



TRANSPARENCY
INTERNATIONAL
BULGARIA



General Assembly resolution
of 31 October
United Nations Convention
against Corruption

The General Assembly,
Recalling its resolution 55/61 of 4 December 2000,
in which it requested of an effective
ad hoc committee for the negotiation of an effective
instrument to examine the implementation
of the Convention against Corruption,
and the

UN CONVENTION
AGAINST CORRUPTION
CIVIL SOCIETY REVIEW:
BULGARIA 2011

Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally binding anti-corruption agreement applicable on a global basis. To date, 154 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on chapters III (Criminalisation and Law Enforcement) and IV (International Co-operation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group (IRG), which met for the first time in June–July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "*to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption*" and to strengthen that participation by measures such as "*enhancing the transparency of and promote the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.*" Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10). Article 63 (4) (c) requires the conference of the States Parties to agree on procedures and methods of work, including co-operation with relevant non-governmental organisations.

In accordance with resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the conference secretariat on their compliance with the convention, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The secretariat, based upon the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organised by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption funded by the UN Democracy Fund (UNDEF), Transparency International has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process, aimed at supporting the preparation of UNCAC implementation review reports by CSOs, for input into the review process..

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of October 2011. Nevertheless, Transparency International Bulgaria and the UNCAC Coalition cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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Introduction

Bulgaria signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003 and ratified it on 3 August 2006.

This report reviews Bulgaria's implementation and enforcement of selected articles in chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation) of the United Nations Convention against Corruption (UNCAC). The report is intended as a contribution to the UNCAC implementation review process currently under way covering those two chapters. Bulgaria was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the first year of the process. An earlier draft of this report was provided to the government of Bulgaria.

Scope. The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), protection of reporting persons (Article 33) and mutual legal assistance (Article 46).

Structure. Section I of the report is an executive summary, with the condensed findings, conclusions and recommendations about the review process and the availability of information; as well as about implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Bulgaria as well as access to information issues. Section III reviews implementation and enforcement of the convention, including key issues related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments and section V elaborates on recommended priority actions.

Methodology. The report was prepared by Transparency International Bulgaria with funding from the UN Democracy Fund (UNDEF). The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was made available to them.

The report was prepared using a questionnaire and report template designed by Transparency International for the use of CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared with the detailed official checklist self-assessments. The questionnaire and report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33 and 46(9)(b)&(c).

The report preparation process went through a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report. The report was peer reviewed by a national expert selected by Transparency International.

The draft report was shared with the government for comments prior to its being finalised. A final draft of the report was then sent to the government prior to publication with the aim of continuing the dialogue beyond the first-round country review process.

In preparing this report, the author took into account Bulgaria's participation in the review processes of the Group of States against Corruption (GRECO), the OECD and the EU. GRECO published an evaluation report in October 2010¹ and the OECD Working Group on Bribery in International Business Transactions in March 2011.² Bulgaria joined the EU on 1 January 2007. The EU established a special co-operation and verification mechanism (CVM) to help the country address

¹ Greco Eval III Rep (2009)7E, 1 October 2010.

[www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_One_EN.pdf).

² Bulgaria: Phase 3. Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Working Group on Bribery in International Business Transactions on 18 March 2011, www.oecd.org/dataoecd/16/20/47468296.pdf

the outstanding shortcomings. The last report from the commission on the progress in Bulgaria under the CVM was issued in July 2011.³

I. Executive summary

At first sight, the implementation of the UNCAC has been relatively successful, as evidenced by government steps to amend existing legislation to bring national laws into compliance with the UNCAC. However, deficiencies still need to be addressed. Moreover, enforcement of these laws has been less than satisfactory in practice.

Assessment of the review process

Conduct of process

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Bulgaria.

Table 1 Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	No
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published on line or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report	Positive indications

Availability of information

Accessing information on corruption-related crimes is very challenging for citizens and civil society organisations in Bulgaria. This is mainly because there is incomplete data and a lack of uniformity and co-ordination due to the different criteria used by governmental institutions in collecting and analysing these statistics.⁴ As a result of these discrepancies, it is difficult to measure the effectiveness of anti-corruption programmes.

This report is based on information obtained from a number of governmental institutions and civil society organisations. On 12 January 2011, Transparency International–Bulgaria sent a questionnaire created by the TI-Secretariat to 20 governmental institutions and civil society

³ Report from the Commission to the European Parliament and the Council on the Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, 20.7.2011, COM(2011) 459 final, ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2011_459_en.pdf

⁴ The data in the statistics on corruption-related cases and crimes provided by the various governmental institutions approached varied significantly due to the criteria they use (e.g. statistics from the National Prosecution Office, the Supreme Court of Cassation differ significantly as evident from the Parallel Review Questionnaire from January 2011). Although approached, the Supreme Judicial Council did not provide information on statistics, despite their obligation according to Article 377 of the Judicial System Act (amend. – SG 33/09) to collect judicial statistics. Based on the information received by the other institutions (National Prosecution Office, Supreme Court of Cassation and the Ministry of Justice) during the process of preparing the reports TI Bulgaria brought the differences in the tables in compliance with the requirements of the questionnaires based on the data from the National Prosecution Office and the Ministry of Justice. For more details see Section III B of the report (key issues related to enforcement).

organisations.⁵ From 19 to 21 January 2011, TI-Bulgaria received responses from the following five: Supreme Court of Cassation, National Prosecution Office, Ministry of Justice, the Association of Prosecutors in Bulgaria and the CSO Access to Information Programme. The other institutions did not respond to the questionnaire due to a lack of information on the matter and/or the short time frame for a response. In addition to information from the questionnaire responses, this report also reflects TI-Bulgaria's independent research and analysis of laws, regulations and other materials.

Implementation and enforcement of UNCAC

At first glance, Bulgaria's national legislation implements all mandatory provisions of the UNCAC assessed in this report. However, the legal framework does not provide for criminal liability of legal persons or adequately provide a framework for illicit enrichment, neither of which is mandatory but would be desirable.

The poor enforcement of national legislation regarding corruption-related crimes is cause for great concern. The main shortcomings in the enforcement system are the lack of complete and reliable data on corruption-related cases; the low level of independence of investigators, prosecutors and judges from political pressure; the complete lack of enforcement of the liability of legal persons (companies); and the lack of an effective witness protection programme and mutual assistance framework.

Recommendations for priority actions

Bulgaria needs to undertake several high-priority reforms, including the following:

1. Pay immediate attention to the liability of legal persons, especially considering that enforcement efforts of the current legal regime have been minimal.
2. Improve the witness protection mechanism through more efficient implementation of the existing legal framework.
3. Consider introducing provisions on illicit enrichment.
4. Improve inter-institutional coordination mechanisms on mutual legal assistance.
5. Strengthen enforcement mechanisms by ensuring better co-ordination between prosecution and investigation services; investing adequate resources into the system; providing effective training; ensuring the independence of investigators, prosecutors and judges; and establishing a unified database on case statistics.

⁵ The agencies are the Supreme Court of Cassation, National Prosecution Office, Ministry of Justice, Supreme Judicial Council, Supreme Bar Council, Union of Judges in Bulgaria, Association of Prosecutors in Bulgaria, Union of Jurists, Bulgarian Centre for Non-Profit Law, Journalists against Corruption Club, Open Society Institute, Risk Monitor, Centre for Liberal Strategies, Programme Access to Information, Bulgarian Centre for Gender Research, Confederation of Employers and Industrialists in Bulgaria, Bulgarian Business Leaders Forum, Bulgarian Industrial Association, Bulgarian Chamber of Commerce and the Bulgarian Institute for Legal Initiatives.

II. Assessment of the review process

A. Conduct of process

A review of the implementation and enforcement of the UNCAC in Bulgaria is being conducted under the review mechanism established by the UNCAC Conference of States Parties. The Bulgarian government was required to undertake a self-assessment of its implementation efforts and report its findings to a team of peer reviewers. The Ministry of Justice is the country's focal point, coordinating the government's participation in the review process. The governmental institutions and civil society organisations approached by the authors of this report for the purpose of this parallel review were asked to evaluate the transparency of the government's self-assessment. Table 1, above, reflects the answers received.

At the time the report was drafted, the Ministry of Justice had not posted on its website any information on the UNCAC in general, nor on the review process in particular. The government did not make public the contact details of the country focal point, and there was no public discussion of the self-assessment. The self-assessment was not published online, but according to a representative from the Ministry of Justice it was provided to UNODC and the review team experts in October 2010. A country visit was undertaken from 14 to 17 February 2011. Eight civil society and business organisations were invited by the government to a roundtable discussion with the review team on 16 February 2011, but only a few responded (two representatives from TI-Bulgaria and two from business organisations). TI-Bulgaria learned in July 2011 that the review report had been prepared by the review team that by the last week of June 2011 and sent for comments from the government's side. Ministry of Justice representatives indicated that there should be no reason not to publish the report online once it is completed.

As evident from Table 1 and the observations above, the self-assessment phase of the review process has not been sufficiently transparent and consultative. The UNCAC Conference of States Parties called for "a review mechanism that is above all transparent, non-intrusive, inclusive and fair." The Bulgarian government has taken some very positive steps but could have done more toward following these basic guidelines.

In particular, it is very positive that the government hosted a country visit and invited civil society and business organisations to meet with the review team. It is also positive that the government indicated a willingness to publish the full review report upon completion, and was very open and co-operative to TI-Bulgaria's requests for information and comments.

B. Availability of information

The governmental institutions and civil society organisations approached for the purpose of this report noted that information on corruption and corruption-related statistics is very difficult to obtain. As a result, they were not able to complete large portions of the questionnaire.

There are several reasons for this problem. First, this type of information is available only upon request from several governmental institutions. There is no unified or comprehensive database containing statistics on corruption-related cases that is available to the public. Second, each governmental institution uses different criteria for collecting data; as a result, the data cannot be made consistent and it therefore differs significantly. Third, statistics on investigations and verdicts available to the public are not up-to-date. Finally, it is difficult to follow ongoing cases and stay up-to-date on filings and decisions, as they are not easily available online.

III. Implementation and enforcement of UNCAC

Under the Bulgarian Constitution, international treaties that have been ratified and promulgated and have come into force are part of the national legislation, and have primacy over conflicting domestic legislation.⁶ However, the Bulgarian Constitutional Court has clarified that when incorporating crimes stipulated in an international treaty, “the elements of each particular crime and the relevant penalty have to be defined through a domestic legislative act.”⁷ By the court’s reasoning, the UNCAC cannot be applied directly. National legislation incorporating the provisions of Chapter III of the UNCAC is required. Accordingly, the National Assembly has amended several provisions of the Bulgarian Criminal Code to comply with the UNCAC.

A. Key issues related to the legal framework

This section covers Bulgaria’s compliance with the mandatory provisions of UNCAC chapter III on criminalisation and enforcement, and chapter IV on international co-operation.

1. Areas showing good practice

UNCAC Articles 15 and 16: Bribery of national public officials and Bribery of foreign public officials and officials of public international organisations. Bulgaria has met a number of its UNCAC obligations. It is in full compliance with UNCAC Articles 15 and 16 regarding bribery of both national and foreign public officials, which is criminalised under Articles 301 and 304 of the Bulgarian Criminal Code, respectively. As required, Bulgarian legislation has established two offences: active and passive bribery of national and foreign public officials. The offences cover tangible and intangible, and pecuniary and non-pecuniary bribes. The “undue advantage” may be promised, offered or given. Intent is a required element of the offence. Article 303 of the Criminal Code expressly prohibits indirect bribery, covering instances in which gifts or other advantages are delivered to another person. Article 93 of the Criminal Code also includes the definition of “foreign public official” and “official of a public international organisation” provided in UNCAC Article 2, as recommended in the UNCAC Legislative Guide. As also reflected in the GRECO report on Bulgaria of October 2010⁸, the current incriminations of bribery and trading in influence provide for a fairly sound basis for the prosecution of various corruption offences.

UNCAC Article 17: Embezzlement, misappropriation or other diversion of property by a public official). Bulgaria has also fully implemented UNCAC Article 17 on embezzlement, misappropriation and other diversion of property by public officials, in Articles 201–205 and 282–283 of the Criminal Code. National legislation provides for all required elements and covers situations in which the actions are for the benefit of a public official or another person. It includes the wrongful diversion of any item of value, tangible or intangible. Intent is required. The prosecution has the initial burden of proof.

UNCAC Article 23: Laundering of proceeds of crime. Bulgaria has also met its obligations under UNCAC Article 23 on laundering the proceeds of crime. Under Article 253 of the Criminal Code, liability is imposed both on the providers and recipients of illicit proceeds. It also covers a wide range of predicate offences, including those involving corruption. Article 253(7) of the Criminal Code covers predicate offences committed within or outside the jurisdiction of Bulgaria, as required under UNCAC Article 23(2)(c). Bulgarian legislation includes all four offences created under the UNCAC: (1) the conversion or transfer of proceeds of crime, (2) the concealment or disguise of proceeds of crime, (3) the acquisition, possession or use of proceeds of crime, and (4) the participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any such offences. The act must be intentional.

⁶ Constitution of the Republic of Bulgaria, 12 July 1991, Art. 5(4).

⁷ Constitutional Court Ruling no. 7 of 2 August 1992; available at: Amnesty International, Bulgaria, *End Impunity through Universal Jurisdiction* 11 (No Safe Haven Series, 2009).

⁸ Greco Eval III Rep (2009)7E, 1 October 2010,

[www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_One_EN.pdf)

UNCAC Articles 32 and 33: Protection of witnesses, experts and victims; protection of reporting persons. Another area in which Bulgaria's legal framework is partially in compliance, on paper, with UNCAC requirements is the protection of witnesses, experts, victims and persons providing information, as required under UNCAC Articles 32 and 33. Witness protection is regulated by the Criminal Procedure Code and a special law, the Law on Protection of Persons Endangered in Connection with Criminal Proceedings. Article 75 of the Criminal Procedure Code provides for the protection of all victims and their relatives. Under Article 67, the victim can ask for a restraining order against the accused. Article 123 addresses the protection of witnesses. Article 141 provides special arrangements for protecting the identity of witnesses giving testimony in court, such as video conferencing and voice modification.

The Law on Protection of Persons Endangered in Connection with Criminal Proceedings provides for protection of a wider class of persons than under the Criminal Procedure Code, including experts and any persons providing information. It establishes procedures for their physical protection, such as domestic or foreign relocation. It also establishes the Special Forces, Witness Protection Programme and Witness Protection Bureau.

Under Article 32 of the Law on Prevention and Disclosure of Conflict of Interest, Bulgaria has established provisions for the protection of whistleblowers in the public sector in conflict of interest cases. These provisions keep the identity and other information about whistleblowers confidential, and are intended to protect them from verbal, mental and physical harassment. These provisions, however, are limited to the public sector and do not provide protection for private sector employees.

The Code of Administrative Procedure has a vague framework for whistleblower protection, concerning the reporting of corruption and other infringements. The public administration does not have relevant mechanisms to protect whistleblowers other than in conflict of interest cases. Their protection is provided *de facto* in some companies (mainly in international business represented in Bulgaria). In sum, whistleblower protection continues to be a problem in Bulgaria.

With regard to Article 46(9)(b-c) on mutual legal assistance among UNCAC parties in cases where there is dual criminality, Bulgaria is also in compliance. Article 471 of the Criminal Procedure Code allows assistance in cases where there is an agreement concluded between the countries. Assistance may be declined if rendering such assistance would breach Bulgaria's sovereignty, national security or other legal interests, under Article 472 of the Criminal Procedure Code. Bulgaria has also ratified the Convention on legal assistance in criminal matters of the Council of Europe of 1959 and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000. Unlike the UNCAC, these treaties provide for mutual assistance even in the absence of dual criminality and for *de minimis* criminal matters. Bulgaria has also concluded treaties on mutual legal assistance with numerous countries. Thus, Bulgaria's legal framework on mutual legal assistance has a wider scope than required under UNCAC Article 46(9)(b). However, problems occur with its application, Coordination amongst the institutions involved in it is insufficient, which hampers or slows down the execution of mutual legal assistance (MLA) requests.

2. Areas suggested for improvement

Bulgarian legislation could be improved in some areas:

UNCAC Article 20: Illicit enrichment. Illicit enrichment is not regulated as separate text in the Criminal Code and it is not a separate crime according to the legislation in force in Bulgaria. We do not see this as a problem in view of the fact that this is not a mandatory requirement of the UNCAC.

However, the issue of "illicit enrichment" or "property (assets) acquired as result of criminal activity", is subject to regulation in Bulgaria. The mechanisms for confiscation of such illegal assets could be found, for example, in Article 55 of the Criminal Code, in Article 3 of the law of divestment in favour of the state of property, acquired through criminal activity, and in Article 83a of the Law on Administrative Offences and Sanctions (LAOS).

On the level of confiscation of assets acquired through criminal activity (which is also a form of illicit enrichment) it should be mentioned that the issue is largely debated in view of the powers of the commission for establishing of property acquired from criminal activity. The issue is subject to regulation by the law of divestment in favour of the state of property acquired through criminal activity (Prom. SG. 19/1 Mar 2005, amend. SG. 86/28 Oct 2005; last amendment SG 60/05.08.2011). The law provides for a long list of crimes, “when it is established that given person has acquired property of significant value about which there may be grounded suspicion that it has been acquired through criminal activity, and against him punitive prosecution has started for crime(s) under the Penal Code under...” and a list of crimes under the Code follows.

A draft law for the confiscation of assets acquired through criminal activity (in order to replace the law of divestment in favour of the state of property, acquired through criminal activity) was developed by the Ministry of Justice in co-operation with the Council of Europe (Venice Commission for Democracy through Law) in order to deal with the issue of inexplicable wealth and the confiscation of such assets. The draft was made also in response to the recommendations from the report of the European Commission under the CVM. In June 2011 the draft was rejected by the Bulgarian Parliament. A new draft is under consideration and it could lead to new regulation of illicit enrichment if accepted by the parliament.

It should also be mentioned that the confiscation of assets (again the issue of “illicit enrichment”) is possible under article 53 of the Criminal Code as a sanction for committing other crimes (such as crimes against property or the economy).

In view of this, it could be concluded that although the legislation in force does not explicitly regulate the “illicit enrichment” as provided by UNCAC Article 20, the confiscation of such assets is possible under other Bulgarian laws mentioned above. The problem is that these laws are not efficiently implemented and in practice there are no concrete results from the deprivation of assets that could be treated as illicit enrichment.

UNCAC Article 26: Liability of legal persons. Second, national legislation does not provide for criminal liability and criminal sanctions for legal persons (e.g. corporations). Under Bulgarian law, a legal person can be held liable under administrative and civil legislation but not criminal. However, non-imposition of criminal liability on legal persons is in line with the fundamental legal principle in Bulgaria that criminal liability must be personal. Moreover, this is not a mandatory requirement under the UNCAC. Under UNCAC Article 26, the liability of legal persons can be criminal, civil or administrative. In Bulgaria, in cases involving companies, Article 83(a) of the Law on Administrative Offences and Sanctions (LAOS) can be applied. LAOS Article 83 creates administrative liability for different forms of corruption and other listed criminal offences. Under LAOS Article 83(a)(3), a legal person may be liable even if the natural person who committed the bribery is not convicted.

B. Key issues related to enforcement

This section attempts to evaluate the enforcement of UNCAC-related offences in Bulgaria. It provides an overview of the enforcement mechanism in place and analyses the statistical data provided by governmental institutions.

As required by UNCAC Article 36, the enforcement mechanism in place in Bulgaria includes specialised agencies, namely the Special Department on Corruption, Money Laundering and Related Offences within the National Prosecution Office. The National Prosecution Office also works with investigative agencies. Coordination between prosecution and investigative agencies is regulated by the Constitution, the Criminal Procedure Code, the Judicial System Act and the Law on Ministry of Interior. These provisions state that the prosecutor’s role is to oversee investigations and the legality of their conduct, and stipulate that investigative agencies are subordinate to the prosecutor. Bulgarian legislation also provides for the independence of prosecutors, judges and investigators, as required by UNCAC Articles 11 and 36.

The National Prosecution Office plays a crucial role in combating corruption.

1. Statistics and cases

Upon request from members of the public, this agency provides information on corruption-related cases. Several high-profile cases have been prosecuted recently. In May 2011 the Sofia City Court sentenced a prosecutor to five-and-a-half years in prison and a fine, and barred him from his job for three years for accepting a € 12,500 bribe from a businessman from Pleven who wanted a probe against him dropped. This is a rare case of sentencing of a court official for corruption in Bulgaria.⁹

More recently, the Sofia Court of Appeal reportedly sentenced the former Deputy Minister of Interior to a two-year suspended sentence, four years of probation and a 3,000 leva (US\$ 2,100) fine for mediating a 100,000 leva (US\$ 70,000) bribe to the head of Bulgaria's Fishing Agency, to withdraw a claim against a businessman. The businessman was sentenced to a three-year suspended sentence, five years of probation and a 5,000 leva (US\$ 3,500) fine for offering the bribe.¹⁰

However, some high-profile cases have recently been downsized or dropped due to a lack of evidence. This occurred with the corruption case against the former Minister of Defence, who was charged with offering a bribe to an investigator to forge evidence that would lead to a positive outcome in an investigation against him. The charges were dropped due to lack of evidence, yet the former minister and his two accomplices are still being charged with paying a bribe.¹¹ Similarly, former agriculture and food minister was charged with permitting deals involving the exchange of agricultural land after a moratorium was decreed. However, the court has remanded the case twice on grounds of unsubstantiated accusations, since the prosecution has accused him of violating the moratorium before it actually entered into force¹².

The National Prosecution Office also collects data on corruption-related cases. Table 2 shows data from the office provided upon TI-Bulgaria's request. The office clarified that the "Acquittals" and "Dismissals" figures reflect the number of people convicted and acquitted separately, as it is possible to have a conviction and an acquittal in one case against two individuals. The Ministry of Justice also provided statistical information, included in Table 2. The ministry, however, did not clarify its method of reporting. The Supreme Court of Cassation also supplied a table with its own statistics. However, its data is limited to its jurisdiction and thus does not provide a useful basis for country analysis and has been omitted from this report.

Table 2: Number of corruption-related cases initiated in 2008, 2009 and 2010, as reported by the Ministry of Justice (MJ) and the National Prosecution Office (PO)

	Prosecutions (under way and concluded)		Settlements		Convictions		Acquittals		Dismissals		Pending	
	MJ	PO	MJ	PO	MJ	PO	MJ	PO	MJ	PO	MJ	PO
Bribery of foreign public officials (UNCAC Article 16)	2	0			0		0					
Bribery of national public officials (passive) (Article 15(b))	57	82			32	31	4	4				
Bribery of national public officials (active)	178	273			141	216	4	4				

⁹ Eubusiness.com, 13 May 2011, Bulgarian prosecutor sentenced to jail for bribery; www.eubusiness.com/news-eu/bulgaria-corruption.9yb

¹⁰ "Focus" Agency, 22 June 2011, Раиф Мустафа и Росен Маринов получиха условни присъди по делото за подкуп; www.focus-news.net/?id=n1537875

¹¹ Novinite.com, 30 August 2010, Bribery Charges against Bulgarian Ex Minister 'Reduced' over Lack of Evidence; www.novinite.com/view_news.php?id=119663

Dnevnik, 7 March 2011, Николай Цонев беше оправдан по всички обвинения за длъжностни престъпления; www.dnevnik.bg/bulgaria/2011/03/07/1055077_nikolai_conev_beshe_opravdan_po_vsichki_obvineniia_za/

¹² Legal World, 15 March 2011, Съдът върна за втори път делото срещу Валери Цветанов; www.legalworld.bg/show.php?storyid=22804

(Article 15(a))												
Embezzlement, misappropriation or other diversion by a public official (Article 17)	1044	1085			555	720	124	147				
Illicit enrichment (Article 20)		277										
Money laundering, corruption-related (Article 23)	69	2			57		2	1				

2. Areas with deficiencies

Bulgaria's enforcement of the UNCAC has several serious shortcomings that require immediate action.

Lack of data. First, and as can be seen above, there is a lack of complete and reliable data on corruption-related cases. As evident from table 2, statistics from the National Prosecution Office and Ministry of Justice are incomplete. The National Prosecution Office noted that because settlements for serious intentional crimes are not allowed, there are no statistics for settlements in the third column of table 2. The office also clarified that there are no statistics for illicit enrichment since this is not a separate crime under Bulgarian law. Instead, the National Prosecution Office included statistics on the expropriation of the subject of crime and forfeiture of property acquired through criminal activity, including bribery and money laundering.

Discouraging, however, is the lack of numbers in the "Dismissal" and "Pending" columns. The National Prosecution Office noted that because of deficiencies in its information database, it cannot identify cases that have been dismissed or are pending. The Ministry of Justice did not provide any explanation for its incomplete data. A lack of information and inadequate technical resources are serious deficiencies in reporting corruption-related cases.

Moreover, statistics provided by the two agencies differ significantly. For example, the National Prosecution Office reported 273 cases related to active bribery of national public officials, while the Ministry of Justice reported only 178. It is clear that the two agencies do not use compatible formats, systems and methods of data collection, thus making it difficult to reconcile the data related to specialised statistics on corruption crimes and assess enforcement of the UNCAC. Consequently, it can be concluded that there is no relevant, reliable and unified database on corruption cases. This is a serious deficiency in Bulgaria's enforcement efforts. Due to this deficiency, it is impossible to fully assess Bulgaria's enforcement of the UNCAC, especially as there is no other source for obtaining such information. This lack of information and difficulty in obtaining reliable data requires immediate action.

Independence of investigators, prosecutors and judiciary. Second, while the independence of the prosecution, investigative bodies and judiciary is stipulated in the Bulgarian Constitution, Criminal Procedure Code and Judicial System Act, as discussed above, this principle of independence is not fully followed in practice. More specifically, the Association of Prosecutors in Bulgaria noted that guarantee of the independence of the prosecution is a serious concern. The Bulgarian prosecutors' association stressed that there is pressure on the prosecution to take on certain cases and drop others. This view is supported by many representatives of the judiciary and has been declared publicly on many occasions.

In an interview with the national television network Nova TV, former Supreme Administrative Court President Konstanin Penchev said, "there is political and economic pressure on the judiciary, and these two kinds of pressure are often connected". He added that members of the judiciary are associated with politicians and representatives of the informal economy.¹³ In 2011 two members of the Supreme Judicial Council – Kapka Kostova and Galina Zaharova – made similar statements.

¹³ www.politika.bg/article?id=9799 , www.politika.bg/article?id=9882

They reportedly resigned from the council because they were highly critical of the personnel policy in the Supreme Judicial Council, including at the top level.¹⁴

Lack of enforcement against legal persons. A third major deficiency is the complete lack of enforcement of the provisions on administrative liability of legal persons. As noted by the National Prosecution Office, because Article 83(a) of LAOS is currently not being enforced, there have been no investigations or prosecutions imposing administrative sanctions on legal persons, despite numerous convictions of natural persons for domestic bribery involving the use of corporate vehicles, which can engage the responsibility of legal persons as well.¹⁵ Therefore, the prosecution has no statistics of the implementation of Article 83 of LAOS. Regarding civil liability, the National Prosecution Office has no available statistics.

Lack of well-functioning witness protection system. Fourth, the practical implementation of the witness protection system is not satisfactory. For example, the Association of Prosecutors in Bulgaria noted that the provisions on witness protection are ineffective and not adequately enforced due to information leaks and malfunctioning mechanisms.

Finally, there is some indication that the mutual assistance framework is not being efficiently enforced. While the National Prosecution Office states it has not received any requests under the national legislation implementing the relevant UNCAC provisions and therefore cannot assess the practice of mutual assistance, the prosecutors' association in Bulgaria indicated that Bulgaria has faced problems regarding mutual assistance with France and Greece.¹⁶

Some of the shortcomings mentioned in the above were also addressed in the OECD report on Bulgaria of March 2011,¹⁷ such as the insufficient application of the regime of liability of legal persons in practice,¹⁸ the lack of sufficient capacities to routinely conduct complex financial investigations in corruption cases¹⁹ and of statistics.²⁰ In addition, the OECD report recommends that Bulgaria take steps to ensure that its authorities are more proactive when seeking mutual legal assistance in foreign bribery cases.²¹

IV. Recent developments

There are several ongoing developments related to the implementation and enforcement of Chapters III and IV of the UNCAC.

While there are no current plans to make illicit enrichment a separate crime, a new law is under consideration, the Law on Forfeiture of Criminal Assets. This law would replace the old regulation in this field and is expected to strengthen the currently ineffective legal framework that provides for property sanctions related to illicit enrichment. The draft law would establish a new specialised commission and envisions a shift of the burden of proof to the defendant, which would significantly ease the prosecution of such cases. However, the proposed law and its concept have been the subject of a very heated and controversial discussion in parliament and among experts. In July 2011 the draft of the law was rejected by the parliament and a new draft is expected to be proposed before the end of the year.

Another positive change under way is in the area of liability of legal persons. The National Prosecution Office is currently working on enforcing Article 83(a) of LAOS by establishing uniform

¹⁴ www.dnevnik.bg/bulgaria/2011/06/08/1102984_dvama_chlenove_na_sudebnia_suvet_napusnaha_otvrateni/

¹⁵ www.segabg.com/online/new/articlenew.asp?sid=2011072500040000101

¹⁶ This information is based on answers to the questionnaire provided by the Bulgarian Association of Prosecutors.

¹⁷ Bulgaria: Phase 3. Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Working Group on Bribery in International Business Transactions on 18 March 2011, www.oecd.org/dataoecd/16/20/47468296.pdf

¹⁸ Id., p. 14.

¹⁹ Id., p. 21.

²⁰ Id., p. 21.

²¹ Id., p. 29.

practice guidelines for prosecuting such offences. This will help initiate the enforcement of the laws on liability of legal persons, which at the present time is completely lacking.

A recent reform that is negatively affecting the enforcement of corruption-related legislation is the transfer of investigative powers to the National Police from the investigative bodies supervised by the National Prosecution Office. This change has significantly decreased the capacity and resources available to the National Prosecution Office and is impeding its efforts to enforce the UNCAC.

V. Recommendations for priority actions

This section makes recommendations regarding Bulgaria's implementation and enforcement of the UNCAC. Bulgaria should undertake the following steps to improve its system.

First, the liability of legal persons requires immediate attention. Although Bulgaria has adopted legislation consistent with the requirements of UNCAC Article 26, it has made little effort to enforce this new regime. While the National Prosecution Office is currently working on the enforcement of LAOS Article 83, it needs to be more active in doing so. In addition, it is widely agreed that a new, more effective law should be adopted. In Bulgaria, corporations are "frequent vehicles for the payment of bribes", and "the use of elaborate financial structures and accounting techniques to conceal the nature of transactions is commonplace."²² Thus, it is especially important that Bulgarian legislation adequately addresses this problem.

While the international trend is moving toward criminal responsibility in addition to administrative and civil liability of legal persons, this remains a controversial and contentious issue because the notion of personal moral guilt is so deeply ingrained in criminal law. In fact, this is why the UNCAC does not require criminal liability for legal persons, contrary to the position of TI. Thus, while Bulgaria does not necessarily need to consider new legislation imposing criminal sanctions on legal persons, it does need to strengthen its existing legal regime. It can do this by adopting legislation that includes the method of establishing corporate *mens rea*. As recommended by the OECD, Bulgaria should also amend its legislation to expressly include the prosecution of foreign bribery and provide for the prosecution of cases in which a non-Bulgarian employee commits foreign bribery outside of Bulgaria.²³

Moreover, Bulgaria should amend the LAOS to make all investigative tools available for the prosecution of natural person also available for the prosecution of legal persons, and allocate sufficient resources for their prosecution. Bulgaria should also clarify which court has jurisdiction to hear such cases.²⁴ In addition, Bulgaria should provide adequate training for judges, prosecutors and law enforcement on the new provisions for liability of legal persons and corporate investigations, in order to increase awareness of the law and ensure its proper enforcement. These changes are necessary for the successful investigation, prosecution and sanctioning of legal persons in Bulgaria.

Second, as suggested by the Association of Prosecutors in Bulgaria, there is a need to improve the practical application of the witness protection mechanism so that it actually protects victims and witnesses involved in corruption proceedings. The protection of witnesses and victims is not effective, which may discourage them from participating in corruption-related cases. Experts and reporting persons are also not adequately protected. Moreover, national legislation should provide for the protection of whistleblowers in the private sector. Current provisions on the protection of whistleblowers are limited to the public sector and subject to extremely poor implementation.

²² Mark Pieth, Lucinda A. Low, Peter J. Cullen, *The Convention on Combating Bribery: A Commentary* 6 (OECD, 2006); available at: www.oecd.org/dataoecd/27/34/39200754.pdf

²³ *Bulgaria: Phase 3 Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Revised Recommendation on Combating Bribery in International Business Transactions* 11, March 2011; available at: www.oecd.org/dataoecd/16/20/47468296.pdf

²⁴ *Id.* at 13.

Third, improvement is needed in inter-institutional co-operation and the channels for communication among institutions for mutual assistance; procedural delays in the process should be prevented.

Finally, the current enforcement mechanism needs to be improved. Ensuring the independence of investigators, prosecutors and judges is crucial in combating corruption. In addition, establishing a unified database on case statistics would ensure a meaningful review of the process of implementing and enforcing legislation on corruption-related cases. Other ways to strengthen the capacity of law enforcement institutions include ensuring better coordination between prosecution and investigation agencies, and providing adequate resources and training to judges, prosecutors and investigators.

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