

ВОЕННА АКАДЕМИЯ „ГЕОРГИ СТОЙКОВ РАКОВСКИ”

1504, София, бул. „Евлоги и Христо Георгиеви” № 82



A significant progress was made by the Republic of Bulgaria in the last few years with regard to combating crime and enforcing the rule of law. As a result of the cooperation between both the judiciary represented by the Prosecutor's Office of the Republic of Bulgaria and the executive power represented by the authorities of the Ministry of Interior, State Agency for National Security, Commission for Combating Corruption and Confiscation of Illegally Acquired Property and others institutions, was conducted criminal prosecution against a number of senior government officials for corruption offenses committed by them, including ministers and deputy ministers. The criminal liability of some of the richest Bulgarian citizens, whose property was acquired in a criminal way, and for whom the public opinion is that they are untouchable from the point of view of Bulgarian justice, is also engaged. As a result of these actions was affirmed within the society a sense of justice and equality before the law of all with no respect to their property status or social status. In a natural way this led to a high level of public approval of the actions of law enforcement agencies in the recent years.

The activities of the Prosecutor's Office of the Republic of Bulgaria were highly appreciated not only by the Bulgarian society but also by the former composition of the European Commission in relation to the established Cooperation and Verification Mechanism (CVM) in the field of justice and internal affairs. Thus within the last issued monitoring Report on the progress of Bulgaria is pointed out the implementation of all criteria and moreover the Commission expressed the opinion that the progress achieved by the Republic of Bulgaria with regard to the CVM has been sufficient for the implementation of the engagements of the state committed since its accession to the EU. This statement does not in any way lower the expectations for beneficial results in the fight against corruption and organized crime in our country. Therefore, the efforts of the law enforcement bodies shall not remain accidental phenomenon but to become a tendency of strengthening the rule of law in the Republic of Bulgaria.

There are also some concrete outcomes, which have an immediate implication on the social life. For example, the Republic of Bulgaria has one of the most secure capitals within the whole European Union. A concrete implication for that is the circumstance that the amount of undisclosed homicide cases last year is extremely low, namely – only two. Therefore it should be noted that in the recent months have been found and detained the perpetrators and have been imposed criminal liability to them for the contract killing of a Bulgarian female banker, committed in the end of 2019 in Sofia. On the base of the collected evidences was proved also the participation of an officer of the National Service for Protection (NSP – a specialized state service under the President of the Republic of Bulgaria) in the criminal activity. In this regard it should be taken into account that the officials of the NSP are responsible for the security of many persons in senior state posts, which increases the level of relative seriousness and place of the offence because of serious risk for the health and life of those persons.

There is also an increase of the detectability of other criminal activities according to which the society is extremely sensitive. In April last year, only one month after the committed offence, were detained the perpetrators and were imposed criminal liability for the committed by them brutal beating of the Bulgarian journalist Slavi Angelov in the city center of Sofia. The process of the detection of the accused persons was significantly hard for achieving because of the efforts of the perpetrators to cover their traces – they wore masks and hoods and after the committed crime they disappeared in different directions. There was a high public interest in the investigation, on the one hand because of the authority of Slavi Angelov as one of the best and prominent home journalists and editor-in-chief of a leading daily newspaper and on the other hand

because of the circumstance that the committed against him beating is significantly serious violation of the freedom of speech.

The fight against another long-lasting socially dangerous phenomenon having an implication on the well-being of the Bulgarian citizens, especially in the smaller towns, namely the conventional or the so-called domestic crime (thefts, robberies, etc.) is also one of the priorities of the law enforcement and prosecutorial institutions. Since the beginning of the last year, shortly after the beginning of the mandate of the newly appointed prosecutor general, in accordance with an issued by him Order was created a new organization jointly with the Ministry of Interior for countering such criminal offences. In this regard on the territory of different towns were conducted systematic specialized police operations aiming neutralization of persons suspected of committing such crimes. As a result of the activities of the Prosecutor's Office and the Ministry of Interior there was a significant decrease (about to one third) of the registered crime events of this type. A priority of the Prosecutor's Office is this to become a lasting trend in the future resulting in solving the problem with the domestic crime until the end of this year. These activities are actually a way of restoring the trust of Bulgarian citizens in the law enforcement bodies, which is of great importance also for achieving the goals of and overcoming the challenges faced by the Prosecutor's Office of the Republic of Bulgaria.

In the last year were undertaken unprecedented activities by the Prosecution against another socially dangerous phenomenon, typical for the territory of our state, affecting mostly the elderly people, namely against the so-called "telephone" frauds. It is used novel approach for investigating of these crimes. All structural units of the organized criminal groups concentrating their criminal activities in this type of fraud were covered. The victims are mostly older people because of their sensitivity and possibility for easy psychological manipulation (most frequently the defrauders invoke as the base of their claim for money that it is necessary with regard to a police investigation for "telephone" frauds or for ensuring a treatment for a victim or ill family relative or friend). The amount of money varies by larger extend but also there are cases in which the victims provide their own money in particularly large amounts (there is a case in which were given between 700 00 to 800 000 BGN, equal to 350 000 – 400 000 EUR). As a result of the actions of the law enforcement bodies and in particularly of the Prosecutor's Office, the levels of this type of crimes are extremely low, moreover the people directing and organizing the "telephone" frauds have been detained and brought to justice, for example since the first specialized police operation, conducted on the territory of the town of Gorna Oryahovitsa, at the beginning of the previous year none attempts to "telephone" frauds have been registered.

Despite of the progress made and the achieved results in front of the Prosecutor's Office are standing concrete tasks and goals. The challenges before us are continuing to be the fight against the conventional crime, in particularly the crimes against the person and corruption. In this regard could be defined some group of problems, especially the countering corrupt practices, on first place in accordance with the existing legislation regulating the criminal proceedings. The Criminal code is adopted in 1968 in terms of socialist to that time period social order and planed economic that despite of his multiple changes do not answer enough the actual social economic circumstances. Another consideration that should be mentioned is the extreme formalism of the Criminal Procedure Code exacerbating the criminal proceeding to a significant extend and hampering both the prosecutors and the investigative authorities and the court officials by the implementation of their duties. The function of the last group of official is also the overstated standard for proving by which the prepared by the prosecutor of charge indictment shall define all the circumstances to the extent as the prosecutor himself had been a witness of the criminal activity, which is unjustified level of detail. Another challenge faced by us is the correlation between the independence and responsibility of the magistrates. In order to have such responsibility it shall be made good developed monitoring mechanism guarantee the implementation of the provided disciplinary penalties and least but not last – the lack of enough political will for establishing legal base for effective functioning judicial system.

Ensuring compliance with law in the course of investigations

The basic functions and jurisdictions of the Prosecutor's Office are regulated in the Constitution of the Republic of Bulgaria (CRB), the Judicial System Act (JSA), Criminal Procedure Code (CPC), as well as other laws enabling new legal jurisdictions of the prosecutors. The phrase *"to act for countering and limiting the unlawful activities"* should be understood

as a summary of constitutional and legal jurisdictions of the Prosecution in accordance with Art. 127 of CRB¹, Art. 146 of JSA² and Art. 46 of SPS³.

In the circumstances *“as well as to take part in resolution of civil and administrative cases, when required by law”* shall be noted that in accordance with the national legislation (Art. 127 of CRB) the Bulgarian prosecutors within the Supreme administrative Prosecutor's Office (Art. 136 (1) of JSA⁴) and the prosecutors within the administrative units of the regional prosecutor's offices (Art. 136 (2) of JSA) are participating in the administrative proceeding aiming to protect the national and social interest and to protect the human rights of citizens within their legal competences by presenting statements before the court (Art. 16 of the Administrative – procedure Code⁵).

Participation of prosecutors in civil cases is regulated by the relevant civil laws and is on the basis of explicitly provided grounds, related to the protection of important public interest - for example according to the Family Code – matrimony annulment claimed by the prosecutor under Art. 47, para 1, items 3 and 4, as well as in para.2, contesting the recognition by the prosecutor under Art.66, para 5 participation in proceedings of adoption etc.

Participation of prosecutors in civil and administrative cases takes a lot of human resources from the Prosecution that could have been used for the purpose of criminal prosecution. The functions of the Prosecutor's Office of the Republic of Bulgaria in civil and administrative cases should be reviewed and the compatibility of these functions with the main task of the Prosecutor's Office to raise and uphold charges in criminal cases. In this sense is also the recommendation of the EU experts – magistrates, contained in the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence, dated December 2016, prepared with the assistance of the Office for Support of Structural Reforms of the European Commission⁶.

¹ Art. 127. The Prosecutor's Office shall monitor the observance of the legality by: 1. (New, SG No. 27/2006) direct the investigation and exercise supervision over its lawful conduct; 2. (New, SG No. 27/2006) may carry out an investigation; 3. (renumbered from Item 1, SG No. 27/2006) bring to justice the persons who have committed crimes and maintain the charge in criminal cases of a general nature; 4. (renumbered from Item 2, SG No. 27/2006) exercise supervision over the execution of penal and other coercive measures; 5. (renumbered from Item 3, SG No. 27/2006) take actions for annulment of illegal acts; 6. (renumbered from Item 4, SG No. 27/2006) in the cases provided by law, participate in civil and administrative cases.

² Art. 146, (1) In exercising supervision for legality on execution of the punishments, of the other coercive measures and in the places of detention the prosecutor may: coercive measures and to check the documents on the basis of which the persons are detained; 2. talk in private with the detained or accommodated; 3. consider proposals, signals, complaints and requests in connection with the execution of the punishments and of the other coercive measures, provided by law; 4. order in writing to the bodies for execution of the punishments and to the administration of the places for execution of the other compulsory measures to notify him for certain actions, acts and events. (2) For elimination and prevention of the violations under par. 1, the prosecutor shall: 1. release immediately anyone who has been illegally detained in the places of deprivation of liberty and for execution of the other coercive measures; 2. give obligatory written orders for elimination of established violations; 3. suspend the execution of illegal written orders and directives of officials and demand their revocation by the respective order.

³ Functions of the prosecutor in criminal proceedings:

Art. 46. (amend. SG 42/15; amend. SG 62/2016, in force from 09.08.2016) (1) The prosecutor shall raise and maintain the accusation for crimes from general character. (2) In fulfillment of the tasks under par. 1, the prosecutor shall: 1. lead the investigation and exercise constant supervision over its lawful and timely conduct as a supervising prosecutor; 2. may carry out an investigation or separate actions on the investigation and other procedural actions; 3. participate in the court proceedings as a state prosecutor; 4. take measures for elimination of the admitted violations of the law by the order, established in this code, and exercise supervision for legality at execution of the coercive measures. (3) (suppl., SG 42/15; amend. SG 62/2016, in force from 09.08.2016) A prosecutor from the higher prosecutor's office may ex officio revoke or amend a decree of a prosecutor from the lower prosecutor's office, which has not been examined in court. His written and reasoned instructions are mandatory for them. In these cases, he may himself perform the necessary investigative and other procedural actions. (4) (New, SG No. 42/2015) The prosecutor who has received the instructions under para. 3, may file an objection against them before a prosecutor from the higher prosecutor's office. (5) (Renumbered from Paragraph 4, SG No. 42/2015) The Chief Prosecutor of the Republic of Bulgaria shall exercise supervision over legality and methodological guidance over the activity of all prosecutors.

⁴ Art. 136. (Amended and supplemented, SG No. 33/2009; amended, SG No. 1/2011, effective 04.01.2011; amended and supplemented, SG No. 62/2016) (effective from 09.08.2016) (1) (Supplemented, SG No. 33/2009; amended in full, SG No. 1/2011, effective 04.01.2011; amended, SG No. 62/2016, effective 09.08.2016) The Prosecutor's Office of the Republic of Bulgaria is unified and structure 6 is in accordance with that of the courts. The Prosecutor's Office consists of the Prosecutor General, the Supreme Cassation Prosecutor's Office, the Supreme Administrative Prosecutor's Office, the National Investigation Service, the Appellate Prosecutor's Office, the Appellate Specialized Prosecutor's Office, the Military Appellate Prosecutor's Office, the District Prosecutor's Office, the Specialized Prosecutor's Office and the District Prosecutor's Office. The district and specialized prosecutor's offices have investigative departments. (2) Administrative departments shall be established in the district prosecutor's offices, the prosecutors of which shall participate in the proceedings on administrative cases.

⁵ Participation of the prosecutor in the administrative process Art. 16. (Amended, SG No. 74/2016) (1) The prosecutor shall monitor compliance with the law in the administrative process by: 1. (amended, SG No. 74/2016) take actions for annulment of illegal administrative acts, agreements, administrative contracts and judicial acts; 2. in the cases provided for in this Code or in another law, participate in administrative cases; 3. initiate or intervene in proceedings already instituted under this Code and when it deems that this is required by an important state or public interest. (2) The prosecutor shall exercise the rights granted to him by law in accordance with the rules established for the parties to the division. (3) In his participation in administrative cases the prosecutor shall give a conclusion.

⁶ See p. 13-14 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence dated December 2016

Written instructions of the Prosecutor General

The functions of the Prosecutor General, including the functions of supervision of legality and providing methodological guidance, cannot have an impact on any prosecutor in solving specific criminal proceedings. Following the amendments to the Judiciary Act in 2016, the Prosecutor's Office of the Republic of Bulgaria is no longer a centralized structure. The hierarchical subordination and centralization is preserved only between the administrative heads of the prosecutor's offices themselves and to the Prosecutor General.

Regarding the explicit power of competence of the Prosecutor General in two separate directions and two separate powers: 1) methodological guidance of the activity of all prosecutors and investigators (Art. 136, para 5, Judiciary System Act⁷, analogically Art. 46, para 5 Criminal Procedure Code) for accurate and uniform application of laws and protection of the legal rights and interests of the citizens, legal entities and the state, by issuing general methodological instructions and guidelines regarding the activity of the Prosecution (power according to Art. 138, para 1, item 6 of Judiciary System Act). These are general acts, they generally refer to the activity of all prosecutors and investigators, they have the characteristic of recommendations, giving organizational preconditions and containing methodological indications for accurate application of law. Through the general methodological guidelines, containing principle directions for similar cases (often in case of legislative amendments) it is precisely the accurate and uniform application of laws by all prosecutors that is achieved. At the same time the methodological guidelines and directions, as being general and of principle, promote professional development and support the independent and autonomous exercise of prosecutorial activity. They do not refer to a specific case.

Examples of such methodological acts containing methodological guidelines:

- concerning the application of certain provisions, separate legal institutes, certain general issues: Guidelines for improving the organization of work of the Prosecutor's office of the Republic of Bulgaria in applying Art. 53 of Criminal Code and Art. 72 of Criminal Procedure Code on pretrial proceedings (concerning seizure of object/means of crime) for transport crimes (Order № ПД-02-06,-11.05.2020).; Order of the Prosecutor General on increasing the effectiveness of combating crime by revealing the entire criminal activity and speeding up the investigation of two or more pretrial proceedings against the same accused person; Guideline for institutional and administrative supervision in the Prosecutor's Office. (Order № JIC- 1986/30.05.2014)
- concerning the organization and tactics on counteracting specific types of crime: Guidelines on the organization of work of the Prosecutor's Office of the Republic of Bulgaria on case files and pretrial proceedings, initiated following communication on domestic violence, for death threats and for violation of order for protection from domestic violence (Order № ПД-02-09/30.04.2018); Methodological guidelines for work on files and cases for crimes against intellectual property (Order № ПД-02-12/18.05.2018.); Guidelines on the organization of work and supervision of legality from the Prosecutors Office of Bulgaria during elections and referendums (Order № JIC-1161/15.04.2014); Guidelines for the organization of the interaction between the pre-trial authorities with general and special competence in case of particularly serious accidents (Order № ПД-02-6/15.03.2017).

The experts who carried out the Independent Analysis of the Structural and Functional Model of the Prosecution recommended that as much of the methodological guidelines and written regulation of the criminal prosecution as possible should be made public, as far as this is compatible with national security and effective criminal prosecution.⁷ This recommendation has been partially implemented, and the current leadership of the Prosecutor's Office considers that the positive practice of publishing more acts of this kind should be continued, which will lead to full transparency in cases where the Prosecutor General has exercised his powers of methodological guidance.

⁷ See p. 9 of the Independent Analysis of the Structural and Functional Model of the Prosecution, dated December 2016

2) The exercise of legally regulated powers and supervision of legality in specific cases, in accordance with what is explicitly provided in the law (for example Art. 243, para 10 of Criminal Procedure Code, claims for reopening of criminal cases in line with Chapter thirty three of the Criminal Procedure Code etc.)

By exercising the explicit power of competence of the Prosecutor General for supervision of legality (Art. 46, para. 5 of the CPC⁸) in specific cases, the legal principle for supervision of legality is put into effect concerning certain hypotheses, falling within the competence of the Prosecutor General, in accordance with the legal requirements.

For example: Control over the decrees for termination of the criminal proceedings under Art. 243, para.10 9 off the CPC is applied by the Prosecutor General in exceptional cases. Thus, for 2019, the Prosecutor General was referred to in 36 pre-trial proceedings, revoking the termination order in 8 of them, which shows that in practice this power is applied in extremely rare cases.

There is a relation between both jurisdictions of the Prosecutor General. This relation is expressed in the fact that through the effective methodological guidance and the accurate and uniform application of the law by all prosecutors and investigators, the need for the Prosecutor General to rule on specific cases is objectively limited and is not realized.

There are many legal restrictions of the powers of the Prosecutor General, these are not absolute and are exercised according to legally regulated procedures. Moreover, the experts who carried out the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office ascertained this circumstances and made recommendations for more active involvement of the Prosecutor General in specific cases, which is the practice in many prosecution services of EU. Recommendations have also been made that *"the administrative heads of prosecutors' offices should direct their staff and be accountable to the Prosecutor General for matters relating to the work of specific sensible cases carried out under their direction. The information on sensible cases should be provided upstream so that the Prosecutor General is informed about the work of his staff in cases on which he may be asked to explain the actions of the Prosecution"*. All opinions on cases expressed by superior prosecutors must be documented in writing in the case file, so that there is an audit trail of the decision - making process. It is again in the independent analysis of the structural and functional model of the Prosecution found that most prosecutors work on the most of their cases with very little or without any interference from their superiors¹⁰

The recommendation in the Independent Analysis of the Structural and Functional Model of the Prosecution that *"the standard for decision-making on internal conviction should be amended, especially what concerns the part of the Prosecution."*¹¹ - For this to happen amendments to the structural Judiciary System Act are needed as well as to the Criminal Procedure Code. The view, expressed in the independent analysis, that the lack of opportunity for anyone to intervene in the final decision of a junior or other prosecutor assigned with the case (even when the case is supervised by an appellate prosecutor) is a characteristic of the Bulgarian system, which causes problems.¹² Furthermore, the experts do not hide their surprise that at present administrative heads have no role in confirming, amending or revoking the prosecutorial decisions of their subordinates, given the fact that prosecutors at regional and district level are subordinate to their administrative heads.

The opinion that if the current legal framework is preserved in this form, it is necessary to take appropriate measures to issue an instruction that will give clear methodological guidelines on the application and interpretation of Art.

⁸ (Renumbered from Paragraph 4, SG No. 42/2015) The Prosecutor-General of the Republic of Bulgaria shall exercise supervision for legality of and provide methodological guidance for the operation of all prosecutors.

⁹ Art 243, para 10 (Supplemented, SG No 71/2013, former para 9, No63/2017, effective 5.11.2017)

¹⁰ Art 243, para 10 (Supplemented, SG No 71/2013, former para 9, No63/2017, effective 5.11.2017)

Where grounds under paragraph 1 were absent, the decree for termination of the criminal proceedings, which has not been appealed by the accused party, the victim or his/her heirs, or by the prejudiced legal person, may ex officio be revoked by a prosecutor with a higher-standing prosecution office. Revocation may also take place within a period of up to two years in cases where proceedings for a serious crime have been instituted and within a period of up to one year - in all other cases, as of the date of issue of the decree for termination of the criminal proceedings. In exceptional circumstances the Prosecutor-General may revoke the decree for termination of the criminal proceedings also after this period has expired.

¹¹ See p. 3 of the Independent Analysis of the Structural and Functional Model of the Prosecution, dated December 2016

¹² See p. 15 of the Independent Analysis of the Structural and Functional Model of the Prosecution, dated December 2016

¹³ See p. 4 of the Independent Analysis of the Structural and Functional Model of the Prosecution, dated December 2016 .

14 of the CPC. The Experts have expressed the view that *"it is precisely the change of this standard, along with providing more guidelines by the Prosecutor General that would lead to greater consistency in the decision-making process within the prosecution service and increase the likelihood of achieving a final conviction."*

The cited recommendations show that the legal powers of the Prosecutor General of the Republic of Bulgaria are even more limited than the powers of similar figures in the judicial systems of the other EU states.

Workload of prosecutors and investigators

According to CPC the investigating bodies are investigating magistrates and the employees of the Ministry of Interior appointed at the position of *"investigating police officer"*, the employees of the Customs Agency, appointed at the position of *"investigating customs inspector"*. According to the current legal framework – Judiciary System Act, Ministry of Interior Act, Customs Act, the investigate bodies are appointed after a competitive procedure, which is organized and conducted by the Prosecutor's College of the Supreme Judicial Council for the investigators and with regard to the investigating police officers and the investigating customs inspectors, by the respective body to which they are appointed - Ministry of Interior and Customs Agency. The Prosecutor's Office is not directly involved in conducting competitions for investigative bodies: it does not participate in competitions for investigative police officers in the bodies of the Ministry of Interior and the Customs Agency, and with regard to investigators, its participation is limited to including representatives in competition commissions, elected by a lot by the Prosecutor's College of the Supreme Judicial Council.

The workload of prosecutors and investigators in the Specialized Prosecutor's Office is in a certain imbalance, and it should be noted that this actually occurs in certain periods of time. This is because some cases are assigned on duty, according to a schedule approved in advance by the administrative head. In this period of time it is not possible to control the number of pre-trial proceedings initiated and distributed to the prosecutor who is on duty.

This imbalance is partially overcome by the possibility, existing in the Internal Rules, approved by the Prosecutor General, for the distribution of files and pre-trial proceedings on the principle of random selection in PRB to exclude the overloaded prosecutor / investigator from the distribution of newly initiated files and pre-trial proceedings for up to 20 days.

Such a problem was found during the thematic audit of the Specialized Prosecutor's Office at the beginning of the previous year. For overcoming it the administrative head was instructed to perform monthly monitoring of the number of distributed files and pre-trial proceedings by prosecutors and investigators in order to take actions ex officio in case of uneven workload.

The Supreme Cassation Prosecutor's Office exercises control over the established mechanism for ensuring an even workload of the prosecutors and investigators from the Specialized Prosecutor's Office, and at the end of the year a thematic revision on the same issue will be carried out by the Appellate Specialized Prosecutor's Office.

The fight against corruption is one of the priorities in the activity of the Prosecutor's Office of the Republic of Bulgaria, due to which in approving the internal structure of the investigation department in the Specialized Prosecutor's Office, by order of the administrative head, a separate anti-corruption sector has been included. Investigators who have more than 8 years of experience, 5 years of which as a judge, prosecutor or investigator, are assigned to investigate cases of corruption offenses committed by MPs, members of the Council of Ministers, chairmen of state agencies and state commissions, judges, prosecutors, investigators, members of the Supreme Judicial Council, inspectors in the Inspectorate to the Supreme Judicial Council and others, exhaustively listed public positions in the provision of Article 411a, paragraph 1, item 4 of the PPC.

Interaction with other structures in the fight against corruption

The interaction of the Prosecutor's Office with the competent state bodies for counteracting corruption is regulated in the respective special laws, on the basis of which the acts for interaction have been concluded, which according to the changes in the legislation are updated in due time. These are the following:

The Anti-Corruption Commission (ACCIAP) pursuant to the Anti-Corruption and Confiscation of Illegally Acquired Property Act (ACCIAPA) in force of 23.01.2019, which regulates the measures for counteraction to corruption, the conditions and the procedure for confiscation of illegally acquired property in favor of the state, the status and functions of the Anti-Corruption Commission (ACCIAP), the interaction of the Commission with the Prosecutor's Office and with other state bodies is explicitly regulated (Art. 1, item 4 and Chapter Three of the ACCIAPA).

The law also determines the scope of the crimes (listed in Art. 108, para. 1 of ACCIAPA²²), for which the prosecutor is obliged to notify immediately the relevant directorate of the Commission in accordance with the development of the case (in case of refusal to initiate pre-trial proceedings; suspension or termination of the State Prosecution on the grounds explicitly stated in Article 108, paragraph 2 of the ACCIAPA, the submission of the case to the court with a prosecutorial act under the PPC - indictment, decree with a proposal to release the perpetrator from criminal liability with imposition of an administrative penalty or with an agreement to settle the case in court); in case of imposed precautionary measures on the property of the accused on the grounds of Art. 72 PPC.

The bodies of ACCIAP and the other competent state bodies (Art. 16, para. 2 ACCIAPA) carry out inspections assigned to them by the Prosecutor's Office under the Judiciary Act by collecting, analyzing and checking information during and on the occasion of information about events of corruption of persons holding senior public positions.

The joint acts for interaction with KPCONPI are:

- Instruction for interaction between the Commission for Anti-Corruption and Confiscation of Illegally Acquired Property and the Prosecutor's Office of the Republic of Bulgaria for implementation of the activities under Chapter Nine by the bodies under Art. 16, para. 2 of the Anti-Corruption and Confiscation of Illegally Acquired Property Act (promulgated SG, issue 82 of 05.10.2018, in force since 05.10.2018);

- Rules for interaction between the Prosecutor's Office of the Republic of Bulgaria and the Commission for Anti-Corruption and Confiscation of Illegally Acquired Property in application of Art. 72 of the Code of Criminal Procedure - ref. № 1186 of 22.11.2019 - regarding the secured property by the order of the PPC and its storage and management by ACCIAP by the order of the special law.

In order to effectively combat corruption at the highest level, in accordance with the competence granted to them, the Prosecutor's Office, the Ministry of Interior, the State Agency for National Security, the National Revenue Agency, the Customs Agency, the General Inspectorate of the Council of Ministers, the Inspectorate of the Supreme Judicial Council and the inspectorates under Article 46 of the Administration Act.

The joint acts for interaction of the Prosecution with other state bodies are as follows:

- Rules for coordination and interaction between the Prosecutor's Office of the Republic of Bulgaria and the Ministry of Interior on conducted operational cases, conducting inspections and conducting urgent and initial actions in the investigation (Order № LS 2556 of 23.08.2013);

- Agreement for interaction and cooperation between the Coordination Council in the fight against offenses affecting the financial interests of the EU and the Prosecutor's Office¹³.

- Agreement for interaction between the Prosecutor's Office of the Republic of Bulgaria and the Agency for State Financial Inspection, № 1-33 dated 13.01.2017; for PFIA-№ 11-02-6 of 13.01.2017

- Agreement for cooperation and interaction between the Bulgarian National Audit Office and the Prosecutor's Office of the Republic of Bulgaria - № 1-28 / 15.01.2019;

¹³ Order № RD-04-619 of 20.11.2015 on the introduction of an Electronic Register for the exchange of information between the PDB and the European Anti-Fraud Office, as amended. with Order № RD-04-114 of April 2, 2019

- Rules for interaction between the Prosecutor's Office of the Republic of Bulgaria and the National Revenue Agency (Order № LS-4687 of 20.10.2014 of the GP);
- Agreement for cooperation and interaction between the Prosecutor's Office of the Republic of Bulgaria and the Financial Supervision Commission № GP - I-772 dated 23.06.2014;
- Agreement for ensuring access of the Inspectorate to the SJC to the information systems of the Prosecutor's Office of the Republic of Bulgaria - ref. №246 dated 28.02.2019, etc.

Along with the mentioned acts, the signed Memorandum of Understanding between the Prosecutor's Office of the Republic of Bulgaria and the European Investment Bank should be taken into account, as well as the forthcoming conclusion of an Agreement between the Prosecutor's Office of the Republic of Bulgaria and OLAF within a few days.

The interaction of the Prosecutor's Office with the State Financial Inspection Agency is also extremely important. Only for the previous year in this direction a total of 58 notifications for performed inspections were received, including reports from them, with different in nature findings from the performed inspections.

Investigated corruption crimes

The concept of corruption covers not only the acts of active or passive bribery and trading in influence, incriminated in Section IV, Chapter VIII of the Special Part of the Criminal Code, but by order of the Prosecutor General in 2014 a Unified Catalogue of Corruption Crimes was introduced, which includes other crimes in which an official abuses his official position for his own or another's benefit., possibly in return for payment.

In this regard, in the last two years, a number of criminal proceedings have been instituted against some of the richest Bulgarians, who have exceptional financial and economic resources through which they can actively participate in corrupt practices. Such actions are unprecedented in their scale for the last thirty years, and the actions of the Prosecutor's Office in this direction continue with high intensity.

Counteracting Corruption

Corruption has been one of the main priorities of the Prosecution in recent years. However, this activity is a small segment of the overall process of counteracting this type of activity - it is limited to criminal prosecution under current law of persons who have committed corruption offenses, as well as within a minimum degree of prevention, expressed in the supervision for legality.

Reducing the levels of corruption, not only in our country, but also in Europe and worldwide, is a task and a challenge for every country. Criminal proceedings are not in themselves inherent in preventing this phenomenon, as the latter is inconceivable without the presence of political will to tackle corruption, effective interaction between the judiciary and the executive and the existence of adequate legislation.

One of the most significant results of the reforms carried out in recent years in the field of anti-corruption is the transfer of corruption cases under the so-called "high level corruption" by the territorial district courts and prosecutor's offices, respectively the Sofia City Court and the Sofia City Prosecutor's Office / having in mind their special competence according to Art.35, para 3 of the PPC /, in the Specialized Criminal Court and the Specialized Prosecutor's Office. The creation of specialized jurisdictions is a good, working European practice, which gives its positive results, including in our country.

In this way, the dependencies that existed at the local level were overcome in the first place, within which quite often most cases of corruption crimes against mayors of municipalities and districts were finally resolved, as well as the corruption risk among magistrates was significantly reduced.

A legal framework has been created in which bodies specializing in resolving the most serious cases in the country - for organized crime and terrorism, to consider corruption cases, which are of no less public importance. This facilitates the possibility of forming a permanent practice, which in turn would speed up the criminal process. This implements the recommendation made in the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office and its Independence, carried out by the EU Technical Support Office in 2016, namely: to transfer corruption cases to the Specialized Criminal Court, *"where there is a more constructive interaction between prosecutors and judges and less formalism"*¹⁴

It is generally accepted in the legal community in our country that the very formalistic Criminal Procedure Code needs to be amended / and even revised /, while the Criminal Code of 1968 needs a comprehensive review in order to be able to fully reflect current phenomena and trends in criminal activity. This opinion is shared as a finding in the report on the Independent Analysis of the Prosecution Model in 2016, highlighting a number of other shortcomings of the t current substantive and procedural criminal law, which hinder not only the detection of corruption crimes, but also conventional crime in general. For example, the results of "preliminary checks", in cases where the signal submitted by a particular citizen or organization does not contain sufficient evidence of a crime, have no procedural value in the course of criminal proceedings.

Therefore, it is necessary to repeat all these preliminary actions in the course of the criminal proceedings, but performed through the means of proof provided for in the Criminal Procedure Code and in compliance with the procedural guarantees provided in it, which in many cases are unnecessarily formalistic. This greatly complicates the procedural activity in terms of the amount of evidence gathered in the course of the investigation, due to which the two-month period for investigation provided by law (although with the option to be extended many times), seems unrealistic.

Another example of increased formalism in terms of procedural rules is the lack of possibility for public statements of guilt expressed by a particular person to have probative value in court. There is also an opinion and recommendation, again by the experts who carried out the independent analysis of the structural and functional model of the Prosecution, for a comprehensive review of the principle of decision-making by prosecutors in their inner conviction, which they believe should be amended, especially in the part for the Prosecution.

Another extremely serious problem for the law enforcement, related to formalism of Bulgarian criminal process, is the content of the indictment, which is the final prosecutorial act by which the case is submitted for consideration in the court phase of the criminal process. In this regard, some measures have been taken at the legislative level to simplify it, but the long-standing practice continues with the purpose for its content to be so detailed in fact as if the prosecutor who prepared it has been a witness - an eyewitness to the crime. This situation is a function of the excessive guarantees that the Criminal Procedure Code imposes on the right to defense of the accused.

The recommendation set out in the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office that the content of the indictment should contain in the possible shortest and most concise form the circumstances related to the crime, as well as a serious review of the so-called substantial procedural violations. The current provisions of the Criminal Procedure Code, regarding the indictments, not only create problems for the effectiveness of prosecutors but also create problems for the efficiency of the whole system of criminal justice. Compared to other EU member states, the indictments in our country require unnecessary level of detail. For the sake of precision in this regard, it should be noted that even in cases of high public interest (which should not be subject to unnecessary delays) it is common practice for judges to return cases to prosecutors due to minor omissions in the preparation of the indictment¹⁵, which is quite possible to be removed in the trial phase of the process.

¹⁴ See p. 20 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

¹⁵ See p. 20 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

There are some positive legislative changes that have facilitated the trial phase of the process. For example, it is no longer necessary to read the indictment unnecessarily before the court, a copy of which the accused has available before the trial and the content of which he was obliged to acquaint himself with. Instead, an obligation has been introduced for the prosecutor to present to the court a summary of the facts of the indictment, which determine the criminal liability of the particular defendant. This is how another of the recommendations of the experts from the Independent Analysis was implemented.

A number of issues can be defined with regard to the Criminal Code, especially in connection with the fight against corruption. And currently in our criminal law the provocation to bribe continues to be criminalized. Taking into account the specific objectives that the "parties" pursue in granting and accepting the relevant benefit, this text of the Penal Code completely "undermines" the course of almost any criminal proceedings with such an object of investigation. The provision itself was adopted in 2000, in a historical period accompanied by numerous corrupt practices, mostly related to the processes of privatization of state property, and high levels of corruption risk.

The state should implement a complex and differentiated approach in the individualization of the punishment of persons who have committed corruption offences. In this regard, legislative changes are needed to ensure the wider use of accomplices and other participating defendants (through agreements, if necessary) against the person committed the corruption offense (giving them the opportunity to be prosecuted first or granted immunity). The need to fully guarantee the protection of their physical integrity, given the risks that arise as a result of their assistance to law enforcement authorities is also taken into consideration. In this sense is one of the recommendations of the Independent Analysis¹⁶.

It is necessary to redefine the meaning of Art. 282 of the Penal Code / the main composition of the official crime /, as the violation or abuse of official position does not apply to officials in companies, and the corruption crimes should refer to the private sector as well. There is some point in adopting provisions that criminalize the commission of the criminal offence itself, without the need to prove any harm caused by the breach of the public procurement rules¹⁷.

It is necessary to introduce a legislative mechanism according to which confiscated property acquired in a criminal way should be "reinvested" for the purposes of criminal proceedings or to compensate the victims¹⁸ of the crime. Such a mechanism is partially available, with regard to citizens and legal entities, through the figure of the "civil plaintiff", but in cases of corruption offenses, for example, there is no mechanism by which the subject of the crime - the confiscated benefit of material nature in favor of the state, to be used for the purposes of forthcoming criminal proceedings.

The improvement of the legal framework in the field of securing and confiscation of property acquired from criminal activity can be pointed out as contribution to the reforms for counteracting corruption. In accordance with the requirements of Directive 2014/42 / EU of the European Parliament and of the Council of 3 April 2014¹⁹, definitions of "direct and indirect benefit" were introduced, fully covering the definition of "benefit" under Art. 2, item 1 of the Directive (Art. 53, para. 3, item 1 and item 2 of the Penal Code), the possibilities for confiscation of property have been expanded (Art. 53, para. 1, item "a" of the Penal Code) and an adequate mechanism for management of secured property until its subsequent confiscation (withdrawal) with an effective judicial decision has been established.

The use of procedural methods for application of the precautionary measures under Art. 72 and Art. 72a of the Criminal Procedure Code (freezing of property) guarantee the actual execution of the property sanctions (fine, confiscation, confiscation in favor of the state).

¹⁶ See p. 22 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

¹⁷ See p. 24 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

¹⁸ See p. 28 of the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office of the Republic of Bulgaria and its Independence since December 2016.

¹⁹ OB, L 127 от 29 април 2014 г., поправка OB, L 138 от 13 май 2014 г.

The occurred normative and structural changes make it possible the effectively implementation of interaction with the Commission for Anti-Corruption and Confiscation of Illegally Acquired Property in the implementation of the activities under Chapter Nine by the bodies under Art. 16, para. 2 of ACCIAPA and the management of the property in respect of which the measures have been applied ²⁰. The improved legal framework in the Law on Administrative Violations and Penalties (Articles 83a - 83g, in accordance with the recommendations of the Organization for Economic Cooperation and Development (OECD), introduced the standards of corporate responsibility for crimes under Article 3 of the Second Protocol to the EU Convention for the Protection of the Financial Interests of the European Communities (1997), Articles 2 and 3 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Trade Transactions (1997) and Article 26 of the UN Convention against corruption, ensuring the application of administrative (non-punitive) sanctions against legal entities simultaneously and independently of criminal proceedings against natural persons, perpetrators of the criminal offence.

Heavily affected sectors of corruption

- Political corruption;
- Misuse of public funds;
- Provision of administrative services;
- Inefficient work of control bodies.

The sectors most affected by corruption are related to the management of public funds (public procurement in the central and local government, licensing regimes), corruption in the system of control bodies and the provision of administrative services (Ministry of Interior, National Revenue Agency, Customs Agency, Executive Agency "Automotive Administration"). The identification of these sectors as affected by corruption has necessitated a number of measures and actions to effectively combat corruption in them. The results of the measures taken are available, evident from the numerous criminal proceedings initiated with such a subject, some of which are already in the court phase or with an effective conviction.

By decision of the National Assembly of the Republic of Bulgaria of 13.03.2020, a state of emergency was imposed on the territory of the whole country due to the danger of the spread of Covid-19. The Bulgarian Prosecutor's Office was one of the first advocates of the thesis of prevention and emergency action. In order to prevent the spread, anti-epidemic measures were introduced against the population. As a result, our country registers one of the lowest morbidity and mortality rates in Europe. The Prosecutor General established an organization for counteracting crimes in the declared state of emergency in the country, forming a National Headquarters in the Prosecutor's Office to interact with the National Operational Headquarters for Combating Coronavirus in the Republic of Bulgaria (Order № RD-09-22 of 13.03.2020) of the Prosecutor General). The Prosecutor's Office of the Republic of Bulgaria has taken a number of measures to protect the public interest and health, related to the prosecution of violators of anti-epidemic measures, compliance with quarantine conditions and stopping the spread of false news. The fact that the COVID-19 pandemic increases corruption risks in the healthcare sector was taken into account. In a state of emergency and concentration of power, directing a lot of money to the economy to alleviate the crisis, corruption risks should not be underestimated. Transparency in the public sector is one of the most important means of preventing corruption. The need for regular and reliable information from public institutions is crucial in emergencies. The healthcare sector is particularly at risk due to the immediate need for medical supplies and protective equipment, which leads to simplification of public procurement rules. In this regard, the established National Headquarters in the Prosecutor's Office undertakes a number of inspections on signals from citizens, media and non-governmental organizations for possible illegal spending of public resources to combat the pandemic of COVID-19. Numerous investigations have been launched to curb speculation on food prices, medical supplies, safeguards, and fuel prices. A well-known Bulgarian politician has been charged with inciting the public to violate the anti-epidemic measures established in the country in the conditions of emergency.

²⁰ Instruction № 2 / 05.09.2018, prom. SG, no. 82 from 05.10.2018, in force from 05.10.2018.

The Supreme Administrative Prosecutor's Office requested information from the Council of Ministers on the actions taken by the competent executive bodies related to the transformation of European Structural and Investment Funds (ESIF) and their transfer to other operational programs to support the fight against COVID-19. The investigation was initiated after a self-referral by the Deputy Prosecutor General at the Supreme Administrative Prosecutor's Office based on a publication in the media related to a decision of the Council of Ministers of May 7, 2020 to transfer European and national funds in the amount of 30,964,149 BGN (about 15 million EUR) from the Operational Program "Science and Education for Smart Growth" 2014-2020, for socio-economic measures to deal with the epidemic situation, vulnerable groups and affected economic sectors of the Bulgarian economy. These should be transformed into the Operational Program "Human Resources Development" - in the amount of BGN 28,790,507 (approximately EUR 14.7 million) and in the Operational Program "Innovation and Competitiveness" - in the amount of BGN 2,155,642 (approximately EUR 1.1 million) With another decision to the Operational Program for Innovation and Competitiveness, the Council of Ministers redirected a resource from the transport and environment programs in the amount of BGN 134 million (about 68 million EUR).

The Supreme Administrative Prosecutor's Office requested information on the actions taken so far by the competent executive authorities, which should contain data on the projects on which such funds have been spent so far to support the fight against COVID-19 - what they have been specifically spent for, as well as the amount. Given the measures taken by the Bulgarian Government to limit the negative economic consequences of the COVID-19 pandemic, large cash flows are distributed in the form of aid and support schemes to the private sector. There is a need for serious monitoring of the procedures for absorption of these funds, as there are prerequisites for the development of a corrupt environment. It is also possible for the beneficiaries of this aid to take corrupt actions, as well as forge documents in order to meet the necessary requirements for receiving state aid. In this regard, alerts alleging such wrongdoing are being considered with caution and speed, in order to prevent the waste of public resources that must be used as intended to control the negative economic consequences of the pandemic.

Functions of the Expert Council established by the Prosecutor General

The Expert Council to the Prosecutor General of the Republic of Bulgaria was established in order to exercise the constitutional powers of the Prosecutor General of the Republic of Bulgaria under Article 126, paragraph 2 of the Constitution of the Republic of Bulgaria for methodological guidance on the activities of all prosecutors. It consists of representatives of the scientific community with high-level expertise in the field of law and prominent law enforcement specialists with proven professional experience and authority.

The Council is not a collegial body and the tasks of its members are assigned individually, depending on the specific profile of the respective expert.

The experts included in the composition of the Council shall provide opinions, consult or participate in the preparation of:

- draft requests of the Prosecutor General to the Constitutional Court;
- draft opinions on constitutional cases to which the Prosecutor General is a party;
- draft requests of the Prosecutor General for adoption of interpretative decisions to the Supreme Court of Cassation and the Supreme Administrative Court and of opinions of the Prosecutor General to the Supreme Court of Cassation and the Supreme Administrative Court on interpretative cases;
- drafts of normative acts sent to the Prosecutor General for approval or opinion;
- drafts of methodical instructions, instructions, rules and other internal acts;
- drafts of interdepartmental instructions and agreements for interaction in exercising the powers of the Prosecutor's Office of the Republic of Bulgaria;
- analyzes of the important for the administration of justice practice of the courts and prosecutor's offices on the application of the law;
- analyzes of the case law on general or specific issues related to the application of the law;

- analyzes of the case law of the European Court of Human Rights and the Court of Justice of the European Union on matters of principle or specific; scientific analyzes related to the activity of the Prosecutor's Office, as well as drafts of methodologies for the practical application of the achieved scientific results;
- lecture materials, manuals, collections and information publications for raising the qualification of prosecutors, investigators and court employees;
- other issues that require expert opinions or consultations in view of their significance for the work of the Prosecutor's Office and for the proper application of the law / outside the management and supervision of specific files and pre-trial proceedings /.

The Council plays a central role in preparing expert proposals for legislative changes. They are based on the prosecutor's office's endeavour to ensure better efficiency and speed of investigation. This is one of the recommendations in the Independent Analysis of the Structural and Functional Model of the Prosecutor's Office, in which the inspection team urges the Bulgarian authorities to consider the advice constructively and creatively in order to seek solutions to improve the system.

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