
THE WAY AHEAD

For two decades, consecutive Bulgarian governments have pretended to be intent on reducing corruption but have in practice undermined any meaningful measures against it. As a result, critical sectors of the public administration and the judiciary have become dysfunctional to the extent that nothing short of a drastic shake-up would have any impact.

As already pointed out, corruption in the public administration and among elected politicians are mutually constitutive. In Bulgaria, administrative corruption has turned into a kind of additional tax paid by individuals and businesses for access to public services, while state capture is expanding and now involves officials at all levels of government in corruption relations with the consent – if not encouragement – of the political class. This has resulted in the emergence of predatory networks, which successfully use corruption to extract economic and political advantages while simultaneously blocking all attempts to introduce anticorruption reforms and policies.

In such a context, there are two imperative – that is, both urgent and profound – reforms that need to be placed on the immediate anticorruption agenda of the country. These are intended to **tackle simultaneously administrative corruption and state capture.**

1. A restart of the system of enforcement and inspection agencies.

Recurring problems in the work of regulatory, enforcement and inspections institutions indicate that they function highly ineffectively and are captured by political-business networks. In many institutions, competence and capacity are in short supply; this in turn is used to justify inaction and/or conceal corruption relations. The main problems which a restart of the system of these institutions should aim to resolve are, at the very least, the following:

- Political interference in their work should be discontinued. The discretionary power exercised by some government institutions should be balanced with effective oversight by other public institutions and/or civil society organizations and media under conditions of adequate transparency.
- There should be effective monitoring of the incomes and assets of public officials, including officials in regulatory, enforcement and inspection institutions, as well as oversight of improper contacts of officials.
- There should be full transparency of the results and effectiveness of the work of control institutions and accountability of their senior management.
- The resources available to control institutions should correspond to the amount of work they are expected to do.
- A review should be undertaken to determine which functions

currently performed by these institutions should be left to market mechanisms and civic oversight.

- A regulatory assessment of the remit of regulatory, enforcement and inspection institutions should be carried out in order to identify excessive or redundant regulations. Overregulation and an increase of the supervisory and enforcement powers of public administrations which are not capable of exercising even their current functions can only create a breeding ground for corruption.

Such a restart should be the first step of a radical and comprehensive administrative reform.

2. Establishment of an independent anticorruption prosecution.

The establishment of a specialized independent body which would investigate and prosecute the most serious cases of corruption is necessary. The new entity should include prosecutors and – in order to ensure its independence from the executive and the judiciary – they should be recruited, employed and dismissed based on specific rules and procedures, different from the rules and procedures of the judiciary. Officials in the new entity should only be accountable to its director – a senior prosecutor with the rank of a deputy prosecutor general or special prosecutor appointed by the Plenum of the SJC under the rules and procedures for electing Prosecutor General. In both scenarios the director should be independent from the Prosecutor General.

The new institution should be granted full investigative rights and responsibilities as provided for in the *Criminal Procedure Code*. The specific groups of crimes the new institution should prosecute should be strictly defined in order to guarantee that activities would only be focused on the most serious corruption cases. In this respect, in addition to a concrete list of crimes from the *Criminal Code*, other criteria should be added in order to specify the cases that are in the competence of the new institution (e.g. type of office held by the offender, value of the object of the crime, etc.).

Despite some recent measures (high profile investigations of allegedly corrupt officials in key public institutions, the cancellation of compromised procurement tenders, a reduction in the level of cross-border smuggling), anticorruption policies are incommensurate with the magnitude of the problem facing the institutions of government in Bulgaria. The glaring discrepancy between the wide spread of corruption as established by the *Corruption Monitoring System* and the modest results of the criminal justice system warrants the urgent adoption of the two measures outlined above.

Corrupt officials in the enforcement and inspection agencies can be expected to put up resistance against profound reforms. The grip of shadow political and business networks on the decision making process in government will make the establishment of an independent prosecution a difficult task. Years of anticorruption stalling allowed the emergence of a cross party constituency capable of blocking any reforms that could make a difference.

In such a context, the only way forward for the anticorruption agenda is through coalition building. This means the active involvement of the three major stakeholders against state capture – reformist politicians, civil society organizations and international partners (governments and international organizations). This approach has been advocated by CSD for some years: “A partnership triangulation is possibly the shortest way to describe the formula for the success of reforms in transition. This includes reformist politicians, active civil society and political and financial support from international partners.”⁴³

Such a triangulation is required to compensate both absent political resolve, as well as corruption and low capacity in the civil service, especially in the enforcement and inspection services of government. Short of the involvement of international partners, powerful lobbies will block any far-reaching decisions in government; without the input and support of civil society, a government would be suspected of responding to foreign rather than domestic demand. Collaboration with partner governments and law enforcement and financial intelligence institutions outside Bulgaria is especially warranted with respect to economic crimes (which are often international in scope and nature and affect international investors) involving complex schemes at the level of the senior civil service. Non-governmental organizations, on the other hand, play a critical role in channeling public energy and reform ideas; they also bring to bear the capacity to monitor and provide expertise to the design of policies.

Overall, curbing state capture in Bulgaria can only be achieved through the sustained and coordinated drive of these stakeholders located at the critical junctures of society and politics – government decision making, civil society and international engagement.

⁴³ Shentov, O. (2008). Opening remarks. *Democracy that Delivers: Unlocking the Potential of Transition*. Sofia: Center for the Study of Democracy/USAID, p. 17.

