
CORRUPTION ASSESSMENT REPORT 1999



SOFIA
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Limiting corruption in Bulgarian society calls not only for institutional and legal measures but also for establishing the rule of law. In this sense, it is of crucial importance to foster a political and economic culture based on trust and respect for public institutions, on transparency and openness in the actions of public administration, and the will to achieve stability and predictability of the economic and social environment.

Coalition 2000 is an initiative of Bulgarian non-governmental organizations which was launched in the Spring of 1997 aimed at limiting corruption in Bulgarian society through a partnership between state institutions, non-governmental organizations, and individual personalities, who developed and have been implementing an Anti-Corruption Action Plan, Corruption Monitoring System, and an anti-corruption public awareness campaign.

The Corruption Assessment Report 1999 follows the structure and approach of the Action Plan adopted by the Policy Forum of *Coalition 2000* in November 1998. It presents a general evaluation of the state and dynamic of corruption in Bulgarian society and of the efforts to counteract it in 1999.

This second edition of the Corruption Assessment Report reflects suggestions and comments made at the Policy Forum (December 1999) of *Coalition 2000*.

Coalition 2000
1 Lazar Stanev Street
1113 Sofia, Bulgaria
Tel.: (359-2) 971 3000
Fax: (359-2) 971 2233
coalition2000@online.bg
www.online.bg/coalition2000

CONTENTS

INTRODUCTION	4
A. CREATING A FAVORABLE INSTITUTIONAL AND LEGAL ENVIRONMENT FOR CURBING CORRUP- TION.....	6
A.1. Public Administration Reform and the Role of the State	6
A.2. Institutional and Legal Mechanisms for Differentiation Between the Public and Private Spheres	10
B. REFORM OF THE JUDICIAL SYSTEM	11
B.1. Legislative Reform	11
B.2. Reform in the Organization of the Judiciary. Qualification and Training of Magistrates.....	12
C. FIGHTING CORRUPTION IN THE ECONOMY	14
C.1. Privatization Process.....	14
C.1.1. PRIVATIZATION PROCEDURES	15
C.1.2. POST-PRIVATIZATION CONTROL	16
C.2. Evaluation of Business Conditions.....	16
D. CIVIL SOCIETY	18
D.1. Non-Governmental Organizations	18
D.2. Mass Media	19
E. DYNAMICS OF CORRUPT BEHAVIOR AND CHANGE IN PUBLIC ATTITUDES TOWARDS CORRUPTION	22
F. INTERNATIONAL ANTI-CORRUPTION COOPERATION	24

INTRODUCTION

The chief purpose of the present report is to propose a general evaluation of the status and dynamics of corruption over the past year. The proposed analysis draws on authoritative international assessments of the situation in this country, as well as domestic evaluation indicators about the spread (frequency of occurrence) of various corrupt practices.

The Corruption Assessment Report 1999 also analyzes the changes which have occurred in various public spheres and which have brought about (or might bring about) changes in corruption dynamics. Special attention is devoted to the processes in public institutions (regulatory framework and manner of implementing certain procedures), the court system, the state and dynamic of the legislation, the functioning of the economy and the mechanisms for state intervention in the micro and macro-economic environment, the degree of alignment of the country's legislation and procedures with international standards.

CORRUPTION AND THE PRIORITIES OF SOCIETY

MAIN PROBLEMS FACED BY BULGARIA*

	February '99	April '99	September '99
Unemployment	58.4	64.1	64.6
Low incomes	51.3	49.1	50.2
Corruption	38.5	34.2	38.5
Poverty	31.6	32.9	37.1
Crime	45.4	32.9	32.4

Source: Corruption Monitoring System (CMS) of *Coalition 2000*.
See www.online.bg/coalition2000 for details regarding the methodology of the surveys included in CMS.

Note: 1) % of those who indicated each factor.
2) Up to three alternatives have been assessed, which is why the sum total of percentages exceeds 100.

The Report is based on the concept of corruption laid down in the *Coalition 2000* Action Plan (adopted by the Policy Forum in November 1998) that corruption is any form of abuse of power – economic, political, and administrative – for personal or group gain to the detriment of the rights and legitimate interests of the individual, of a specific community, or the entire society.

At the end of 1999 it can be observed that the problem of corruption has been assuming increasing public and political importance.

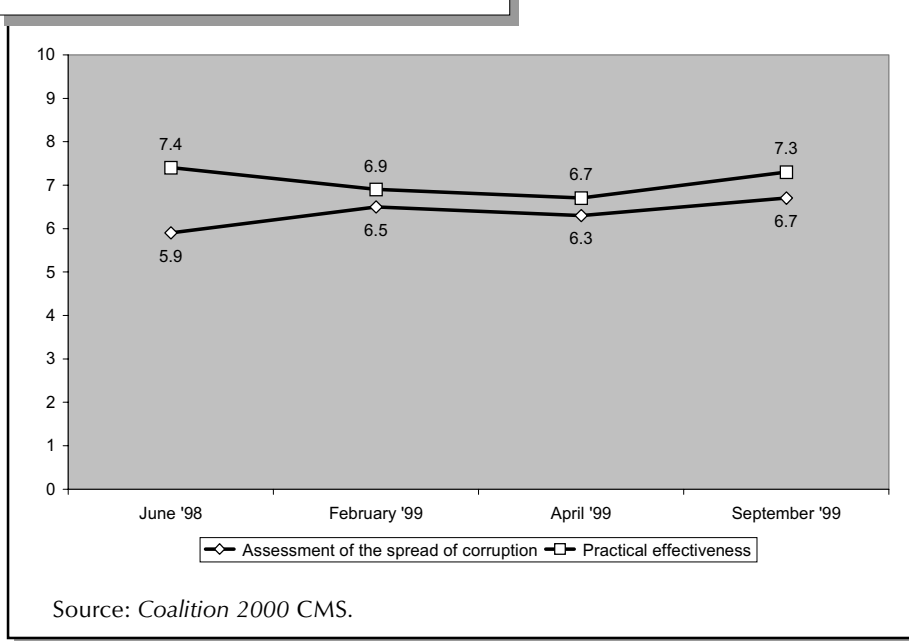
- Whereas in early 1999 the subject of corruption was the natural monopoly of the political opposition and of the critically inclined media, by the end of the year the debate has come to involve basic structures of civil society, all the leading media, the institutions of the executive, legislative and the judiciary.
- The focus of anti-corruption pressure, which used to fall on corrupt practices on a local and regional level, by the end of the year has shifted towards those zones which the public generally defines as the „corruption at the top“.
- Increasingly popular on a mass consciousness level is the explanatory model according to which corruption in Bulgaria is one of the

chief obstacles to the successful functioning of democratic institutions, to the Europeanization of Bulgarian society, the economic reforms, and to addressing the problem of crime.

These circumstances have all **turned corruption from a peripheral, into a priority topic on the public agenda.**

In response to the increased public pressure the political class in Bulgaria has also come to be greatly activated in the past few months. The fight against corruption assumed new dimensions after the President and Vice President showed their commitment to it through publicly expressed positions. They pointedly raised the problem as being of fatal importance to the political class and appealed to the institutions of power to start the fight against corruption from their own ranks.

ASSESSMENTS OF THE MAGNITUDE OF CORRUPTION



For the first time in the past years, government **itself, rather than just the opposition, is openly referring to corruption in the high ranks of government.** The Prime Minister also firmly endorsed this position and called for the removal of the „political umbrella“ over the corrupt, even when they are part of the political elite.

These public commitments could facilitate the formation of a political will able to transform the political awareness of the „corruption“ problem into practical measures against it. However, the political commitments have not yet become an actual policy.

A. CREATING A FAVORABLE INSTITUTIONAL AND LEGAL ENVIRONMENT FOR CURBING CORRUPTION

One important precondition for counteracting corruption is to enact effective institutional mechanisms in the political system and civil society on the basis of clear rules. The legal and institutional preconditions ought above all to help foster a social and political environment unfavorable to corruption. Along with the general preventive and stabilizing effect they also ought to lead to a clearer regulation of the liabilities and sanctions for the perpetration of acts of corruption.

A.1. Public Administration Reform and the Role of the State

Making all power structures, and particularly public administration, transparent and accountable is of utmost importance to curbing corruption in its manifold manifestations.

The more notable among the **legislative measures** undertaken in this area in the course of the past year are:

- The **Administration Act**, in force since December 6, 1998, contains relatively detailed provisions regarding the powers of the bodies of the executive, the structure and organization of their administration. However, on a number of key issues for the curbing of corruption the provisions are of a general and a recommendatory nature and refer the specific regulation to separate laws, regulatory or internal institutional acts, which for the most part have not yet been drafted or adopted.
- The reform in the sphere of administrative services is at a most rudimentary stage. The **Administrative Servicing of Natural and Legal Persons Act** was enacted in the beginning of November 1999 and it is still too early to evaluate its enforcement. All the more that the procedures and organization of administrative services are yet to be determined.
- The **Civil Service Act**, in force since August 28, 1999, only regulates the general requirements for acquiring the status of a civil servant, including under the provisions of special laws, the recruitment procedures, the rights, obligations, and liability (disciplinary and property) of public officials. The range of persons, defined as public servants, has not been exhaustively regulated. Officials in the judiciary, for instance, are not assigned the status of civil servants. In view of the particular characteristics of their work and the responsibility they carry for the quality of judicial administration, their status of public officials needs to be specially regulated through an amendment to the Judiciary Act, which means indefinite postponement in time. There is a call for greater conceptual clarity regarding the areas of application of the Labor Code and the newly adopted Civil Service Act.

It is still too early to tell whether the obligation of public officials to declare their property status (when first assuming their position and there-

after annually, by March 31, before the recruiting authority) will prove a sufficiently deterring factor for corrupt practices or how effective the control over its enforcement will be. Clearly, however, **developing the regulatory framework on the financial and property status of public officials**

is of key importance to curtailing corrupt practices. It needs further development and strict regulation of the powers of the control authorities (including the State Administrative Commission with the Council of Ministers which is provided for by the law to oversee the civil service) and the sanctions in this sphere. It is also indispensable to introduce a public register of the property and incomes of senior public officials.

The new customs law, in power since the beginning of 1999, implements European standards and principles for the work of the customs officers. In accordance with this law, many measures for limiting corruption and other illegal actions of the customs officers are taken. The introduction of mandatory identification cards as a part of the uniforms of the customs officers, different ways of receiving complaints and signals from persons who have been affected by the actions of customs officers (special mail boxes in the

premises of the customs, "hot" phone lines, etc.) is to be implemented . It is necessary to accelerate the creation of more detailed regulations (especially the adoption of the Instruction for the Internal Control), the Code of Ethics in the Bulgarian Customs Administration, as well as better interaction with other state institutions – courts, prosecution, investigation services, the Ministry of the Interior, Tax Administration, etc.

- The legislation regulating government and municipal procurement has undergone dynamic development. With the passing of the **Public Procurement Act**, in force since July 5, 1999, the former Government and Municipal Procurement Act of 1997, which had proven its inadequacy, was abolished. Even in the new law, however, despite the proclaimed principles of public accountability and transparency, free and fair competition, equal opportunities for participation of all candidates, etc., the guarantees for putting those principles into practice have not been sufficiently elaborated. For instance, insufficiently clear-cut criteria differentiating among the three possible procedures – open, limited, by negotiations – still allow relatively broad possibilities for state authorities and other assignors institutions to take discretionary decisions. The implementation of the new legislation implies

FACTORS FOR THE SPREAD OF CORRUPTION

According to the public many of the factors contributing to the spread of corruption are immediately related to the structure and functioning of the public sphere. It is commonly believed that this sphere is both conducive to corrupt practices and does not create regulatory and functional preconditions for curbing those practices.

MAIN FACTORS INFLUENCING THE SPREAD OF CORRUPTION IN BULGARIA (%)*

	February '99	April '99	September '99
The desire for fast enrichment by those in power	53.5	52.9	54.8
Low remuneration	51.9	51.5	43.6
Inadequate legislation	41.1	38.8	37.8
Lack of strict administrative control	35.2	36.4	33.8
Conflict of official obligations and private interest	25.1	25.8	28.3
Ineffectiveness of the court system	26.4	19.6	27.5
The moral crisis in the period of transition	19.4	19.4	19.4
The problems inherited from the communist past	10.9	6.8	7.4
The specific characteristics of Bulgarian culture	5.7	6.9	4.7

Source: *Coalition 2000 CMS*

Notes: 1) % of those citing each factor
2) up to three factors have been evaluated, which is why the sum total of percentages exceeds 100

certain organizational and administrative preconditions and unless these are promptly developed, it is destined for the same fate as the preceding law.

- Despite the need for transparency in the functioning of public administration, **access to public information** has not been regulated. The government draft law provoked a debate and contradictory positions among the public at large.
- The **Tax Procedure Code** passed by the National Assembly (in force from January 1, 2000) provides for extensive powers of the tax control authorities for conducting searches and appropriation beyond the rules laid down in the Penal Procedure Code. There is a need for further guarantees against possible misuse of those powers, as well as clearer differentiation from the powers of police authorities.
- The draft **law on the fight against corruption and financial crime** which has been introduced in Parliament provides for the setting up of a special Government Agency for the Fight against Financial Crime

and Corruption (financial police) as a specialized division with the Council of Ministers, i.e. subordinate to the executive. The envisioned status and rather broad powers of this body, as well as the fact that the draft law reduces corruption only to bribes and embezzlement, give rise to a number of questions – regarding its effectiveness and the possible duplication with the powers of other special authorities and divisions, as well as regarding the constitutionality of the legislative act under consideration.

The review of the process of creating legal preconditions to counter corruption reveals a number of deficiencies and shortcomings. At the same time, there are **a number of possibilities** in other laws which **are hardly used by the authorities** and divisions with control functions – for instance, the provisions of the Citizens' Property Act, allowing for investigation of unearned income, including of high-ranking officials.

The process of **democratic transformation of the state** is continuing but state power still remains extremely centralized. The presence of the state is still

SPREAD OF CORRUPTION IN PUBLIC INSTITUTIONS

Citizens generally believe corruption is widespread in the various institutions of the state. Along with the customs services, where the problem is clearly most serious, the court system is also placed high in the rating. In the course of 1999 the mean values increased for most of the institutions, i.e. the image of the institutions in the eyes of the public deteriorated and citizens had a firmer impression of living in a society marked by a high level of corruption.

INDEX OF ASSESSMENTS OF THE SPREAD OF CORRUPTION IN THE INSTITUTIONS (MEAN VALUES)

	April '99	September '99
Customs	8.78	9.10
Tax services	7.10	7.98
Court system	7.62	7.88
Privatization Agency	7.46	7.86
Police	7.16	7.54
Sector ministries	6.94	7.40
Foreign Aid Agency	7.02	7.40
District authorities	6.90	7.32
Municipal administration	6.64	7.24
Parliament	6.78	7.16
Government	6.58	7.12
Committee of Energy	6.40	6.84
Committee of Posts and Telecommunications	5.86	6.42
Commission for the Protection of Competition	6.14	6.40
Securities and Stock Exchange Commission	6.24	6.28
National Audit Office	5.74	5.86
Bulgarian National Bank	5.34	5.32
Army	4.88	5.06
National Statistical Institute	4.80	4.54
President's administration	4.46	4.50

Source: *Coalition 2000 CMS*

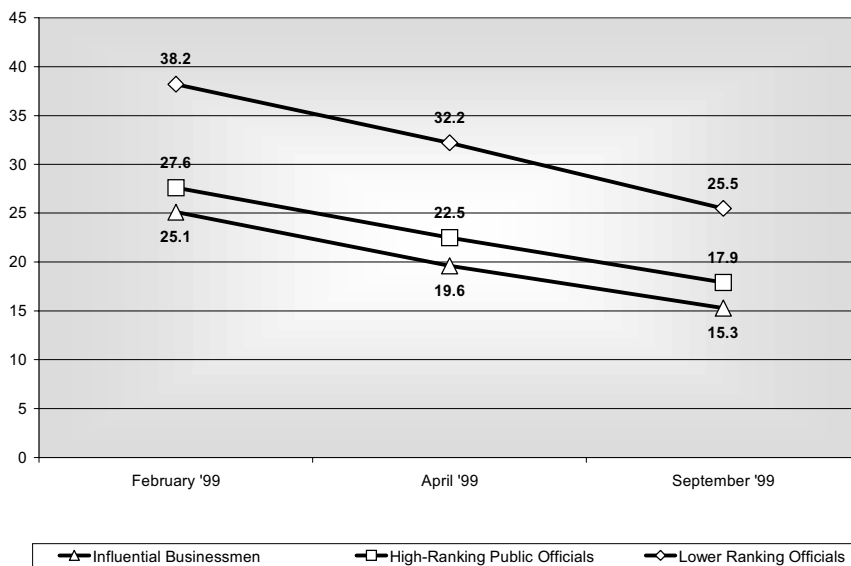
Note: The maximum value of the index is 10.0 and indicates the highest level of corruption. The minimum value is 0.0 and means absence of corruption in the respective institution.

too strong with respect to economic and certain regulatory functions; state property continues to play an important role in the economy, and monopolization retains many of the territories gained. Licensing and permit procedures continue to be among the areas most affected by corruption.

ASSESSMENTS OF THE GOVERNMENT'S ACTIVITY IN THE FIGHT AGAINST CORRUPTION

Trust in the seriousness of the government's intentions and actions has been declining continually. The public is convinced that the fight against corruption is more determined as regards officials holding positions at the lower levels of the administration; a significantly smaller number of citizens evaluate as serious the efforts of the government among people with a higher administrative rank and/or public status.

EVALUATIONS OF THE LEVEL OF SERIOUSNESS OF THE GOVERNMENT'S ANTI-CORRUPTION ACTIVITIES (AMONG THE FOLLOWING GROUPS)



Source: Coalition 2000 CMS

Furthermore, the institutions of the state are still weak and ineffective in terms of their protective role regarding the citizens, and the necessary coordination between them is lacking. This is true for all three branches of power to a varying degree.

The National Assembly still needs to adopt modern regulatory instruments, in line with international standards, which allow effective counteraction of corruption and transcend the narrow frames of the formal legal approach. As a body of the supreme national representation, the standing parliamentary *Committee for Counteracting Crime and Corruption* ought to become a coordinating center and initiator of legislative decisions for the introduction of working mechanisms for creating an institutional and legal environment unfavorable to the development of corruption.

Even in the sphere of the **executive branch of power** there has not been any substantial progress in curbing corruption:

- The discretionary powers of the administration in practice remain too broad and uncontrollable, while the rights, obligations, and procedures involved in the exercise of those powers are not sufficiently clearly regulated.
- Little has been done about limiting corruption through strengthening the control exercised by the National Audit Office, the bodies of State Financial Control, the tax administration, the national agencies within the structure of the Ministry of the Interior. Neither has the regulation been improved of their competencies, interrelations with other state institutions, and the coordination among them. The newly created control agencies such as the Bureau for Financial Investigation with the Ministry of Finance, established by the Money Laundering Act, and the Agency for interception and disclosure of tax violations (the so-called tax police) have failed to make full use of their potential for reducing corruption. There is no actual system of monitoring and control over not accounted money flows which is what corruption money always is.

The decisive internal factors favoring corruption are still active. No sufficiently effective measures have been taken to create a favorable institutional environment for preventing corruption and fostering anti-corruption attitudes and climate.

A.2. Institutional and Legal Mechanisms for Differentiation Between the Public and Private Spheres

The democratic development of the system of political parties in Bulgaria would tangibly reinforce institutional anti-corruption mechanisms. Instead, the practice in this sphere has continued to favor the development of corrupt practices. The reasons lie in:

- inadequate differentiation between the state and party sphere, between public and private interests;
- the absence of conditions for the development of legitimate sources of financing and for control over the financing of parties and politicians,
- the lack of legal preconditions for equal standing of the political parties in election campaigns, for transparency of lobbying activity.

The belated debates on the **legislative regulation of public financing of political parties** continue. The positions in the discussion of the 5 draft laws introduced are grouped around the principles of a more liberal regime of registration of political parties, but stricter requirements for participation in elections; ban of for-profit activity, but with the possibility to register companies under the Commercial Code , and so on. The legislative decision has been postponed for April 2000. Yet, even if it should be adopted it would not actually be applied until the year 2001, under the pretext of budgetary constraints. The slow progress on these matters holds off the reform of the party system and the necessary differentiation of private and public interests.

Over the past one-year period, as a result of the initiatives of *Coalition 2000* and the collaborative work with state institutions and a broad range of non-governmental organizations and experts, support for the idea of **introducing a specialized national institution of the ombudsman type (people's defender)**, has been growing. It would be an institution outside the power system for monitoring and control over the administration, a deterring factor against corruption and arbitrariness harming the interests of citizens and their organizations. This is a mechanism, which would not be competing with, or duplicating, the existing traditional mechanisms, but would complement them in all instances of transgression of the boundaries between the private and the public. The existence of these boundaries is characteristic of the rule of law, i.e., when the bodies of public power or non-governmental institutions assigned with public functions fail to create the conditions for the free exercise of private rights and freedoms, do not respect, or violate them. The idea for creating a mechanism complementing and accompanying the slower court, administrative, and other existing forms of protection has come to be shared by representatives of the leading state institutions – the Chairman of the National Assembly, the Vice President of the Republic, members of parliament, representatives of the judiciary and the executive, as well as by civil society.

B. REFORM OF THE JUDICIAL SYSTEM

One of the main directions of judicial reform is determined by the need to exclude possibilities for corruption in the operation of the judiciary itself, to build a system of sanctions against the various forms of corrupt behavior and to create conditions for their effective penalization. Up to now, the efforts in the chief areas of the judicial reform – legislative reform, court administration reform, training of magistrates – have been aimed at creating a general organizational environment for implementation of domestic law and international standards in counteracting corruption.

B.1. Legislative Reform

In 1999, further amendments to the procedural laws, aimed at speeding up the administration of justice and enhancing its efficiency and transparency, were adopted.

The amendments to the Penal Procedure Code (in force from January 1, 2000) provide for:

- Turning the court phase of the trial into the principal one at the expense of the preliminary proceedings, the latter not being public and thus more conducive to corrupt practices.
- Enhancing court control, especially as regards bail and other measures affecting human rights.
- Introducing the „settlement” principle – a court-sanctioned agreement between the prosecution and the defense regarding the size of the punishment as a procedural means of speeding up criminal prosecution and of avoiding unregulated „arrangements” between defendants and magistrates.

The amendments to the Civil Procedure Code, in force as of July 1999, are aimed at reducing to a minimum the possibilities for case postponement and abuse of procedural rights. They envision:

- a speedier procedure for summoning the parties;
- fast proceedings in the case of disputes;
- introducing a „complaint of delays” which would ensure court control over unwarranted delays of court decisions forcing many of those concerned to resort to bribes.

The **Commercial Code** is also about to be amended, which is particularly urgent with respect to speeding up procedures for declaring insolvency – one area marked by corrupt practices. Another such area are the registers kept by the courts.

Although the **alternative dispute resolution** methods are widely recognized in professional legal circles as necessary and useful, no specific steps have been undertaken to introduce and popularize specialized arbitration and mediation for the resolution of a considerable part of the arising disputes outside the courts.

The creation of comprehensive legal preconditions for counteracting corruption necessarily presupposes the alignment of domestic law with international standards in this area. This would have a positive impact on anti-corruption activity on a domestic level, as well as on the country's participation in international cooperation for the prevention and exposure of acts of international corruption. The beginning of this process has been set. In 1999, Bulgaria signed three international conventions regulating the fight against corruption – **Criminal Law Convention on Corruption** of CE, **Civil Law Convention on Corruption** of the Council of Europe, and the **Convention on the Fight against Bribery of Foreign Officials in International Business Transactions** of OECD. Only the third one has been ratified and it is in fulfillment of the commitments made under this convention that the Amendment to the Penal Code Act was passed on January 15, 1999. The law defines the term „foreign official“, and the bribing of a foreign official in international business transactions is declared a crime. The punishment in this case is the same as with active bribery of local officials.

Notwithstanding this important step, **insufficient measures have been taken to bring the legislation in line with international anti-corruption standards**. This is true to the greatest extent to a clearer definition of the forms of corruption, of the penal and civil legal liability for committing such acts, and the protection of those adversely affected by them.

There has been no comprehensive screening of the acting legislation as a step toward, on the one hand, the abolition of certain obsolete or inconsistent provisions, and on the other, to the establishment of a modern, consistent legal framework which is in line with European standards.

B.2. Reform in the Organization of the Judiciary. Qualification and Training of Magistrates.

The successful counteraction of corruption calls for a new organization of the judiciary, which is inconceivable without well-educated, qualified magistrates of high integrity, and an effective court administration staffed by professionally trained and incorruptible officials.

- For the first time in 1999 important steps were taken to enhance the professional skills of magistrates and train them to apply the anti-corruption legislation. A Magistrates Training Center was created and started operating. The training programs are designed both to assist magistrates in the prompt exposure and sanctioning of acts of corruption, and to help form sustained anti-corruption behavior models among the magistrates themselves.
- The court administration reform is still at an early stage. The new Ordinance on the Organization of Work in the Courts drafted at the Ministry of Justice is expected to give impetus to the efforts to confine possibilities for corruption by providing conditions for greater public access and transparency of the administration of justice, by modernizing and computerizing the work of the court administration. Coordinated efforts in this direction began with the creation in October 1999 of an expert group with the Supreme Judicial Council for drawing up an overall plan for computerizing court activity, which would serve as the basis for designing integrated court filing system software. The successful attainment of these objectives would facilitate citizens' access to information in the courts and would foster transparency and the possibility for administrative and public control over the organization of the work.

The need to speed up and further advance the judicial reform led eight non-governmental organizations and representatives of governmental and international institutions to join their efforts in the *Judicial Reform Initiative for Bulgaria*, developed on the model of *Coalition 2000*. The draft consensus document – **Program for Judicial Reform for Bulgaria** (www.csd.bg/jri), reviewed at broadly representative forums, constitutes a good basis for further development of the judicial system in the designated directions.

Bulgaria would continue to hold one of the “leading” positions in terms of corruption if there is no acceleration in the pace of creating the necessary legal and institutional framework. This would, in turn, continue to be a serious obstacle to the firm establishment of the democratic society and to the country’s economic prosperity.

C. FIGHTING CORRUPTION IN THE ECONOMY

The deeper the involvement of the state in the economy, the greater the resources distributed and controlled by officials throughout the entire administrative structure and the greater the possibilities for corruption. When assessing the corruption potential in the economy it is therefore necessary to examine:

- how the role of the state as an immediate economic agent has changed;
- how transparent and „clean“ in terms of corrupt practices are the mechanisms of property ownership transformation;
- what is happening in the field of post-privatization control;
- how the adopted mechanisms of governance of state participation and state-owned property affect the attitudes and conduct of public officials;
- what is the corruption potential of the access to, and distribution of, external donor funds;
- to what extent is the business environment experiencing corruption pressure.

C.1. Privatization Process

In the past few years the share of state-owned property was sharply reduced. In 1998 about 65% of the gross added value in the economy was generated by the private sector, while in 1999 this share is nearly 70%. Since the beginning of 1999, 7% of the state-owned assets have been privatized. This generally implies reduced possibilities for corruption in the economy. **Yet, while reducing the public share in the economy, the administration is still trying to hold on to possibilities for control over the privatized property.** As it withdraws as owner, in most cases (and in all of the large privatization deals) the state inevitably retains a share in the privatized enterprises. This leaves the opportunity to „trade“ the control.

The governance of state participation takes place through representatives of the state (public officials) in the boards of directors of privatized enterprises where some state participation is maintained. Since such a presence is typically remunerated and in many cases involves additional benefits (company car, cellular telephone, access to recreation facilities, etc.), it has a serious corruption potential. The second aspect of the problem concerns a kind of „self-corruption of power“. **The participation in (and above all, the appointment to) boards of directors is among the main legitimate channels through which the higher echelons enlist clientele from among the lower ranks of the power hierarchy.**

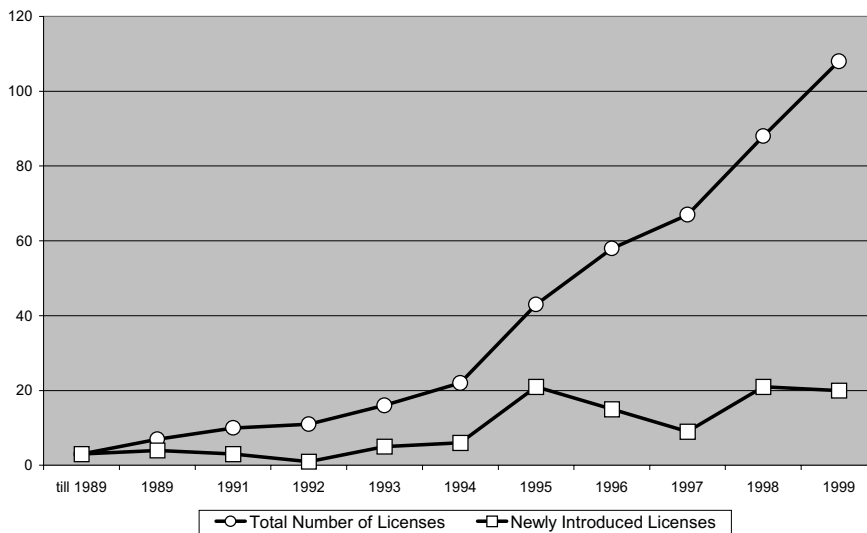
This leads to the conclusion that the statistical data about the decreasing amount of assets owned by the state do not as yet indicate a lesser corruption potential. The latter remains in place since, **while relinquishing ownership, the state in many cases retains the possibilities for control.**

C.1.1. PRIVATIZATION PROCEDURES

The process of privatization is an intricate knot of political and economic, private and public interests which makes it particularly liable to corruption. The process itself is regulated by the Privatization and Transformation of State-Owned and Municipal Enterprises Act. Despite the repeated amendments since its adoption in 1992, the changes have not abolished the possibilities for corruption. The same could be said of most regulations in this area.

LICENSING REGIMES

License requirements involve additional expenditures in starting a business in Bulgaria. This increases the overall cost of carrying out business activity in the country and at the same time limits competition. The data indicate a clear tendency towards increase in the number of activities requiring a license or permit. Since most of the requirements set in 1998 and 1999 were in line with the harmonization of the legislation with the European standards, the tendency is expected to continue.



Source: *Kapital* weekly, Issue 42, October 23-29, 1999

The first problem of the privatization process is the fact that it is broken up among various institutions – ministries, the Privatization Agency, municipal privatization agencies. This „fragments” the picture, makes it extremely opaque, and facilitates corruption. To a considerable extent this is also due to the lack of effective control – the courts are the only option in this respect. In order, however, for a possible violation to be sanctioned it is necessary to have clear-cut and unequivocal rules.

The second problem is the preferred „technology” of privatization. Even in 1999 the tradition was maintained of privatizing mainly through „**negotiations with potential buyers**”, particularly in the typical, smaller deals. No systematized data are available but according to various estimates, about 85% of all privatization deals have been effected through this procedure. It allows **the greatest possibilities for corruption**, since:

- Negotiations with potential buyers are nontransparent and allow direct bribery;
- Negotiations with potential buyers in the highest degree allow making covert (non-public) commitments which substantially alter the visible parameters of the deal concluded (for instance, a commitment for subsequent capital increase with preferential treatment of the majority owner in the acquisition of the new issue).

This leads to the conclusion that **the very way in which the state is relinquishing its participation in the economy gives rise to corruption**. Full use is still not made of open tenders and the stock-exchange mechanisms. There are many answers to the question why not but one reason which should be borne in mind is precisely the limited opportunities for corruption that they offer.

C.1.2. POST-PRIVATIZATION CONTROL

The existing system of post-privatization control tends to be a source of, rather than an obstacle to, corruption. The owners of already privatized enterprises frequently obtain unexplainable concessions on the part of the administration. Typical agreements concern:

- reduced obligations for investments in the enterprise privatized;
- review of clauses concerning the preservation of the number of jobs;
- change of the activity profile of the enterprise;
- debt remission;
- obligations under environmental requirements.

At the same time, post-privatization development is an area where information is extremely scarce. The failure to abide by commitments made upon the conclusion of the privatization contract is equally characteristic of small management-and-employee owned companies, and key enterprises owned by large international companies. Again, it is important to privatize through mechanisms which do not require any subsequent control (auctions based on price only, stock exchange, centralized auctions of the Mass Privatization Center).

C.2. Evaluation of Business Conditions

In the course of the past ten years **the gray economy became one of the main generators of corrupt practices.** Tax evasion, the avoidance of customs duties and fees have turned into a major strategy for reducing costs and increasing profits. This „gray” sector of the economy has gradually grown interconnected with organized crime under different forms. At the same time, various groups of administrative officials and political leaders have become an important and sustained infrastructure of the gray economy in this country.

Indirect evidence to this is found in the still flourishing trade in consumer goods of evidently illegal imports. Revealing of the scope of this type of activity is the market of tobacco products in 1998. According to marketing estimates, the share of the smuggled tobacco products is about 12-15% (valued at DEM 35-42 million, which gives an idea of the corruption potential of the grey economy).

The corruption pressure over business. In 1999 possibilities in this respect seem to have increased. The reasons are found in the numerous licensing regimes and the tax policy implemented.

The activities requiring a license (and implying huge discretionary power of the state apparatus) are continually increasing in number. From 55 in 1996, to 65 in 1997, 86 in 1998, to 106 in 1999. **The need to acquire a license, as a condition for starting economic activity, makes bribery a cheaper and faster way of doing business.** The negative aspects of licensing are reinforced by the inefficiency of the judicial system (and respectively, of the procedures for appealing against refusals).

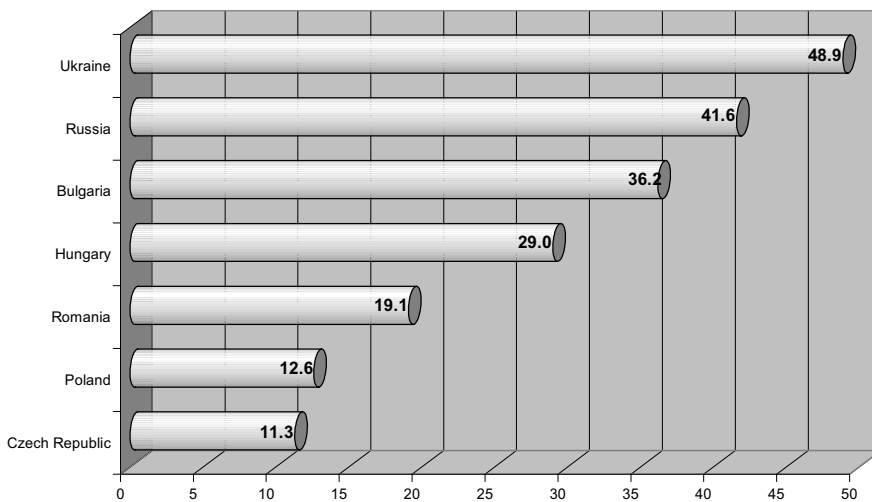
Fiscal policy relies on high taxes, which makes their evasion economically profitable. In order to increase the rate of tax collection the role of the lower ranks of the tax administration grows more important. This, however, often finds expression in arbitrary interpretation of fiscal problems by the specific tax inspector. On the other hand, the procedure for

appealing against taxation acts is slow (i.e., costly). **Hence, fiscal pressure leads to corruption in the form of a „compromising settlement” between the economic agent and the tax inspector.**

In the past year insufficient conditions have been created in the economy for limiting the opportunities for corruption. At the same time, **corruption is becoming ever more refined and is more rarely reduced to violations of the law.** All too often, acts leading to corruption are transgressing the spirit, rather than the letter, of the law. This makes the sanctioning of corrupt behavior extremely difficult.

THE GRAY ECONOMY

RELATIVE SHARE OF THE GRAY SECTOR IN GNP (%)



Source: European Bank for Reconstruction and Development

Curbing corruption in the economy calls for the use of privatization procedures guaranteeing transparency and accountability in the privatization process. **Negotiations with potential buyers ought to be regulated as a special option applicable upon decision by the Council of Ministers to privatization deals involving enterprises of key importance to the economy,** monopolistic structures, and in cases of great factual and legal complexity. There should be clear-cut and thorough regulation of the supervisory functions, competencies and powers of the Supervisory Board of the Privatization Agency for sanctioning violations of the prescribed procedures at all stages of the privatization deals.

Considerable potential for curbing corruption emerges on the basis of the *Program for Optimization of Administrative Procedures under License Permit and Registration Regimes* adopted with Decision N 687 of the Council of Ministers of November 3, 1999. Its execution has already begun but the bulk of it will be implemented in 2000.

A considerable potential for curbing corruption in the economy could also be found in the activities of professional and business associations through their sector and national structures. Business circles in Bulgaria are not particularly sensitive to the issue of corruption and seem to perceive it as part of the landscape. They are not sufficiently aware of their mission and the potential benefits to business in general from the adoption of certain ethical rules and norms.

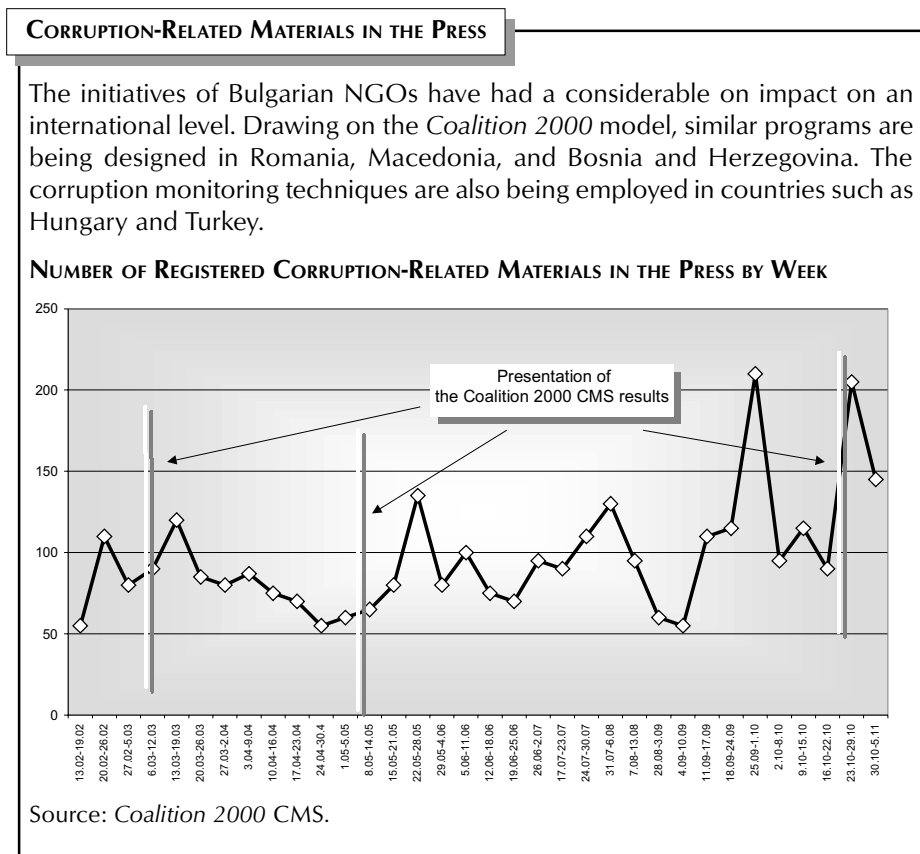
D. CIVIL SOCIETY

D.1. Non-Governmental Organizations

It is important to note that Bulgarian non-governmental organizations (NGOs) have played a significant role in assessing the scope of corruption in this country. It was precisely the analyses of third-sector research institutes that showed that the rise of corrupt practices after 1990 was leading to deepening mistrust in the political elite. The established public standing of the Bulgarian NGO sector has allowed it to become the *initiator of the debate on corruption*.

The preconditions for the successful establishment of the third sector in the country's anti-corruption efforts have been:

- the considerable analytical potential which a number of NGOs have managed to mobilize (specifically in the socio-economics field);
- the developed network of broad-profile and more specialized organizations covering almost the entire territory of the country;
- good communications with the mass media;
- dynamic cooperation with international institutions;
- support from international donor organizations.



A convincing evidence of this role is the *Coalition 2000* process, which began in the spring of 1997. This pioneering initiative brought together for the first time representatives of state institutions and NGOs in the fight against corruption in this country. For its part, Transparency International created a Bulgarian chapter, TI Bulgaria; a number of NGOs outside the capital city also joined in various anti-corruption initiatives. In 1999 the NGOs united under *Coalition 2000* implemented a range of specific activities aimed at countering the most widespread corrupt practices and creating institutional, legal, organizational, behavioral, and other preconditions for curbing corruption in the country. These included:

- The *Clean Future* public awareness campaign, which covered the whole country.
- A number of public officials and experts were involved in conceptualizing and implementing measures to limit identified corrupt practices.
- Within the framework of *Coalition 2000*, local anti-corruption projects were launched in 14 municipalities. They were aimed at enhancing transparency of local government and reinforcing the anti-corruption watchdog role of civil society.
- Anti-corruption councils were formed on a municipal and/or district level, which involved local government authorities, municipal councils, the courts, prosecution and investigators offices, police, and tax services, among others.
- A number of international conferences were held at which Bulgarian NGOs presented the coalition model of counteracting corruption.
- The periodic publication of the *Coalition 2000* Corruption Indexes kept up the public debate.

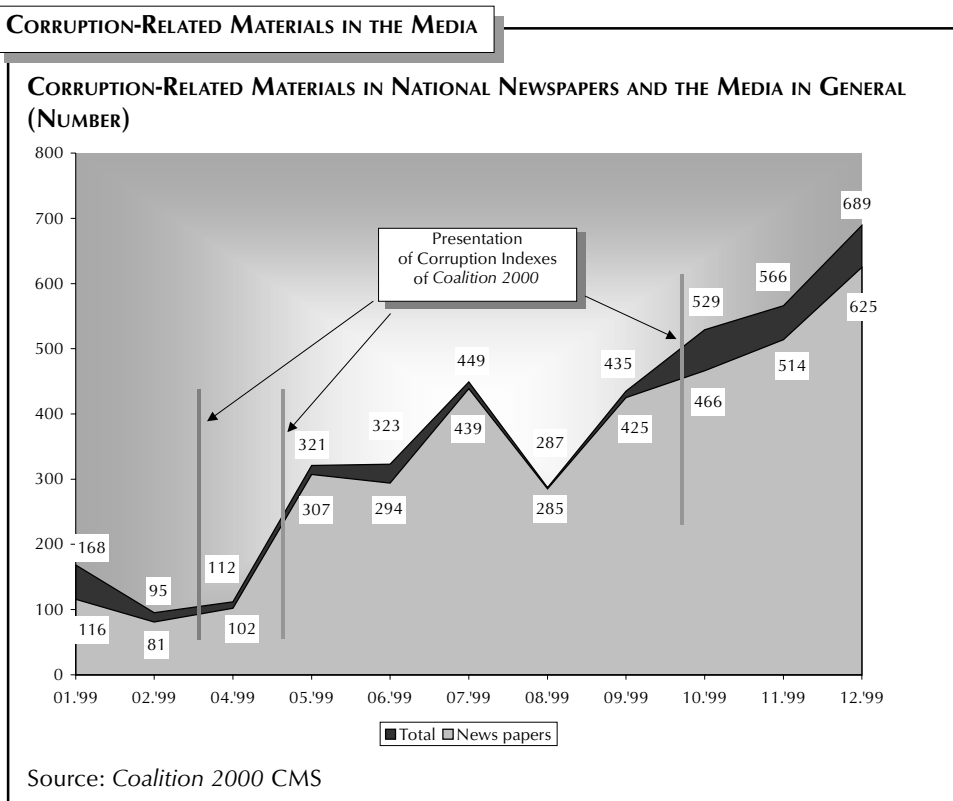
D.2. Mass Media

In the past year the mass media played an exceptional role in mobilizing the public opinion against corruption. The good cooperation between NGOs and the media was particularly beneficial in creating a climate of public intolerance towards corruption. As the public opinion became more demanding with respect to journalists, the journalist organizations grew more intolerant to corruption. There is no accident in the fact that the public opinion consistently rates NGOs and journalists among the least corrupt categories.

The monitoring of key Bulgarian media registered a clear trend towards an increasing presence of corruption as a topic of media interest. It

would not be an exaggeration to say that **corruption has become a number one topic in Bulgarian mass media, particularly in the second half of 1999**. Several important aspects can be distinguished within this trend:

- The topic is discussed and interpreted by the media very specifically and analytically. Most of the major mass media, the press in particular, are beginning to overcome the stage of mere sensationalism in presenting the topic and **expose specific acts of corruption** in a very professional manner. A circle of journalists has emerged within the community of Bulgarian reporters who not



only confidently present specific cases of corrupt behavior to the general public, but likewise reveal the hidden mechanisms which make such behavior possible, successful, difficult to identify and penalize.

- There is every reason to claim that the media have managed to expose the **corrupt nature of a broad range of existing unlawful practices**. The media have raised social awareness and have thus helped foster public intolerance towards the entire diversity of forms and nuances of corrupt behavior. The media have largely managed to create an adequate vocabulary for the public debate on corruption.
- An unquestionable achievement of the media in 1999 is the fact that they shifted the **public attention from ‘everyday petty corruption’ to ‘corruption at the top’**. Moreover, the focus on corruption was no longer based on political confrontation (in the past ten years the media have talked about corruption but always in the narrow framework of political confrontation). This type of politicized discourse has been largely superficial and has ultimately impeded a deeper grasp of the mechanisms generating corruption.
- The instances have become more frequent when the media did not simply cover acts of corruption registered by law-enforcement authorities but actively drew the public attention to **facts, which called for further investigation**. In their efforts the media used their own journalist methods as well as information from citizens and NGOs. Sometimes this cooperation has almost spontaneously grown into **examples of effective coalitions** involving media, civil society, law-enforcement authorities, and public administration. Unfortunately, such coalitions are typically incidental and unsustainable.
- It should be noted that in the course of the past year certain publications and radio and TV programs **initiated considerable public debate on legislation in the field of legal and economic reform**, which drew the public attention to specific provisions in the laws that could generate a risk of corruption. In this way, the leading Bulgarian media have made their contribution to the prevention of corruption.
- The media proved more successful than in previous years in making **Bulgarian politicians assume specific public commitments** concerning cases of corruption and thus in creating conditions for civic control over the political class.

Certain problems can, however, be noted as regards the coverage of corruption issues by the mass media:

- The national electronic media – mostly television – which are the undeniable information leaders, were relatively inert towards the issue. The impression was created that the national electronic media fear the topic itself and they have not yet outlived the reflexes typical of state, rather than public, media. Placed in a situation of pending licensing, the private electronic media too preferred to follow behind the events and cover official statements.
- Even those media, which showed the greatest concern with the topic of corruption, had a rather short attention span and quickly lost interest in the development of cases, which they had themselves brought out to the public attention. Indirectly, such behavior leads to public demobilization and an impression that none of the signaled cases would have a legal consequence.

- Without being a deficiency of the mass media alone, the lack of cooperation between the media and the law-enforcement authorities is a serious problem for Bulgarian society. As a result of the absence of such dialogue, the public at large is almost completely unaware of cases of corruption, which have ended in legal sanction. This circumstance keeps reproducing the popular perception that corruption in this country practically goes unpunished.

E. DYNAMICS OF CORRUPT BEHAVIOR AND CHANGE IN PUBLIC ATTITUDES TOWARDS CORRUPTION

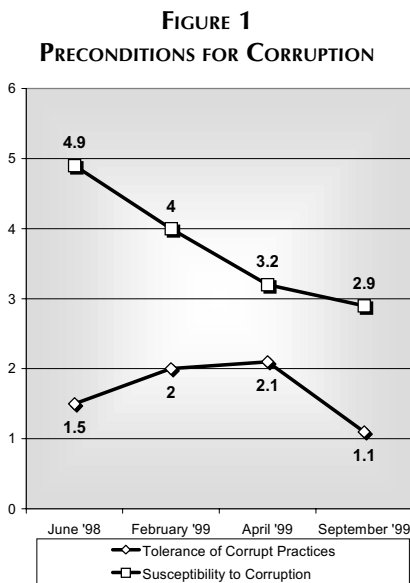
In terms of the **scope of corrupt practices** and the state of **public attitudes towards the various forms of corrupt behavior**, the situation in Bulgaria remains unfavorable.

Internationally the country’s position in the Transparency International ranking did not change substantially over the period 1998-1999. In the Transparency International rating Bulgaria occupies an altogether unenviable place (63rd in 1999 and 67th in 1998) among the countries featured (85 in 1998 and 99 in 1999). This indicates that compared to other countries corruption in Bulgaria is a **serious problem**. Quantitatively, the value of the Transparency International index for Bulgaria is 3.3. This is much closer to the most unfavorable value (1.0) than the most favorable one (10.0) and suggests that the problem is yet to be addressed.

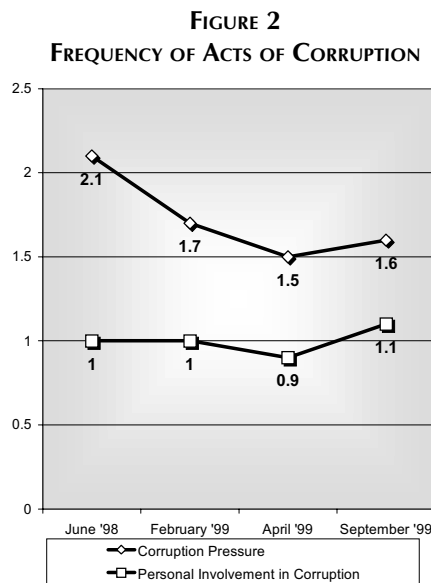
For the Bulgarian citizens, the intensity of corruption in this country (frequency of involvement in corrupt practices) is high and remained essentially unchanged in the period June 1998 – September 1999. However, one positive development is to be observed: there has been a visible fall in the frequency of cases when citizens experienced pressure from public sector officials to engage in acts of corruption.

PRECONDITIONS FOR CORRUPTION AND FREQUENCY OF ACTS OF CORRUPTION

Public opinion is becoming less tolerant towards corruption and less inclined to use corrupt practices (Figure 1). A positive development is also to be observed with respect to the pressure to give bribes exerted over citizens by officials in the public sector (Figure 2). Nevertheless, the actual frequency of citizen involvement in acts of corruption remains unchanged.



Source: Coalition 2000 CMS



Source: Coalition 2000 CMS

Over the past year there emerged several notable changes:

- The data of the *Coalition 2000* Corruption Monitoring System clearly show a **positive change in attitudes against corruption (higher intolerance)**. Citizens are less likely to accept various forms of corruption as normal and to use corrupt practices as a means of coping with problems. A climate of intolerance towards corruption and a critical attitude towards corrupt public officials, including in the high ranks of power, is being fostered in society. This could constitute a favorable environment for development of anti-corruption campaigns and for support of any efforts by state institutions to limit corruption.
- The more critical public attitude towards corruption and its

more intensive exposure in the media have **reinforced the assumptions shared by different social strata that corruption is a widespread and socially effective practice.** Expectations have increased that there will arise new social mechanisms which will simultaneously be legitimate, morally admissible, and effective.

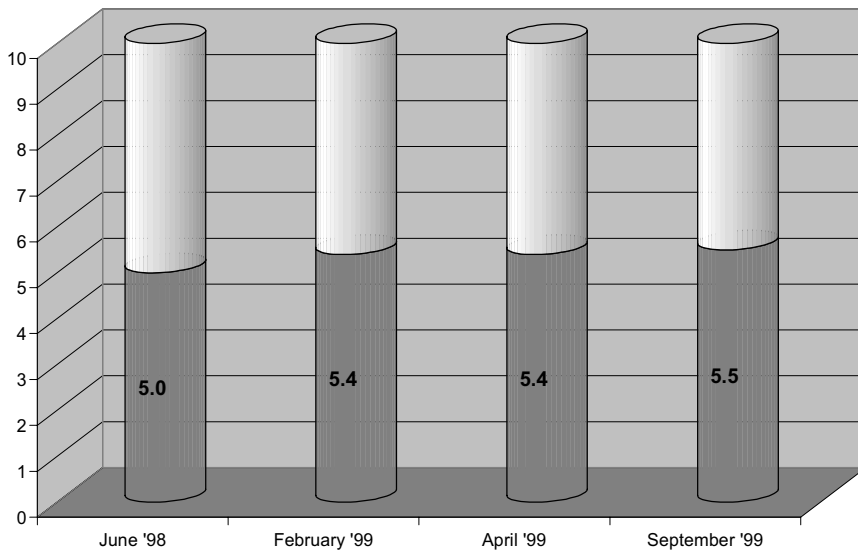
- For the most part public opinion consistently qualifies as corrupt the sectors of: customs, the tax administration, the court system (including judges, lawyers, court officials, prosecutors), and the police.

Public opinion has become far more critical towards corruption and the policy claiming to fight it. In 1999 there was a tangible fall in public confidence that the authorities are truly taking steps to counteract corruption. The reasons for this are of varying nature:

ASSESSMENTS OF THE SPREAD OF CORRUPTION

As a result of the more critical public attitude and changed public expectations, citizens' pessimism has grown. The predominant part of the country's adult population (18 and over) are convinced they live in a society where corruption is a serious problem and a socially effective means of coping with arising everyday problems.

CORRUPTION EXPECTATIONS



Source: Coalition 2000 CMS

- The government has been slow to respond to the anti-corruption campaign launched by civil society structures.

- In the political debate corruption-related facts and disclosures are being used as means against political opponents and for gaining political dividends.

- There is a suspicion that the public administration has a strong interest in covering up corruption if it involves those close to the government.

- Anti-corruption issues are still not adequately covered within the **system of education.** The topic of corruption is completely absent from secondary and university education, and only sporadically appears in civic education conducted by various non-governmental organizations. This is a sphere where the state ought to support the non-profit organizations that are able to assist the education process, specifically with respect to introducing the

anti-corruption subject into the school curricula. They need to be given broader access to the education process, with corruption treated in the context of the subject of the State and the risk of state deformation. From the very beginning of their education, young people need to realize that it is really up to them in what kind of state – corrupt or not – they will live.

F. INTERNATIONAL ANTI-CORRUPTION COOPERATION

In 1999, the problem of corruption was highlighted in the work of many international organizations and in international exchange in general. The globalization of this exchange increasingly calls for a treatment of corruption similar to the treatment of security issues after the end of the cold war – as a problem of the entire international community, which cannot be addressed by national measures alone. In this context, Bulgaria's cooperation with the international community has played an important role in encouraging the fight against corruption in this country.

Notable among the international legal commitments taken on by the country in the past period are the signing of the *Criminal Law Convention* and *Civil Law Convention* of the **Council of Europe** (CE) and the accession to the Group of Countries against Corruption – GRECO. By opening the two conventions for accession the Council became a leading international organization in the fight against corruption, which is particularly important in view of its pan-European nature. Together with the participation in the Octopus II program of the Council (a joint initiative with the European Commission), the signing of the two conventions is a step forward in Bulgaria's involvement in the development and implementation of international anti-corruption standards. Two conventions entail the obligation to adopt certain standards in domestic legislation. In this way – unlike the mechanism of the Octopus project limited to intergovernmental cooperation – the ratification of the conventions and the subsequent amendments to national law will have a potentially broader social effect. To this end it is necessary for the alignment of the domestic legislation to be a transparent process involving all concerned institutions from the public and private sectors in this country. Additional positive effect could be achieved through possible linkages between the monitoring of the enforcement of the conventions in the countries (GRECO), which will be confined to consultations among the institutions of the executive, and the efforts of civil society in this area.

The problem of corruption in the relations between Bulgaria and the **European Union** (EU) is considered above all in the broader context of the measures to prepare the country for EU membership. To EU, corruption is a problem related above all to the protection of the financial interests of the Union, the normal functioning of the Internal Market and of competition as its fundamental principle. In addition, Bulgaria is facing the task of effective adoption of the EU legislation – *acquis communautaire* – in the sphere of justice and internal affairs and more specifically, the fight against corruption and organized crime.

One important aspect of these relations is found in the fact that the *acquis communautaire* in the area of justice and internal affairs includes not only the instruments adopted by EU, but likewise the international instruments of CE and the Organization for Economic Cooperation and Development (OECD) in this sphere. With the signing and ratification by

Bulgaria of the *Convention on the Fight against Bribery of Foreign Officials in International Business Transactions* of OECD the country could be said to have taken important steps forward on the road of harmonization with EU law.

The assistance provided by the European Commission to Bulgaria in the fight against corruption in the context of accession is focused on the work of the administration. In the past period a number of anti-corruption projects, implemented by the administration, were funded in the context of pre-accession assistance. In its regular report on the country's progress towards accession of October 1999 the Commission noted that „progress in the fight against corruption appears more hesitant“ and recommended further measures in the following areas: „financing of political parties, strengthening of the legal framework in areas such as public procurement, financial control, liability of Ministers, improving the implementation of measures in areas such as money laundering and creating or strengthening internal and external control structures in the administration and the judiciary (including among prosecutors). Transparency and judicial control should be reinforced in the privatization field.“

The problem of corruption in the context of structural reform is not visibly present in the work of international organizations in Bulgaria. In view of the crucial importance of the structural reform to the success of the transition to market economy and the obstacles posed by corruption to economic growth and human development in the countries in transition, it is recommended to propose specific initiatives in this area that would involve the international organizations concerned, as well as bilateral and multilateral donors.

In the past period, an important event with implications for the anti-corruption processes in Bulgaria was the adoption of the **Stability Pact for Southeastern Europe**. In the Pact, corruption is treated in the context of strengthening security, thus stressing the international character of the measures needed for its overcoming, especially as regards the countries of the region. While it is still too early to evaluate the effect of the Pact, there is no doubt Bulgaria ought to assume a leading role in proposing and implementing anti-corruption initiatives of a regional scope, drawing on its experience in establishing the rule of law in general, as well as in the cooperation between the institutions of the state and civil society in this area.

In conclusion, it is necessary to note the important role of **non-governmental organizations** for the development of the international contacts of Bulgaria in the fight against corruption. The cooperation of *Coalition 2000* with a number of foreign agencies, non-governmental organizations, and international organizations, especially in South-East Europe, was a substantial contribution towards assisting the country in sharing the leading international experience in this field. Thus the support provided by the **United States Agency for International Development (USAID)** to *Coalition 2000* is a model of cooperation, which ought to be encouraged in the future.



In the past year international observers such as the World Bank, the International Monetary Fund, Transparency International, the European Bank for Reconstruction and Development, and large private financial organizations have evaluated positively the tendencies in the fight against corruption. According to the Transparency International evaluation, within one year Bulgaria has moved from the 67th to the 63rd position in the world rating by level of corruption. This small step forward is encouraging but the position attained clearly demonstrates the great distance at which the country stands from European standards.

The improved standing of the country is due to such positive changes as the enhancement of the anti-corruption legislation, the launching of the public administration reform, reduced state participation in the economy, and the significantly limited gray economy.

Most serious ground for optimism, however, is found in the fact that these small steps fail to weaken the resolve of civil society in Bulgaria. This is evidenced by the widening gap between the evaluations from the „outside“ and the internal self-evaluations of the achievements in countering corruption.

In the ten years of transition to a democratic society and market economy, Bulgarian society has failed to cope with the corruption problem. The past year, however, gives us sufficient reason to believe that we have avoided the danger of turning from a society with corruption into a corrupt society.