **grounds for enforcement** should be reconsidered; for example, is it appropriate to maintain grounds for enforcement titles like the

ones in § 237(e) of the *Code of Civil Procedure* (like promissory notes), which are often times employed for horrific abuse.

– The rules on **enforcement** should be entirely revised. The only acceptable modern solution to the issue of foreclosure is to have auctions with open bidding, coupled with an unrestricted right to submit bids.

– Radical changes to enforcement proceedings are necessary, including through the adoption of new legal instruments regulating in detail the status and the powers of bailiffs, and the procedural issues pertaining to judicial enforcement. Viewpoints on this vary from proposals for introducing **private enforcement** (the enactment of such rules in the Czech Republic enabled the closure of 39,000 cases in a matter of six months) to proposals **for reforming the state enforcement** (as envisaged in a project on reforming the state enforcement, carried out by the Ministry of Justice, with the financial support of the European Commission—Phare 2000).

Contradictions arise when specific proposals for reform in civil procedure are analyzed. On the one hand, the proposed reform is aimed at curbing and combating corruption in the area of civil procedure and civil law. On the other hand, some of the proposed options for a new framework of civil procedure may be expected to give rise to new sources of corruption. It could be safely assumed that giving the courts wider freedom (such as selective pronouncement of the Supreme Court of Cassation) would generate such new hubs of corruption.

Nonetheless, the construction of a system of a high-quality and effective civil procedure should be given priority, as the very fact of its existence would serve as a guarantee that corruption will be reduced and combated.

C.3. Administrative Law and Procedure

Corruption in the administrative area undermines trust in the state's authority, in the judicial system and in public administration, and tends to be perceived as a criminal feature of the system itself rather than as a series of criminal acts committed by individual organizations, institutions or officials. Some essential reasons for the significant growth of corruption in the administrative sphere could be summarized as follows:

– There is a lack of a clear system of judicial review of the steps undertaken by the administration.

– The rules on the determination of administrative disputes are somewhat obscure.

– The limits of operational autonomy discretion granted to the administration are rather ambiguous and are not always subject to control.

– The bureaucratic machinery is slow and clumsy.

– No specific attention is paid to ethics in the public administration and in administrative justice.

– There is weak or altogether lacking confidence of citizens in the steps made by the administrative and judicial authorities.

A series of measures were undertaken in 2003 that have strong anti-corruption potential and are relevant to the modernization of public administration and to the reform of administrative justice.

• *Measures to modernize the public administration*

In January 2003, the Council of Ministers approved a *Program for Modernization of the State Administration* and a *Plan for Implementing the Strategy for Modernization of the State Administration*. The strategy was updated in September 2003. Those instruments outline a number of legislative reforms and institution-building measures designed to optimize the pattern of organization and operation of the public administration. The strategy follows the recommendations of the European Commission for a capacity-building model for the public administration and for the fulfillment of the obligations stemming from Bulgaria's anticipated membership of the European Union and its future participation in the EU structural funds.

The strategy foresaw the **implementation of the "one-stop shop" principle** which was introduced in the beginning of 2003 through pilot projects run at five central administrations: the Directorate for National Construction Supervision, the Ministry of Labor and Social Policy, the General Labor Inspectorate, the Employment Agency, and the National Social Assistance Service, as well as in a number of municipalities. By 2005, all administrations should provide their services based on the "one-stop shop" principle. A better and speedier service for the citizens is expected to ensue from the implementation of mechanisms that ensure open access of citizens to the administration, the possibility to track the path of every administrative service offered, and to check the level of approval of administrative work.

In March 2003, a Council for the Modernization of the State Administration was established, as provided for in the *Plan for Implementing the Strategy for Modernization of the State Administration*. The council is chaired by a vice prime minister and is expected to bring the operation of the public administration in harmony with the requirements stemming from Bulgaria's accession to the European Union.

As of 2003, the *Register of Administrative Structures and of the Acts of the Administrative Bodies* collects information *inter alia* on all existing regulatory regimes (licensing, registration, authorization, or equivalent regimes) and on the acts of the executive issued in implementation of those regimes. It is, however, necessary to centralize the entirety of information concerning the regulatory regimes, as it is now scattered over many other registers kept by individual ministries or other administrative bodies.

Based on the *Strategy for Modernization of the State Administration*, the *E-Government Strategy* was approved at the end of 2002. It focuses on the establishment of a **single administrative system to provide services to businesses, citizens, and administrative bodies through modern information technologies**.

Although e-government was officially launched at the end of September 2003, the practice of providing and receiving services online remains underdeveloped. The success of the project for electronic public procurement based on universal e-signatures (implemented by the Ministry of Finance) will be of key relevance here; it is expected to greatly contribute to curbing corruption in the field of public procurement, which is highly susceptible to improper pressure.

This is a good initial step towards establishing a solid foundation for the work of the administration to be corruption-resistant, in line with the needs of modern society and with European standards. Nonetheless, more prominent and comprehensive measures are required to ensure the necessary quality of administrative service, its lawfulness and swiftness, and to limit corruption.

- *Measures to reform administrative law and procedure*

Administrative justice exists to resolve disputes over the lawfulness of acts issued by the Council of Ministers, the prime minister, the vice prime ministers, the ministers, heads of other agencies immediately subordinate to the government, district governors, or other administrative acts. Hence, administrative proceedings play an essential part in the political process and frequently become a junction for different, often opposing interests whose protection is sought through corrupt means. Grounding those proceedings in a solid anti-corruption foundation is therefore a vital prerequisite for making administrative justice modern, efficient, and fair.

The lack of consistent administrative legislation and procedures is still a major problem of administrative law. The numerous amendments to substantive administrative laws are frequently discrepant, give rise to many gaps and ambiguities, and invite conflicting interpretation. Almost no steps were undertaken in 2003 to improve this situation, regardless of the important progress made in devising the conceptual framework of administrative procedures.

The major proposed changes include drafting a *Code of Administrative Procedure*, reforming administrative justice, including through building up a system of administrative courts, and modifying the mechanisms for lodging appeals with administrative bodies. Work on the *Draft Code of Administrative Procedure* is already in progress and it is expected to be finalized by the end of 2004.

The updated version of the *Strategy for Reform of the Judiciary in Bulgaria*, approved by the government on April 3, 2003, provides for the formation of specialized administrative courts. Discussions and specific solutions in that respect are still to come.

The reform of administrative law and procedure is aimed at improving the legal and organizational framework of administrative justice in order to prevent corruption by introducing a modern system of administrative legislation and setting up efficient mechanisms to keep the work of public administration under judicial review.

C.3.1. Administrative Law: The State of Affairs

With a view to combating corruption in the process of enforcing administrative law, the following major problems in substantive administrative provisions should be enumerated:

- *Establishing a uniform organizational pattern for the public administration*

Regardless of the legislative measures undertaken to implement a uniform organizational pattern and common internal rules for the administrative structures of all executive bodies, be they central or local (the *Law on Administration*, in effect as of November 5, 1998 and the *Ordinance on the Conditions and Procedure for Keeping a Register of Administrative Structures and the Acts of the Administrative Bodies,* in effect as of May 26, 2000), corruption still affects to a greater or lesser degree the administration of all of those bodies.

  – The measures aimed to make the work of individual administrations more **transparent** are, as yet, far from sufficient. While almost all of the administrations have provided special reception rooms where citizens can file applications or complaints, there are no efficient feedback mechanisms or adequate legal rules.

  – Although legislative provisions exist on how to exercise the **right of access to public information** (the *Law on Access to Public Information*, in effect as of July 10, 2000, and the *Law on Protection of Classified Information*, in effect as of May 3, 2000), their implementation has identified the lack of sufficient guarantees for transparency and accountability and the persisting attempts of the administration to retain for official use much of the information about its operations. There are still opportunities to refuse, by invoking obscure criteria, access to information constituting an official secret and this type of environment is quite conducive to corruption.

  – At the same time the annual reports on the situation in the administration as a whole, and in some individual administrations, offer no **findings of corruption transactions or suggestions for specific anti-corruption measures**. It is still quite difficult to pinpoint the indices that could be used to assess the efficiency of the administrative operation and to manage performance in a purpose-oriented manner.

- *Establishing a professional civil service*

The impression of the public that those working in the administration are highly corruptible makes it crucial to analyze the implementation of the *Law on Civil Servants* and the anti-corruption measures envisaged therein, including those enacted through the latest amendments of 2003.

- In line with the *Law on Civil Servants*, the status of civil servants has been introduced in 96% of the central administrative structures, in the district administrations, and the municipal administrations. **That status, however, does not apply to those working at the National Audit Office and**

in the tax administration, irrespective of the responsible supervisory functions vested in those bodies. The scope of the *Law on Civil Servants* does not extend to expert posts in the general administration which are still governed by the *Labor Code*. The number of employees working under contracts of employment in the administration is therefore twice higher than the number of civil servants. This is also due to the persisting trend to insert into sector-specific legislation only a few "beneficial" elements of the civil servant status, without considering the status as a whole in the respective sector. These factors continue to obstruct the promotion of a system of professional civil service based on corruption-free behavior and culture.

- The *Law Amending and Supplementing the Law on Civil Servants* (in effect as of November 1, 2003) **contains a number of anti-corruption provisions**. **Competitions** are now compulsory for any appointment to the civil service, and will follow uniform procedures. This is a prerequisite to ensure objective selection based on professional merit. However, the possibility given to any head of administration to appoint at his or her own choice any of the first three applicants ranked by the competition committee, rather than the best-performing candidate, still fosters corruption.

As of November 2003, the *Register of Administrative Structures and of the Acts of the Administrative Bodies* is filled with information about all competitions for civil servants in the state administration. This is an additional factor expected to promote transparency and to reduce corruption transactions when appointing civil servants.

The scope of statutory prohibitions on appointment laid down in § 7(2) of the *Law on Civil Servants* has been extended. It now covers many situations that constitute a **conflict of interests** and normally create a corruption-friendly environment, e.g., relations with next-of-kin, business activities, or holding posts in political parties. A conflict of interest disclosure mechanism has been put in place. It will operate on the basis of annual filings by civil servants to disclose the commercial, financial or other business interests which they or their related parties have in the operation of the administration where the respective servant works. In addition, civil servants must refrain from participating in the discussions on, the preparation of, and the making of decisions where their impartiality is reasonably doubted. The promulgation of a *Code of Conduct for Public Officials* is envisaged, and its violation would entail disciplinary sanctions.

- *The lack of a clear-cut division between the powers of the separate administrations*

The interweaving of powers most often results in duplicating work or reshuffling responsibilities which, in turn, is conducive to abuse and creates an environment conducive to corruption transactions.

- *No uniform concept of "administrative act" exists*

  – Different legal instruments prescribe **different contents and scopes** for the concept of "administrative act". There is no uniform legal cri-

terion to be used for excluding some administrative acts from judicial review. All this impedes the definition of the type of act at stake and frustrates the proceedings designed to review the legality of such acts.

– **Equally lacking is a distinction** between the individual administrative acts issued by the state in its capacity as a carrier of the executive authority to regulate and organize, and the acts issued by the state in its capacity as an economic operator who manages and disposes with state-owned property[14]. Identical arrangements for appealing against such essentially different instruments frequently block normal economic life, thus creating preconditions for corruption transactions.

• *The practice of* ***"tacit refusals"***

This structure has been preserved almost entirely in the shape in which it existed in an earlier social setting, where there was no division of powers. Therefore, it provides no guarantees for the respect of citizens' rights in the modern environment. The sole exception to the tacit refusal rule is the issuance of authorizations and certificates for one-off transactions or actions. In such cases, the newly-adopted *Law on Limiting Administrative Regulation and the Administrative Control on Economic Operations* (in effect as of December 18, 2003) proclaims the principle of tacit consent. This possibility, however, is not comprehensive as it will only apply where it is not otherwise provided by other laws. Discrepant secondary legislation has not yet been brought into line with the new law. While the law is a step towards the speedier and more efficient provision of administrative services, the insufficient capacity of the central or territorial administrations to implement it, and the existence of rules that invite different interpretations, pave the way for corruption transactions.

The rules on challenging tacit refusals before the court are equally unsatisfactory under the new circumstances. The appeals procedure is slow and costly, so many private individuals prefer to dispense with it.

The frequent instances of tacit refusals, which are more often than not the result of corruption transactions, entail the uncontrollable transfer to the court of functions that are typical of the administration. The courts thus engage in inappropriate activities (they decide on issues of governance and

[14] Judgment No. 19 of the Constitutional Court of December 23, 1993 in case No. 11/93 describes the power of the Council of Ministers, which is the highest administrative authority in the country, to organize the management of state-owned property as a "typically managerial function". The vast material scope of that constitutional power is defined as covering not only the two types of property the state may have in Bulgaria, i.e., public and private property, but also other rights and duties of the state that can be valued in money. Express mention is made of the fact that in the context of that organizational activity, the Council of Ministers may issue acts but the same activity could also be carried out by individual ministers or by other bodies empowered by the Council of Ministers to do so. In other words, in its capacity as a high executive body, the Council of Ministers decides on the basis of expediency who and how should manage that property, unless otherwise provided in law. At the same time, attention is drawn to the fact that the rules applying to sites which form either private or public (other than exclusive) property of the state or the municipalities shall be laid down by law, and in the exercise of their right to private property the state and the municipalities shall be placed on an equal footing with all citizens and legal entities.

power that fall entirely within the competence of public administration) and this fuels secondary corruption at the level of the administration of justice.

- *Operational autonomy*

The widest field for corruption in the administrative sphere is the so-called **operational autonomy (discretion)**. The lack of adequate controls for lawfulness or advisability frequently transforms operational autonomy into arbitrary or illegal steps by the administration, and all these factors contribute to corruption to the largest possible extent.

Some laws contain legal rules which precondition corruption as they give powers to the administrative bodies but fail to identify any criteria or to give instructions as to why a particular law should regulate specific cases of clashing interests. The existing "undefined" concepts or expressions in some laws also enable broad interpretation and enforcement and, hence, corruption (for example "incongruous speed", a concept used in § 20(2) of the *Law on Road Traffic*). Such provisions greatly risk becoming corruption-generating incentives, especially when used in privatization and public procurement laws.

C.3.2. Administrative Procedure: The State of Affairs

In view of the reform of administrative proceedings, the following major problems emerge from the analysis of the legal framework:

- *The existence of multiple sources of administrative-procedure rules, some of which belong to other areas of law*

In this situation, control over the administration becomes rather inefficient, the responsibilities of the different supervisory authorities are watered down, the reputation of judicial review is compromized, citizens are poorly informed about how and where they should challenge illegal or incorrect administrative acts, and so forth.

  – There is **no clear distinction between administrative-procedure law and existing procedural codes**, *viz*. the *Code of Tax Procedure*, the *Code of Criminal Procedure* and the *Code of Civil Procedure*. The *Code of Tax Procedure*, for instance, provides for a special route of challenging tax reassessments, which differs from the common one envisaged in the *Law on Administrative Proceedings*.

  – **References** to the *Code of Civil Procedure* and the *Code of Criminal Procedure* often result in inaccuracy, gaps, or even inconsistencies with administrative procedure laws. This is due to the different legal nature of the relations covered by each of those instruments. This situation is an enormous impediment to efficient administrative justice.

  – **The interpretative decisions of the Supreme Administrative Court** (SAC) cannot substitute for the statutory rules and should not settle lasting relations of administrative procedure, or else there will be conflicting pronouncements, fragmentation and inconsistency.

In brief, the existing legal framework fails to contribute to the development and operation of a consistent and uniform system of administrative justice, whereas the discrepant, non-standardized sets of administrative proceedings may push the courts to adopt different approaches, thus fueling corruption transactions.

- *The absence of unambiguous legal rules on some procedures and on major legal structures*

The **cassation appeals** against court judgments in administrative cases give rise to problems which have not been definitely or explicitly addressed by the administrative-procedure legislation in force, at least not to date. The subsidiary application of the *Code of Civil Procedure* is insufficient, nor is that code fit to serve as a comprehensive legal basis for the complex and specific area of administrative justice.

The introduction of **corporate administrative liability** is still on the agenda. In practice this is the only possibility to penalize corporate corruption given the hindrances in existing Bulgarian legislation and legal doctrine. In the course of the work on the concept for the *Code of Administrative Procedure,* the proposal for introducing corporate administrative liability for corruption-related or other crimes committed by legal entities' employees has been adopted. Recommendations to that effect were noted in the last *Regular Report* of the European Commission.

- *Failure to respect and comply with court acts*

The **relations between the court and the administrative bodies** that issued the acts under attack are somewhat problematic as well. Forwarding of administrative files is often delayed, the court is denied assistance by the administrative bodies' failure to provide relevant facts and submissions to clarify the disputes, and there are instances of failure to fulfill judgments.

On the other hand, **corruption transactions are suspected** whenever the competent administrative body which must act to implement a court judgment or the instructions of the court fails to comply with the judgment or to fulfill the instructions. The administrative penalties envisaged for such cases are extremely inefficient and, even worse, are often not enforced.

C.3.3. Required Legislative Amendments

- *In the field of administrative law*

Changes are imperative in substantive administrative law, particularly in the legal instruments that regulate the work of the administration, along the following lines:

– Introducing **wider accountability and access to the information** kept by public authorities so as to reduce the chances for corruption acts or omissions.

– **Regulating operational autonomy** by adopting internal rules that should define the method of decision-making when such autonomy is granted. All possible actions that an authority could undertake in exercising its operational autonomy should be foreseen by the law.

– Anchoring the career promotion of civil servants in demonstrated diligence in their performance, introducing **fair and transparent career development procedures,** and reducing to a minimum the room for conflicts of interest by relying comprehensively on the anti-corruption potential of the newly-passed amendments to the *Law on Civil Servants*.

– Promoting a general system to improve the professional knowledge and skills of those working in the administration. An important factor here could be the introduction of a **systematic training for civil servants in corruption-related matters** at the Institute of Public Administration and European Integration.

– Putting in place a reliable **feedback mechanism** to stay in touch with service users, so that their skills could be employed to improve the process of administrative servicing and to suppress corruption.

– Revising completely the practice of "**tacit refusal**" and the appeals against such refusals. If those refusals are retained, on appeal, the court must always review the decision and decide on the liability of the corresponding administrative body or of the person who failed to pronounce on time, while imposing **penalties** in the same proceedings. It would be better to proclaim the principle that failure of the administration to pronounce on time shall be construed as a reply in the affirmative to the request addressed to it. This means extending the scope of "**tacit consent**" as enshrined in the newly-adopted *Law on Limiting Administrative Regulation and the Administrative Control on Economic Operations*. Tacit consent should actually become the general rule. There should be scarce possibilities to provide for different rules in other laws, secondary legislation should be harmonized with the rules of the law, and the administrative capacity of the competent bodies should be reinforced by way of training and improving the efficiency of their officials.

• *In the field of administrative procedure*

Further improvements in the legal and organizational framework of administrative justice are associated with the following specific proposals:

– Drafting a ***Code of Administrative Procedure*** *(CAP),* which has already started. It should cover the subject matter of administrative proceedings in the widest possible sense, as these are currently governed ambiguously and in a discrepant manner by myriad other laws. Explicit rules are needed to bridge the gaps in administrative procedure and *CAP* should not copy provisions or matters from the *Code of Civil Procedure*.

– *CAP* should prescribe the **general rules of administrative procedure**, including the proceedings for issuing administrative acts, the

enforcement of such acts, the imposition of administrative penalties, and the appeals against those acts before another administrative body or before the court. Special rules of procedure should exist for urgent and justified cases but they should also be contained in a specific chapter of *CAP*. References to other procedural codes must be few and should only be made where they cannot be avoided.

– *CAP* should **define the concepts** of individual administrative acts, administrative acts of general application, and instruments of secondary legislation. It should also **define** the meaning and the status of the "parties concerned". It should provide for corporate administrative liability and for stiffer administrative sanctions for administrative agencies that fail to abide by court judgments. The code should **cover** the liability of the state and the compensation for damage caused by such administrative acts or by failure to act.

– Once *CAP* is enacted, it will be necessary to adopt **unified rules on the work of the administration** in issuing administrative acts. Based on those rules, the administrative bodies should adopt their own internal regulations for each type of act of individual or general application, and those internal regulations should be announced in public and be accessible. Specific training programs should be designed to tackle the implementation of the future *Code of Administrative Procedure*.

– Setting up **a new unified system of administrative courts—regional administrative courts and a Supreme Administrative Court: *pros and cons***

Support for the setting up a new unified system of regional administrative courts (a proposal embedded in the updated *Strategy for Reform of the Judiciary in Bulgaria*) is based on the current drawbacks of administrative justice which stem from the lack of specialization at first instance. It is recommended that, when those regional courts are set up, responsibility be assigned to the professionals at those district courts which currently have operational administrative divisions, while precluding the possible "remoteness of justice from the people".

The views **against** such a system also take account of the need to have specialization in administrative cases at first instance, but this should ideally be achieved based on the current pattern of specialization in civil or criminal cases. Arguments against the proposal to set up separate administrative courts mainly suggest that this is unreasonable in terms of the quantity, structure, and funding involved.

In either case the competence of the Supreme Administrative Court should be clearly delineated and the institution should be enabled to efficiently implement its constitutional powers to exercise supreme supervision in order to ensure the accurate and uniform application of law in the process of administrative justice. To that effect the SAC should also issue interpretative decisions to streamline inconsistent case-law.