

III. ANTI-CORRUPTION POLICY ENFORCEMENT

Law Enforcement and the Security Sector

In mid-2013, the General Directorate for Combating Organized Crime (GDCOC) was moved into the State Agency for National Security (SANS). The step involved a transfer of functions and personnel from the Ministry of Interior to SANS. Another important consequence was restoring SANS' powers to conduct investigations. A third "innovation" was the provision that both the appointment and the discharge of SANS' director should be made by the National Parliament after a motion by the Prime Minister. The introduction of these changes was marred by the widely publicized scandal around the rushed appointment and subsequent withdrawal of a controversial Bulgarian MP and media mogul at this post. The introduced concentration of powers in SANS and the reduction in the requirements for the position of its director have confirmed initial fears that the changes have been carried out to appease specific political interests, and not to solve security sector challenges. Most likely, the future governments will undo these changes, further messing up attempts to reform the security sector and to enable bold anti-corruption actions.

The second significant change put into effect was the dissolution of the Ministry of Interior Specialized Directorate for Operative-Technical Operations (SDOTO) and the launch of a separate agency subordinated to the Council of Ministers – State Agency for Technical Operations (SATO). The main explanation given for this step was the need to shield this unit from undue influence in order to increase its independence and integrity. The reason for such a change was the increasing use of Special Intelligence Means (SIMs) and the frequent use of this unit by competing political groups for obtaining competitive advantages for their business ventures and political interests. Despite the intention to concentrate the use of SIMs within one single structure (even with the risk of infringing the Constitution), in practice SANS still uses them unilaterally, which is fraught with risks of misuse. In addition, the newly created Bureau for Control over SIMs has not yet provided any public information about its functioning, which confirms concerns of continuing lack of transparency in the control of SIMs.

Electoral fraud as political corruption. The last three election campaigns for national and European parliament (2013 – 2014) have made the problem of "political investments" (buying votes and controlling voters) a matter of high political importance. This is a form of political corruption with growing importance: comparing election results in different years has shown that the relative weight of controlled and bought vote has increased from about 9 – 9.5% in 2009 to about 12 – 13% in 2014.

CSD analyses of the last 10 years have shown that local and national level oligarchs are increasingly involved in "political investment", which

they seek to recover after elections by acquiring access to public funds and/or assets. Increasingly, political investors directly ask political parties to compensate the funds spent through procurement contracts, agricultural subsidies, EU funds and others. The negative effects of this process are numerous: disappointment with institutions and political parties, distortion of political representation, lack of trust in central and local government, decreasing quality of public services, and publicly funded construction projects. Overall, controlled and bought votes lead to political demotivation and lower voter turnout, which in turn increase the relative importance of political investment. The impact of political investment is probably most destructive for law enforcement institutions, e.g. the judiciary, Ministry of Interior, and SANS. The 2014 election experience has shown that officials from these institutions have suspended or restricted to a large degree all activities targeting vote buying and controlling voter behaviour.

The caretaker government (August – November 2014) made efforts to counter political investors and reverse the observed trends, announcing that its main goal would be to ensure fair elections and reduction of vote purchases. Regional Ministry of Interior (MoI) directorates were instructed to evaluate risks and present action plans aimed at countering political investors. The Inspectorate and the Internal Security Directorate of MoI received detailed instructions. Results reported by MoI were mixed: in some local directorates where actual work was done the bought and controlled vote was reduced by about 30 – 40%. However, some directorates remained passive, and in these areas of the country bought and controlled vote was visible and even reported in the media.

The social base of political investment is the growing number of marginalised groups/people especially among the Roma community. These groups form the “reservoir” of votes for sale. On the other hand, the increasing incidence of vote buying has made parties face the “prisoners’ dilemma” (if everybody suspects that others use fraud, every party has to buy votes or risk losing the competition). Supply and demand have in this way created a market in which Roma families offer the potential votes of the whole community (the reservoir) and all big parties compete to buy them. The market has three distinct levels of organization: 1) “privates”, or people who control/sell the votes of their immediate social circle (10 – 15 people); 2) “lieutenants”, or people who control 10 – 15 privates; 3) “brokers”, who control the access to political parties and lower levels of control over this market.

Buying Electoral Support: Main Participants and Roles

Mayors who control substantial part of the local economy. Usually, these are regions with inferior economic and demographic performance where municipal administration and municipal companies provide the main (or only) employment opportunity. The municipal economy ensures the bulk of procurement contracts

and/or subcontracts for public services, utilities, garbage collection, etc. The local administration is in practice the mayor's "private" administration and loss of elections usually leads to replacement of these officials by the new mayor.

Municipal councillors in smaller cities who have become the unavoidable middlemen. Some municipal councillors have migrated through several parties to remain in the municipal council. In order to boost their influence they make efforts to "keep" 200 – 300 supporters (up to 2,000 – 3,000 in bigger cities) from the Roma communities, poorer people, and party supporters. The votes of these people are used in local elections and are sold on national elections.

Local businesspersons (oligarchs) who are part of the municipal economy and part of the interest network together with local councillors and mayors. They usually offer the votes of their employees, but also provide funds for vote buying. Many of them personally communicate with the local Roma community leaders.

High-level officials in the administration (police, tax administration, inspectorates, etc.). These people are local level political appointees and dispose of additional resources to "convince" local businesses to contribute with the controlled employee vote. Often, local labour inspectorates intensity checks in the beginning of the election campaign.

Members of Parliament who often mediate in the negotiations between parties and middlemen. An MP running in elections becomes practically inaccessible to law enforcement. Due to their parliamentary immunity, investigation procedures against MPs are essentially blocked. People with criminal background are also often included in party lists in order to engage in the buying of votes. Operational investigations of MoI and investigations of journalists have shown that some bigger parties have even attributed some leaders of regional party lists with responsibilities both with regard to the party campaign and to the buying and control votes.

Criminal leaders and their networks who have been permanent participants in the process in the last 10 years. Criminals working both in Bulgaria and abroad in illegal lending, drugs and prostitution are actively involved. In addition to being middlemen, they also have enforcement functions with regard to informal contracts and payments related to buying and control of votes. Private security companies became a new actor in the last election: they had the function to enforce contracts, as this is part of the black market and force is often used to ensure compliance.

Judiciary and Anti-Corruption

Members of the Bulgarian judiciary have only functional immunity. This is theoretically seen as a good basis for strengthening the integrity and accountability of the judiciary. However, in practice no significant progress was made in key areas such as governance of the judiciary and monitoring of its performance, enforcement of criminal cases for corruption, weaknesses in the state accusation, the ambiguous role of the prosecution, etc.

Governance of the Judiciary

The Supreme Judicial Council (SJC), which appoints, promotes, demotes, transfers and removes from office all magistrates (judges, prosecutors and investigative magistrates, the latter being part of the Prosecutor's Office), sets the direction of the overall judicial policy. Therefore, the election of this collective body, as well as the election of the heads of the higher courts and the Prosecutor General is subject to attempts at political influence and backstage negotiations. Loaded with high public expectations, the current SJC, inaugurated on October 3, 2012, has raised doubts about its legitimacy:

- Regarding the judicial chapter, the election was marked by non-transparent selection of delegates heavily influenced by the administrative heads of the respective courts and prosecutor's offices. This was especially visible in the election of the prosecutors' quota, where a large number of the delegates, and most successful candidates, were among the administrative heads of various offices.
- The election of the parliamentary chapter increased 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 formal and did not fulfil their goal to ensure openness and public participation in the procedure.
- The SJC accumulated criticism as regards its managerial capacity and integrity by its inaction in relation to the allegations accompanying the two unsuccessful procedures for the election of a constitutional justice by the Parliament.
- The election of the new Prosecutor General in December 2012 clearly showed that even seemingly competitive and public elections could be non-transparent, especially if the competition is fictitious and the procedure is manipulated, including, paradoxically, even the use of electronic voting to pre-determine the vote. Such shortcomings showed also the failed election of a new president of the Supreme Court of Cassation at the end of September 2014.

In the beginning of 2014, the Council received another series of criticisms after the disciplinary dismissal of one of its members, a former high-ranking prosecutor. The dismissal led to doubts about the very legality of the SJC's actions, since the magistrate was removed by a lesser number of votes than that required by law, following the leak of wiretapped conversations, supposed by law to be destroyed after not being used for the criminal case they were made under and certainly not for grounding and disciplining the magistrates involved.

Moreover, despite some formal steps being taken (the Committee on Proposals and Evaluation of Judges, Prosecutors and Investigative Magistrates being divided into a sub-committee on judges and a sub-committee on prosecutors and investigative magistrates), judges and prosecutors are still practically being governed together, as witnessed by a case in March 2014, where a member of the prosecutorial quota allegedly proposed a harsh disciplinary penalty for a judge in a highly controversial disciplinary proceeding.

Monitoring Judicial Performance

Doubts as to the ethics enforcement capacity of the SJC and its ability to oversee the work of the judiciary through its Inspectorate continued in relation to the institutional stalemate as regards the so far failed election by Parliament of a Chief Inspector of the Inspectorate of the SJC. The Inspectorate is mainly tasked by law to inspect the administrative activity of the judiciary and the case progress, as well as to analyse and summarize the closed cases and files, without infringing upon the independence of magistracy. The election of a new Chief Inspector has been generally seen as a test both for the Parliament, having to form a majority of two thirds of all MPs, and for the judiciary as to its capacity to put forward a candidate “of high professional and moral qualities”, as required by law. The initial single nomination of a Supreme Court Justice, allegedly involved in unclear property transactions with her mother and husband, was largely criticized as flawed and non-transparent. In the face of a growing public scandal, the Justice ultimately retired, receiving the substantial monetary compensation due upon retirement, a number of magistrates refused to be put forward as subsequent candidates, which led monitors to consider the perception of judicial integrity in Bulgaria as falling into complete collapse.

Measures for Raising the Capacity and Integrity of the Supreme Judicial Council

- Adoption and effective enforcement of new rules for election of the members for the Supreme Judicial Council, in particular of its judicial chapter such as “one magistrate – one vote”, electronic voting etc.;
- Effective implementation of transparent and open for public participation procedures for nominating and electing SJC’s members of the parliamentary chapter;
- General internal division of the Council in 2 chambers – one composed of judges and competent to deal with the management of the court and one composed of prosecutors and investigators to manage the prosecution;
- Increasing publicity regarding disciplinary proceedings against magistrates on corruption-related grounds.

In October 2014, the Ministry of Justice published on its website for public deliberations a draft *Updated Strategy to Continue the Judicial Reform*⁵⁰

⁵⁰ http://mjs.bg/Files/Проект_на_Актуализирана_стратегия_за_съдебна_реформа_635489116277892922.pdf

outlining the goals and measures for the next seven years. The first strategic goal titled *Guaranteeing the Independence of Courts and Other Bodies of the Judiciary through Effective Measures to Curb Corruption, Political and Economic Pressure and Other Dependencies* contains specific measures for overcoming the institutional prerequisites for exerting illicit influence upon and through the Supreme Judicial Council, for restricting possible administrative influences upon the independence of the courts, and for enhancing the responsibility and efficiency of court administration; it also envisions a set of measures for preventing corruption within the judiciary. The development of a *Modern and Effective Criminal Justice Policy* is a strategic goal of its own, as are the issues of human capital and the effective administration of the judiciary.

Systematic Policy to Prevent Corruption within the Judiciary

- Integrated policy to prevent conflict of interests and corruption within the judiciary. Electronic registers enabling the declaration of a wider range of circumstances.
- Establishment of an Integrity Unit within the SJC Ethical Committee to be tasked with regular inspections of magistrates and judicial administration using an approved methodology for identifying corruption inducing factors.
- Introduction of mechanisms for the effective application of the judicial ethics rules by judges, prosecutors and investigative magistrates, and by the SJC.
- Introduction of mechanisms for speedy, objective and accountable investigations against magistrates, and creation of effective guarantees that investigations are not used for putting those under investigation into a state of dependency.
- Removal of administrative discretion when deciding on magistrates' remuneration, including financial incentives, which should not be used as a covert mechanism to promote some magistrates at the expense of others.
- Establishment of security standards for the IT tools used in the judiciary.
- Establishment of guarantees for a secure and transparent process of random case distribution and judicial panel members' nomination.
- Building the capacity of the SJC Inspectorate to monitor systemic corruption factors in the daily work of the judiciary.
- Annual reports by the SJC containing data on corruption and assessment of the effectiveness of anti-corruption measures, which should be put under public discussion.

Source: Updated Strategy to Continue the Judicial Reform (draft).

The public deliberations and the positions⁵¹ on the draft updated Strategy contributed by stakeholders make it possible to develop further and to coordinate the proposed measures prior to the government's adoption of the Strategy.

⁵¹ <http://mjs.bg/107/>

Enforcing the Criminal Law in Cases of Corruption

After a series of legislative amendments (the last one dating back to the year 2010) Bulgarian criminal law was brought in compliance with the main international standards in the field of anti-corruption. The catalogue of criminal offences and their corresponding sanctions satisfies the requirements of the major international treaties to which Bulgaria is a party. The main forms of corruption behaviour are incriminated and the sanctions are relatively high. Most of the corruption-related offences are grave crimes (punished by more than five years of imprisonment), which means that they can be investigated through special intelligence means. However, the current Criminal Code was subject to justified criticism for a number of reasons.⁵² In January 2014, the Ministry of Justice submitted to the National Assembly a draft of a new Criminal Code.⁵³ The poor quality of the draft combined with the inability of the Ministry of Justice to adequately defend the controversial provisions caused strong criticism on the part of legal practitioners, NGOs and the general public. The Ministry of Justice preferred not to respond to the appeals for a public discussion on the draft before its submission to the parliament. Ultimately, the ministry dropped the project submission, which was one more signal for lack of strategic vision and political will for laying the foundations of a comprehensive criminal law reform.

Despite this inconsistency, the main problem in the field of criminal law and procedure is not the legislation itself but rather its ineffective enforcement. The problems affect both the investigation of the crimes at the pre-trial stage and the subsequent trial proceedings. The result is a low number of cases ending with conviction, lenient sanctions and no successfully completed high-profile cases.

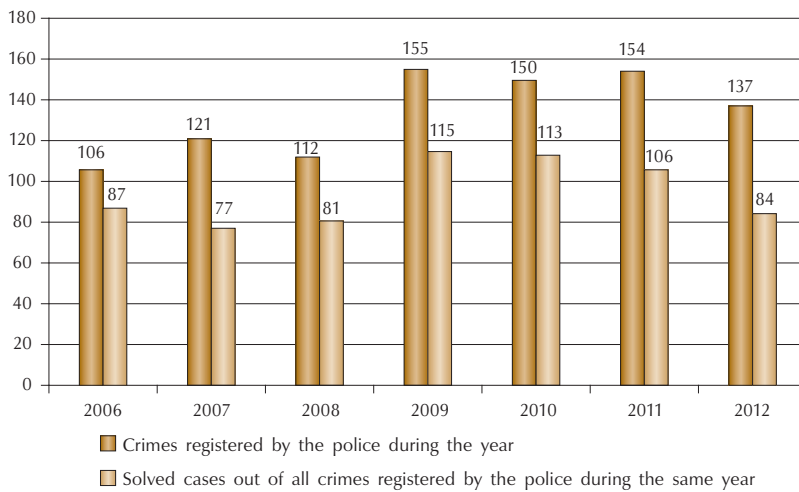
The problems start at the **police** where a **significant share of the registered crimes remains unsolved** (Figure 15).

The share of bribery cases which the police were unable to solve during the same year is gradually increasing, reaching almost 40% in 2012. There are numerous reasons for the low success rate of the police in corruption cases. On the one hand, corruption cases are difficult to solve because there are no real victims who could assist the law enforcement bodies. On the other hand, without underestimating the objective complexity of these cases, there are also problems related to the integrity and capacity of the investigative authorities.

⁵² Adopted in 1968, it basically follows the Soviet model of criminal law, which does not correspond to the new economic and social environment. The numerous and often inadequate amendments of the Code and particularly of its Special Part (the one listing the crimes and their corresponding penalties) resulted in gaps and contradictions, which in turn led to problems with its practical application and inconsistent case law. There were also problems in terms of compliance with international standards, including those of the EU and the Council of Europe.

⁵³ Despite the long drafting process, which took several years and involved a number of criminal law experts, the final version of the draft presented by the Ministry of Justice did not meet the expectations of both the legal community and the general public. The Ministry of Justice disregarded most of the proposals and recommendations coming from NGOs and practitioners and presented its own version of the law.

FIGURE 15. NUMBER OF BRIBERY CASES REGISTERED AND SOLVED BY THE POLICE (2006 – 2012)



Source: Ministry of the Interior.

The public prosecution admits that the number of uncovered corruption crimes is extremely low. However, instead of undertaking a more pro-active approach, it prefers to blame the bodies exercising administrative oversight for not reporting a sufficient number of corruption cases to the public prosecutors and even the civil society for "the embedded public attitudes and the insufficiently pro-active citizens' standpoint for the eradication of corruption mechanisms and practices".⁵⁴

Public Prosecution

Experience so far clearly shows the significant impact of the Prosecutor General on the effectiveness of the entire Prosecutor's Office.

Despite the declared will to prioritize the prosecution of high-level corruption and organized crime, the Prosecutor's Office did little in this direction. Soon after the election of the new Prosecutor General a number of high-profile cases were launched, but few of them marked significant progress. The Prosecutor's Office heavily advertised the launch of these cases by special media notes, some of which went beyond the mere description of the facts and included assumptions bordering on a violation of the presumption of innocence.

The Ballots Case

An exemplary case of a compromised investigation due to untimely media publicity is the case with the allegedly fake election ballots in 2013. On the day before the parliamentary elections in May, which is a statutory period of election silence, the Prosecutor's Office issued an official statement concerning an operation performed the previous day at the premises of the printing company responsible for printing the election ballots, during which a certain amount of ballots were found. The statement one-sidedly and unprofessionally referred to facts and assumptions that at this stage were not properly verified. It mentioned the number of the ballots, described them as "printed and ready for shipment", included an explicit conclusion that the amount was beyond the one which the company was

⁵⁴ ПРБ. Доклад за прилагането на закона и за дейността на прокуратурата и на разследващите органи през 2012 година [Report on the Enforcement of the Law and the Activities of the Public Prosecution and the Investigating Authorities in 2012], 17.09.2013, p. 98, available at: http://www.prb.bg/uploads/documents/docs_3923.pdf

obliged to produce, and announced that the launched pre-trial investigation was not only for abuse of power, but also for election-related organized crime. The investigation that followed rebutted most of these conclusions, establishing that the initially stated number of ballots was incorrect, not all of them were ready for use, and there was no evidence concerning their eventual shipment. As a result, the Prosecutor's Office was unable to adequately solve the case, and neither the purpose of the ballots, nor the persons who ordered their printing was revealed. The charges for election-related organized crime were also dropped. To avoid complete failure the Prosecutor's Office tried to indict the former secretary general of the government for not exercising control over the operation of the printing company. However, even this attempt to save the case proved unsuccessful, as both the first and the second instance court returned the file back to the Prosecutor's Office due to its ambiguity and lack of evidence. The chronology of the case and some documents leaked at a later stage increased the suspicions that the Prosecutor's Office played a political, rather than prosecutorial role, and its main objective was to influence the outcome of the elections, rather than solve the case.

As a result of the organizational changes of February 2012, the specialized department for countering corruption and crimes committed by public officials of the Supreme Prosecutor's Office of Cassation was assigned with the task to monitor also the corruption cases against members of the judiciary. In 2012, these teams received 14 pre-trial proceedings and completed five of them, bringing charges against one investigator, one judge, and several parliamentarians.

Specialised Criminal Court and Prosecution

In 2010, the National Assembly passed legislative amendments providing for the establishment of a specialized criminal court with a jurisdiction to examine organized criminal group cases and a specialised court of appeal acting as a court of second instance.⁵⁵ The same legislative package provided for the establishment of new units within the prosecution system: a specialised prosecutor's office of appeal and a specialised prosecutor's office with an investigation department as a constituent element. The specialised criminal court enjoys a status equal to that of a district court and examines cases sitting in a panel of one professional judge and two lay judges, unless otherwise provided for in a law.

The establishment of the specialized courts and prosecutor's offices was debatable even before the adoption of the legislative amendments and still remains so. Among the main obstacles before the specialized

⁵⁵ The proponents and the opponents of a specialised criminal court first clashed back when the government unveiled its idea on its establishment, even though it was never submitted to a broad expert and public discussion. Despite the doubts about the need of this new instrument and opinions against this idea expressed by legal practitioners and experts, the parliamentary majority pushed through the amendments.

court to administer justice more efficiently in organized crime cases is that specialised courts and prosecutor's offices are in Sofia, and the investigation very often takes place far from their headquarters. Another obstacle is posed by the still unaddressed weaknesses of the pre-trial proceeding in the collection of evidence. One such weakness is said to be the prosecutors' practice to keep modifying the charge without citing evidence and the lack of control over this practice.

Enhancing the Capacity of the Judiciary to Enforce Anti-Corruption Legislation

- Improve the substantive and procedural legislation, the investigation process and collection of evidence, as well as the capacity of prosecutors and investigating authorities. Address delays in investigations and judicial proceedings.
- Put focus on the pursuit of high level corruption, which can as a result improve the public and investors' confidence. Expand the jurisdiction of the specialised court and prosecution to be able to examine cases for high-level corruption as well.
- Reform the pre-trial proceedings and strengthen law enforcement for lawfully implementing special means and techniques for detecting and investigating corruption and their links with organized crime, and for gathering reliable evidence.
- Increase the responsibility of the prosecution to conduct and direct investigations of corruption and to press reasoned and proven charges before the court.
- Improve judicial practice for dealing with corruption cases and imposing adequate penalties.
- Significantly improve the collection of statistical data on criminal cases in general and on corruption cases in particular. A common definition of corruption offences should be elaborated and all judicial and law enforcement authorities should be obliged to collect data in line with this definition.
- Further reform the Prosecutor's Office.⁵⁶ A system of performance indicators should be developed and implemented to assess both the work of individual prosecutors and the operation of the whole system.

⁵⁶ In a *Position of the Prosecutor's Office of the Republic of Bulgaria on the Judicial Reform Strategy* published on November 25, 2014 the Prosecutor's Office for the first time expresses its support for the restructuring of the SJC into two chambers – a chamber of judges and a chamber of prosecutors and investigative magistrates, as well as for the introduction of direct election of SJC members from the magistrate quota preceded by a transparent nomination procedure of candidates and deliberations of their qualities. The Position presents some ideas on reforming the internal structure of the SJC Inspectorate to correspond to the possible restructuring of the SJC, on reforms in the organization and system of the Prosecutor's Office, including its current structure and hierarchy, on the activities of specialised prosecution offices, etc., and ultimately, on enhancing public control over the work of the Prosecutor's Office. If there is a will to develop further and put into practice these ideas, they could contribute to a transformed, modern and smooth-running public prosecution. For more details see: <http://prb.bg/main/bg/Documents/5318/>