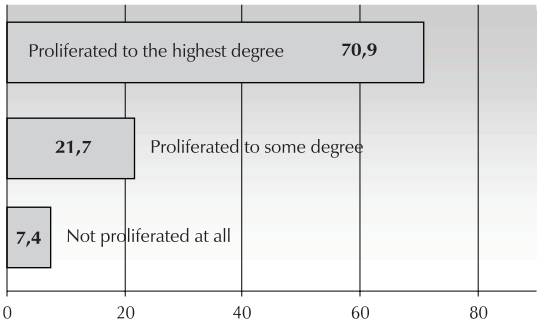
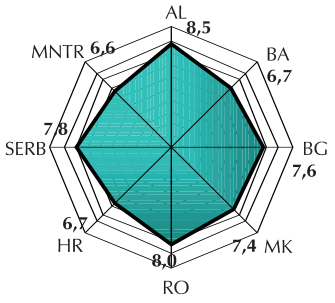
B. JUDICIAL REFORM: ANTI - CORRUPTION DIMENSIONS

Achieving legal stability and confidence in the Judiciary, providing conditions for greater efficiency, quality and transparency in the administration of justice, creating internal control mechanisms to combat abuse of power and corruption within the Judiciary and creating a system for improving the professional qualifications of magistrates has been the major issues on the agenda of judicial reform in Bulgaria in year 2001.

SPREAD OF CORRUPTION IN THE JUDICIARY (GENERAL PUBLIC; %)



Bulgaria, October '01



Southeast Europe, January '01

Source: CMS of *Coalition 2000*, SELDI

Nevertheless, significant progress in 2001 was not achieved . The Judiciary was once again ranked among the six most corrupt institutions in Bulgaria in surveys of both the general public and businessmen while judges, lawyers, prosecutors, police officers and other law enforcement professionals are among the most corrupt occupation groups.

The new government's *National Anti-corruption Strategy* (especially in the section entitled „Anti-Corruption Measures in the Judiciary and the Criminal Legislation") and the *Strategy for Reform of the Judiciary in Bulgaria,* both adopted on October 1, 2001, have incorporated many of the measures proposed by the *Coalition 2000* Action Plan of 1998 and the Program for Judicial Reform, which was developed within the framework of the *Judicial Reform Initiative* and endorsed in May 2000. The legislative measures, already implemented or planned for the future, target objectives in different areas, namely **improving the substantive and procedural laws (legislative reform in the strict sense), reforming the organization and operation of courts and court administration reform and raising the criteria to the appointment of magistrates and their professional qualifications - training of both magistrates and court administrators.** Nevertheless, proper functioning of the Judiciary is also dependent on the work of the law enforcement authorities which are not part of the Judiciary - the Bar, the specialized authorities of the Ministry of the Interior (including the Police and the

SPREAD OF CORRUPTION AMONG INSTITUTIONS *

	April 1999	Sept. 1999	January 2000	April 2000	Sept. 2000	January 2001	October 2001
Customs	8,78	9,10	9,02	9,10	8,90	8,96	9,06
Privatisation Agency	7,46	7,86	7,96	8,28	8,06	8,24	8,66
Bulgarian Foreign Investment Agency	-	-	-	7,78	7,54	7,74	8,08
Judiciary	7,62	7,88	7,68	7,68	7,60	7,82	8,04
Tax services	7,10	7,98	7,68	7,56	7,54	7,42	7,62
Police	7,16	7,54	7,30	7,24	7,14	7,36	7,34
Sector ministries	6,94	7,40	7,24	7,44	7,50	7,56	7,12
District administration	6,90	7,32	7,02	7,04	6,94	6,90	6,90
Commission for Protection of Competition	6,14	6,40	6,18	6,68	6,54	6,84	6,88
Committee on Energy	6,40	6,84	7,00	7,10	7,00	6,82	6,80
Parliament	6,78	7,16	6,96	7,24	7,42	7,46	6,78
Municipal administration	6,64	7,24	6,82	6,74	6,54	6,54	6,58
Government	6,58	7,12	6,94	7,10	7,44	7,42	6,44
Bulgarian Telecommunication Company	-	-	-	6,28	6,60	6,30	6,42
Securities and Stock-Exchanges Commission	6,24	6,28	6,22	6,50	6,46	6,48	6,40
National Audit Office	5,74	5,86	5,54	5,84	5,98	5,82	5,72
Bulgarian National Bank	5,34	5,32	5,34	5,16	5,72	5,48	5,24
Military	4,88	5,06	5,06	5,08	4,98	4,80	4,70
National Statistics Institute	4,80	4,54	5,00	4,68	5,02	4,76	4,61
Presidency	4,46	4,50	4,28	4,52	4,52	4,24	4,26

Source: *Coalition 2000*
* Note: The maximum value of the index is 10.0 indicating the highest possible level of corruption. The minimum value is 0,0 indicating total absence of corruption.

National Service for Combating Organized Crime), the financial intelligence service, the tax and financial control authorities, etc. Therefore, a more comprehensive approach including all aspects of law enforcement is necessary in order to effectively combat corruption.

B.1. Legal Basis of the Judicial Reform

B.1.1. Criminal Law and Procedure

Criminal law has the most direct impact on the problem of corruption. With only a few exceptions, however, criminal law reform was only marginally addressed by the Bulgarian legislature in 2001.

- *Measures Taken So Far*
  - *Introducing internationally accepted instruments and standards*

The ratification of the *Criminal Law Convention on Corruption* of the Council of Europe in 2001 was a significant step forward. Bulgaria made two reservations to this convention, however, which show the current state of anti-corruption criminal legislation. With the first one Bulgaria reserved the right not to incriminate the bribery or „trade in influence“ of members

of foreign or international public or parliamentary assemblies as well as passive bribery of foreign officials. The second reservation states that active and passive bribery in the private sector will only be considered as a crime if it corresponds to existing internal legislative provisions for such offences.

Regarding the *Criminal Law Convention on Corruption, the UN Convention against the Transnational Organized Crime, the International Convention on Combating Bomb Terrorism, Protocol against the Illegal Trafficking of Migrants by Earth, Sea and Air, Protocol on Prevention, Counteraction and Punishment of the People Traffic, especially of Women and Children,* supplementing the *UN Convention against the Transnational Organized Crime,* all of which were ratified in 2001, a set of comprehensive follow-up legislative and practical measures are necessary in order to put them effectively in practice.

- *Restriction of Immunity against Criminal Prosecution*

The link between immunity and corruption has been publicly debated for a long time and cited as an important issue in several international documents. Thus, for instance, *Resolution (97) 24 on the 20 Guiding Principles for the Fight against Corruption of the Committee of Ministers of the Council of Europe* states that countries should „limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society." The risks of corruption within the Judiciary are too high taking into consideration the combination of magistrates' immunity and life-long mandates. This is why **limiting magistrates' immunity could become appropriate instruments in combating corruption**. The failed attempt in year 2001 to amend the *Constitution* on the issue of MPs' and magistrates' immunity makes it practically impossible to introduce such changes in the criminal regulations directed against corruption.

- *Necessary Legislative Amendments*

The following supplementary criminal legislative measures aimed against corruption should be introduced:

- Formulating **new provisions for combating corruption-related offences, including those concerning the illegal funding of political parties and „trade in influence".** This is necessary because corruption is a phenomenon which goes beyond the current regulatory treatment of bribery as an offense and includes a wide range of acts committed by officials which should be considered as criminal offences.
- **Extending the scope of the offence of bribery to include a widest possible circle of officials. Special regulations on embezzlement of EU funds are to be introduced** which is absolutely necessary in the course of Bulgaria's accession to the EU.
- **Broadening the scope of the subject of bribery to make acts of asking for and accepting non-material benefits subject to criminal prosecution.** At present, the *Criminal Code* considers a public official's benefit as undue only if it is material, thus treating bribery as a self-interest crime only in the narrow sense of the word.
- Making **bribery committed by a representative of the Judicial system (a magistrate or an administrator) as an aggravated of-**

SPREAD OF CORRUPTION BY PROFESSIONAL GROUPS

„Nearly all" and „Most are involved in corruption" (%)

	February 1999	April 1999	September 1999	January 2000	April 2000	September 2000	January 2001	October 2001
Customs officers	73,3	73,2	75,2	77,0	78,6	75,2	74,3	77,3
Judges	49,5	50,8	50,7	48,5	56,0	50,1	50,6	56,4
Lawyers	55,5	55,4	55,6	54,8	51,9	52,9	50,3	55,0
Prosecutors	48,5	50,0	50,8	46,3	54,4	51,3	50,7	54,8
Police officers	51,5	49,2	55,8	51,9	50,5	54,3	51,0	53,7
Tax officials	47,1	45,2	56,4	53,9	51,0	53,7	47,3	51,6
Criminal investigators	43,6	41,8	44,9	41,0	48,0	43,8	43,5	48,4
Doctors	56,9	46,0	47,3	42,5	40,9	43,6	27,0	46,8
Ministry officials	42,5	41,9	48,2	47,9	55,1	49,7	43,9	45,8
Members of parliament	39,0	37,7	42,6	45,0	55,1	51,7	52,6	43,5
Business persons	49,5	47,6	48,3	48,5	51,4	42,3	43,6	42,2
Administrative staff from the Judicial system	42,0	40,5	49,7	42,0	45,2	40,2	36,8	41,7
Ministers	39,1	35,3	43,9	45,3	53,4	55,0	52,3	41,2
Leaders of political parties and coalitions	40,5	31,1	42,7	37,5	45,0	43,8	39,1	40,8
Municipal officials	44,3	39,6	48,8	45,0	46,5	41,6	35,9	39,6
Local political leaders	34,0	27,5	38,2	31,7	36,4	36,8	34,2	35,1
Bankers	-	-	-	20,9	38,8	33,5	35,6	32,5
University professors or officials	29,5	28,5	35,7	29,4	29,3	28,1	21,6	27,4
Municipal Council members	31,2	26,4	34,7	32,5	35,2	32,1	30,9	26,3
Representatives of NGOs	16,3	11,5	20,9	16,2	18,2	23,9	18,2	19,8
Journalists	12,7	12,0	14,3	10,6	14,1	13,9	11,3	10,5
Teachers	12,6	8,4	11,5	9,5	8,2	10,9	5,8	9,3

Source: CMS of *Coalition 2000*

fense and further discuss the provisions of art. 307 of the *Criminal Code* on inducement to bribery.

- **Changing the title of the chapter of the *Criminal Code,*** which deals with bribery as much as the titles of the chapters in this *Code* provide guidance in the interpretation of their content it would be good if the title of Chapter Eight were amended to include the opportunities for bribery in the sphere of the economy as well.

- Defining more precisely the **terms "public official"** and **„foreign public official"** as major subjects of the crime of passive bribery. At present, for instance, it could be disputed if a MP or a municipal counselor is a „public official" who could be the perpetrator of passive bribery under the present language of art. 93 of the *Criminal Code*. A careful broadening of the definition of a „foreign public official" is also necessary for Bulgarian law to sufficiently protect the financial interests of the EU.

• *Corruption and Global Security Problems*

The globalization of the issues of security, both in the field of information technology and in military or political affairs, makes necessary further elaboration of criminal law in spheres which may have only an indirect effect on corruption. New measures to combat *terrorism and cyber-crimes* have to be adopted.

- *Terrorism*

Since September 11, 2001 increased attention has been paid to the link between **organized crime and corruption** on the one hand, and between organized crime and **terrorism,** on the other hand. Although no notable acts of terrorism have been committed in Bulgaria, in view of the international context it is necessary for Bulgaria to coordinate its anti-terrorist efforts with the international community. With this in mind, national legislative amendments to the *Criminal Code, Code of Criminal Procedure, the Law on Ministry of the Interior and the Law on Special Intelligence Means*, the financial and banking legislation and administrative procedures are forthcoming. At the end of 2001 Bulgaria withdrew its reservation made at the ratification of the *European Convention on the Suppression of Terrorism* in 1997, which retained the right of Bulgaria to refuse extradition for crimes it considered political. In addition, the currently existing long and complicated procedure for extradition from Bulgaria for terrorist activities could be substituted with a **European Arrest Warrant** in the near future.

When making these amendments, the delicate balance between broadening the powers of the state or the security services and respect for human rights, especially the protection of privacy, must be respected.

- *Cyber Crimes*

Joining the *Convention on Cyber crimes*, adopted by the Committee of Ministers of the Council of Europe on November 8, 2001, will allow Bulgaria to take part in setting up an efficient system of international co-operation in combating cyber crimes, which too often facilitate corrupt practices such as **money laundering or illegal payments**. It is expected that the Convention will be ratified in the near future - its ratification will expedite the adoption of amendments to the *Criminal Code* incriminating the illegal creation, use, distribution and preservation of computer information **(**including **abuse of electronic signatures and electronic documents).** The adequate treatment of computer crimes will meet the need for additional legal protection against manifestation of corrupt behavior which gets more and more sophisticated.

B.1.2. The Role of the Mechanisms of Criminal Procedure in Combating Corruption

Criminal procedure mechanisms play a very important role for the quality and speed of prosecution, for their procedures of the imposition and execution of penalties. The amendments to the *Code of Criminal Procedure* of 1999, in force since January 1, 2000 came to meet modern requirements to the criminal prosecution system - consolidation of the **court's role as the principal overseer of procedure and the trial phase as the central stage in criminal proceedings; judicial control over coercive measures which may infringe upon basic human rights at the pre-trial phase; competitiveness in court; expedited procedure; and introduction of differentiated procedures.** Nevertheless, these amendments did not have a significant contribution for progress in combating crime in general and corruption in particular. Admittedly, the period since these amendments went into force has been short and it may be too early to judge about their effectiveness but still it should be noted that **practical problems**

have already emerged, primarily due to some legislative amendments which were not very appropriate. Several of these amendments were made with the *Law* on *Amendment to the Code of Criminal Procedure,* in force since May 1 2001, which was passed without any public discussion or consideration and was adopted at the very end of the mandate of the 38th National Assembly. These changes have had a particularly negative influence on the efficiency of the Judiciary's work. To the greatest degree this applies to the amendments on **the issue of plea bargaining**, which very quickly won recognition as an important procedural technique for accelerating criminal prosecution and preventing corrupt practices between defendants and magistrates. Data from cases tried in 2000 shows that 36, 6 % (more than 1/3) were concluded through *plea bargaining*. The amendments to the *Code of Criminal Procedure* of 2001 significantly narrowed opportunities for *plea bargaining*.

At the end of its term of office the 38th National Assembly introduced these changes disregarding the opinion of the legal community, expressed by the Association of Judges, the Modern Criminal Justice Foundation and other participants in the *Judicial Reform Initiative* which insisted that court's control over the procedure at the pre-trial phase should be retained. The legal community also insisted that the amendments in question were not in line with European standards, they were not backed by necessary funding and would be inefficient.

As a whole, the year 2001 amendments to the *Code of Criminal Procedure* have slowed down criminal procedure and made it more expensive. Serious fears also exist that the quality of administration of justice will be reduced due to the court clog as courts have to deal with activities for which they should not be responsible - as a result the percentage of detected and punished crimes, including those involving corruption, will decrease.

In order to improve the efficiency of criminal procedure, new legislative solutions are necessary. These actions must be based on a long-term anti-corruption strategy which will serve the public rather than short-term particularistic interests. The causes for the inefficient operation of some of the questionable provisions as well as the experience so far must be thoroughly analyzed in order to find a solution to the low detection of the crimes of corruption. It is recommended that after such an analysis, a **new Code of Criminal Procedure** be drafted; amendments in the sphere of execution of penalties should also be adopted.

B.1.3. Civil and Administrative Law and Procedure

Few legislative amendments deterring directly or indirectly corruption were introduced in civil and administrative laws and procedures in 2001.

- *Measures Undertaken*
  - The *Law on Electronic Signature and Electronic Document*, in force since October 7, 2001, which was developed by an expert group at the Center for the Study of Democracy, must receive a positive evaluation. The Law should enhance the security and speed of both online transactions in particular and electronic data exchange in general. Its implementation will expedite the provision of administrative services, **make administrative procedures transparent** and

reduce the possibilities to solicit or offer bribes in the interaction between the **public administration** and **citizens, legal entities and merchants**.

- The *Law on the Cadastre and the Real Estate Register* has been in force since January 1, 2001. Changes in the system of real estate registration, a sphere marked by abuse, fraud and corruption, are also in progress. Introducing these changes takes a long time but the impact, including availability of complete and precise information on property and pending liabilities upon it, **will have lasting anti-corruption effects in the field of real estate transactions.**
- Amendments to the *Commercial Code*, in force since October 17, 2000, concern two main areas - company law and commercial bankruptcy law. Harmonization of the company law section with the *EC directives on publicity, equity and single member limited liability companies* and the adjustment of the legal provisions for joint stock companies will enhance confidence in equity trading, reduce the possibilities for abuse and ensure better transparency and the protection of creditor and third party interests**. The amendments to the commercial bankruptcy legislation have not yet brought a real acceleration to bankruptcy procedures and therefore have failed to adequately deter interested parties from seeking resolutions through corrupt means.**

A significant new amendment to the section of the *Commercial Code* which deals with re-structuring of companies (mergers, acquisitions, spin-offs, splits and transformations) is now being considered. This amendment comes as a response to the need for harmonization of Bulgarian legislation with EU standards and aims to put an end to the current practice of re-structuring in an atmosphere of lack of transparency and acting at the expense of some of the partners involved which should significantly improve the business climate.

- In October 2001 a **Center for Out-of-Court Legal Dispute Resolution** was established with the Union of Bulgarian Jurists and *Rules on the initiation and performance of out-of-court legal dispute resolution* was adopted. This is the first step towards the introduction of procedures for alternative out-of-court legal dispute resolution. Their practical implementation will narrow the possibilities for corruption, ensure effectiveness and rapidness in the resolution of disputes, and relief the Judicial system's work.

- *Forthcoming Changes*

  - It is necessary to adopt a *Law on Bank Bankruptcy* in order to ensure greater stability and speed in bankruptcy proceedings and to enforce control over the receiver in a bank bankruptcy, which should reduce the possibilities for corruption.
  - It is necessary to adopt a ***Code of Administrative Procedure*** in order to bring together and systematize the various types of administrative procedures which should help overcome the lack of co-ordination and synchronization through introducing unified criteria, procedures and control, reducing the possibilities for evading the law through corruption.
  - **Administrative liability (imposition of monetary penalties) for**

MAJOR FACTORS FOR THE SPREAD OF CORRUPTION * (%)

	April 1999	Sept. 1999	January 2000	Sept. 2000	January 2001	October 2001
Desire for quick personal enrichment sought by those in power	52,9	54,8	57,0	57,8	60,8	59,2
Imperfect legislation	38,8	37,8	35,1	40,5	39,1	38,0
Lack of strict administrative control	36,4	33,8	30,8	32,3	31,8	35,2
Low salaries	51,5	43,6	47,2	41,6	33,7	32,3
Conflict of interests	25,8	28,3	28,3	32,6	25,8	31,7
Ineffectiveness of the Judicial system	19,6	27,5	24,7	22,2	27,2	28,5
Moral crisis in the period of transition	19,4	19,4	18,2	17,0	18,9	21,1
Problems inherited from the communist past	6,8	7,4	7,3	7,8	4,4	5,8
Specific characteristics of the Bulgarian national culture	6,9	4,7	5,9	4,2	5,9	4,4

Source: *Coalition 2000*
* Note: Respondents have marked up to three factors which is why the cumulative percentage may exceed 100

legal persons whose senior officials and representatives have committed crimes of corruption for the benefit of those persons should be regulated by law.

- **The procedure of foreclosure** must be improved. Currently, it is inefficient, full of corruption and discredits the administration of justice.

A review of the legislation which currently constitutes the legal basis for the Judiciary's activities against corruption shows numerous flaws. This conclusion is shared by the majority of the general public, which places inadequate legislation in the second place among the factors for the spread of corruption.

Further legislative work should be complemented by serious progress in the field of law enforcement without which even the best legal texts are doomed to failure.

B.2. Reform in the Organization of the Judicial System (Structure and Management) and in Court Administration

No serious reform in the organization of Judicial system took place in year 2001.

The Most Frequent Criticism to the Organization of the Judicial System Concern:

- The Judicial system's structure.
- The authority of the Executive in making the Judiciary's budget along with the insufficient financing of the Judiciary.
- The magistrates' immunity.
- The inefficiency of court administration (poor procedures for case management, lack of computerization, lack of central coordination of management practices).
- The status of magistrates and administrative staff, which is recognized as extremely unsatisfactory, including the lack of transparency and clear criteria for appointment, the proper

evaluation of their work, the criteria for promotion and relocation of magistrates and insufficient training.

- The inefficiency of judgment execution.

Under the pressure of criticism at the end of the previous mandate and the beginning of the present one the government tried to address the problems of the Judicial system by taking the following measures:

- Organizing discussions on the conclusions and the recommendations of the European Commission for year 2000 at meetings with judges from throughout the country.

- Adopting *a Strategy for Reform of the Judiciary in Bulgaria* aimed at the following anti-corruption measures:
  - Human resources - introducing new criteria for selection and appointment, raising the professional qualifications of magistrates and their administrative staff, introducing competition for recruiting magistrates, making performance evaluation mandatory before magistrates become irremovable or are promoted or demoted in rank and position, encouraging magistrates to report instances of corruption, and, finally, introducing disciplinary sanctions when appropriate.
  - Overhauling the central management of the Judicial system, including creating a clear distinction between the functions of the Ministry of Justice and the Supreme Judicial Council.
  - Automation of the Judicial system's activities in order to achieve speed, transparency and reliability.
  - Improving judgment execution procedures to achieve efficient protection of citizens' and legal persons' rights.
  - The Judicial system's budget - composition, management and sufficiency.
  - The interaction of the Judiciary with both the other governmental powers and the public must be clarified.

- Inclusion of a section entitled **"Anti-Corruption Measures in the Judicial System and the Criminal Legislation"** in the government's *Program for Implementation of the National Anti-Corruption Strategy***.**

- Using the experience of non-government organizations and their initiatives to reform the Judiciary and developing partnerships with these organizations.

B.2.1. Structure of the Judicial System

The structure of the Judicial system is vital to the successful functioning of the Judiciary in its anti-corruption efforts. Its improvement will have positive effects in several aspects: **the interaction between different units to avoid both duplication of effort and transferring of responsibilities; unified mechanisms for both preventing internal corruption and punishing it; expediting and increasing the detection and prosecution of corrupt practices, etc.**

The structure of the Judicial system, although set initially in the *Constitution*, has not been put seriously on the agenda. Without seeking constitutional changes, which require a longer and more difficult procedure it is still possible to enact successful measures within the framework of the existing *Constitution* to foster cooperation between the courts, prosecution and investigation and obtain support from the National Service for Combating Organized Crime, the tax, financial and customs' police, etc.

It is crucial to make operational the *Unified Information System against Crime* whose rules were adopted by the Council of Ministers in September 2000. This System should link the data on crime from the Ministry of the Interior, the Ministry of Defense, the Financial Intelligence Bureau, the customs authorities, the investigation, courts and public prosecution offices.

When evaluating the Judiciary's efficiency in curbing corruption, one usually underscores on the court's administration of justice. Under the existing *Constitution* the other units of the Judiciary - the **investigation and the prosecution** - should also be taken into account as the efficiency of their work is a prerequisite for better and more efficient administration of justice.

- *Investigation*

Previous experiments in reforming the **investigation** reflected in confrontation between the short-term particularistic interests and resulted in ineffective cases of preliminary investigation, including cases on corruption.

Over the course of the past 10 years several attempts to re-organize the investigation have been made. They have varied from transferring investigation services back to the Ministry of the Interior (1997) to closing down the National Investigation Service and creating 28 independent district investigation offices and one Specialized Investigation Service (1998). As a result, the Specialized Investigation Service was deprived of organizational, financial and administrative means of influencing district investigations. In 2001 an attempt was made to subordinate administrative investigation to the prosecutor's office. Subsequently in November 2001, the Ministry of Justice expressed a willingness to introduce amendments to the *Law on the Judiciary* and restore the National Investigation Service.

Data on Preliminary Investigation of Crimes of Corruption (art. 301 - 307 from the *Criminal Code* and Malfeasances art. 282 - 285) for the Period 1999 - the First Half of 2001:

- Reduction in the number of newly- opened and closed cases.
- Significant delays in the investigation of cases.
- Sharp increases in the number of the cases returned - more than 30 % of investigations.
- The Attorney General invoking too rarely his power to assign the investigation of legally and materially complicated cases to the Specialized Investigation Service (established in art.172, par.3 of the *Code of Criminal Procedure*): in 2000 22 cases were assigned and during 2001 (till November) - only one.

Source: Specialized Investigation Service

Improved work on crimes of corruption requires a new approach on behalf of investigators that will raise their authority as an essential element of the Judiciary and limit the opportunities of corruption in the process of investigation. The following particular measures can be proposed:

- Improving the **interaction with the prosecution's office and the Ministry of the Interior**.
- Using more actively **special means of investigation** on offenses including corruption.
- Use of **the mechanism of witness protection** in order to achieve better protection for persons who agree to co-operate with the investigation and assist the administration of justice.
- **Wider use of interrogation before a judge** in order to avoid the exertion of undue pressure on witnesses and defendants and to provide evidence that can be used in court.
- Introducing the institute of **special investigators for cases of corruption.**

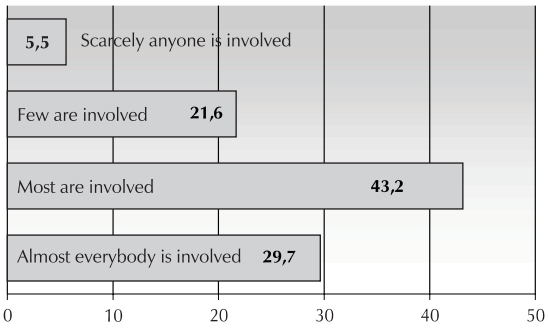
The constitutional provisions on the investigation place it within the Judiciary. The assessment of this arrangement as „unusual" in the European Commission Report for year 2001 comes from the fact that the procedures of taking investigators' immunity have hardly been applied so far. A well though of decision is necessary in order to stabilize the role and the place of the investigation services for success in their tasks.

- *Prosecution*

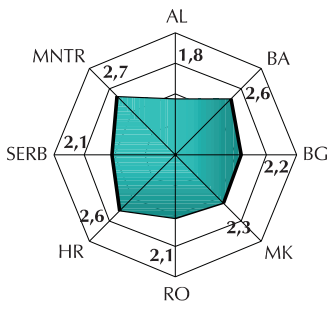
The proper place and role of the **prosecution** in the Judicial system, including the status of the Attorney General, has also been the subject of serious discussions. Different and often controversial approaches have been suggested: to preserve the *status quo*; to amend the *Constitution* and transfer the prosecution to the Executive, in particular to the Ministry of Justice; to give it greater independence from the Supreme Judicial Council; to impose parliamentary control over the Attorney General, etc. The problem is serious enough to require careful consideration. It is necessary to examine both previous experiences and latest novelties in other countries where combating corruption is successfully done through public discussion with participation of the prosecution.

The self-inflicted isolation of the prosecution from the public and especially from the inter-institutional debate on these issues brings additional complication to

SPREAD OF CORRUPTION AMONG PROSECUTORS



Bulgaria, October '01



Southeast Europe, January '01

Source: CMS of *Coalition 2000*, SELDI
Note: SELDI data represents average values (1 - lowest, 4 - highest).

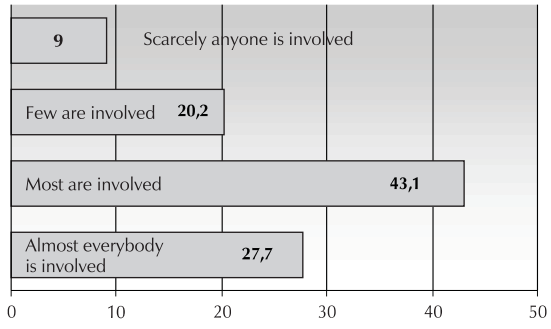
the matter and makes it difficult to reach an acceptable solution. The prosecution's silence and apparent alienation from matters of principle, often combined with boisterous announcements of preliminary investigations followed by lengthy delays in bringing cases to court, highlights **the necessity of reforming the prosecution in general.** In trying to create a proper basis for these reforms, the European Union's experience should be taken into consideration, especially the successful example of Italy's separation of the prosecution from the Executive. Thus, it is necessary to consider carefully if the proper approach for Bulgaria is to expand prosecutor powers or to abolish its current independence from the Supreme Judicial Council with a kind of subordination to the Ministry of Justice.

B.2.2. Other Institutions Related to the Judicial System's Proper Functioning

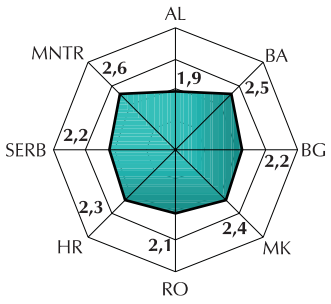
- *The Bar*

The possibility of attorneys being **intermediaries in matters involving corrupt practices between the principle units of the Judiciary - courts, prosecution and investigation**, has been quite underestimated up till now. This is possible because of the relatively weak control by the Bar's management. The use of such mechanisms and means of corruption is more accessible to better of people and businessmen than to people who cannot afford the services of qualified attorneys who „knows the right people".

SPREAD OF CORRUPTION AMONG LAWYERS



Bulgaria, October '01



Southeast Europe, January '01

Source: CMS of *Coalition 2000*, SELDI
Note: SELDI data represents average values (1 - lowest, 4 - highest).

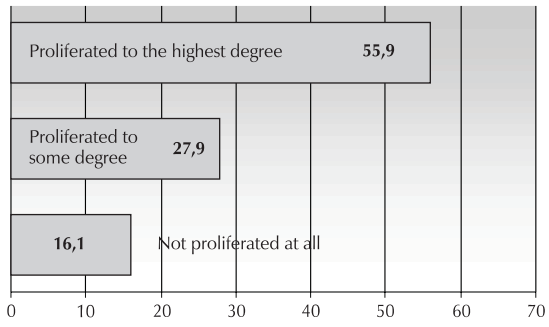
A task force of the Supreme Bar Council is already working on amendments to the *Law on the Bar* aiming at raising the prestige of lawyer's profession and overcoming the defects in the attorneys' work. In order to affirm the role of the guild in preventing corruption the following measures could be useful:

- Introduction of strict requirements for admission to the Bar.
- Adoption of rules of ethics and standards of conduct whose non-compliance carries sanctions.
- Improvement of the disciplinary procedures for non-compliance with the law and the rules of ethics.
- Creating a legal basis for free legal assistance, i.e. legal assistance office.

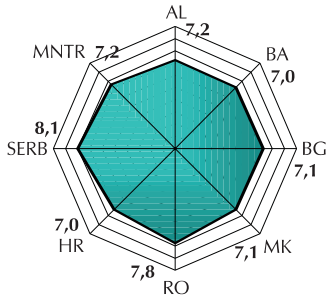
- *Role of the Police*

The role of **the Police** in law enforcement is critical for the proper functioning of the Judicial system.

SPREAD OF CORRUPTION IN THE POLICE FORCE



Bulgaria, October '01



Southeast Europe, January '01

Source: CMS of *Coalition 2000,* SELDI
Note: SELDI data represents average values (1 - lowest, 4 - highest).

The introduction of the institution of preliminary police investigation in the *Code of Criminal Procedure*, in force since January 1 2000, aimed at improving the state's policy on crime by accelerating investigation through removing unnecessary formalities from criminal procedures. The Bulgarian Police were given the power to investigate about 80% of committed crimes. The advantages and disadvantages of this legislative act have been seen in practice: about five times more police investigations were sent to the prosecution than in the previous year with an opinion for trial; the average time used to investigate crime was also reduced by a factor of at least five. At the same time too many police officers (more than 10,000) without the necessary legal background have received the powers to investigate; in certain cases this has had an unfavorable effect on the quality of police investigation. In addition, the 2001 amendments to the *Code of Criminal Procedure* instead of solving the outline problems **increased procedural formalism** that brought **seriously difficulties** to **police investigation,** making it slower and less efficient. More flexible legislation on police investigation and its potential to realize greater procedural efficiency is needed, including measures such as improving police investigators' legal skills and training.

- *Anti-Corruption Measures in the Ministry of the Interior*

The Ministry of the Interior has an essential role to play in curbing corruption. Nevertheless, this role can be discredited by internal cases of corruption. The main tasks in fighting corruption within the Ministry are specified in the government's *Program for Implementation of the National Anti-Corruption Strategy*. It delineates functional responsibility among operative units of the National Security Service, the National Service for Combating Organized Crime, the National Police Service and the National Border Police Service in order to avoid duplication of anti-corruption efforts.

In 2001, the Ministry of the Interior made serious efforts adopting the following anti-corruption priorities:

- It completed the re-structuring of the administrative services of the Ministry in accordance with the *Law on Administration* - demilitarization of the administration and reglamentation of their status in compliance with the *Law on Civil Servants*. However, it still must

continue to work on **the elaboration and application of a system for selection, appointment and career progress of human resources,** based on criteria of professionalism and motivation (minimum term of experience, professional training, examinations, etc.).

- A **Draft Code for the Ethical Behavior of Police Officers** with anti-corruption content has been prepared. In addition, it is necessary to improve the training curricula on the basis of developed **objective criteria for evaluation of the work of police officers**. The efforts on better organization of the work environment at the Ministry should continue by improving the structure, functional responsibilities and job descriptions.
- The new structure of the Ministry assigns the function of coordinating the work of the various services on fighting corruption to one of the Deputy Ministers. Within the Inspectorate of the Ministry a unit on internal corruption monitoring and prevention has been established.
- **A Practical Manual for Police Investigators** has been written. Two additional manuals are also being prepared to help police officers - one for safeguarding public order and one for protection of human rights.

To achieve success in its anti-corruption priorities, the **Ministry of the Interior must open to the public**; the attitude of secrecy and closed doors which casts doubts on its capacity and creates opportunities for corruption should be replaced by an attitude of transparency and accountability. In this context, for instance, complaints on police actions are examined in internal procedures which create possibilities for both concealing violations and lack of objectivity in investigations. In order to overcome these drawbacks the following measures are recommended:

- Set-up of **Internal Investigation Departments** within the specialized services and the regional units of the Ministry of the Interior.
- Continuous application of **civic control over the activities of the Ministry of the Interior**.
- Establishment of **an independent body** to examine complaints and allegations of corruption as a part of an external control system.

B.2.3. Governance of the Judicial System

Improving the governance of the Judiciary is necessary for efficient fight of corruption both inside the Judicial system and throughout the rest of the society. A pressing issue is the delineation and re-definition of the authority and functions of the Supreme Judicial Council (SJC) as a governing body of the Judiciary which makes decisions on personnel and organization, and the Ministry of Justice as a unit of the Executive.

- *Supreme Judicial Council*

The Supreme Judicial Council has the main representative functions in the Judiciary as well as broad powers in its administration. Unfortunately, there are serious weaknesses in its activities. Some of these are caused by constitutional provision on its composition, responsibilities and powers while others can be corrected within the current constitutional framework.

These weaknesses are generally due to the lack of transparency in the work of Judiciary, lack of clear procedures for a number of aspects of its activities, outdated internal rules, insufficient administrative capacity and a lack of feedback mechanism with the branches of the Judiciary.

Measures Necessary for Institutional Consolidation of the Supreme Judicial Council:

- Creation of capacity to perform governing functions for Judicial system - strategy, financing, governance.
- Accountability and transparency in its work.
- Creation of capacity for disciplinary proceedings against magistrates.
- Development of an information system for control and co-ordination.
- Improvement of the decision making process.
- Achievement of efficient practical interaction with the Executive and the Legislature.
- Resolution of the issue of the status of the SJC's administrative staff which doesn't currently have adequate reglamentation and is not part of the court administration (the SJC does not currently have the respective experts and support structures for performing its functions.)

The Draft *Law on the Amendments to the Law on the Judiciary,* prepared at the end of 2001, proposes improvements to both the regulation of the elections in the SJC and its responsibilities.

- *Ministry of Justice*

In order to achieve better co-ordination of the governance of the Judicial system and protect the independence of the Judiciary it is of particular importance to establish a model of interaction and at the same time delineation of the responsibilities of the Executive and the Judiciary. Strengthening the independence of the Judiciary also requires that **the Executive,** i.e. the Ministry of Justice**, be restricted to creating the necessary material conditions for its efficient functioning.** These conditions include the management and maintenance of court buildings, providing the required materials and equipment, etc. The Sofia Regional Court has proposed that the Inspectorate be removed from the structure of the Ministry of Justice and that in the future control should not be exercised by the Executive but by a new permanent body at the SJC, with its own status, composition and powers regulated by the *Law on the Judiciary*. It was also proposed that this body be composed of senior magistrates, representatives of the Bar, citizens elected by the municipal councils, etc.

- *Toward Professional Governance Free of Corruption*

In light of the problems discussed, several amendments to the *Law on the Judiciary* adopted in 2001 can be evaluated as being superficial or non-essential. What is necessary is to **improve the work of the Judiciary through democratization of its administration,** including increase of

the responsibility of magistrates; better regulation of the access to the magistrate profession (judges, prosecutors and investigators); improving qualifications and strengthening social control; introducing elections and term limits for senior positions in the Judiciary; specifying the responsibilities of the SJC; introducing competition for judicial appointments; and regulating the professional requirements to judges, prosecutors, investigators and the other office holders.

Similar **measures against internal corruption** are also needed in all other administrative units - they should include transparency of income and property, other relevant information about the judicial office holders, enhancement of the mechanisms for disciplinary sanctions against magistrates, etc.

B.2.4. Court Administration

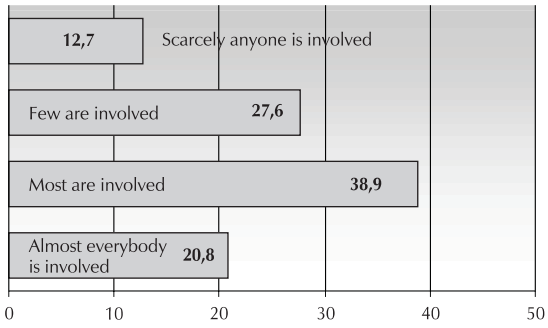
There was notable progress on several prioritary aspects of the reform in the field of court administration in 2001.

Reforms in the Administration of 11 Pilot Model Courts

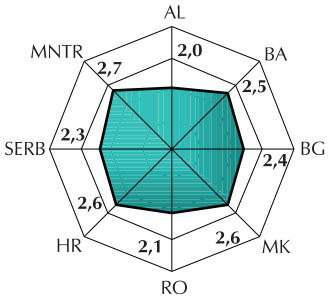
- More than 400 judges and court administration employees underwent judicial administration training.
- Office re-organization aiming at one-stop shop service was initiated.
- More than 400 PCs and other equipment were installed.
- An automated system for case management was created designed especially for Bulgarian courts.

The **newly created automated system for case management throughout the entire Judicial system** was presented at the first annual assembly of the Bulgarian Court Clerks' Association in November 2001 and is expected to begin functioning soon. It is nevertheless necessary to adopt additional regulations to replace the out-of-date *Ordinance No 28 of 1995* of the Ministry of Justice and better regulate the court administration, including the rights and obligations of the different categories of the court administration staff as well as the position of a court administrator. Court administrators' positions have already been created within the Supreme Court of Cassation, the Supreme Administrative Court and the Attorney General's Office. Legal regulation of the status of the ad-

SPREAD OF CORRUPTION WITHIN THE JUDICIAL ADMINISTRATION



Bulgaria, October '01



Southeast Europe, January '01

Source: CMS of *Coalition 2000*, SELDI
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ministrative staff of the Judiciary and the SJC is forthcoming.

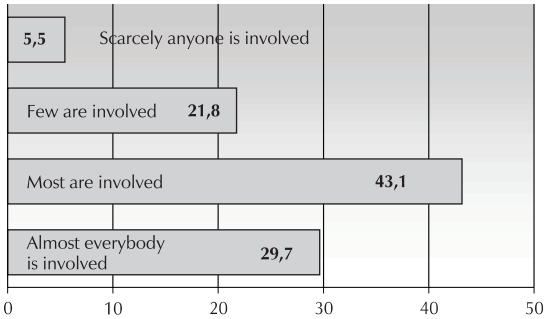
To reduce everyday ('petty') corruption in the interaction between the court administrative staff and the citizens **a new approach to administration in the courts must be adopted,** including a system of management of the court's records, human resources, distribution of cases among judges and their progress through the courts, automation, a database for judges in Bulgaria, building additional institutional capacity of the SJC, inlcuding through setting up a National Coordination Office for the Court Administration, training, preparation of a Code of Ethics for the Administration of the Judicial system in Bulgaria, etc. Similar issues should also be considered with regard to the investigation and prosecution administrations. All of these measures should lead to the creation of clear, transparent and logical rules which will facilitate fair administration of justice and curb opportunities for corrupt practices.

B.2.5. Magistrates' Independence and Qualification

Achieving stability of the institutions which guarantee supremacy of the law is impossible without an independent Judiciary consisting of objective and highly qualified magistrates of impeccable moral standards.

- With regard to **the selection and appointment of magistrates** during 2001 the need for competition based on detailed criteria defined in the *Law on the Judiciary* and overseen by the SJC gained further support. It is necessary to introduce periodical performance evaluation of magistrates as well as evaluation at the end of the term before obtaining an irremovable status and before promotion or raise of a magistrate's salary. All decisions on magistrates' professional careers, including performance evaluations, should be made on the basis of the objective criteria set out in the *Law on the Judiciary*. This goes parallel to the provisions of *Recommendation No P/94/12* of the Committee of Ministries of the Council of Europe, dated October 13 1994 *concerning independence, efficiency and role of judges*.

SPREAD OF CORRUPTION AMONG JUDGES



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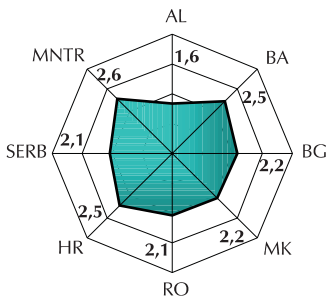

Southeast Europe, January '01

Source: CMS of *Coalition 2000*, SELDI
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- **With regard to the magistrates' further training** in the past year **the Magistrate Training Center (MTC)** continued to function successfully and earned a deserved reputation as a unique institution to provide training for already appointed magistrates. In the beginning, training programs targeted mainly judges, but in 2001 prosecutors, investigators, civil servants at the Ministry of Justice and university lecturers were

also included. Training curricula already include general courses on European law and the Institutions of the EU and specialized courses in international cooperation on criminal cases.

In the future, training should be orientated to a greater extent toward persistent **anti-corruption behavior and moral standing** of magistrates; to this end, a serious contribution can be made by a closer cooperation of the MTC with non-governmental initiatives - *Coalition 2000, the Judicial Reform Initiative,* etc.

The planned changes in the Center's status - to become **a separate independent public institution funded by the state -** should provide continuity, stability, opportunities for long-term planning and functioning in accordance with the actual training needs. The *Draft Law on the Amendments to the Law on the Judiciary,* provides for the establishment of a public institution for professional training of magistrates.

Subjects of public discussions which should take place before the adoption of respective legislation:

- Performance evaluation and an adequate procedure for its implementation before judges, prosecutors and investigators gain a status of irremovability.
- Procedure for demotion of magistrates who do not have the necessary qualities for performing their professional duties.
- Introducing competition for appointments of junior judges, prosecutors in Regional Prosecution Offices and investigators.
- Creating a legal framework on requirements for magistrates' qualification and its impact for the magistrates' progress in the professional hierarchy.