

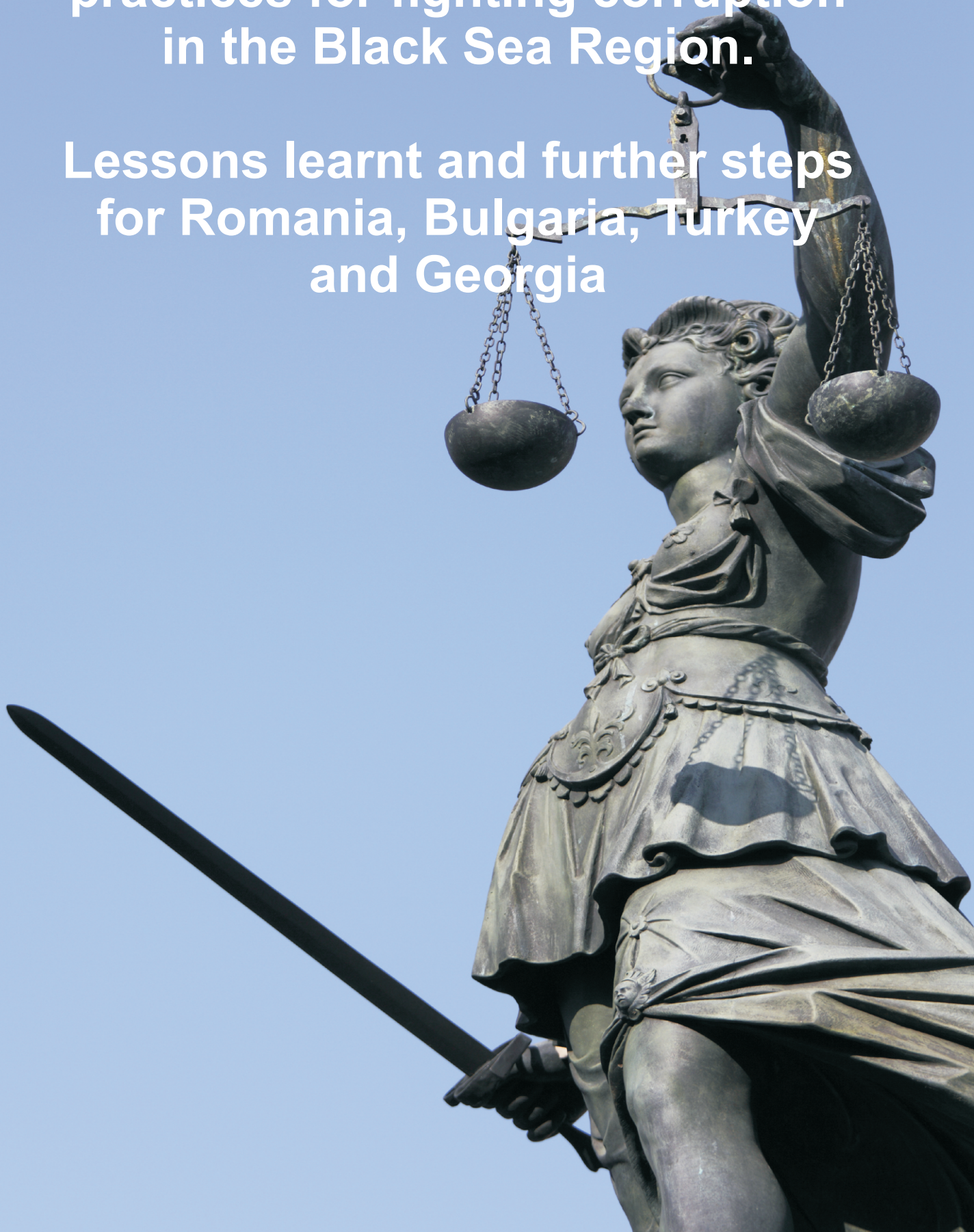


Institutul pentru Politici Publice  
București



# Effective mechanisms and practices for fighting corruption in the Black Sea Region.

## Lessons learnt and further steps for Romania, Bulgaria, Turkey and Georgia





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## **Effective mechanisms and practices for fighting corruption in the Black Sea Region: lessons learnt and further steps for Romania, Bulgaria, Turkey and Georgia**

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The study brings to the attention of the reader a topic which has not been that “fashionable” for countries in the region in the past years, yet it is more actual and acute as ever: facets of corruption in the public sphere, with a focus on conflicts of interests and incompatibilities as main sources generating corruption.

The country reports have been prepared by reputed researchers and associate collaborators from each organization participating in the project, based on a commonly agreed methodology, and have been presented during the regional conference held in Bucharest during September, 9 -10, 2010. A special thank is due to Prof. Dr. Şeref İba and Mr. Hakan Arıkan for their contributions to the report prepared for Turkey, as well as to the other experts that have brought important substance to the debates upon effective means to combat corruption in countries in the region, namely: Mr. Paweł Wojtunik, Head of the Central Anticorruption Bureau, Poland, Mrs. Mila Georgieva, Prosecutor, Supreme Prosecutorial Office, Bulgaria, Ms. Polya Petrova-Ognyanova, Chief Expert of the Legal and Methodology Directorate, Bulgarian National Audit Office, Mr. Svetoslav Malinov, PhD, Member of the European Parliament, Mr. Zurab Sanikidze, Legal Advisor of Analytical Department, Ministry of Justice, Georgia, Mr. Gorazd Šalamon, Deputy Head of the Sector for the Conflict of Interest, The Commission for the Prevention of Corruption, Slovenia and Mr. Jaroslavs Streļčenoks Deputy Head of Division of Control and Activities of Public Officials, Corruption Prevention and Combating Bureau, Latvia.

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## 1.

### ***Towards a common roadmap for fighting corruption***

*“Corruption may not be the oldest profession in the world, but it definitely has a long and disgraceful past that cannot be denied”*

(Harvey Kebschull, *Political Corruption: Making it the “significant other” in political studies*, 1992)

Frequently labeled as *endemic, intrinsic negative* or *an attack to public interest*, the phenomenon of corruption remains an actual and acute problem which still raises the interest of decision – makers, academia and civil society in what regards those universally valid elements which may explain the appearance and the proliferation of corruption.

At present, no country formally refrains from collective efforts of identifying, isolating and working for reducing the multiple forms of corruption. Though, given the complexity of the phenomenon – as well as the larger context in which these efforts must be considered, marked by international pressures of different supranational structures – there is a strong need for a more in-depth understanding of corruption and, correlatively, of the mechanisms through which it is tackled as a severe problem that claims for proper solutions.

Starting from the theory of corruption as an *exchange*<sup>1</sup>, the present study is simultaneously a systemic analysis of corruption in the public sector and of the efficiency/effectiveness of anticorruption strategies promoted by the four countries in the Black Sea Region: Romania, Bulgaria, Turkey and Georgia. Each of the participating countries has its own perspective and approach towards combating corruption; however most do share common features due mainly to the external factors – out of which the accession to European Union has been probably most important.

By reviewing the magnitude and shapes of corrupt exchanges in the public sector, the internal logic of these exchanges, causes and effects, main stakeholders involved and third parties affected, cost and benefits of corrupt acts, as well as effectiveness of resource allocation for anticorruption national policies, we will further argue the need for a common path in fighting corruption in the region.

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<sup>1</sup> Johnston, Michael, *The Political Consequences of Corruption: A Reassessment*, 1986, p. 459

Recently, at the end of 2009, the Swedish Presidency of the European Union has presented to the European Council the document commonly known as *The Stockholm Programme – An open and secure Europe serving and protecting the citizen*. It is for the first time that the EU acknowledges explicitly that *corruption* is a severe scourge affecting the internal security of the Union as an indivisible entity and invites the Commission to take appropriate measures for reducing the incidence of corruption by:

- Developing indicators, on the basis of existing systems and common criteria, to measure efforts in the fight against corruption, in particular in the areas of the *acquis* (public procurement, financial control, etc) and to develop a comprehensive anticorruption policy, in close cooperation with the Council of Europe Group of States against Corruption (GRECO);
- Considering measures to facilitate identification of beneficial owners behind assets and increase transparency of legal persons and legal arrangements,
- Increasing coordination between Member States in the framework of UNCAC (United Nations Convention against Corruption), GRECO and OECD (Organization for Economic Cooperation and Development) work in the field of combating corruption.

While this is not the first time countries gather together for fighting corruption – entities such as GRECO or OECD have a long standing record in that field – it is however the first articulated attempt initiated by EU after the Lisbon Treaty to call for action at European level for what is was once an exclusively national problem and a tick box on the *to do* lists of acceding countries.

Amongst the type of actions that the Commission further intends to undertake, there are:

- Collection of comparable statistics on selected crime areas: money laundering, cybercrime, corruption [...], ongoing
- Communication on a comprehensive policy against corruption in Member States, including the establishment of an evaluation mechanism as well as presenting modalities of cooperation with the Council of Europe's Group of States against Corruption (GRECO) for that purpose, by 2011
- First evaluation of anticorruption policies of the Member States, by 2013

Similar priorities are envisaged for non-member states engaged at different levels of cooperation with EU: Turkey, within the Action Plan for cooperation or Georgia, as part of the EU/Georgia Action Plan.

In the communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee *on a comprehensive EU Policy against corruption* issued in 2003<sup>2</sup>, it called for 10 principles for improving the fight against corruption in acceding, candidate and other third countries:

1. To ensure credibility, a clear stance against corruption is essential from leaders and decision-makers. Bearing in mind that no universally applicable recipes exist, national anticorruption strategies or programmes, covering both preventive and repressive measures, should be drawn up and implemented. These strategies should be subject to broad consultation at all levels.
2. Current and future EU Members shall fully align with the EU acquis and ratify and implement all main international anticorruption instruments they are party to (UN, Council of Europe and OECD Conventions). Third countries should sign and ratify as well as implement relevant international anticorruption instruments.
3. Anticorruption laws are important, but more important is their implementation by competent and visible anticorruption bodies (i.e. well trained and specialised services such as anticorruption prosecutors). Targeted investigative techniques, statistics and indicators should be developed. The role of law enforcement bodies should be strengthened concerning not only corruption but also fraud, tax offences and money laundering.
4. Access to public office must be open to every citizen. Recruitment and promotion should be regulated by objective and merit-based criteria. Salaries and social rights must be adequate. Civil servants should be required to disclose their assets. Sensitive posts should be subject to rotation.
5. Integrity, accountability and transparency in public administration (judiciary, police, customs, tax administration, health sector, public procurement) should be raised through employing quality management tools and auditing and monitoring standards, such as the Common Assessment Framework of EU Heads of Public Administrations and the Strasbourg Resolution. Increased transparency is important in view of developing confidence between the citizens and public administration.
6. Codes of conduct in the public sector should be established and monitored.

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<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52003DC0317:EN:NOT>

7. Clear rules should be established in both the public and private sector on whistle blowing (given that corruption is an offence without direct victims who could witness and report it) and reporting.
8. Public intolerance of corruption should be increased, through awareness-raising campaigns in the media and training. The central message must be that corruption is not a tolerable phenomenon, but a criminal offence. Civil society has an important role to play in preventing and fighting the problem.
9. Clear and transparent rules on party financing, and external financial control of political parties, should be introduced to avoid covert links between politicians and (illicit) business interests. Political parties evidently have strong influence on decision-makers, but are often immune to anti-bribery laws.
10. Incentives should be developed for the private sector to refrain from corrupt practices such as codes of conduct or “white lists” for integer companies.

It seems that national anticorruption strategies and traditional anticorruption instruments (conventions) are no longer sufficient for dealing with corruption, moreover in a context of generalized economic crisis. According to the preamble of the questionnaire used for the public consultation<sup>3</sup>, “this need for for action is justified by the fact that despite various legal and non-legal anticorruption measures and existing international monitoring mechanisms, evidence at hand proves that corruption in both the public and the private sector remains in a substantial number of EU Member States a serious problem. Corruption also occurs in less affected Member States so that it can safely be concluded that within the EU there is no corruption free-zone. Europe wide, 78% of European citizens consider corruption to be a major problem in their country (2009 EUROBAROMETER survey<sup>4</sup>). 88% of citizens consulted on the follow up to the Hague Programme requested more EU action in the fight against corruption”.

According to the same document, “a tailor-made reporting mechanism for the EU 27 should not duplicate existing monitoring mechanisms (e.g. GRECO, OECD and the future UNCAC). On the contrary, it should create synergies, build on their results and detect and address blind spots in the current monitoring system. It should also not represent a disproportionate additional administrative burden on the EU Member states. The objectives of an EU evaluation mechanism should first and foremost be to provide an answer to the expectations of the European public, to evaluate Member States anticorruption efforts and from there on to identify appropriate policy action/measures at EU level which ultimately should lead to a measurable reduction of corruption in the European Union”.

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<sup>3</sup> [http://ec.europa.eu/home-affairs/news/consulting\\_public/0007/consultation\\_questionnaire\\_en.pdf](http://ec.europa.eu/home-affairs/news/consulting_public/0007/consultation_questionnaire_en.pdf)

<sup>4</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_325\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_325_sum_en.pdf)



Given all above mentioned arguments and starting by positively answering one of the questions advanced through the consultation questionnaire: *Existing monitoring mechanisms are largely based on official sources. Do you think they should be complemented with contributions from civil society, academics and independent experts?*, the present report will further detail facts, figures and ideas about how corruption should be better identified, measured, isolated and addressed nationally, regionally and at European level.

## 2.

### ***Common research methodology***

In order to allow for horizontal comparisons between several research dimensions, each country report has been elaborated using a common methodology framework including:

- *general considerations* about the stage of anticorruption fighting in the country of origin, general perception of corruption, external pressures onto the national authorities for combating corruption, other relevant national researches in the field of anticorruption conducted prior to the study;
- *national legislative framework analysis*: reviewing and commenting the most relevant pieces of legislation in the field of combating sources of corruption in the country of origin, targeting (but not limited to): *conflicts of interests, regime of incompatibilities, declaration of assets and liabilities etc.* The analysis focuses on sources of corruption in the public sector and distinguishes between *general legislation* e.g. (National Strategy for Combating Corruption) and *specific legislation* (codes of conduct for civil servants, dignitaries etc). It also tracks the appearance of anticorruption legislation (whether it has been a national initiative or it has been imposed by external actors – e.g. the European Union during negotiations for the accession process, where the case).
- *National institutional framework relevant for anticorruption fight*: each country report reviews the the most important institutions that play a role in combating corruption in the country of origin, including (but not limited to):
  - a. Special Agency for Combating Corruption (if the case)
  - b. Parliamentary Committees having specific responsibilities in the field (if the case)
  - c. Prosecutors' Offices;
  - d. Other governmental and/or independent bodies established at national, regional or local level for combating corruption.

A second major component of each national research deals with assessing *perception* on the effectiveness of anticorruption policies in the countries of origin of relevant stakeholders in the four countries. Although not exhaustive, the qualitative research method deployed (Delphi interviews) allows for assertions on relevant trends/positions within the national societies towards the phenomenon of corruption and potential solutions to it, moreover since the sample of interviewed experts include representatives of the institutions with competences in combating corruption, parliamentarians, lead NGO representatives etc.

The main questions addressed stakeholders' perceptions towards:

- effectiveness of the current national regulations regarding the regime of incompatibilities and conflicts of interest, as main sources of corruption;
- exceptions from the rule of incompatibility for certain categories of professionals (e.g. MPs that can be at the same time lawyers, teachers, doctors etc.);
- participation of elected/appointed officials (Members of the Parliament and of the Government) in various management structures of commercial companies (state owned), banks, financial institutions;
- abstain from vote in the Parliament in case of bills directly affecting professional interests of the Members of the Parliament;
- effectiveness of national institutions engaged in combating corruption, by category.

The qualitative analysis over stakeholders' perceptions towards national anticorruption policies is completed with a review of a representative sample of cases of high – level corruption for each country subject to research, commented with regards to the particular contexts/actions of the national authorities and finality of these cases.

The third component of the research includes conclusions and recommendations of each national researcher – based on previous documentation – with regards to strengthening the fight against corruption in the countries of origin and potentially leading up to regional/European efforts in that respect.

The documentation (review of legislation, interviews) has been carried on during May – July, 2010 and the country reports have been prepared during August – October, 2010.

### 3.

#### ***Effective means for combating conflicts of interests and incompatibilities. The case of Romania***

Romania's democratization after 1989 was closely accompanied by a growing (perception of) expanding corruption in economic and political sectors. Corruption and national anticorruption policies have become a European priority in the early '90s, after a long period of time during which this issue was not present on the public agenda in Europe. Long-term ideological changes related to how public and private sectors are regarded, the difficulties that accompanied transitions to democracy and free market and the ever growing global competition of the private sector were, among others, main arguments for corruption to be thought again as a problem and a policy priority in most Central and Eastern European Countries. Thus, corruption became the focus of sustained international propaganda and new types of evidence and prevention have contributed to the impression that corruption was increasing<sup>5</sup>.

But it should be noted that the notion of widespread corruption should be carefully defined and one should consider a series of benchmarks according to which corruption can be weighed. Forms of corruption have diversified and it becomes increasingly more difficult to treat the problem in itself. Numerous studies and researches in the field have shown that fighting corruption has proven effective in countries where several dimensions of this scourge were tackled through different mechanisms, especially from institutionalizing bottom-up best practices.

In Romania, corruption is not new; it persisted as an institutionalized phenomenon associated with social and economic relations during the communist regime and it burst up in public after 1989. Official statistics speak about a growth of six times in number of crimes of corruption during 1990 – 1999 and also about new crimes associated with corruption such as tax evasion, abuse, fraudulent bankruptcy etc.

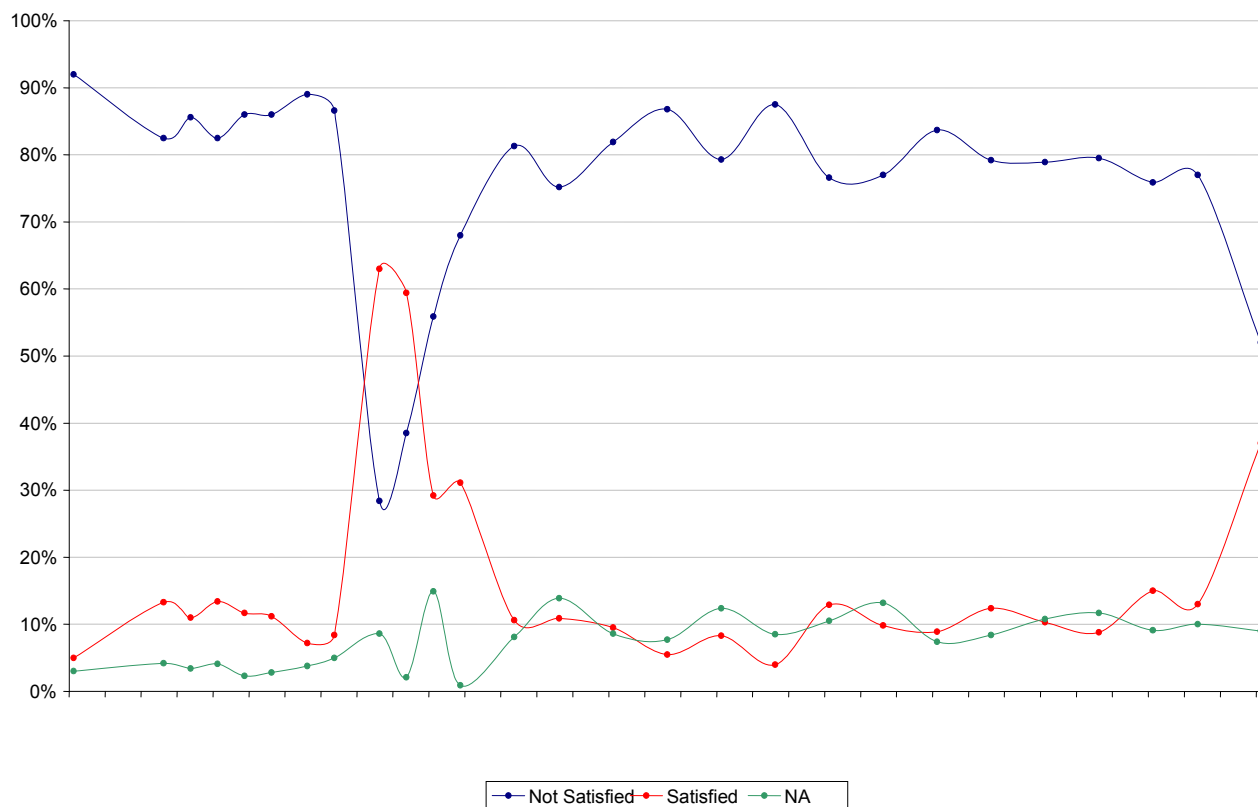
According to the Barometer of Public Opinion<sup>6</sup>, Romanians appreciated corruption on a growing scale during the nineties, whereas after 2000 they have begun to feel that Government has intervened for curbing this phenomenon.

The figure below shows the dynamic of Romanians' perception upon Government's efficiency in combating corruption in Romania during the past 10 years (1999 – 2010).

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<sup>5</sup> Michael Johnston, *Syndromes of Corruption: Wealth, Power and Democracy*, Iași, Polirom, 2007

<sup>6</sup> Bi-annual surveys measuring public opinion on various dimensions of the socio-political and economic life in Romania, implemented by the Romanian Soros Foundation.



### The Corruption Perception Index<sup>7</sup> in Romania

2003	2004	2005	2006	2007	2008	2009
2.8	2.9	3.0	3.1	3.7	3.8	3.8

The problem started to be seriously treated by state institutions and politicians in Romania only after the beginning of negotiations for EU accession. Actually, corruption has become the *leitmotiv* of Romania's progress reports: in 2005, the EU country roadmap progress report noted that "surveys and assessments conducted by both national and international organizations confirm that corruption remains a serious and widespread problem that affects many aspects of society. The impact of Romania's fight against corruption has been limited, there has been no significant reduction in perceived levels of corruption and the number of successful prosecutions remains low, particularly for high-level political corruption. [...] Finally, a number of areas of serious concern requiring immediate action from Romania so that it may

<sup>7</sup> The Corruption Perceptions Index (CPI) measures the perceived level of public-sector corruption in 180 countries and territories around the world. The CPI is a "survey of surveys", based on 13 different expert and business surveys, implemented by Transparency International. It ranges from 10 (the lowest level of perceived corruption) to 0 (the highest level of perceived corruption).

reap the benefit from EU accession but also in order to preserve the balance of the Union. These areas include the structures and mechanisms for participation in European structural funds. They also include the control of industrial pollution, the *fight against corruption* and the need to ensure a high level of food safety, in the interest of both citizens of current Member States and Romania. The Romanian authorities are strongly encouraged to spare no efforts to remedy the existing gaps without further delay.”<sup>8</sup>

3 years after Romania’s EU accession, corruption is still a challenge for responsible authorities and a sensitive subject in the context of the current Mechanism for Cooperation and Verification imposed by EU to Romania and Bulgaria after accession in 2007, for continuing reforms in the fields of judicial reform, *corruption* and organized crimes<sup>9</sup>. Regression generated by recent developments in the implementation of internal anticorruption legislation may easily lead to loss of credibility with regards to the political will in actually curbing corruption.

The problem of real fight against corruption continues to remain the leading critics by the European Community in 2010. The latest Monitoring Report issued in July 2010 by the European Commission on progress in Romania under the Co-operation and Verification Mechanism notes extensively both progresses and shortcomings of the fight against corruption at present<sup>10</sup>.

The positive benchmarks are associated with the activity of the National Anticorruption Directorate<sup>11</sup> (DNA), which continues to show a good, stable track record in the investigation of high-level corruption which has been reflected in further indictments and an increased number of final court judgments, although the Report noted down the lengthy trials and pending cases that have not reached a first instance decision.

The National Integrity Agency<sup>12</sup> (ANI) improved its track record and is recognized by the prosecution, DNA and other law enforcement authorities as an important partner in preventing and sanctioning corruption. Efforts by the General Prosecutor to enhance the fight against corruption by local prosecution offices are beginning to deliver results.

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<sup>8</sup> Romania 2005. Comprehensive Monitoring Report.

<sup>9</sup> [http://ec.europa.eu/dgs/secretariat\\_general/cvm/index\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm). The purpose of the Co-operation and Verification Mechanism (CVM), established on the accession of Romania to the EU, is to help put in place an impartial, independent and effective judicial and administrative system properly equipped inter alia to fight corruption.

<sup>10</sup> [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2010\\_401\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_401_en.pdf)

<sup>11</sup> To be further described in Chapter 2.

<sup>12</sup> Idem 7

However, after the law regulating the organization and functioning of the National Integrity Agency has been declared unconstitutional and a new law was adopted by the Romanian Senate in July 2010, the Commission appreciated at the time that the new legal provisions “interrupts the encouraging development of ANI and breaches commitments taken by Romania upon accession”.

One of the general conclusions of the report was that, despite progress made in some areas, *a coordinated anticorruption policy across the different sectors of government is still missing* and the Commission has issued further recommendations inviting Romanian authorities *to take immediate action* in what concerns:

- Correction of the law on National Integrity Agency in line with Romania’s commitments taken upon accession with regards to the effective contribution of ANI to the prevention and sanctioning of corruption in Romania;
- Improving celerity of high level corruption trials and promote consistency of sanctions applied in high level corruption cases;
- Ensuring the legal and institutional stability of the anticorruption framework, including the implementation of the new Criminal Code and Criminal Procedure Code;
- Increasing the effectiveness of legislation in what concerns prevention of conflicts of interest with regards to the public procurement and establishing performance benchmarks for competent authorities in prevention activities, control activities, sanctioning of conflict of interest, inter-institutional cooperation and cooperation with judicial authorities.

### *National Legislative Framework regulating Anticorruption in Romania – focus on conflicts of interest and incompatibilities*

Amongst various forms/sources of corruption, *conflicts of interest* and *incompatibilities* are the ones generating most difficulties when it comes to identifying the direct relation of causality with a potential criminal act. Therefore the present paper, as well as the other national case studies, focuses on these two main facets of corruption in what concerns legislative and institutional approaches towards them.

The brief review of Romanian legislative framework includes both general legislation that relates to conflicts of interest/incompatibilities as expressions of corruption amongst other criminal offences, as well as special legislation that deals exclusively with anticorruption.

#### *a) General legislation*

##### 1. The Constitution of Romania

The Constitution of Romania addresses solely the issue of incompatibilities between holding multiple public offices by parliamentarians (article 71), the President of Romania (article 84) and the Members of Government of Romania (article 105), setting the following restrictions:

*Article 71:* (1) No one shall be at the same time, deputy and senator. (2) The Deputy or Senator is incompatible with the exercise of any public authority, except the State Government. (3) Other incompatibilities shall be established by organic law.

*Article 84:* (1) During the term of office, the President of Romania may not be a member of any political party and cannot perform any other public or private function. (2) President of Romania shall enjoy immunity. Article 72 (1) shall apply accordingly<sup>13</sup>.

*Article 105:* "(1) Membership of Government is incompatible with holding other public office, with the exception of Deputy or Senator. Also, it is incompatible with holding an office of professional representation paid by a trading organization. (2) Other incompatibilities shall be established by organic law.

## 2. National Strategies for Combating Corruption

The legislative and institutional frameworks regulating anticorruption in Romania have started to institutionalize beginning with the National Strategy for Combating Corruption 2005 – 2007<sup>14</sup>. It set up three priorities, with specific sectoral objectives under each priority, as following:

### 1. *Prevention, transparency, education*

- a) Increasing transparency and integrity of public administration
- b) Preventing corruption in business environment
- c) Information campaigns and educative measures

### 2. *Combating Corruption*

- d) Increasing integrity and resistance to corruption of the judiciary;

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<sup>13</sup> Article 72 (1): (2) Deputies and Senators may be pursued and prosecuted for criminal acts that are not about votes or political opinions expressed in the exercise of their office, but cannot be frisked, detained or arrested without the consent of the Chamber they belong, after hearing them. Prosecution and criminal prosecution may be made only by the Prosecutor's Office at the High Court of Cassation and Justice.

<sup>14</sup> Although this is not the first National Anticorruption Strategy, it points out the benchmarks that Romania needs to accomplish before accession, therefore the authors have considered it to be the reference starting point in institutionalizing the fight against corruption.



- e) Reducing the number of entities with competences in the fight against corruption;
- f) Strengthening the institutional capacity of the National Anticorruption Prosecution Office<sup>15</sup>
- g) Increasing celerity of criminal proceedings and trials
- h) Combating corruption through administrative means

### 3. *Internal cooperation and international coordination*

- i) Coordinating and monitoring the implementation of the Strategy and Action Plan
- j) Full implementation of the anticorruption instruments used by the European Union, the European Council and the Organization for Economic Cooperation and Development.

The National Strategy was accompanied by an Action Plan<sup>16</sup> including specific responsibilities and intermediary deadlines for accomplishing each proposed measure. Some of these measures are still pending for implementation, such as:

- Reviewing legislation with regards to civil servants' evaluation and payment based on performances criteria;
- Rotation of personnel in corruption vulnerable sectors;
- Modifying legislation for ensuring the principle of continuity of criminal proceedings by: setting up objective criteria for distributing cases to prosecutors, restricting the possibility of redistributing or taking over causes by hierarchic superiors, introducing the incompatibility regime for the position of member of the Superior Council of Magistracy and leading positions in courts or prosecutorial offices.

The National Anticorruption Strategy 2005 – 2007 was also the first document referring to the need of designating a specialized institution responsible with control of liabilities and assets, incompatibilities and for ensuring protection of whistleblowers – what is later became the National Integrity Agency.

Naturally, once a new Government took over in 2008, it has adopted a new Strategy on Preventing and Combating Corruption in vulnerable sectors and local public administration 2008 – 2010. The new Strategy defines as *vulnerable sectors* the following areas/institutions, pointing out for each the main risks associated with the incidence of corruption:

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<sup>15</sup> Currently the National Anticorruption Directorate

<sup>16</sup> <http://www.gov.ro/upload/articles/100062/050401-planact-anticoruptie.pdf>

### 1. *Public Safety/Police*

- Lack of objective and transparent recruitment, selection and continuous training of personnel;
- Lack of effective, periodic and unexpected controls from hierarchic structures;
- Difficult working procedures;
- Deficient management;
- Lack of transparency in public relations;
- Subjective interpretation of legislation.

### 2. *Financial Control Service*

- Loose legislation in what concerns sanctionable acts;
- Lack of professional and financial motivation;
- Lack of internal control;
- Direct contact with economic agents;
- Professional risks insufficiently compensated as compared to other authorities with similar responsibilities.

### 3. *National Customs Authority*

- Deficient management;
- Inadequate payment system;
- Insufficient hierarchic control;
- Ineffective training for personnel;

### 4. *Health*

- Lack of legislation (e.g. for regulating informal payments to doctors)
- Inadequate payment;
- Deficient recruitment, evaluation and promoting system;
- Insufficient monitoring of public procurement;
- Vitiating control by corrupted practices.

### 5. *Education*

- Legislative instability;
- Inefficiency of information channels;
- Low level of intra and inter-institutional cooperation;
- Inadequate payment;
- Deficient selection, evaluation and promotion systems;
- Low interest for public procurement processes;
- Insufficient prevention, information and awareness campaigns.

### 6. *Local public administration*

- Inequitable and uncompetitive payment;
- Lack of alternative motivation;
- Lack of objective management of career dossiers;

- Lack of information regarding documents, terms and procedures for the public;
- Difficulty to attract and keep professional personnel;
- Lack of decisional transparency.

Although the Strategy speaks of a General Action Plan and of Sectoral Action Plans for implementing specific measures for curbing the risk factors identified as potentially generating corruption in the above mentioned vulnerable sectors, there are currently no such documents available, with the exception of the General Anticorruption Direction in the Ministry of Administration and Interior.

### 3. Pieces of legislation with general character referring to corruption

- *Penal Code*

A new Penal Code has been recently adopted in July, 2010 by the Romanian Parliament. It includes a separate title regarding criminal offences of corruption (title V, articles 288 - 294) referring to the following:

- Bribery (taking and offering bribe)
- Influence peddling
- Office abuse
- Acts of courts of arbitration members or related
- Acts of foreign civil servants or related

*Conflict of interest* is separately regulated in article 301, as is defined as: “the act of a person holding public office that has performed or participated in taking a decision through which a patrimonial advantage was obtained, directly or indirectly, for oneself, for spouse, for a relative up to second degree including, or for another person with whom the respective has had commercial or work relations in the past 5 years or from whom he/she has benefited of advantages of any nature, is sanctioned with imprisonment from 1 to 5 years and ban for holding public office.

- *Law no. 115/1996 on declaring and control of the assets of dignitaries, magistrates, of persons responsible for the management and control and public officials*

This piece of legislation included for the first time the obligation for dignitaries, magistrates, civil servants and certain persons with management positions in various public authorities to declare their assets and values, according to a template declaration which was not public at the time. The law has been modified several times and most of its provisions were abrogated.

- *Law no. 78/2000 on preventing, discovering and sanctioning corruption*

This law establishes measures for preventing, discovering and sanctioning corruption and applies to the persons that perform a public function, regardless of how they were invested in the public authorities or public institutions. This law has been also modified several times, expanding the area of enforcement.

- *Law no. 147/2002 ratifying the Civil Convention on Corruption adopted in Strasbourg*

CoE Member States and other European countries have adopted the Convention in 1999, having as main objective to determine the signatories to adopt the most effective measures internally for persons whom have suffered damage resulting from a corruption act, with the declared purpose of allowing them to defend their rights and interests, including the possibility of receiving material reparations.

- *Law no. 27/2002 for ratification of the Penal Convention on Corruption adopted in Strasbourg*

Considering that corruption represents a menace to democracy, preeminence of human rights and that it undermines good governance, social justice, loyal competition and stability of democratic institutions, the Romanian Parliament has ratified the Penal Convention on Corruption, which stipulates a series of measures that should be adopted at national level for incriminating various acts of corruption.

- *Law no. 161/2003 regarding some measures for ensuring transparency in exercising public dignities and business environment, preventing and sanctioning corruption*

Also known as “the anticorruption” law, this is the most comprehensive normative act that refers to categories of corrupted acts associated with various public dignities/offices and business environment and it sets up new rules for: public debt, e-governance and e-administration, conflicts of interest, incompatibilities regime, modification and completion of Civil Servants Statute. The law imposes for the first time the on-line publication of debts of all commercial companies, state or privately owned, sets out regulation for on-line payment of taxes, public procurement, release of IDs etc. It is for the first time that the conflict of interest is regulated *per se* in the Romanian legislation, being applicable to all categories of civil servants and dignitaries, except for MPs. Furthermore, the law establishes incompatibilities for civil servants and dignitaries and it expands the categories of active subjects to corruption to managers, administrators and auditors of private companies, Romanian officials that work abroad and foreign officials working in Romania. It also requires dignitaries

and civil servants to *publicly* disclose assets, liabilities, gifts and hospitality services received during office.

- *Law no. 571/2004 on the protection of personnel from public authorities, public institutions and other units reporting law infringements*

The “whistleblower” law refers to the general principles and conditions applicable to the protection of personnel reporting breaches of law, amongst which corrupted acts are the first mentioned by law. Unfortunately this piece of legislation is rather inapplicable and it did not generate major progress in combating corruption in public institutions.

- *Law no 144/2007 on the organization and functioning of the National Integrity Agency*

Announced by the National Anticorruption Strategy of 2005, constantly required by the European Union, the National Integrity Agency (ANI) has been finally created in 2007, practically marking up Romania’s accession to EU. This is the first specialized institution that has the competences to verify assets of dignitaries or civil servants or conflicts of interest and incompatibilities, its activity being subject to control of the judiciary. Recently, the institution has suffered from severe limitations of competences after the Constitutional Court has declared most of legal provisions unconstitutional.

#### *b) Specific legislation*

Apart from the general legislation that is applicable – with mere exceptions – to all categories of public officials, there are several other pieces of legislation that include provisions related to potential sources of corruption – especially conflict of interest and incompatibilities – with regards to special categories of active legal subjects. Hereby below are mentioned the most important such normative acts:

- *Law no. 7/2004 - Code of conduct for civil servants*

The law is regarding the rules regulating the professional conduct of public servants. Rules of professional conduct provided by this Code of Conduct are mandatory for occupying a public office within public institutions and authorities of local and central public administration, as well as the autonomous administrative authorities. The code declares as explicit purpose that of ensuring an increase of quality of public service and contributing to eliminating bureaucracy and corruption in public administration.

- *Law no. 393/2004 on the Statute of local elected officials*

This law speaks about the rights and obligations of each local elected official, including specific provisions related to declaration of liabilities. According to Chapter VIII of the law, local elected officials are obliged to disclose their liabilities through a solemn declaration submitted in duplicate to the secretary of the village, town, city, namely the general secretary of the county or Bucharest Municipality, as case. A copy of the declaration on personal interests is kept by the Secretary in a special file called the register of interests.

It is considered that local elected officials have a *personal interest* if they can anticipate that a decision of public authority to which they belong could be of benefit or disadvantage for himself or for:

- spouse, relative of second degree inclusive;
- any person or entity with whom he/she had a relationship of commitment, regardless of its nature;
- a company which is established as the single shareholder, the position of manager or receiving income;
- any other authority to which they belong;
- person or entity other than the authority which they belong, who paid the official
- fan association or foundation to which they belong,

The law establishes sanctions for those officials not disclosing liabilities or disclosing false information.

- *Law no. 96/2006 on the Statute of deputies and senators*

Similar to the Statue of local elected officials, MPs have their own regulations with regards to incompatibilities and potential conflicts of interest, as following:

#### *Incompatibilities*

The deputy or senator is incompatible with the following functions:

- a) president, vice president, general manager, director, manager, board member or auditor in companies, including banks or other credit institutions, insurance companies, financial institutions and public institutions;
- b) president or secretary general of shareholders general assembly or companies referred to in point a)
- c) State representative at general assembly of companies referred to in points. a)
- d) manager or member of board of autonomous, companies and national companies;
- e) individual trader;
- f) member of a group of economic interest as defined by law.

### *Other incompatibilities*

Deputies and Senators are incompatible with the functions and activities of persons that may not be members of political parties, with the quality of Member of the European Parliament and with any public office granted by a foreign state, with the exception of positions that are subject to agreements and conventions that Romania is part to.

The Deputy or Senator that is incompatible, according to the law, must choose between his/her mandate and the incompatible position by resignation.

The Statute does not refer to potential conflicts of interests for members of Parliament, it only stipulates that each MP, after validation, must submit a honorable liabilities declaration to the Secretary General of the Deputies Chamber/the Senate.

- *Standing Orders of the Chamber of Deputies and of the Senate*

Apart from the general incompatibilities set up by the Statute of deputies and senators, the Standing orders of both parliamentary chambers include special provisions with regards to incompatibilities between administrative functions in the Parliament and Government, such as, for example: Members of the Government may not hold positions in the Standing Bureau, the Commission offices, may not be members of parliamentary delegations and cannot be leaders of parliamentary groups. Members of the Parliament may, however, exercise functions or activities in teaching, scientific research and literary and artistic creation and other areas specified by law.

The relatively large number of pieces of legislation regulating anticorruption in Romania is not necessarily a sign of effectiveness, but an indicator of a rather unpredictable legislation and severe effects of the phenomenon, that needed to be “cured” with fragmented measures. The institutional framework has followed quite a similar dynamics and, as described further, it can be up to a point labeled as a drawback in Romania’s fight against corruption due to the shifts in legislation.

### *National institutions dealing with combating corruption in Romania*

This chapter reviews the main responsibilities of the most important institutions that are in charge with combating corruption in Romania, relative to the normative framework described above, as legislation is effective as long as it is enforced by strong institutions at all levels.

- *National Integrity Agency*

Adoption of an effective mechanism for control of assets has been a consistent recommendation of the Commission over Romania's accession process to the European Union, which is also mentioned in the joint position paper on EU Justice and Home Affairs (Chapter 24). Council of Europe Group of States against Corruption (GRECO) adopted a similar position: one of the GRECO recommendations following the evaluation performed in 2005 referred to the need of improving mechanisms for verifying assets and conflicts of interest. Following these recommendations, one of the objectives set out in the National Anticorruption Strategy 2005 - 2007 adopted by the Government was *combating corruption through administrative means* and thus the National Agency for Integrity was created in 2007, as an autonomous independent authority at national level.

Recently, the law regulating the functioning of the Agency (law no. 144/2007, republished) has been subject to controversial debates in the Romanian Parliament after being appealed at the Constitutional Court.

After a failed process of revision resulting in a new law that practically annulled the most important prerogatives of the Agency, and the EU Commission report on progress in Romania under the Co-operation and Verification Mechanism issued in July 2010 that pointed out to *important shortcomings in Romania's efforts to achieve progress under CVM* and explicitly called correction on the law on ANI in line with Romania's commitments taken upon accession, the Romanian Parliament has ultimately adopted the new law on ANI in September, 2010 (law no. 176/2010) which reinstates the initial *status quo* of the Agency.

According to the law, the Agency is responsible with controlling declarations of assets and liabilities and of all information related to any patrimonial or interests modifications, incompatibilities for a vast category of public officials from all public authorities at central and local level, governmental bodies, independent agencies, as well as for candidates for public offices and members of the Economic and Social Committee.

The purpose for which the Agency was created was that of ensuring integrity in exercising public dignities and offices and preventing institutional corruption, by exerting responsibilities in evaluating assets, liabilities, incompatibilities and potential conflicts of interest of public officials or other categories established by law. In performing its duties, the Agency may cooperate with other institutions/agencies in country or abroad.



At the level of the Agency, the control is performed by *integrity inspectors*, who are responsible for collecting, processing and analyzing all relevant information with regards to the situation of assets, interests and potential incompatibilities of a public official during mandate. Based on these analyses, the inspectors issue *evaluation reports* that may indicate potential infringements of the law regarding disclosure of assets, liabilities, interests and incompatibilities or of contravention or penal nature. The report is communicated to the person who has been subject to verification and, as the case may be, to the fiscal, disciplinary or prosecution authorities, as well as to the committees for verification of assets next to the Courts of Appeal, made up of two judges and a prosecutor.

These commissions may decide with majority of votes whether it sends the case to court, to prosecutors' offices for further investigation or quashes the case.

- *National Anticorruption Directorate*

The National Anticorruption Directorate<sup>17</sup> (DNA) established by the Government Emergency Ordinance no. 43/2002 is a distinct legal entity within the General Prosecution Office next to the High Court of Cassation and Justice and has as main responsibilities to conduct, supervise and control all criminal investigations on corruption crimes and to send cases to court for trial in the following conditions:

- If the prejudice is higher than 200,000 euro or if the equivalent amount of the good(s) subject of corrupted acts is higher than 10,000 euro;
- If the prejudice is higher than 1,000,000 euro, in case of special crime incriminated by the Penal Code, the Customs Code and the Law on fiscal evasion.
- If the prejudice, irrespective of value, is committed by deputies, senators, members of the Government, councilors, judges or prosecutors, officials from the Presidential Administration, Cabinet Office, the governor and vice-governors of the National Bank, personnel of the National Audit Court, of the Competition Council, personnel of army, police forces, custom local elected officials, lawyers, personnel with managerial functions in state companies or financial institutions etc.

Crimes committed against financial interests of the European Union are also in the competence of the National Anticorruption Directorate.

National Anticorruption Directorate leadership is provided by a General Prosecutor and two Deputy General Prosecutors, appointed, according to Art. 54 of Law no. 303/2004, by the Romanian President at the proposal of the Minister of Justice and

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<sup>17</sup> Initially called National Anticorruption Prosecution Office

with approval of the Superior Council of Magistracy for a period of three years, with the opportunity to reinvest once.

The Government Ordinance regulating the creation and functioning of the National Anticorruption Directorate has been amended several times and the prerogatives of the DNA have been expanded as described above. DNA has exclusive competences in combating high-level corruption in Romania, while the competences for investigating cases of corruption for mayors of towns and communes, police agents and public notaries have been transferred to prosecutors' offices next to courts.

DNA has also regional and local branches – 18 territorial departments and 3 territorial offices.

- *Prosecutors' offices*

According to Law no. 78/2000 on prevention and sanctioning corruption, most of the competences for investigating corruption crimes belong to the National Anticorruption Directorate. Prosecutors' Offices next to County Tribunals and Courts of Appeal may organize distinct structures (offices) for combating corruption. The Prosecutors' Offices are competent to investigate cases of small corruption for all other categories of subjects than the ones referred to in Government Ordinance no. 43/2002, article 13 (1), b.

- *Anticorruption General Directorate*

The Anticorruption General Directorate (DGA) was established by Law No. 161/2005 as the specialized structure for preventing and combating corruption within the Ministry of Administration and Interior personnel. The creation of Anticorruption General Directorate was sustained by the European Union, using the assistance from Great Britain and Spain's experts.

Its objective is focused on prevention and fight against corruption offences in which the ministry's personnel may be involved. The Anticorruption General Directorate establishes co-operation with the public and private organizations with attributions in preventing and fighting corruption. The ministry's staff deploys its activity according to the internal and international provisions, observing the principles of objectivity, confidentiality and impartiality, as well as the human rights and freedoms.

According to the latest activity report issued by the Anticorruption General Directorate marking 5 years of activity, DGA has performed integrity tests for 133 police agents and has advanced 4857 files to Prosecutors' offices, out of which 594 cases were sent to court.

Recently, the Minister of Administration and Interior has declared that he intends to expand the prerogatives of DGA after consultations with the General Prosecutor of the National Anticorruption Directorate.

- *Parliamentary Steering Committees*

Both chambers of the Romanian Parliament – the Chamber of Deputies and the Senate – have distinct permanent steering committees having amongst other responsibilities that of regulating anticorruption (named Permanent Steering Committees for investigating abuse, corruption and petitions). However, when analyzing the prerogatives of these committees based on the internal regulations, they have limited and unclear competences with regards to the specific topic of corruption. Whereas the true power in issuing legislation on anticorruption belongs to the Juridical Steering Committees, which have been recently involved in the process of amending the legislation regulating the organization and functioning of the National Integrity Agency, as described above.

*Other structures/institutions/entities with potential impact in the fight against corruption*

- *Whistleblowers*

The institution of *whistleblower* has been introduced in Romania in 2004, through law no. 571/2004 on protection of personnel from public authorities and institutions that report breaches of law.

According to the law, *whistleblowers* are persons working in public authorities whom report in good faith any deed that deems a breach of law, of professional ethics or conduct or of good administration.

The concept was meant to bring innovations to protect public integrity by:

- Applicability of law to all authorities and public institutions, including utilities and national companies;
- Introducing the principle of good administration;
- Encouraging civic attitude in law enforcement and shaping conduct of civil servants and personnel working in public authorities.

Yet, despite the ambitious objectives of the law institutionalizing the whistleblower in Romania, practice has shown that it has been rather ineffective, the main argument being that whistleblowers are insufficiently protected by law and may be easily fired. The EU Commission has strongly recommended strengthening enforcement of confidentiality rule in what concerns the activity of whistleblowers in Romania.

- *Nongovernmental organization and media*

Although not part of the public system engaged in combating corruption, Romanian non-governmental organizations (including media organizations) have proven to perform a remarkable activity in this field, sometimes vital in key moments marking Romania's progresses before and after EU accession.

Currently, on EU's webpage dedicated to the Mechanism for Cooperation and Verification for Bulgaria and Romania there is an open list<sup>18</sup> with major NGOs involved in monitoring progresses which the Commission often refers to when drafting country reports.

Mass-media has also played a crucial role in increasing the impact of anticorruption fight of various responsible institutions, by largely exposing cases of corruption. Nevertheless, sometimes it has been presumed of having used this advantage for creating pressure or manipulating public opinion (the so-called "TV law").

*Are anticorruption efforts effective in Romania? What are the next steps that should be undertaken for effectively combating conflicts of interests and incompatibilities? A brief overview of main stakeholders' perceptions*

The descriptive analysis over the legislative and institutional framework regulating anticorruption in Romania has been completed by a qualitative assessment of perceptions of various actors directly involved in the fight against corruption with regards to particular aspects concerning:

- The possibility of increasing the sphere of control over potential conflicts of interests for members of the Parliament/public officials;
- The effectiveness of current institutions engaged in the anticorruption fight in Romania.

Under the first category, the researchers have investigated the perceptions of respondents from various categories (MPs, prosecutors, lead NGOs experts and journalists) with regards to:

- *Sufficiency of legal provisions regulating conflicts of interest/incompatibilities for elected officials:* whereas all MPs agreed that there are enough legal provisions regulating the two potential sources of corruption, the rest of the

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<sup>18</sup> [http://ec.europa.eu/dgs/secretariat\\_general/cvm/romanian\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/cvm/romanian_en.htm)

respondents consider that there is still need for improvement, especially in what concerns potential conflicts of interests in public procurement processes.

- *Exemptions from incompatibilities regime for elected officials in what concerns teaching, scientific research and literary/artistic creation:* opinions were equally balanced between those agreeing with such derogations (mostly MPs and public officials, but also one of the NGOs' representative) and those considering that no exemption must be allowed for elected officials during office.
- *Exemptions from incompatibilities regime for elected officials in what concerns practicing liberal professions, such as lawyer or doctor:* opinions weighed towards rejecting this exemption, although most of the MPs interviewed were in favor of this exception currently existing in the Romanian legislation.
- *Interdictions for public officials' commercial relations with state authorities:* when asked about the possibility of prohibiting public officials and their relatives up to the third degree to enter any commercial relation with state authorities, respondents split again in two categories – the first category, including members of the Parliament but also representatives of NGOs – whom did not agree with such an interdiction, considering that it would be more appropriate to enforce provision related to transparent disclosure of such relations, whereas the second categories, including representatives of civil society and prosecutors were in favor of the restriction.
- *“Revolving doors” – should there be a restriction for Romanian public officials to work for a private company with whom he/she previously had commercial relations during office for a specific period of time (1 to 5 years).* Although most of the respondents considered this initiative as a good one, some mentioned the possibility of imposing certain limitation (e.g. a minimum equivalent value of contracts).
- *Refraining from participating to a decision (voting) when a potential personal interest is at stake (e.g. MPs who are also lawyers should refrain from voting the law regulating the Statute of the profession):* opinions are again divided amongst respondents whom favor a more strict regulation of similar situations and those who would not agree with such a restriction (mostly MPs, but also other public officials who declared that this is a matter of professional conduct, not of law).

- *Public Registry of contacts of public officials with representatives of the private/business environment – should there be a specific regulation in that respect?* Only the representative of the National Anticorruption Directorate and two MPs agreed with the idea of introducing such a registry for public officials (elected and appointed), whereas the rest of the respondents considered that it is not a viable alternative at this point, as there is no effective control of the content of the Registry.
- *Perception of effectiveness of institutions engaged in the anticorruption fight in Romania.* The institution appreciated by the majority of respondents (75%) as being the most effective in combating corruption in Romania is the National Anticorruption Directorate, whereas the other two categories of institutions – the National Integrity Agency and the Prosecutors' offices scored lower satisfaction rates: only 50% of the respondents appreciated the activity of Prosecutors' offices as being effective for the fight against corruption in Romania and 40% consider the National Integrity Agency as being effective in this field.

Such diagnosis, although subjective, is useful for testing current trends in various professional segments that are involved in the more general initiatives regarding the anticorruption fight in Romania and further used for proper advocacy/awareness raising purposes with regards to new policies in the field.

#### *“Fishing” for corruption in Romania – a diagnostic*

In 2005, the former EU Commissioner Günter Verheugen declared that the Romanian anticorruption authorities should catch more 'big fish' instead of 'small fish'." Since then, several cases of corruption of high officials have been brought to court, but, as it appears below, seldom has the judiciary finalized any of these cases.

There are several examples of such corruption files that are currently on various phases of trial in Romanian courts, but one important thing to mention in this context is the procedural artifices used by lawyers to postpone the decisions. Out of these, the most common is the so called *exception of unconstitutionality*<sup>19</sup> that is raised by the advocates for delaying on an indeterminate period the trials. According to a central Romanian newspaper, more than 100 such exceptions have been raised in 2009 with regards to corruption cases. Otherwise, the recent Report on progress of

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<sup>19</sup> A procedure used for defending public rights and liberties which can be claimed in a lawsuit only if it has a direct connection to the case. If the Constitutional Court admits the exception, the judicial act in discussion is no longer applicable and will not generate any effects in the future.

judiciary reforms in Romania issued by the European Commission in the spring of 2010 notes that “in all cases involving allegations for high level officials at least an exception of unconstitutionality has been raised.”

Amongst the most notorious cases of corruption involving public officials filed by the National Anticorruption Directorate in the past years and still pending for final decisions are those of:

- Adrian Năstase, former Prime-Minister of Romania during 2000 – 2004, currently the Vice-president of the Chamber of Deputies has several corruption files pending for decision. Out of these, the most notorious is the so called “Zambaccian” file, in which the former Prime-Minister is accused of bribery, influence peddling and participation to forgery in deeds by private signature. The file has been finalized by DNA in 2008 and is still pending at the High Court of Cassation summoned to appear in court on November, 9, 2010. The file has been stuck in the Constitutional Court for more than a year.
- Dan Voiculescu, Vicepresident of the Romanian Senate and owner of one of the largest media trusts in Romania – Intact – has been accused for buying 3,6 hectares of land and 1 hectare of constructions in a residential area in Bucharest for a price 75 times smaller than the real market price. DNA has started prosecution in 2008 for abuse of power for gathering unfair advantage and money laundering. Senator Voiculescu has been indicted in December 2008 and the trial is ongoing.
- Marian Opreșan, President of County Council of Vrancea is being on trial for abuse of power, forgery and use of forgery since 2006, for a prejudice of approx. 2 million Euro. The trial had 18 hearings in Focsani court, it has been moved to Cluj Tribunal for another 10 hearings, then it has been passed to Cluj-Napoca court where is still ongoing.
- Antonie Solomon, former Mayor of Craiova, is accused of bribery, forgery and use of intellectual forgery. He has been arrested in March 2010 and since September, 2010, he is judged in liberty.
- George Copos, former Vice Prime-Minister during 2004 – 2008 and owner of an important football club, has been accused of a causing a prejudice of 1 million euro by declaring only 25% of the amount received for 38 commercial spaces sold to the National Lottery. The lawyers of Copos have raised two exceptions of unconstitutionality in the case, both being rejected by the Constitutional Court. The trial is pending at the Bucharest tribunal.
- Codrut Seres and Zolt Nagy, two former Ministers of the 2004 – 2008 cabinet, have been trialed in a complicate case of espionage, treason and corruption in several files, none of these are finalized at the moment.
- Decebal Traian Remes, former Minister of Agriculture, is being prosecuted for continued influence peddling, after being filmed in 2007 when he received an envelope with 15.000 Euro from Ioan Muresan, another former Minister of

Agriculture. Remes' lawyers have raised the exception of unconstitutionality over telephone recordings proofs administered by the prosecutors. The Constitutional Court has rejected the exception and the case is pending at the High Court of Cassation and Justice.

- George Becali, Member of the European Parliament and owner of an important football club, is being prosecuted for bribery in the file known as "The suitcase". The case has been moved from one court to another (including the Constitutional Court) from 2008 and is still pending for decision.
- Cătălin Voicu is the first case of an incumbent Senator for whom the Senate has approved the detention under remand with 70 votes out of the minimum 69 votes necessary<sup>20</sup>. The Senator is accused of receiving hundreds of thousands of Euro from businessmen in exchange of influence over judges and policemen for cases in which the respective businessmen were prosecuted. Exceptions of unconstitutionality have been, of course, raised in this lawsuit, too. The trial is still ongoing and the Senator is currently under arrest.

Such examples are the living proof that corruption is still a major problem in Romania, having the conflict of interest as primary roots. Is no wonder that Romanians – as other Europeans do – perceive high degree of corruption at all administrative levels, moreover since notorious cases seem not to ever end in conviction. The usage of technicalities such as the exception of unconstitutionality or the approval of the Parliament for prosecuting MPs on a large scale is still a drawback in fighting high level corruption, and these should be deemed to reflection for other national anticorruption strategies assessments and a future common policy in the area. Nevertheless, the topic of *anticorruption*, although confiscated and emptied of content in the past by electoral discourses, appears to be more actual than ever for the Romanian society in general and it still counts as a priority for Romania's capacity of proving commitments taken upon accession to the European Union.

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<sup>20</sup> This is another mean of over protection for elected officials, whom cannot be withheld unless the qualified majority of the Chamber approves through vote.



#### **4.**

#### ***Effective means for combating conflicts of interests and incompatibilities. The case of Bulgaria***

The phenomenon of corruption appeared in Bulgaria as a top priority social problem towards the end of the 1990s. Similarly to Western democracies, the problem of corruption in Bulgaria was first studied and brought to the social agenda by non-governmental actors. Broad corruption awareness campaigns, studies on corruption, and many other initiatives got underway at that time, with the support of the international donor community. Gradually, the anticorruption agenda pervaded political parties and Governments' programs while some of its main principles were converted into legislation. In spite of all these achievements, corruption and organised crime were identified by the European Commission as two of the most serious problems in Bulgaria. System reforms, as well as practical results in the fight against corruption and organised crime, were named as conditions for the accession of Bulgaria to the European Union.

Since the end of the 1990s Bulgaria has been included in a number of international surveys measuring corruption. The most well-known of them, the Transparency International Corruption Perceptions Index, indicates that after a period of marked improvement between 1998 and 2002, corruption perceptions seem to be stagnating around a relatively moderate level over the last five years (4.0 for 2005). In 2005, Bulgaria ranked 55<sup>th</sup> out of 158 countries included in the survey. In 2010, the country ranked 71<sup>st</sup> with a score 3.8, which is an indication of a partial backsliding, although comparative measurements based on the CPI index are to a large extent misleading. The huge interest in the topic of corruption has resulted in numerous surveys not only of experts' opinion, but also of public perceptions. According to data from the Vitosha Research Polling Agency,<sup>21</sup> the Bulgarian public perceives corruption as one of the most serious problems in the country. It has always been among the top five social problems, usually taking up fourth or fifth position. In 2004 - 2005, it grew in importance to become the third most important problem. The overriding concerns of the Bulgarian population were low incomes (first place) and unemployment (second place). The dynamics of these rankings clearly shows that Bulgarian society considers corruption one of the most important elements on the country's political agenda. Expectations related to the countering of corruption tend to rise in the periods of transition from one government to another. A new government usually heightens the priority of the problem and raises the performance standards for the political class. Data from opinion polls covering the 1998 - 2010 period suggest that public expectations remain unmet. Interestingly, over the last several years, the overall level of corruption victimisation has been dropping (or at least has remained constant), while at the same time the public perceptions of the level of corruption in

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<sup>21</sup>On the Eve of EU Accession: Anticorruption Reforms in Bulgaria, Center for the Study of Democracy/Coalition 2000, 2006.

society practically have worsened. This means that the subjective perceptions reflect people's ethical assessment of the observed levels of corruption, showing whether observed corruption levels are perceived as too high or normal; i.e. perceptions are a qualitative assessment of the social and moral acceptability of the corruption situation in the country and not a measure of the number of corruption transactions. When citizens believe they live in a highly corrupt environment, where corruption not only remains unpunished, but is also perceived as an effective means of solving problems, their own inclination to engage in corrupt practices increases. In Bulgaria, the predominant public perception is that corruption is widespread in all spheres of public life, at all levels of state governance, and among the various occupational groups. Politicians, MPs, ministers, and tax officials have been perceived to be far more corrupt than the other occupational groups. In terms of institutions, customs, courts, and healthcare system have been perceived to be the most corrupt public institutions in Bulgaria.

When asked to explain why they believe that corruption is so widely spread in Bulgaria, most of the respondents included in public opinion surveys tend to rank various economic factors at the top of the list. These include the fast enrichment of those who are in power, compared to the low salaries of civil servants. Additional factors that facilitate this process are the imperfect legislation, the ineffective judicial system, the lack of strict administrative control and, last but not least, the moral crisis in the period of transition.

In this paper our task is to present the anticorruption infrastructure of Bulgaria. For this purpose, in the first section we describe the existing anticorruption institutions. The second section is devoted to the analysis of the normative anticorruption framework. In the third section we explore the perceptions of corruption and the effectiveness of anticorruption measures of six specific target groups: the politicians, the judiciary, the police, the media, NGOs and business. We have studied these perceptions and their underlining understandings on the basis of in-depth interviews and analyses of documents. In the next section we offer four brief case studies of corruption scandals, which we believe are important for the understanding of the corruption situation in Bulgaria: these cover the areas of privatisation of state assets, political financing, corruption in the security services, and corruption in the judiciary. The paper ends with a set of conclusions and tentative recommendations.

### *Anticorruption normative framework*

In this section we review the main anticorruption norms in the Bulgarian legal system, starting from the basic law – the Constitution. Our analysis includes all norms with anticorruption potential, including norms on incompatibilities, conflict of interest, etc. Certain specific laws, as the law on elections or the party law, as well as the laws of

public procurement are omitted from the analysis, since they are too specific and their content cannot be properly analysed in the present limited space.

*The Constitution*<sup>22</sup> and numerous laws, governmental regulations, as well as ethics codes provide the normative framework for the anticorruption activities.

The Constitution states in art. 68 (1) that 'MPs cannot hold other state office or perform activities, which according to the law, are incompatible with their status of MPs'. Art. 95 (2) regulates the incompatibilities with the position of a president and vice-president: they cannot be at the same time 'MPs, perform other state, societal and economic activities as well as be members of the governing bodies of political parties. The position of the prime-minister and deputies are under the same restrictions and requirements for compatibility as that of the MPs (art. 110).

With an amendment to the Constitution in 2007 the Inspectorate with the Supreme Judicial Council was established, with the task of overseeing the activities of the representatives of the judicial power (it is implied, that this is the main body engaged in the fight against corruption within the judiciary itself).

Art. 147(5) regulate the incompatibilities with the position of a member of the Constitutional court. These officials cannot hold an elective position, or any other state or societal position, nor can they be members of political parties or trade unions, as well as perform any economic or other professional activity and be free-lancers.

*The Law on the Administration*<sup>23</sup> regulates at 19 (6)<sup>24</sup> a host of incompatibilities for high public office holders, such as the prime-minister and his/her deputies, ministers and their deputies, region governors and their deputies as well as the heads of the state agencies and other high officials. They cannot hold other state office, cannot have trade and other economic activities, be members of the boards of NGOs, companies and co-operations, as well as be free-lance workers (except in the cases of academic activities and authorship).

*The Civil Servants Act*<sup>25</sup> regulates the rights and duties of civil servants. At art. 7 (2) are enumerated the incompatibilities, related to this status, which again exclude trade and other economic activities, political independence (no leadership or control functions within political parties), work on a second contract, being an MP and member of the city councils. For the senior civil servants, a further requirement for Bulgarian citizenship exists.

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<sup>22</sup>State Gazette№ 56/13.07.1991.

<sup>23</sup>State Gazette№ 130/5.11. 1998.

<sup>24</sup>This specific article was introduced in the Law in 2006.

<sup>25</sup>State Gazette№ 67/27.07. 1999.

All the above-mentioned laws also contain provisions against the conflict of interests, which were introduced after the promulgation in 2008 of the Law on the Prevention and Disclosure of Conflicts of Interests.<sup>26</sup>

*Law on the Publicity of the Property of Persons Occupying State Positions* (adopted in 2000).<sup>27</sup>

A law demanding the publicity of all assets of high officials was promulgated in 2000. It required that upon undertaking office, the high public officials file a declaration, indicating all their property, income and expenses (real estate, motor, water and air vehicles, cash, takings and liabilities, securities, shares, income, travel, education etc. (art. 4) – both in the country and abroad (art. 2). These declarations are public (art. 6(1)) and kept for 10 years.

From 2006, the public register of these assets is available on the website of the Bulgarian National Audit Office (art. 6 (2)). The public register is established within the auspices of the chairperson of BNAO. With the amendment from 2006, this body is also responsible for performing all the necessary actions for verifying (by requesting documents from the relevant state bodies) the submitted declarations of the high public officials. In cases of failure to submit declarations and for verified inconsistencies between those and the facts, the chairperson of BNAO is responsible for informing the Executive Director of the National Revenue Office. There are monetary sanctions for failure to submit declarations. The scope of the duty-bound persons was also increased. With the 2006 amendments to the Law on the political parties, members of the governing and controlling bodies of the political parties are also responsible for declaring to BNAO their assets, income and liabilities in the country and abroad. The political parties have to declare their donors, as well as the amount and the type of donations. They have to also send to BNAO a list of NGOs, in which members of their governing bodies participate.

*Law on the Prevention and Disclosure of Conflict of Interests*

This law was adopted in 2008 and entered into force from the beginning of 2009. Prior to the Law there have been numerous partial regulations for disclosing conflict of interests, spread in different pieces of legislation, such as the Penal code, the Law on Administration, the Civil Servants Act, the Ethical code of the Civil Servants, the Public Procurement Act, the Internal Rules of the Parliament, etc. What was entirely lacking was a clear institutional framework for implementing the conflict of interest provisions. The ethical codes and rules were not sufficiently instrumental in countering the emergence of conflicts of interest. This has led to constant unchecked abuse of powers by high officials and civil servants. The trigger of the introduction of

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<sup>26</sup>State Gazette № 94/31.10.2008.

<sup>27</sup>State Gazette № 38/09.05.2000.

this piece of legislation was the public scandal, involving the executive director of the Fund 'The Road Infrastructure of the Republic' Vesselin Georgiev. This official had signed public procurement contracts with the company of his brothers ('Binder' Ltd and others). The damages to the country amount to 120 million leva (approximately 60 million Euro). As a result of this scandal, the European Commission stopped funding Bulgaria's projects for the ISPA program. In January 2008, the Minister of the Finance demanded the Inspectorate within this ministry to check Vesselin Georgiev for conflict of interests and such was established. In October 2008, the Sofia district Prosecutors' Office indicted Vesselin Georgiev for embezzlement, for which crime the Penal code determines between 1 and 8 years prison sentence.

As a result of the critiques by the European Commission and the suspension of the ISPA funding for Bulgaria and in the nervous anticipation of a very negative Monitoring report by the EC in July 2008, the Cabinet and the MPs speedily prepared two conflict of interest bills. In October 2008, the Law on Prevention and Disclosure of Conflicts of Interests<sup>28</sup> was passed. It requires all public officials to file declaration for conflict of interests within 7 days of being elected or appointed. Conflict of interest is defined as a situation, in which 'the person, holding public office, has private interest, which may influence the impartial and objective implementation of his office-related rights and duties.' (art. 2. (1)) Private interest itself is defined as 'a pecuniary or non-pecuniary profit for the office holder or connected to third parties, including all liabilities' (art. 2(2)). The scope of the duty-bound by this law public officials is wide: the president (and his deputy), the constitutional judges, the MPs, the prime-minister (and the deputies) and the ministers (and their deputies), the chairpersons of the Supreme Cassation and Supreme Administrative courts and the Prosecutor General, the ombudsman (and his deputy), the 28 regional governors (and their deputies), the mayors of municipalities and districts (and their deputies), the members of the municipal councils, the members of the Supreme Judicial Council, the chairperson and the members of the National Audit Office, of the National Bank, of the National Social Security Office and the National Health Insurance fund, the ambassadors, the judges, the prosecutors and the investigators, etc. More than 25 categories of positions are listed in art. 3(3) of the law. Art. 5 states the main requirement of incompatibility, formulated in very general terms: 'a person holding public office position cannot hold another position or perform activities, which according to the Constitution or a special law is incompatible with his/her position.'

In case of presence of private interest in a particular decision, the person cannot represent the state or the municipality (art. 6), nor can he/she vote in favour of private interest (art. 7(1)) or use his/her position to influence in favour of private interest other bodies or persons in drafting, and adopting of decisions and in performing controlling and investigative functions (art. 7(2)).

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<sup>28</sup>State Gazette № 94/31.10.2008.

Particularly important is art. 9, which prohibits public officials to manage public and EU funds and property, sign contracts, as well as issue permits, certificates etc. to NGOs or companies, in which he/she or connected third parties participate as owners, members of boards, etc. This prohibition applies as well in case the circumstances above were present up to 12 months before his/her election/appointment.

The public officials are also required to fill in declarations about incompatibilities and private interests – in general and in concrete cases (art. 12). Art 14 exhaustively lists all the circumstances that may trigger situation of conflict of interests: participation in companies, NGOs, private entrepreneurial activities (during the office and 12 prior to the appointment), all credits, liabilities and contracts , as well as information about the similar activities of connected to the official persons, in which he/she may have a private interest.

The declarations are submitted to the appointing body or commission, which keep declaration registers and publish them on the websites.

The law also regulates the action to be undertaken in cases of conflicts of interests. The person with a disclosed private interest (or when the appointing body believes there is such a conflict) in a concrete case is removed from deciding it/performing his/her office-related duties. This body is responsible for deciding in each concrete case whether there is a presence of conflict of interests.

There are conflicts of interests restrictions after leaving office as well – the former public officials may not work for one year for companies (and their partners), with respect to which they were taking decisions as public officials (art. 21), nor can they represent companies in public procurement bids within the departments where they held positions.

Responsible for checking for conflict of interests are the appointing or other responsible body. It is done on the basis of inquiry, triggered by ‘signals’ (including anonymous), or on its own initiative. For a wide range of highest public dignitaries and officials (such as president, prime-minister, constitutional judges), this body is the Permanent Parliamentary Committee for Fight against Corruption, Conflict of Interests and Parliamentary ethics. For others, the relevant body is the Chief Inspectorate within the Council of Ministers, for the mayors and municipal councillors – the respective municipal conflict of interests commissions; for the magistrates – a commission of the SJC .

The decision for the presence of conflict of interest in cases of the highest public officials is a prerogative of the Supreme Administrative court, and for lower-ranking public officials – by the lower administrative courts. Both decisions may be appealed.

The consequences of the presence of conflict of interests, when established by an effective court decision, are a reason for dismissal (unless in the Constitution there is a different provision). The private profit from situation of a conflict of interests is confiscated, as well as is the salary for the period of the presence of conflict of interests. There are also administrative monetary sanctions for officials failing to submit conflicts of interests declarations within the specified deadline.

In September 2010, the Bulgarian parliament passed in a first reading draft amendments to the Law: in order to be adopted, they need to be passed once more by the National Assembly, and then the law needs to be promulgated. These amendments concerned mostly the establishment of an extra-parliamentary special independent commission, which will be responsible for establishing conflict of interest, and will keep a register of all received signals for conflict of interest. The commission will have jurisdiction over cases concerning MPs and senior public servants. The commission will be comprised of five members, elected for a fixed term of five years without a possibility for re-election. If the draft is finally passed into law, the commission will become operative in April 2011. The creation of this commission will lead to a reduction of the prerogatives of the now existing parliamentary committee responsible for establishing conflict of interest.

### *Anticorruption institutions in Bulgaria*

#### *1.1 Anticorruption bodies within the Executive*

One main instrument for the control of state administration are the *inspectories*, created in each of the ministries,<sup>29</sup> in the state agencies and other administrative and regional structures of the central state administration. There are more than 20 such inspectories. They analyze the efficiency of the activities of the administration, check the compliance with the internal rules of the administration, check the requests, information and complaints from the citizens against illegal or irregular actions/inactions of the civil servants, control the compliance of the administration with the requirements of the Civil Servants Code of Conduct with the Law on Prevention and Establishment of Conflict of Interests (LPECI) adopted in January 2009. In general, they are the main instruments for promoting the anticorruption policies within the executive branch of state power.

Under pressure from the European Commission, in the pre-accession period (2006), a Directorate "*Chief Inspectorate*"<sup>30</sup> was established within the Council of Ministers. Its main functions are to coordinate the activities of the above inspectories and to organize the state anticorruption policies, to control and check the compliance with the LPECI, to check the information (coming from the citizens, the media and other

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<sup>29</sup> Art. 46 of the Administration Act, State Gazette, № 130/ 5.11. 1998.

<sup>30</sup> Art. 46a and 46b of the Administration Act, amended in 2006, State Gazette № 24/ 2006.

sources) of corruption of *high public officials* and senior civil servants and to perform checks for such activities on its own and that of the Prime-Minister's initiative. This body is directly subordinated to the Prime-Minister and reports on its activities only and directly to him.

This Chief Inspectorate is a part (as its Secretariat) of a further state body, newly established in 2006 as a response to the critiques and as a result of the pressure from the European Commission: The *Commission for the Prevention and Countering of Corruption (CPCC)*. It is again a structure within the Council of Ministers.<sup>31</sup> It is chaired by the Minister of the Interior and his deputies – the Ministers of Justice and the Minister of State Administration and Administrative Reform. Its members are also the Minister of the Finance, the Minister for European Affairs, the vice-ministers of education and health, as well as the chief of the customs office, of the state revenues agency, etc. The tasks of the Commission are:

- To participate in elaborating the anticorruption policy of the state
- To assist the Cabinet in formulating the priorities of the anticorruption state policies and activities
- To determine the most efficient approaches for successful counter-action and prevention of corruption in different spheres
- To control and coordinate the anticorruption activities - by summarizing the information from the different state institutions: 1) the Inspectorates, created in each of the ministries and 2) the regional *public councils for prevention and countering of corruption*, created in the state administrations of the 28 regions in Bulgaria
- To report its activities to the Council of Ministers as well as prepare an annual report, presented to the Parliament by March 31<sup>st</sup> of the following year.

The policies and the decisions of the Commission are to be implemented by the inspectorates within the administrative structures of the executive. Their chiefs meet regularly to coordinate their activities, where their meetings are chaired by the chairperson of the Directorate 'Chief Inspectorate'. This directorate is also responsible for preparing the meetings and coordinating the work of the Commission.

Starting from 2004, within the 28 regional administrations in the country, *Public Councils for Prevention and Countering of Corruption* were established. Their members are representatives of the bodies of the regional state and municipal administration, on one hand, and on the other - of the non-governmental organizations, the local business and the regional media. Their actions are directed towards coordinating the efforts of all these sectors of society for countering the corruption at the regional and municipal levels.

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<sup>31</sup>Decision № 61/ 02.02.2006 of the Council of Ministers.



### *1.2 Anticorruption Bodies within the Legislative*

The body responsible for anticorruption within the legislative is the Commission for the Fight against Corruption in the 40<sup>th</sup> National Assembly (2005 - 2009) – with 17 members, and the Commission for the Fight against Corruption and the Conflict of Interests and Parliamentary Ethics in the 41<sup>st</sup> National Assembly (2009 – [..]) with 5 members.

Another permanent Parliamentary Commission in the 41<sup>st</sup> National Assembly with anticorruption related prerogatives is the Commission for European Affairs and on the Control over the European Funds (with 18 MP members). This commission oversees the management of funds from the from the European Union, by collecting information from state bodies, companies and other organizations and persons, related to EU funds absorption, by inviting officials, experts and citizens to EU funds related hearings. It prepares bi-annual reports to the Parliament for the level of EU funds absorption in the country.

A further anticorruption related permanent Parliamentary commission is the Commission on the Control over the State Agency 'National Security' (CCSANS) - to the extent that one of the tasks of the State agency is the fight against high-level corruption (see below the discussion on SANS).

### *1.3. Anticorruption Bodies within the Judiciary*

Within the judiciary there are several anticorruption bodies. The Commission for Professional Ethics and Prevention of Corruption in the judicial system is a permanent auxiliary body to the Supreme Judicial Council (SJC) - the so-called 'government of the Judiciary'. Its members are 5 of the members of SJC, determined by SJC decision. The Commission meets weekly, and if necessary, more often. It has the following prerogatives:

- To perform checks based on concrete complaints and signals, to send information to the relevant state bodies and inform SJC about the results
- To analyse the information about corrupt practices within the judicial system.
- To prepare and propose to SJC concrete measures for prevention and countering corrupt activities within the judiciary
- To coordinate for anticorruption activities with all other bodies with anticorruption functions and with the Ombudsman .

The decisions of the Commission for the presence of corrupt acts of magistrates/administrative officials within the judiciary are to be reported to SJC and other responsible state bodies for undertaking administrative sanctions.

One of the major activities of the Commission in 2009, according to its official report<sup>32</sup> was the adoption of an Ethics Code of the Bulgarian Magistrates. According to it, in all regional structures of the judiciary and the supreme courts and prosecutorial offices are to be established permanent ethics committees. Indeed, by the end of 2009, such committees have been established, yet it is too early to evaluate their activities.

As a result of the introduction of the Code, two magistrates resigned (and another 18 magistrates were checked) as members of SJC, because of improper contacts with the citizen Krassimir Georgiev (nicknamed KrasyoChernichkiya), who allegedly had impact upon the selection of magistrates for members of SJC. In addition, in its 43 meetings for 2009, the Commission managed to hear and decide on more than 1650 complaints, signals and requests, related to corrupt actions and practices within the judiciary.

Another anticorruption body within the Judiciary was established under pressure from the European Commission - the *Inspectorate with the Supreme Judicial Council*. This new independent body within the SJC was established after an amendment to the Constitution was introduced in 2007.<sup>33</sup> Its main task is to check the activities of the bodies of the judicial power in the country, without infringing on their constitutionally guaranteed independence. The often-quoted excuse for not dealing with the corrupt activities of the representatives of the judiciary was the constitutionally guaranteed independence of this power. Yet the Supreme Judicial Council (SJC) and its Ethics Committee were incapable to discharge its responsibilities in overseeing the activities and checking for corruption this major branch of state power. This incapacity prompted numerous critiques both from the civil society and from the European Commission, and one of the solutions advanced was to establish the Inspectorate. Amongst the prerogatives of the Inspectorate, we enumerate:

- Checks the administrative activities of the courts, the prosecutorial offices and the investigative bodies
- Checks the organization of starting and development of the judicial, prosecutorial and investigative cases, as well as their timely completion
- Analyzes and summarizes the cases, completed with a court verdict, as well as with respect to the completed prosecutorial and investigative case files
- In cases of a contradictory judicial practice, sends requests to the competent bodies for interpretative decisions
- In cases of violations, signals the head of the respective administrative unit of the judiciary as well as the Supreme Judicial Council (SJC)
- Proposes to SJC the imposition of disciplinary sanctions to judges, prosecutors, investigators and the administrative heads of the units

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<sup>32</sup>The report is available at the web-site of the Supreme Judicial Council - [www.vss.justice.bg](http://www.vss.justice.bg)

<sup>33</sup>State Gazette№12/6.02.2007, art. 132a.

- Sends requests, signals and reports to other state bodies and to the respective judicial bodies.<sup>34</sup>

The major addressee of the signals for corruption is, of course, the prosecutorial office. In the Supreme Prosecutors' Office of Cassation in 2007, a specialised section for countering corruption was established under the direct supervision by the Prosecutor General. The main task of this sector is overseeing the files and cases of violations of the law (in relation to their official duties) by high officials – MPs, members of the Cabinet, heads of state and independent organizations, of state agencies, mayors, prosecutors, judges and investigators, etc. Similar sections were created in the regional and appellate prosecutorial offices. Yet despite these administrative activities, the results of the fight against corruption among the high officials were unsatisfactory, though some improvements could be discerned. Thus, for 2009, 595 cases of corruption were investigated (490 for 2008) and 192 persons – convicted (140 for 2008).<sup>35</sup>

Within the Supreme Prosecutors' Office of Cassation there is also a *directorate 'Inspectorate'*, which specifically oversees the prosecutions and cases of corruption and other office-related violations of magistrates. In 2009, cases of 57 magistrates were overseen (in 2008 – 46, and in 2007 – 23)<sup>36</sup>.

As a further response to the critiques of the weaknesses of the work of the prosecutors' office and the police, four (and subsequently – five) inter-institutional groups for support of investigations of high level corruption between the Prosecutors' Office, The Ministry of the Interior and the State Agency 'National Security' were established in September 2009.

#### *1.4 Independent state bodies with anticorruption functions*

##### *Bulgarian National Audit Office (BNAO).*

The main task of the office is to 'contribute to the good management of the state budgetary and other public expenses, as well as to provide to the Parliament reliable information on the use of public funds according to the principles of lawfulness, efficiency, effectiveness, economy and for the truthful reporting on the management of the respective public funds.'<sup>37</sup> The office is responsible (in addition to auditing the state bodies, state - owned enterprises, publicly funded organizations, etc.), for the financial control over the political parties and for keeping the public register of the Persons with High Public Positions – for verifying their assets declarations and for

<sup>34</sup> Art. 54 (1) of the Law on the Judiciary, State Gazette№ 64/ 07.08. 2007.

<sup>35</sup> Source: Summary report on the fight against and countering of corruption in the activities of the Prosecutors' Office. , p.2, available at [www.prb.bg/php/document.php](http://www.prb.bg/php/document.php).

<sup>36</sup> Ibid.

<sup>37</sup> Art. 4 of the Law on National Audit Office, State Gazette№109/ 18.12. 2001.

informing the Public Revenue Agency and the Prosecutorial office about inconsistencies and violations with respect to them.

### *The State Agency 'National Security'*

The State Agency 'National Security' (SANS) was created in 2008 by combining the functions and the personnel of three organizations – the National Security Office, The Military Counter-Intelligence Office and the Agency for Financial Intelligence. It is a specialised body within the Council of Ministers, its main task being implementing the national security policies.<sup>38</sup> Its activities are in countering threats to the national security, coming from: intelligence in favour of foreign states, threats to the sovereignty and the territorial unity of the state and to the national unity, anti-constitutional activities, corruption of high officials, use of violence for political purposes, threats to the economic, financial and ecological security of the state, international terrorism, arms trade, migration processes, etc.<sup>39</sup> The Agency's prerogatives are 1) limited investigatory powers (operational-investigative); 2) performing informational, analytical and prognostic activities; and 3) performing controlling, coordinative and methodological activities, using own and/or from other state bodies information.<sup>40</sup>

Political controversies, as well as numerous and continuous scandals, marked the creation and the first two years of activity of SANS. Concerns were raised with regard to its structure and wide and often incompatible competences: under the heading 'defence of national security' were gathered intelligence and counter-intelligence prerogatives, control of access to classified informations, activities against money laundering, terrorism, financial, economic and ecological threats to security, organized crime (in 2009 this prerogative was dropped) and corruption, etc. The main problem here is that the intelligence and the investigative functions are difficult to combine. With an emphasis on the intelligence tasks of the agency, this harms the quality of the investigative actions – the evidence collected for intelligence purposes is simply not suitable for court proceedings. And, conversely, the methods for collecting suitable for court use evidence are not good for intelligence purposes. The determination of clear priorities in this respect is a must.

In addition, many of these wide competences repeated those of structures within the Ministry of the Interior and other organizations. This led to rivalries and conflict between the national security - related institutions. The budget of SANS is also generous – with some 130 million leva (approximately 65 million Euro) for 2009. This fact (huge salaries and bonuses, building of strong administrative capacity, etc) also

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<sup>3838</sup> Art. 2(1) of the Law on State Agency 'National Security' (LSANS), State Gazette 109/20.12. 2007.

<sup>39</sup> Art. 4 (1) of LSANS.

<sup>40</sup> Art. 4 (3) of LSANS.

sparked rivalry with sub-financed and under-staffed structures with similar competences within the Ministry of the Interior.

Very importantly, the enormous powers of SANS were not matched with relevant checks and control mechanisms.<sup>41</sup> Over a year after SANS' creation, the Parliamentary Commission for its control was not constituted, and it hardly started its work before the end of the mandate of the 2005 - 2009 Parliament. Again for more than a year, SANS had no web-site, and though such now exists, one finds there little more than the normative framework for its activities as well as very short bi-annual financial and narrative reports on its activities. Surprisingly, the administrative and organizational structure is not laid out, nor there is any information on work done by the respective units, or the analyses and reports, which are supposed to be 1/3 of the activities of the Agency. Scandals involving agents of SANS fill the tabloids. Information about 'secret' SANS-prepared reports for corruption of high officials is often leaked, and they frequently prove to contain little more than a compilation of journalistic investigations, gossip and cut-and-paste material from reports, prepared by other state and non-state, national and international, bodies. Significantly, the former prime-minister of Bulgaria Sergey Stanishev was indicted in July 2010 for the disappearance of 7 reports (3 from SANS, 2 – from the Ministry of the Interior, one – from the Minister of Defence and one – from NATO), containing classified information. The reports contained information on corrupt officials, and allegedly were given to the implicated officials by the former prime-minister (several influential politicians, members of the Parliamentary Commission for Control over SANS as well as the current Prime Minister himself, made such allegations).

The evaluation of the activities of SANS by the leaders of the new Bulgarian government is unanimous. According to the current vice Prime Minister of Bulgaria and Minister of the Interior Tzvetan Tzvetanov, SANS was 'created by the former Prime Minister Stanishev with the aim of collecting information resources to be used for solving his own party's internal problems'. The current Prime Minister Boyko Borissov also warned SANS in October 2009 that 'if it turns out that SANS was created with the sole aim of generating scandals and of creating problems, it might as well be closed down.'<sup>42</sup>

As a result of these critiques and of the pressure from the civil society and the media, SANS started publishing bi-annual reports on its website. However, as mentioned, they contain little information. The general and empty formulations of tasks, programs and results achieved, do little to convince the public in the efficiency and benefits of SANS' activities. For example, one wonders whether it is an achievement to have 14

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<sup>41</sup> For detailed analysis and recommendations, see the 'Monitoring of SANS' - 2008 and 2009 Reports, prepared by Foundation Risk-Monitor, available at [riskmonitor.bg](http://riskmonitor.bg).

<sup>42</sup> Cited in 'Borissov dade posledno preduprezhdeniema DANS' ('Borissov with a last warning to SANS'), published in *Sega* daily, 27.10. 2009.

investigated cases of corrupt high officials for the entire 2009: the comparison with the planned just 7 such cases for this year leaves one further perplexed who/how the plan is set. The same holds for the investigated cases of money laundering and terrorist activity (5 reported cases, measured against the planned 4, such cases) etc.<sup>43</sup> The obvious question is whether the planned activities of SANS were ever sufficient to justify its 65 million Euro annual budget. For 2010, the planned number of cases to be investigated has increased (although it is hardly justified how such a planning is possible), yet the data in the report for the first half of 2010 do little to help the citizens in understanding whether they are adequate to the level of corruption, money laundering, fraud etc. in the country. No analysis, no comparisons with other countries with the same levels of corruption and similar problems, no meaningful statistics are provided, no justification for one or another program, policy, decision. Yet it has to be acknowledged, that some progress has been made, since just half a year ago, the agency had no website, its activities were entirely non-transparent - its bi-annual activity and other reports were secret and it was a constant source of political scandals.

### *Understandings of corruption, its causes, effects and possible cures*

In this section we present an analysis of the understandings and views about corruption of six target groups: politicians, judges, the police, the media, NGOs and business. We have studied these through in-depth interviews with representatives of these target groups. The bulk of the interviews were carried out in the framework of the F6 project *Crime and Culture* funded by the EU Commission.<sup>44</sup> For the purposes of the current project additional interviews were carried out to clarify, update and refine some of the points. Below we present the understandings of the different target groups about the nature of corruption, its causes and effects, as well as the possibilities for effective anticorruption responses.

#### *Target Group: Politics*

##### *Definitions*

At present, politicians in Bulgaria – both from the government and the opposition – “recognise” the “widespread character” of corruption and are generally ready to discuss the phenomenon in public. It has to be noted that this has not always been so. In the period 1998 – 2001, when the issue of corruption emerged for the first time

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<sup>43</sup> Source: Dokladzastepentanaizpulnenienautvurdenitepolitiki I programina DANS for 2009 (Report on the level of implementation of the approved policies and programs of SANS for 2009), available at [www.dans.bg](http://www.dans.bg).

<sup>44</sup> For more information about this project see: <http://cls-sofia.org/en/projects/rule-of-law-17/anticorruption-10/crime-and-culture-31.html>

as a public priority, there was a clear cut division between the discourse of the opposition on corruption and the discourse of the ruling parties. The latter stuck much more to “legalistic” definitions of corruption, while the former resorted to inflated, “public interest-based” definitions. This initial division could be explained by the fear of the governing parties to “recognise” or “admit” the existence of corruption “unless proven in judicial proceedings”; such admittance would amount to recognising certain complicity in corrupt activities. Today this fear is gone, and the question is why?

What has changed since the end of the 1990s is that governing politicians now seem to believe that they could also “score points” in a debate over corruption. That is why the corruption discourse has become not an exclusive theme for the propaganda of the opposition, but also a mobilization, electoral tool of the governing parties as well. When somebody opens a debate about corruption, they could take part in this debate on an equal footing by pointing out “measures taken” against the phenomenon, “strategies”, “action plans”, “anticorruption commissions and bodies”, etc.

Thus, we conclude that governing politicians no longer stick exclusively to a “legalistic” definition of corruption (as defined in the law books), but also engage in debates using inflated, public interest based ones. In any event, in contrast to the opposition, they insist on a certain “depoliticising” of the phenomenon. They accept that corruption is “abuse of power”, but “power” in their view is diffused in many centres at different levels, and is not concentrated in the government. Thus, corruption could be encountered in the judiciary, the local government bodies, the lower levels of the public administration, the opposition parties, and in the private sector (including the NGOs). The “diffusion” of power is related to a concept of “diffused responsibility” for corruption as well: it is not the government which is essentially responsible, but a plurality of actors.

The opposition politicians, by contrast, try to concentrate the responsibility for corruption in government. So, they both use inflated and all-inclusive concepts of corruption: the specificity is that the government is playing a role in one way or another in all these forms of corruption, either as a direct perpetrator as well, or as a conduit. At the very least, the government is responsible for a given form of corruption indirectly, by providing conditions which favour its emergence.

A particularly interesting conceptual debate about corruption took place in Bulgaria in the autumn of 2007 in relation to the numerous allegations of vote-buying in the recent local elections. The allegedly wide-spread vote-buying scandalised the public. In response, the leader Ahmed Dogan from the ruling coalition party Movement for Rights and Freedoms stated in public that “The buying of votes is a European phenomenon. If the business feels uncomfortable and wants to get in the power, it will use this technique. Democracy will survive the vote-buying”. Many were additionally scandalised by these words, and read them (properly in our view) as an

attempt to “normalise” corrupt forms of electioneering. The surprising fact was, however, that there was no concerted reaction on behalf of the rest of the political establishment against this attempt, however. In our previous report we pointed out how the same politician attempted to “normalise” another corrupt practice – clientele links between parties and companies (so called “circles of firms”). Then, however, there was a much more serious public reaction and lack of tolerance to his ideas. In the autumn of 2007, our interviews and informal conversations with members of the political elite encountered a higher level of tolerance to vote-buying. One of the reasons for this tolerance could be the cross-party usage of this dubious electoral tool. Another, more surprising reason, which emerged, was the fact that vote buying introduces “market” relationships in politics. In current Bulgarian political language and thinking, the “market forces” generally produce good and efficient results. Ergo, marketisation of politics might not be that reproachable phenomenon after all.

Finally, something which is worth noting at the conceptual level, the process of “depoliticisation” of corruption (which is best seen in the parlance of governing parties) goes on along with a process of “ethnicisation” of the phenomenon. The recent local elections, as well as the European Parliament elections earlier in the year, demonstrated that increasingly the party of the ethnic Turks in the country is seen as a the hot-bed of corrupt practices. This party is seen as “clientele”, “patronage-prone”, “feudal” in its attempts to control its electorate economically. In elections, it is seen as one of the primary perpetrators of corrupt practices – from vote rigging and buying, to the “bussing” of people (emigrants) from abroad to take part in the elections. Although part of these allegations might be founded in facts, the excessive emphasis on the irregular practices in a specific party cannot be explained through its “ethnic”, “Turkish” character.

### *Causes and origins*

The “depoliticisation” of the concept of corruption is best seen in the perceptions of the causes and origins of the phenomenon. The governing parties and politicians seem to have won this debate, since the causes of corruption are not looked for in the character and individual morality of specific politicians, but in institutional, structural factors which shape the incentives in specific ways, so that individual cannot but act in corrupt ways. Simply put, the roots of corruption are deep, the phenomenon is here to stay, and all we could do is to engage in serious, long-term oriented reforms, which should go in the following direction: downsizing of the state, lowering taxes, taking out the state from the economy, deregulating the economy, diminishing the licensing procedure, etc. This programme seems to be a cross party consensus.

On top of this programme the opposition parties and politicians are of course more insistent on personnel reforms, as far as they see these as a possible tool leading to pre-term elections.



A decreasing minority of politicians seem to be ready to blame the “communist past” for corruption. Twenty years after the start of the transition, “anticommunism” has largely lost its mobilization force. A telling fact for this trend is the relatively low interest which the opening of the secret services files of the former communist regime sparked in Bulgaria in 2007. A small group of right-of-the-centre parties and politicians attempted to draw public attention to the fact that important present-day politicians – including President Georgi Parvanov – were active secret service collaborators. The interpretation of these right-of-the-centre parties was related to corruption: they were essentially arguing that the network of former secret police agents has managed to “infiltrate” the state as a whole, which raised not only moral problems, but also issues of lack of transparency, possible manipulation, hidden influences, etc. Their conclusion was that because of such reasons, people who had for years not disclosed their “true identity” had no right to continue occupying public office. This argument, which would strike many as reasonable, remained largely unpopular, however: it drew support from very small quarters.

### *Effects*

Politicians no longer diminish the importance of corruption as a problem. At present, they admit, both governing and opposition parties, that corruption is a serious public concern and that it has negative effects on the economy, democracy, and the general prosperity of society.

Apart from the above-mentioned attempts to “normalise” corruption, no one has ventured to come out in public to defend the functionality of corruption. Our interviews confirm this statement - ideas that actually corruption could be good for the economy in one way or another are not popular.

### *Size and Scope*

As to the size and scope of corruption, the opposition and the governing parties seem to differ. Representatives of both of these express the view of the wide-spread character of the phenomenon, but they tend to look for it at different places. Respondents from governing parties tend to stick to the “diffusion” theory of corruption: corruption takes place at many levels and in different centres of power in society: the government is not the primary site of corrupt activities. The opposition representatives tend to stick more to the “concentrated” model of corruption, which in one way or another is centred around the government.

As to the measurement of corruption, politicians rarely believe that these measures reflect objective realities. Still, such measurements are to be taken seriously. Opposition parties are interested in “independent” assessments and measures,

“monitoring” by external actors, etc. Governments are increasingly interested in the production of their own data.

### *Anticorruption measures*

This is the point where the opposition and the government differ mostly. The former see the most important measures in terms of political changes: personnel changes, and eventually government changes. They stress the “lack of political will” argument a lot. Governing parties, not surprisingly, stress more long-term institutional reforms, the setting up of commissions and other anticorruption bodies. Other anticorruption measures, as awareness raising, public education, etc, are also popular among governing elites. Finally, co-operation with civil society on the issue of corruption becomes of crucial importance both for the governing and the opposition. This paradoxically brings these two together, because both of them look for cooperation with one and the same actors. Paradoxically, cooperation with the same actors from civil society leads to a certain “depoliticisation” of anticorruption, despite the attempts of the opposition to “politicise” the issue.

### *Target Group: Judiciary*

#### *Definitions*

The representatives of the judiciary tend to define corruption as abuse of power. It may involve not only public servants and politicians, but also the private sector. In this sense, corruption refers to all forms of distorted application of *formally* accepted rules in a given society or organisation. Therefore, we found confirmation of the hypothesis about the *legalistic* emphasis in the discourse on corruption of the judiciary. Yet, the forms of corruption are described as going far beyond the ordinary graft to include nepotism, trade with influence etc. This means that in some cases the law may be imperfect and fail to include all forms of corruption. Therefore, one of the main concerns of the judiciary is the corruption in the legislative process: it is seen as one of the most dangerous form of the phenomenon since the laws passed by the parliament in favour of private interests create opportunities for repeated occurrence of corruption deals. Also, this type of corruption is dangerous since it affects negatively the interests of big groups of people. Examples in support of this statement are some laws where the parliament deprived the court of control over the administrative acts of the government, thus creating a window for repeated corruption occurrences. Corrupt legislative practices are possible and fuelled by the existence of political corruption and illegal party financing, which distort the political process the process of decision making in such a way, so as to favour of private interests.

Corruption in the judicial system and the courts is no less dangerous than legislative and political corruption, as the judiciary is the power meant to correct the failures of the two other branches.

The legalistic emphasis in the judicial discourse on corruption is revealed in their professionally determined concern about the quality of the law. One of the main problems with corruption, in their view, becomes its legal definition and regulation: the assumption is that if there is a non-corrupt and efficient legislative process, which manages to produce a correct and inclusive definition of the phenomenon, the fight against it is going to be much easier.

### *Causes and origin*

There are several reasons for the existence of corruption, according to the representatives of the judiciary. The first one is related to the constant changes in the legislation that have been taking place in the last 15 years thus creating a situation of legal instability and insecurity. The unpredictability of the legal acts is the reason why often social actors opt for solutions that involve corruption. The second set of reasons involves peoples' values. Many Bulgarians tend to solve their problems in a way that circumvents the laws and the established rules. There is a popular perception that one cannot succeed in life if one follows the formally established rules and procedures. There is no clear idea where these popular attitudes might come from but several possibilities have been mentioned, including history (the Ottoman rule in Bulgaria) and the transition period.

### *Effects*

It is perceived that the negative impact of corruption on the value system is even more dangerous than that on the economy. Corruption destroys the social values and distorts the behaviour of social actors. This effect is reinforced by the fact youngsters are socialised into an environment where corruption, although not explicitly, is commonly recognised as an important precondition for economic and social success. In this way, corruption behaviour is perpetuated.

### *Size and Scope*

The representatives of the judiciary believe that corruption is present in all social segments. The phenomenon is considered to be "highly contagious" and since all elements of society are interrelated, it is not possible for the infection to not spread throughout the system. To a great extent this process is assisted by the media that through the permanent use of the corruption rhetoric creates popular perceptions that corruption is everywhere and it is somehow inevitable. Despite all this, respondents admit that it is very difficult to measure corruption objectively. In most of the cases only perceptions of corruption are measured. A slightly more reliable instrument to measure it would be to interview victims, but we should not forget that in most of the

cases corruption is a deal involving both parties and this would negatively affect the readiness of the respondents to reveal the case.

It is admitted, however, that there are certain fields of social life where corruption pressure is higher and corruption practices are broadly spread. These are the sectors of business and politics, where factors like competition and the high level of discretion of politicians and public officials play a major role.

### *Anticorruption measures*

Somewhat paradoxically in view of the hypothesis of the “legalistic” emphasis in the discourse of the judiciary, the respondents think that too much attention is paid to laws and formal rules and procedures at the expense of informal institutions and education. Legislative and administrative measures could help to counteract corruption, but only to a certain extent. They can help optimise and regulate the public sphere so to limit the opportunities for corruption. They are important instruments indeed, but they are not the first ones in importance. As regards the capacity of the regulation, the focus is placed on the concept that the state should simplify the existing administrative procedures, introduce rules that are as clear as possible, and limit its interference in the market and social processes only to the extent it is indispensable. There are examples showing that system reform is capable of limiting dramatically the opportunities for corruption. These are usually reforms that include withdrawal of state regulation and control and introduction of clear market rules, as in the case of the reorganisation of the notary services in Bulgaria, which are now provided on a pure market basis.

The second and more important set of measures involves moral education and prevention of corruption. Practically, this means identification of the cultural roots of the problem and addressing them. A good example of the cultural conditioning of corruption can be seen in the educational system: it is believed that there is nothing wrong with giving presents to the teachers, and at the same time teachers have the discretion of giving grades that may be crucial to the future prospects of the students. Another similar example would be the common practice of providing false witness to friends, who need it to facilitate their divorce cases in the court. Giving that situation, there are crucial roles to be played by civil society structures like the churches for example. There is a strong correlation between the role of the church and the crime rate in a given society. Unfortunately, the Bulgarian Orthodox Church, which is traditionally the most influential church in the country, nowadays has very little influence on the public. There are not many other genuine civil society organisations and NGOs that might bring a real change in this respect either. The media also have a major role to play in educating society and raising its moral standards of the society but the problem is that the Bulgarian media are largely commercial and the corruption

discourse is often used in a tabloid manner, which has led to a growing trivialisation of the topic.

### *Target Group: Media*

### *Definitions*

Journalists define corruption in a rather inflated way as an improper and illegal (concepts used interchangeably) advancement as a result of the abuse of the power resources. This only concerns matters, which involve exercising public power. Similar relations in private life are not included in this definition. In terms of possible negative effects on society there should not be a difference between the so called “grand” and “petty” corruption. Petty corruption undermines the rules and the social discipline, which eventually leads to negative consequences for society as whole. Grand corruption has not only a monetary effect for the state, but also a broader social effect, since in most cases the public services provided as a result of unfair procurement procedures are of poor quality. The legislation focuses to a greater degree on the phenomena related to petty corruption, such as bribes, where the crime can be easily proved with the help forensic instruments. Legislative provisions, however, are much less powerful when it comes to the grand corruption. In many such cases, the legal procedures are strictly followed and observed but at the end many of the deals concluded by the public authorities are immoral. Both the politicians and the business believe that the system of distribution of public resources should function in a way that is not based on pure market principles but requires special relations and arrangements between both sides.

### *Causes and origin*

Media representatives perceive the presence of the state in the economy as the major reason for the existence of corruption. Registration and licensing regimes are numerous and many key companies are in the hands of the state. One specific feature of the Bulgarian case is the great role of the state in the process of redistribution of the huge public resources inherited from the communist past. It is perceived that this process inevitably brings up corruption in any country and that Bulgaria is no exception to the rule. The transition process, with all its components, is recognised to play a role for the development of corruption. Yet transition itself may not be regarded as a cultural phenomenon; it is very likely that similar situations in different societies produce very similar problems and outcomes.

### *Size and scope*

The journalists think that measuring corruption is an enterprise bound to fail. What can be measured are the perceptions of the people about corruption. At the same

time they believe that the phenomenon is omnipresent in the whole society. This judgement is made on the basis of personal experience and knowledge shared with colleagues, friends and relatives. Due to the specific interconnections within society, corruption has spread everywhere from the field of politics to the field of art. The financial and economic spheres are most susceptible to corruption since the monetary flows are in bigger size there. This sphere includes also all public bodies having discretion in dealing with financial resources. The most dangerous corruption, however, is that it is present in the judicial system because it is itself the major structure meant to investigate and punish acts of corruption.

### *Anticorruption measures*

According to media representatives, anticorruption measures cannot succeed in their current form for one main reason: the major actor that is expected to fight corruption, the political class, is deeply corrupt itself. It is hardly a secret that being a politician is indeed a business enterprise. This is the way in which politics functions and the political system recruits politicians. There is a superficial consensus that corruption should be counteracted, which has been pushed by the EU accession process and post-accession monitoring. However, reforms, to the extent they exist in practice, concern only general normative measures that are implemented so as to allow preserving the status quo almost untouched. These superficial policies have produced no satisfactory results so far and the authorities desperately need to show the EU that people involved in corruption are indeed being punished in Bulgaria. The efforts of the Public Prosecutor's Office to do something in this respect resulted in several so called "demonstrative" corruption court cases involving high ranking officials and representatives of organised crime. However, for now there is no indication they might end successfully. Evidence demonstrating the lack of political will to counteract corruption is the fact that some simple and very well functioning anticorruption practices were suspended. The example that was given in this respect is the suspended practice of police officers under cover testing their colleagues, traffic policemen, whether they would accept the bribes that they are offered in return for not fulfilling their obligations.

One possible anticorruption strategy, according to journalists, would be a dramatic reduction of the state presence in the economy. This, of course, cannot lead to a complete eradication of corruption, but the opportunities for its occurrence would be significantly limited.

Another idea for optimising the anticorruption activities at the level of the state is a reorganization of the system of powers in Bulgaria and in particular transferring the Prosecutor's Office from the judicial to executive branch of power.

The roles of the different institutions in counteracting corruption as seen by media

representatives are the following:

The media are the only arena left where a corruption scandal can be revealed and made available to the public. Unfortunately, the quality of journalism in Bulgaria is very low and corruption investigation is not always done in the best possible way. Another problem is that continuous corruption rhetoric has made the people tolerant to corruption. They are convinced that the country is lost in corruption and the media maintains these perceptions stimulating passive instead of proactive citizens' behaviour. The lack of clear institutional response to corruption scandals in combination with the situation in the media described above leads to a social normalisation of the phenomenon of corruption.

Political parties use the corruption/anticorruption discourse only in its capacity to mobilize the public when trying to deal with their political rivals. When in power, politicians make use of information and investigative powers they control to accuse their predecessors of corruption. If however, these parties remain in the government as coalition partners then all information about possible corruption activities is concealed in the name of the political stability of the coalition.

The role of NGOs in preventing and counteracting corruption is ambiguous. It has many positive effects: it creates expert knowledge about the problem and promotes some anticorruption measures in the legislation. On the other hand, it has some negative effects as well: its excessive focus on raising public awareness about corruption is one of the major reasons for normalisation of the topic and social tolerance toward the problem. In the time when there were such awareness campaigns, the public perceptions about corruption (measured by the same NGOs that organised these campaigns) went very high. After the funding for such activities decreased, the public perceptions did, too. In order to get governmental support for their activities and general programmes, NGOs have worked in close cooperation with government representatives, including persons allegedly involved in corruption. In this way, the NGOs took part in building an image of anticorruption fighters for some corrupt politicians.

*Target Group: Police and Prosecutors*

### *Definitions*

The representatives of the bodies that investigate corruption-related crimes define the phenomenon broadly as an act in which the political process is distorted in favour of certain private interests at the expense of the common, public interest. This generally confirms our hypothesis from the first stage, that the prosecutors and the police as a group have a different perception from the judiciary, perception which brings them closer to groups like the media and the politicians. Our respondents

referred to a definition used by some international organisations such as the International Criminal Court, according to which the really dangerous forms of corruption are in the legislative process and in high-level governance. These forms are considered to be more dangerous in comparison to everyday corruption, since they have, above all, hidden accumulative effects. This means that the negative effects of current corruption deals might not be immediate, but might appear years later, for example in cases where environmental standards are not respected as a result of corruption.

### *Origin and causes*

The lack of certain values in Bulgaria is considered to be one of the major reasons for the existence of corruption. The church and religion in general, which normally have positive effects on crime prevention, have a limited influence in the country. Another set of causes combines factors determined by the Communist past and the transition period, such as the weak state and weak judicial system in particular.

If we compare the views of this group on the issue of the origins of corruption with the views of the judiciary, an important difference emerges: the prosecutors, apart from the issue of social values, stress also the *political* origins of corruption, and do not shy from making political judgements, relating the phenomenon to the “Communist past” and the “transition”. It needs to be said that references to such “key words” have a specific political meaning in Bulgarian public discourse; usually sympathisers of the right of the centre political forces will speak negatively about the communist past; people dissatisfied with the mainstream parties and sympathising for new populist parties will normally depict the “transition process” in negative terms, stressing its corruption and injustice.

### *Size and scope*

Similarly to respondents from the other target groups the representatives of this target group believe that corruption is an almost immeasurable phenomenon. The quantitative studies that try to detect the number of corrupt transactions cannot measure the social cost of separate transactions, which is the most important aspect in this respect. At the same time, respondents perceive corruption as present in all segments of society, justifying this conclusion on the basis of personal observations and experience. The state of total corruption is explained with the fact that the systems of politics and governance, which are of key importance for the functioning of the society, are corrupt themselves. Since corruption is considered to be “an infection,” it easily affects the whole social organism.



### *Anticorruption measures*

Similarly to the journalists, the representatives of the Police and the Prosecutors' Office believe that it is unrealistic to expect that the political system can do something to limit or prevent corruption, since the way in which it functions is determined by the corruption exchanges. The state has established formal anticorruption bodies and structures, but they have no real powers and function on a very general level.

One way to tackle corruption would be to establish Ethical Commissions at all public institutions that have the power to investigate every single complaint of corruption filed by the citizens and companies. Another way would be to establish special investigative institutions to deal exclusively with corruption cases. In order to be effective, these institutions need to be independent and capable to investigate separate cases of corruption. This would seriously threaten the politicians' interests and therefore it is less likely that they would allow for such institutions to exist.

The respondents from this target groups are skeptical about the possible anticorruption roles of political parties, the media, the NGOs, and the business circles. The political parties are seen as the major engine of corruption in society and therefore it cannot be expected that they would be the ones to initiate anticorruption reforms. The media are seen largely dependent on various political and business interests and therefore incapable of investigating and revealing cases of corruption to the public in a way that might bring real change. NGOs are perceived as similarly inefficient, as in most cases they are related to certain political parties and do not truly represent the civil society in the country.

### *Target Group Civil Society*

#### *Definitions*

NGOs have had a major role in promoting anticorruption discourse in the country and therefore it is not surprising that they conceptualize the phenomenon of corruption in the most complicated and comprehensive manner.

NGOs define corruption broadly as an abuse of power for personal gain. This is the definition largely used by international anticorruption organizations such as Transparency International. This definition refers mainly to political corruption, and not to corruption in the private sector. Corruption is considered to be a normal practice and in this sense it is not as anything unusual, a one-off event, but is quite widespread not only in Bulgaria, but also in the rest of the world.

Corruption can be present in every area of social life, but in some areas it might be more harmful than in others. These are cases where not only the system

(institutions), but also citizens are affected. Corruption in education is very unpleasant, but corruption in healthcare is a real life-threatening problem, and this should be the main criterion for classifying different forms of corruption.

Another very dangerous form of corruption is perceived to be the influence peddling. It is dangerous because it is very difficult to detect and prove. This is probably the most common type of corruption crime, but it is very difficult to prove because it takes place within the relationships of persons, who do not have interest in disclosing the activity and giving evidence.

### *Origin and causes*

The representatives of the civil society target group believe that generally corruption is not a cultural phenomenon. Petty corruption could be culturally dependent on and connected with cultural heritage, with the culture of society at large, and with understandings about forms of gratuity gifts, etc., but this does not hold for the case of high level political corruption.

The vision of the universal nature of corruption corresponds to the understanding that in general it is not connected with the legacy of socialism. Some influence is possible, but it is not decisive. Corruption also exists in developed capitalist countries and the core cause of the phenomenon is the lack of efficient control and enforcement both for grand political corruption and for petty corruption, which could be culturally-dependent to some extent.

Another possible cause of corruption is poverty. For example, this is the case in Africa. This coincides with the approach of Transparency International, which sees poverty and corruption as two interconnected phenomena, which feed on each other and generate each other.

The second set of causes of corruption as seen by representatives of this target group includes factors related to institutional performance, such as the lack of effective control and enforcement in some areas (public procurement mostly, but not exclusively), and the poor capacity of investigatory bodies to investigate corruption crimes efficiently.

The lack of information and the lack of a culture of identification of corruption by the people are seen as an additional reason for the spread of corruption. Very few citizens know that active and passive bribery are both crimes and very often it is believed that only taking bribes constitutes a crime.

Last but not least, the lack of political will amongst Bulgarian political class is also an important factor.

### *Size and scope*

Contrary to respondents from almost all other target groups included in this study, the NGO representatives believe that corruption can be measured. The measurement is based on a study of perceptions similar to the method applied by Transparency International for its CPI index. One of the components that are measured is the impact of corruption on the life of ordinary citizens. According to these studies, three years ago, more than 80 per cent of the citizens declared that corruption exercises strong influence on their personal life. Now the situation has changed and slightly more than 50 per cent declare so.

Another dimension of corruption that NGOs attempt to measure is the size of the bribes paid in different public spheres. According to NGOs studies, the highest bribes are paid in the judicial system.

### *Effects*

There are two major groups of negative social effects of corruption as seen by NGO representatives. The first one encompasses the negative effect on democratic institutions, as corruption undermines the public trust. The second one includes the economic aspects of the impoverishment of the population due to the non-regulated ways of distribution of public resources. Privatization procedures are a good example of this process.

### *Anticorruption measures*

One set of anticorruption ideas concerns the possible improvement of existing anticorruption measures in terms of better coordination and implementation. The reason for the poor effectiveness of anticorruption strategies is not that much in the balance of powers, but rather in the lack of effective interaction and cooperation between the agencies engaged in counteracting corruption. The fight against corruption crimes requires the joint efforts of many institutions. This is the job not only of prosecutors, but also of the court, anticorruption commissions, the government, etc. Another problem of a similar nature is the lack of transparency in the work of anticorruption bodies themselves, which leads to more public distrust in the capacity of the system to counteract corruption.

The major conclusion is that in terms of legislation and institutions a lot has been done already. The problem is that the institutions do not use the powers they have to full extent and this is where the efforts should focus. If however, a new institution is to be established, this could be only a special anticorruption agency. In order to be efficient it should be within the prosecutors' office and should have large investigative powers. There is no need for other anticorruption bodies, such as the Commission for

the fight against corruption at the Council of Ministers, because all they can do is to educate, produce brochures, and monitor the implementation of action plans. Efficient anticorruption activities, however, require investigative powers in order to punish persons involved in corruption and in this way play a prevention role in society at large.

As regards the question about the focus of a successful anticorruption strategy, the respondents believe that it should be placed on both grand and petty corruption. This requires that both approaches the top-down and the bottom-up are applied in parallel. On the level of grand corruption, the focus should be on transparency and control of party financing, which is the main engine of corruption in politics. On the level of petty corruption, the first step is to narrow the popular perception about corruption. Corruption is cited as an explanation for too many different problems, which are not related to corruption. This lack of understanding of the essence of the phenomenon reflects on the citizens' perceptions and leads to exaggerated levels in the perception of the phenomenon.

The NGOs representatives consider the lack of good investigative journalism in Bulgaria to be serious shortcoming of the anticorruption efforts in the country. According to them, the major role of media is to work on particular cases of corruption. The lack of investigative capacity amongst journalists is considered to be the main reason for the poor media coverage on the topic of corruption.

The role of NGOs in anticorruption activities is perceived to be supportive and cooperative to the government's efforts for counteracting corruption. However, another equally important function of NGOs is to correct government activities.

### *Target Group: Businesses*

#### *Definitions*

The representatives of the business define corruption as a state in which economic actors are forced to pay money in order to get services that should be provided by the public authorities for free. In some of the cases this could be the so called "greasing the wheels" corruption where money are paid to get things done in an easier and quicker manner. In the other cases, the access to some services could be blocked by the public officials unless the certain sum of money is paid.

Another manifestation of corruption is when both business and public authorities in a consensual way circumvent rules and legal procedures. This type of corruption distorts the competition and lowers the quality of the services provided to the public. The most dangerous form of corruption is perceived to be that which affects negatively the interests of big groups of people. In this respect, the petty corruption

that affects many members of the society could be much more dangerous than grand corruption because it is destructive for values and further incidences of corruption.

The respondents from this target group believe that corruption exist not only in the public sector, but also in the private one. This includes cases where private officials abuse their power for personal enrichment at the expense of the company's interest.

### *Origin and causes*

The representatives of business perceive corruption as universal phenomenon that exists to a certain degree in all societies. The characteristics of corruption in Bulgaria are determined first by the Communist heritage, and second by the lack of experience with democracy and market economy. This includes underdeveloped civil society, lack of independent media, and weak judicial system.

### *Size and scope*

According to our respondents, corruption can only be measured on the basis of a personal experience admitting that this approach cannot be applied for policy purposes. The phenomenon is present at low administrative levels with which many citizens interact in their everyday practice. As regards grand corruption, there are less people involved and the public is informed about it by the media. In this situation, it is very difficult to measure objectively corruption, but perception that is actually very strong in the society.

### *Anticorruption measures*

Since corruption has different manifestations, there should not be a single anticorruption strategy. However, one general strategy can be used to limit corruption at lower levels. This reorganization of the public sphere involves reduction of the state influence and introduction of clear rules and procedures. In many fields in which public resources are spent (healthcare for example) corruption is not the cause of the problem, but it is rather a negative outcome as a result of the system mismanagement. In such cases, a simple reorganization of the system towards better management would limit corruption.

Establishment of new state institutions meant to fight corruption would not help much since public trust in the state institutions is very low. The general public perception is that institutions are often established not to improve the quality of the governance, but rather to create new power opportunities for the ruling parties.

Introduction of transparency in all process of public decisions making could help to limit corruption significantly. It is important, however, that this transparency is

achieved in an impartial way through the use of new technologies and media like the internet, rather than traditional media, which has lost much of its public confidence.

Persistence in teaching social values to the young generations is an important factor that might play certain role in reducing corruption in the country. However, respondents admit that changing social values would require a lot of time and effort.

It is unrealistic to expect that political parties would initiate reforms that might bring positive change to the process of counteracting corruption due to the fact that they are the major vehicle of corruption. The lack of interest in politics has led to parties commercialization and “clientelisation”. Corruption to a great extent explains and rationalizes their existence.

It is also unrealistic to expect that business organizations might contribute significantly to the anticorruption efforts since they are private organizations that are primarily led by their private interests. This does not concern the low level administrative corruption, in which removal all businesses have questionable common interest.

In general, the media are of great significance for every anticorruption strategy. In particular there are not many media in Bulgaria that enjoy considerable level independence. Most of them follow certain private interests. There is a presumption in theory, which assumes that existence of many media representing different interest and views might lead to relative balance in information. However, in practice, it seems that media have concluded unwritten agreement to exclude certain topics from the public debate.

### *Corruption case studies*

In this section we present five case studies, which cover areas especially susceptible to corruption in Bulgaria: the process of privatization of major enterprises, political finance, the security services, the judiciary, and public procurement:

#### *Case Study 1: Privatization Procedure of the Bulgarian Tobacco Monopoly – Bulgartabac Holding (BTH), 2002 - 2006*

Bulgartabac Holding (BTH) is a leading tobacco company not only in Bulgaria but also in SEE. The company is state-owned and managed. The holding's activities include the full circle of cigarette production, from tobacco buying and leaf processing, to manufacturing and export of cigarettes.

Most Bulgarian producers of raw tobacco are ethnic Turks and political supporters of the Movement for Rights and Freedoms (MRF), which is the political party

representing Bulgarian ethnic Turks. Therefore the movement has direct political interest for Bulgartabac to remain state-owned in order to retain the political control over its voters. As a partner in the ruling coalition over the last five years, MRF has been able to exercise such a control mainly through guarantying higher minimum purchase prices for raw tobacco, which are set by the Government. That is why the privatization of Bulgartabac has been a difficult process that still has not been completed. Several Governments expressed readiness to privatize the tobacco sector. Bulgartabac was first put up for sale by the Union of Democratic Forces (UDF) Government in 1998. Two years later, in July 2000, the Privatization Agency cancelled the tender and invited new bids. In March 2001, the Agency terminated the privatization procedure without selecting a buyer.

The parliamentary elections in 2001 were won by Simeon II National Movement (SSNM), which assumed power together with the Movement for Rights and Freedoms (MRF). Days after the electoral victory, the new Minister of the Economy and Vice Prime-Minister Nikolay Vasilev announced that the privatization of the Bulgartabac Holding (BTH) would be completed by the end of 2001. However, owing to political and economic constraints, the new bidding did not start until the spring of 2002.

In March 2002 a new privatization procedure was opened. There were four major candidates to buy the holding. One of them was a consortium that was formed with the help of Deutsche Bank. The other three companies that participated in the tender actually represented one and the same person – Russian businessman Michael Chorny, who had been expelled from the country in 2000 on suspicions for involvement in organized crime.

Possibilities for corruption in the privatization process were identified and explained by the media in two main directions. First, it was well known that the Economy Minister who was responsible for privatization of the holding had good relations with some of the Deutsche Bank managers from the time when he had worked in the City of London. Soon after the procedure started, some publications in the media suggested that the Government, and in particular the Deputy PM Vasilev, has a favorite buyer – the Deutsche Bank consortium. Also, the media and society were suspicious of the privatization of BTH since there had been some previous scandals related to the way the Government managed the holding. Several investigative reports were published in the press in 2001 showing direct relation between the Vice PM Vasilev and Georgy Popov, Executive Director of Bulgartabac and best man at Vasilev's wedding. This made the media conclude that the appointment of Popov as Executive Director was made on the basis of personal connections. In April 2002, the representative of the Russian-Bulgarian company SoyuzkontraktTabak, Garegin Gevondyan accused the Executive Director of BTH of asking him for 500,000 dollars at their meeting on April 1, initiated by Popov. The case had nothing to do with the

imminent process of privatization, but reinforced the media and public suspicions about the real intentions of the Government as regards the privatization of BTH.

Secondly, there were suggestions in the media saying that Chorny and the leader of MRF Ahmed Dogan had been friends for a long time and that Chorny had funded his party in the past. Also, Ahmed Dogan and his party had immediate interest for Bulgartabac to be sold to somebody they know and they have influence over, since otherwise they would lose the political control over the Bulgarian ethnic Turks many of whom live on growing tobacco.

In this way, in the very beginning of the privatization of BTH, the media constructed the procedure as a clash of two powerful coalitions that would use their relations to Government and ruling parties in order to acquire the Bulgarian tobacco monopoly.

The interests of the two coalitions were well defined, and qualitatively different. The Deutsche Bank coalition was interested in purchasing the enterprise with as little future obligations and burdens as possible, with intention to restructure the monopoly and later sell it, or parts of it, to strategic global players from the branch. The Government was interested in being able to sell to an internationally known trade mark, for a good price, at as low a social cost as possible, and to be able to report progress in privatization to both the internal public and to international financial institutions and players.

The interests of the Chorny coalition were centered on the acquisition of a monopoly position in an important sector of the Bulgarian economy. The desire of both players in this coalition, Chorny and MRF, was to acquire economic rents and opportunities to enhance political influence through the ability to influence a significant number of voters dependent on the monopoly – in short, to purchase political representation.

In July 2002, the final bids were submitted and in August 2002 the Privatization Agency announced that Deutsche Bank was the winner in the tender. Chorny was not satisfied with this result and appealed the decision of the Agency before the Supreme Administrative Court (SAC).

In October 2002, the three-member SAC panel declared the procedure illegitimate and cancelled the choice of buyer. Two months later, this decision was confirmed by a five-member panel of SAC. At this stage Chorny succeeded to block the deal with Deutsche Bank in court, but not to buy BTH. In February 2003, under the pressure of the Government, the Parliament adopted an amendment to the privatization law, allowing for specific enterprises to be sold under the direct control of Parliament, which would avoid the control of the SAC. However, after the amendment was passed, the coalition around Chorny responded through several actions, including rallying MPs against the sale, eroding the public support for the Deputy PM Vasilev,



and even issuing physical threats to the point man of Deutsche Bank in Bulgaria. Eventually, one year after the start of the procedure, the PA, observing the lack of parliamentary support, stopped the negotiations and soon after the Council of Ministers stopped the procedure. Later on, the Constitutional Court abolished the amendments made to the privatization law, declaring that the exclusion of judicial control for privatization procedures does not comply with the Constitution.

### *Case Study 2: Allegations of Corruption and the Political Process*

In October 2003, the notorious Russian businessman Michael Chorny announced in the media that he had been blackmailed by the former PM Ivan Kostov, and that one of his companies had funded the Union of Democratic Forces' party foundation *Democracy* with the amount of 200,000 USD. Chorny was expelled from Bulgaria over suspicions of organized crime involvement during the UDF government (1997-2001) headed by Ivan Kostov. The management of the Democracy Foundation announced they received the money from a company based in Cyprus that had no connection with Michael Chorny.

Several investigative services began proceedings against the Democracy Foundation suspecting money laundering. One month later investigation was completed finding no criminal activity, but the Prosecutor's office requested an extension of proceeding. These proceedings did not lead to a definite conclusion for more than a year. In November 2004, the Sofia City Court found the former executive director of Democracy Foundation Grozdan Karadzov guilty of libeling Michael Chorny as a criminal, and sentenced him to pay a fine to the amount of 1,000 EUR. In March 2005 a court in Nicosia, Cyprus, ruled that the company that had transferred the money to the Democracy Foundation was not in possession of Michael Chorny. The scandal around the foundation continued lingering on for some time and gradually died out.

The case study is of interest because it illuminates the link between party funding, corruption and organized crime in Bulgaria, as well as their impact on the political process. The Russian-born businessman Michael Chorny did play a serious role in the Bulgarian transition period. His main investment in the country was the purchase of one of the only two mobile operators (during the discussed period of time) – Mobiltel. He was also the owner of the most popular football team in the country – Levski, which ensured his popularity among a large proportion of the fans. Finally, he had significant media interests; most importantly, he was the owner of one of the national dailies 'Standart'.

In 2000, upon Bulgaria's accession to NATO, Michael Chorny, together with a number of other Russian businessmen residing in Bulgaria, was expelled from the country by the UDF government of Ivan Kostov. The argument that the government used was that they presented a threat to national security: the evidence, the

government argued, constituted classified information, which cannot be publicized. The 2000 order for the expulsion of Chorny was signed by the head of the National Security Service (NSS) General Atanas Atanasov. In 2004, this order was quashed by a Sofia court on procedural grounds. However, this did not lead to the rehabilitation of Chorny and the restoration of his right to enter the country – on the contrary, the new chief of the NSS Ivan Chobanov reissued the order, rectifying some of the procedural flaws mentioned by the court, but again relying on classified information and national security considerations.

In the meantime, Chorny started civil proceedings for libel against some of the members of the UDF Government and the executive director of Democracy Grozdan Karadzhov. In 2004 the court fined Karadzhov for libel against Chorny, and in 2006 the Court fined the former finance minister Muravey Radev to the amount of 30,000 leva for the same reason. Both of them accused Chorny of being part of international criminal networks and of meddling illegally in Bulgarian politics. The courts found these accusations unfounded and libelous.

A further twist to the story adds a report produced in 2000 by the then head of the NSS General Atanasov, which accused senior members of the UDF government, and especially the Minister of Interior Bogomil Bonev, of illegitimate connections with Michael Chorny. More specifically, Bonev was accused of illegitimate lobbying for the financial interests of Michael Chorny and for providing him with “political roof” (protection) from investigation. This report became the reason for the dismissal of Bonev as minister. However, the report was never made officially public. In the 2001 presidential race, UDF candidate Petar Stoyanov showed the front page of the report to the public during a presidential TV debate with Bonev who was also running for the presidency. The exact content of the report was never published, however. Bogomil Bonev started judicial proceedings against general Atanasov, accusing the latter of abuse of powers in the production of the report. A first instance court found general Atanasov guilty of abuse of powers, but an appellate court acquitted him.

All these intricate details of the story are mentioned here in order to illustrate a very specific feature of Bulgarian public discourse on organized crime and corruption. On the one hand, it seems that it is public knowledge that businessmen, such as Chorny, are part of the organized crime and the underworld in general. After all, most of the media (apart from his own newspaper ‘Standart’) treat Chorny either openly as a criminal, or at least as a person whose wealth is of illegitimate origin. Further, there are official documents – such as the order of the NSS expelling Chorny from the country, which are motivated by the threat he presents to Bulgarian national security. People read this as an acknowledgement of the connection between Chorny and the Mafia.

On the other hand, however, no independent Bulgarian judicial body has ever established that Chorny is guilty of crime of any sort, not to speak of organized crime. On the contrary, Bulgarian courts have pronounced such allegations libelous. This state of affairs creates a degree of public confusion: people know who the criminals are, but they do not know exactly why they are criminals and what the character of their crimes is. This situation is fertile ground for the creation of myths as to the nature and scale of the spread of crime and corruption in the country.

Most importantly, this state of affairs leads to a situation in which different people put radically different content in their conceptions of organized crime and corruption. Most of the time, there are strategic reasons which lead different actors to stick to a specific conception of crime and corruption.

### *Case Study 3: Alexey Petrov and his role in SANS (State Agency for National Security)*

Currently, the most high profile investigation in Bulgaria is against Alexey Petrov, the alleged organizer of a grand criminal „octopus”, as it is popularly referred to in the media. Petrov started his career under communism as a sportsman, related with the police – he was a karate player, who the police planned to use in the future. In the beginning of the 1990s he started his own business – predictably, a private law enforcement agency, which gradually grew into an insurance company dealing primarily with automobile insurance. At the end of the 1990s he was recruited as an informer by the state security services of already democratic Bulgaria. In 2008 his career peaked when he became a senior officer in SANS, the Bulgarian state security agency. He was in charge of the fight against organized crime. In the autumn of 2009 he was indicted with organized crime charges (leader of organized criminal group). His case is currently pending.

It is interesting that Petrov has survived a number of different governments – he has contacts and links with many Bulgarian politicians and officials, including the former Prosecutor General. During the 1990s he had common business with the now Prime Minister Boiko Borissov.

Further, during the parliamentary campaign of 2009 SANS (with Petrov among its top ranks) became unusually politically active leaking sensitive information to and accepting corruption signals from a specific new party called „Order, Law and Justice”. To many observers, this looked like an instance of political engineering by SANS, which allegedly aimed to strengthen the electoral prospects of the then ruling party (BSP) and to weaken the chances of the opposition (GERB). Reportedly, the brother of Petrov was member of this new party.

This case study illustrates the intricate interrelations between alleged organized crime members and the political establishment in Bulgaria. This is a good illustration of the utility of the „broad” meaning of organized crime in Bulgarian context. What is meant by OC is in fact the formation of the present-day political elite in the country in close interrelation with members of the former communist secret services and the police, or „violent entrepreneurs”, who have emerged in the place of the disintegrated institutions of communist Bulgaria. By the concept of organized crime the majority of the people understand the dominance of such connections during the better part of the Bulgarian transition to democracy and market economy. Whether guilty or not in reality, Petrov already symbolizes in the public imagination what is perceived as a largely illegitimate origin of contemporary political elites.

The Petrov example further shows the lack of analytical clarity in defining both organized crime and political networks. This analytical confusion is apparent in the public discourse: media generally portray politicians as corrupt. In fact, politicians come in two models: corrupt and anticorruption fighters. For the last ten years this has become the main „cleavage” in the Bulgarian party system, overshadowing socio-economic issues and other traditional party dividing lines. This phenomenon is of key importance for the understanding of what organized crime means in Bulgarian context.

Whenever we try to give a precise definition to this complex social phenomenon, we find this difficult. The Bulgarian Penal Code provides certain clarity by giving a definition for “organized criminal group.” It states that the activities of the gangster groups are not only manifested in the accumulation of grave crimes, but they also constitute a collective act of individuals who continuously coordinate their actions and whose relationships are well structured and hierarchical. Generally, organized crime is the formation of criminal networks, the creation of illegal quasi-institutions. Hence, it is a criminal *competitor to the government* in the areas of enforcing rule and order. This competition is most evident with the monopoly on violence and the monopoly on collecting of taxes, duties and levies. In these two aspects, the Mafia openly competes with governmental institutions and often manages to gain its own “territories.”

#### *Case Study 4: Krasio the Blackie – corruption in the judiciary*

In June 2009, a member of the Supreme Judicial Council - Ivan Kolev publicly stated that a young man, in his words "Krasio the Blackie with the neck-chains", sold to interested parties his ability to influence personnel decisions of the SJC. Krasio claimed that he had influence over members of the SJC, boasting such influence over between 8 and 13 magistrates, out of a total of 25. The price was 200,000 Euro. The immediate investigation of the mobile communication of Krasio revealed that he is in the centre of a powerful network. And, remarkably, this network has been

activated just before the meetings of SJC regarding the appointment of the candidate that has paid the bribe. There were numerous phone calls between him and two members of the SJC, as well as a host of other magistrates.

Krasio owns several companies, expensive real estates and cars: his lifestyle and assets were obviously well above his legitimate means and sources of income.

The announcement of Ivan Kolev created a massive public scandal: the scandal just confirmed wide-spread public impressions that the SJC is dysfunctional, and that there are corrupt networks within the judiciary. US Ambassador to Bulgaria James Warlick metaphorically described this case as a cloud that still hangs over the Bulgarian judicial system.

The address book of Krassio numbered 1040 people, including magistrates from all levels, executives, MPs, local authorities, representatives of shady businesses, etc. 41 magistrates and 23 MPs were reported by the media as figuring in the address book, while Prosecution reported slightly different figures. Politicians from the tsarist party NDSV and the Turkish minority party DPS were implicated.

There was massive pressure from political parties and civil society on the SJC to respond with tough measures to this very damaging scandal. For instance, the Bulgarian chief prosecutor, the Minister of Justice, the Association of Judges in Bulgaria, the Association of the prosecutors, some of the parties, including those involved, insisted SJC to remove its members who have had connections with Krassio. Some of these institutions proposed changes in the respective legislation.

The appointment decisions of the SJC (although temporarily suspended) continued regardless of the fact that Bulgarian chief prosecutor and the Minister of justice insisted SJC to stop the appointments until its members proved to be out of this network. The Association of Judges in Bulgaria blamed SJC for not announcing the full list of Krasio's "friends". Ultimately, two members of the SJC – Dimov and Stoykov – resigned, and several other magistrates, who had contacted Krasio before their election proceedings were dismissed. These measures could not convince the public that the SJC had eradicated corruption and dubious practices in its work, however.

#### *Case Study 5: Conflict of Interest of Ahmed Dogan*

The biggest scandal of 2010 implicated the leader of one of the main political parties in the country – Ahmed Dogan from the Turkish minority party Movement for Rights and Freedoms. A newspaper reporter (from the daily *Trud*) first published information that Ahmed Dogan has received a huge (by Bulgarian standards) honorarium of over one million leva (500,000 Euro) for consultancy services regarding plans to build

dams and hydro-electrical power stations. Ahmed Dogan is a philosopher by training, and has been professional politician with no publicly known scientific interests or achievements for the last twenty years. The revelation immediately created a huge public scandal: many believed that this honorarium was a kickback for specific public procurement services secured by Dogan for the private company which gave him the honorarium.

During the time of the consultancy contract, Dogan was head of the MRF – a key partner in the triple coalition which was ruling the country in the period 2005-2009. Further, personally Dogan was a member of a consultative body – the so called Coalition Council – which was an informal body through which the party leaders of the triple coalition took the most important governmental decisions: these decisions were then formally implemented by the Council of Ministers and the majority in parliament. In short, Dogan was a key member of the ruling coalition, and without his approval major decisions could not be taken.

The company, which gave the honorarium to Dogan, was a part of a holding structure: some of the other companies in this holding structure had benefitted from public procurement contracts in the hydro-electric power and related businesses, although this specific company – an institute – did not. In fact, for the relevant years the institute posted financial losses, which amounted more or less to a million leva, as reported by the media.

After the huge public outcry the case was taken up by the prosecutorial services, and by the parliamentary committee on conflict of interest. In the summer of 2010 the committee came up with a conclusion that there was a conflict of interest in this case: the committee sent the case to the Supreme Administrative Court, which is the final authority to rule on the matter. If the Court confirms the verdict of the committee, Dogan's honorarium should be taken by the state, and then Ahmed Dogan will be liable to other administrative sanctions, as envisaged by the laws. If corruption is revealed or proven in the course of the proceedings, he could be liable for penal sanctions as well, after due process under the criminal code. Undoubtedly, this case will be a major test for the efficiency of the conflict of interest legislation.

### *Conclusions*

The present report demonstrates that Bulgaria has gone a long way in the institutional fight against corruption. The country has an elaborate network of anticorruption bodies; in addition, the normative base has been significantly improved, and there have been numerous state-of-the-art pieces of legislation adopted. Even in areas like conflict of interest, which are not heavily regulated in many democracies, Bulgaria has ventured to adopt sets of rules and standards.

The overall results of this massive institutional and normative 'transplantation' and innovation are mixed. The high profile scandals from the last two years indicate that there is now political will on behalf of ruling elites to part with corrupt practices. Whether this will be sufficiently strong and persistent remains to be seen. One thing is clear, however: institutional innovation per se cannot guarantee results: the case of the Bulgarian State Agency for National Security illustrates the point. Institutions and rules are tools in the hands of politicians and public officials, which could be used for good, but also for questionable purposes. Therefore, institutional innovation should be always considered in its political context.

#### 4.

#### ***Effective means for combating conflicts of interests and incompatibilities. The case of Turkey***

##### *Fighting corruption and corruption case*

Corruption is defined as abuse of entrusted authority to harm any kind of public and private interest. While until recently, corruption was being widely defined as „abuse of public power for private interest's use ", with the emerging new developments, corruption cannot be explained by only appealing to the concept of *public power*. According to this wide definition of corruption which is not limited to public power, corruption may also be explained as “any task is misused for personal benefit”.

Corruption enriches the few, but weakens the social fabric, the economy and the state. Where corruption is rampant, it becomes a key obstacle to development. Corruption undermines the rule of law and democracy; it leads to the wasting of public funds; it distorts competition; it hampers trade and inhibits investments. Thus, there is a general agreement today that corruption is a major evil.

There are international documents that define corruption. According to second article of Civil Law Convention on Corruption dated November 4, 1999, “Corruption as dealt with by the Council of Europe's GMC is bribery and any other behavior in relation to persons entrusted with responsibilities in the public or private sector, which violates the duties that follow from their status as a public official, private employee, independent agent or other relationship of that kind and is aimed at obtaining undue advantages of any kind for themselves or for others” so the definition of corruption is two-sided.<sup>45</sup>

In the United Nations Convention against Corruption signed in Merida, on December, 9 – 11, 2003, corruption is defined as “using the entrusted authority in any way of abusing the public and special interests.”<sup>46</sup> According to this definition, public or private sector officials' decisions, which are invested with authority, if there are at stake personal or economic relations with third parties, are the source of corruption.<sup>47</sup>

Corruption, however defined, expresses negativity and moral weakness; also it can be seen in the field of public sector, private sector, civil-military bureaucracy, politics and the media.

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<sup>45</sup> Civil Law Convention against Corruption (Strasbourg, 04.11.1999), 17 June 2003 and 25 141 numbered Official Gazette, p. 39.

<sup>46</sup> H Özbaran, "Corruption and International Organizations and the Struggle in the Field Units, Court Review, and Number: 50-51, July-December 2003 p. 18.

<sup>47</sup> Mehmet Aközer, "Public Corruption in the Public Eye", Opinion, December 2003, p. 15.



Corruption is a threat for democracy. It erodes confidence in and respect for democratic institutions and emerges as an obstacle to economic development. Fight against corruption is therefore crucial to achieve economic development and stability. Corruption poses an increasingly serious threat in Turkey, as well as in the rest of the world in many respects.

There are a variety of negative effects of corruption. The most common and the most negative effect of corruption is that it damages the political system, legitimacy and prestige of the state and management. When corruption has become widespread in the management system, public management functions cannot be performed effectively.

Another important impact of corruption is that it slows down the economic development. In recent years, it is known that corruption is the source of economic crisis which occurred consecutively all over the world. In this regard, according to a study of World Bank, there is an inverse relationship between corruption level, foreign investment and economic growth.<sup>48</sup>

Corruption which does not only exist in Turkey, it is a problem in all the world to a certain extent. Almost everyone in terms of comparative indicators of corruption relies on the reference sources of the work of Transparency International (the Corruption Perception Index). The index uses a scale ranging from 0 (most corrupt) to 10 (uncorrupt). According to a study conducted by the International Monetary Fund, the country's one point increase in corruption perception index between 0 to 10 is statistically related to a decrease between 0.3% to 1.8%, GNP per capita, 2.8% of investments in GNP and incomes of the poor between 2% to 10%. An increase of 1% of corruption perception index leads to decrease in public education expenditure in GNP between 0.7% to 0% and of public health expenditures from 1.7% to 0.6%.

The 2009 CPI includes 180 countries, of which New Zealand, Denmark, Singapore, Sweden, and Switzerland were the 5 least-corrupt countries. Turkey's ranking fell to 61, from 2008's place at number 58.

Another study published by the same organization is Global Corruption Barometer which has shown that corruption is not only the problem of Turkey but also becoming chronic problem in all countries. Global Corruption Barometer (2004) has been announced on the first time to celebrate the UN Anti-Corruption Day (December 9, 2004). According to the research during which people from 62 countries were asked their opinion about corruption, 36 of the 62 countries surveyed, political party

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<sup>48</sup> Hakan Özbaran, *ibid*, p.21

corruption took first place, followed by parliamentarians, policemen, judiciary and the private sector, respectively. The least corrupt institutions are the army and religious institutions.

According to the World Bank report, many developing country governments including Turkey are making important gains in the control of corruption. Political and institutional reforms are empowering Turkey in its fight against corruption, the report says. The strengthening of the DDK and the law on access to information, passed in 2003, that allowed citizens to seek information from public institutions are listed as important actions in the fight against corruption. The survey, conducted with the participation of 1,186 top executives from 33 countries, showed that there is a rising awareness against bribery and this has encouraged international organizations, including the UN, to draft important anti-bribery agreements. The participants noted that anti-corruption and anti-bribery laws in Turkey have been made stronger, although existing sanctions and public pressures are behind the worldwide average. This implies that legal sanctions cannot be properly implemented in Turkey. However, compared to previous periods, the anti-bribery laws have become stronger in the last five years, the survey found. According to the survey, the rate of success by internal audits in detecting and preventing bribery and corruption is 72 percent worldwide, but 52 percent in Turkey. On the other hand, 52 percent of executives in Turkey believe that auditors are sufficiently informed about bribery, corruption, risks and indicators.

Increase in number of corrupt acts affects investment, resources allocated to development are hampered, it encourages violations of the laws, directly or indirectly, it deprives people of their rights and perhaps most important, causes to irreparably harm the poor people of developing countries. In this regard the efforts of international organizations for fighting corruption accelerated in the past years.

As a result of this requirement, the international organizations and bodies that were established with the explicit objective of fighting corruption work hardly on bringing aspects of this phenomenon to the light. Amongst the most well-known organizations in the field of anticorruption operating at international level (as well as in Turkey) are: provide support by both documents and other works they prepare about corruption

- Group of States against Corruption (GRECO)
- The European Anti-Fraud Office (OLAF)
- Financial Action Task Force (FATF)
- The International Transparency Organization (TI)
- The Center for International Crime Prevention (CICP)
- Southeast Europe Stability Pact Anti-Corruption Initiative (SPAI)
- Anti-Corruption Network (ACN)
- Anti-Corruption Initiative for Asia-Pacific Countries

In Turkey, in addition to these organizations there are also local organizations or operating units whose goal can be included in the overall efforts of fighting corruption. Such organizations play a major role in the field of implementing concrete measures for fighting corruption; for example, during an international seminar organized by one such organization on *Prevention and revealing of fraud and corruption*, the Court of Auditors presented for the first time its plan on medium and long term for preventing corruption. Measures proposed on a mid-term targeted<sup>49</sup>:

- To ensure transparency in public financial management
- To develop internal and external audit structures
- To create an institution to combat corruption
- To review the risk of corruption in public administration processes
- To improve rates of corruption perception

On a long term, the Court of Auditors states that Turkey needed:

- An increased public awareness on corruption
- The contribution of Scholars to better understanding and deconstructing the concept
- An increased effectiveness of civil society organizations active in the field.

In the same communication, it was stressed the need for an appropriate economic policy, which is capital for reducing the possibility of corruption and strengthening of the relevant following institutions/fields ("columns", as they are described by TI<sup>50</sup>):

- Political will
- Administrative reforms
- observer organizations (anticorruption commissions, higher audit institutions, ombudsman)
- Legislative Council
- Social awareness
- Judiciary
- Press and broadcasting
- Private enterprise.

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<sup>49</sup> Özsemerci, *ibid*, p.132-135

<sup>50</sup> The President of Transparency International, "National Reliability system "like an idea of holding up the roof of a house in the eighth column of eight elements, independently and collectively provide the national safety. Reliability of the weakening of the one column load more weight than others as a result of this move is that the load will stop crashes and sustainable development. That s why overall balance of the column is so important and the government should strive to keep the eight pillars in balance.

### *Turkish national legislative framework analysis*

The fight against corruption is crucial, in particular for achieving an economic and political stability, to attract foreign investors and to establish the rule of law. It has a particular importance for Turkey in the achievement of its goal of becoming a European Union member. Anticorruption will feature prominently in Turkey's talks on EU accession. Turkey has been considering the fight against corruption as a priority matter.

One cannot deny that corruption is at the basis of chronic budget deficits and inflation in our country for many years now. Today it is a common belief that losses and corruption are associated by public opinion with public institutions and organizations' irregularities and inefficiency.

Corruption is a phenomenon has negative effects even onto laws. Due to existing gaps in current legislation and to the lack of control resulted from lack of transparency and accountability; it is difficult to clearly keep distinction between several types of corrupt acts. Classification within the current existing researches appeal usually to political, managerial, administrative, economic or material interest in defining corruption, but what kind of actions would fall within the scope of this classification is difficult to determine.

From this purpose, it is necessary to move further to the causes of corruption in our country, to investigate the dimensions found in the report of the Parliamentary Investigative Commission, types and actions – whether directly or not related to criminal sanctions. Two main categories of such corruption acts were examined<sup>51</sup>:

a) *Direct criminal sanctions* linked to the following types of corruption:

- Bribery
- Debt
- Malversation<sup>52</sup>
- Money laundering
- Fraud
- Insider trading

b) *Types of corruption* indirectly connected to the criminal offences, which are not punishable:

- Rent seeking

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<sup>51</sup> Parliamentary Investigative Commission Report, p. 7-13.

<sup>52</sup> Malversation: Scientific studies "tribute" or "active bribery" is defined as the difference of malversation of bribery, by service areas in the process of moral persuasion or officer of algebraic methods is to have a price to pay.

- Lobbying
- Vote trading
- Other (such as: abuse of information, constitutional violations, lack of disclosure of gifts accepted by politician, misconduct of officials in local public services – especially excessive partisanship etc)

In recent years our country has carried out various corruption studies based on scientific criteria. The results of the latest study on corruption in Turkey<sup>53</sup> revealed that:

- a. *Corruption is widespread in public administration*
  - b. *Turkish citizens perceive corruption as one of the most important problems that needs to be solved*
  - c. *The major causes of corruption are:* overweighed staffing in public institutions, rote education, the incapacity of the institutions to generate a sense of security within the society, perception of corruption of public service as “natural” or “appropriate”, laws, rules, regulations and complexity of transactions, commercial relations between the press and the politics, inequality in income distribution, inflation, lack of ethical values in public administration, lack of merit principle in promoting in careers in administration.
  - d. *Corruption of Government* is meant to facilitate business, protect officials from the judiciary, while it generates plundering of state resources, losses in public and private sector production, mafia-state, decrease of public trust in the system.
  - e. *Most effective means to combat corruption* are: ensuring the effective supervision and accountability in public sector, education, promoting transparency of political financing, independent media.
- In the fight against corruption, probably the most important *must* is a strong political will in order to ensure a broad public support.

One of the most important causes of corruption in our country is that the financial system has not achieved integrity. Since the 1980s, significant portions of the operating budget financed by public revenues are taken out of context. These activities are done under the supervision of the Turkish Grand National Assembly, which practically removed the possibility of auditing these funds.

Court of Auditors’ audit and legal activities, in terms of fighting corruption, have a dual function. First, by revealing committed corruption to provide punishment of offenders, as well as the recurrence of these and similar opportunities to provide an effective deterrent measures to ensure a role to play – the latter is already

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<sup>53</sup> Parliament Assembly Research Commission Report, p. 108-109

enforced. However, fragmentation of budget restrictions and the Court's authority to audit, in accordance court to fulfill its purpose and functions is substantially blocked. Prime Minister's Inspection Board report from April 2001 states that the corruption level of 65% is the most important factor that negatively influences foreign capital.<sup>54</sup> 1 As regards the fight against corruption in Turkey, if we look to our national legislation we may find some that are directly or indirectly pointing to provisions of combating corruption, but the most important deficiency is that neither defines corruption. Amongst the most important pieces of legislation including provisions related to combating forms of corruption are:

- The Turkish Penal Code
- Provisions related to paying bonuses for informants
- Declaration of Assets, Combating Bribery and Corruption Law
- Bribery of Foreign Public Officials in International Business Transactions for Prevention of Certain Laws Amendment Act.

Several legal arrangements have been passed for combating corruption also in Turkish public administration. These pieces of legislation have been implemented especially after 2000s' in accordance with the good governance principles: participation, transparency, openness, accountability, efficiency, effectiveness.<sup>55</sup>

The new Turkish *Criminal Code No. 5237* which entered into force on June, 1, 2005, defines bribery as providing a benefit to a public official for the performance or omission of an act contrary to the requisites of the duties of the official. A public official whom receives a bribe is subject to the same penalty as a person who gives a bribe. The Criminal Code sets forth that Turkish laws shall apply to the crimes of bribery committed abroad regardless of whether the crime is committed by a Turkish citizen or a foreigner. If a bribe creates an unlawful benefit to a legal entity, the entity shall be punished through three security measures: invalidation of the license granted by a public authority; seizure of the goods which are used in the commitment of, or the result of, a crime by the representatives of a legal entity; and seizure of pecuniary benefits arising from or provided for the commitment of a crime. Criminal liability of legal entities was not regulated under the old Criminal Code and is therefore a new concept under Turkish law.<sup>56</sup>

Turkey's first attempt to criminalize bribing foreign public officials was the ratification in 2000 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention" discussed *infra*), which was followed by the enactment in 2003 of *Law No. 4782 Amending Certain Laws for the*

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<sup>54</sup> Parliament Assembly Research Commission Report, p. 78-81

<sup>55</sup> Public Administration Reforms and Corruption In Turkey Dilek MEMİŞOĞLU , Ayşe DURGUN Süleyman Demirel University, TURKEY

<sup>56</sup> Anti-Corruption Legislation In Turkish Law By Güne Okuyucu-Ergün

*Prevention of Bribing Foreign Public Officials in International Commercial Transactions* and the enactment of the new Criminal Code in 2005.<sup>57</sup>

*Law No. 3628 Concerning the Declaration of Assets and Combating Bribery and Corruption*, which entered into force on May, 4, 1990, is one of the main pieces of legislation which aims to prevent corruption in Turkey. Law No. 3628 requires certain public officials to declare their assets in order to monitor any increase in those assets. The violation of this requirement is subject to a penalty of imprisonment from one to three years.<sup>58</sup>

*Law No. 5176 Concerning the Establishment of the Public Officials Ethical Board and Amending Certain Laws* became effective on June, 8, 2004 and sets forth the ethical rules that the public officials are required to comply with, such as the transparency, impartiality, honesty, accountability and pursuing the public interest. The Ethical Rules Law established the Ethical Board to investigate any irregularities or other unethical conducts of the public officials. According to TUSIAD's<sup>59</sup> anti-corruption strategy plan on the published report of this law, the expansion is required.

Administration – including all public paid services (Universities and the Turkish armed forces, including) should be also subject to this law. The sanctions prescribed by law are neither adequate nor appropriate. In our opinion, every ethical rule violation should be assessed according to action's situation and sanctions like condemnation, fee cuts and stop promotions should be applied. Judicial ethics rules for members of the judiciary should be also set up. As in the case of Law No. 5176, this must be connected to an institutional mechanism.<sup>60</sup>

Efforts on Fighting Corruption and Improving Governance can be also found in the *Local Government Law on Metropolitan Municipalities, No. 5216*, July, 23, 2004, *Law on Municipalities, No. 5393*, July, 23, 2004, *Law on Provincial Administrations, No. 5302*, December, 24, 2004. These laws aim to ensure:

- Efficient and effective local governance
- Transparent and accountable expenditure management
- Strong internal controls and external audit, reporting and accounting
- Sound legislative oversight.

*Law No. 5018 on Public Financial Management and Control Law*: In order to ensure responsibilities of the public officials, transparency and accountability in public service, the law describes the scope of accountability (Article 8): *Those who are*

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<sup>57</sup> Anti-Corruption Legislation In Turkish Law By Güne Okuyucu-Ergün

<sup>58</sup> Anti-Corruption Legislation In Turkish Law By Güne Okuyucu-Ergün

<sup>59</sup> <http://www.tusiad.org/Default.aspx?Lang=eng>

<sup>60</sup> Anti-Corruption Legislation In Turkish Law By Güne Okuyucu-Ergün

*assigned duties and vested with authorities for the acquisition and utilization of public resources of all kind are accountable vis-à-vis the authorized bodies and responsible for the effective, economic and efficient acquisition, utilization, accounting and reporting of the resources on the basis of law, as well as for taking necessary measures to prevent the abuse of such resources.*

Undersecretaries, superior public officers in public institutions, governors and mayors are defined as responsible officers. By means of this law, all public financial transactions approved by these responsible officers shall be transparent and accountable. Thus, determining causes of conflict of interest situations in these processes may be easier.

*Law No. 5393 on Municipalities (Article 27):* The Mayor and the members of the Council shall not participate especially in the meetings during which the matters related to them, their second degree relatives by blood and relatives by law and their adopted children are debated. *(Article 28):* Any mayor may not directly or indirectly, enter into contract with, or engage in brokerage or become a representative of the municipality or its subsidiaries during his term of office and two years after the termination of his office. These prohibitions are applied to the members of the council during their term in office and one year after the termination of their office.

At international level, Turkey supports the anticorruption initiatives through various international conventions including the United Nations Convention against Corruption and the Council of Europe's Civil Law and Criminal Law Conventions on Corruption. As far as the UN Convention is concerned, in order for it to be effectively enforced, it needs to be signed by at least 30 contracting party countries, which is not the case at the moment. It has the scope of encouraging legislation for preventing unfair enrichment, private sector bribery, embezzlement and money laundering. The UN Convention covers the prevention, investigation and prosecution of corruption as well as the freezing, seizure, confiscation and return of proceeds from corruption. Pursuant to the UN Convention, each State Party is required to adopt such legislative and other measures as may be necessary to establish the crime of bribery as a criminal offence when committed intentionally. As explained above, the Turkish Criminal Code penalizes bribing public officials. The UN Convention also requires the state parties to take the necessary steps to establish appropriate systems of procurement - based on transparency, competition and objective criteria in decision-making - that are effective, *inter alia*, in preventing corruption. Two Turkish laws meet this requirement: *Turkish State Tender Law No. 2886*, which generally applies to the sale and lease transactions of the state assets; and *Public Tender Law No. 4734*, which applies to the procurement of goods and services by the public entities. In addition, the Turkish Public Tender Authority has been established by Public Tender Law No. 4734 on January, 1, 2003 in order to regulate, supervise and control the public procurements. Pursuant to the UN Convention, the state parties are required



to institute a comprehensive domestic regulatory and supervisory regime for banks, financial institutions and other natural or legal persons particularly susceptible to money laundering in order to deter and detect all forms of money-laundering.

The Turkish anti-money laundering legislation mainly consisting of the *Anti-money Laundering Law No. 4208*, which entered into force on November, 19, 1996, and the *Anti-Money Laundering Regulation*, which entered into force on July, 2, 1997, meets this requirement of the UN Convention. In particular, the Anti-Money Laundering Regulation states that if there is a suspicion that money or convertible assets are being used to launder or attempt to launder money, this shall immediately be reported to the Financial Crimes Investigation Agency, after making customer identification. A person or entity who fails to report such suspicious transactions are subject to imprisonment from six months to one year, as well as to certain administrative fines. The Turkish Financial Crimes Investigation Board, which was established by the Anti-money Laundering Law No. 4208 and started operation on February, 17, 1997, is a public authority specifically authorized to investigate money laundering crimes.<sup>61</sup>

Turkey has formally adopted European standards in the fight against corruption. The European Council Special Law Regarding the Anti-Corruption Convention, 27 September 2001 signed in Strasbourg, was approved by the TGNA through the *Law No. 4852* on April 17, 2003. According to this law, formally entered into force in 2003, a person who is damaged as a result of act of corruption is entitled to sue to defend his/her rights and interests . Contract tracking against corruption will be carried out by Group of States against Corruption (GRECO). By enforcing the contract, Turkey also became a member of GRECO.

Preventing of the bribe given to public officials in international trade transactions contract of the OECD came into force after being approved in February, 1, 2003 and published on February, 6, 2003. The UN Convention Against Transnational Organized Crime as signed in Palermo on November 15, 2000 was approved by Law no. 4800 on January, 30, 2003. Assuming objectives to fight corruption from international prescriptions is another argument that Turkey pays importance to anticorruption. It is also part of the national plan propose by the International Monetary Fund for Turkey. Effective administration and corruption board which was created for this purpose at the prime ministry inspection board has started preparing the strategy in this field. Reduction of the public in the short term and bureaucratic ethical principals being entered into the legislation has taken place in the action plan for the Increasing transparency in government in Turkey and development of the effective management in the public. Although similar full compliance could not be

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<sup>61</sup> Parliament Assembly Research Commission Report, p. 108-109

achieved, new auction tender act which was approved for being in compliance with the EU Commission came into force on January, 1, 2003.

Having examined the Turkish anti-corruption legislation, it can be seen that some considerable steps are already taken by Turkey. Being a candidate for the European Union accession and a member to several international conventions against corruption, such as the UN Convention on Corruption, the Council of Europe's Criminal and Civil Law Conventions and the OECD Convention on Combating Bribery of Foreign Public, Turkey also actively supports the anti-corruption initiatives at the international level. These positive steps alone, however, are not sufficient to combat corruption in an efficient manner, which requires a comprehensive governmental strategy and support from the civil society as well as a universal anticorruption strategy to fight against the global phenomenon of corruption.<sup>62</sup>

### *Fighting corruption in Turkey with public structure and civil society*

The two external oversight bodies over the government are Turkish Grand National Assembly (TGNA) and the Turkish Court of Accounts (TCA, regulated by Law 832. The Audit mandate of the TCA is discharged in a two phase process: the first phase is the audit of the accounts, while the second phase is the trial of these accounts. The end-product of the latter is a legal document called a writ, which acquits officials or holds them responsible for their financial management. The judicial assessment, is to establish "public loss" resulting from the misuse of resources as an individual responsibility of the account. A draft law tabled in the TGNA aims to enlarge the current audit scope of the TCA. The current major exemptions are the Central Bank and other state banks, municipal enterprises and State Economic Enterprises (SEEs). In addition, the audit of the Ministry of Defense is circumscribed by some restrictions. The Parliamentary Audit Commission oversees SEEs, which are also audit by the Prime Ministry High Auditing Board; this Board is accountable to a state minister within the Prime Ministry.

The same survey performed by TI mentioned in the first section of this report revealed also the corruption levels associated by Turks with institutions that are supposed to be anti-corruption agencies, such as:

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<sup>62</sup> Parliament Assembly Research Commission Report, p. 108-109

*Institutions and sectors**Corruption perceived levels (10 – highest)*

Political parties	4.0
Parliament / Legislature	3.7
Justice system / Judiciary	3.6
Police	3.6
Business / Private Sector	3.4
Tax Administrations	3.4
Customs	3.3
Media	3.3
Health Services	3.3
Education system	3.1
Registration and Permit Services	3.0
Utilities	3.0
Army	2.9
Civil Society Organizations	2.8
Religious Institutions	2.7

**Source:** Transparency International, Global Corruption Barometer 2004, p. 18.

However, corruption cannot be solved only by legal norms. Contribution of public and in particular civil society organizations must also play an important role. The most important organization in Turkey engaged in fighting against corruption is *Social Transparency Movement Association*, which is the Turkey ambassador of International Transparency organization. Other organizations such as Turkish Economic and Social Studies Foundation (TESEV), Turkish Industrialists and Businessmen's Association (TUSIAD), Union of Chambers and Commodity Exchanges (TOBB), Fighting Against Corruption Association, can be regarded as civil society organizations which contribute to public awareness in the field of combating corruption in recent years. Especially the studies of TESEV are worth to mention in this context in recent years<sup>63</sup>. The most recent study of TESEV targeting exactly the perception of corruption of three target groups, namely household, business and bureaucracy, reveal that:

*For the general public:*

- The importance of corruption and bribery as problems has increased on the agenda of the general public in the last years. Trust of people in public

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<sup>63</sup> TESEV, from the Household Review of the Causes and Prevention of Corruption in Turkey Related Recommendations, Istanbul, 2001, <http://www.tesev.org.tr>, P. 90-10.

institutions is very weak and the consumers satisfaction on public services is very low.

- Most of the respondents declare they give gifts to public officials for solving their problems, this being an indicator for an internalized corruption/bribery.
- Nevertheless, people are supportive of measures to curb the phenomenon, especially through increasing resources and reducing bureaucracy they think that the Government has the most important regulative role in that respect.

*For the business:*

- The approximately 1,200 businesses interviewed during the research tended to favor slightly similar measures to combat corruption, amongst which to increase the wages of the public officials, to decrease bureaucracy and to increase the capacity of the service and sources.
- Trust of businesses in public corporations is commonly very low and the satisfaction for public services is quite low. Businesses consider that in most of public corporations bribery and corruption are very common, and they do not behave on equality premises. There is nepotism in every field from recruiting, to some decision making procedure in subsidies.

In March 2004 TESEV expressed the result of 'the satisfaction taken from services by local and central managements, patronage relations and reform' which is the third part of the research named Corruption in Turkey. According to the results of this study bribery and corruption is ranked third among the problems that must be solved. (Unemployment in the first, second row - inflation). Confidence levels in the public institutions according to the results of this study are as following: the Armed Forces is on the first place with 8.2%., Primary and Secondary Education Institutions (6.8%), universities (6.6%), Governors (6.5%), Courts/Legal System (6.4%), Central Government/Government (6.2%), Police (6.1%), Parliament (6.1%), District of (5.7%), Municipalities/Local Government (% 5.2), Newspapers (4.8%), trade unions (4.8%), TV channels (4.7%), political parties (% 3.8) and politicians (3.4%). In the same study, the central government and local satisfaction of management reviews of the services between 1999 - 2004 was also included. According to this the central service satisfaction in 1999 was 2.8% in 2004 it has risen to 5.8 %. The satisfaction of local government services for these years has not changed much. In 2004 it was 5.1% and in 1999 it was 5.3%.<sup>64</sup>

According to the results of this research, among the alternative reforms for curbing bribery and corruption preferred, the increased government regulations is the most favored reform, although there are different suggestions about different agencies.<sup>65</sup>

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<sup>64</sup> TESEV, İş Dünyası Gözünden Türkiye'de Yolsuzluğun Nedenleri ve Öneriler, Şubat 2003, s. 132

<sup>65</sup> TESEV, Türkiye'de Yerel ve Merkezi Yönetimlerde Hizmetlerden Tatmin, Patronaj İlişkileri ve Reform, Mart 2004, s.7-8.

Other recommendations are: increasing resources capacity of public services, reduction of bureaucratic formalities, raising the salaries of staff, prevention of intervention of politicians in the administrative act.

*Assessment of stakeholders' perceptions towards the effectiveness of anticorruption fight in Turkey*

Examining the results of interviews aimed to assess national officials' and civil society's perception towards the effectiveness of the anticorruption fight (legislation and practice), it can be seen that perceptions are almost same. According to general opinion current regulations regarding the regime of incompatibilities in Turkey are not enough at the moment. Because there is a lack of legislation and sanctions are rarely applied. It is said that conflicts of interest is one of the main cause of corruption. Due to conflicts of interest, corruption is tolerated.

None of the participants to the interviews agreed that Member of Parliaments should be allowed to participate in General Assemblies, or in Administration Councils of national companies, commercial companies, banks and other financial institutions and to be paid for this job. Participants deal with working in such organizations cause increase in corruption.

Most of the participants think that MPs should not refrain from voting in the Parliament when bills may directly affect their professional interests (for example, if a MP is a lawyer, he/she must not vote for the Professional Statute of the Lawyers). Parliaments' duty is to represent the public so personal interests should be background.

The anticorruption institutions most well known by the participants to the interviews were: the Parliament, the Presidency (State Supervisory Council), Law Enforcement Authorities, Public Prosecutors, Ministry of Interior (Turkish National Police, Gendarmerie and Coast Guard), Customs, Administrative Bodies. However the result of survey indicated that participants do not perceive these institutions as effective in combating corruption.

According to result of survey, the current level of access to information related to official's assets and liabilities in Turkey is satisfactory, due to the Law of Concerning the Declaration of Assets and Combating Bribery and Corruption, which is one of the main pieces of legislation which aims to prevent corruption in Turkey and it requires certain public officials to declare their assets in order to monitor any increase in those assets. The violation of this requirement is subject to imprisonment from one to three years. However it is not able to provide clear regulations on how to follow income of people related in one way or another with officials.

The result which is concluded from interviews about possible problems related to incompatibilities and corruption is that these are currently insufficiently regulated. According to examples of answers from survey, municipal and provincial administrations, local governments and companies are able to participate in economic activities with a wide variety of structures. To a very large extent, therefore, corruption continues. The larger the organization, the lesser the transparency.

Like in the case of procurement for the army, large municipalities also organize substantial tendering which is prone to corruption, as they are not transparent.

According to respondents, an effective solution would be to provide higher life standards for public officials, to further deal with political corruption, to prevent expansion of bureaucracy, to strengthen tax auditing and to improve the coordination of anticorruption efforts by managing more effectively the existing professional inspection bodies.

If we want to give few examples of corruption in Turkey – and there are plenty, it can be said that this problem has been seen principally in local government: tenders corruption, bribery, zoning law - contrary to licensing, documentation of fraud, municipal land put up for sale at low costs, which cause major public damage etc. There are many cases which have resulted, penalized or newly opened for local managers and employees. Another major category of examples of corruption is associated with lack of transparency of revenues of political parties, with regards to which the Council of Europe pointed out that there is a lack of transparency. The same applies to expenses related to the election campaigns, which are not under control.

### *Conclusions and recommendations*

Corruption damages society both economically and morally. It causes illegal activities to be transformed into economic and administrative power, and it appears as a result of lack of control, accountability and transparency.

Good governance, transparency, preparing the required legal basis and its effective implementation, public awareness and involvement of non-governmental organizations are important tools in the fight against corruption. A higher level of transparency in decision making increases the probability that corruption or wrongdoing is detected. From the perspective of overcoming corruption, very positive developments are seen in the transition from authoritarian to democratic societies,

from closed to open societies, from vertical to horizontal societies, from centralized to participatory societies<sup>66</sup>.

An independent, impartial and informed judicial system holds a central place in the realization of a fair, open and accountable government and takes a significant part in fighting corruption. Adding a third dimension to the traditional public-private axis, civil society (i.e. non-governmental) organizations have effectively backed popular demands for greater accountability and responsiveness and helped to initiate important anti-corruption efforts. The institutionalization of civil society participation is thus a major challenge and can add an important bottom-up dimension to conventional anticorruption strategies. Local governments have increasingly come into the focus of anticorruption strategies, as the local level is the one that directly impacts upon the ordinary citizen. Corruption should not only be fought from the top; an important bottom up dimension is added by targeting the municipal level<sup>67</sup>

Our country, which is in search of serious ways of fighting corruption, has to identify resources for this objective, set rules, investigate and impose sanctions as well as implement various tools. Besides these activities, Turkey's participation in international organizations more actively, its implementation of accepted national and international laws, are indicators of its democratic development and political stability.

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<sup>66</sup> *Vatican City, 21 September 2006, Feast of Saint Matthew, Apostle and Evangelist Cardinal Renato Raffaele Martino.*

<sup>67</sup> *Public Administration Reforms And Corruption In Turkey Dilek MEMİŞOĞLU , Ayşe DURGUN Süleyman Demirel University, TURKEY*

## 5.

### ***Effective means for combating conflicts of interests and incompatibilities. The case of Georgia***

#### *Current Scope of Corruption in Georgia*

At the end of the 1990s, Georgia was often referred to as a “failing state”. Among other difficulties, corruption was one of the main reasons of the failure of the young south Caucasian state. More than half of the population was living below the poverty line. “The decision-making process mainly served narrow elite, centered on the President and his family, while ordinary citizens were left at the mercy of an oversized and underpaid state bureaucracy”.<sup>68</sup> Anti-corruption crusades declared by the President every second year, mainly served the purpose to create an illusion of an anticorruption fight in the eyes of the International Donors and led to nothing (in 2002 Transparency International rated Georgia 85<sup>th</sup> out of 102 countries, in 2003 124<sup>th</sup> out of 133 countries). The turning point in the fight with corruption was marked only by the “Rose Revolution” in 2003, when President Shevardnadze was forced to resign because of intolerable levels of corruption and fraudulent elections. The new government came with an ambitious plan to combat corruption and achieved significant success over the next several years.

In 2009, Georgia scored 4.1 in the Transparency International Corruption Perception Index (CPI). The CPI for Georgia was constantly growing over the last six years:

<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
2.4	1.8	2.0	2.3	2.8	3.4	3.9	4.1

In the year 2009, on country ranking list Georgia was on position 66, Croatia and Kuwait with similar scores also sharing the same position (surveys used in Georgia’s case - 7). The country list reflected the improvement in the following way: in 2008 – position 67 out of 180 countries, in 2007- position 79 out of 179, in 2006 – position 99 out of 163 countries.

Though, the Freedom House reports that despite an effort by the Georgian government to reduce corruption and an obvious success in combating petty corruption, there still are “numerous areas where the authorities have failed, whether out of inertia or lack of political will, to remedy perceived shortcomings”<sup>69</sup>. Georgia’s

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<sup>68</sup> Schultz, Jessica, Abashidze, Archil: Anti-corruption policy making in practice: Georgia –A Country Case Study, U4 Report 2007

<sup>69</sup> <http://www.unhcr.org/refworld/docid/4a55bb3d9.html>. Retrieved on 25.07.2010



scores of 5.00,<sup>70</sup> which is an improvement in comparison the previous 5-6 years, remain constant over the last three years, (see the chart below).<sup>71</sup>

Corruption

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
5.00	5.25	5.50	5.75	6.00	5.75	5.50	5.00	5.00	5.00

*International and Local Research*

One of the serious efforts to measure how different elements of integrity systems interact and what is necessary to make them stronger, was the Georgian National Integrity Systems Assessment Program conducted in 2005-2006<sup>72</sup>. (Georgian) National Integrity System was defined as “the institutions, laws, procedures, practices and attitudes that encourage and support integrity in the exercise of power’ in any given society”<sup>73</sup>.

83 interviews were conducted within various institutions: the three branches of government, the media, NGOs, International and donor institutions etc. The results of the research were presented in the final report published in 2007, where each institution and its’ interaction with other institutions was analyzed in the framework of available resources; recommendations were presented on how to make the Integrity System more efficient and sustainable.

A similar research of the National Integrity System with the same methodology currently is being conducted by Transparency International Georgia. This time the focus is on thirteen institutions of the Integrity System. The NIS assessment is expected to offer “an evaluation of the legal basis and the actual performance of institutions that make up Georgia’s overall anti-corruption system”<sup>74</sup>.

In 2007 the Norwegian Chr. Michelsen Institute, a private social science research foundation working on issues of development and human rights, conducted a

<sup>70</sup> The ratings are based on a scale of 1 to 7, with 1 representing the highest of democratic progress and 7 the lowest.

<sup>71</sup> This data by the Freedom House has raised endless questions not only among Georgian officials, but even opposition parties and the civil society: arguing that Georgia has the same level of corruption as it had in 2000 is according to local experts “incomprehensible”. An explanation by the Freedom House how these conclusions were made didn’t follow.

<sup>72</sup> The Project was financed by Open Society Institute/Open Society- Georgia Foundation and conducted by the Caucasus Institute for Peace, Democracy and development, TI Georgia, GYLA, in cooperation with the Griffith University Institute for Ethics, Governance and Law (Australia) and Tiri Group (UK).

<sup>73</sup> An Assessment of Georgia’s National Integrity System: The GNISA Project, Report, Georgia 2007, p. 1.

<sup>74</sup> **National Integrity System (NIS) Assessment: Checked: 24.07.2010.**  
<http://www.transparency.ge/en/project/national-integrity-system-nis-assessment>

research project in six countries around the world in order to find out how countries that face serious problems with corruption, deal with anti-corruption strategies and its implementation, and finally what can they can learn from each others' experience (six countries participating in research were Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia).

The research focused on the anti-corruption strategy of the Georgian government after the "Rose Revolution", the Anti-corruption Action Plan and outlined the main "lessons learned" from the Georgian experience that could be shared with other countries facing the same challenges.<sup>75</sup>

### *Opinion Polls*

In summer 2009, two surveys were conducted as part of the Council of Europe project "Support to the anti-corruption strategy of Georgia" (GEPAC) by GORBI (Georgian Opinion Research Business International-Gallup International): one among the general public and the other among government officials. A total of one thousand adult respondents were interviewed for the general public survey and eight-hundred government officials for the second survey.

#### A) General public survey<sup>76</sup>

Answering the question *which is currently the most serious problem in Georgia* unemployment was named by more than half of respondents (51.9 %) as the top problem, followed by political instability as the second (13.2%) and high cost of living (10.2%) as the third. Corruption (0.2 %) is on the 17<sup>th</sup> place followed by safety concerns/crime (0.1 %) closing the list.

On the question *if compared to 10 years ago corruption in Georgia has increased or reduced*, 60% of those surveyed answered that corruption in Georgia has either been "significantly reduced" or "reduced" and only 18% considered that corruption had increased over the this period. 4% think the level of corruption has stayed the same.

The question *who is mostly responsible for corruption being perpetuated*, more than half of respondents answered that politicians (28.2%) and bureaucrats (27.5%) are the two major groups that continue to perpetuate corruption in Georgia; approximately one in ten respondents blame either regular citizens or businesspersons (11.4% and 8.5% respectively).

Another question that could give information on citizens' awareness of their crucial role in fighting corruption was *How often is the following statement true: "If a government agent acts against the rules I can usually go to another official or to his*

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<sup>75</sup> The full report can be accessed: <http://www.cmi.no/publications/publication/?3551=anti-corruption-policy-making-in-practice>

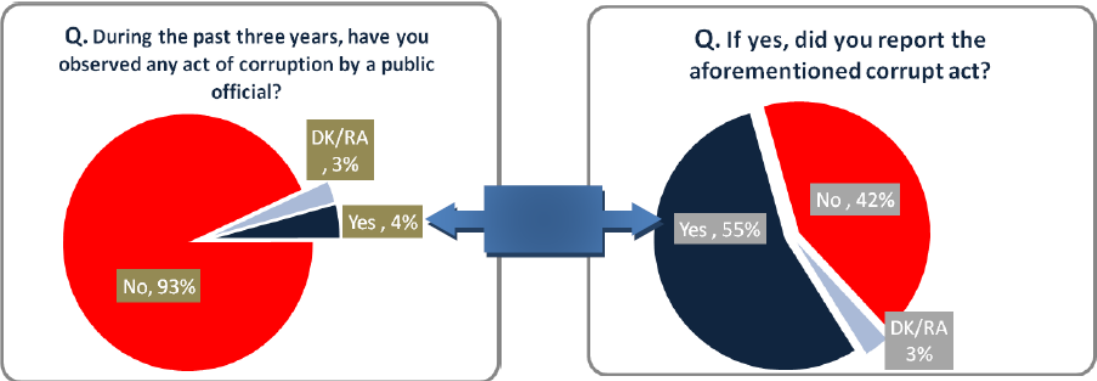
<sup>76</sup> GORBI, Perceptions of Corruption in Georgia: General Public Survey, Survey Results, Tbilisi 2009

superior and get the correct treatment without recourse to unofficial payments." 21.3 % of respondents gave a positive answer – “always” (9.5 %) or “mostly” (11.8 %), 13.1 % thinks that it is “frequently” true and 24.6 % answered that the statement is not true (“seldom” 14 % and “never” 10.6 %). A very high number of 41 % answered “don’t know”.

*Public officials Survey*<sup>77</sup>

Majority of respondents (55%) reported that they know what process to follow in reporting a case of corruption (Question: *Do you know what process to follow in reporting a case of corruption?*). 4% of those surveyed admitted having observed an act of corruption by a public official in the last 3 years and more than half of them have reported the corrupt act they have witnessed (see Figure 19 from the survey).

**Figure 19.** Observed acts of corruption by public officials

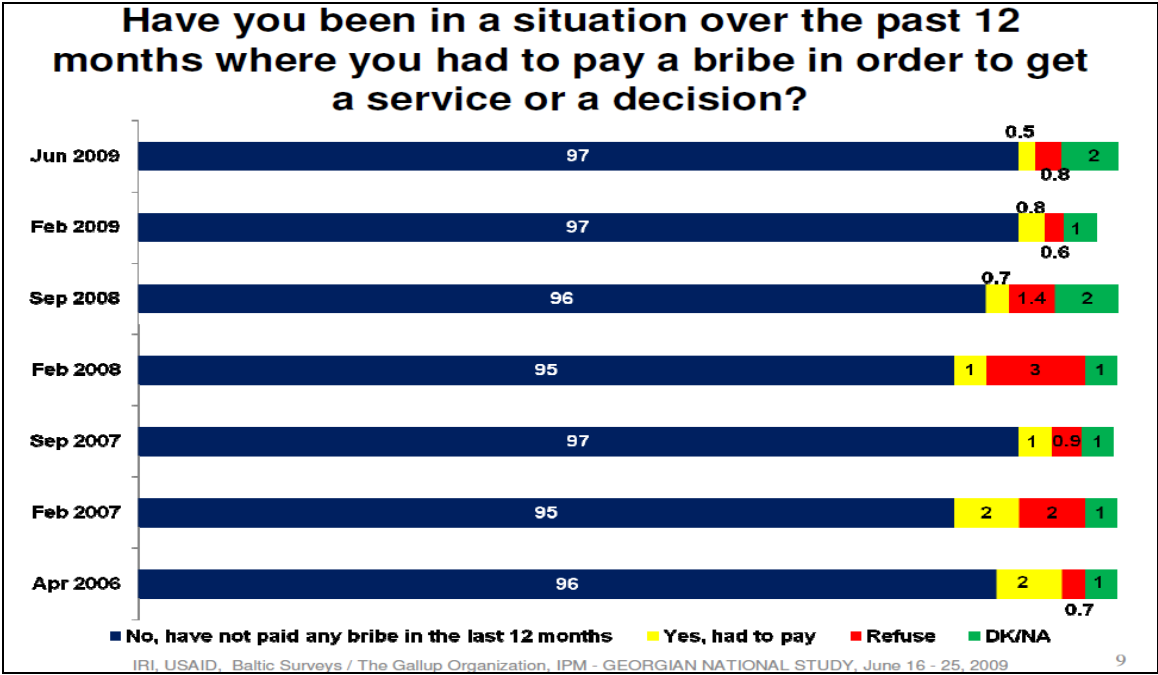


Over half, 52% of public officials surveyed either “agree” or “completely agree” that the process of reporting corruption cases is very simple (question: *how would you evaluate the process of reporting corruption cases?*). The survey also raised the question if the public official who reports about such an act is well protected: 61% answered that those who report instances of corruption are well-protected from potential harassment, 14 % disagrees, 16 % has an indifferent position and the rest (9 %) “doesn’t know”.

Another public opinion poll is conducted on an annual basis by the International Republican Institute (IRI Georgia) on a variety of political, economic and cultural issues. The 2009 Georgian National Survey shows (1,500 permanent Georgian residents older than the age of 18 selected by the random route method) that corruption is not among the main problems that Georgians face currently: unemployment, territorial integrity and economic situation were leading the list.

<sup>77</sup> GORBI, Perceptions of Corruption in Georgia: Survey of Public Officials, Survey Results, Tbilisi 2009

97% of respondents said that they haven't been in a situation over the last 12 months where they had to pay a bribe in order to get a service or a decision. This number remains almost the same in the IRI polls over the period of last three years. In the same survey "fight with corruption" is named as one of the major achievements of the Georgian government.



*Typology of Corrupt Acts*

The most often-used definition of corruption is probably "the misuse of public power for private gain". The extent and specific mix of corrupt practices differ from one country to another and no country is totally free of corruption. The efforts in the recent to categorize the corrupt practices have demonstrated that in general, countries with similar political background encounter similar forms and often scope of corrupt acts: as an example, post-communist countries have a lot in common. Though, even among these countries, one can distinguish forms of corrupt acts that are more frequent and blatant in one society and more rare in another. Here, historical, political, economic and cultural experience and norms of the given society play, without doubt, an important role.

In the modern world, corruption appears in our lives in so many forms, that one can easily get lost while trying to draw conclusions about strategies to combat it or even evaluate its scopes: starting with bribing a traffic policeman to the so-called "state capture", there are many types of corrupt acts that can be hard to detect and even harder to prove.

Therefore, it is essential to set a typology that can help us distinguish among corrupt acts of different gravity. Otherwise, one can come to misleading results by mixing up corrupt acts occurring on different government levels. Typology of Corrupt Acts that is presented below belongs to Rasma Karklins, professor of political science at the University of Illinois at Chicago. In her work on the corruption in post-communist societies<sup>78</sup> Professor Karklins groups corrupt acts, that are most common in these societies into 3 levels. Georgia, being a post-soviet state, shares this experience; therefore, we think, Karklin's typology will make the results of the national study, presented in the following chapters of this report, more comprehensive.

Karklin breaks up Corrupt Acts into three levels:

***The first level acts*** occur in *Everyday Interaction between Officials and Citizens*. These include: a) bribery of public officials, initiated by citizens or individual officials themselves as well as extortion by a group of officials. b) Obfuscation and over-regulation by officials, in order to extort bribes or enhance power. c) Misuse of licensing and inspection powers by officials.

This type of corruption, often referred to as "petty" corruption has been part of everyday life for the majority of Georgian citizens for decades; street level corruption, outlived the Soviet Union and was regarded as something defined and conditioned by cultural constructs, values. Moreover, as Kaklin writes, people recognized that corruption has many forms, some of which are more acceptable than other. "Average citizens are most angry about corruption among top government officials and politicians, less so about malfeasance by lower-level officials, and readily make excuses for petty corrupt acts committed by themselves or their peers".<sup>79</sup> So, in Georgia paying bribes to traffic policemen, tax officers, *Voenkomat* (military registration and enlistment office) or bribing the way into the University on the entrance exams was a widely known and accepted way of life through decades starting back in the 1970s slowly increasing in spread.

***The second level acts*** occur in the process of *Interaction within Public Institutions*: a) self-serving use of public funds, such as bonuses and hidden salaries, overspending on or appropriating cars, apartments etc. b) Profiteering from public resources by selling off environmental assets, leasing offices, equipment for personal gain, using public employees for private work (often occurs in the military), quasi-privatization of state-owned enterprises and property, paying board of directors' fees to self or cronies. c) Malpractice and profiteering from privatization and public procurement through steering businesses and assets to self or cronies, disregarding conflicts of interest, taking kickbacks, breaking rules of competitive bidding, using corrupt government subsidies and tax write-offs. d) Influence-peddling, manipulation

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<sup>78</sup> Karklins, Rasma: *The System Made Me Do It: corruption in post-communist societies*, New York 2005

<sup>79</sup> Karklins, Rasma: *The System Made Me Do It: corruption in post-communist societies*, p.6.

of personnel decisions that include engaging in nepotism, clientelism, favoritism or extortion of favors from subordinates or job candidates, sabotaging personnel to preserve turf.

The perverse practice of the Soviet past, when the oversized state bureaucracy was using the public resources for their own profit went on in Georgia for almost 13 years after the downfall of the Soviet Union. In 2001, the GRECO Evaluation Report on Georgia stated that “the police, the customs and the courts, those very agencies responsible for fighting corruption, are most widely affected by it”.<sup>80</sup> Things have improved since then, but it is still not seldom that public officials are caught on similar charges (see case studies in chapter 4).

***The gravest forms of corruption are grouped on level three:*** a) “state capture” e.g. de facto takeover of state institutions, which means building of personal fiefdoms and exploitation of public institutions for enrichment of self and network (a similar case was the autonomous Republic of Adjara in Black Sea Region Georgia, where the Head of the Autonomous Republic was a sort of warlord with his own little army, feeling powerful enough to refuse the central government to pay money into the central budget; eventually, resigned in 2004 at the culmination of his conflict with the new central government in Georgia). b) Forming secret power networks to collude in corrupt acts. c) Undermining elections and political competition through illicit campaign and party financing, buying hidden political advertising, secretly creating spheres of influence for exploitation and manipulating with administrative resources. d) Misuse of legislative power by “selling” laws to private interests, blocking anti-corruption legislation, deliberately passing poor laws, dereliction of duty to oversee executive branch, ineffective parliamentary investigations. e) Corruption of the judicial process: “selling” court decisions, false prosecutions, scapegoating and lack of prosecution. f) Misuse of audits and investigatory powers. g) Using *kompromat*<sup>81</sup> for political blackmail. h) Corruption in and of the media.

Elections, independence of the judicial branch, freedom of speech and media-ownership are burning issues in Georgia since its independence and will probably remain so in the nearest future at least for following several reasons: first, it takes long time and serious effort and willingness to achieve desired outcomes in the fields of free elections, independent judiciary and media. Second, problems in these fields are not uniquely Georgian, but rather typical for all young democracies. Third, despite the well-known vulnerability of these sectors it is difficult to prove, find evidence of corruption (evidence that a certain TV company belongs to a crony of an influential politician, or that a certain judge experienced influence from the Prosecutor’s Office). Only rarely, as an exception, usually when a conflict happens inside a certain secret

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<sup>80</sup> Group of States Against Corruption, Evaluation Report on Georgia, June 15, 2001, p. 10.

<sup>81</sup> Russ.: компромат, short for *компрометирующий материал* is the Russian term for compromising materials about a politician or other public figure.

power network, the public gets some information about corruption on the highest levels of politics.

These are many but not all forms of corrupt acts that all post-communist countries more or less are familiar with, through their past or in some cases present experience.

### *National legislative framework*

#### *The Constitution of Georgia*

The Constitution of Georgia addresses the issue of corruption in three Chapters: Chapter 3 - The Parliament of Georgia, Chapter 5 -The President of Georgia and Chapter 4 -The Government of Georgia -setting following restrictions:

Article 53: 1. A member of the Parliament shall not be entitled to hold any position in public office or engage in an entrepreneurial activity. The conflict of interests shall be determined by law.

Article 72: The President of Georgia shall not have the right to hold any other position except for a party position, engage in entrepreneurial activity, and receive salary or another permanent remuneration for any other activity. (6.02.2004.N3272)

Article 81<sup>2</sup>: A member of the Government shall not have the right to hold any position, except for a party position, establish an enterprise, engage in entrepreneurial activity or receive a salary from any other activity, with the exception of scientific and pedagogical activity.

#### *Georgian National Anticorruption Strategy*

Approved on June 3 2010 by the President's Decree<sup>82</sup> the Georgian National Anticorruption Strategy outlines six main fields that have to be addressed in the next several years in order to improve the fight against corruption:

1. Efficient and Corruption-Free Public Sector: areas covered in this sector include further modernization of the public service in order to make it more transparent and efficient; making state and administrative services more customer-oriented and user-comfortable; Improvement and control of state procurement, an area that is very corruption-sensitive and where suspicion of corrupt acts still exists, despite all recent reforms; Reform of Public Finances System in order to improve the financial management and efficiency of control

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<sup>82</sup> Presidential Decree № 376 On the Approval of Georgian National Anticorruption Strategy, 3 June 2010, Tbilisi, Government of Georgia

of public expenditure and ensure transparency of financial management; Improvement of Tax and Customs Systems, where despite significant changes and improvement over the last several years, cases of corrupt acts are still reported.

2. Competitive and Corruption-Free Private Sector: liberalization of economic policy, creation of competition friendly environment, streamlining barriers for starting a new business are among planned steps.
3. Improvement of Justice Administration: Improvement of Witness Protection System, appointment of judges on life terms, Publicity of information about procedures and public consultations, Establishment of Jury Institution are planned in order to raise the public confidence and improve the performance of the judiciary.
4. Improvement of Anticorruption Legislation: “Anticorruption legislation shall be amended to make the law simple, laconic, exhaustive and unambiguous” and comply with the recommendations of the international organizations.
5. Prevention of Corruption: The role of the Anti-Corruption Council is underscored here – it is necessary to institutionally strengthen the Council and improve the non-interference guarantees in the activities of Council; provide the Council with financial and human resources guarantees on the legislative level, strengthen the activities of Council and public awareness raising in this respect, ensure the involvement of the society and non-governmental organizations in the activities of the Council.
6. Financing of Political Parties: in order to improve and develop political culture the plan is to improve the financing of public sector and political parties, as well as election campaign.
7. Support the dialogue between authorities, political powers, relevant international organization and civil society, making the decision-making process more participatory.

Since the strategy paper just outlines the general areas and principles of the reforms the same Decree obliges the Georgian Government to elaborate the “National Anticorruption Strategy Implementation Action Plan” and submit to the President of Georgia for approval before 1 September, 2010. The Action Plan will give detail on what activities should be performed by which institutions: timeframe and implementation indicators will also be outlined in the action plan.

The previous (first) National Anti-corruption Strategy is dated June, 24, 2005 and covered a much more wide range of measures including ratification of international conventions on corruption and legislative changes. In 2005 the first, and in 2006 the second, “Georgia’s National Anti-Corruption Strategy Implementation Action Plan” were approved. The 2006 Action plan was basically the same plan as the one from 2005 (just a couple of activities added) but it included implementation timeframes,



agencies in charge and partner organizations – a significant addition to the criticized Action Plan from 2005.<sup>83</sup>

### *European Neighborhood Policy Action Plan*

The EU-Georgia Neighborhood Policy Action Plan was adopted on November, 14, 2006. The Action Plan is a political document laying out the strategic objectives of the cooperation between Georgia and the EU. It covers a timeframe of five years. Its implementation will encourage and support Georgia's objective of further integration into European economic and social structures. One of the issues the Action Plan addresses is the necessity to combat corruption. In order to push the country for taking measures the document defines measures that have to be taken. Namely, *Chapter 4* of the Action Plan under the subtitle *Fight against corruption* lists following steps:

- (Georgia has to) accede to the UN Convention on Corruption, and the relevant articles of UNTOC, ratify the Council of Europe Criminal Law Convention on Corruption, ensure that the domestic legislation is in line with the above mentioned international instruments, the Civil Law Convention on Corruption and the OECD Convention on combating bribery of Foreign Public Officials in International Business Transactions;
- Continue to develop and implement specific anti-corruption measures within the law enforcement agencies (police, State border service and judiciary), including the development of Code of Ethics for prosecutors and judges and implementation of the European Code of Police Ethics, as adopted by the Council of Europe Committee of Ministers on 19 September 2001;
- Ensure progress in implementing the recommendations of the Council of Europe Group of States against Corruption (GRECO).

### *Group of States against Corruption (GRECO)*

Georgia is member of GRECO since 1999 and its critical attitude in 2003 towards Georgia's anticorruption efforts played a decisive role in Georgian government taking seriously the development of the anticorruption strategy.<sup>84</sup> The new Georgian government took the two following evaluation reports of the second evaluation round (2003 - 2006) with more caution and seriousness. After studying the situation in Georgia the Evaluation Report for Georgia in 2006 came up with a number of recommendations that included:

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<sup>83</sup> T. Karosanidze, National Anti-Corruption Strategy and Action Plan: Elaboration and Implementation, U4-TI Georgia, 2007

<sup>84</sup> In the report of 2003 GRECO noted that Georgia failed to comply with the recommendations outlined in its first evaluation report.

- To establish clear rules for all employees in the public sector on receiving gifts and actual and potential conflicts of interest, and to provide for an appropriate mechanism for the enforcement of these rules (reported as *implemented satisfactorily* in the GRECO Compliance Report on Georgia in 2009);
- To introduce clear rules requiring all employees in the public sector to report suspicions on corruption in public administration and to ensure that those who report such suspicions in good faith are adequately protected from adverse consequences (reported as *partly implemented*<sup>85</sup> in the GRECO Compliance Report on Georgia in 2009);
- To implement uniform rules for the transparent, impartial recruitment and promotion of public servants and to take measures to ensure their fair and impartial appraisal (reported as *implemented satisfactorily* in the GRECO Compliance Report on Georgia in 2009);
- To revise the existing legal provisions on accounting offences and sanctions to ensure that the creation or use of invoices or other accounting documents containing false or incomplete information or unlawfully omitting to make records of payments, in order to commit, conceal or disguise corruption and trading in influence, are liable to criminal or other sanctions (reported as *implemented satisfactorily* in the GRECO Compliance Report on Georgia in 2009) ;
- To take measures to have code(s) of conduct adopted for all employees in the public sector, both at local and state level, in order to clarify and complement the rules on *inter alia* conflicts of interest, gifts and reporting of corruption (reported as *partly implemented*<sup>86</sup> in the GRECO Compliance Report on Georgia in 2009).<sup>87</sup>

These demonstrate the general trend in the Georgian anticorruption efforts in the recent years: a lot has already been changed in the legislation and more serious changes are planned (and have already been implemented since the GRECO Compliance Report of 2008). GRECO reported in 2009 that Georgia “has implemented satisfactorily or dealt with in a satisfactory manner just over half of the recommendations in the Second Round Evaluation Report”.<sup>88</sup>

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<sup>85</sup> GRECO took the note of the information provided with regard to the introduction of measures for whistleblower protection and to draft amendments to the Public Service Law which foresee a general reporting obligation.

<sup>86</sup> GRECO took the note of the reported draft amendments to the Public Service Law and urged the Georgian authorities to have the bill adopted.

<sup>87</sup> See for more GRECO Evaluation Report on Georgia, 2006.

<sup>88</sup> GRECO Compliance Report on Georgia 2009, p.11.

*The Organization for Economic Co-operation and Development (OECD) and the Anti-Corruption Network (ACN) for Eastern Europe and Central Asia*

The Anti-Corruption Network established in 1998 supports its member countries “in their fight against corruption by providing a regional forum for the promotion of anti-corruption activities, exchange of information, elaboration of best practices and donor coordination”.<sup>89</sup> The ACN is one of the outreach programs of the Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery.<sup>90</sup> Georgia is actively involved in the ACN activities. The 7th General Meeting of the Anti-Corruption Network and the ACN Steering Group meeting took place in Tbilisi in June 2008, where a special session was dedicated to the recent experience of Georgia in fighting corruption.

The Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was endorsed in the framework of the Anti-Corruption Network (ACN) in September 2003, in Istanbul. The implementation of the Istanbul Action Plan includes several phases: review of legal and institutional framework for fighting corruption; implementation of the recommendations endorsed during the reviews; and monitoring progress in implementing the recommendations. The review of Georgia has been completed in 2004-2005.<sup>91</sup>

The OECD worked in the frames of the Istanbul Anti-Corruption Action Plan with its member states: The Update on National Implementation Measures Report on Georgia in 2006 lists recommendations for the Georgian government that should be implemented in order to reduce corruption in the public sector. Among others, amendment of the incriminations of active and passive bribery in the Criminal Code to meet international standards, introduction of criminalization of bribery of foreign or international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code, adoption of clear, simple and transparent rules for the lifting of immunity and limit the number of categories of persons benefiting from immunity, adopt (basic) regulations on the protection of “whistleblowers”, introduction of a system of merit-based appointment and promotion in the civil service is needed.

The results of the monitoring process of the implementation of the recommendations were presented in 2006 as the Monitoring Report on Georgia. On most issues

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<sup>89</sup> <http://www.oecd.org>

<sup>90</sup> The ACN Secretariat is based at the Anti-Corruption Division of the OECD Directorate for Financial and Enterprise Affairs, at the OECD Headquarters in Paris.

<sup>91</sup> The Istanbul Anti-Corruption Action Plan available at <http://www.oecd.org>

Georgia is reported as *largely or partially compliant with the recommendations*.<sup>92</sup> In 2008 OECD published an analytical Report on the achievements and challenges made by its member countries over the years working in the frames of the Istanbul Action Plan where apart from general conclusions; steps for further action are presented.<sup>93</sup>

### *United Nations Convention against Corruption*

Georgia accessed the UNCAC on 4 November 2008. But before the accession became possible Georgia had to adopt a certain number of legislative measures to bring the local legislation in conformity with the UNCAC. A working group consisting of the representatives of the Georgian Parliament, ABA/CEELI (American Bar Association/ Central European and Eurasian Law Initiative) and other experts was created in 2005 and presented in May 2006 its conclusions and recommendations on the differences between the UNCAC and the local legislation. As the document shows the group found a big number of flaws in the local legislation.

At the same time, TI Georgia was also working on a similar task and studied several documents including the UNCAC. Some of the most serious issues worth mentioning were:

**The UNCAC definition of the public official was wider than the one defined by the Georgian legislation:** The Georgian legislation (Law of Georgia on Civil Service), didn't consider the part-time civil servant, who is appointed for specific period as the subject of the crime.

**The Georgian legislation contained weaker regulation of confiscation than the Convention:** The possibility of confiscation was very poorly regulated by the Georgian legislation. This was partly determined by one of the first decisions of the Constitutional Court of Georgia, which declared that confiscation of the property, as an additional form of punishment, is against the Constitution. The Code of Administrative Offences contained provisions concerning the legal nature of confiscation: the general part of the law (Articles 24 and 25) established the possibility for applying confiscation as the main as well as additional administrative penalty. The various types of the confiscation were considered by various Articles of the Criminal Procedural Code of Georgia. Namely, these articles defined the so-called procedural confiscation - taking of the tool and subject of the crime free of

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<sup>92</sup> ACN: Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, Georgia Monitoring Report, 2006

<sup>93</sup> According to the document in the next phase of Istanbul Action Plan implementation, peer learning and development of best practices was given equal priority as the monitoring work. OECD "Fighting Corruption in Eastern Europe and Central Asia: the Istanbul Anti-Corruption Action Plan – Progress and Challenges", 2008

charge, which is conducted on the basis of the judge's decision (This conformed only partly to the requirements of the Convention). As for confiscation of the property before the court decision was passed, the Criminal Law Code and Administrative Procedures Code of Georgia considered the possibility of conducting administrative prosecution with respect to the public officials hiding from the investigation.

**The Convention considers the criminal responsibility of the legal persons. Georgian legislation was not familiar with the criminal responsibility of the legal persons:** Only natural persons could be the subjects of the Criminal Code of Georgia, which excluded criminal responsibility of the legal persons. The same issue was also raised before other international organizations and treaties Georgia was already member of.

**The legislation of Georgia wasn't imposing criminal responsibility for the corruptive acts committed by public officials of the foreign countries:** note, that according to the convention an official of a public international organization is "an international civil servant or any person who is authorized by such an organization to act on behalf of that organization". The Criminal Code of Georgia didn't consider the responsibility of the public officials of foreign countries for the commission of the corruptive offences.

**The Convention gives the definition of the "trading in influence" (Article 18), which was not present in the Georgian legislation:** though, the Criminal Code of Georgia contained notions as abuse of official powers, official authority, official protection, etc., which partly covered the stated issue of the Convention.

**Unlike the Convention, the legislation of Georgia didn't consider the promise as a crime:** The giving of a bribe itself represented the formal crime whereas the promise or offering was one of the stages of the crime. The promise or offer established by Article 15 of the Convention might be considered as the preparation of the crime, though according to the Criminal Code of Georgia the criminal responsibility was arising only upon the preparation of the serious and grave crimes. The promise, considered by the Criminal Code of Georgia as a minor crime, didn't demand for criminal responsibility.

Other important inconsistencies included:

The Convention considers the presence of the defendant in the criminal proceedings. The legislation of Georgia permitted the possibility of conducting court proceedings without the presence of the defendant.

According to the UNCAC the accused public official may be removed, suspended from his official duties or reassigned to the other position. The Georgian legislation only considered the possibility of dismissal from the office.

The Convention establishes the necessity for implementation of the special protective measures for the witnesses, experts, victims and persons cooperating with the investigation. The Georgian legislation didn't contain any provisions for the implementation of the stated obligation.

#### *United Nations Convention against Transnational Organized Crime (UNTOC)*

Georgia ratified the United Nations Convention against Transnational Organized Crime in September 2006. In this case too, the Georgian legislation had to be amended in order to comply with the Convention. The same working group presented its considerations on this matter. The very definition of the organized crime was different in the UNTOC and the Georgian Criminal Code. The Criminal code reads as "Crime is committed by the organized group if it is committed by the stable group of persons who joined for the commission of several crimes."

Paragraph 1 of article 2 of the UN Convention establishes the term of "controlled delivery", meaning the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence". Under article 20 of the Convention controlled delivery represents special investigative technique. The criminal procedural legislation of Georgia included no similar technique.

The legislation of Georgia needed important amendments in the respect of implementation of the measures to provide protection to witnesses and victims. The Criminal Procedures Code of Georgia provided some protective measures as "changing the first name and surname, identity card or appearance, changing of the place of living, moving to a new job", but these provisions didn't fully satisfy the relevant requirements of the UN Convention.

The same TI Georgia study also worked on the consistency of the Georgian legislature with the Council of Europe Criminal Law Convention on Corruption and the Civil Law Convention on Corruption.

## *Law of Georgia Concerning Corruption and the Incompatibility or Interests in the Public Service*

The Law was passed in October 1997. Since then it was amended or supplemented almost 30 times. There are VII chapters in the Law. The law provides criteria and definitions for “gifts”, “family member of the public servant”, regulations on submitting asset declarations etc.

On December 4, 2009, the Law was amended since the introduction of the Online Asset Declaration System caused various gaps in the current legislation: some articles were outdated and did not fully reflect the list of the officials for whom submission of an asset declaration was mandatory. In order to make the list complete following officials were added: Head of the Chancellery of the Government of Georgia, his/her Deputy, Head of structural subdivision and officials with equal status. Before the amendment, these officials were listed as Head of State Chancellery, his/her Deputy, Head of structural subdivision and officials with equal status in the list of officials, causing some problems as these officials were not obliged to fill in the asset declarations. Also added to the list were the Head of Administration of the President of Georgia, his/her Deputy, Head of structural subdivision and officials with equal status.

Heads of certain legal entities of public law (for example, Head of Georgian Public Broadcasting, State Purchasing Agency, National Agency of Civil Registry and Heads of other Public Law entities) were also defined as public officials, the exact list is approved by the President of Georgia. The amendment was introduced since the legal entities of public law are funded from the state budget.

The amendment relieved the Civil Service Bureau from the obligation to provide a copy of a submitted declaration to the agency appointing an official, since such a declaration is available on the Bureau’s web-site.

The ten day extension granted by the Head of the Bureau in case of delay of submission of the declaration has been canceled. According to the changes, no later than twenty days before the actual deadline date the Civil Service Bureau warns the civil servant about the deadline and explains the measures envisaged by the Georgian legislation for not submitting the declaration on time. If a person still does not submit the declaration, he/she may be fined in the amount of 1000 GEL.

Indication of the personal identification number in the declaration became obligatory which allows for more precise identification of a person. As stipulated by the amendments, all information contained in the official’s asset declaration, except the secret page, personal identification number, permanent address and private phone number, is public.

There were some further amendments in July 2010:

- submission of official's asset declaration will be performed only once a year
- In addition, amendments include abolishment of reserve system of civil servants except when directly stipulated by the legislation
- In order to maintain progress of anticorruption activities and strengthen existing mechanisms, Interagency Anticorruption Coordination Council was established by the amendments.

### *Law of Georgia on Civil Service*

The law was adopted in October 1997. Since then it was amended or supplemented more than 60 times. Several amendments became necessary in order to bring it in accordance with the abovementioned UN Conventions. "This law determines the legal basis of organizing civil service in Georgia; regulates relations concerning execution of civil service; defines legal status of a civil servant". There are XVI Chapters in the Law (one Chapter, about the so-called *work record card* was taken out in December 2009) covering issues of the Entry into service, Rights and Guarantees of the Civil Service, Service Duties, Position Ranks in the Civil Service, General rules of behavior for civil servants, Incentives, promotion and disciplinary sanctions, Certification of Civil Servants, Suspension of duties of a civil servant, Dismissal from the service, Reserve of civil servants, Length of Service, Dispute resolution.

Recent amendments to the law passed in 2009 included:

- The obligation to submit an application for a competition only in written form was canceled and, instead, electronic applications also became acceptable;
- The obligation to submit notification of submission of an asset declaration from Tax Agency upon entrance into the civil service was abolished;
- A CV was defined as an alternative to an autobiography;
- Number of officials who are obliged to submit asset declarations has been increased.

Since 2004, the Georgian system of public service has been under constant change. Reforms, including serious institutional changes, undertaken were aimed to reduction of risks associated with corruption activities and increase transparency of the government activities, minimization of private sector regulation by government, improvement of motivation system for public servants etc.<sup>94</sup>

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<sup>94</sup> More on this check the website of the Civil Service Bureau of Georgia: [www.csb.gov.ge](http://www.csb.gov.ge)



## *Code of Public Service*

The code of Public Service will be adopted in 2010 and it is a serious step in the reform process of the Georgian public service. It will regulate issues related to conflict of interests and corruption in the public sector, since both, the Law of Georgia Concerning Corruption and the Incompatibility or Interests in the Public Service and the Law of Georgia on Civil Service, will be abolished as soon as the code comes into effect. The Code will preserve main principles set in these two laws and the according amendments. The changes introduced by the reform are based on the experience in the public service models of Sweden, New Zealand and the UK.

The regulatory scope of the Code will extend to independent national regulatory bodies, not- for-profit legal persons and legal entities of public law; the exact list which is updated annually is determined by the Decree of the Government of Georgia based on relevant legislation.

There are several important issues that the Code introduces:

**Division of Political and Executive Parts in the public service:** The institutional structure of the public service will be divided into political and executive parts. The political part (Minister and the Cabinet) will be responsible for decisions of political nature and will not administer the institution. The executive part will free from dependence on political processes and thus, more stabile. A position of Executive Director will be established. The function of the Executive Director is designed to oversee and administer the institution.

The Code of Public Service will contain a separate chapter on Rules of Conduct in Public Service.

**Recruitment in Public Service:** the threshold for admission into public service will be lowered to 18 years and in addition, non-citizens will be permitted to occupy positions in the public service, except political and state servant positions. A very clear line shall be drawn between elective positions, positions accessible through competition and those where direct appointment is applicable.

The selection competition for the position of the Executive Director will be the responsibility of the Civil Service Bureau while the qualification requirements are determined by relevant political or state servant in coordination with the Head of the Bureau. The contract with the Executive Director is signed by relevant political or state official and Head of the Bureau in accordance with basic principles for contracts established by Draft Code.

Termination of the powers of the Executive Director shall depend not upon the dismissal of relevant political or state official but rather upon the non-fulfillment of

terms of the contract. Appraisal of the performance of Executive Director will be carried out by relevant political or state employee, based on reports of the Executive Director who shall present his/her report at least twice per year.

#### *Code(s) of Conduct (Ethics)*

At this point Georgia doesn't have yet a Code of Ethics for public servants. As an exception the Prosecutor's office has its code of ethics. Though, general rules of conduct will be defined in the Code of Public Service.

#### *National institutional framework*

##### *Inter-Agency Coordination Council of Combating Corruption and GEPAC*

The Inter-Agency Coordination Council of Combating Corruption was created by the Decree of the President of Georgia on December 26, 2008 (Presidential Decree N°622). The functions of the Inter-agency Council include coordination of anticorruption activities in the country, elaboration and periodical review the anticorruption action plan and strategy, supervision of their implementation, monitoring accountability towards international organizations, initiation of relevant legislative activities and drafting recommendations. The inter-agency is headed the Ministry of Justice of Georgia.

Before the Council was created the office of the State Minister for Reforms Coordination was empowered with supervising the implementation of the Action Plan. In February 2008 the office of the State Minister for Reforms Coordination was dissolved.<sup>95</sup>

The GEPAC ("Support to Anti-Corruption Strategy in Georgia") was running from 1 September, 2007 and till 30 March, 2010. Beneficiaries included the inter-agency coordination council fighting against corruption, Ministry of Justice of Georgia and Ministry of Internal Affairs of Georgia.

The project was funded by a voluntary contribution of the Ministry for Development Cooperation of the Kingdom of the Netherlands and implemented by the Council of Europe. Within the General Secretariat of the Council of Europe in Strasbourg, the Economic Crime Division/ Corruption and Fraud Unit was responsible for overall management and supervision of the project.

The "Support to Anti-Corruption Strategy in Georgia" (GEPAC) project aimed at strengthening the capacities of the Georgian institutions in their anti-corruption efforts through implementation of the Anti-corruption Strategy and Action Plan in compliance

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<sup>95</sup> Support to the Anti-corruption Strategy of Georgia (GEPAC), 4th Narrative Progress Report, 15 October 2009

with Council of Europe and international standards. The project also promoted co-operation and support in order to implement GRECO recommendations.

The project focused on five main areas:

- strengthening capacities of the anti-corruption policy institutions;
- coordinating and monitoring the implementation of the Anti-corruption plan;
- elaborating and improving primary and secondary legislation concerning criminalization and prevention of corruption;
- strengthening the capacities of the Prosecution to investigate and prosecute high-level corruption;
- introducing pilot activities to enhance the integrity and institutional capacities as tools for prevention of corruption.<sup>96</sup>

The main project partner from the Georgian side was the Inter-agency Coordination Council, a key player in the national anti-corruption effort.

The Project was a success. Among its main achievements are:

- Establishment and support to the Inter-Agency Coordination Council for the Fight against Corruption: a body dedicated to coordinating a preventive anti-corruption policy that is Georgia's obligation under UNCAC Article 6. activities conducted to achieve this output included training of the Staff at the State Minister on Reforms Coordination and Contact Points (Working Party members) on operational issues, a conference, purchase of equipment etc.
- Anti-corruption Strategy reviewed and Action Plan updated: The very first step—a strategy document—has been adopted by the Coordination Council and the Georgian authorities are prepared now to launch an intensive work of elaborating a more detailed implementation plan. The two surveys on Perception of Corruption in Georgia, Household Survey (General Public) and Survey on Public Officials were commissioned to the successful bidder GORBI Company following an advertisement and selection procedure.
- Specialized anti-corruption training module for investigators and prosecutors: in addition to training activities on specific topics, GEPAC assisted the Ministry of Justice Training Centre in developing a specialized training module that would be used both: for in-service training (continuing legal education) and training of newly-recruited investigators and prosecutors. In addition, GEPAC assisted the Georgian authorities in outlining a set of priorities on the content

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<sup>96</sup> [http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/GEPAC/gepac\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/GEPAC/gepac_en.asp)

and methodology for ongoing training for law enforcement professionals on corruption-related matters.

A second phase of the project, GRECO 2 with duration of 36 months is already planned and awaits approval. The project plan focuses on three components:<sup>97</sup>

1. Strengthening capacities to elaborate and implement key measures of the Anti-Corruption Action plan in line with the 2010 National Anti-Corruption Strategy.
2. Strengthening prevention of corruption and enhancement of good governance in the Healthcare Sector.
3. Strengthening prevention of corruption and enhancement of good governance in the Public Utilities Sector.

#### *Ministry of Justice of Georgia: the Prosecutors Office*

Constitutionally, Prosecution Service of Georgia is part of the system of executive power. It is governed by the Chief Prosecutor. The candidate for the position is nominated by the Minister of Justice of Georgia and approved and appointed by the president of Georgia. Resignation of the Government does not automatically cause the resignation of the Chief Prosecutor of Georgia.

The main directions in the activities of the Chief Prosecutor's Office of Georgia are:

- Conducting the full pre-investigation in cases foreseen by the law;
- Supervision on the precise and uniform execution of the law during the activities of the operative-investigative organs;
- Criminal pursuit;
- Carrying out the procedural management on the investigative stage in order to ensure the implementation of the criminal pursuit;
- Inspecting facts related to the infringement of those rights whose liberties are deprived and fulfilling procedural duties at pre-trial detention, penitentiary, correction and other institutions which execute penalty or any other constraint measures appointed by the Court;

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<sup>97</sup> Proposed Project Concept: Strengthening good governance and prevention of corruption in Georgia (GEPAC 2), Version of 10 May, 2010, Retrieved 20 August 2010 [www.justice.gov.ge](http://www.justice.gov.ge)

- Participating in the criminal case during the court session in the capacity of the State Prosecutor;
- Coordinating the fight against the crime;
- Implementation of the measures ensuring the Human Rights protection;
- Conducting the investigative and other procedural activities at the territory of a foreign state and conducting the same activities at the territory of Georgia with the request from the competent authorities of a foreign state, extradition of the Georgian national from a foreign state in order to face criminal responsibility and serve the penalty, extradition of foreign national with the same purposes.<sup>98</sup>

#### *Constitutional Security Department of the Ministry of Internal Affairs of Georgia*

The main aim of the Constitutional Security Department of the Ministry of Internal Affairs of Georgia is to expose the crimes conducted by state officials, including the representatives of their own unit. In 2005 120 high-rank state officials are detained and arrested for bribery. The unit conducts annual opinion polls (1200 respondents over the age of 18) on the issues if public servants are taking bribes, according to their data the number of such acts is constantly decreasing in the period from 2004-2007<sup>99</sup>.

#### *General Inspections in the Ministries*

General Inspections are structural sub-agencies of the Ministries. The main tasks of the General Inspections are:

- Control of the fulfillment of requirements of the Georgian Legislature within the Ministry system;
- Official control within the Ministry of the discipline and the rule of law, identification of violations of constitutional rights of citizens by the Ministry servants, abuse of official power and other crimes.
- Revealing facts of irresponsibility and delays; their avoidance and preventive maintenance.
- Study appeals and complaints on above-mentioned cases and equivalent response.
- Conducting official investigation of facts of abuse of official powers by the Ministry servants and presenting the conclusion based on the investigation results to the Minister.
- Conducting inspection of financial and economic activities of structural sub-agencies of the Ministry, sub-divisional institutions within the ministry system,

<sup>98</sup> Source: [http://www.justice.gov.ge/index.php?lang\\_id=ENG&sec\\_id=120](http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=120)

<sup>99</sup> Check the opinion poll results: <http://kud.security.gov.ge/index.php?task=page&id=7&lang=geo>, Retrieved 20.07.2010

its legal entities of public law, conducting control of distribution and expenditures of budgetary and non-budgetary funds.

### *Civil Service Bureau*

The Public Service Bureau was established by the President of Georgia on August 16, 2004 for perfection of state policy and coordination of activities of public service. On the first revolutionary wave of reforms major changes undertaken in the public service included:

Optimization of the Number of Public Servants: the number of employees of ministries was reduced in 2004-2005 from 102571 to 66615 (by 35%), and the number of staff in subordinated institutions decreased from 23769 to 8237 (by 65%).

Reorganization of the Ministries: Reorganizations took place in several institutions, for example in the subordinated agencies of the Ministry of Finance, the Forest Department.

Steps to raise the motivation of the public servants: In the public sector the average salary increased as the result of the reforms by fifteen (in 2004-2005); the number of individuals willing to work for public sector rose.

In 2003 the amount spent on salaries of public servants from the budget constituted 138.321.200 GEL, in 2004 – 198.675.600 GEL (increased by 43% in comparison with previous year), in 2005 – 276.461.300 GEL (increased by 39% in comparison with previous year). In 2006 – 372.651.400 GEL (increased by 35% in comparison with previous year); In 2007 – 462.177.100 GEL (increased by 24% in comparison with previous year). All unpaid salaries from the past were paid and the practice of paying salaries with a delay was eradicated<sup>100</sup>.

Today, the Public Service Bureau coordinates drafting of uniform state policy in the sphere of public service, is actively involved in public service sector reforms, analyses existing system of public service, and ensures adoption, publicity, and supervision of timely submission of Official's Asset Declaration; asset declaration forms of the Georgian public officials can be seen and downloaded from the Bureaus website.

The main goals of the Bureau are:

- Develop uniform standards and approaches to improve the performance of the public service;
- Improve human resource management in the public service;

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<sup>100</sup> Source: <http://www.csb.gov.ge/content.php?id=11&lang=eng>, Retrieved: 31.07.2010

- Collect and store the asset declaration of the public servants (currently discussions are taking place with regard to status, powers and activities of public service bureau).

### *The Chamber of Control*

The Contemporary Chamber of Control is the legal successor of the state control Institution of the Democratic Republic of Georgia of the years 1918-1921. Chamber of Control is member of INTOSAI (International Organization of Supreme Audit Institutions) from 1992, member of EUROSAI (European Organization of Supreme Audit Institutions) since 1993 and member of ASOSAI (Asian Organization of Supreme Audit Institutions) since 2004. The Law “On the Chamber of Control of Georgia” was adopted in 1993. Later, 1997 The Parliament of Georgia adopted a new Law “On the Chamber of Control of Georgia”. In December 2008 the Parliament of Georgia adopted a new Law “On the Chamber of Control of Georgia”.

The Constitution of 1995 defined the Chamber of Control as the state Supreme Audit Institution.

The Chamber of Control of Georgia is a supreme institution of the state financial and economic control. It oversees the expenditure and usage of public funds and other state material values, safeguards the national wealth and state property, controls and analyses the legality, purposefulness and effectiveness of the use of state resources. It is independent in its activities and is accountable only to the Parliament.

The Chamber of Control of Georgia revealed recently serious wrongdoings in the Ministry of Healthcare involving the Deputy Minister (see case study 4). This case was the most serious revelation of corrupt network involving the Chamber of Control over several years.

### *Political Parties*

There are up to 200 registered political parties in Georgia. The party system is weakly institutionalized. Opposition parties, refusing to engage into any kind of dialogue with the President’s ruling party, because of “falsified elections”, “lost war” etc. have not so far presented any alternative agenda of anti-corruption fight. Instead, they regularly make statements, where they accuse representatives of the state institutions in different kinds of corrupt acts, starting from quite feasible wrongdoings such as ownership of shares in companies up to unbelievable conspiracy plots. Statements are usually made in a confrontational, insulting, personal approach. As a rule, no evidence is presented. Furthermore, in the recent past some of the opposition party leaders have been involved in corrupt acts themselves, such as selling positions in party lists, which seriously affects their credibility in the public

eyes. The ruling party knows exactly how to use these weak points in their rivals' background.

This is why, even when opposition parties report about corrupt acts of the public officials, no actions follow: the ruling party passes everything as another rumor, provocation from their opponents; the general public is quite skeptical about the integrity of the opposition leaders themselves, since their biographies are well known. Unfortunately, these mutual accusations have become part of daily political life and cause little interest in the public.

### *Nongovernmental Organizations*

Since the beginning of the 1990s Georgia has always a rich and vivid NGO sector, numbering to several thousand. They played an active role in the Rose Revolution. Though, after 2004 the picture changed for two main reasons: first, a big number of the intellectual forces moved from the NGO sector into the government; and, second, the international Donors cut for some time the funding after the Revolution, directing part of the resources into the reform programs of the new government.

Today, the interest of the NGO world to the anticorruption programs of the government is lower than one can expect. Either because the issue of corruption is not as acute as it was previously, or because of lack of funding of these issues there are few organizations or independent experts working on this. Transparency International Georgia focuses its efforts on these issues. There are NGOs working on exclusively on the election process or human rights and cover in the process of their activities issues that are connected with the corrupt acts of the public officials.

### *Media*

The media sector in Georgia is represented by a wide range of print and electronic publications, several Radio stations and up to 15 TV stations. Though a serious problem is media ownership. Main TV stations as well as printed publications are either owned by people close to the government or in some cases the owner of the TV channel is unknown, in other words the owner is a certain company and nobody knows who the actual owner of the company is. This media sources cover the anticorruption efforts of the Government on a regular basis, but there is no or very few analytical part in Georgian journalism and almost no investigative journalism.

Apart from the ownership problem there are other reasons why investigative journalism is still so weak. Without doubt, lack of professionalism and low ethical standards are other important reasons that hinder the development of the Georgian media. Especially the printed media prefers to focus on gossip and scandals in order to sell their publications. As a result, the few true stories about corrupt acts involving



public officials, politicians that appear in the press get lost in the flood of unchecked news. The reputation of the newspapers often marked by absurd publications, help the corrupt officials to deny their fault and blame the press of defamation. In general, we can say that all the Georgian media today, is it pro governmental or opposition dominated, lacks credibility.

### *The Ombudsman*

Georgia adopted the organic law on the Public Defender on 16 May 1996 and established the Public Defender's Office (PDO) in the country. The Ombudsman supervises and documents to the Parliament on the human rights abuses. Prisons, Law enforcement agencies, orphanages are spheres of oversight activities of the Georgian Public Defender. Human right violations are often connected to corrupt acts though, the Ombudsman's office is not among leading Institutions in the anticorruption campaigns. While the previous Public Defender was a very active and dedicated person, the current Public Defender is very careful in his statements, even when reporting on restrictions of media freedom.

### *Stakeholders' perception*

An important issue when studying the anticorruption strategies is the perception of corruption of the political elite and the masses. In the Soviet Union corruption has been part of everyday life for decades, so the necessity to fight corruption as a serious threat to the functioning of the state is not something self-evident to everyone. Indeed, the question of who carries the lion's share of responsibility of a certain society being corrupt- the masses or the elites, has been often put forward since the downfall of the Soviet Union and revealed controversy among politicians, experts and citizens. Most frequently one can hear the explanation, that the "whole society is corrupt and we all are responsible". This vague explanation, often heard from politicians implies that no reform can miraculously heal a sick society and some fundamental changes have to take place in the minds of ordinary citizens. It has also been stated by some scholars that corruption can play in certain societies and on certain developmental stages humanizing role, by helping citizens to cut red tape bureaucracy. The same idea can often be heard by people who have spent most part of their life in the Soviet Union.

But in general, people express the idea that there is corruption because the political elite is corrupt and they as ordinary citizens have no other way but engage in small, everyday corrupt acts in order to survive. This traditionally nourishes a deep mistrust to the government and state institutions. Hardly any citizen will say that he believes in his ability to make things better in the country if he knows that there are no ways of reporting about corrupt acts committed by public officials and even less are the chances that he will be punished for it. Nevertheless, it is not rare to hear from

politicians that corruption depends on the people and not on the authorities.<sup>101</sup> Useless to say that such politicians rarely do seriously anything to combat corruption. For example, former President of Georgia Eduard Shevardnadze was a politician with thirty old experiences in ruling Georgia, first as a soviet republic and later as an independent state, and through his entire life he was “combating” corruption till this latter reached a monstrous scale.<sup>102</sup>

Periodic campaign targeting misuse of office by public officials took place in the Soviet Union too. Though many dismissed officials in this “purges” escaped real punishment and often were soon reappointed to other important positions. The reason was that these Campaigns served the purpose to create the illusion that the government was fighting with corruption; in other cases the campaign was used to destroy political rivals. Though this was rarer since in a system corrupt to the core, everyone had a *kompromat* on everybody, so usually all preferred to keep the mouth shut and pretend that nothing was happening unless something extraordinary occurred.

Georgia in the 1990s was ruled mainly by the survivors from the communist government who came back to power renamed as democrats. The belief that corruption is part of doing things and people are used to and ready to continue living in a corrupt state, was so dominant among them that they didn't even think about serious restructuring of the existing system.

The breakthrough happened when the power went into the hands of the new generation of Georgian politicians who were not brought up with the belief that the level of corruption cannot be decreased because “Georgian people have corrupt minds”. Aggressive and rapid systemic reforms, accompanied by a reshuffle of the state institutions, made very soon visible that people *refuse to pay bribes to officials and do report about such cases if there is where they can report*. This is very well demonstrated by the following example: when the patrol police was first introduced, people often refused to call and report about wrongdoing they witnessed, because of a very simple reason: they didn't trust the police; they even preferred to go to criminal authorities to settle disputes. It took some time till citizens gained trust in the new police service and today, Georgian police is among the most trusted state institutions. One can probably say that the Georgian experience of the fast few years is a good example of a combination of decisive action from the top backed with strong public support.

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<sup>101</sup> Words of Anatolii Chubais, Russian politician, quoted by Rasma Karklins, p. 65.

<sup>102</sup> In 2000 he created a commission, “group for the Elaboration of the National Anticorruption Program”, which presented a document well describing the unbelievable scale of corruption in the state institutions. The president admitted that the document “contains the horrible truth”, but took almost no actions but creating an “Anticorruption Policy Coordinating Council” that in its turn achieved nothing during the next two years of its existence.

Almost all experts' interviews show that petty corruption in Georgia has significantly decreased in the last four years and some even say "that there is almost no petty corruption". Almost all also agree that the serious improvement on Georgia position in the TI CPI or researches and surveys is mainly on the expense of this decrease. The very first wave of the post revolutionary reforms targeted fields and areas where corruption was most widespread and was striking the ordinary citizens the most. This was a clever step from the new government with the intention to make citizens see as soon as possible some kind of improvement in their daily life, which would guarantee public support for further reforms.

There was little doubt that the law enforcement agencies and the education sector were among the most corrupt sectors in the Georgian state, since citizens had the most frequent contact with these: everybody had to do with the traffic police in the streets or entrance examinations in the Universities.

Prosecution of some high-ranking officials from the previous government (including ministers, rectors of universities etc.) was one of the first measures that the anticorruption campaign started with. To some extent a theatrical, demonstrative arrests of notorious public officials should strengthen the citizens' belief that this time the new Georgian government *means it seriously*. Most of these officials were released thanks to the plea bargaining<sup>103</sup>, another feature of the post revolutionary Georgia, but the fact that they were arrested and had to pay the state budget significant amount of money, seriously influenced the public opinion by fueling its optimistic expectations.

Further steps included the introduction of a new patrol police force, reform of university admissions, reform of public and civil registries, streamlining of licensing and permission procedures.

In 2004 nearly the entire traffic police was fired (several thousand employees) and replaced by the "patrol police": salaries were significantly raised (15 times,) new equipment, new cars, new uniforms introduced to transform the image of the old traffic policeman. The new Police Academy where recruitment process is fair and transparent, guaranteed that only people able and willing to serve the public enter the traffic police. This process was so important to the government that even the President of the country attended the entrance exams in the Police Academy several

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<sup>103</sup> A "plea bargain" is a deal offered by a prosecutor as an incentive for a defendant to plead guilty. "One of the first acts of the Saakashvili government in February 2004 was to introduce plea bargaining into Georgia's legal system. A plea bargain is, quite simply, "an agreement [between the prosecutor and the defendant] that, if an accused person says they are guilty, they will be charged with a less serious crime or will receive a less severe punishment". The principle is simple, a defendant is rewarded for relinquishing his right to a fair trial and therefore saving all concerned from a long and often expensive legal battle". Source: [www.transparency.ge](http://www.transparency.ge)

times. The result is quite impressive: since the introduction of the “patrol police” there have been no public reports of extortions of bribe from the patrol policemen<sup>104</sup>.

In the education system the Unified Admission Exams has been introduced for all applicants, where Universities don't participate in conducting admissions exams. Previously, each University conducted own admission exams and corrupt acts were frequent. As part of the education sector reform School boards were also established. And despite the fact that the education reform is still far from being finished and the changes introduced so far are very controversial and have been accompanied by failure in certain areas, it has obviously reduced the level of corruption and established a more competitive and fair environment at least in the higher education. Corruption in the Army was also a matter of serious concern for all male citizens: the Georgian army was underfinanced and most of conscript preferred to pay a bribe in the local commissariat rather than go to the Army. Through increased budget allocation, special programs supported by the US government and later introduction of professional Army, this source of income was closed for the corrupt officials in the defense Sector. Before this, Universities offered students protection from military service; these two sectors were in a certain way “nurturing” each other: the university offered shelter to service avoiders and the military service recruitment offices made money on young people who failed to enter universities.

Other changes included streamlining of different kinds of procedures like issuing licenses, permissions etc. The introduction of the “one-window” principle, meaning that citizens can get all necessary information and service by approaching one counter/desk and doesn't have to run through numberless offices and cabinets, seriously cut the red tape bureaucracy. For example, if one needs to get a national ID or passport, the procedures, cost and issuance time can be easily found on the website of the civil Registry and any violation of these can be reported. It is noteworthy, that e-government is taking its first steps in this sector and a number of services, such as application to certain documents (for example, application for Georgian citizenship has become possible online, without the applicant coming to Georgia) are already possible online.

These measures had a very quick and apparent effect on the petty corruption: citizens found themselves in situations when they were asked by public officials to pay bribes more and more rarely. Opinion polls of this period show a significant growth in trust of state institutions such as the police: a result absolutely unimaginable in the previous decade. Despite some skeptics arguing that these were PR measures by the new government in order to raise their popularity and lacked depth, the following years show that the level of petty corruption has remained very

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<sup>104</sup> Skeptics speak about the strict way that the patrol police treat any offenders as a sort of corruption when the budget is enriched by the “zero tolerance” approach to drivers.

low and even skeptics agree today, that it is one of the main achievements of the “Rose Revolution”.

So much about the petty corruption, or as Karklins defines it in his typology of corrupt acts- first level corruption, acts when citizens fall as victim: if the government launches an anticorruption campaign and manages to convince people that it really intends to combat corruption, people report about corrupt officials, refuse to pay bribes and cooperate with the according institutions in other ways. But in the case of grand corruption/ political corruption one cannot count on ordinary citizens as source of information: people simply don't possess proof of such corrupt acts. Even when there is a suspicion of acts of political corruption it takes serious investigation and effort to prove it. Here is where the role of the civil society organizations and the media is crucial. In the post communist societies this role is even more important because it is not a secret to anyone that despite formal institutions of democracy been established in this countries, there often is serious gap between formal democracy and informal politics. At the same time political corruption, undermines public spiritedness which can in a long run play a disastrous role in a young state.

Speaking about containment of corruption one inevitable arrives to the truism that only effective accountability is the mechanism that can give long-lasting effect. In the modern society “accountability goes beyond restraint and oversight by public agencies and the electorate. It calls for multiple forms of self-restraint and culture of public-spiritedness”.<sup>105</sup> Accountability has several dimensions and public accountability is the one that all experts in the post soviet countries usually mention as one of the weightiest.

#### Public Accountability: Georgian Civil Society and the Media against corruption

The Civil Society experienced in Georgia a dramatic challenge after the Rose Revolution: a big part of the human resources from Civil Society Organizations moved into the new government. Of course, this also meant that they carried the values of the Civil Society into the new government. But the Civil Society faced consequently a problem: the vision of the Georgian public made little difference between the new government and part of the civil society. Moreover, this vision was shared by the donor organizations, who were thinking of diverting financial resources from the civil society organizations into the governmental programs<sup>106</sup>.

In fact, there were several problematic issues: first, there was the question if the civil society will manage to “fulfill the function of an objective commentator on public developments, if the government is composed of their friends (often their personal

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<sup>105</sup> Karklins, p. 126.

<sup>106</sup> Ghia Nodia, *Civil Society Development in Georgia: Achievements and Challenges*, Tbilisi 2005, pp. 16-17.

friends)?”<sup>107</sup> In the field such as combating corruption this is more than a crucial factor.

Second, the civil society organizations were at least for some time drenched of its best people until some new blood started to appear in the Third Sector. Even the greatest supporters and admirers of the tendency of CSO becoming an important pool of human resources for the government, acknowledged that it would be extremely negative if the importance and influence of the CSO in the post revolutionary Georgia would diminish.

Thirdly, the period after the Rose Revolution “was marked with an obvious diminution of the importance of the civil society sector in public perception”.<sup>108</sup> Why listen to them if the best of the brains of the Civil Society is in the government? - was wide spread belief throughout the Georgian government. The same attitude was dominant in the media and even some donor organizations.

As noted above, the new government launched a very swift and aggressive systemic reforms campaign in almost all sectors. Corruption has been one of the main targets though the approach was not combating corruption per se but the system where it was entrenched in the whole. Naturally, these reforms were of such a large scale that in any other historic period could cause serious social upheavals. But on the post revolutionary wave the government made a very good use of the wide public support and implemented reforms as the police reform that meant firing thousands of police officers. During this “cleansings” the Civil Society Organizations often reported about violations of human rights, legal norms pressure on judiciary and the media<sup>109</sup>.

Gradually the relationship between the Georgian government and the Civil Society returned to the usual mode of cooperation and opposition but certain disinterest can still be felt from the side of the government; representatives of state institutions often ignore invitations to the presentations of the civil society organizations researches, try to avoid participation in researches etc. Fairness demands also to mention that certain selectiveness can be felt in dealing with the CSOs: this selectiveness is often based on the international reputation and size of the organization; TI Georgia for example is an organization working on corruption issues that the government can't always ignore. Also, there are certain organizations that enjoy a high level of trust from the government officials, partly due to the old connections mentioned above and other organizations, which are usually excluded from process of cooperation due to distrust, dislike by certain figures in the government. No need to mention, that in

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<sup>107</sup> Ibid. p. 17.

<sup>108</sup> Ibid.

<sup>109</sup> For example, CIPDD reported on violations of private property rights in the process of dismantling “illegal” and “ugly” buildings and houses in the Capital, Tbilisi. See the Policy Brief : The development of Tbilisi and private property, CIPDD 2007

combating high level corruption this kind of “friendly” organizations will not play the desired, watch-dog function.<sup>110</sup>

According to the media experts interviewed, after the Rose Revolution the Georgian TV stations either changed the owners or were closed. Today, in 2010 there is only one TV Station that has the same owner as it had in 2003. In most cases it is not even known or known for sure who the actual new owner is; the only sure thing usually is that it is someone who has close relations with the government. As a result the main Georgian TV Channels are extremely friendly or openly supportive of the ruling party and the president.

One of the experts described the situation with the Media prior to the Revolution and after the Revolution in the following way: if we imagine a triangle, the government on the top angle and the journalist and media owner on the two bottom angles, journalists and their media-owners belonged to the same group and opposed the Government together. After the revolution this triangle turned upside down, media-owners have been placed together with the Government in the upper two angles beside each other and the journalists were left in the lower point; on their shoulders fell the weight of the two others.

As a result Investigative journalism has completely disappeared from the leading TV Channels after the Revolution. Investigative journalism has found shelter in a couple of Media studios that find financial support from donor organizations. This is especially sad because Georgia had a very impressive experience in investigative journalism before the Revolution: the TV program “60 Minutes”, an analogue to a similar US program, played a major role in informing the public about the wrongdoings of the public officials and politicians, but ceased its existence after the Revolution. Moreover, investigative journalism is not taught at Georgian higher education institutions and the lack of human resources in this specific field of journalism is already apparent: journalists active in this field today were trained and prepared by the program “60 Minutes”.

One of the biggest obstacles for investigative journalism, according to experts is the difficulty in accessing public information from state institutions. Journalists as well as anyone involved in the research from the NGOs confirms that obtaining public information is a challenge that asks for tremendous effort and time investment. No need to say that in such conditions investigative journalism, that is a very difficult occupation even when there are no additional barriers, runs the risk of failure.

The newspapers are under much less pressure than the TV and experts say despite financial problems, the printed media enjoys more freedom. Though, the influence of

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<sup>110</sup> More on this topic check Freedom House Country Report 2006: <http://www.freedomhouse.org/template.cfm?nit=402&page=47&year=2006>, Retrieved on 16.08.2010

the printed media on the public opinion is much less than it used to be before 2003. Several reasons can be named: first, the president and after him other high rank officials, has publicly announced that he doesn't read Georgian newspapers because the true opinion maker today is the TV not the printed media. Newspapers become source of information that public officials stopped fearing, since printed media was announced as being of second importance.

The other reason why printed media plays a very modest role in the Georgian society is in the attitude of the printed media itself: some of the newspapers make a very bad use of the freedom of media and often publish material that is not supported by any serious evidence and source. As a consequence, experts agree, suffers the reputation of all printed editions including those that are not trying to use sensations in order to make to make a name and sell the paper. The pursuit of quick money and fame is a very serious problem of the Georgian journalism, which the journalists tried to combat by promoting the idea of and developing a Charter of ethics for journalism. Though, the problem is still far from being solved.

The regional printed media has on the contrary grown more responsible and careful in publishing unverified information, because they depend to a wider extent on the donors. They don't want to lose the financial support of the donors so have learnt to think twice before they publish a scandalous, tough unverified information of someone's corrupt doings. The regional newspaper "Batumelebi" was named by the interviewed experts as an example of printed media source that published serious material about corrupt public officials that the government couldn't ignore and had to intervene.

Another problem that some experts and the opposition parties often speak about is that the investigations prepared by independent media studios on corruption are not aired on TV Channels that have wide area of dissemination: the biggest Channels refuse to put these films on air. The two Channels that are known for their anti governmental position have small coverage and are watched mostly in the capital. This has been a serious problem for years, but according to one of the experts the situation is changing slowly with the internetization of the country. All the investigative material can be found and downloaded from the web, Georgian TV Channels can be watched (live as well as recorded programs) online. Almost all major cities have internet access and the process of supplying the whole country, including all villages with access to the internet is advancing. It is the ambition of the Georgian President that every school and every citizen in Georgia even in the most remote village high in the mountains should have access to the internet soon. This will solve the problem of access to the information different from the official one.



## Case 1

The largest media scandal developed in 2005, involving the co-owner and main anchor of one of the TV channels, Shalva Ramishvili. Ramishvili was the anchor of a popular political talk-show and part owner of - TV broadcaster '202'. The show was famous for its critical attitude towards the ruling party and the President. On August 27, he and the general director of the Channel, David Kokhreidze was arrested in a police sting; Ramishvili was caught on tape accepting a US \$ 30,000 bribe from a majority MP Koba Bekauri. The money was demanded for not showing a documentary film containing evidence of illegal activities of the politician.

Ramishvili was charged with extortion of US\$100,000, and the court refused to release him on bail. He was sentenced to 4 year long imprisonment. The opposition parties described the arrest of Ramishvili as "an attack on free media."

Ramishvili himself denied blackmailing MP Bekauri and extorting money from him. He admitted taking \$30,000 from Bekauri, but added that he was planning to reveal that the MP agreed to pay him for his silence in the future, namely when the MP would bring the rest of the money. He also claimed he wasn't in possession of a hidden camera at that time to film the meeting. According to Ramishvili, it was Bekauri who was blackmailing and threatening him during three months.

In his turn MP Bekauri denied the existence of compromising materials against him and said that he agreed to pay the Journalist USD 100,000 in order "to uncover corruption in the Georgian media." He denied any relation with the customs terminal he was linked to in the program that was made for blackmailing him; the investigation was done and the program made by studio "Reporter", accusing the MP of owning the customs terminal "Opiza." Media Studio "Reporter" had a contract with the 202 television according to which the investigative stories produced by the organization were aired by the 202 TV.

The investigation was launched after it was found out that MP Bekauri's assets have increased in a short period by 294,000 Lari (USD 163,300) since he became parliamentarian. The MP explained this sudden increase of assets by an interest-free loan of USD 150,000 from an Israeli-based Georgian businessman. But according to the law, an interest-free loan is same as a gift and the sum in this case exceeds the value of the gift that a public servant has the right to accept. Moreover, the loan was used by the MP Bekauri's wife to purchase shares in the "Opiza" customs terminal.

The story became especially unpleasant for the government when some colleagues of Bekauri from the ruling National Movement expressed doubts about his statements

and demanded from the party to launch probe into Bekauri's activities. One of the MPs even quit the ruling party after being criticized by one of the leaders of the party by for his doubts in MP Bekauri's integrity.<sup>111</sup>

The story developed into a serious scandal. The government announced it to be an attempt "to free the media from corruption," while the opposition parties and some civil society organization stressed on dubious business interests of the MP and viewed the story as "an attack on the free media". The absurdity of some arguments presented by both sides in this story left the impression, that it rather was a case when both sides had something to hide: an MP, who used his position for personal enrichment became victim of a journalist who tried to use his position for his personal enrichment. The government used the opportunity to get rid of an active, annoying journalist.

Soon after the trial MP Bekauri disappeared from the Georgian politics and "returned to business". TV Channel '202' went off the air in October 2006.

*Governmental Accountability* is still very weak. Asset declarations are a must for all public officials but supervision and enforcement as well as sanctions for violations are inadequate. Parliamentary investigatory commissions have rarely been established, ministers rarely have been a subject of corruption scandals. The officials' explanation of this is that the government strictly controls who is appointed on high positions in the state and the mechanisms of control of appointed officials is effective. In fact, this of course is not exactly the same. We will not list here the accusations of Georgian political high rank officials that we heard from the journalists or experts since there is so far no evidence of these wrongdoings but we would like to mention the following: the government never speaks about corrupt acts of the politicians and high rank figures but if it happens that any of these change sides" and go into the opposition, the public suddenly finds out through the official sources of media that these persons have accumulated wealth while being in high positions. Best examples of these are the forms Prime Minister, former Chairwoman of the Parliament, the former Minister of Defense. Resignations of these or any other, don't mean investigations of their wrongdoings: instead the public witnesses campaigns of defamation of these former allies.

In terms of *Legal Accountability* many things have been accomplished in the period since 2004. As described in Chapter 2 of this report many laws have been passed or been amended in order to ensure higher level of transparency and accountability of the actions of the state institutions. This is probably a trend in most post socialist countries in the region, Georgia being a bit late due to several reasons. The problem is rather the enforcement of these laws. The weakness of state institutions, the low

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<sup>111</sup> See daily news online service Civil.ge "MP Quits Ruling Party": <http://www.civil.ge/eng/article.php?id=10644>

effectiveness of the judiciary and the Parliament in its oversight functions, play a role in the low effectiveness of the legal accountability mechanisms. The executive branch is the first violin in the Georgian anticorruption fight, the prosecutor's Office often guiding the court into desired direction.<sup>112</sup>

It is even more difficult to judge the *Administrative Accountability* in the current situation since the Georgian public administration system is being reformed; there is an agreement between the government and the public, that the existing system has to be changed. The main concern of the public is that the reform takes a long time. Though, most experts agree that there is some improvement in administrative accountability but it is still far from the desired: on the whole, civil servants are more cautious (some even use the phrasing *scared*) when dealing with citizens, being afraid of punishment. Reforms aimed at restructuring general inspection in the ministries that proved ineffective or legislative changes aimed to whistleblowers protection, are met with approval and high expectancy by the public.

*Financial Accountability* is another weak point in the current system. Audits have rarely if ever become reasons for serious investigation of corrupt acts. The Chamber of Control is an institution with rather restricted functions and rarely reports of significant findings. The Level of Financial accountability of state institutions varies from one institution from another: the Ministries of Defense and Interior being the most closed institutions. State procurements have been a matter of discussion for years and have often become topics for investigative journalism; rumors about fraudulent tenders and kick-backs also often appear in the newspapers.

*Professional Accountability* which can be supported by groups and associations of professionals suffers due to the weakness or non existence of such. Self-monitoring is especially important in the case of groups that represent professionals with a public mandate such as lawyers, doctors, notaries. Through codes of behavior and disciplinary boards these organizations can seriously affect the performance of their representatives of their profession. In Georgian reality such associations are still very weak and unorganized. Several scandals involving doctors and lawyers have demonstrated that professional ethics is still of secondary importance. Teachers, lawyers, journalist are among groups that managed to better mobilize than others but unfortunately their influence remains weak.

*International Accountability* is a dimension that the government pays more attention to. Is it the "carrot" of NATO and EU membership or financial support from the

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<sup>112</sup> The weakness of the young Georgian state in this regard is not a secret and neither is it uncommon for other newly emerged democracies. See the article in The Economists from Aug 19th 2010: "On paper Georgia has all the institutions proper to a democracy. In practice few of them enjoy real power. Parliament, dominated by Mr. Saakashvili's United National Movement party, has become little more than a rubber stamp. The police and judiciary are beholden to politicians. Key decisions are taken by a circle of insiders whose influence often extends far beyond their job titles".

international institutions, the opinion of these matters a lot. The World Bank, various European institutions, the US government have played a growing attention to the fight with corruption in Georgia; not just through support of civil society organizations working on this issue but through direct oversight and recommendation to the government. To name here once again are the GRECO reports. According to local experts high level corruption scandals in Georgia become a matter for the government's consideration when/if the international actors hear about it and demand for action (if for example the Ambassador of the US makes an announcement).

The Georgian government doesn't deny that the motive for the adoption of the anticorruption document such as the Action plan and Strategies adopted since the Rose Revolution was the insistence of the international actors on doing so. The Georgian government's vision was that the existence of such documents is not a guarantee that corruption will in fact be fought in a country; the political will and systemic reforms are rather what can make a change (a just observation based on the Georgian experience prior to 2003). The international actors, politely agreeing to this declaration of the political will of the new government still wanted to see documents that would define the government's actions and help to monitor them.

*Electoral Accountability* is another dimension that scholars refer to when speaking about ensuring accountability. Georgia has a very unpleasant experience since its independence of political power change: so far, there was no precedent that the ruling party lost elections and a new political figures came to power. Both previous presidents were replaced by unconstitutional means (unlike the East European "protest vote democracies", where disappointed voters often vote for new parties on every election). The government explains this by the weakness of the opposition parties which is partially true but there is more than that: strong ties between the ruling party and businessmen, use of administrative resources are what opposition parties, NGOs and media accuses the ruling party of. Election campaign financing is a big corruption topic in Georgia that is definitely preparing lot of unpleasant moments for the country in the future too.<sup>113</sup>

Despite the improvements in conducting elections, for example amelioration of the voters lists, the results of the elections remain one of the issues of most severe disagreement between the ruling party and the opposition. This makes cooperation between political powers impossible, undermines the political legitimacy of the ruling party in the eyes of the opposition party voters and hinders the political development of the country. Transparency of the spendings during the election campaigns is what can significantly contribute to the containment of political corruption in Georgia. Though, few of the experts expressed their optimism in this regard.

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<sup>113</sup> The International Society for Fair Elections and Democracy (ISFED) is a local NGO that monitors elections in Georgia and who's reports are read and taken into consideration by international organizations: [www.isfed.ge](http://www.isfed.ge)

## Case 2

An unexpected turn developed recently in a famous criminal case: Main Prosecutor's Office has arrested a well-known businessman, the owner of the Elizi Group Company, his daughter-in-law and her father in suspicion of document forgery and bribery. Charged with commercial bribery and false testimony, the police arrested the former Deputy Minister of Healthcare, four expert psychiatrists – among them well known persons to the Georgian society.

Reportedly, the case refers to the son of the businessman, who serves his sentence in jail for murder. The informal reports say that he had a conflict with the prison administration for which the court added several years to his sentence. The family objected to the decision however, failed to assist the convict legally. They contacted the doctors of the psychiatric clinic offering a deal: the doctors should write a conclusion that the prisoner had mental problems, they would be paid serious sum of money instead.

The son of the businessman serves the sentence for premeditated murder, which occurred on May 19 2001 at a birthday party. He went to the party together with his three friends and after a quarrel shot the person who's birthday was celebrated and his uncle. The murderer escaped from the place of the murder, however, was arrested afterwards and is now serving a 21 year long sentence.<sup>114</sup>

The fact that Georgian psychiatrists were involved in such corrupt acts was neither new nor a surprise: buying a document that was a proof of a person's mental instability was a very common practice among young people trying to avoid military service or prisoners who tried to achieve hospitalization/ transfer from prison into a special institution. In this case too, parents of the prisoner claim that they decided to "buy" the document because their son was held in bad conditions in prison and experienced pressure and was victim of money extortion from the side of other prisoners.

Moreover, it is not the first case since 2004 when expert psychiatrists are accused of issuing false diagnostic conclusions: six years ago the Prosecutor's Office launched an investigation but couldn't collect evidence. In that case psychiatrist hit back by accusing the Prosecutor of pressure and explained the scandal by their refusal to issue false diagnostic conclusions on the demand of the prosecutor<sup>115</sup> (another very common practice in the soviet past when expert psychiatrists often cooperated with the law enforcement agencies and declared persons hostile to the soviet system as insane).

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<sup>114</sup> Daily Newspaper "24 Saati", 08.07.2010, <http://24saati.ge>

<sup>115</sup> Weekly newspaper "Kviris Palitra", 12.07.2010, [www.kvirispalitra.ge](http://www.kvirispalitra.ge)

The investigation continues and no matter what the end will be, it revealed once again that there is lack of transparency and deep entrenched corruption in the healthcare system.

### **Case 3**

The Healthcare system was again in the spotlight of public attention recently due to a loud corruption scandal. A corrupt network involving high rank officials was revealed by the Chamber of Commerce.

Former deputy minister of Healthcare, Nikoloz Pruidze has been arrested in suspicion of charges related to abuse of office and bribe-taking: machinations were carried out in the state program of immunization in 2009. The audit carried out by the Chamber of Control reported that 1,788,9 GEL were misappropriated by these wrongdoings carried out by senior officials of the Ministry of Healthcare and the company, successful in one of the tenders.<sup>116</sup>

The prosecutor's office said that in 2009 Pruidze used his official position to influence the commission on a tender offer for procurement of vaccine for state-funded vaccination to accept a bid from a firm, which was offering vaccine for three-fold inflated price. The firm had no previous experience in similar activities and as it turned out later, was actually created short before the tender with the purpose to participate in this tender. Avery close friend of Pruidze worked in the firm. The prosecutor's office alleged that Pruidze received a bribe in exchange. Until 2009 immunization vaccines were provided to Georgia by donor organizations and only last year, the government began to purchase vaccines.

It was also discovered that the Agency of Health Care and Social Programs purchased vaccine of inferior quality and short expiration, which was less in number than it was required. Thus, serious damaged was inflicted on state budget, while the company benefitted from the aforementioned machinations.

Founder of the firm, N-Pharma+, allegedly involved in the scheme, who is also arrested, told investigators that Pruidze received USD 25,000; but the sum, he said, was handed over not directly to Pruidze, but to a middleman.

Pruidze, served as deputy healthcare minister since 2004 and was dismissed couple of weeks before Alexander Kvitashvili's resignation from the post of healthcare minister on August 31. Pruidze, who denies charges of taking a bribe, expressed his willingness to cooperate with the investigation and "reimburse any losses that was

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<sup>116</sup> <http://www.civil.ge/eng/article.php?id=22675>

inflicted on the state as a result of his actions.”<sup>117</sup> This means, that we will witness another case of plea bargaining.

#### **Case 4**

In July 2010 the Ministry of internal Affairs disseminated the following statement: “In 2010, Canadian investor William James Simpson purchased a land area in the town of Mestia from G. Svanidze, along with a ruined building of the former tourist complex “Ushba,” where he planned to construct a hotel. The land purchase agreement was legal and was registered in the Georgian National Agency of Public Registry (Svanidze had been an owner of this land for several years). William Simpson’s official, notarially certified representative in Georgia was David Kukhilava, resident of the town of Jvari.”<sup>118</sup>

According to David Kukhilava’s testimony, he arrived in Mestia on 30 June and on 1 July he was approached by 2 government officials and 4 local residents, including David Japaridze – Head of Mestia’s Municipal Office for Sport, Culture, Tourism and Youth Affairs, Taniel Japaridze – Chief engineer of “EnergoPro Georgia” Mestia branch, Neli Naveriani – Member of Mestia Sakrebulo and Shota Japaridze – unemployed, who told him that the land area, where the hotel was to be constructed once belonged to their ancestors and, according to local traditions, the hotel could not be built without their consent. In exchange for their consent, they demanded 220 000 GEL from the businessman (the land area comprises 22 000 sq. meters). Otherwise, they threatened to “shed blood.” A friend of David Kukhilava was present at this meeting as well.

Kukhilava told them that he could not pay the demanded sum of money all together, but agreed to give them this money in parts. At first, he promised to pay 70 000 GEL. On 2 July 2010, David Kukhilava informed the Samegrelo-Zemo Svaneti Main Division of the MIA.

On 7 July 2010, after conducting a number of criminal investigation steps, the Police carried out an operation and arrested David Japaridze, Taniel Japaridze, Neli Naveriani and Shota Japaridze.

During the police operation, some locals resisted the police and tried to free the detained suspects. As a result, several police officers and a cameraman who was shooting the operation were injured.

The MIA possesses clear evidence on this extortion case. Namely, testimony of David Kukhilava, videotape depicting the transfer of money, intercepts of telephone calls, marked money and testimonies of witnesses”.

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<sup>117</sup> <http://www.ghn.ge/news-22516.html>, on 23.09.2010

<sup>118</sup> <http://police.ge/index.php?m=8&newsid=1179&lng=eng>

Soon after this statement became public, on 16 July 2010 four organizations – Human Rights Center, Transparency International Georgia, International Society for Fair Elections and Democracy and Georgian Young Lawyers' Association responded to the statement stated above:

“On 7 July, Local Council Member Neli Naveriani and her three relatives – Shota Japaridze, Tariel Japaridze and Davit Japaridze – were arrested on extortion charges in Mestia. The detainees were transferred to the Zugdidi preliminary detention jail on the same day. Two helicopters were sent to Mestia to take Neli Naveriani to Zugdidi since local residents had blocked the road and it was impossible to transfer her in a car.

For two years now, Neli Naveriani and her relatives have been trying to reclaim a hayfield that belonged to their ancestors but had been sold to a Canadian investor – William James Simpson – by the authorities. Although Neli Naveriani had not registered this land with the Public Registry, her family has been using it for several decades. Generally, a majority of the residents of mountain areas, including Mestia, are yet to formalize legal ownership of the land that they possess.

Neli Naveriani has said that Davit Kukhilava, who is representing the Canadian investor, contacted her for negotiation after the local elections. On 7 July, he arrived in Mestia for the third time. Neli Naveriani refused to meet Davit Kukhilava but Shota Japaridze, Tariel Japaridze and Davit Japaridze met him in the Mestia Hotel. It has been reported that, at the meeting, the residents of Mestia were offered money in exchange for the land. After that, an armed special force entered the hotel. According to eye-witnesses, all three persons who had come to the hotel for negotiation were thrown to the floor and beaten. Meanwhile, Neli Naveriani was arrested by a special force at home.

...Also, several local residents sustained injuries during the special operation carried out in Mestia as they attempted to defend the detainees. According to eye-witnesses, as a result of the use of weapons by the special force, Gela Japaridze's hand was broken, Inga Margiani sustained a serious hand injury...

...Although the special operation was carried out in the early hours of 7 July, the lawyers of the detainees were unable to visit them until the evening of 8 July. The trial of Naveriani and her relatives was held on July 9 in Zugdidi and all four were placed two months preliminary detention.

It has to be noted that Neli Naveriani is a leading member of an opposition party. She was elected to the local council in the 2010 elections. Naveriani was among the first people to publicize the violence perpetrated against the members of opposition parties in Mestia on 3 May when Samegrelo-Zemo Svaneti Governor Zaza Gorozia arrived in Mestia together with other high-ranking officials and a police unit at 11 p.m. and, according to Naveriani and other opposition representatives, resorted to



harassment and pressure, demanding that they withdrew from the elections.

An investigation of the 3 May incident in Mestia was launched two months ago. Not a single official has been charged so far, despite the fact that there is evidence, including the testimonies of victims and witnesses, as well as an amateur video footage showing the events that unfolded that night. In response to the publicizing of the incident, Zaza Gorozia took a leave following a recommendation by the Inter-Agency Task Force though he continues to work in the usual manner today. In a statement issued on 20 May, Transparency International Georgia, the Georgian Young Lawyers Association and the International Society for Fair Elections and Democracy urged the authorities to suspend the Samegrelo-Zemo Svaneti governor, the regional police chief, the Mestia police chief and other persons involved in the 3 May harassment until the completion of the investigation. However, all persons involved in the incident have retained their positions.

Transparency International Georgia, the Georgian Young Lawyers Association, the International Society for Fair Elections and Democracy and Human Rights Center believe that Neli Naveriani's arrest might be linked to her political activities. It is worth noting that Neli Naveriani had begun her work in the local council by examining the activities of the previous council. The legality of land sales that had been conducted without the necessary permits was among the issues that she had focused on.

...We ask international organizations to show interest in this case and to attend the trial. We will monitor the investigation and provide detailed information to all interested parties”.

The statement of the NGOS was commented by Shota Utiashvili, Head of the Department of Information and Analysis:

“I am surprised at the statements made by several local and international nongovernmental organizations on 10 July regarding the police operation conducted in Mestia on 7 July.

I would like to remind you that we are talking about legal charges according to which local authorities and their accomplices threatened a Canadian businessman, who had bought land in Mestia district, to obstruct his business activities unless he paid them 70 000 GEL. The investor informed the police about the issue. The police detained the suspects when they were taking the money.

Unfortunately, this case proves that there are still problems related to corruption, which require efforts of everybody, including the government, mass media and NGOs to eradicate them. The 10 July statement by four NGOs cannot be considered as a part of such an effort.

The NGOs state that “according to their information the investor himself offered money to the Mestians”, but they do not explain why the businessman would have decided “himself” to offer a financial contribution to the Mestian officials.

The authors of the statement say that the land was disputed, because “although Neli Naveriani had not registered that land area at the Georgian National Agency of Public Registry, her family had used it for several decades. Generally, in mountainous regions most of the population has not legally registered real estate which they own.” We remind the authors of the statement that there is only one type of document, which confirms real estate ownership in Georgian legislation, and it is a record at the Georgian National Agency of Public Registry, which is equally valid for lowlands and mountainous areas.

...The authors of the statement also mention that “several local residents, who tried to defend the detainees, were physically injured.” We would like to remind the authors that when someone obstructs the police during an operation to detain a suspect, this is qualified as “resistance to police” rather than “defense” and such behavior is punishable by law according to Georgian Criminal Code. An investigation into the case is already underway at the Mestian police.

...Finally, the statement says that: “Georgian Young Lawyers’ Association, Transparency International – Georgia, International Society for Fair Elections and Democracy and Human Rights Center consider that the detention of Neli Naveriani may be related to her political activity.” And why? Because “Neli Naveriani began examining decisions taken by the previous Sakrebulo, as well as legal aspects of selling land without permission.” Here we can only assume how many more businessmen would Naveriani and her relatives approach and explain to them that the property, which they considered as legally purchased, was not in their legal ownership according to local traditions”.

In this murky story it is really hard to distinguish the truth from lies: was it a continuation of a previous episode on lections and therefore, revenge from the high officials of the regional government? Was it a simple case of corrupt public officials extorting money from a foreign investor? The problem of land ownership has become reason for conflicts in the past and will probably serve the same reason in the future, since locals claim that historically they own the lands, though have no documents to prove it. The State intensively tries to use the lands for touristic purposes. Resistance from the locals takes different forms; the story above is just one example.

Whatever is true here the fact is that either corruption is still a serious problem among public officials in this particular region (as the Ministry of Internal Affairs claims) or prosecution of political rivals under the cover of anticorruption measures is not uncommon.

## Case 5

The Department of Constitutional Security and the General Inspection of the Ministry of Internal Affairs frequently report arrests of corrupt public officials. Here are just some of the recent events<sup>119</sup>:

1. The officers of Constitutional Security Department of the Ministry of Internal Affairs, as a result of operative activities detained Nikoloz Kazarashvili the employee of Veterans' division of Kaspi local municipality on the fact of bribery. The detainee extorted 600 GEL for issuing the veterans' certificate to the citizens.

Constitutional Security Department also detained Zurab Birkaia, the employee of Samegrelo-Zemo Svaneti Probation Bureau of the Ministry of Corrections and Legal Assistance. The suspect systematically extorted 100 GEL for suspending the date of appearance to the Bureau of Probation for the bailed out convicts.

The committed crime envisages the term of imprisonment up to 9 years. Investigation is conducted by the Constitutional Security Department of the Ministry of Interior (statement released on 13.09.2010).

2. The employees of the Constitutional Security Department arrested Ivaz Ismailov, chairman of the City Administration of Marneuli Municipality over the fact of bribe taking. The mentioned person extorted bribe in amount of 6000 USD from a citizen for assisting the latter in land plot privatization. Kamran Musaev - deputy chairman of the City Administration of Dmanisi Municipality and Fakhrat Kurbanov, proxy of Orozman village were also detained on the fact of systematic bribe extortion from the citizens. The mentioned persons were detained over the fact of 300 GEL bribe taking.

The punishment for the crime above envisages terms of imprisonment for up to 9 years. The criminal case is investigated by the Constitutional Security Department (statement released on 27.08.2010).

3. General Inspection of the Ministry of Internal Affairs detained the Patrol-Inspector of Sarpi border checkpoint, Pridon Mkheidze on the fact of being involved in bribery dealings.

The detained Patrol-Inspector extorted cash from foreign citizens which were deported from the Republic of Turkey; from each foreign citizen Mkheidze extorted 100 USD and guaranteed to assist them in returning to the Republic of Turkey.

The detained police officer admitted the committed crime. In connection with the mentioned fact investigation is conducted by the officers of General Inspection of the Ministry of Internal Affairs.

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<sup>119</sup> Source: the website of the Ministry of Internal Affairs of Georgia [www.police.ge](http://www.police.ge)

According to the acting legislation the committed crime envisages from 6 to 9 years of imprisonment as provided by the Criminal Code of Georgia (statement released on 30.06.2010).

4. The officers of General Inspection of the Ministry of Internal Affairs detained the inspector-investigator of Lanchkhuti Police Station, police Lieutenant Davit Gogvadze- who extorted 120 GEL from citizens and assisted in transportation of inert materials.

Detained police officer has already pleaded guilty.

IN connection with the mentioned fact investigation was launched under the article 338 of Criminal Code of Georgia by General Inspection of the Ministry of Internal Affairs.

According to the acting legislation the committed crime envisages from 6 to 9 years of imprisonment (statement released on 02.07.2010).

Reading these statements, on the one hand it is pleasant to observe that there is so much for combating corruption, but on the other hand one can wonder why do public officials, knowing that they face serious sentences up to 9 years engage in corrupt acts when often sums of money they profit is very small, like one hundred GEL. The common explanation that old habits die hard and corruption is still not eradicated from the minds of people in Georgia is partially true. Another explanation of why public officials still risk their careers and engage into corruption is the above mentioned plea bargaining, that guarantees the wrongdoer freedom, even on the expense of a lost job, and avoid imprisonment if one confesses his guilt and reimburses the state the loss.

### *Conclusions*

“In 1999, The World Bank published a comparative analysis of corruption in the major regions of the world for the period 1996-99. According to that, and contrary to many people’s expectations, the worst region on earth for corruption was perceived to be neither Africa, nor South or East Asia, nor Latin America, but the Commonwealth of Independent States. Not quite as bad, but still among the more corrupt parts of the world, was what used to be known as Eastern Europe.”<sup>120</sup>

Indeed, in the 1990s in the majority of post soviet countries corruption was part of daily life and furthermore, considered to be caused by certain cultural values. Moreover, the Georgian government sincerely believing in this or intentionally spreading this belief among the public, often referred to corruption as something

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<sup>120</sup> Corruption in Contemporary Politics, Edited by Martin J. Bull, James L. Newell, Palgrave Macmillan 2003, p. 193.

characteristic and unavoidable for all “southern” cultures, especially in small countries where everybody knows everybody. The rhetoric dramatically changed after the “Rose Revolution” in 2003. Apart of launching serious anticorruption measures, the new government, aware of the importance of public support in the task of combating corruption, repeatedly made it clear that it doesn’t believe in and doesn’t support the theory of culturally defined underlying reasons of corruption. The President himself announced many times that he doesn’t believe that there are corrupt nations and not corrupt nations: the difference is just that in some societies citizens have less faith that the authorities can or will do anything about this problem.

Demonstrating truly exemplary political will the post revolutionary government launched serious systemic reforms in several sectors, that didn’t aim exclusively but had a major effect on the reduction of corruption. For example, as a result of the police reform, organized crime has been weakened and the police was cleansed of corrupt officials who had ties with the criminal world.<sup>121</sup> This fervor of the government was on the first stages significantly driven by the ambition of the young democracy to achieve level of corruption that would allow the country to make serious step forward for joining NATO and the EU; even though these are now considered as distant future perspectives, the necessity of attracting investments to the country serve as a major motivator for the Georgian government to pursue the anticorruption efforts. Corrupt countries rarely attract foreign investors; this is clear to the Georgian government in the same way as it is aware of Georgia’s need of serious investments in the coming years.

After achieving tangible results in fighting corruption, especially the low level corruption, the Georgian government enjoyed a raising support of the public (opinion polls show that the vast majority of people consider fight with corruption as an achievement of the government) and praise from international organizations and foreign partners. The government often reminds the public that the country’s position in the TI CPI has significantly improved, which is a fact but at the same time position 66 is also an indicator that there is still much to be done. This achievement of Georgia has mainly been accomplished thanks to prompt, effective and often aggressive punishment measures: the state simply crashed on the corrupt networks and destroyed them, arrested corrupt individuals. This was probably a necessary part of cleaning the swamp of post communist corrupt system, but experts of the field agree, that without creating mechanisms of corruption containment, it is naïve to think to keep corruption under control.

Cornerstones of corruption containment are well-known and are “creating institutional checks and balances, assuring that the mechanisms of accountability actually work

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<sup>121</sup> More on this see “Police Reform in Georgia”, Lili di Puppo, U4 Practice Insight 2010 under <http://www.cmi.no/publications/file/3748-police-reform-in-georgia.pdf>

and mobilizing the citizenry to participate in enhancing the public good”.<sup>122</sup> Here lies the true challenge for the young Georgian democracy.

Strictly persecuting low and middle level officials (occasionally high level officials) Georgia has reached the stage when, as one of the experts interviewed put it, there is as much corruption as the government needs. In other words, if certain corrupt networks exist and operate, it is because the system of check and balances and accountability mechanisms are still weak. Only with the level of independence of the Judiciary becoming higher, the importance of the Parliament raising or civil society developing, Georgia will be able to combat the existing political corruption. This is not just a question of fine-tuning the legal framework or even institutional development, but rather making all these mechanisms actually start to work as intended. We are not saying here that the stage of introducing according legislation or creation of institutional framework is already accomplished in Georgia; on the contrary, there is still a lot to be done on this stage too. But it is essential to keep in mind that the creation of the legal and institutional framework is just the beginning of the fight with corruption. The recognition of corruption as a problem and developing mechanisms to fight it, is also an achievement but isn't something that will bring results per se.

The Georgian case is probably unique in another way too: scholars often pay attention to the links between corruption and security threats in Georgia, a connection between corruption and the frozen state formation conflicts. People, who profit from chaos and lawlessness in this region, are interested in spread of corruption. Trading of weapons, drugs, smuggling and trafficking, even nuclear smuggling can bring big profits to the criminal groups operating on the breakaway territories of Abkhazia and South Ossetia.<sup>123</sup> The international community is well aware of these dangers.<sup>124</sup> Thus, combating corruption is essential for the Georgian state for security reasons too, because corrupt law enforcement agencies will give a free way to the above mentioned criminal groups and Georgia will be flooded with smugglers and criminals.<sup>125</sup>

The unresolved conflicts remain a significant challenge not only for political and economic development of the country in general, but also for the struggle with corruption specifically. “There are several ways in which corruption and lack of progress in conflict transformation reinforce each other. For one, personal agendas to control economic assets are said to have contributed to the initiation of the armed

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<sup>122</sup> Karklins, p. 163.

<sup>123</sup> According to some reports counterfeit money smuggled from South Ossetia into Georgia included some extremely well made 100 USD bills with distribution channels to Iraq, Israel and the US. See more on this in the publications of the Transnational Crime and Corruption Center: [www.traccc.cdn.ge](http://www.traccc.cdn.ge)

<sup>124</sup> <http://news.bbc.co.uk/2/hi/europe/6297713.stm>

<sup>125</sup> See Networks of Crime and Corruption in the South Caucasus, Richard Giragosian, Caucasus Analytical Digest, № 9 2009

conflicts and the “losers” of Georgia’s anti-corruption campaign could try to promote future conflicts in order to strengthen their position. In addition, corrupt officials “grow fat off smuggling. Corruption in Georgia remains systemic, and involves local security sectors, customs services, local governments and peacekeeping units.”<sup>126</sup>

These threats give probably one more explanation why the international community is so much interested in supporting and advancing the anticorruption campaign of the Georgian Government. Financial and legal assistance over the last six years have been constant and significant, plans for future programs are already set. While international organizations give the Georgian government more specific recommendations in different fields of combating corruption, the aim of our research was to focus on the problematic areas that stakeholders within the Georgian society want to see more effort from the government or the civil society. Generally, all respondents agreed that the level of corruption has decreased but all also agreed that this level is still far from the desired. Serious steps have to be undertaken to clean the current political system of corruption.

A matter of serious concern is the ongoing constitutional reform: through constitutional changes Georgia is switching to the parliamentary model of governance, in which the Parliament’s political weight increases and the Prime Minister, elected from the party taking the majority of votes on elections, heads the executive branch. A positive change indeed, if we take into consideration that in the current model of governance the Parliament has mere rubber-stamping functions, but there some concerns too: the new model will create more and new centers of power in the country, leading to more space for lobbying and manipulation; necessary institutional and legal changes will take time and cause turmoil in the political system for some time; the decision making process will become more complex, time consuming. The danger that these changes can give a more fertile soil (at least for corruption political corruption) is high.

#### *The Role of Parliament in fighting corruption has to increase*

At this point it has to be mentioned that the Georgian Parliament’s role in fighting corruption today is less than modest. The Parliament’s role is merely adoption and amendment of legislation supporting the anticorruption campaign and the oversight functions are weekly developed. The Parliament follows the general trend of the Georgian political system and acts as if corruption has ceased to be a problem in Georgia. At the same time the activities of the MPs are one of the serious issues that have to be investigated when speaking about corruption. Corruption issues, despite frequent scandals in different sectors of the Georgian government, simply remain beyond active interest of the Georgian Parliament.

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<sup>126</sup> Georgian Security: A Latvian Perspective, Nils Muznieks, University of Latvia 2008, p. 32.

Obviously the role of Parliament in this regard has to be increased, by means of applying those existing oversight mechanisms or introduction of new ones, be that special commissions etc. Since the new constitutional model implies a stronger and politically diverse Parliament, it is expected and desirable that the Parliament becomes a strong link in the system of checks and balances and takes more care of fighting with corruption in its own walls as well as other branches of the government.

*An expansion of the authority of oversight agencies like the Chamber of Control and the Civil Service Bureau is necessary; reform of public service has to be advanced*

The authority and functions of the Chamber of Control and the Civil Service Bureau have to be expanded. Since these two are among main institutions responsible for checking the level of transparency and integrity of state institutions, their current role in the system is not satisfactory. For example, a serious issue here is the question of asset declarations: asset declarations have to undergo verification on their truthfulness. Otherwise, there is no use of storing them and putting them online like it is done currently.

The reform of the public service, launched several years ago is quite slow and has so far weak results. The President himself, in a recent purge of one of the ministries announced that the previous minister was recruiting heads of departments from the circle of his personal friends. Isn't this statement a best proof that the legal changes introduced in this sector don't reflect the real situation in the public service?

Besides the media and the SCOs complain about difficulties in obtaining information from state institutions more attention has to be paid to transparency mechanisms. State agencies shouldn't be fortresses one has to besiege for weeks in order to get public information.

*Investigative journalism needs support and encouragement from the State or at least a reaction on investigations conducted shall follow*

Investigative journalism cannot be just ignored like it is currently done. If accusations presented by investigative journalists are false, it is important to present proof of that. The government should regard such investigations as a help in detecting corrupt acts and not avoid it like a plague. Despite many promises there are no such projects on the government controlled TV stations.

*Dissemination and presentation of the Anti Corruption Strategy and the Action Plan to the public is necessary*

A more active involvement of the general public in the anticorruption campaigns is



necessary. We wouldn't exaggerate here by saying that most citizens don't know anything about the Anti Corruption Strategy of the Georgian government, not to say anything about the Action Plan and specific steps in it. An active dissemination of these documents is necessary in order to ensure higher awareness of what corruption is and is being implemented in this direction and how citizens can get involved in this process. In the long run it is the Georgian society that the anticorruption fight is performed for and not just the international community.

## 6.

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## Web Resources

- [www.freedomhouse.org](http://www.freedomhouse.org)
- [www.oecd.org](http://www.oecd.org)
- [www.coe.int](http://www.coe.int)
- [www.cmi.no](http://www.cmi.no)
- [www.unhcr.org](http://www.unhcr.org)
- [www.transparency.ge](http://www.transparency.ge)
- [www.csb.gov.ge](http://www.csb.gov.ge)
- [www.parliament.ge](http://www.parliament.ge)
- [www.police.ge](http://www.police.ge)
- [www.justice.gov.ge](http://www.justice.gov.ge)
- [www.civil.ge](http://www.civil.ge)
- [www.isfed.ge](http://www.isfed.ge)
- [www.kvirispalitra.ge](http://www.kvirispalitra.ge)
- <http://24saati.ge>
- [www.ghn.ge](http://www.ghn.ge)
- [www.traccc.cdn.ge](http://www.traccc.cdn.ge)
- <http://kud.security.gov.ge>
- [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2%282006%292\\_Georgia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2%282006%292_Georgia_EN.pdf)
- [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2%282008%299\\_Georgia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2%282008%299_Georgia_EN.pdf)
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