

## CORRUPTION AND ANTI-CORRUPTION IN BULGARIA (2012 – 2013)

### Policy Brief No. 43, November 2013

In 2013, the level of administrative corruption in Bulgaria affecting the population and the business sector remained practically the same. Bulgaria is still among the EU Member States with highest corruption risk. The newly elected parliament and government did not come up with any specific initiatives to meet the higher public expectations for prompt results in the fight against political corruption. There is no visible improvement in the performance of the judicial system. The examples of **continuing poor management practices**, creating serious risks of political corruption and arousing suspicions in the will and capacity of Bulgarian officials to tackle corruption, multiplied in 2013:

- a series of (attempted) appointments by the government and the Parliament of people without proven track record and expertise or with questionable reputation, to key positions in the administration, including to institutions designed to fight corruption and organised crime;
- speedy preparation and adoption of laws, including laws containing lobbyist clauses, without public consultations and analysis of costs and benefits;
- lack of comprehensive strategy for reform in the security sector, and in particular in the fight against corruption and organised crime;
- public disclosure of facts from on-going investigations, before the collection and verification of all facts, including purposeful sabotaging of corruption investigations involving figures from the political elite and officials from economic sectors with high corruption risk (such as the energy sector), as well

#### KEY POINTS

- **The level of administrative corruption in Bulgaria remained the same.** In the period 2012 – 2013, 14 % of the adult population has been involved in corruption transactions at least once per year. The dynamics of corruption practices **in the business sector** was similar. The practical efficiency of corruption as a means to resolve problems and get access to services **is still high**, and in the business sector it has even been growing since 2008.
- Confidence in state institutions in general and in specialised anti-corruption bodies in particular remained very low. While expectations for relevant actions on the part of state anti-corruption bodies have been on the rise in 2013, both citizens and businesses believe corruption in the country is increasing.
- **Activities of the legislative, executive and judicial powers continued to be unclear and ineffective.** The integrity of the Parliament was seriously shaken following a series of poor legislative decisions and appointments.
- The performance of the newly elected **Supreme Judicial Council** and **Prosecutor General** in 2013 **failed to meet the expectations for improvement in the fight against corruption and organised crime.** The striving of politicians, business and financial groups to control the appointments of senior magistrates, behind-the-scenes political arrangements, and attempts to influence judicial decisions are still a deep-rooted practice.

## Box 1. Corruption Monitoring System

This analysis is based on results obtained through the *Corruption Monitoring System (CMS)*. The system is developed by the Center for the Study of Democracy and Vitosha Research and is the first of its kind in the post-socialist countries. CMS has been successfully applied for 15 years and has been recognised by the UN as best national system for corruption monitoring. It provides data on the frequency and dynamics of corruption practices affecting the population at large and the business sector. CMS registers the actual level and trends of public corruption, as well as the public attitudes, assessments and expectations in relation to corruption. Nationally and internationally tested indicators are used to measure the actual frequency and public perception of corruption. The methodological features of CMS guarantee comparability of data for Bulgaria with data for other European countries.

intervention of the Bulgarian prosecution in the political process;

- replacement of a significant part of the executive administrative staff after the new government was formed, without analysis and justification of the replacements;
- confrontation and politicising of the civil protests that aim to create new moral in politics, by application of political engineering and the abuse of party apparatus.

The result is a lack of progress in the anti-corruption reform. Political corruption remains unpunished. Corruption in general is not persecuted effectively and adequately. **Activities of the legislative, executive and judicial powers continued to be unclear and ineffective.** The integrity of Parliament was seriously shaken following a series of poor legislative decisions and appointments. The strong interest of politicians, business and financial groups toward high standing officials in the judiciary, behind-the-scenes political arrangements and attempts to influence judicial decisions are still a deep-rooted practice, despite the declared principles of separation of powers and independence of the judiciary. The Supreme Judicial Council, both in its previous and in its current composition, remained susceptible to illegitimate pressure. The behaviour of many prosecutors and judges at various levels is quite similar. **State capture** by powerful business groups **has become even more visible**, with serious political influence exercised through the concentration of financial and media resources.

## Dynamics and level of administrative corruption

In the period 2012 – 2013, **the level of administrative corruption** in Bulgaria **did not change**, with 14 % of the adult population taking part in corruption transactions at least once per year. This data points to a **systematic problem** and structural reasons for the existing corruption practices, as well as to ineffective anti-corruption policies and measures.

In recent years, **stable corruption behaviour of citizens** has been observed where bribes are offered to public servants even when they are not explicitly demanded. Thus, bribes have in effect become part of the price for certain administrative services. In 2013, only 53 % of those who resorted to bribes have been pressured by the recipients of bribes to do so, while in 2007 the respective number was 90 % – 96 %.

**The dynamics of corruption practices in the business sector** is generally similar to that of the population, and their level did not change. Thus, after the sharp decline observed in 2007, corruption in the business sector is relatively stable.

**Acceptance of corruption** in principle among the population is at a stable low level, and is continuing to decline in the business sector, indicating that as a rule corruption behaviour is not tolerated. Despite these attitudes, the **practical efficiency** of corruption as a means to resolve problems and obtain access to services remains high, and has even been on the rise in the business sector since 2008. **Confidence in state**

**institutions**, in specialised anti-corruption bodies, including the overall judicial system and the criminal justice in particular, remains **very low**. There is a growing perception by both citizens and businesses that **corruption is getting more and more widespread**. Most probably this is a direct consequence of the higher political instability in the country, mounting social discontent and strong confrontation in society.

## Corruption pressure and victimisation of citizens

For the 1998 – 2013 period, several stages were registered by the CMS, based on the indexes of involvement of the population in corruption transactions and corruption pressure exercised over citizens:

- up to 2001, the highest levels of corruption were observed, but the general trend was downward;
- in the 2001 – 2004 period, both indexes reached and maintained their lowest points;
- in 2005, corruption was on the rise again, reaching its highest points in 2008;
- since 2009, certain improvement compared to the

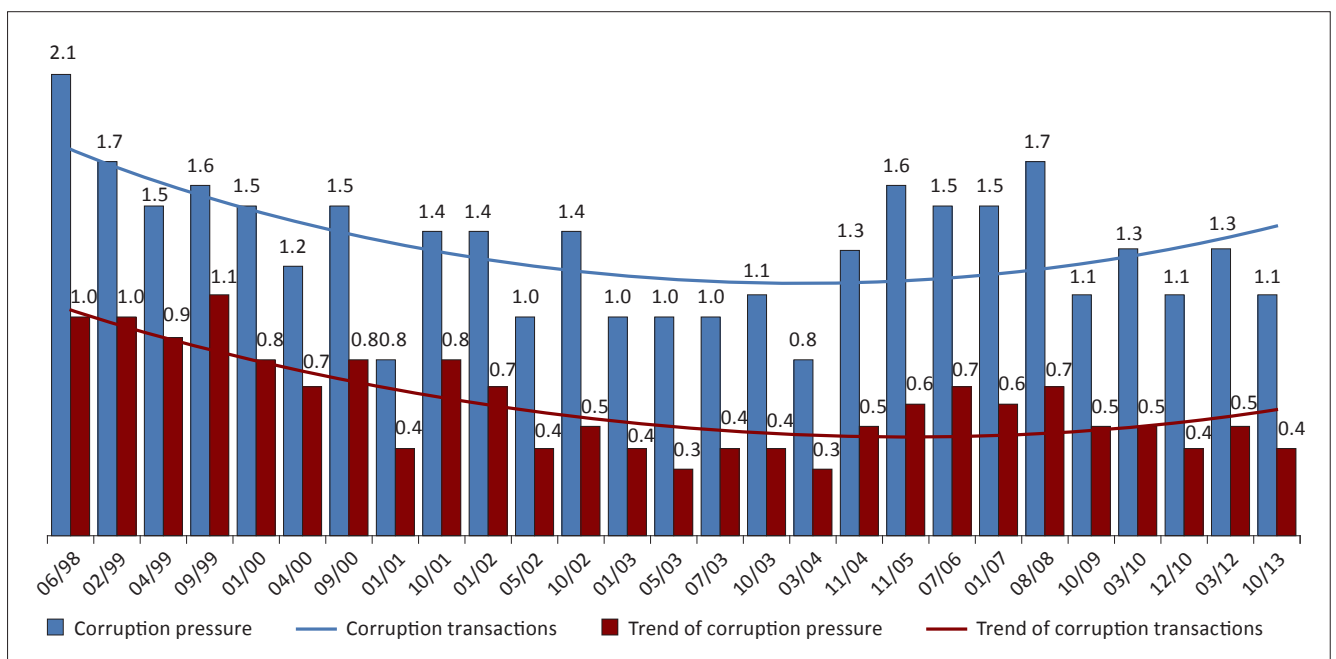
previous period has been observed, both in the index of corruption pressure and of involvement in corruption transactions.

The analysis of corruption pressure and involvement in corruption practices indicates that while before the accession to the EU the economic development of Bulgaria and the government anti-corruption policies produced parallel effects, after the accession their impact seemed to follow diverging paths.

Along with the indexes of corruption pressure and involvement in corruption transactions, corruption can be measured by a third significant indicator – number of **people who were involved in corruption transactions** at least once per year. The analysis of these indicators throughout the years highlights both shared trends and certain corruption specifics that characterise the mandates of previous cabinets:

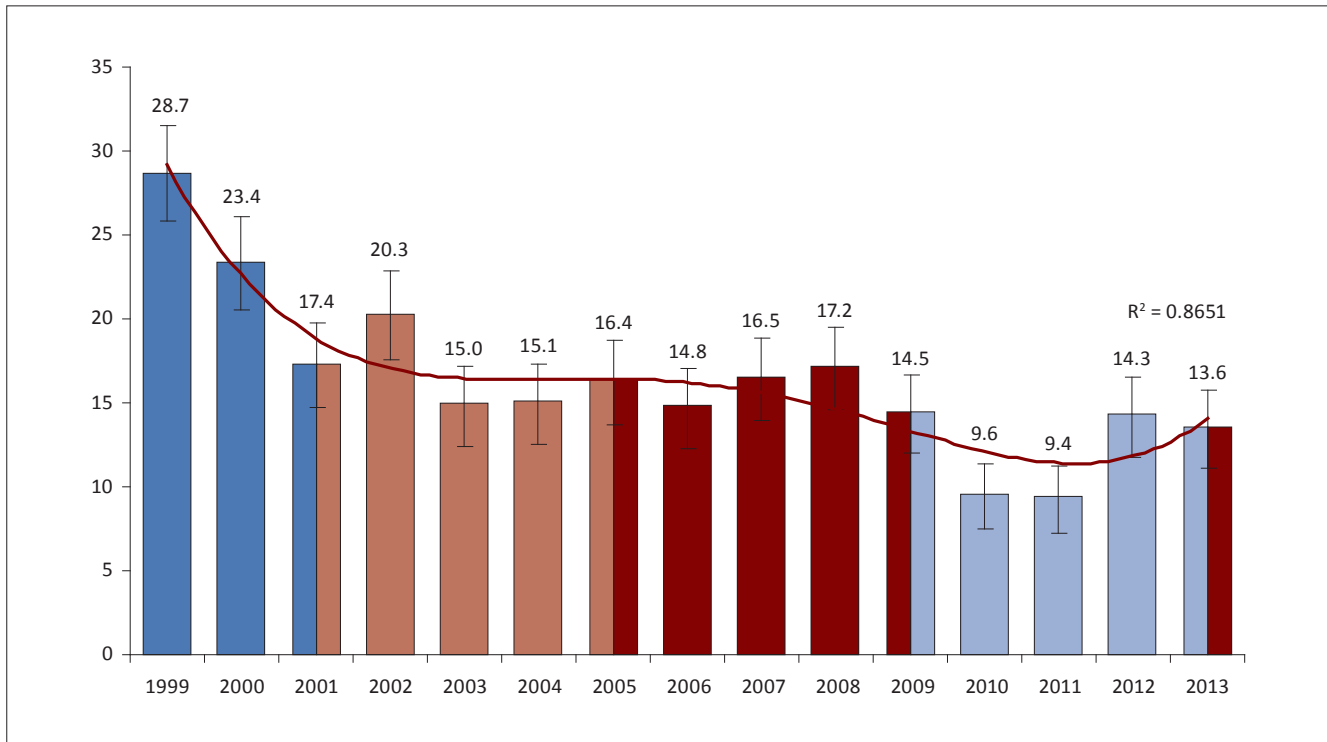
- There is a general trend of declining numbers of people who were involved in corruption transactions in the 1999 – 2013 period.
- In the past two years this trend has been reversed, and the number of participants in corruption practices has increased.

**Figure 1. Corruption pressure and involvement in corruption transactions by citizens**



Source: CMS, CSD/Vitoshva Research, 2013.

**Figure 2. Involvement in corruption transactions (people who gave a bribe at least once in the last year, % of adult population, 18 years and older)<sup>1</sup>**



Source: CMS, CSD/Vitosha Research, 2013.

## Assessment and expectations about corruption and anti-corruption efforts

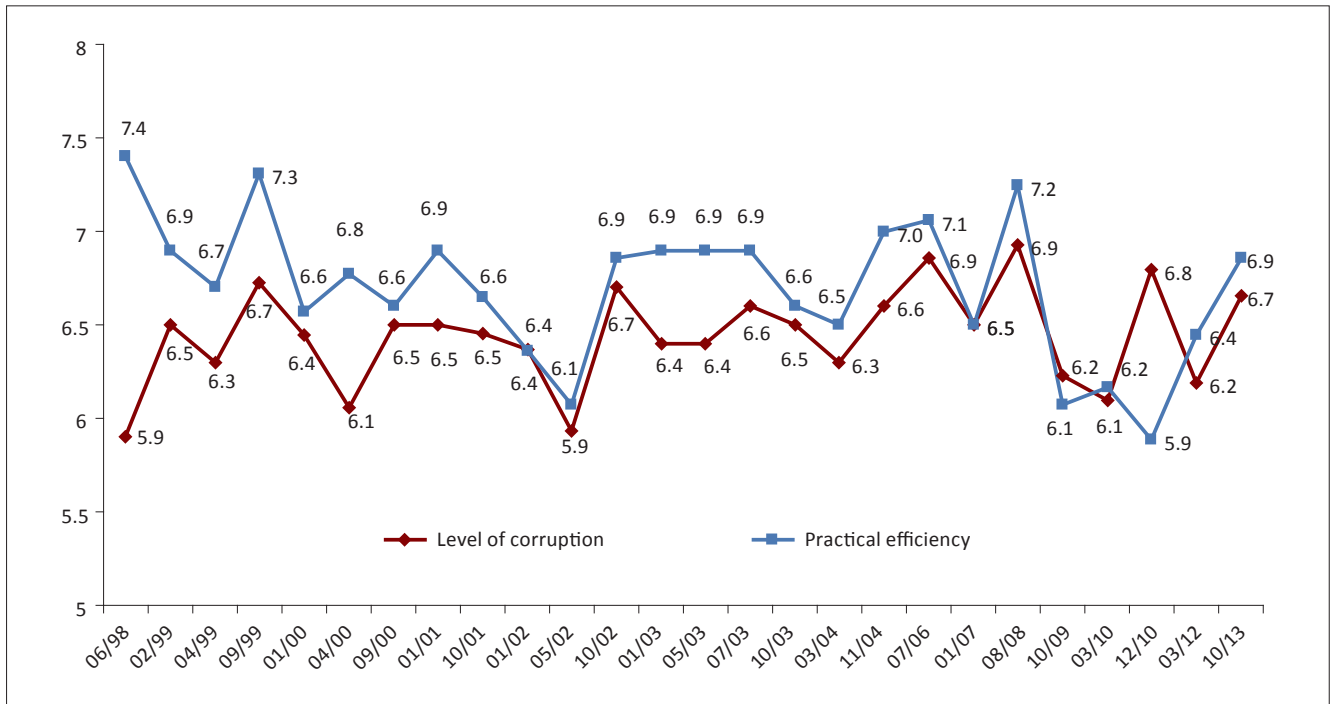
Subjective assessments by citizens indicate that corruption has been growing in recent years. Corruption practices are perceived to get more widespread, with the index going up from 6.1 in 2010 to 6.7 in October 2013. Even stronger is the increase in the perception of the **practical efficiency** of corruption (the probability of resolving problems by means of corruption). That index changed from 5.9 in 2010 to 6.9 in 2013.

**Corruption pressure** from the public administration is the major factor driving corruption practices. When citizens are asked by public office holders to give a bribe, provide a service or a gift, on average between 50 % and 70 % of them comply and enter into a corruption transaction. An interesting trend

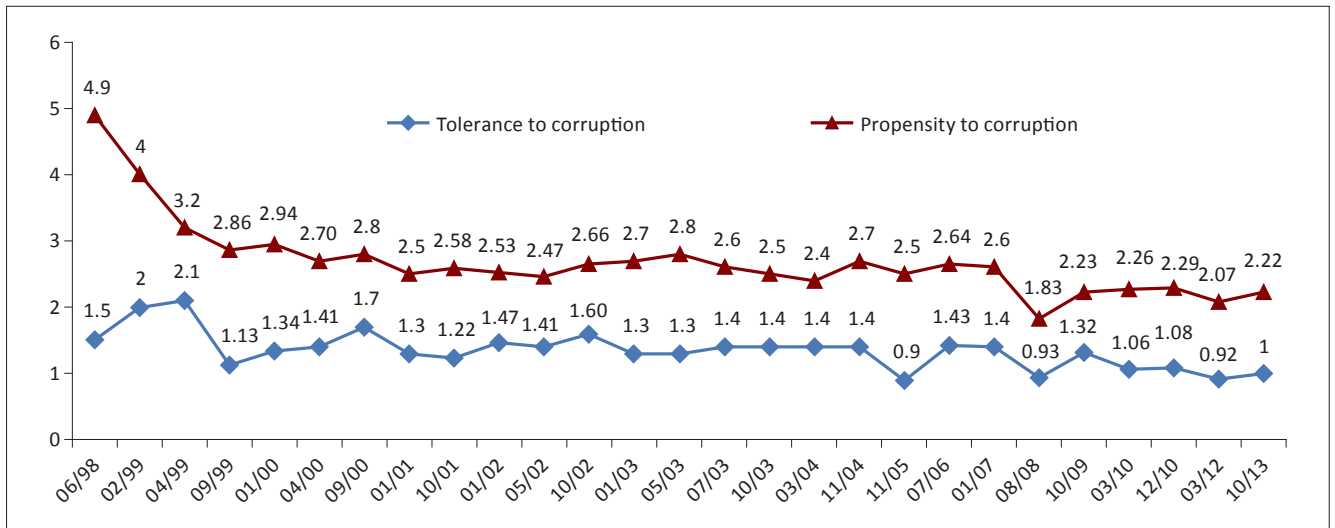
was observed in the last five years, 2008 – 2013. On the one hand, fewer and fewer citizens yield to corruption pressure, with the share of those giving a bribe after they have been asked to going down from 70 % to below 50 %. On the other hand, however, **the share of people who enter into corruption transactions without corruption pressure is rising**. In the 1999 – 2007 period, between 90 % and 96 % of those involved in corruption practices have been asked for some kind of ‘additional payment’. In 2013, only 53 % of those who gave a bribe were pressured to do so by the public servant they contacted. Thus, **pro-active corruption behaviour** on the part of citizens has increased based on the belief that a bribe is expected, even when it is not explicitly demanded. There are several factors that can influence these contradictory trends:

- **Tolerance towards corruption** (the index of accepting corruption in principle) has stayed at a fairly low level in recent years. Measures to enhance

<sup>1</sup> Data for the mandate of each government is colour-coded.

**Figure 3. Subjective assessment of level of corruption and its practical efficiency**

Source: CMS, CSD/Vitoshka Research, 2013.

**Figure 4. Tolerance to corruption and propensity to corruption among the population**

Source: CMS, CSD/Vitoshka Research, 2013.

control on public officials at low hierarchical levels, the introduction of electronic administrative services, as well as the public protests exercise restraining effect on public officers to refrain from corruption pressure, and at the same time make citizens more resistant to such pressure.

- Bureaucratic obstacles, whether created on purpose or not, and the still **significant discretionary power** vested in public administration. The attitude that corruption has practical utility, developed in the course of decades, still makes many citizens initiate corruption transactions.

## Corruption pressure and victimisation in the business sector

The indexes for corruption pressure and involvement in corruption practices, measuring the **level of corruption in the business sector**, have not changed significantly in recent years. An important factor is the on-going economic crisis which has drained free cash flows and limited the ability of businesses to participate in corruption transactions. Public procurement and state subsidies became key factors influencing the level of corruption. Particularly important is the management of state resources in the energy and health care sectors, and the distribution of budget funds among the municipalities in Bulgaria.

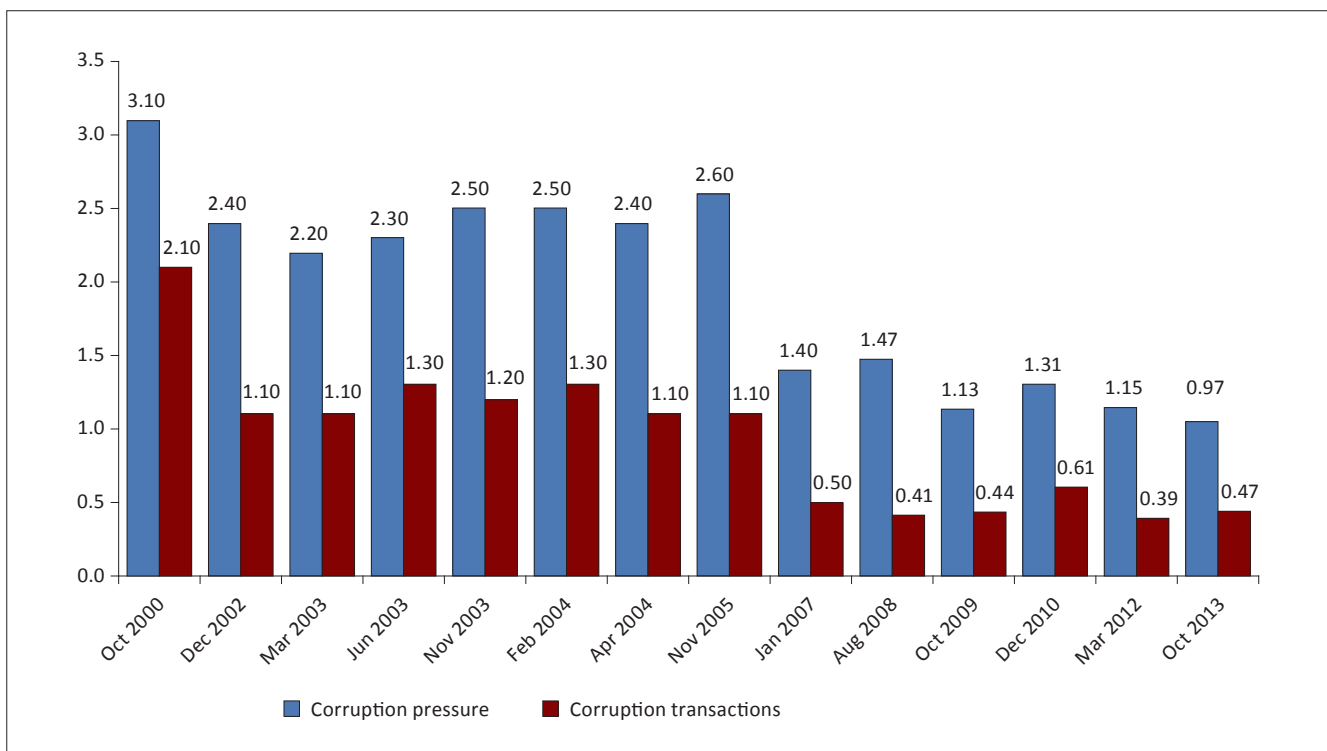
The interpretation of these trends does not necessarily indicate that corruption in the business sector is declining. This is particularly true about the

**large-scale, political corruption, involving political-oligarchic networks**, where no improvement has been observed. Concentration and monopolisation of businesses have pushed corruption to the higher strata of administrative and political power, at the expense of corruption at lower administrative levels. The fact that political corruption affecting the business sector is not changing is confirmed by the perception of businesses about corruption levels and practical efficiency of corruption. These indexes retain their high values and have even gone up recently. The increase is usually associated with higher competition among various business groups to obtain certain benefits from the state.

There is no better example for the **high risk of political corruption than the developments in the energy sector**. This risk had numerous and diverse manifestations in the last two years:<sup>2</sup>

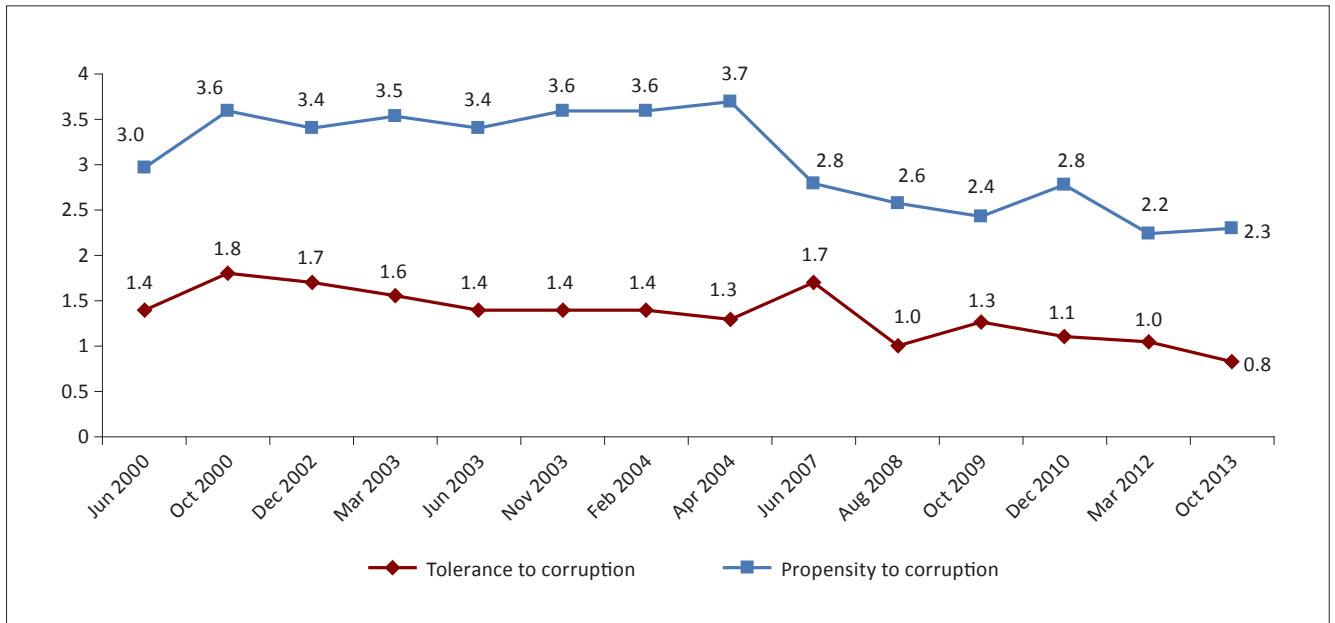
- The findings of the 41<sup>st</sup> Parliament about serious malpractices in the energy sector, and in particular

**Figure 5. Corruption pressure and involvement in corruption transactions in the business sector**

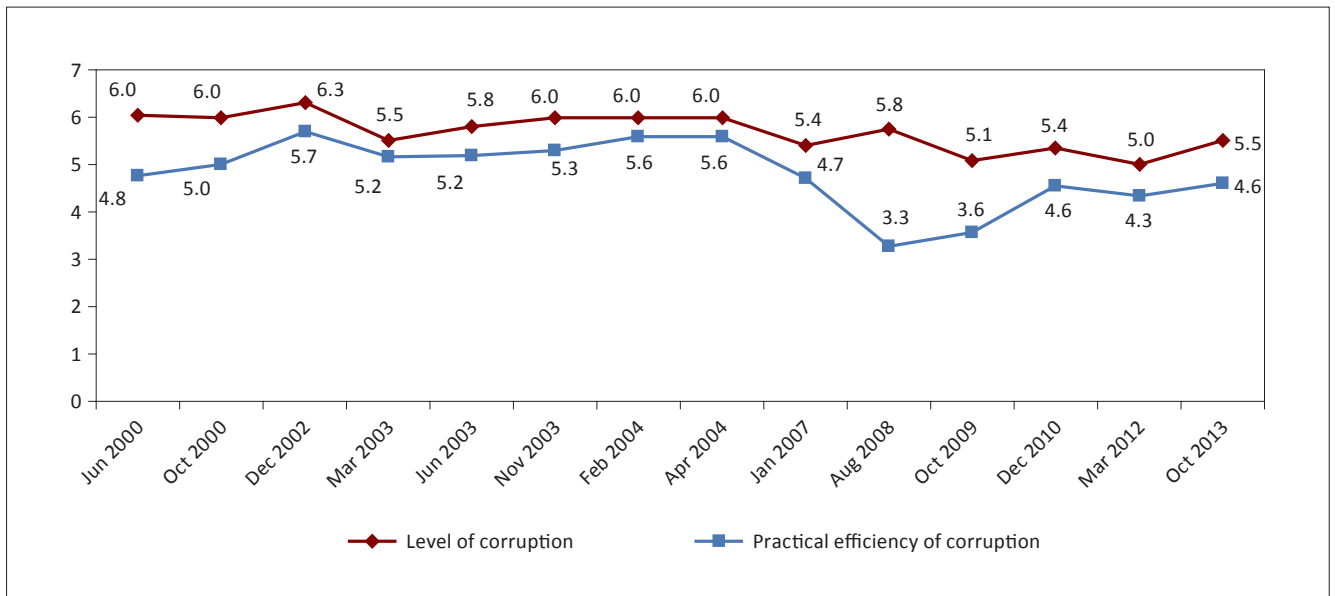


Source: CMS, CSD/Vitosha Research, 2013.

<sup>2</sup> Bulgaria’s Energy Security Risk Index, CSD Policy Brief No 40, Sofia, 2013.

**Figure 6. Tolerance to corruption and propensity to corruption in the business sector**

Source: CMS, CSD/Vitosha Research, 2013.

**Figure 7. Level of corruption and practical efficiency of corruption in the business sector**

Source: CMS, CSD/Vitosha Research, 2013.

in the procedures for the construction of the Belene nuclear power plant have so far remained without any consequences. The publicised arrests of officials who took part in the project, without a clear picture of the general direction of the investigation, arose suspicions that these measures have been selective and politically motivated.

- The non-transparent model of decision making in the Belene NPP bears close parallels with the handling of the South Stream gas pipeline project. Each of these projects is worth as much as the annual value of public tenders in Bulgaria. Yet, these projects are developed without a clear strategic framework and without cost-benefit analysis.



- Frequent shuffles in the top management of the presumably independent State Energy and Water Regulatory Commission, and changes in the energy pricing model create opportunities for illegal access to regulatory decisions and corruption pressure over the business sector. This is particularly true in the case of granting access to the national energy network to renewable energy sources and in assigning quotas to various players in the regulated energy market.
- Over half of the public tenders in the energy sector are conducted through closed procedures. When audited, most of these procedures are found to contain irregularities and other abuses. Emblematic in this respect is the public tender for reconstruction of gas compressing stations, one of the largest tenders in the energy sector. It took one year and a half to complete (2011 – 2013) and its procedure was entirely non-transparent to the public. It remains unclear whether the reconstruction itself is justified, given the construction of a new transit gas pipeline.

## Countering corruption in Bulgaria

### Lobbyism in the Parliament

The lack of transparency in the work of the Parliament continues to cause reasonable doubt that **some laws in Bulgaria are adopted to serve private political and/or business interests**. The measures taken for publicity, such as the live broadcast of the plenary sessions on the parliamentary website, do not represent a sufficient guarantee against illegal lobbying practices in the legislative process. Key legislative amendments are adopted without proper justification of the need for them and without prior expert and public debate.

The newly elected 42<sup>nd</sup> Parliament at the very beginning of its term demonstrated a flagrant **disregard of the rules of transparency and public participation** in the preparation and adoption of new laws. A good example of this are the amendments to the *Law on the State Agency for National Security*, adopted in

June 2013. Their preparation, consideration and adoption revealed serious shortcomings in the legislative process and questioned the independence of the supreme legislative authority. The adoption of the law (within the record-breaking period of ten days between its submission and adoption) **disregarded the general principles of justification, stability, openness and coordination of regulations**. It also **violated the legal requirement for prior publication** of the draft and its justification on the website of the Parliament and provision of at least 14 days for suggestions and opinions. The explanatory report to the draft, which must point out the reasons and objectives of the proposed changes, the means for their implementation and the expected results, do not contain any legal or financial justification or assessment of the expected results. Substantive arguments are replaced by political rhetoric while some of the most significant changes such as the reduction in requirements for holding the office of Chairperson of the SANS (accompanied by a significant increase in the powers of the Agency) are not addressed at all.

The second main function of the Parliament, namely the **election of heads or members of other government bodies**, is also accompanied by a **lack of transparency** and **inappropriate dependence on private interests**. The problems range from total lack of publicity and participation of civil society, as in the case of the election of the Chairperson of the State Agency for National Security, to unreasonably delaying the election months after the term of office has expired, as in the case of the Inspector General of the Inspectorate with the Supreme Judicial Council.

The standing parliamentary **Anti-Corruption and Conflict of Interests Committee** failed to establish itself as an effective mechanism to prevent and counter corruption. Instead of coordinating the anti-corruption activities of the different branches of power (legislative, executive and judicial), the Commission deals with individual MPs who have not complied with the deadline for filing their conflict of interest declarations and avoids engaging in more serious coordination or strategic tasks.



## The Constitutional Court and constitutional justice

Conceived as a corrective to the legislature and a guardian of the Constitution, the Constitutional Court has gradually become a highly politicised institution. The tipping point in this process is the decision of the Court regarding the status of a Member of Parliament who was first elected Chairman of the State Agency for National Security but later the decision was repealed. The delayed decision, the weak legal justification and the public statements of some of the constitutional justices indicate the **dependence of the Constitutional Court on political pressure**. This is a consequence of, *inter alia*, the imperfect legislation that does not provide sufficient guarantees for the independence and impartiality of the Constitutional Court.

## Judicial reform and criminal justice

Loaded with high public expectations, the new **Supreme Judicial Council (SJC)**, inaugurated on October 3, 2012, **does not yet fulfill its mission to enhance the accountability and transparency of the judiciary** within the judiciary itself as well as in respect to the general public and domestic and foreign observers.

Doubts about the legitimacy of the SJC occurred from the very **election of its members from the judicial chapter and, even more so, the parliamentary chapter**. Despite the recommendations of the civil society organizations involved in judicial reform, including professional associations of magistrates, for direct election of the judicial chapter based on the 'one magistrate – one vote' rule and the use of electronic voting, it was never implemented and the election was marked by **non-transparent selection of delegates** heavily influenced by the administrative heads of the respective courts and prosecutor's offices. The election of the parliamentary chapter, on the other hand, followed in time the other elections, thus exacerbating the already existing suspicion that **positions are negotiated behind the scenes between the parliamentary political forces**. The checks and hearings of the nominated candidates were also

formal and did not fulfill their goal to ensure openness and public participation in the procedure.

The inaction of the SJC in relation to the allegations accompanying the two unsuccessful procedures for the election of a constitutional justice by the Parliament cast significant shadows on the work of the Council and especially on its standing committees directly responsible for countering corruption.

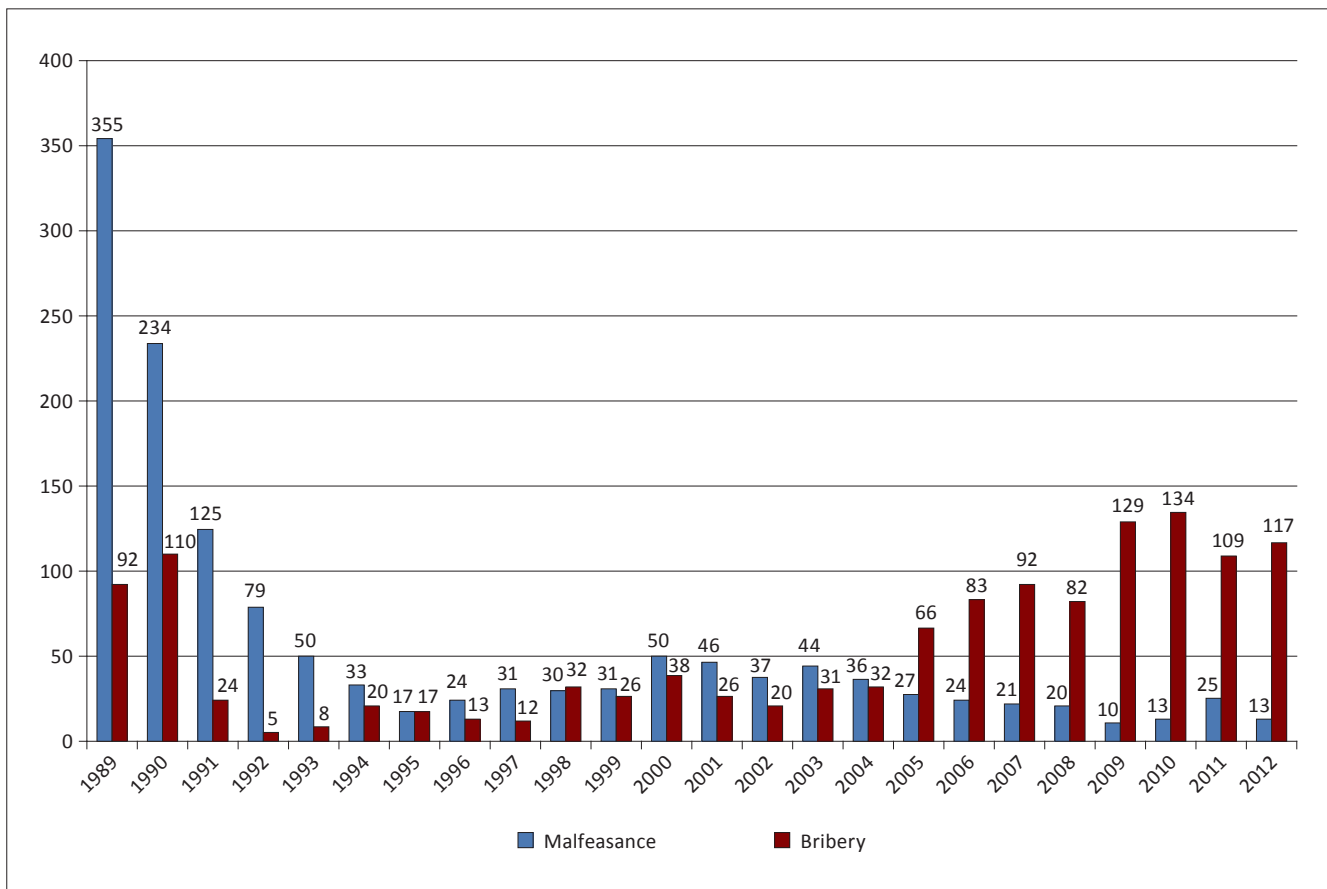
The activities of the standing **Committee on Professional Ethics and Prevention of Corruption** of the SJC and the professional ethics commissions attached to the individual bodies of the judiciary failed to deliver any tangible results. For the first ten months of 2013 the Committee had not reported any cases containing data about corruption. The anti-corruption mailboxes, advertised as a good practice, are also not effective and rarely receive more than two or three signals a month.

The election of a new Prosecutor General once every seven years is traditionally associated with certain expectations for **reforming the Prosecutor's Office**, which has a key role in the criminal justice system, the compliance with the law and, in particular, the prosecution of corruption.

The election of the new Prosecutor General in December 2012 clearly showed that even competitive and public elections could be predetermined and non-transparent, especially if the competition is fictitious and the procedure is manipulated, as was largely the election of the SJC itself.

The pursuit of publicity and involvement of the Prosecutor General in topical affairs and problems creates the impression of excessive activity on specific occasions, inevitably leading to direct intervention in the political process. The result is a poor balance between the efforts of the Prosecutor's Office to be more public and the permissible publicity in view of substantiating the prosecutions and the protection of legality. The behaviour of the Prosecutor's Office with regard to two of the biggest public scandals – the unauthorized amount of ballots found in a printing house in Kostinbrod on the eve of the parliamentary

**Figure 8. Number of persons convicted for bribery and malfeasance (1989 – 2012)**



Source: National Statistical Institute, 2013.

elections and the illegal wiretapping of citizens and senior politicians – warrants the conclusion that **attempts to demonstrate political independence do not necessarily mean political impartiality.**

Investigating and punishing corruption-related crime continues to be one of the weakest links in the fight against corruption. Regardless of the different types of crimes that individual institutions define as corruption, the **number of convictions** for these crimes is **extremely low.** The small number of persons convicted for crimes related to corruption negatively affects the public confidence in the ability of the justice system to deal with this phenomenon and enhances the public perception of impunity for the perpetrators of such crimes.

According to the National Statistical Institute, in the first half of 2013 only 42 persons were convicted

of bribery (compared to 49 during the same period in 2012), representing 0.3 % of the total number of convicted persons. The small number of persons convicted of bribery indicates that the **prosecution of corruption is not effective.** This is due to deficiencies in the substantive and procedural legislation, shortcomings in the investigation and collection of evidence and insufficient capacity of prosecutors and investigating authorities. A specific problem with corruption cases at the highest levels of government is that they are most often initiated only after the respective person has been released from office. The case of the Deputy Chair of the Parliament leaving political office in November 2013 before being charged raises doubts about the independence of the investigative bodies in the country.

## Security sector reforms and capacity to tackle corruption

A series of personnel changes and hasty institutional reforms have brought the fight against organized crime and corruption to a virtual stall. The scale, speed, and the manner of the removal of senior law-enforcement officers and civil servants are unprecedented, while the quality of new appointments is questionable. Such degree of sudden politically-motivated personnel changes within law-enforcement and civil service, coupled with premature and hasty restructuring of the law-enforcement institutions, has significantly weakened the state's capacity to counter organised crime, corruption, and the grey economy.<sup>3</sup>

The major reforms in the security sector, which also took place within a matter of four months – the merger of the State Agency for National Security (SANS) and Chief Directorate Combatting Organised Crime (CDCOC), the transfer of various organized crime units from the CDCOC into Criminal Police, the split up of the Specialised Technical Operations Directorate into an independent agency – has resulted in bringing the countering of corruption and organized crime to a virtual halt. Similar mergers and establishment of new

agencies in other countries are carried out with one or two years of preparation, while political consensus is often sought to ensure sustainability of reforms.

The merger did not address the main problems that anti-corruption law-enforcement has faced: **the focus on low-level corruption cases, the low capacity** (in terms of dedicated investigators) **to tackle major cases, and the political meddling into the work of law-enforcement agencies and investigative units.**<sup>4</sup>

Some less visible transformations within the Customs and Revenue agencies have equally resulted in weakening the capacity to counter organized and white-collar crime and related corruption. In the **Revenue Agency**, the Investigation of Special Cases Directorate was in practice dismantled, as all local investigators were merged into the general revenue administration, while the Directorate was transformed simply into a “unit”, signalling the weakening of its importance. In the **Customs Administration** the Customs Intelligence and Investigations Directorate (heavily criticised under the new leadership) is about to be merged with the Post-release Audit Directorate, again signalling the reduced role of the investigative work.

<sup>3</sup> Grey Economy in Bulgaria 2013, Policy Brief No 43, November 2013, Center for the Study of Democracy.

<sup>4</sup> Corruption and Anti-corruption in Bulgaria (2011 – 2012), CSD Policy Brief No 35, June 2012.

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