CORRUPTION ASSESSMENT REPORT 2003

COALITION 2000

Sofia, 2004

Countering corruption in Bulgaria needs to go further than institutional or legislative measures and be be aimed at creating the kind of political and economic culture which is built on trust in public institutions, transparency and accountability of all actions of the public administration and a determination to achieve a stable and predictable economic and social environment.

Coalition 2000 is an initiative of Bulgarian non-governmental organizations launched in the spring of 1997 with the aim to help restrict corruption in Bulgarian society through a partnership between state institutions, non-governmental organizations and individuals, who developed and have been implementing an Anti-Corruption Action Plan, a Corruption Monitoring System, and an anti-corruption public awareness campaign.

The Corruption Assessment Report—2003 follows the approach of the Action Plan adopted by the Policy Forum in November 1998. The Report contains a general evaluation of the state and dynamics of corruption in Bulgarian society and of anti-corruption efforts in the year 2003 emphasizing the anti-corruption dimensions of judicial reform in Bulgaria.

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INTRODUCTION

The level of corruption in Bulgaria did not change significantly in 2003. Corruption is still perceived to be one of the gravest problems of society. This is indicated by the *Coalition 2000* Corruption Indexes, which measure the spread of corruption and the perceptions of the general population, the business community and analysts.

Similar conclusions can be drawn from the country's ranking in the Transparency International (TI) Corruption Perception Index for 2003. Bulgaria ranks 54th among 133 states included in the survey, indicating that there is a considerable amount of corruption in the country with no detectable deterioration from the previous period. The decrease of the TI composite index for Bulgaria from 4.0 in 2002 to 3.9 in 2003 is within the margin of error[1], while its plunge from 45th to 54th place in the international ranking was due to the inclusion of 29 additional states in the survey. Nevertheless, Bulgaria's scores are equal to those of the Czech Republic and higher than those of some states acceding to EU in 2004, namely Poland, Latvia and Slovakia.

The steady corruption level is in contrast to the Bulgarian public's expectations for improvement. This lack of development signals that **the anti-corruption measures undertaken so far have been exhausted**. In the last few years, anti-corruption efforts have, to a certain extent, succeeded, due to certain "soft" forms of curbing corruption, i.e., by means of extensive public pressure. However, **few of the essential structural faults that breed corruption in various segments of society have been remedied**.

The corruption-friendly institutional environment is especially harmful since it fosters **broader penetration of organized crime into the economy of the country**. Informal economic actors are currently striving to migrate into the legal economy and partake in new investment projects. The legalization of dirty money continues. It is accomplished by **buying off politicians, senior magistrates, and public officials authorized to administer services of considerable public interest, including the issuance of licenses or permits.**

The main challenge of the annual assessment of corruption in Bulgaria is distinguishing actual corrupt practices from the accusations of corruption used in partisan politics. **Two divergent trends** are evident in this context. The first is **the destabilization of political life which expands opportunities for corrupt practices.** Interest groups lobbying for private economic or criminal interests are becoming ever more active. As conflicts between the

[1] This issue is described in detail in the second chapter of this report.

groups have been aggravated, various forms of political corruption have become public. Unfortunately, the main political parties have commonly used anti-corruption rhetoric to discredit political rivals. Thus, public trust in anti-corruption efforts has diminished.

A **contrasting trend** concerns **the plummeting of corruption-generating resources**. In comparison to the political sphere—where the very institutional structure promotes opacity and impunity—a sustainable positive trend has been observed in the economy. In 2003, major foreign and international corporations started to operate in the country, thereby introducing advanced standards of accountability and facilitating the adoption of international ethics norms in business.Together with the government's anti-corruption measures, this has brought about a shrinking of the grey sector. Over 300,000 people, previously employed in the shadow economy, have entered into legal employment. As a result, tax revenues have risen, not least due to positive developments in the customs administration as well. In addition, in 2003 the privatization of two state-owned banks, DKS Bank and Biochim—respectively the third and fourth largest banks in Bulgaria—was completed. Bank privatization, along with the Currency Board, was as a factor in restraining the capacity of political parties to influence economic decisions. In general, the fact that over 75% of the GDP is already produced by the private sector will curb political interference in the economy in the long run. In the short term, however, economic policy continues to be influenced by lobby groups. A telling example of that was the failure of privatization transactions for the Bulgarian Telecommunications Company and the Bulgarian tobacco monopolist, Bulgartabac Holding.

Evident in the public debate in 2003 was the continuing belief that **corrupt officials are, in effect, immune to punishment,** and the reason for that was considered to be the **low effectiveness or lack of action by law enforcement and the judicial authorities.** Corruption in the judiciary itself was widely debated, and was cited as discrediting the core ideals of justice, democracy, and rule of law. Public expectations for future reforms in the judiciary are very high, as a profound transformation is considered necessary, instead of the skin-deep measures against institutional and political corruption that have been undertaken so far.

The Corruption Assessment Report—2003 incorporates the main assessments, conclusions and suggestions concerning the anti-corruption aspects of judicial reform laid down in the *Judicial Anti-Corruption Program*. At the same time, CAR—2003 stresses the links between corruption as a general issue and the need to establish an effective, stable and clean judicial system as the key rule of law instrument for curbing of corruption in society. This approach also seeks to bring about a consensus between decision makers on the general principles, as well as the particular immediate and long-term goals of judicial reform.

The complex challenges of judicial reform, including anti-corruption measures, can be met only on the basis of an **agreement between the political parties,** on the one hand, and between **policy makers and civil society** acting in concert, on the other. **The cooperation of all units of the judiciary** is also an indispensable condition. The bipartisan *Declaration on the Reform of the Bulgarian Judicial System* of April 2, 2003, signed by the parlia-

mentary political parties, as well as the constitutional amendments, adopted almost unanimously in September, could serve as a basis for a broad consensus on the judicial reform goals. The balance between the various branches of power should be a special consideration in the process of counteracting and preventing corruption, concentration of power and abuse of office.

A. LEVEL OF CORRUPTION

The objective of the *Corruption Monitoring System* of *Coalition 2000*[2] (CMS) is to measure the **level of corruption** (defined as the number of corruption transactions concluded in a given period of time) in the country. Additionally, the CMS also aims to account for **the public attitudes and expectations related to the observed level of corruption.** In response to the frequently raised criticism that what is actually measured are people's perceptions rather than the actual level of corruption, it should be noted that the CMS is designed to measure both the perception aspects of corruption and the objectively observed frequency of corruption transactions.

Due to the fact that corruption is a complex phenomenon, any system of dynamic measurement introduces certain conditionalities, which predetermine the content of the data and the possibilities for their interpretation. In this respect, the main advantage of CMS, which has been utilized since 1998, is the comparability of data over time. The considerable mass of information that has already been collected enables long-term trends to be explored and allows random deviations to be eliminated. The main principle used in the construction of the CMS is that corruption is a crime with a high latency level (as a rule, it is not reported to law enforcement authorities and hence not registered in official statistics) and therefore the degree of its spread can be measured solely through *victimization surveys*. In this sense, the approach to establishing the frequency of corruption transactions is identical to the methodology for measuring the frequency of other types of crime.

The working definition of corruption used in the CMS is: the abuse of power or official position for personal gain. Cases of corruption under this definition can be described as the non-regulated (i.e., informal) transfer of resources from private persons to civil servants for the purpose of receiving a certain favor in exchange. The favor could be legal, where the employee does not violate the law and the favor involves the regular performance of his or her official duties, or it could be a favor that basically presupposes the violation of certain laws or other norms and/or rules.

[2] This report presents only the more significant data and conclusions related to the research program of *Coalition 2000*. The full reports on all monitoring that has been conducted are accessible at the web sites of *Coalition 2000* (www.anticorruption.bg) and Vitosha Research (www.vitosha-research.com).

TYPES OF CORRUPTION

The level of corruption is determined by two basic types of transactions: 1) effective conclusion of corruption transaction (actual transfer of resources), which, in the CMS context, is identified as "real corruption"; and, 2) transactions related to requesting or offering a corruption transaction, which in the CMS context is identified as "potential corruption". The differentiation between these two types of corruption is conditional; in many cases the very request or offer of a corruption transaction is considered a crime and should also be seen as corruption.

The definition adopted in the CMS enables a relatively accurate account for the types of corruption that are linked with the direct transfer of resources (money, gifts, or services). Left outside the scope of this definition are the forms of corruption which do not presuppose a direct transfer of resources, but are linked with abuse of power such as, trading in influence, the use of official information for personal gains, nepotism, clientelism, etc.

INDICATORS FOR MEASURING THE LEVEL OF CORRUPTION

Types of corruption	Real corruption	Potential corruption
Measured indicator	Number of transactions concluded by a given type of actor	Number of cases of request of non-regulated transfer of resources
CMS index	Personal involvement	Corruption pressure

LEVELS OF CORRUPTION STUDIED BY THE CMS

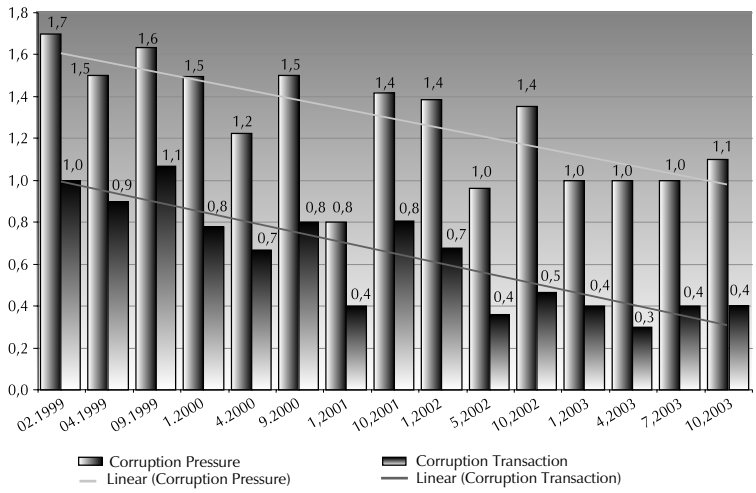
	Low level (small corruption)
Actors/type of survey	Citizens/survey of the population
Used resource	Small
	Medium level (medium corruption)
Actors/type of survey	Business representatives/survey of the business sector
Used resource	Medium-large

A.1. Level of Corruption—Corruption Transactions

The indicator "level of corruption" reflects the number of corruption transactions actually concluded by the population for a given period of time. These are arrangements in which the citizens of the country and the representatives of the business sector have admitted to participation. This is an indicator which reflects the actual frequency of a certain type of events in the everyday lives of citizens and businesses (as opposed to reflecting the perceptions of citizens and businesses).

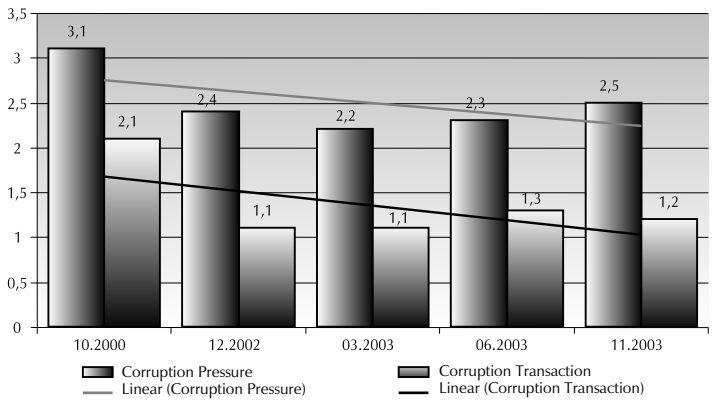
The values of the 2003 indexes for levels of corruption among the population and the business sector are the lowest since 1998. No significant changes occurred during the year (see Charts 1 and 2). This justifies the conclusion that **the level of corruption in the country in 2003 is neither increasing nor decreasing**. The absolute number of corruption transactions carried out by citizens and companies, however, is still disturbingly high. The average monthly number of corruption transactions which corresponds to an index value of 0.4 (for the population) is about 100,000. For

CHART 1 **DYNAMICS OF THE INDEXES OF THE LEVEL OF CORRUPTION FOR THE POPULATION (FEBRUARY 1999 – OCTOBER 2003)**



Source: CMS of *Coalition 2000*

CHART 2 **DYNAMICS OF THE INDEXES OF THE LEVEL OF CORRUPTION FOR THE BUSINESS SECTOR (OCTOBER 2000 – NOVEMBER 2003)**



Source: CMS of *Coalition 2000*

the business sector, the average monthly value of the index for 2003 is about 1.2, which corresponds to about 4,000 corruption transactions.

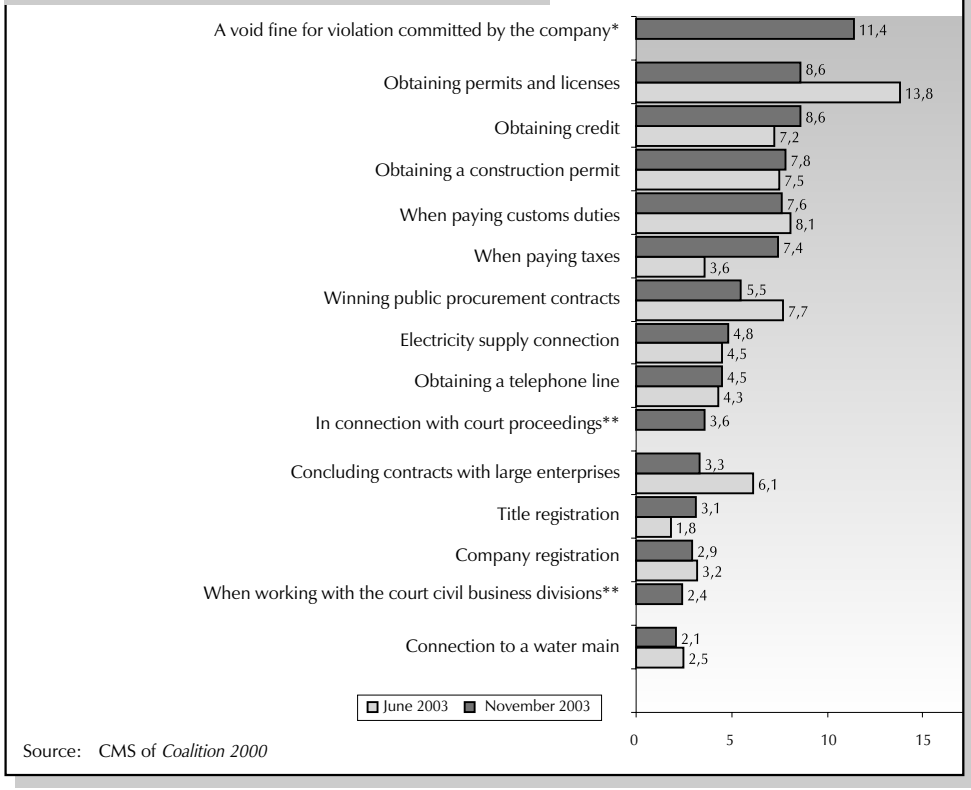
The consequences on the citizens, given the observed levels of corruption, are several. First, the use of corruption transactions creates inequality, since those giving bribes benefit from the services of the state to a larger degree. Second, the existence of a sufficiently large incidence of corruption transactions prompts some civil servants to create situations in which the giving of bribes becomes "necessary", in this way creating a market for their "services". Third, in time, the criteria for making decisions in the different departments of the administration tend to become distorted.

Whereas corruption transactions within citizens' services raise the problems of social justice and administrative efficiency, the use of corruption transactions in the business sector significantly distorts the market and competitive environment. As reported by company managers, corruption transactions have turned into a significant factor, which has a distorting effect on:

- the application of the **regulative functions of the state** (see Chart 3). The data show that state regulations and prescripts are skirted by about 10-20% of the companies in the country (not taking into account companies in the gray economy, which considerably increase the figures).

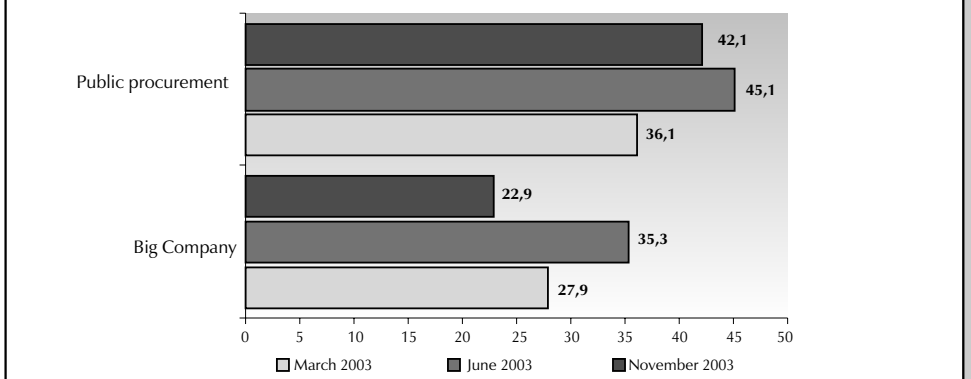
- the effective **selection of suppliers for the needs of the state** (see Chart 4). Taking into account the fact that more than BGN 2.4 billion (according to data of the Bulgarian Industrial Association), have been spent through public procurement in 2003, the fact that in a significant number of cases this happens by means of various corruption transactions shows that a parallel system of interests exists in the country. This system shapes the concrete decisions of executives who start to derive

CHART 3 RELATIVE SHARE OF FIRMS HAVING MADE UNOFFICIAL PAYMENTS FOR SERVICES (%)



Source: CMS of *Coalition 2000*

CHART4 RELATIVE SHARE OF FIRMS HAVING UNOFFICIALLY PAID SUMS IN ORDER TO PROCURE A PUBLIC ORDER OR CONTRACT WITH A BIG COMPANY (%)



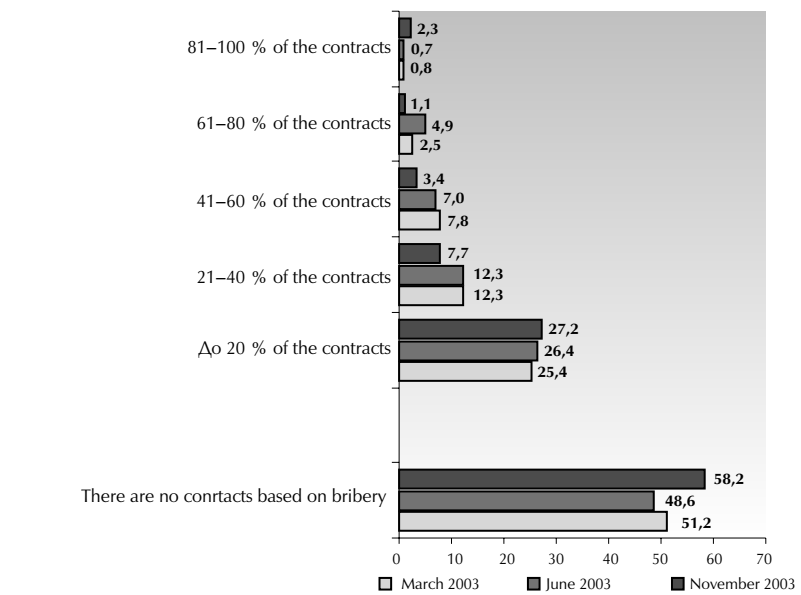
Source: CMS of *Coalition 2000*
Base: *December 2002.: N = 147 (contact with a big company); N = 155 (public procurement); March 2003.: N = 98 (contact with a big company); N = 91 (public procurement); June 2003.: N = 136 (contact with a big company); N = 133 (public procurement) November 2003.: N = 140 (contact with a big company); N = 121 (public procurement)*

considerable benefits from these transactions at the expense of taxpayers.

- the principles of **free competition among companies** (see Chart 5). The relatively large number of contracts, marked by the burden of corruption transactions, shows that in the "real economy" of the country, corruption is poised to become a peculiar tax which ensures relative economic well-being, and is the price for staying in business. The good news in this case is that the statistics on the incidence of corruption in contractual relations show a trend (albeit weak) towards reduction.

A basic issue for the political assessment of the level of corruption is whether the observed values of the indicators are high or low. In addition to tracing the dynamics of the indicators, two basic approaches are possible in this respect: international comparisons, and subjective perceptions of the degree of seriousness of corruption as a social problem. Regarding international comparisons, the data of the relative position of Bulgaria are contained in the index of Transparency International. The evolution of the country in the period after 1998, according to the ranking of Transparency International is similar to the developments observed by the national surveys of *Coalition 2000*: there was positive development in the period of 1998-2002, and a standstill in 2003. Among the 133 countries included in the 2003 index of Transparency International, Bulgaria occupies 54th place, which indicates a country with a serious corruption problem.

CHART 5 **SHARE OF CONTRACTS BETWEEN BRANCH PARTNERS INVOLVING BRIBES (%)**



Source: CMS of *Coalition 2000*
Base: March 2003: N = 244; June 2003: N = 284; November 2003: N = 261

TABLE 1 **DYNAMICS OF THE RELATIVE STATUS OF BULGARIA IN THE RANKING OF TRANSPARENCY INTERNATIONAL**

Year	Ranking	Index	Standard deviation	Number of surveys	Number of countries
2003	54	3.9	0.9	10	133
2002	45	4.0	0.9	7	102
2001	47	3.9	0.6	6	91
2000	52	3.5	0.4	6	90
1999	63	3.3	1.4	8	99

Comments on this rating were published in the media, asserting that, according to business circles, corruption in the country is increasing. A reason for this is the fact that the absolute value of the index of Transparency International decreased from 4.0 in 2002 to 3.9 in 2003, as well as the fact that for the same period the country "dropped" from 45th to 54th place in the international ranking. Such a conclusion is not sufficiently substantiated, since the decrease of the value of the index is smaller than the standard deviation (see Table 1); from a statistical point of view it is not possible to speak of a change if the change of the index (0.1) is smaller than the standard deviation (0.9). The change of the position of the country in the ranking of Transparency International is due mainly to the fact that 133 countries took part in the rankings for 2003, as compared to 102 in 2002 (Table 2).

The overview of international data for the country shows the lack of statistically significant changes after 2001. In this sense, **the negative message of the data** is not that the situation in the country is deteriorating, but rather that no further positive developments have been observed. Clearly, the way in which corruption is combated is no longer sufficient to ensure its further decrease. However, regardless of the unfavorable position of the country in the ranking, negative image should not be exaggerated: Poland, the Czech Republic and other countries in Eastern Europe occupy similar or the same position as Bulgaria in the international ranking.

Several general conclusions may be drawn about the level of corruption:

- **In 2003, the level of corruption in the country underwent no significant change**. As shown by both national and international surveys,

TABLE 2 **DYNAMICS OF THE POSITION OF BULGARIA IN THE TRANSPARENCY INTERNATIONAL RANKING IN 2002 AND 2003**

2002			2003			
Country rank	Country	CPI 2002 score	Country rank	Country	CPI 2003 score	change of index v/s 2002
25	Portugal	6,3	25	Portugal	6,6	(+0,3)
27	Slovenia	6,0	26	**Oman**	**6,3**	
28	Namibia	5,7	27	**Bahrain**	**6,1**	
29	Estonia	5,6	28	**Cyprus**	**6,1**	
29	Taiwan	5,6	29	Slovenia	5,9	(-0,1)
31	Italy	5,2	30	**Botswana**	**5,7**	
32	Uruguay	5,1	31	Taiwan	5,7	(+0,1)
33	Hungary	4,9	32	**Qatar**	**5,6**	
33	Malaysia	4,9	33	Estonia	5,5	(-0,1)
33	Trinidad & Tobago	4,9	34	Uruguay	5,5	(+0,4)
36	Belarus	4,8	35	Italy	5,3	(+0,1)
36	Lithuania	4,8	36	**Kuwait**	**5,3**	
36	South Africa	4,8	37	Malaysia	5,2	(+0,3)
36	Tunisia	4,8	38	**United Arab Emirates**	**5,2**	
40	Costa Rica	4,5	39	Tunisia	4,9	(+0,1)
40	Jordan	4,5	40	Hungary	4,8	(-0,1)
40	Mauritius	4,5	41	Lithuania	4,7	(-0,1)
40	South Korea	4,5	42	Namibia	4,7	(-1,0)
44	Greece	4,2	43	**Cuba**	**4,6**	
45	Brazil	4,0		Jordan	4,6	(+0,1)
45	**Bulgaria**	**4,0**		Trinidad & Tobago	4,6	(-0,3)
45	Jamaica	4,0	46	**Belize**	**4,5**	
45	Peru	4,0		**Saudi Arabia**	**4,5**	
45	Poland	4,0	48	Mauritius	4,4	(-0,1)
50	Ghana	3,9		South Africa	4,4	(-0,4)
51	Croatia	3,8	50	Costa Rica	4,3	(-0,2)
52	Czech Republic	3,7		Greece	4,3	(+0,1)
52	Latvia	3,7		South Korea	4,3	(-0,2)
52	Morocco	3,7	53	Belarus	4,2	(-0,6)
52	Slovak Republic	3,7	54	Brazil	3,9	(-0,1)
52	Sri Lanka	3,7	**55**	**Bulgaria**	**3,9**	(-0,1)
57	Colombia	3,6		Czech Republic	3,9	(+0,2)
57	Mexico	3,6	57	Jamaica	3,8	(-0,2)
59	China	3,5		Latvia	3,8	(+0,1)
59	Dominican Rep.	3,5	59	Colombia	3,7	(+0,1)
59	Ethiopia	3,5		Croatia	3,7	(-0,1)
62	Egypt	3,4		El Salvador	3,7	(+0,3)
62	El Salvador	3,4		Peru	3,7	(-0,3)
64	Thailand	3,2		Slovakia	3,7	0
64	Turkey	3,2	64	Mexico	3,6	0
				Poland	3,6	(-0,4)
			66	China	3,4	(-0,1)

9 new countries

corruption neither decreased nor increased. The altered parameters in the rankings of Transparency International should not be interpreted as a negative change. Firstly, the change in the ranking of the country is due to more states being included in the survey (102 in 2002 and 133 in 2003). Second, since the change of the absolute value of the index of Transparency International from 4.0 to 3.9 falls within the scope of standard deviation (for this indicator it is 0.9 in 2003, which exceeds the value of the change), no conclusions may be drawn about the fact that the value of the index is actually increasing or decreasing.

- **The lack of change in the level of corruption in 2003 is a fact that has negative meaning**. The expectations of the Bulgarian public are for corruption to be reduced and to continuously decrease, especially when its level is disturbingly high. Second, the continued lack of changes is likely to negatively impact the position of the country in comparison to other nations, due to the progress they will make.

- The lack of positive or negative changes in the period after May 2002 clearly shows that **the effectiveness of the anti-corruption measures implemented until this point has been exhausted**. The progress made in countering corruption in the period 1998-2002 was mainly due to measures of an ethical and political nature. Basically, these are "soft" forms of countering corruption, which reduce it through public pressure.

The interest targeted in such cases is the fear of public exposure or moral sanction. The interests which generate corruption (those which stem from dysfunction in the structural organization of different spheres of society), however, remain basically unaffected. Working in this direction presupposes the construction of "hard" measures, which impact the use of corruption as a mechanism for solving problems, generated by the dysfunction of the social structure. It should be noted that progress in this respect is fairly limited. Frequently one kind of dysfunctional mechanism is replaced with another; and many spheres which are particularly susceptible to corruption are in principle left unaffected by reforms (e.g., the funding of political parties).

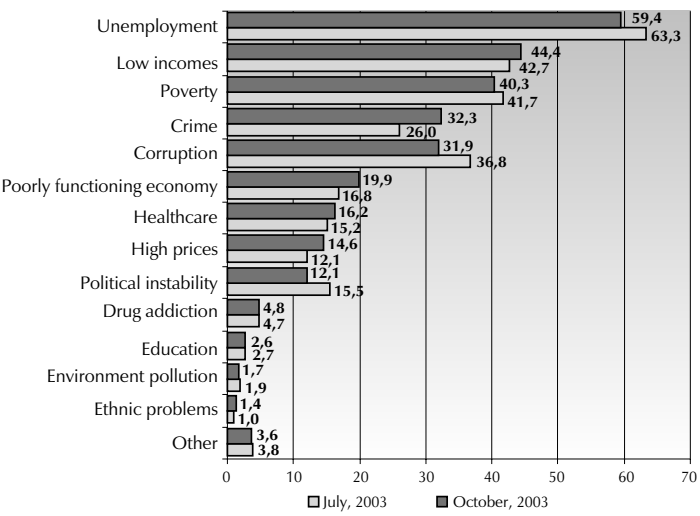
A.2. Public Attitudes and Assessments of Corruption

A.2.1. Public Attitudes towards Corruption and the Role of the Media

The relative importance of corruption as a social problem **decreased marginally** (1%). Such a small decrease, however, does not warrant the claim that the country has achieved any visible successes. In contrast to the problem of "unemployment", for which data from government surveys confirm positive development, **corruption, together with crime, continues to be a serious problem.** Special attention should be paid to the fact that despite several serious criminal incidents (demonstrative murders, bomb blasts, abductions, etc.), which occurred in 2003 and **the special attention commanded by the subject of "crime", corruption preserves its level of importance for the population.**

In contrast to the opinions of average citizens, among business leaders corruption is an absolute priority. According to the people who are the driving force of the Bulgarian economy, this is not only the most serious problem of the country but also a problem that still has not found any solution. Such an assessment gives rise to serious concerns because even serious topical problems such as crime and political instability, are not considered more disturbing than corruption.

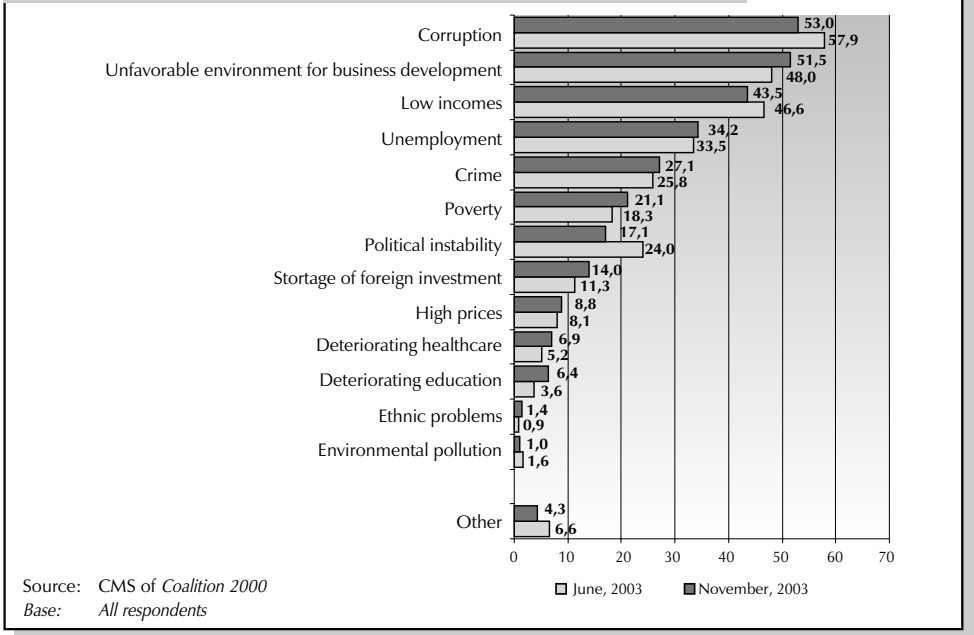
CHART 6 **CORRUPTION AND THE PRIORITIES OF SOCIETY (MAIN PROBLEMS FACING BULGARIA)**



Source: CMS of *Coalition 2000*
Base: All respondents (July N = 1057; October N = 1098)

The two main indexes of *Coalition 2000*—"Corruption Pressure" and "Involvement in Corruption"—provide some explanation for these attitudes toward corruption among the general population and business leaders. The value of the two indexes decreased constantly, with ratings for "pressure" and "involvement" halved in mid-2002. The 2003 data show that both indexes retain their levels and do not show fur-

CHART 7 CORRUPTION AND THE PRIORITIES OF SOCIETY IN 2003 (MAIN PROBLEMS FACING BULGARIA —OPINION OF BUSINESSES)



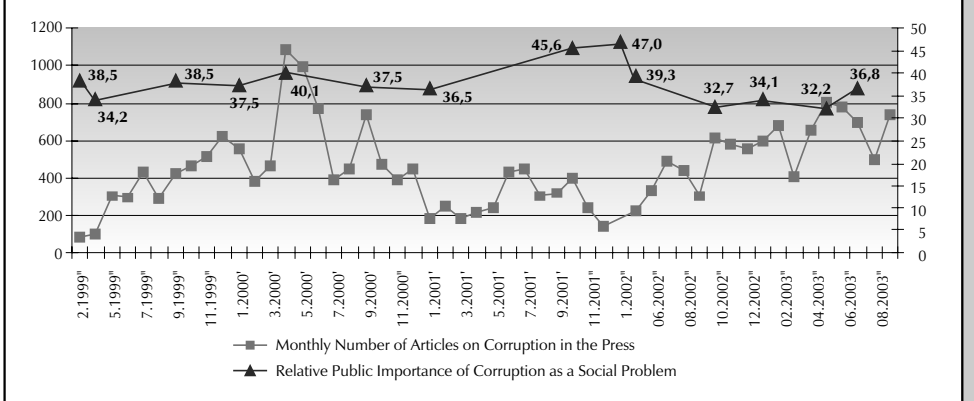
Source: CMS of *Coalition 2000*
Base: All respondents

ther improvement. Among business leaders both indicators even show a certain deterioration. This warrants the assumption of a possible change in the business environment, because the elite is subject to much greater corruption pressure and is the first to register the changes.

A.2.2. Media Coverage of Corruption: Intensity, Topics, and Quality

In 2003, the intensity with which corruption was covered in the media increased constantly, reaching record levels comparable only to the spring of 2000 (Chart 8). Two main reasons may be cited for the increased interest in the theme of corruption. The first is linked with deteriorating political stability and the increasing criticism of the government of the country. The experience of *Coalition 2000* shows that the less time remains until parliamentary elections, the more the topic of corruption is used as a criticism of the ruling majority. The second reason is the linking of the topic of corruption to crime. An increasing trend of perceiving criminal events as being linked with corruption has been observed since mid-2002. The media routinely asserts that criminals and politicians are in direct contact (perhaps the most frequently used phrase is "high-level patronage").

CHART 8 INTENSITY OF MEDIA COVERAGE OF CORRUPTION AND ASSESSMENT OF THE IMPORTANCE OF THE PROBLEM OF CORRUPTION



Source: CMS of *Coalition 2000*

Comparing the intensity of the media coverage of corruption with the level of negative public attitudes disproves the theory that the debate on corruption (i.e., anticorruption rhetoric) makes society more sensitive to the phenomenon (Chart 8). Public perception of the relative

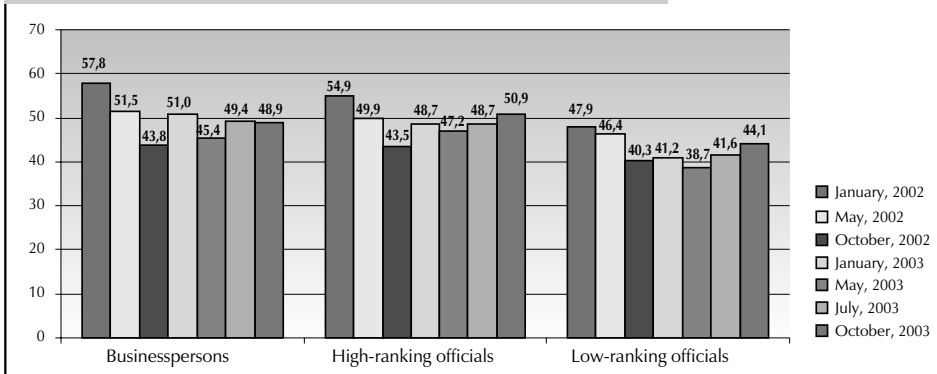
importance of corruption is formed on the basis of a complex combination of factors and concrete assessments, of which exposure in the media is only one of the factors shaping these attitudes.

One of the serious weaknesses of the Bulgarian media, according to international experts, is the fact that the problems of corruption, although covered by the regional media, are rarely picked up in the national media. The most recent example is the failure to cover problems of local elections in the national media: the press in Varna, Vratsa, Veliko Turnovo, Bourgas and other big cities published numerous articles about corrupt mayoral candidates, none of which were made accessible to the public in the country as a whole.

A.2.3. Assessments of Government Anti-Corruption Efforts

Coalition 2000 utilized the opinions of groups at greatest risk of corruption—employees in the administration and the business elite—to assess the anti-corruption efforts of the government. The decline in confidence in the government, registered by public opinion polls, does not affect the assessments of the government's activity in countering corruption (Chart 9).

CHART 9 PERCEIVED EFFECTIVENESS OF GOVERNMENT ACTIONS IN CURBING CORRUPTION (*)



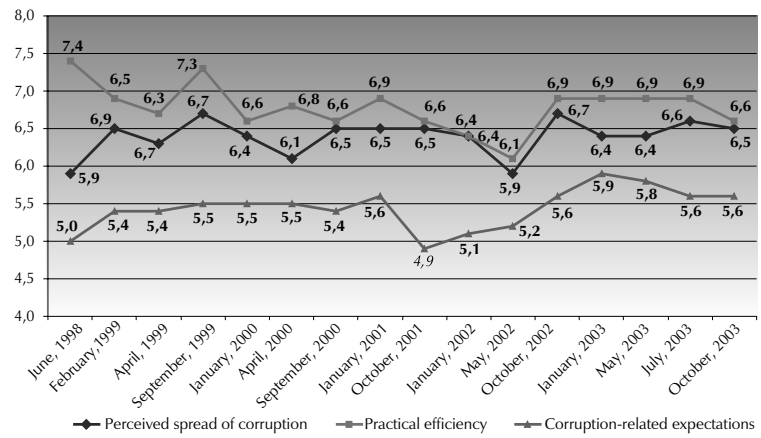
** Relative share of those who answered, "The government is not doing anything"*
Source: CMS of *Coalition 2000*

In the period after the beginning of 2002, negative assessments toward the government's efforts to counter corruption passed through two stages. Until the end of 2002, attitudes critical of the government's anti-corruption activity gradually decreased. This was most clearly illustrated in the opinions gathered from the business sector. The most probable reason for this positive change was the introduction of several government initiatives at the end of 2002, such as codes of ethics in the ministries and the creation of the Government Anticorruption Commission. The widely advertised investigations of corruption in the system of the Ministry of Interior and the announcement of large numbers of employees dismissed on grounds of corruption also contributed to the more favorable assessments. In 2003 this trend reversed, and an increase in negative assessments, especially with regard to the measures for limiting corruption among employees in the state administration, was registered.

A.2.4. Assessments of the Spread of Corruption

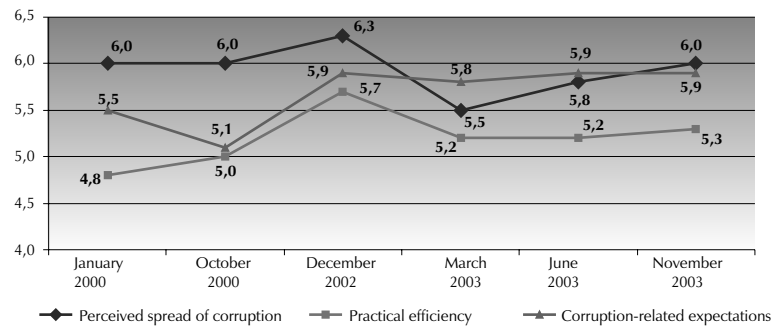
In contrast to the indicators of the level of corruption, which reflect the number of corruption transactions conducted over a given period of time,

CHART 10 ASSESSMENT OF THE SPREAD OF CORRUPTION (POPULATION)



Source: CMS of *Coalition 2000*

CHART 11 ASSESSMENT OF THE SPREAD OF CORRUPTION (BUSINESS SECTOR)



Source: CMS of *Coalition 2000*

the indicators of the *spread of corruption* are based on perceptions. The indicators reflect different social groups' subjective views of the extent to which corruption affects different spheres of society. These perceptions are a combination of practical experience of citizens and their moral-political assessments of the degree of admissibility of corruption. In the period of 1998-2003 (Chart 10 and Chart 11), both among citizens and among business sector representatives, the prevailing opinion was that corruption was a widespread and frequent practice.

As the data show, subjective perceptions of the spread of corruption did not change significantly in the period after 1998. Practically, this means that these types of assessments are more of a political nature, and that they reflect the degree of confidence (with regard to countering corruption) in the executive and, above all, the political will of the government. This is demonstrated by the fact that the improvement in the values of the indicators coincides with changes in the government (i.e., change of cabinet or replacement of cabinet members). Besides this, it is quite clear that changes in the perceptions about the spread of corruption and changes in public expectations related to corruption are parallel. The unfavorable level of these indicators shows that:

- Regardless of the progress made in countering corruption, its level continues to be sufficiently high to generate public distrust in the executive. Due to this widespread perception of corruption, in their everyday experience citizens often accept even doubtful reports of corruption of employees in the executive as worthy of attention and belief.

- Insofar as the representatives of the business sector are concerned, the unfavorable state of affairs diverts choices to alternative action strategies. The latter usually lead to adaptation to the existing situation, i.e., the

introduction of corruption transactions as an element of business strategy and price formation. This is one of the reasons why the business sector regards corruption as a problem of the highest relative importance for society.

- Often the executive's public reactions to accusations of corruption include surprise, taking offense, and rejection of the cases exposed by the media and the public. In many cases, there are also counter-accusations, and demands that accusers provide proof of corrupt activities. In such cases, both the performance and the investigating capacity are completely controlled by the executive. Consequently, the executive is unable to create the impression of a clear and consistently applied political will to counter corruption.

- As a rule, the level of the indexes measuring perceptions of the spread of corruption is significantly higher (in a negative sense) than the level of the indicator measuring the real level of corruption. In this sense, it is often argued that these differences are the product of a wrong methodology. Such dependence is linked with the peculiarities of the measurement system and with the nature of subjective perceptions. According to public opinion, a given employee or institution is assessed as corrupt, even if there is only one case of corruption. The halving of the number of corrupt transactions (the trend after 2000) has not improved perceptions of the level of corruption. Due to the same technical type of measurement, the indicators reflecting the subjective perceptions have a much higher value than the indicators reflecting the number of corrupt actions; however, it is important to note that these indicators measure phenomena of a different order.

A.2.5. Main Spheres of Corruption and the Corruption Image of Employees in the Executive, the Judiciary and the Legislature

The opinions of the public and representatives of the business sector about the professional groups and institutions where corruption presents a serious problem largely overlap (Tables 3-5). What is common in the hierarchy of distrust is the idea that corruption is present in those positions and institutions of power in which the fate (social and personal) or the economic interests of citizens and business is decided.

Throughout the year, the three spheres attracting the greatest criticism, as well as the most contentious public debate were the customs administration, the judicial system and the system of the Ministry of Interior. In the mind of the public and the business leaders the reputation of all three spheres worsened (to a greater or lesser degree) with regard to the spread of corruption. This essentially means that public trust in the basic systems of society related to law enforcement and the administration of justice is seriously shaken. For this reason, in 2003, surveys of the CMS of *Coalition 2000* were carried out among three basic groups of respondents: magistrates, the business sector, and the population. The surveys aimed to explore the reasons for the negative attitudes of the public and the factors contributing to these negative attitudes.

TABLE 3 SPREAD OF CORRUPTION BY PROFESSIONAL GROUPS (POPULATION SURVEY)

	Relative share of those who answered, "Nearly all and most are involved in corruption"										
	Apr '00	**Sep '00**	**Jan '01**	**Oct '01**	**Jan '02**	**May '02**	**Oct '02**	**Jan '03**	**May '03**	**July '03**	**Oct '03**
Customs officers	78,6	75,2	74,3	77,3	74,2	70,8	79,2	76,6	74,3	76,9	74,5
Police officers	50,5	54,3	51,0	53,7	47,0	50,7	59,6	57,7	57,7	61,4	59,2
Judges	56,0	50,1	50,6	56,4	55,0	50,8	63,0	62,2	59,6	61,8	57,3
Lawyers	51,9	52,9	50,3	55,0	55,5	52,5	62,3	60,1	60,0	57,5	55,8
Prosecutors	54,4	51,3	50,7	54,8	55,4	51,0	63,0	62,1	59,3	60,6	55,7
MPs	55,1	51,7	52,6	43,5	47,8	39,2	56,2	53,5	57,5	56,9	54,5
Doctors	40,9	43,6	27,0	46,8	45,7	52,3	54,9	51,0	49,8	53,4	52,9
Ministers	53,4	55,0	52,3	41,2	45,4	35,6	50,8	49,5	52,6	54,9	52,6
Tax officials	51,0	53,7	47,3	51,6	51,2	41,9	58,0	52,6	51,8	54,1	49,3
Investigators	48,0	43,8	43,5	48,4	48,0	43,1	57,5	55,4	53,6	55,4	49,2
Businesspersons	51,4	42,3	43,6	42,2	41,6	41,4	48,9	52,7	50,9	48,7	47,6
Politicians and leaders of political parties and coalitions	45,0	43,8	39,1	40,8	43,0	33,0	54,0	50,7	51,3	50,8	47,6
Mayors and municipal councilors	35,2	32,1	30,9	26,3	31,8	23,4	48,3	45,7	43,6	45,0	43,4
Ministry officials	55,1	49,7	43,9	45,8	47,1	36,7	48,3	44,6	44,4	45,1	40,1
Bankers	38,8	33,5	35,6	32,5	31,7	29,5	37,2	43,4	35,8	37,1	37,3
Municipal officials	46,5	41,6	35,9	39,6	39,4	30,0	49,1	40,9	39,8	42,2	36,5
University professors and officials	29,3	28,1	21,6	27,4	27,7	29,8	33,4* 23,1**	30,8* 20,0**	31,7* 19,0**	34,1* 21,2**	36,5* 23,2**
Administrative court officials	45,2	40,2	36,8	41,7	41,1	36,5	45,0	42,4	37,5	37,9	33,5
NGO representatives	18,2	23,9	18,2	19,8	21,8	15,3	21,4	20,2	21,0	21,6	22,3
Journalists	14,1	13,9	11,3	10,5	12,2	9,5	15,3	12,1	13,3	12,9	14,6
Teachers	8,2	10,9	5,8	9,3	9,7	9,8	13,9	9,8	11,6	10,9	11,0
Local political leaders	36,4	36,8	34,2	35,1	34,4	27,1	-	-	-	-	-

Source: CMS of *Coalition 2000*

* Assessment of the spread of corruption among university professors

** Assessment of the spread of corruption among university officials

TABLE 4 SPREAD OF CORRUPTION BY INSTITUTIONS (POPULATION SURVEY)

	May 2002	Oct 2002	January 2003	May 2003	July 2003	Oct 2003
Spead of corruption in general						
In Customs. Among customs officers.	33,2	30,4	53,3	50,0	54,1	49,5
In court. In the judicial system. In the system of justice. Among lawyers.	23,5	28,5	48,2	42,9	45,3	42,0
In the system of the Ministry of Internal Affairs (including Traffic Police, the investigation service)	20,6	19,9	28,6	30,6	30,9	33,9
In the healthcare system. In medical care. In the National Health Service.	25,6	20,6	27,3	27,6	30,9	27,8
In the higher ranks of power (Parliament, the Presidency,the Government). Among the political elite.	24,1	30,3	24,7 23,1 1,3	27,6 27,5 2,5	28,5 28,2 1,7	26,1 26,3 1,9
Ministries and state agencies						
Ministry of Justice	12,6	10,9	31,2	31,2	31,5	32,4
Customs Agency	15,0	18,1	33,5	31,0	32,1	30,3
In all ministries and state agencies	-	-	19,6	21,8	24,6	25,4
Privatization Agency	22,0	22,5	27,2	24,7	21,8	21,7
Ministry of Internal Affairs	16,2	15,3	18,4	19,0	18,5	21,2
Judicial system						
Throughout the judicial system	3,5	5,4	33,5	34,4	33,3	37,6
The courts, the administration of justice	29,1	32,1	27,5	29,1	32,5	30,5
Prosecution	26,2	32,0	26,2	25,3	30,0	22,9
Lawyers	15,3	16,2	24,9	21,8	22,5	19,7
Notaries public			7,4	8,0	7,4	8,5
Criminal Investigation service	15,7	15,7	18,4	17,6	21,5	15,3

Source: CMS of *Coalition 2000*

The following conclusions can be drawn from the results obtained:

- Public perceptions of the spread of corruption are no less harmful to institutional stability and the effectiveness of the economy than real manifestations of corruption. To a very large degree, the actions of economic agents are based on their perceptions, due to unlikelihood of securing reliable information about the real situation. This is why anti-corruption measures of the government should be aimed equally strongly both at curbing real corruption transactions and at reducing negative perceptions of corruption. In this case the appropriate strategy would be to focus public attention on the most important spheres in which corruption takes place, and on the introduction of clear reform measures.

- A relatively small part of the population of the country (about 18%) and representatives of the business sector (about 19%) trust in the possibility of the judicial system reacting adequately to emerging problems (civic or economic). The prevalent opinion among the public is that the judicial system is slow, unreliable and has a serious corruption problem. For these reasons citizens and business leaders tend

TABLE 5 SPREAD OF CORRUPTION BY INSTITUTIONS (BUSINESS-SECTOR SURVEY)*

	March 2003	June 2003	November 2003
In customs, among customs officers	62,4	59,5	55,6
In the judicial system	36,7	36,4	32,1
Ministry of Internal Affairs and its agencies	20,4	24,9	27,8
In the National Assembly / among MPs	24,2	19,5	20,7
Government, ministers	20,1	19,2	18,5
In healthcare	18,3	17,9	16,6
In the agencies issuing various permits and certificates (Institute of Hygiene and Epidemiology, etc.)	22,1	20,6	16,2
In central public administration	12,8	13,3	13,3
In municipal administrations	17,4	17,0	12,4
In the tax system	12,1	17,0	10,7
In big business	13,0	8,4	9,3
In the education system	2,5	1,4	3,3
In the presidency	0,9	0,7	0,2
Everywhere	6,3	8,6	14,3
Other	0,4	0,2	1,9

Source: CMS of *Coalition 2000*
Base: All respondents
* *The percentages add up to more than 100 because respondents could give up to three answers.*

either not to use the services of the judicial system or to solve their problems in alternative ways.

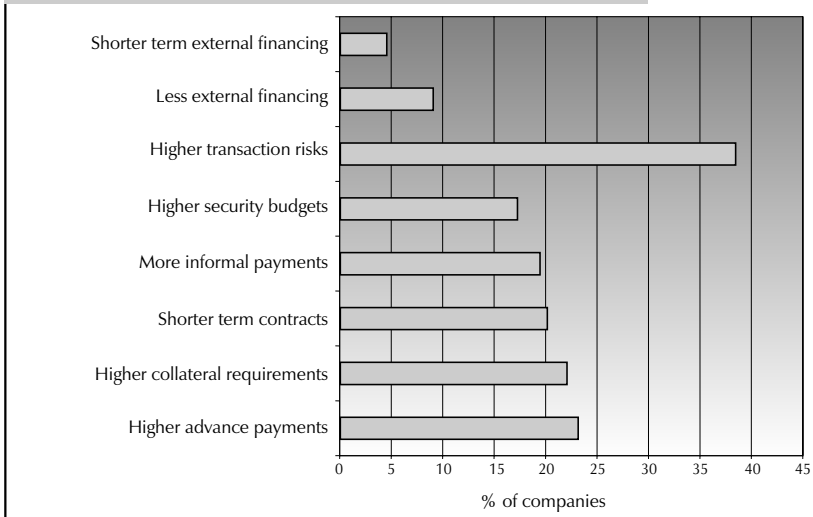
The study conducted among 454 magistrates[3] shows that the professional community in the judicial system has a clear idea of the problems in the structure and functioning of the system. Furthermore, the magistrates admit that corruption has not left the judicial system itself unaffected (see Chart 13). In this respect, from the viewpoint of the magistrates, the problem is perceived as less acute than from the viewpoint of the population and the business elite.

Regardless of the fact that the magistrates are less critical of themselves than of their colleagues, the data from the survey clearly illustrate the use of corruption transactions to influence the course and results of the investigation and trial. A total of about 4-6% of the magistrates note that no cases of corruption exist among judges, prosecutors and investigators, and a total of about 9-13% of the magistrates find it difficult to assess to what extent cases of corruption occur in the judiciary. The remaining cases (75-80%) clearly reveal the main corruption interests related to the functioning of the judiciary (Table 6).

Corruption in the judiciary undermines its effectiveness and its ability to perform its functions as established in the constitution. The lack of trust in the objectivity and justice of the judiciary in turn greatly hampers and raises the cost of economic transactions and increases the business risk in the country. Competition between economic actors is distorted into unfair

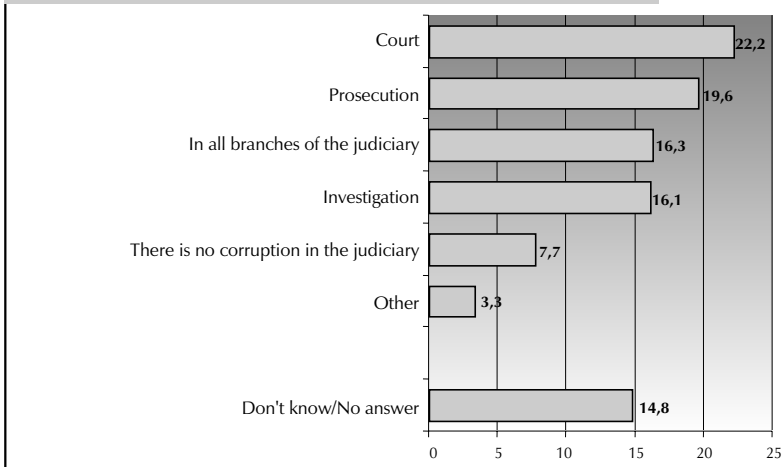
[3] The survey *Corruption and Anti-Corruption: The Viewpoint of Magistrates* was conducted by Vitosha Research in the period April 21- May 20, 2003 within the framework of the CMS of *Coalition 2000*. This is the first survey of its type on the problems of corruption in the judiciary, in which the respondents are the very representatives of the judiciary—judges, prosecutors and investigators.

CHART 12 ELEMENTS OF THE IMPACT OF THE EFFECTIVENESS OF THE JUDICIARY ON BUSINESS (%)



Source: CMS of *Coalition 2000*

CHART 13 ASSESSMENTS OF THE SPREAD OF CORRUPTION IN THE JUDICIARY (%)



Source: CMS of *Coalition 2000*
Base: All respondents (N = 454)

business practices and the striving for a politically-secured monopoly. The contracts in the official economy are fewer and short-term ones, and the companies have limited growth opportunities. Furthermore, although losses of the increased risk for the economy cannot be measured accurately due to the influence of additional factors, the removal of the corruption burden in the judiciary will probably have a strong positive economic effect in the long run. The distrust of citizens in the judiciary is even stronger than the distrust of business. The reasons should be sought both in the media coverage of the inter-institutional conflicts of the judiciary and the executive, as well as in the relative inaccessibility of judicial institutions to citizens from a financial and instructive viewpoint.

It should be noted that both in business circles and among citizens, it is of little consequence whether attitudes toward the judiciary rest on practical experience or on perception. In either case the negative image of the judiciary delays the development of democratic institutions of the market and reduces the desire and willingness of society to support new reforms. This is why anti-corruption efforts should aim both at the solution of concrete practical problems, and at the general improvement of the public attitude toward the judiciary.

The behavior of the professional community in the judiciary does not always match the nature and the urgency of the problems (including the problem of corruption), with which only this community could cope (due to its constitutionally defined independence). The statements and actions of many magistrates are dominated by a defensive reaction—denial of the problems or attempts to shift them to other institutions. The lack of self-criticism in combination with the stronger criticism of the other parts of society often places the public and business in a deadlock—on the one

TABLE 6 TARGETS OF CORRUPTION TRANSACTIONS FOR DIFFERENT GROUPS OF MAGISTRATES (%)

Judges	
To render a verdict/judgement with a predetermined content	69.6
To dismiss / suspend action without legal grounds	39.6
To delay the hearing of a case	40.1
To protract, accelerate or influence in another way entry into the commercial register	27.5
To exert undue influence	15.4
Other	1.5
No corruption act is taken	4.6
Don't know/ No answer	9.5
Public prosecutors	
To cancel criminal proceedings	63.4
To start/not start pre-trial proceedings or preliminary examination	49.3
To submit/not submit a bill of indictment	27.8
To remand a case for further investigation without legal grounds	23.3
Not to exercise procedural action in cases when they are obliged to	19.8
To exert undue influence	17.0
Other	1.5
No corruption act is taken	4.6
Don't know/ No answer	12.3
Investigators	
To take or not take up certain actions of investigation	59.5
To stop investigation or propose its termination	56.2
To exert undue influence	28.0
Other	2.2
No corruption act is taken	6.2
Don't know/ No answer	13.2

Source: CMS of *Coalition 2000*

hand only the professional community in the judiciary is able to propose alternatives and solutions of the problems and, on the other, the professional community relatively rarely makes an attempt to convince society with words and action that it is actually looking for solutions to making the judiciary serve the public interest more effectively.

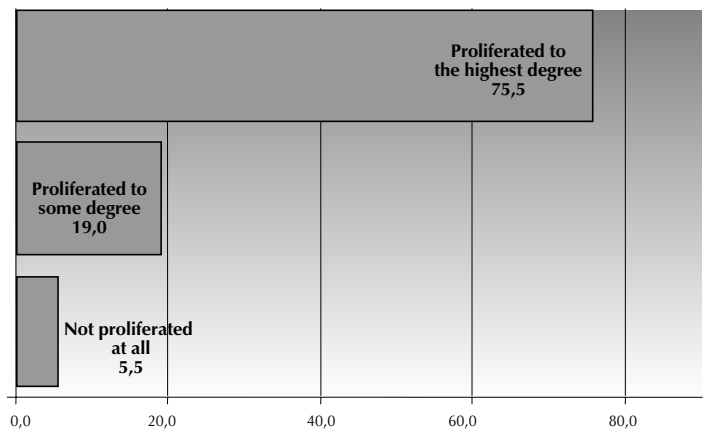
B. THE ANTI-CORRUPTION DIMENSIONS OF JUDICIAL REFORM

Because of its specific functions and peculiar place within the system of state power, the judiciary is given a paramount role in promoting the rule of law, protecting fundamental rights, and efficiently suppressing corruption—a major problem of the transition period that is still to be resolved. The key branches of the judiciary are called upon to investigate, prosecute and impose penalties for crimes of corruption. Any failure to fulfill, or fulfill on time, those functions therefore perturbs public confidence in the judiciary. Even worse, the existence of corruption with the judiciary brings harm to society and the state as it distorts the very nature of the judicial system and prevents it from exercising the functions vested in it by the *Constitution* and by the laws, namely to uphold the rights and the lawful interests of citizens, legal entities and the State.

Public opinion polls in 2003 suggest that, just like in previous years, there is a high level of corruption in the judiciary. Contrary to the polls, every other magistrate is confident that public perceptions of the spread of corruption are unfounded.

Moreover, a disturbing trend has been perceived within the judiciary in that the bodies of the system deny responsibility and blame each other for the spread of corruption, thus revealing the existence of serious flaws in the understanding of the place and role of the different branches, and in their mutual relations.

CHART 14 **PUBLIC OPINION ON THE SPREAD OF CORRUPTION IN THE JUDICIARY** (%)



Source: Corruption Monitoring System (CMS) of *Coalition 2000*

The trend to impute corruption to a branch of the judiciary other than one's own is also visible from magistrates' perceptions of the stages of criminal and civil proceedings. One out of four **judges** states that corruption is most widespread at the stage of preliminary proceedings, and one out of five judges believes the same about police investigation. Quite the contrary, **prosecutors and investigators** identify the court stage as the key segment of criminal proceedings where corruption transaction abound.

TABLE 7 ASSESSMENT OF THE LEVEL OF CORRUPTION WITHIN THE THREE GROUPS OF MAGISTRATES (%)

	Corruption proliferated among: (*relative share of responses "Most or all magistrates are involved"*)		
Magistrate	**Judges**	**Prosecutors**	**Investigators**
1. Judge	2.8	17.4	19.0
2. Prosecutor	11.9	7.9	10.3
3. Investigator	20.8	28.2	4.7

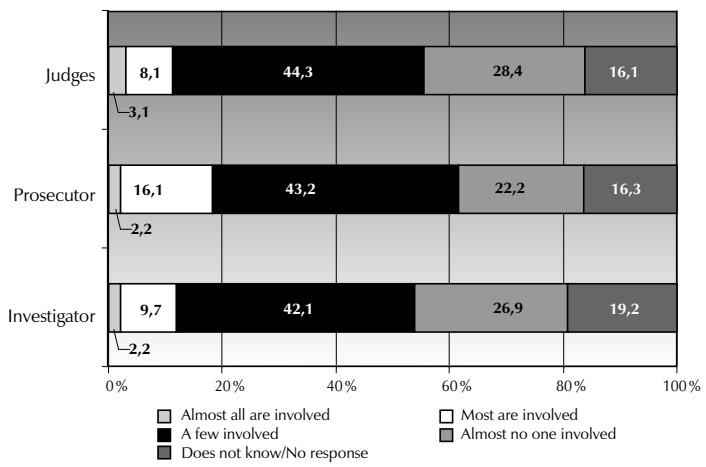
Source: CMS of *Coalition 2000*

The lack of specific statistical data makes it impossible to map out the real picture of the number of cases where magistrates have been investigated, prosecuted or punished for corrupt crimes. Nonetheless, given the constitutional principle of full immunity that existed until recently and the extremely rare requests and decisions to lift the immunity of particular magistrates, it seems justified to conclude that there has been almost no instance of detecting and prosecuting corruption offenses perpetrated by members of the judiciary.[4]

Any evaluation of the state of affairs in the judiciary, the level of corruption therein and the contribution of that branch to the fight against corruption in 2003, must take account of some essential factors of domestic and international politics that bear directly on judicial reform.

Firstly, one must consider the consensus reached by all political forces represented in Parliament on the **priorities of judicial reform**, as manifested in the *Declaration on the Guidelines to Reform the Bulgarian Judicial System* signed by those forces on April 2, 2003. Despite the incomplete inventory of issues addressed there, the declaration is a good point of departure in the search of genuine, wider consensus on the way to attaining the stated objectives of judicial reform.

CHART 15 SPREAD OF CORRUPTION WITHIN DIFFERENT GROUPS OF MAGISTRATES (%)



Source: CMS of *Coalition 2000*

Secondly, one must consider the **amendments to Chapter Six of the *Constitution,*** enacted on September 24, 2003, which represented the first steps in breaking through the obviously malfunctioning framework and removing the obstacles to serious legislative change with respect to

[4] The Report on the Activity of the Supreme Judicial Council in the period December 16, 1998-December 16, 2003 states that during its five-year term of office, the Supreme Judicial Council has decided to lifting the immunity of seven magistrates, of which six are investigators at District Investigation Services and one is a military investigator, and has rejected the requests for lifting immunity in four cases concerning one judge, one prosecutor and two investigators.

the judiciary erected by the Constitutional Court. Despite the unanimous passage of those amendments, however, their significance should not be overstated. Parliament confined its debate on the Constitution solely to the requirements imposed from abroad in the context of Bulgaria's EU accession negotiations. It therefore failed to pave the way for large-scale modifications that would be feasible in the context of Judgment No. 3 of the Constitutional Court of April 10, 2003 (Constitutional Case No. 22 of 2002), such as introducing mechanisms that ensure the accountability of the branches and bodies of the judiciary, particularly the prosecutor general, or putting in place "independent counsel", an official outside the system of the public prosecution and vested by law with the investigation of corruption inside the judiciary. Some of the possible and required changes that already enjoy public and political support, though they are not directly connected with the judiciary, can substantially relieve the work of that branch of power, improve the protection of human rights and restrict the channels whereby corruption is infused into the judicial bodies and into other state institutions. Those changes include *inter alia* the enactment of constitutional rules on an ombudsperson (including provisions on his or her election by a qualified majority and on his or her right to refer issues to the Constitutional Court), the establishment of alternative dispute-resolution techniques, and the imposition of stricter duties on attorneys to comply with professional ethics and discipline.

Thirdly, one must take into account **the closure of Chapter 24, Justice and Home Affairs, of Bulgaria's pre-accession negotiations** with the European Commission on October 29, 2003. The closure of that chapter by no means signifies that judicial reform has come to an end, nor that the issue of corruption has finally been settled. Further progress in reforming the judiciary will greatly predetermine Bulgaria's successful accession to NATO and the European Union and its future membership of those organizations. The European criteria for a well-functioning judicial system remain stringent and imply specific requirements subject to regular compliance reports to the European Commission. If the problems under Chapter 24 fail to be resolved within the time limits agreed, negotiations in this area may therefore be resumed under the existing safeguard clause. According to the agreement reached under Chapter 24, reforms are still needed in the areas of:

- improving access to justice;
- drawing a clear divide between the tasks and responsibilities of the Supreme Judicial Council (SJC) and the Ministry of Justice;
- bringing the budget of the judiciary in accordance with European standards;
- creating an objective and transparent case-assignment procedure;
- introducing uniform statistics for all branches and bodies of the judiciary;
- reorganizing the system of investigation, etc.

Irrespective of the discrepant evaluations of the result attained, each of the above factors will be important to the future development and scope of

judicial reforms. The analysis of the long-standing practice of piecemeal reforms and the lack of satisfactory results made it clear in 2003 that a **comprehensive consensus-based approach** is needed which touches upon all future constitutional, legislative, organizational and institutional reforms. Achieving such a consensus on as many key issues of judicial reform as possible is a must for legal certainty and institutional stability, and for public trust in the judicial bodies. It is also a *sine qua non* if we are to bring to an end the typical transitional process of replacing the independent, professional decisions and steps of magistrates with acts inspired by politics or corruption, and to do away with inter-institutional conflicts, including those between the separate branches of the judiciary. Future consensus-based amendments to the Constitution should provide a framework for the separation of and balance between the powers where **the Constitutional Court acts primarily as a guardian of the constitutional consensus**, and should leave a much narrower space for interpretation, sometimes doubtful and partial, of the constitutional norms or for interpretation that may compromise the supremacy of the legislative power.

Building future judicial reforms on the basis of consensus would improve the situation in the country, and the judiciary in particular, in terms of limiting corruption.

B.1. The Organization of the Judiciary: Constitutional, Legislative and Institutional Aspects

A comprehensive approach to the organization of the judiciary is a prerequisite for attaining a functioning, solid, independent and corruption-free judicial power, as well as for an efficient fight against corruption in society. Relevant legal and institutional solutions are needed for the fundamental elements of the organization of the judiciary, *viz*. the **principles** upon which it is based and operates**, its management and structure, and the relations between its branches**. The general aspects of the structure, principles and functions of the judiciary which define its place under the separation of powers must be **governed by the *Constitution***, while the details should be fixed in the **legislation adopted on the basis of the respective constitutional arrangements**. At the same time, issues such as introducing time and quality standards, achieving the required transparent and open performance of the judiciary, adopting effective anti-corruption measures in general, and in the branches of the judiciary in particular, improving the criteria for recruiting professionals and regularly evaluating their performance, improving the efficiency of disciplinary proceedings against magistrates, etc., could be resolved even within the current constitutional framework, and specific steps have been undertaken to that effect.

B.1.1. Fundamental Principles Underlying the Organization and Operation of the Judiciary

The principles that govern the organization and operation of the judiciary have been prominently on the agenda of the debates on judicial reform in recent years. Specific proposals and recommendations, especially those suggesting:

- to rethink the issue of independence and irremovability,
- to limit the immunity of magistrates,

- to introduce terms of office for magistrates in managerial positions,

can be found in the basic papers produced by a number of influential international organizations and institutions, and by some national civic organizations and initiatives.[5]

The amendments to the constitutional rules on the judiciary enacted in 2003 have produced the following changes:

First, the **immunity** of magistrates has been narrowed down to **functional immunity**, i.e., magistrates shall be immune from criminal or civil liability only for actions undertaken in their official capacity (as opposed to liability ensuing from their private endeavors and actions outside the context of their direct activities). Immunity also extends to the orders and judgments of magistrates, unless the act in question represents an intentional offense prosecuted on indictment. In the latter case magistrates can only be prosecuted with the authorization of the Supreme Judicial Council. Judges, prosecutors and investigators may be arrested only for serious offenses, and only after the Supreme Judicial Council has so authorized. No authorization is required if the magistrate is caught at the scene of a serious crime. Authorization to lift the immunity of a magistrate may be sought by the prosecutor general or by at least one fifth of the members of the Supreme Judicial Council, provided that the request is reasonable.

Second, the changes in the principle of **irremovability** of magistrates concern the time that has to lapse before a magistrate becomes irremovable, the procedure applicable to the acquisition of that status, and the grounds for early dismissal of magistrates who are otherwise irremovable. The status of irremovability shall be acquired with the completion of five years of work as a judge, prosecutor or investigator, and with evaluation of past performance. The grounds to dismiss irremovable magistrates, including the presidents of the Supreme Court of Cassation and the Supreme Administrative Court, and the prosecutor general, now include *inter alia* "serious breach of, or systematic failure to, fulfill official duties, as well as any act that undermines the reputation of the judiciary".

Third, **terms of office** have become a principle applicable to the magistrates holding managerial positions at the bodies of the judiciary (save for the president of the Supreme Court of Cassation, the president of the Supreme Administrative Court, and the prosecutor general for whom the

[5] For instance: The annual regular reports of the European Commission; the Evaluation Report (2002) adopted by the Group of State Against Corruption (GRECO) within the framework of the first evaluation round of GRECO; the Evaluation Report of the Working Group On Bribery in International Business Transactions at the Organization of Economic Cooperation and Development (OECD) adopted in February 2003 within phase two of the monitoring process of the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Revised Recommendation of the Council on Combating Bribery in International Business Transactions (1997); the reports of the EU Accession Monitoring Program of the Open Society Institute–Budapest on the capacity of the judiciary in accession countries; research by the Country Assistance Strategy of the World Bank, especially with respect to legal and judicial reforms and the suppression of corruption; the Judicial Reform Index developed by the Central and Eurasian Law Initiative of the American Bar Association (ABA-CEELI); and previous Corruption Assessment Reports by *Coalition 2000*.

status quo has been maintained). The term of office is five years, and may be renewed. The amendments to the *Law on the Judiciary* currently in the pipeline suggest that the nomination of candidates for such positions (by the immediate superiors or by one fifth of SJC members) and their appointment should take place by March 31, 2004. Regular replacement of the heads of judicial bodies would circumscribe the possibilities of improper personal relations or enduring corruption transactions.

Because these partial amendments were passed before certain other indispensable reforms in the judiciary, the following problems may be envisaged in the course of their implementation:

- The reform of magistrates' immunity has left almost intact the powers of the prosecutor general, as the proposal to introduce independent counsel (a public official endowed by law with prosecutorial functions to seek the lifting of a magistrate's immunity or, where appropriate, to institute preliminary proceedings and guide the investigation) was dropped. The new possibility for one fifth of SJC members to authorize the arrest of a magistrate caught on the scene of a serious crime, or to authorize the prosecution of a magistrate, is not a sufficient corrective to the monopoly the prosecutor general has on the prosecutorial function and on investigation. The realization of the criminal liability of magistrates therefore remains almost entirely dependent on the subjective view of the prosecutor general, as long as the unified and centralized structure of public prosecution is preserved.

- In addition, the new ground to dismiss irremovable magistrates ("serious breach of, or systematic failure to fulfill official duties, as well as any act that undermines the reputation of the judiciary") is worded in a fairly general fashion and can hardly be implemented in practice. In particular it is not clear who, and based on what criteria, would make the judgment of whether the conduct of a magistrate has undermined the reputation of the judiciary or does not play by the "rules".

- Likewise, one should think of the possible risks of improper pressure and instability when the modified principles are applied against the backdrop of other major lingering problems of the judiciary, e.g., the overgrown independence of the judiciary that borders on a total lack of control, the distorted balance of powers, the lack of guarantees to prevent self-insulation of the system or its improper involvement in political or corporate interests, the persistent lack of accountability of the prosecutor general and the centralized hierarchical structure of the system of prosecution, the problems surrounding the composition of the SJC and the required adjustment of its functions, etc. For example, unless the limited immunity of magistrates is accompanied by thorough guarantees and well-thought-out procedures and mechanisms, it could actually produce opposite effects, e.g., unfounded persecution, pressure, defamation, frustration of justice and investigation, etc. It is therefore worth analyzing the opinion of magistrates as most of them (49.3%) believe that a move to functional immunity would not in itself reduce corruption in the judiciary, compared to 37.2% in support of the idea and 13.4% without an opinion on the matter.[6]

[6] Source: CMS of *Coalition 2000*.

- Even in their most current form, the above organizational principles reproduce the current structural problems of the judiciary. Those principles are applicable to all three branches (courts, public prosecution, and investigation) and no account is taken of the different professional circumstances of judges, prosecutors and investigators which derive from their different functions, powers and hierarchical dependence, from the different transparency, recruitment policy, appointment and career promotion arrangements in the three branches. As a result, it is still necessary to create a legal possibility to apply the major principles in a differentiated manner within the current structure of the judiciary, especially given that structural changes may take place in the future.

- As a matter of fact, the implementation of the terms of office will be in the hands of the new Supreme Judicial Council, elected in December 2003, that is formed under the existing quota-based scheme. That procedure, particularly the election of the parliamentary quota by a simple majority, largely predetermines the replacement of one politically-shaded team of SJC members with another, and, hence, the key role of the ruling majority or coalition in the appointments of the heads of courts, prosecution offices and investigation services as well as in the making of other important decisions concerning the judiciary. Another risk that should be taken into account lies in the possibility members of the SJC, elected by the judicial quota but representing different branches of the judiciary, to defend positions that are predetermined by the institution they represent, sometimes even opposing each other. All this would additionally hamper the formation of a uniform and impartial position by the SJC members.

To attain the principal objectives of judicial reform—accountability, swiftness, and efficiency—and to suppress corruption more successfully, further constitutional and statutory amendments are needed that preserve the independence of the judiciary, while allowing for a better balance between the branches of power, wider transparency and responsibility across the judicial system, and ampler room for civil control. These could be summarized as follows:

First, the constitutional principle of **independence** of the judiciary should be kept. Nonetheless, it should not be an end in itself or amount to irresponsibility. It should rather serve as a precondition for the full-fledged fulfillment of the tasks of the judiciary, to ensure lawfulness and fairness, to uphold the laws and protect legal rights. In other words, lucid mechanisms of mutual control (checks and balances) of the three powers should be introduced. The lack of such mechanisms in the existing system, including its constitutional framework, is one of the reasons why independence is sometimes perceived as untouchability. Therefore, the purpose of the proposed options (i.e., to change the management and the structure of the judiciary, of the public prosecution and investigation, to make their powers more specific, and to redefine their fundamental organizational principles) is to prevent the threats of concentrating too much power in the same hands and the risk of abuse, while ensuring a balance of powers that essentially respects the principle of independence.

Second, the independence of the judiciary should be more closely linked to the **principle of separation of powers** and the ensuing relationships

among those powers. In that context, it is suggested that an amendment to the *Constitution* be considered that would provide that **the president of the Supreme Court of Cassation, the president of the Supreme Administrative Court and the prosecutor general shall be elected by the National Assembly** for a term of office of at least five years, and with a qualified majority in order to avoid politicizing the election. The National Assembly should have the power to decide on the early removal of those individuals from office and on lifting their immunity, though solely on conditions, and under a procedure strictly defined in the *Constitution*. The National Assembly could thus play a vital part in ensuring the checks and balances among the three powers, without interfering with the independence of the judiciary.

Third, the **status and structure of public prosecution** is an issue essential to the independence of the judiciary in the context of the separation of powers.

TABLE 8 **"DOES THE EXISTING UNIFIED AND CENTRALIZED STRUCTURE OF PUBLIC PROSECUTION IMPACT THE LEVEL OF CORRUPTION WITHIN THE PROSECUTION?" (ACCORDING TO MAGISTRATES) (%)**

Agree	20.5
Somewhat agree	24.7
Somewhat disagree	27.1
Disagree	20.3
Does not know/No response	7.5

Source: CMS of *Coalition 2000*

TABLE 9 **"DOES THE EXISTING UNIFIED AND CENTRALIZED STRUCTURE OF PUBLIC PROSECUTION IMPACT THE LEVEL OF CORRUPTION WITHIN THE PROSECUTION?" (BY CATEGORY OF MAGISTRATES) (%)**

	Agree	Somewhat agree	Somewhat disagree	Disagree	Does not know/ No response
Judge	26.3	29.1	27.4	8.4	8.9
Prosecutor	5.6	10.3	30.2	50.0	4.0
Investigator	26.2	31.5	24.2	9.4	8.7

Source: CMS of *Coalition 2000*

While magistrates have diametrically opposing views on whether the existing uniform and centralized structure of public prosecution is conducive to corruption, the opinion that specific measures are needed to ensure the **decentralization, transparency and accountability** of that system seems to be gaining ground. Moreover, such measures are actually feasible within the current constitutional framework and could be pursued by amending and supplementing the *Law on the Judiciary*. Possible measures include:

- changing the hierarchical model on which the system of prosecution is based;

- providing better guarantees for the independence of prosecutors of any superior prosecutor or of the administrative head of the prosecution system when deciding on specific files and cases. This can be achieved by introducing a requirement for written instructions, and by recognizing the right of prosecutors to object against the instructions given by superior prosecutors or to step out of the case in the event of disagreement with the instructions received;

- prescribing serious sanctions to root out the unlawful practice of giving oral instructions;

- introducing (i.e., in the *Constitution*) the principle of **regular** and ***ad hoc*** **reporting** by the **prosecutor general** to the SJC or to the National Assembly, respectively (depending on whether the proposal for the prosecutor general to be elected by Parliament is approved).

Fourth, the adjustments to be sought through constitutional amendments also comprise the possible appointment of a **public official entrusted by law with prosecutorial functions**, or of a team of such officials, outside the hierarchical system of public prosecution in its current form. Such officials should be elected by the National Assembly to fulfill specific functions (e.g., to investigate instances of inside corruption in the judiciary) or *ad hoc*, and should enjoy the immunity of magistrates. Their powers should extend to investigating, pressing charges and maintaining the indictment in cases expressly envisaged in the *Constitution*.

Fifth, with regard to **immunity**, the future constitutional solution should be based on a general review of the immunity provided to a wider spectrum of individuals (members of Parliament, members of the Constitutional Court, and individuals in senior positions in the executive).

Sixth, the *Constitution* should lay down the general parameters, the content of and the correctives to irremovability, and these should be specified in the legislation by defining clear criteria and rules, along with specific conditions for obtaining or losing the status of irremovability. It is proposed that irremovability should only benefit magistrates who work effectively in the authorities of the judiciary (in other words, it should not apply where those individuals occupy elected positions such as members of Parliament or mayors, or if they are on leave).

Seventh, it is worthwhile to consider the proposal to introduce a **special procedure for an early removal from office** that should be developed on substantive grounds defined in the *Constitution*.

Eighth, special attention should be given to the hierarchical relations inside the different systems: superior magistrates should control and monitor magistrates at lower levels only by way of providing general methodological guidance and without any interference in the resolution of cases, let alone unlawful pressure from top to bottom.

B.1.2. Managing the Judiciary

To effectively combat corruption, the management of the judiciary should be professional and resistant to corruption. Likewise, the functions and the powers of the Supreme Judicial Council, as a body of the judiciary, and of the Ministry of Justice (MoJ), as an executive authority, must be distinguished and redefined, while putting in place a reliable framework of interaction between these two players.

The **powers of the SJC** should focus on the **general strategic management and organization of the judiciary**'s staffing policy (including recruitment, evaluation, acquisition and loss of the status of irremovability by magistrates, and budgeting for the judiciary, especially in the context of staffing policy). Any extension beyond that remit may well entail a duplication in the functions of the SJC and the Ministry of Justice and may ultimately make one of the two institutions redundant.

As for the suppression of corruption, it is particularly pertinent for the SJC to receive and exercise to the fullest extent the power to introduce standards on how the work performed by the branches of the judiciary would be reported and uniform statistical reporting forms to be used by all bodies and branches of the system, as well as to summarize statistical data. This would put an end to the provision of discrepant information by courts, prosecution offices and investigation services, and would foster an objective assessment of the level of corruption and of the genuine effect of anti-corruption efforts. Moreover, in view of Bulgaria's future accession to the European Union, as of 2004 the country should provide the European Commission with **regular information** on criminal proceedings, charges pressed, and convictions in respect to **organized crime, corruption, drugs, trafficking in persons, and tax and financial offenses**.

Enhancing the independence of the judiciary would also mean confining **the managerial powers of the executive** (i.e., the Ministry of Justice) ***vis-a-vis* the judiciary** to providing the organization and the facilities indispensable for the effective operation of judicial bodies (management and maintenance of buildings; provision of equipment and materials; provision of security staff and facilities, as well as assisting with the additional training of magistrates and staff; checking on the progress of cases or any unjustified delays; unwarranted remittals and the like, while refraining from any interference with the merits of the cases, etc.).

On the other hand, it should not be forgotten that **the budget of the judiciary** is a major cause for friction between the judiciary and the executive and this will persist, unless European standards in that respect are applied (the budget should amount to 4% of GDP, while in 2003 it was less than 1% in Bulgaria). Besides increased allocations from the national budget, **additional funding** must be ensured for judicial reforms. It is within the powers of the SJC to encourage a broader involvement in international and European projects and the active utilization of EU pre-accession funds.

Further measures to help the SJC exercise its powers

- Put in place a well-developed system of **rules and regulations** on the operation and management of the judiciary, including anti-corruption norms.
- Improve the **internal rules** on the proceedings of the SJC, including its decision-making procedures.

- Develop an information system to ensure co-ordination and control, by introducing **uniform judicial statistics**.
- Detail the SJC's powers to **discipline** magistrates, and ensure the full-fledged exercise of those powers.
- Promote the **openness and transparency** of the SJC's work by implementing and refining the existing media strategy.
- Establish **dialogue and co-operation** with the executive and the legislature, especially in view of resolving the problems of the judiciary.

The prevailing number of magistrates (61.2%) recognize the need for reforms in the SJC that would make it more efficient in combating corruption in the judiciary. Some of the indispensable changes that have been identified concern the way in which the SJC is composed, including the abolition of the parliamentary quota, the promotion of wider transparency and openness in the work of the SJC, the extension of its powers and capacity in disciplinary proceedings, the implementation of a system of control and coordination, etc.

The possible changes in the **status of the SJC, its powers and formation** (number of members, election and term of office, eligibility criteria) must be effected through the Constitution and should be carefully linked to possible future changes in the structure of the judiciary. Along these lines, it is worth noting and examining in depth the suggestion **that SJC members be elected solely by the bodies of the judiciary** and those bodies nominate a member of the judiciary as president of the SJC. The latter should be elected by the National Assembly and report thereto regularly or *ad hoc*.

TABLE 10 **"WHAT ARE THE REFORMS NEEDED BY THE SUPREME JUDICIAL COUNCIL?"**

	Yes (%)
Changing the manner of forming the SJC	60.8
Promoting a more transparent and open operation of the SJC	54.0
Extending the SJC's powers/enhancing its capacity in disciplinary proceedings against magistrates	37.4
Strengthening the SJC's administrative and managerial capacity	19.1
Building up a control and coordination information system	48.2
Other	4.3
Does not know/no response	0.0

Source: CMS of *Coalition 2000*

That structure matches the proposal to have the president of the Supreme Court of Cassation, the president of the Supreme Administrative Court, and the prosecutor general elected by the National Assembly. This would indeed deprive the assembly from having a say in the composition of the SJC but the parliament would still have its role in operating the mutual checks and balances among the three powers.

It is suggested that, should the parliamentary quota persist, the elections should be by a **qualified majority.**

B.1.3. Anti-Corruption Measures Designed to Promote the Status of Magistrates

The status of magistrates largely conditions their conduct in the process of combating corruption, both in their capacity as representatives of the bodies in charge of investigating and prosecuting corruption crimes, and in their possible capacity to be corruption offenders. The previous measures to promote the status of magistrates have failed to take account of the different functions and powers of judges, prosecutors and investigators. There has even been no debate about any differentiated legislative solutions, and these would be essential if the investigation and/or the prosecution were to move from the judiciary to the executive.

In spite of the difficulties inherent in the uniform status of judges, prosecutors and investigators under the current constitutional framework of the judiciary, a vast number of magistrates share the need for **comprehensive measures to promote the status of magistrates** so as to reduce the possibilities for any form of corruption, e.g., introducing stricter criteria for the recruitment and appointment of magistrates, improving the devices used to monitor their performance and the procedures of disciplining magistrates, by providing summary procedures for some cases, adjusting the relevant powers of the SJC, refining access to the profession of magistrates, and making competitions for such access dependent on clear criteria that preclude any improper acts.

TABLE 11 MEASURES TO BE UNDERTAKEN TO CURB CORRUPTION WITHIN THE JUDICIARY (ACCORDING TO MAGISTRATES)

	Agree (%)
Increasing the salaries of magistrates/court staff members	69.4
Introducing more stringent criteria for the selection of magistrates	68.7
Making changes in the structure of the judiciary and providing wider opportunities for accountability, monitoring and disciplining	35.0
Introducing regular evaluations of professional performance and linking magistrates' career development with the result of such evaluations	32.8
Introducing an efficient system to improve the professional qualification of magistrates	33.9
Encouraging magistrates to report to the public on any deficiencies in judicial work they have come across	25.1
Other	4.4
Does not know/No response	0.7

Source: CMS of *Coalition 2000*

In addition to the above findings, attention should be paid to the following aspects:

- *Selection and appointment criteria applicable to magistrates*

The staffing policy in the judiciary needs to be seriously reformed – as regards both the initial election of magistrates and their promotion in the same position or hierarchically, while ensuring a more balanced representation of both genders within the community of magistrates. The current widespread approach where the presidents of the respective courts or prosecution offices make a sole proposal (i.e., submit a single nomination) more often than not results in subjectivity, lobby pressures and other forms of improper influence.

The **principle of competition** should be the only one utilized when a magistrate is to take a position at a higher instance or to be moved to another job or another town. The first step to that effect was the first centralized competition for junior judges held at the end of 2002 on the grounds of the Interim Regulations issued by the SJC. *Ordinance No. 1 Laying Down the Conditions and Procedure for Carrying out Competitions for Magistrates*, adopted by the SJC (in effect as of April 23, 2003, amended on December 3, 2003), provides that every applicant for a magistrate's position should sit for a written and oral exam; these requirements should be abided by consistently and objectively. As regards the competitions for becoming a member of the judiciary and the evaluations of magistrates before they become irremovable or are promoted in rank or in position, it is essential for the SJC to organize and monitor the rigorous and corruption-free implementation of the new rules. Otherwise they would be pointless and only serve as a shell for reform.

Applicants for the judiciary should undergo a careful scrutiny for, among other things, their mental fitness and character so that different forms of dependence or negative factors (suggestibility, instability, etc.) could be disqualifying. The existence of any kinship or other connections or interests should also be taken into consideration where it is likely to generate a conflict of interests or any privilege.

- *Mechanisms to control the performance of magistrates*

Since the efficient administration of justice depends to the utmost extent on the competence and professionalism of magistrates, their performance should be monitored. The review of court acts by higher powers is not sufficient to achieve a lasting improvement of the system of justice or to ensure the integrity and professionalism of magistrates.

It is necessary to expand the rules on **evaluation** that were introduced by the 2002 amendments to the *Law on the Judiciary* and reconfirmed by the new wording of §129(3) of the *Constitution*. To that effect, a permanent body should be set up with the SJC (an Evaluation Commission) that would assess the work of magistrates regularly (every other year), upon the expiry of the term for obtaining guaranteed tenure, and upon any proposed promotion in rank or in salary or in position. The composition of that commission (number of members, which professional groups they should belong to, etc.), and the mechanism for its formation that would guarantee its independence, must be given a solid legislative basis.

All of the decisions concerning the professional career of magistrates, including their evaluation, should rely on the objective criteria listed in the *Law on the Judiciary*. *Recommendation No. R(1994)12 of the Committee of Ministers to the Member States of the Council of Europe on the independence, efficiency and role of judges of October 13, 1994* suggests the same approach. The *Law on the Judiciary* should include the **following indicators** to be used as **evaluation criteria** for the magistrates:

– Competence. This should cover elements such as quality of performance, number of cases closed, and promptness.

– Honesty and integrity.

– Experience, based on the length of professional service and on qualifications.

– Willingness to improve one's professional knowledge and skills by way of additional specialized training.

It is necessary to bring the **rules on professional ethics**, which have been or are to be adopted by the professional organizations of magistrates and approved by the SJC, closer to the requirements for professionalism and to the definition of offenses and the statutory mechanisms for monitoring and disciplining. This is a must for the enforcement of the novel provision of the *Law on the Judiciary* (§ 168(1)(3)) under which magistrates shall be disciplined for their breach of the moral rules embedded in the applicable Ethics Code. According to the polls among magistrates, 46.7% of them think that the adoption of and compliance with ethics codes would lessen corruption in the judiciary.[7]

• *Education and training of magistrates*

The lack of a serious reform of legal education and the deficient efforts to improve the professional skills of judges, prosecutors and investigators form a major reason for the insufficient capacity of the judiciary to perform its basic functions, in particular, to suppress corruption. The quality of education largely defines whether the young people appointed or to be appointed in the judicial bodies now, would successfully implement the expected judicial reforms and add more professionalism and moral integrity to the fight against corruption. The training of practicing magistrates grows in importance along with the need to ensure the future enforcement of European Union law. Therefore, material improvements should be made of university education, and of the initial training (including the practical training) before new magistrates take office, as well as of on-the-job training which should take place on a continuous basis throughout magistrates' professional lives.

First, as regards **higher education**, it is necessary to upgrade the link between theory and practice in the process of teaching by involving eminent magistrates; the seminars should rather serve to equip the students with practical knowledge and skills by way of methods such as moot court exercises and the drafting of warrants, indictments, criminal and civil judgments, and rulings. The apprenticeship periods in the course of university studies should become more efficient and there should be closer links between law schools and the institutions where apprentices are placed.

Second, as regards the **practical training of apprentice-lawyers**, an altered duration of apprenticeship will hardly be successful on its own[8]. As a matter of fact, apprenticeships should be given a completely new basis by

[7] CMS of *Coalition 2000*.

[8] The amendments to the *Law on the Judiciary* made in 2002 and furthered by the amendments of July 2003 shortened the time of compulsory apprenticeship from one year to three months, which would hardly enhance the knowledge or the skills of future magistrates.

amending the legal rules that govern the procedure and conditions for becoming a qualified lawyer. These should be coupled with the introduction of **additional, practice-oriented training** for future judges, prosecutors, investigators, notaries, bailiffs, real estate registration judges or members of other professions.

Third, to meet the need to **continuously improve the professional qualifications** of practicing judges, prosecutors and investigators, account should be taken of the prevailingly poor level of professional knowledge and practical skills, the excessive workload of magistrates which lessens their opportunities to engage in self-education, and the incessant changes in the legislation which generate many problems in the administration of justice and often entail inconsistent case-law. In combination with other negative factors, these circumstances only make corruption thrive. To rectify that situation, major reliance is placed on the newly-established National Institute of Justice (NIJ) with the Supreme Judicial Council which has emerged from the non-governmental organization known as the Magistrates Training Centre. The NIJ shall be developed based on the MTC and its attainments, curricula and training materials, body of lecturers, officials and assets.

On October 1, 2003, the SJC approved the *Rules of Organization and Procedure of the National Institute of Justice*. A Board of the Institute has been elected as well. The NIJ shall provide compulsory training to:

- All newly-appointed judges and prosecutors immediately after they take office in the judiciary (six months of initial training).

- The judges, prosecutors, and investigators when they take an office in a body of the judiciary (10 days of initial training).

- Judges, prosecutors, investigators, bailiffs, real estate registration judges, court staff, inspectors and other officials of the Ministry of Justice, on a regular basis (continuous training).

Performance at the National Institute of Justice shall be relevant to the professional evaluation of magistrates and to the promotion in rank of court staff.

The SJC has already adopted and approved the initial training curriculum for judges.

The future curricula of the NIJ should also mandatorily include **training to enforce anti-corruption legislation, to learn and comply with ethical norms and rules, including conflict-of-interest and anti-corruption provisions**. In more general terms, training should contribute to instilling and upholding in the behavior of magistrates values and principles such as impartiality, independence, intolerance to corruption in general and to any of its forms within the judiciary.

B.1.4. Possible Options for Restructuring the Judiciary

The structure of the judiciary usually engenders opposing opinions and evaluations. Some argue that the *status quo* should be preserved at any rate. Others offer restructuring proposals, some of which require serious constitutional amendments that could only be enacted by a Great National Assembly (Judgment of the Constitutional Court No. 3 of April 10, 2003, delivered in constitutional case No. 22 of 2002). If the Constitutional Court changes its view and the political will is there, some of the proposed structural changes, however, may be enacted by the Ordinary National Assembly.

Regardless of the fact that structural changes cannot in themselves resolve all of the problems the judiciary faces, and even less so the problem of corruption, the introduction of such changes or the failure to make them would largely predetermine the choices to be made with respect to the management, functions and organizational principles of the judiciary.

In parallel to the proposed anti-corruption measures in the judiciary that would be pertinent if its current structure is preserved and slightly adjusted, **two alternative options** for fundamental structural modification are also on the table. If either of those options, or some of their elements, materialize, the basic organizational principles of the judiciary will be preserved in full with respect to the branches that will remain in the judicial system, and should be modified to the extent necessary to serve the branches that will move to the executive. When the structural changes take place, the managing and administrative functions of the judiciary should be clearly distinguished.

- **Under the first option**, the constitutional model of the judiciary would comprise the authorities that administer justice, i.e., the courts, plus the prosecution offices. While that scenario implies retaining the public prosecution within the judiciary, it is mandatory to implement the **principle of regular and *ad hoc* reports by the prosecutor general to the SJC.** In addition, in the context of the proposals to decentralize the system of public prosecution and to appoint public officials entrusted by law with prosecutorial functions outside the system of the Supreme Prosecution Office of Cassation, the Supreme Administrative Prosecution Office, the appellate, district and regional prosecution offices, it is recommended that one consider whether prosecutors from the system of public prosecution could work in the specialized authorities carrying out investigations at or outside the MoI (e.g., the National Service for Combating Organized Crime, the Financial Intelligence Agency, the Customs Agency, etc.). This issue should be addressed in more detail in relevant acts of parliament.

- **Under the second option**, the constitutional model of the judiciary would only comprise those authorities that administer justice: the courts. As far as the **prosecutorial authorities** are concerned, it is proposed that the legislation should provide for the following organizational and institutional changes (after the *Constitution* has been amended accordingly):

– A **National Prosecution Office** should be set up within the Ministry of Justice[9]. In the framework of that office, a **Managing and Administrative Board, or a High Council for Prosecutors** (more or less similar to the Supreme Judicial Council) should be created to include the prosecutor general as the head of the Prosecution Office, three prosecutors elected by the community of prosecutors and having terms of office equal to the term of office of the prosecutor general, and the minister of justice (by operation of law). To avoid the risk that the executive might dominate the Prosecution Office and its governing body, the prosecutor general should be nominated by the minister of justice and elected by the National Assembly for a specific term of office (longer than four years), and the National Assembly should again have the power to remove him or her from office under conditions strictly listed in the *Constitution*.

– The prosecutor general should report to the National Assembly regularly (annually) and *ad hoc*. That structure, where public prosecution would be a separate institution with the executive but the prosecutor general would be elected by and accountable to the legislature, is expected to result in a more balanced separation of powers and a refined mechanism of checks and balances.

– If this proposal is approved and implemented, the new office should be an umbrella for all prosecution bodies existing at present plus the prosecutors working at specialized authorities that conduct investigations inside or outside the Ministry of Interior for example, the National Service for Combating Organized Crime, the Financial Intelligence Agency, customs authorities, etc.

– The Managing and Administrative Board (High Council for Prosecutors) should handle the staffing of, and provide methodological guidance to, the prosecution offices and to prosecutors working outside the prosecution system. Public prosecutors should be autonomous, enjoy functional immunity and obey the laws when performing their basic functions. This would be necessary to avoid any risk of intervention by the Ministry of Justice or by any other authority when prosecutors fulfill their duties.

To ensure adequate **investigation**, both options suggest that the National Investigation Service (NIS) should be kept in place, while becoming a specialized service in the framework of Ministry of Interior deigned as follows:

– The head of the NIS should be appointed by the minister of interior for a term of office exceeding that of the government.

– The leadership of NIS should take the form of a collective governing body composed of the head of the NIS, a deputy minister of the MoI, and three investigators elected by the community of investigators in the country. All investigators should be directly subordinate to that body.

[9] Public prosecution is connected with the structure of the executive not only in established democracies like **Austria**, **Belgium**, **Denmark** or **Spain** but also in many new democratic countries, such as **Poland**, and the **Czech Republic**.

– Investigators should exercise their functions in the structure of the NIS directly, or at the corresponding district services of the MoI, or within the specialized structures that conduct investigations outside the system of the MoI (again, such as the National Service for Combating Organized Crime, the Financial Intelligence Agency, customs authorities, etc.), under conditions laid down by the leadership of the NIS.

– In the context of the day-to-day work of investigators, their autonomy from the structures of the MoI and from any other authorities to which they are attached should be guaranteed, as should be their leading role in the investigation conducted by such authorities.

The idea behind the changes proposed above is to ensure the immediate link that is required between the police authorities that detect crime and the investigative authorities—a link that is sadly missing in the current structure of the judiciary. Making the police and the investigative authorities part of the same institutional mechanism would enable the formation of joint teams and promote interaction throughout the process of investigation. The police would thus be responsible for the final result (a successful completion of investigation), whereas the investigative authorities, as a major unit of the MoI, would be involved more actively in the fight against and the prevention of crime, and their knowledge and experience would be of immediate assistance to police inspectors. This is even more important given the essential changes that will be made following the recent closure of negotiations on Chapter 24, Justice and Home Affairs. Such reforms should include the restructuring of the investigation system (until 2005), the development of a strong network of **police inspectors** who should gradually assume competence in investigating criminal offenses, and the imposition of limits to the powers of investigators. Ensuring **efficiency and transparency at the pre-trial stage, eliminating the duplication of functions between police inspectors and investigators or the duplication of investigations for some types of offenses, and improving the deficient qualifications and skills of most police inspectors** are key requirements to judicial reform in light of Bulgaria's anticipated membership in the European Union.[10]

In the future, one may consider abolishing the investigation and entrusting all operational activities to the police. In that scenario some police officers could be vested with carrying out urgent investigative steps that would produce acceptable legal effects.

This being said, any change in the investigative function and in the underlying structure should be made in the context of thoughtful reform of criminal proceedings. At the same time, it will be necessary to take due account of the need to strictly distinguish between and regulate the powers, duties and responsibilities of the authorities involved in that process, and to root their relations in sound and unambiguous legislation. The resistance that large groups of magistrates offer to any idea about changing the structure of investigation should not be overlooked, either.

[10] As of the beginning of 2003, the MoI has been working to that end. For example, new appointment requirements have been introduced, including a competition, a law degree (compulsory), and an exam.

B.1.5. Internal Anti-Corruption Monitoring Mechanisms within the Bodies of the Judiciary

The importance of in-house anti-corruption monitoring in the judiciary cannot be questioned. This is also true of the entities whose operation is linked to that of the courts, investigation services and prosecution offices, such as the Bar and the Ministry of Interior, as corruption transactions there could "export" corruption to the judiciary or fuel "chain" corruption that is hard to detect.

TABLE 12 FACTORS BENEFICIAL TO THE PROLIFERATION OF CORRUPTION IN THE JUDICIARY (%)

Low salaries of magistrates/court staff members	55.3
Moral crisis during the period of transition	43.2
Imperfect legislation	36.1
Lack of efficient internal monitoring mechanism and sanctions	35.7
Interweaving between the official duties of magistrates and their private interests	31.1
Aspirations of quick wealth gain	25.1
Political connections and dependence of magistrates/court staff	16.1
Sense of untouchability/immunity	15.0
Other	2.6
Does not know/No response	4.2

Source: CMS of *Coalition 2000*

TABLE 13 "WOULD THE FOLLOWING MEASURES CONTRIBUTE TO LIMITING CORRUPTION IN THE JUDICIARY?" (%)

	Agree	Disagree	Does not know/ No response
Setting up a specialized unit within Supreme Prosecution Office of Cassation to inquire into alleged corruption	49.6	39.6	10.8
Setting up such units to inquire into alleged corruption in the courts	48.7	41.0	10.4
Setting up such units to inquire into alleged corruption in the investigation	46.0	42.7	11.2
Setting up such units to inquire into alleged corruption in the bodies of the MoI	48.0	40.5	11.5

Source: CMS of *Coalition 2000*

It is noteworthy that magistrates identify the **lack of an efficient internal monitoring machinery and sanctions** as the fourth most important factor that favors the infusion of corruption into the judiciary.

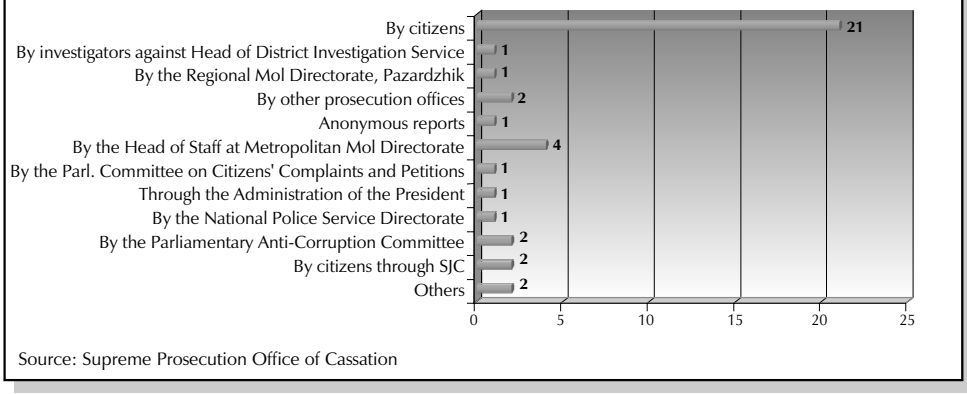
Most magistrates believe that setting up **specialized units** at the Supreme Prosecution Office of Cassation, the courts, the investigation service, and the Ministry of Interior that are tasked with inquiries into reported inside corruption, and the promotion of such units would help limit corruption in the judiciary.

According to the Supreme Prosecution Office of Cassation, its Complaints Unit is open to any information about corruption transactions allegedly involving magistrates or senior public officials.

The majority of the 39 reports received until September 2003 were checked by the Inspectorate Unit at the Administrative Department, while two of them have been assigned to the Investigation Department.

To resist **inside corruption**, at the end of November 2003 a permanent three-

CHART 16 INFORMATION ON CORRUPTION TRANSACTIONS ALLEGEDLY INVOLVING MAGISTRATES FILED WITH THE SUPREME PROSECUTION OFFICE OF CASSATION, JANUARY-SEPTEMBER 2003



Source: Supreme Prosecution Office of Cassation

member panel was set up at the SJC. It should prevent and combat the corruption transactions of judges, prosecutors, investigators and the staff at all the bodies of the judiciary. The mission of the panel is to receive, verify, and analyze any reports on corruption among magistrates and court staff, and to interact with other state agencies and NGOs in response to corruption. At the same time, the existing interim rules on the panel's procedure, structure and organization invite mixed perceptions: the panel has no defined term of office; it is composed of practicing magistrates who are not members of the SJC; it is not given any powers to react to findings of corruption; and the specific mechanisms of its interaction with other anti-corruption units in the bodies of the judiciary remain obscure.

To curb inside corruption in the judiciary and to resist the diverse forms of "chain" corruption, it is recommended:

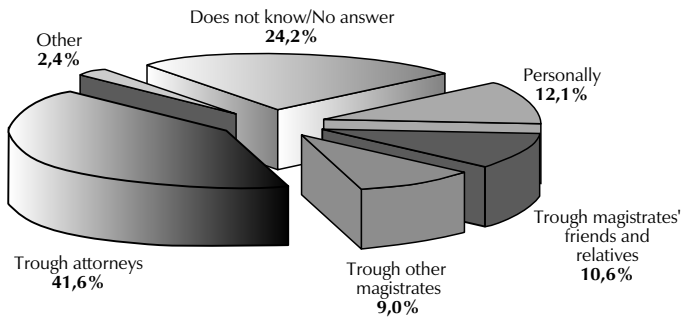
- To further promote the existing **specialized units** and put in place new such units within the basic structures of the judiciary. These units should closely interact among themselves and with any other competent bodies, including the relevant services of the MoI (the National Service for Combating Organized Crime, the National Police Service Directorate, the Operational and Technical Tracing Directorate, the Operational Information Directorate, and the National Security Service Directorate), the Anti-Corruption Coordination Commission with the Government, the Anti-Corruption Standing Parliamentary Committee, the SJC, the Court of Auditors, the Customs Agency, the General Tax Directorate, the Financial Intelligence Agency, the Privatization Agency, the Post-Privatization Control Agency, and the State Financial Control Agency.

- **To improve the accountability** of the judiciary and to report on the number of prevented, detected or prosecuted corruption crimes involving magistrates.

- To compile on a compulsory basis **statistics on the corrupt offenses involving magistrates**.

The debate on the anti-corruption dimensions of judicial reform has revealed growing fears that some **members of the Bar** at times facilitate the proliferation of corruption transactions in the judicial system and in the public administration by acting as **intermediaries** or by deriving unlawful benefits under the false pretext that bribes are solicited.

CHART 17 METHODS USED BY INTERESTED PARTIES TO IMPLEMENT CORRUPTION TRANSACTIONS



Source: CMS of *Coalition 2000*

The actual gravity of this problem is not confined to the unlawful and morally unacceptable behavior of some attorneys but lies in its effects as it prompts a real growth of corruption among magistrates and civil servants, the fundamental symbols of statehood and of the public opinion about statehood. To cut off those negative phenomena, decisive legislative amendments are required (introducing stricter criteria for access to the legal profession, expanding the scope of statutory duties of attorneys who should comply with **a number of ethical rules** in order to uphold the trust and the respect needed by the profession, and refining the **disciplinary proceedings** for failure to fulfill statutory duties or to observe the ethics code). In addition, specific guarantees would be necessary to secure the observance of professional ethics and discipline by attorneys, **and that obligation should be proclaimed in the *Constitution***. Stricter control must be exercised by the competent internal bodies of the Bar and responsibility should be attached to improper behavior, *inter alia* in the form of disqualification of attorneys on account of clearly impertinent procedural steps or abuse of procedural rights (e.g., procrastinating cases because of pretended illnesses; this could be countered through a requirement that the ailments of any party to the proceedings or its counsel must be confirmed by "trusted" doctors assisting the respective court).

B.1.6. Opening the Judiciary to the Public

The general public seems to cherish an enduring perception that the various segments of the judiciary are entrapped by sluggishness, inefficiency, partiality and widespread corruption transactions. In turn, most magistrates think that **citizens normally have excessive expectations of the performance of the members of the judiciary**, and many of them fail to know their rights or are inclined to resort to various corruption transactions in order to settle disputable issues "informally".

The discrepancy between the opinion of the public and that of magistrates on the level of corruption in the judiciary confirms the existence of a **serious communication problem** between the judiciary and civil society.

This is proven by the inability of magistrates or the separate branches of the judiciary **to respond adequately to critical assessments of their performance**. According to the results of a survey conducted by Vitosha Research, very few of them (25.1 %) think they should inform the public about the shortcomings in the operation of the system they have come across. Moreover, as public pressure grows, some branches of the judiciary perceive as hostility even the well-meaning opinions and recommendations

TABLE 14 "HOW OFTEN DO CITIZENS WITH WHOM YOU ARE IN CONTACT WHEN FULFILLING YOUR PROFESSIONAL DUTIES— (%)

	Normally	Sometimes	Seldom	Never	Does not know/ No response
—have excessive expectations of magistrates and their performance?"	56.2	28.0	8.1	2.6	5.1
—fail to know their rights?"	52.4	31.5	11.9	2.0	2.2
—show discontent with the work of magistrates?"	34.6	47.1	14.1	2.0	2.2
—prefer to engage in corruption acts rather than uphold their rights lawfully?"	15.4	34.6	26.9	8.8	14.3
—think they can achieve whatever they want by offering money or gifts?"	12.6	30.4	32.2	15.2	9.7
—behave rudely or impolitely towards court staff or magistrates?"	9.5	37.4	42.7	6.8	3.5

Source: CMS of *Coalition 2000*

voiced by the civil society, by foreign governments or international organizations. Such reactions enhance in turn the public suspicion that members of the judiciary use their immunity as a shield, that they are uncontrollable and untouchable.

An increasing number of magistrates and experts have become aware of the urgent need to change the style of communication between the judiciary and the public. Moreover, the first steps have been made to make some branches of the system more responsive to the problems, questions and criticisms regarding their operation. New practices are being developed which demonstrate the nascent aspiration of the judiciary to open the system while relying on the media and to launch a public dialogue to address the issues of justice in a transitional environment.

- *Press offices at the bodies of the judiciary*

Press offices established at some courts[11] provide information to the community on cases that are of interest to the public (scheduled hearings, progress, key points, judgments or verdicts).

The *Uniform Media Strategy of the Judiciary* approved by SJC on June 25, 2003 prescribes in detail the rights and the obligations of an official to be appointed at SJC, *viz*. the **Public Relations Officer**, and of the press officers (also referred to as "public relation officers") to be appointed at the supreme, appellate and district courts and prosecution offices, at the National Investigation Service and the district investigation services and, if possible, at Sofia City Court and some larger regional courts which are known for their vast workload. The Strategy outlines the basic rules for communication with the media and with other institutions. The attainment of its objectives would positively contribute to opening the Judiciary towards society and, in the end of the day, to improving its own performance and the public perception thereof.

- *Access to information about the operation of the judiciary*

Increasing the judiciary's transparency must imply the provision of access to information about the operation of the judiciary. Such a guideline is

[11] Press offices have been created and already function at the Supreme Administrative Court, the appellate, district and regional courts in Bourgas, Varna, Veliko Turnovo and Plovdiv, and the appellate, district, city and regional courts in Sofia.

Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe on measures facilitating access to justice. A major principle underlying the recommendation is that member states should "take all necessary steps to inform the public on the means open to an individual to assert his [or her] rights before courts and to make judicial proceedings…simple, speedy and inexpensive".

Relevant steps to that end are the Websites developed by individual courts and by the SJC, and a number of other initiatives designed to make the administration of justice more transparent, for example, the project implemented at Varna District Court to release court proceedings of immediate interest to the public directly on the Internet.

As better communication between the branches of the judiciary and the public would require further steps, special attention should be attached to the use and implementation of **modern technology.** New methods of communication could include:

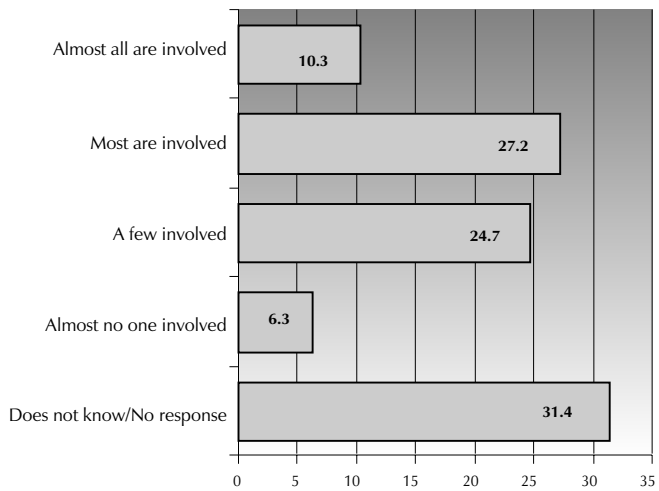
- launching projects to facilitate receipt from the Internet of information about the cases and their progress, and any other useful information, while relying on the successful practices and the experience gained[12];
- providing an implementing statutory framework on the use of electronic documents and electronic signatures in the judiciary, so as to foster efficiency, promptness, security and transparency;
- introducing the practice of judges and prosecutors regularly answering questions addressed to them on the Internet;
- developing and using electronic information systems at the Supreme Court of Cassation and Sofia City Court, and in as many courts across the country as possible.

B.2. The Administration of Judicial Bodies

The organization and operation of the administration of judicial bodies (i.e., the administration of the Supreme Judicial Council, the Supreme Court of Cassation, the Supreme Administrative Court, the prosecutor general, the Supreme Prosecution Office of Cassation, the Supreme Administrative Prosecution Office, the National Investigation Service, and all the courts, prosecution offices and investigation services), briefly referred to as "**court administration**", are linked to the management of the judiciary and to the arrangements that ensure its independence and self-governance. On the one hand, the persisting problems in the governance of the judiciary and corruption in its branches largely precondition the shortcomings of court administration. On the other hand, the malfunction of court administration and corruption transactions involving court staff form a straightforward obstacle to high-quality performance of judicial bodies and adversely affect public opinion about the judicial branch of power. There is a very wide discrepancy

[12] For example, the websites of the Supreme Administrative Court and Varna District Court, the possibilities for quick electronic reference to case progress information as they exist at Blagoevgrad District Court and Blagoevgrad Regional Court, etc.

CHART 18 PUBLIC OPINION ON THE SPREAD OF CORRUPTION AMONG COURT STAFF (%, MAY 2003)



Source: CMS of *Coalition 2000*

TABLE 15 SPREAD OF CORRUPTION AMONG COURT STAFF IN THE BRANCH WHERE RESPONDENT MAGISTRATES WORK (%)

Almost all court staff members are involved in corruption	0.2
Most court staff members are involved in corruption	2.2
A few court staff members are involved in corruption	18.7
Almost no court staff members are involved in corruption	32.4
No court staff members at all are involved in corruption	30.0
Does not know/no response	16.5

Source: CMS of *Coalition 2000*

between the views of the population and those of magistrates when it comes to the level of corruption among the employees working in the administration of judicial bodies, whom the legislation refers to as "court staff".

B.2.1. Organization and Operation of Court Administration: The State of Affairs

Although growing attention has been given in recent years to the need to reform court administration, efforts so far have mainly been confined to drafting strategic and programmatic documents. Even today, court administration is based on obsolete organizational principles, staff members work in unsuitable, frequently primitive conditions, no unified standards or practices exist, and the system is generally a far cry from modern management technologies. There are no uniform and detailed rules of secondary legislation regulating the operation of administrations in the courts, prosecution offices or investigation services. All of these factors create a corruption-friendly environment, which, in turn, could result in delaying or obstructing investigation and court proceedings, including the investigation and prosecution of corruption-related crime.

The following specific major problems in the organization and operation of court staff have been identified:

- *Document processing in the branches of the judiciary*

Case management procedures (most generally those relative to the filing and receipt of papers with and from the court, and the prosecution office, access to information, security of document circulation, and inter-institutional transfer of court files) are typically **opaque, awkward, and**

TABLE 16 **CORRUPTION TRANSACTIONS (E.G., OFFERING BRIBES OR TRAFFIC IN INFLUENCE) ARE EXERTED ON COURT STAFF FOR THE FOLLOWING PURPOSES:**

	Yes (%)
To carry out/to refrain from carrying out specific steps in processing court papers and documents	55.9
To knowingly violate the rules on serving summonses and other court papers	53.7
Other	3.1
No corruption acts take place	7.7
Does not know/No response	16.5

Source: CMS of *Coalition 2000*

subjective. Under those conditions, myriad unpredictable local administrative practices emerge which additionally frustrate the efficient administration of justice and sow the seeds of distrust of the judiciary. Such practices eat up much of the time and efforts of judges and of the insufficient number of court staff members, most of whom are not well-trained and lack motivation.

No clear rules exist regarding access to documents and records in courts, investigation services and prosecution offices, on the issuance of documents and the delivery of certified copies by the court, on how case files should be accessed and used, and on who should be held liable for the disappearance or destruction of individual documents or parts of files.

Automated case management system

USAID has donated to the SJC a modern document registration system which reports on the progress of judicial proceedings and enables many different searches and the electronic submission of cases to higher instances. The SJC has already decided to implement that system in all courts. Meanwhile, it operates successfully at the District and Regional Court in Blagoevgrad, and at Smolyan Regional Court. The document registration system of the Supreme Administrative Court and Varna District Court is based on similar principles. The automated document registration system also covers the progress of enforcement proceedings. It will be accessible on the Internet, so citizens and attorneys will be able to find information about the cases at any time, including any scheduled hearings and the indispensable forms to be filled out.

- *The mechanism of summoning*

The incorrect, inaccurate, or late serving of writs of summons, and the errors possibly contained therein, as well as the absence of any remedy against inaccurately served summonses may become major factors for delaying the cases and manipulating the development of judicial procedures.

- *The assignment of cases to individual judges and court chambers*

The assignment of cases to individual judges or to different court chambers is not always well-founded, adequate and objective. This paves the way for

corruption transactions and affects the performance of court staff. Not only the citizens, but magistrates and staff members alike are typically convinced that if a specific outcome is sought in a case, the file would be assigned to specific chambers or judge-rapporteurs.

Impartial automated case-assignment system

On October 6, 2003, Division Three of the Supreme Administrative Court launched—on an experimental basis—a new system of assigning cases to judge-rapporteurs and court chambers. When administrative proceedings are instituted, the judge-rapporteur or the chamber in charge are identified by an automated system which forms part of the Court's document registration system. After the results of that experiment are analyzed, it will be decided on whether to apply the same approach in the other divisions of SAC. Such measures are needed in view of the requirement of the European Union to fully implement an impartial automated case-assignment system by 2007.

- *The imperfect mechanisms of recruiting, promoting and disciplining court staff*

Beyond the lack of objective criteria or adequate procedures for recruitment and career development, no efficient machinery exists in practice to discipline court staff, even in the event of corrupt behavior or breach of the moral rules enshrined in the Ethics Code of Court Clerks.

B.2.2. The Need to Build up a Modern Structure and Organization of Court Administration

A set of legislative and organizational changes is indispensable in order to efficiently modernize the operation of court administration and place it on solid corruption-free ground.

- *Improving the legislative framework*

  – The **fundamental general principles** of the operation of court administration should be refined, as should be the **status of court staff members**. This should happen by improving and elaborating on the provisions of Chapter Fifteen of the *Law on the Judiciary*.

  – The **instruments of secondary legislation and the internal regulations on the work of court administration**, required under §.188 of the *Law on the Judiciary*, should be drafted; these should govern in detail and with precision the structure and the organization of court administration, the requirements to, the recruitment criteria for, and the specific rights and duties of staff members, as well as their continuous training and professional improvement.

  – Requirements should be introduced as to the **categories and number of court staff members** needed in all groups of judicial bodies, and detailed **job descriptions** should be prepared for them.

– The importance of **ethical rules** should be reiterated, and compliance therewith must be ensured through appropriate controls and sanctions.

– Thorough rules should be devised on **access to information** handled by court staff (regarding employees entitled to have access, the parameters of official secrecy, and procedures).

• *Funding, logistics, and human resources for court administration*

– The overall budget of the judiciary should provide for **sufficient funding, equipment and facilities** for the court administration, while rectifying the existing disparities between the judiciary and the other branches of power, on the one hand, and among the separate branches and bodies inside the judiciary, on the other hand. This should be promoted by an equitable allocation of resources among the branches of the judiciary; for example, by striking a fair balance between the bodies in Sofia and those in the countryside.

– **More funds** should be earmarked in the budget of the judiciary for the work of its administration in general, and for case management in particular.

– **The conditions of work should be improved** through the rational use and management of the Court Houses Fund which should be relied upon to expand and improve the existing buildings of the judiciary and the equipment at the work places of staff members.

– **Competitions** should become the standard practice of appointing court staff, as envisaged in §. 188a of the *Law on the Judiciary* and in the *Rules on the Organization of Court Administration, on the Functions of Services at Regional, District, Military and Appellate Courts, and on the Status of Court Staff*.

– A mechanism should be devised for the **recruitment of new staff** members trained at specialized schools, while involving appointed personnel in **continuous training**.

– **New mechanisms of managing and controlling** court staff should be elaborated.

• *Automating administrative work*

To ensure the speedier and more transparent processing and provision of information which would enhance the performance of court administration and reduce to a minimum the chances for corruption transactions, the following measures should be implemented:

– Transfer any case-related information and operations from paper to electronic medium and store all of the files in electronic form based on **a uniform software product implemented in all courts**.

– Introduce a new approach to the search and retrieval of **case-related information** by devoting several work stations solely to this activity, which should be conducted with a software program; other staff members would thus be able to work at ease and to concentrate on the cases themselves and the orderly processing of court papers.

– Court services should **provide any public information** to outside agencies and institutions or to private individuals (notaries, law firms, etc.) **in electronic form**, in return for fees and under strict information security arrangements embedded in the software used.

• *Changing the structures and the corresponding positions*

In order to modernize court administration and ensure its smooth operation, implementation of the relevant provisions of the *Law on the Judiciary* and of the *Rules on the Organization of Court Administration, on the Functions of Services at Regional, District, Military and Appellate Courts, and on the Status of Court Staff* should be expedited. Similarly, a number of new positions should be introduced (court administrators, administrative registrars, court statisticians, judicial police, etc.), while the functions attached to some of the existing positions (such as court registration clerks, and court secretaries) should be revisited.

The above steps should considerably improve the performance of individual employees and of the court administration as a whole, and would allow the heads of different bodies within the judiciary to rid themselves of countless irrelevant functions they are bound to perform now. The clear distinction between the responsibilities of different staff members would contribute to a speedier, more transparent and efficient administration of justice.

• *Education and training of court staff*

The professional training and the integrity of court staff members are of the essence given their responsibility in ensuring the high-quality overall operation of the judiciary. It is therefore necessary to continue to refine, within the framework of the National Institute of Justice, the practice launched by the Magistrates Training Centre of drafting and implementing advanced training programs for court staff members. The programs cover, among other things, the ethical and anti-corruption aspects of their work. Additionally, on the basis of programs developed and agreed upon at the national level, the training of court staff should be decentralized by court district and the responsibility for training the staff in each district should be entrusted to the corresponding head of the judicial body or to a magistrate appointed there. The cooperation for training of court staff members that has been established—including training of trainers between the National Association of Court Clerks and the United States Agency for International Development—provides an appropriate basis for decentralized training initiatives. Until the end of 2003, more than 700 court staff members and 40 court staff members trainers have been trained. An all-year curriculum for training of members of court administration, including newly-appointed court staff, has been approved to be implemented on a regional level for 2004.

In the long run, it is pertinent to consider the introduction of compulsory training upon any initial appointment to a given position, and this should gradually transform into **specialized training** as a requirement to start working in the court administration. Likewise, continuous training should be offered on a standard basis to enable staff members to regularly upgrade their skills.

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

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

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

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

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

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

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

C.1. Criminal Law Instruments Used to Combat Corruption

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

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

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

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

Source: Ministry of Justice

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

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

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

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

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

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

Source: Ministry of Justice

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

C.1.1. Criminal Law

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

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

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

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

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

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

Source: Supreme Prosecution Office of Cassation

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

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

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

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

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

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

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

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

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

- *Required legislative amendments*

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

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

Source: CMS of *Coalition 2000*

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

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

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

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

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

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

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

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

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

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

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

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

C.1.2. Criminal Procedure

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

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

TABLE 20 MAJOR INVESTIGATION INDICATORS, FIRST HALF OF 2003

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

Source: National Investigation Service

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

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

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

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

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

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

TABLE 21 SPREAD OF CORRUPTION AT VARIOUS STAGES OF CRIMINAL PROCEEDINGS

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

Source: CMS of *Coalition 2000*

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

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

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

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

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

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

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

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

- *Required legislative amendments*

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

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

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

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

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

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

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

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

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

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

Източник: СМК на *Коалиция 2000*

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

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

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

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

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

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

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

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

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

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

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

TABLE 23 STATISTICS ON DETECTED CORRUPTION-RELATED CRIMINAL OFFENSES

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

Source: Ministry of Interior

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

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

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

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

C.1.4. Execution of Penalties

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

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

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

- *Required legislative amendments*

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

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

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

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

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

C.2. Civil Law and Procedure

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

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

C.2.1. Civil Law: The State of Affairs

• *Property law*

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

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

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

• *Commercial law*

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

– *Company law*

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

– *The legal framework of corporate insolvency*

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

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

• *The system of company incorporation*

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

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

• *Labor law*

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

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

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

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

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

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

• *Civil liability for criminal offenses*

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

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

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

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

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

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

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

Source: CMS of *Coalition 2000*

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

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

C.2.2. Civil Procedure: The State of Affairs

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

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

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

The following problems of civil justice deserve notable attention:

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

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

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

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

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

Source: CMS of *Coalition 2000*

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

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

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

C.2.3. Required Legislative Amendments

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

- *Amendments to commercial law*

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

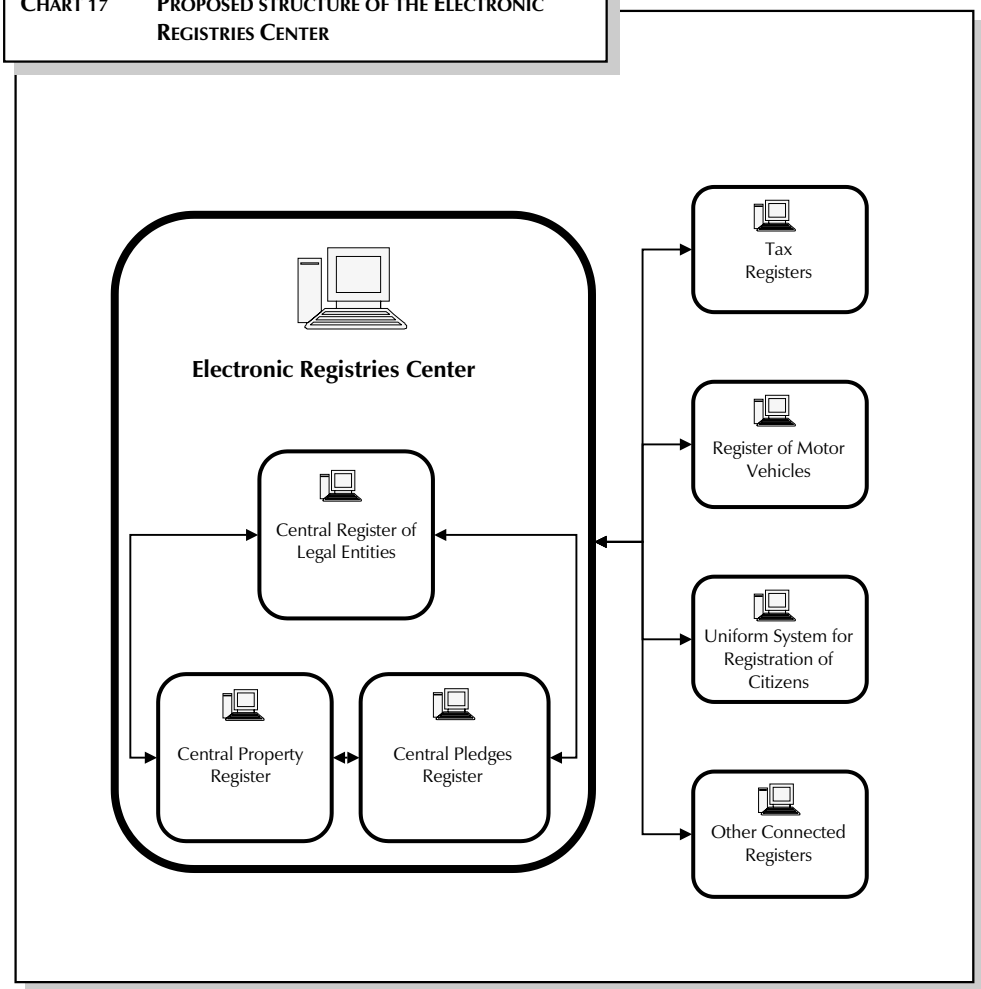
- *Registration reform*

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

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

- *Amendments to labor law*

CHART 17 PROPOSED STRUCTURE OF THE ELECTRONIC REGISTRIES CENTER



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

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

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

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

- *Amendments to civil procedure*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

• *Summoning and serving notice*

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

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

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

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

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

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

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

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

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

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

• *Collateral proceedings and enforcement*

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

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

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

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

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

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

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

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

C.3. Administrative Law and Procedure

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

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

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

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

– The bureaucratic machinery is slow and clumsy.

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

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

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

• *Measures to modernize the public administration*

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

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

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

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

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

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

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

- *Measures to reform administrative law and procedure*

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

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

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

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

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

C.3.1. Administrative Law: The State of Affairs

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

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

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

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

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

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

- *Establishing a professional civil service*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- *Operational autonomy*

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

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

C.3.2. Administrative Procedure: The State of Affairs

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

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

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

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

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

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

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

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

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

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

- *Failure to respect and comply with court acts*

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

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

C.3.3. Required Legislative Amendments

- *In the field of administrative law*

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

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

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

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

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

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

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

• *In the field of administrative procedure*

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

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

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

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

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

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

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

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

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

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

D. INTERNATIONAL COOPERATION ON ANTI-CORRUPTION REFORMS IN THE JUDICIARY

In recent years the role of the judiciary in the system of democratic institutions has been receiving increased attention. The assessment of the development in the national justice systems has become a key criteria for the success of reforms in the transition countries. In this context, the growing international interest in the process of judicial reform in Bulgaria, as well as the high expectations for dealing with the problems in the judiciary in the context of EU accession, are well founded.

The slow pace of reform has mostly prompted critical assessments by international institutions, foreign governments and Bulgarian NGOs. The drawn-out administration of justice and human rights violations (evident in the many cases brought against Bulgaria in the European Court of Human Rights, although those violations were allegedly committed in the period of 1993-1998), low public trust in the judiciary, the spread of corruption, and the impunity of offenders, particularly among magistrates, are most often quoted as problematic issues. Thus in recent years all international institutions and major foreign partners highlighted the importance of an accelerated judicial reform for the success of both integration efforts and overall reforms in the country.

There exists *"a general perception that the judiciary had achieved insufficient results in the combat of crime, especially as concerns organized crime and corruption, including corruption in the judiciary itself."*

Reform of the Judicial System in Bulgaria, Conclusions adopted by the Venice Commission at its 55th plenary session (Venice, 13-14 June 2003) *"Deficiencies in the administration of justice represent the country's most outstanding democracy-related problem."*

USAID/Bulgaria Graduation Strategy 2003-2008, p.49

The link between judicial reform and integration is acknowledged in the Judicial Reform Strategy adopted by the government October 2001: "The strategy's main purpose is the development of European standards in justice, by defining the political and legislative priorities of the reform of the judiciary, that will contribute to the process of preparation of the Republic of Bulgaria in order to join the European Union. The strategy complies with the requirements and commitments that Bulgaria has accepted in the National Program for the Adoption of the Acquis and with the priorities of the Accession Partnership."

D.1. Political Implications

The interest of foreign partners in the outcome of the reforms—in particular those in the judicial power—is a key factor for their success and is undoubtedly beneficial to political developments in Bulgaria. Arguably, the current focus on the judiciary—specifically in the field of anti-corruption—and the need for constitutional changes would not have materialized in 2003 without such interest from abroad (it is indicative that the changes in the Constitution came to be dubbed "the Ferheugen amendment"). Communicating this concern appropriately will determine the extent to which the Bulgarian public will come to realize that it is not inspired primarily by a quest for certain advantages (say, in the process of negotiations) but rather aims at creating long-term trust by Bulgaria's international partners.

One of the best practices exemplifying this is the cooperation between Bulgaria and Spain. In 2003 the Spanish model of transition from an authoritarian state to democracy was a matter of a number of exchanges between the two countries. By means of a project with the Bulgarian Supreme Judicial Council (SJC) and several visits by senior Spanish magistrates and government officials the Bulgarian institutions came to better understand the political consensus that has been underpinning the Spanish transition and which was manifested in a State Pact on the Judicial Reform. Its four main elements—independence and efficiency of the judiciary, legislative amendments, organizational reforms, and reform in the administration and infrastructure of the judiciary—are particularly relevant to the current status of reforms in Bulgaria.

The key impact of the involvement of foreign partners and institutions in judicial reform in Bulgaria is the **encouragement of political consensus on the reform priorities.** In the context of extreme partisanship by political parties—which nonetheless have no meaningful policy differences in this area—Bulgaria's international integration commitments facilitate the adoption of consensual policies.

Still, foreign influence on anti-corruption reforms could bear a number of **risks.**

First, concern of international institutions often suffers from **short-termism**. This gives rise to unrealistic expectations for quick fixes which in turn could encourage the adoption of superficial measures. It does not encourage accountability and could lead to ad hoc measures which, although needed, could only be effective in a broader context of developments.

Second, the so called conditionalities posed by international institutions—aimed at linking integration progress (i.e., to the EU) or the availability of loans (i.e., from the World Bank) to effective judicial reforms—**commit mainly the executive and do not produce direct consequences for the judicial power**. The positive effect of external influence could be further diminished in the context of a rift between the government and the magistrates, the controversy surrounding the proposals for a change in the status of some of the branches of the judiciary, and the discussions of the new role of the court administration. This approach does not contribute to enhancing the accountability of magistrates to society nor to increased transparency in their work. As a result, the understanding among magistrates of the significance of EU membership is at a lower level than in the executive.

Third, there is risk of **shifting priorities**. A probable reason is that political attention has limited capacity, but this could still be detrimental to the sustainability of reforms. For example, the 1995 EU Madrid Summit made public administration reform a priority although the judiciary was even less advanced in its reforms. During the last couple of years attention has shifted to the role of magistrates in Bulgaria while reforms in the administration could hardly be said to have been completed.

Being aware of these risks would enhance the effectiveness of assistance provided by international institutions. Making the judiciary more involved in a three-way cooperation process with foreign partners and the government would diminish fears that reforms are somehow aimed at undermining judicial independence.

It is also crucial that foreign encouragement of specific reforms makes sense from the point of view of the logic of integration, as there is a tendency to lump together various policies or to follow the political debate in the country. In 2003, for example, the European Commission conditioned negotiations progress to certain judicial reforms about which most political parties have already reached a consensus. The constitutional amendments of September 2003 (concerning immunity, the mandate of governing magistrates, and irreplaceability), while important to a more accountable judiciary, are hardly directly relevant to an "ability to take on the obligations of membership." Further—probably partly due to recent problems with crime in the country—the criminal law aspects of reform are being prioritized at the expense of concerns over judicial capacity to evenly and effectively apply the rules of the single market.

A key factor for the effectiveness of foreign involvement in judicial reforms in Bulgaria is the coordination of messages from abroad. In this respect, a best practice could be found in the approach of the EU, USAID and the World Bank. These institutions have, by and large, harmonized their approaches and WB assistance, while provided in crucial integration areas, does not overlap with EU and USAID support, with USAID reflecting WB conditionalities in its assistance programs thus helping Bulgaria comply. The preparation of the $150m Programmatic Adjustment Loan for Bulgaria (PAL 2) targets the improvement of public sector governance, including judiciary reform and eradicating corruption. In order to receive the loan, the government of Bulgaria is supposed to meet a previously-negotiated set of conditions concerning these reforms. The policy dialogue on negotiating and fulfilling these conditions is, in its own right, a learning process for the Bulgarian side.

D.2. Donor Assistance

The relation between the policy messages of foreign partners and international organizations and the concrete financial and technical assistance they provide is of key importance to the overall impact. On the surface, the fact that technical assistance is delivered for objectives that are also conditions to be met before integration might seem contradictory. In fact, both policy implications and funding are conducive to the accomplishment of reforms. With regard to this aspect, multilateral institutions like the EU and the World Bank differ substantially from bilateral aid agencies.

- With **multilateral institutions** a state's particular needs may not be met at the appropriate time since both the political agenda and assistance programs depend on a long and complex coordination process. The degree of financial and technical assistance they deliver is considerably greater; this is why such assistance results in mostly long-term effects.

- **Bilateral aid agencies** are much more flexible in terms of both the forms of aid provision and the particular programs and projects. These differences strike a critical note with the judiciary due to its status and institutional structure. In order for the assistance to achieve its full effect, donor institutions must coordinate their priorities and approaches, not allowing the common measure of competition between them to interfere. This is all the more essential given that the executive and the judiciary are not always capable of leading this process.

The Magistrate Training Center (MTC), initially a non-governmental entity established with the support of the US Agency for International Development (USAID), is an example of good practice for judicial reform support. Aided by the European Commission and USAID, in 2003 the MTC has been under conversion into a public entity under the SJC, namely the future National Institute of Justice (NIJ). The establishment of the NIJ is to be finalized in early 2004.

Donor institutions also diverge importantly in terms of where they place the judicial system in their programmatic framework. In the EU Commission's Justice and Home Affairs agenda, for instance, judicial reform issues and the

TABLE 26 PROJECTS WITH INTERNATIONAL GRANT OR INVESTMENT AID EITHER CURRENT OR LAUNCHED IN 2003[15]

Ministry/Agency	Number of projects	Total amount(€)[16]
Ministry of Justice	6	12,130,000
Ministry of Justice, with the participation of the Supreme Judicial Council	5	24,710,000
Ministry of Justice, with the participation of the Supreme Administrative Court	2	1,080,000
Ministry of Justice, with the participation of other agencies	3	460,000
NGOs	35	1,593,000
The Public Prosecutor's Office	3	6,340,000
Inter-agency	1	1,200,000
Total	*55*	*47,513,000*[17]

[15] Source: Information of the Judicial Reform Working Group with the Donor Coordination Mechanism

[16] These are round figures. There is no information available about the funding of some projects.

[17] The budget of the judiciary in 2003 was about €73 million.

operation of executive law-enforcement bodies converge. This combination derives from the logic of enlargement negotiations, which, as noted above, involve mainly the government and the administration. For USAID, the judiciary is a priority of its own, while the goals their support pursues are achieved in one of several manners—directly (through the Supreme Judicial Council or pilot courts), through the executive, or involving non-state actors.

A positive development in this respect is the creation of a **Donor Assistance Co-ordination Mechanism with the Council of Ministers.** It brings together state institutions and the international donor community and certain non-governmental organizations have been invited to take part, as well. Judicial reform is among the areas the mechanism will cover. Bearing in mind that of the 16 members of the relevant working group in 2003, only two were magistrates, it is advisable to involve a greater number of judiciary representatives in the future.

The form in which international support is provided is predetermined by the institutional and structural peculiarities of the judicial system. One of the frequently used options is the so called "pilot courts", where a particular procedure is introduced, and training is conducted or some other type of technical or financial support is provided. Pilots model successful practices, thus promoting their adoption by their counterparts in judicial units. As a method of work it is suitable for a non-hierarchical structure, for it achieves visible results in short periods. These results have a relatively permanent effect due to the low turnover in the judiciary. The only drawback of the approach is that it only targets individual courts, failing to address the shortcomings of the whole system.

There are some positive developments including the growing level of sectoral specialization of the various aid agencies, and the effort to target pilot projects (e.g., USAID) at courts of varying size and workload so as to cover the broadest possible range of issues:

- Bilateral agencies such as USAID, the governments of Spain, the Netherlands and UK, and others focus on training of both magistrates and court administrations, on monitoring, and on pilot projects at individual courts (e.g., introducing new software and automatic file management systems).

- Multilateral institutions like the EU, the World Bank and the UNDP underpin structural reform, regulatory reform and general capacity-building measures. It should be stressed that a multitude of their projects are funded and/or implemented by individual member countries (such as Germany and Norway).

The EU is the largest contributor to Bulgarian reforms, including judicial reform, through the programs administered by the European Commission. In 2003 a total of 11 judiciary-related projects were implemented under EU's enlargement instrument, PHARE. All of them had a public institution as the main executor and coordinator (the Ministry of Justice in most cases). The Supreme Judicial Council has not independently executed any PHARE project so far, but two projects are in the pipeline.

Seven of the PHARE projects were so-called "twinning" projects, with five of those containingan investment component[18].

Title of the Project	Type of Support
BG-0103.04 *Streamlining of Bankruptcy Proceedings*	Twinning project
BG-0103.03 *System for Career Development and Professional Qualification of Magistrates and Clerical Staff in the Judiciary*	Technical assistance
PHARE Horizontal Programme *Reinforcement of the Rule of Law*	Technical assistance
PHARE 2002 *Implementation of the Strategy for Reform of the Judiciary in Bulgaria*	Twinning project and investment component
PHARE 2002 *Improvement of Administrative Justice in View of the Fight against Corruption*	Twinning project
PHARE 2003 *Reform of the Civil and Penal Procedures*	Twinning project
PHARE 2003 *Support of the Implementation of the Strategy for Reform of the Judiciary through Introduction of Information Technologies*	Grant aid, investment component
BG 02/IB-FI-02 *Developing a National Cooperation and Information Exchange Network for Protection of Intellectual and Industrial Property Rights*	Grant aid, investment component
BG/2000/IB/JH/01 *Strengthening the Public Prosecutor's Office*	Twinning project and investment component
BG/2002/IB/JH/04 *Strengthening the institutional capacity of the Public Prosecutor's Office for fighting organized and economic crime and corruption*	Twinning project and investment component
Strengthening the interagency cooperation between Public Prosecutor's Office and the Ministry of Interior in fighting organized crime and corruption	Twinning project and investment component

[18] Source: Information of the Judicial Reform Working Group with the Donor Coordination Mechanism

Twinning projects are a popular form of providing technical assistance to candidate countries. Many of those targeting justice and home affairs include executive bodies as participants. Twinnings require direct contacts between the respective Bulgarian agency and a member state government institution and are thus more appropriate at the level of state administration rather than in the judiciary. The portion of twinning projects is large due to the fact that the Ministry of Justice is usually the key partner in PHARE projects. Yet ways must be found to make EU support directly available to the judicial system (particularly to the SJC, whose role in international cooperation and EU integration needs to be strengthened).

* * *

The success of judicial reform in Bulgaria is strongly contingent on the commitment of international partners. Their interest should continue to contribute to a broader consensus between policy makers and the separate branches of government.

The efficiency of such international support could be enhanced if the following two courses of action are taken: assistance should be provided in **priority areas defined** as such on the basis of a broad political consensus; and **an independent technical and institutional capacity should be built within the judiciary itself.** Judicial independence—a characteristic paramount to its role in society—should be strengthened through the necessary institutional resources, including those for the absorption of donor support. Insufficient as transparency and accountability are in internationally assisted projects in public institutions, effective judicial reform is unthinkable without these. A stronger involvement of the judiciary in the integration process would directly translate into the enhanced capacity for utilizing international technical and financial support.