

Anti-corruption
policies and
preventive measures –
available tools and
best practices

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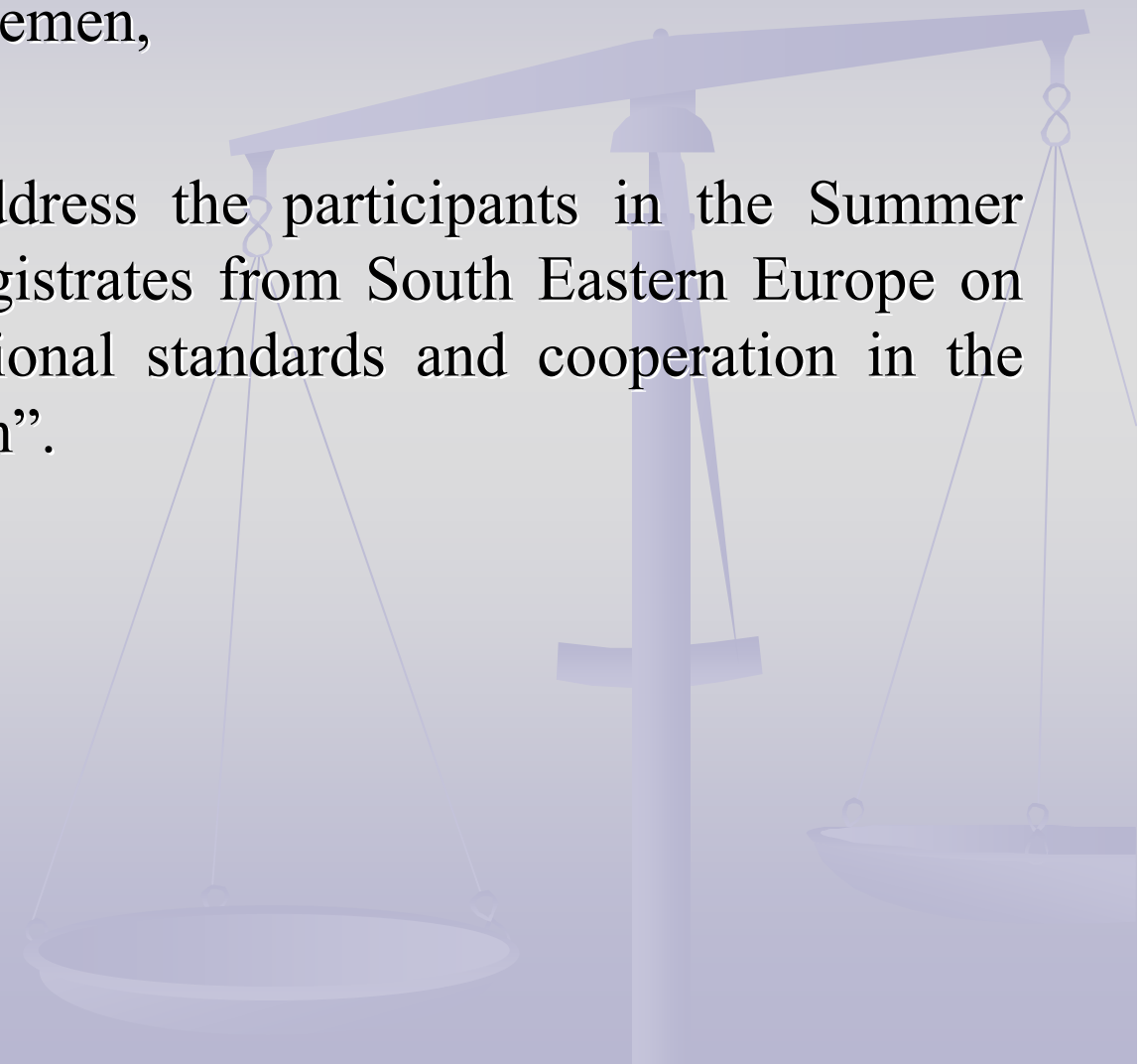
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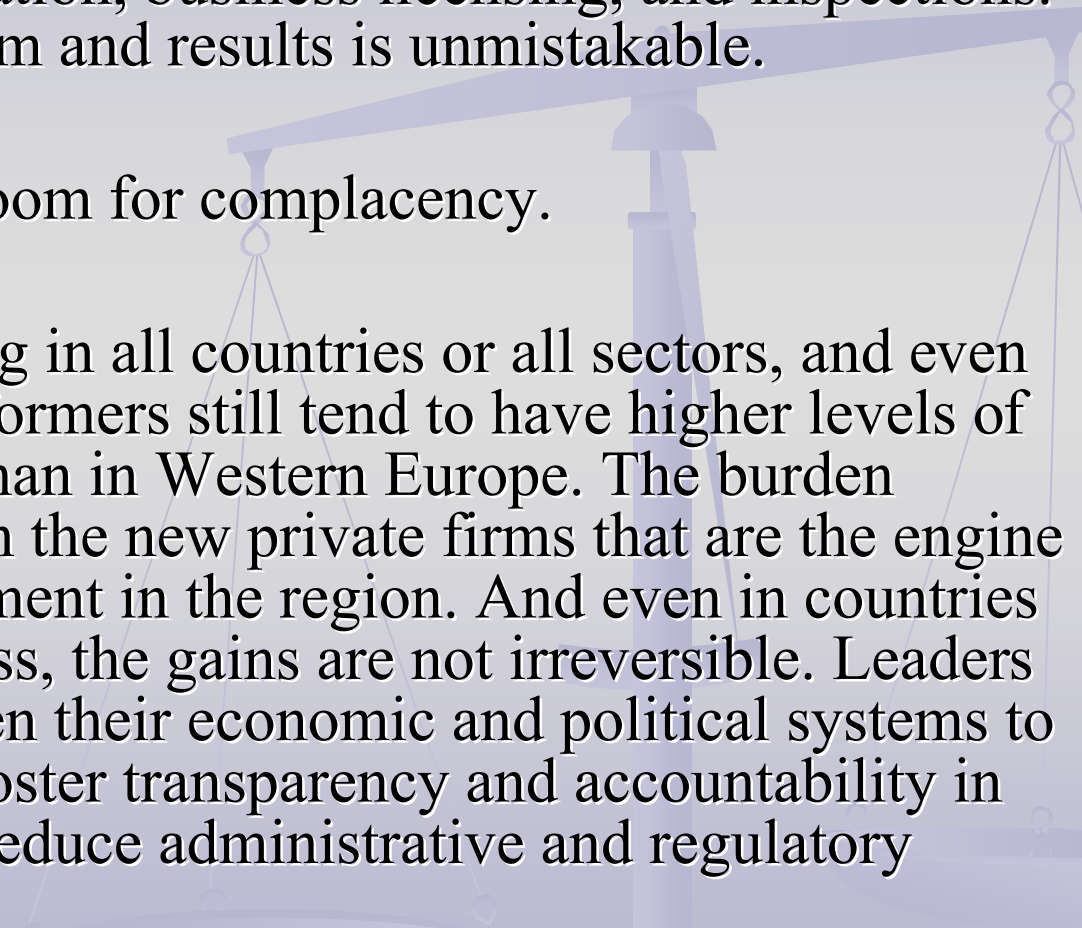
Dear Ladies and Gentlemen,

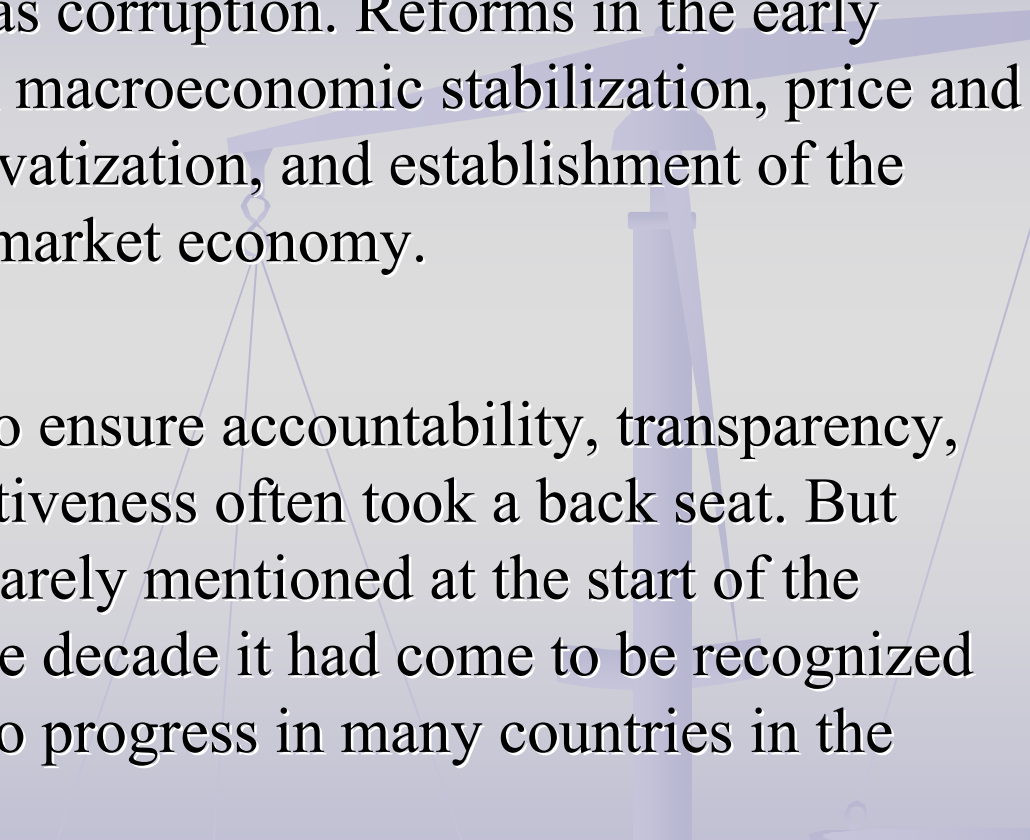
I am honoured to address the participants in the Summer School for Junior Magistrates from South Eastern Europe on the topic of “International standards and cooperation in the fight against corruption”.



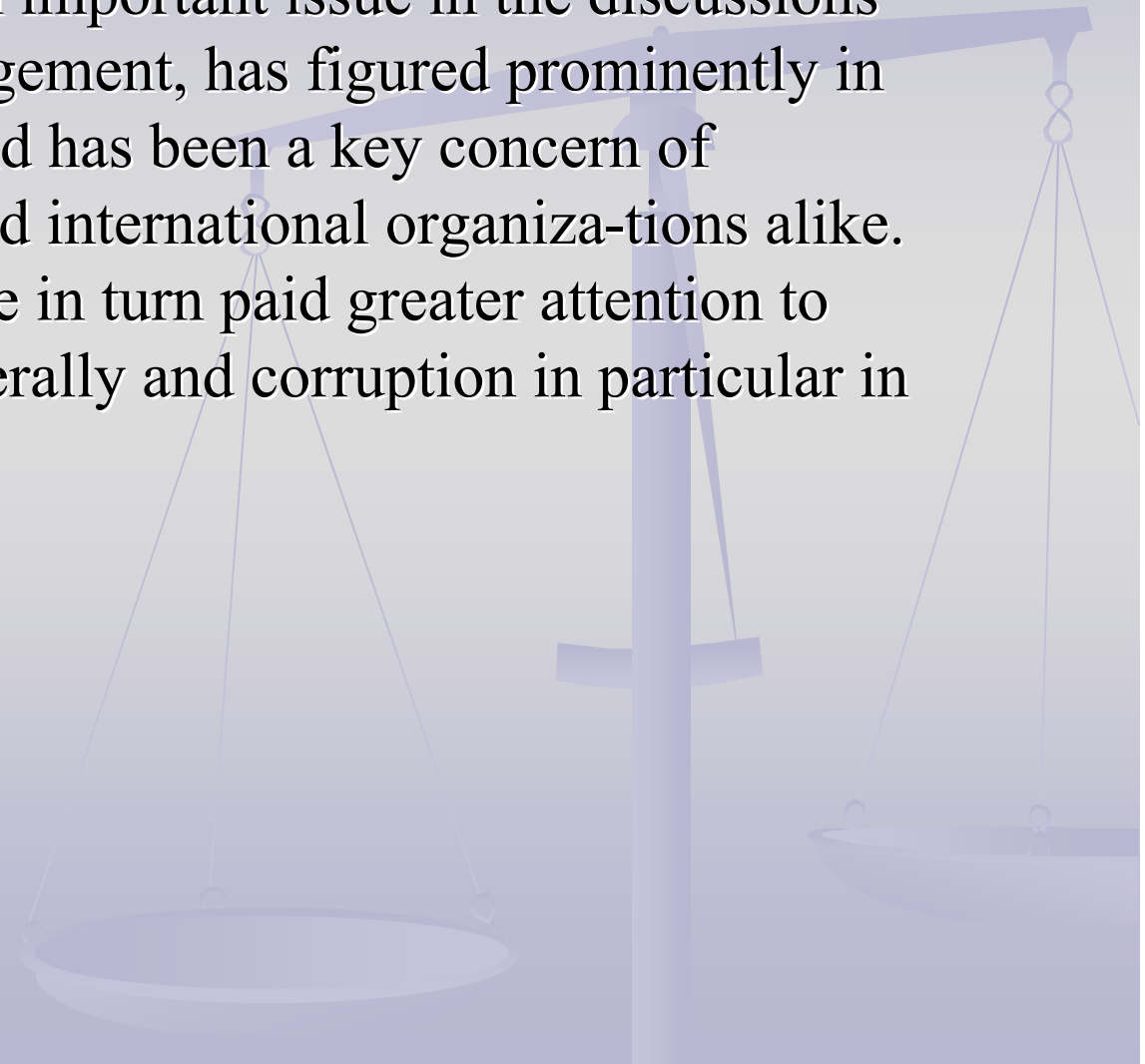
1. Introduction.

- As an introduction of my presentation I will refer to a study of The International Bank for Reconstruction and Development, one of the five branches of The World Bank, namely “Anticorruption in Transition, Who is Succeeding ... and Why?”, that examines patterns and trends in corruption in business-government interactions in the transition countries of Europe and Central Asia.
- According to the analysts of The World Bank the message of the study is positive: Corruption has fallen since 2000 in many transition countries in the region. Firms are paying bribes less frequently and in smaller amounts (as a share of revenues) than in the past, and they see corruption as less of a problem for business.

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- Reforms have accelerated in the past decade. Many countries are simplifying taxes and strengthening audits. These reforms are translating into lower levels of corruption in areas such as tax and customs administration, business licensing, and inspections. The link between reform and results is unmistakable.
 - However, there is no room for complacency.
 - Corruption is not falling in all countries or all sectors, and even the most successful reformers still tend to have higher levels of firm-level corruption than in Western Europe. The burden weighs most heavily on the new private firms that are the engine of growth and employment in the region. And even in countries that are showing success, the gains are not irreversible. Leaders need to continue to open their economic and political systems to greater competition, foster transparency and accountability in the public sector, and reduce administrative and regulatory burdens for firms.

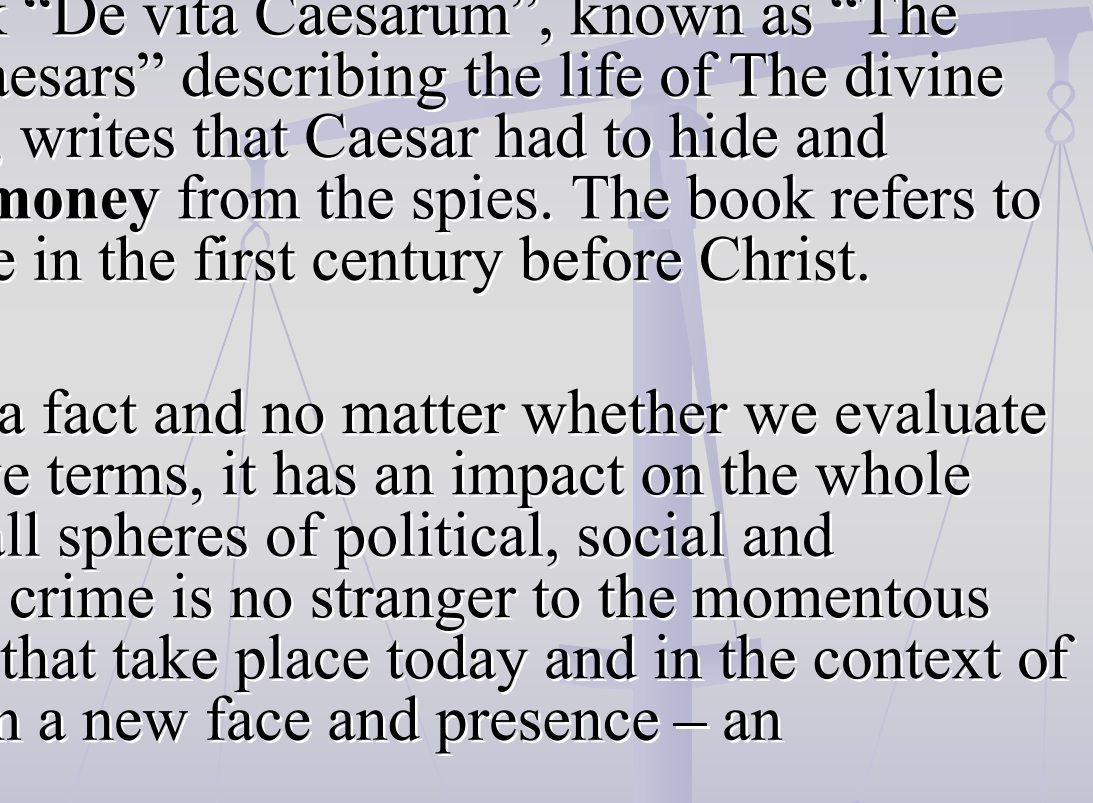
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- In the years since the start of transition in the former socialist economies of Europe and Central Asia, few issues have risen as rapidly in visibility as corruption. Reforms in the early 1990s were focused on macroeconomic stabilization, price and trade liberalization, privatization, and establishment of the legal foundations of a market economy.
 - Institutional reforms to ensure accountability, transparency, and public sector effectiveness often took a back seat. But while corruption was barely mentioned at the start of the 1990s, by the end of the decade it had come to be recognized as a central challenge to progress in many countries in the region.

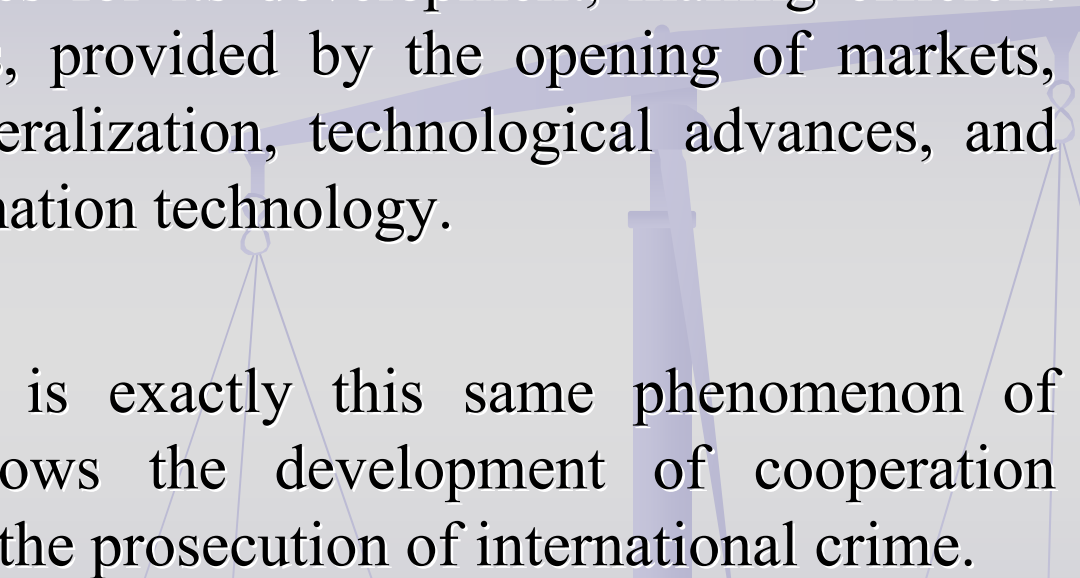
- Corruption has been an important issue in the discussions surrounding EU enlargement, has figured prominently in political campaigns, and has been a key concern of citizens, businesses, and international organizations alike. Leading reformers have in turn paid greater attention to governance issues generally and corruption in particular in recent years.



2. Definition:

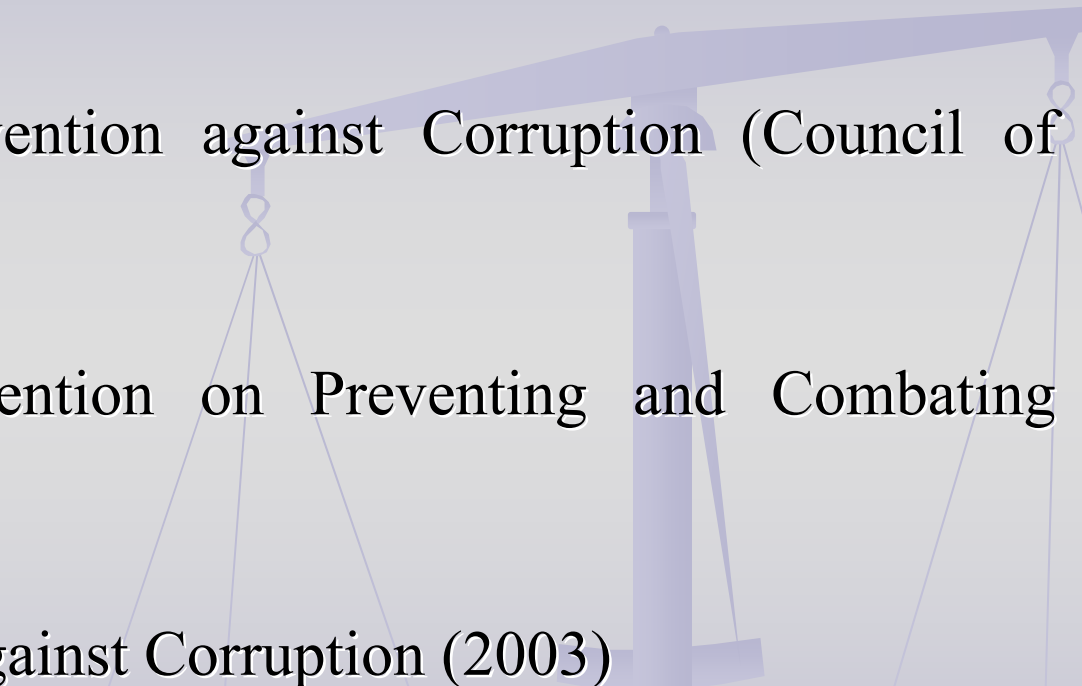
- The etymology of the term “corruption” originates from Latin - corruptio - and literally means evil, malignancy, sickness. Its original meaning has connotations with loss of innocence or purity.
- The encyclopedic definition of the term “corruption” is as follows: “when applied as a technical term, is a general concept describing any organized, interdependent system in which part of the system is either not performing duties it was originally intended to, or performing them in an improper way, to the detriment of the system's original purpose”.

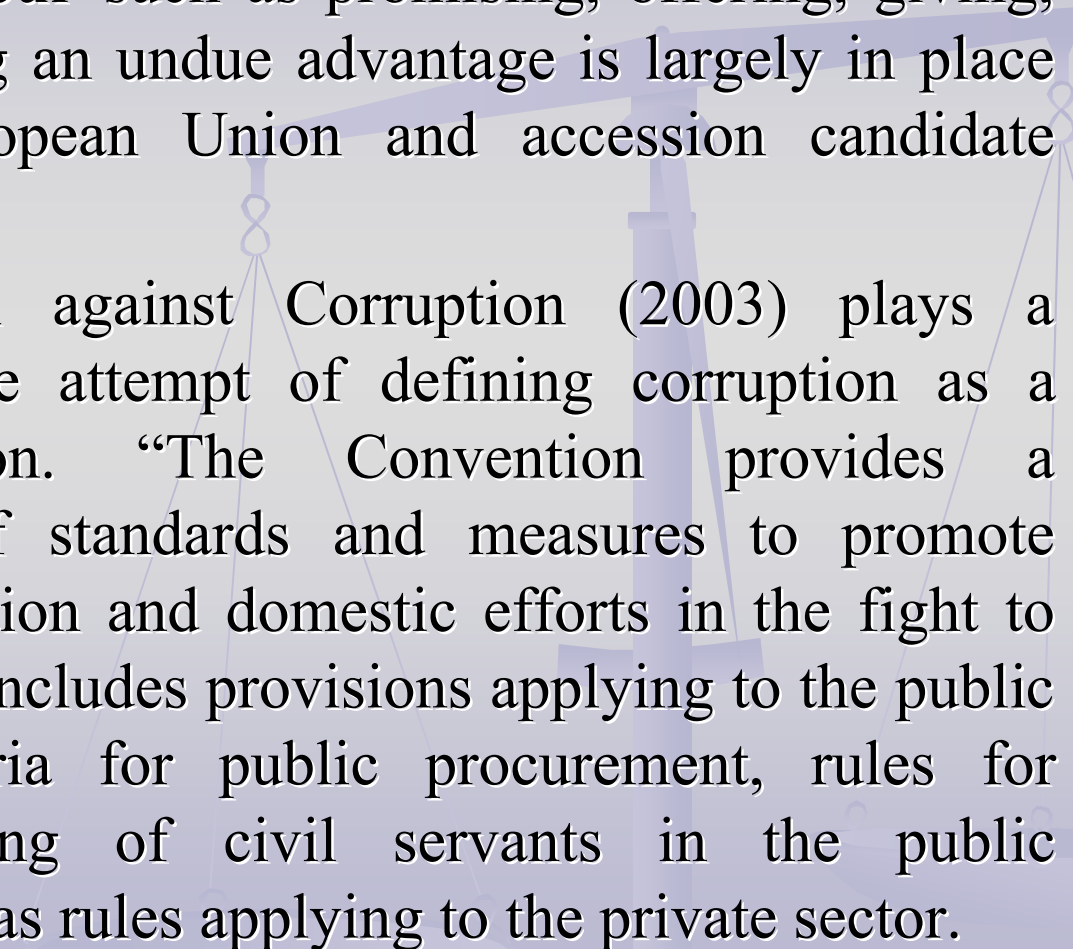
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- Corruption is a complex phenomenon which has emerged neither today nor yesterday; it has been a part of social life for a few millennia. The Roman historian Gaius Suetonius Tranquillus in his work “De vita Caesarum”, known as “The Lives of the Twelve Caesars” describing the life of The divine Emperor Julius Caesar, writes that Caesar had to hide and **redeem himself with money** from the spies. The book refers to an event that took place in the first century before Christ.
 - Today globalization is a fact and no matter whether we evaluate it in positive or negative terms, it has an impact on the whole world and it pervades all spheres of political, social and economic life. Modern crime is no stranger to the momentous changes and processes that take place today and in the context of globalization it takes on a new face and presence – an international one.

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- It finds adequate niches for its development, making efficient use of the advantages, provided by the opening of markets, capital movement, liberalization, technological advances, and the rising use of information technology.
 - At the same time it is exactly this same phenomenon of globalization that allows the development of cooperation between countries and the prosecution of international crime.

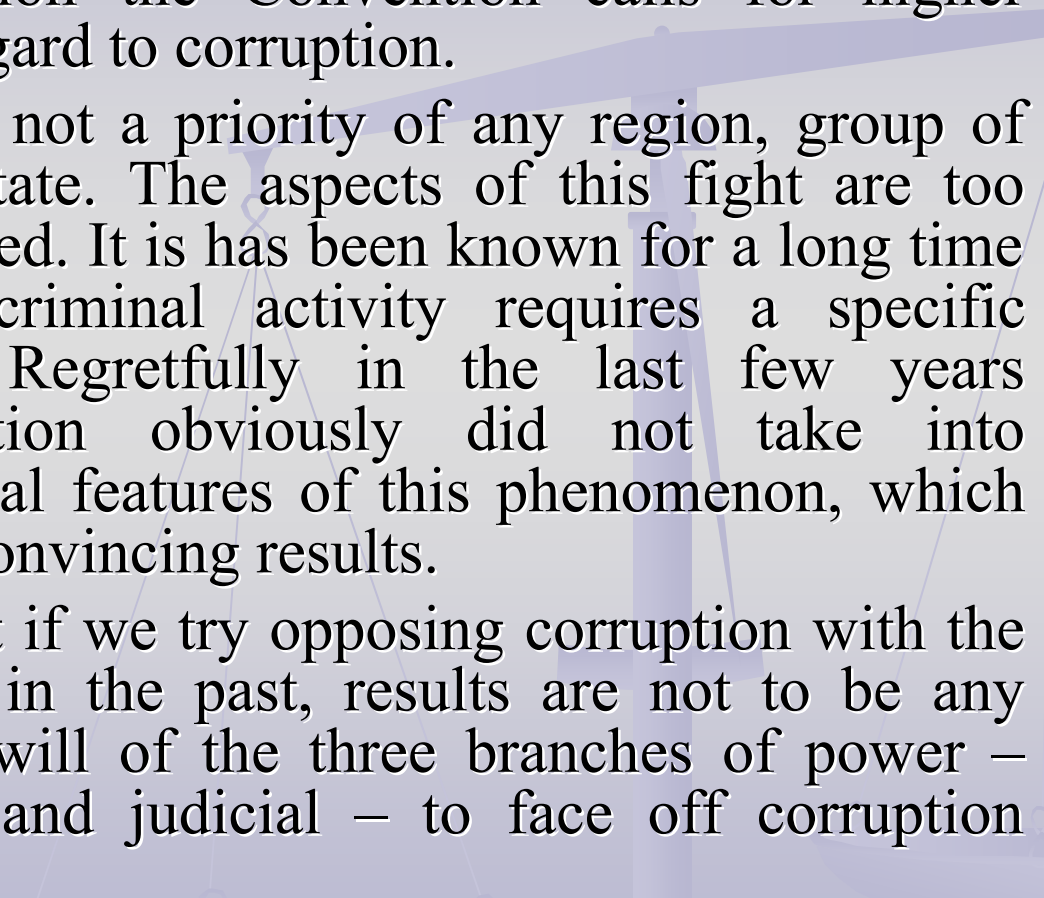
3. Legal frame:

- Corruption is an old subject with a relatively new response. This response at international level is represented by series of conventions. These include:
- The Inter American Convention against Corruption (1996)
- The Convention on the Fight Against Corruption involving Officials of the European Communities, or Officials of Member-States of the European Union (1997)
- The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD 1997)

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- The Criminal Law Convention against Corruption (Council of Europe 1999)
 - The Civil Law Convention against Corruption (Council of Europe 1999)
 - African Union Convention on Preventing and Combating Corruption (2003)
 - The UN Convention against Corruption (2003)

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- Although there are overlaps in the earlier conventions a unified approach came in the shape of the UN Convention against Corruption in 2003. Harmonization, criminalising **key elements of corruptive behaviour** such as promising, offering, giving, soliciting, or accepting an undue advantage is largely in place both within the European Union and accession candidate countries.
 - The UN Convention against Corruption (2003) plays a significant role in the attempt of defining corruption as a complex phenomenon. “The Convention provides a comprehensive set of standards and measures to promote international co-operation and domestic efforts in the fight to prevent corruption. It includes provisions applying to the public sector such as criteria for public procurement, rules for recruitment and hiring of civil servants in the public administration as well as rules applying to the private sector.

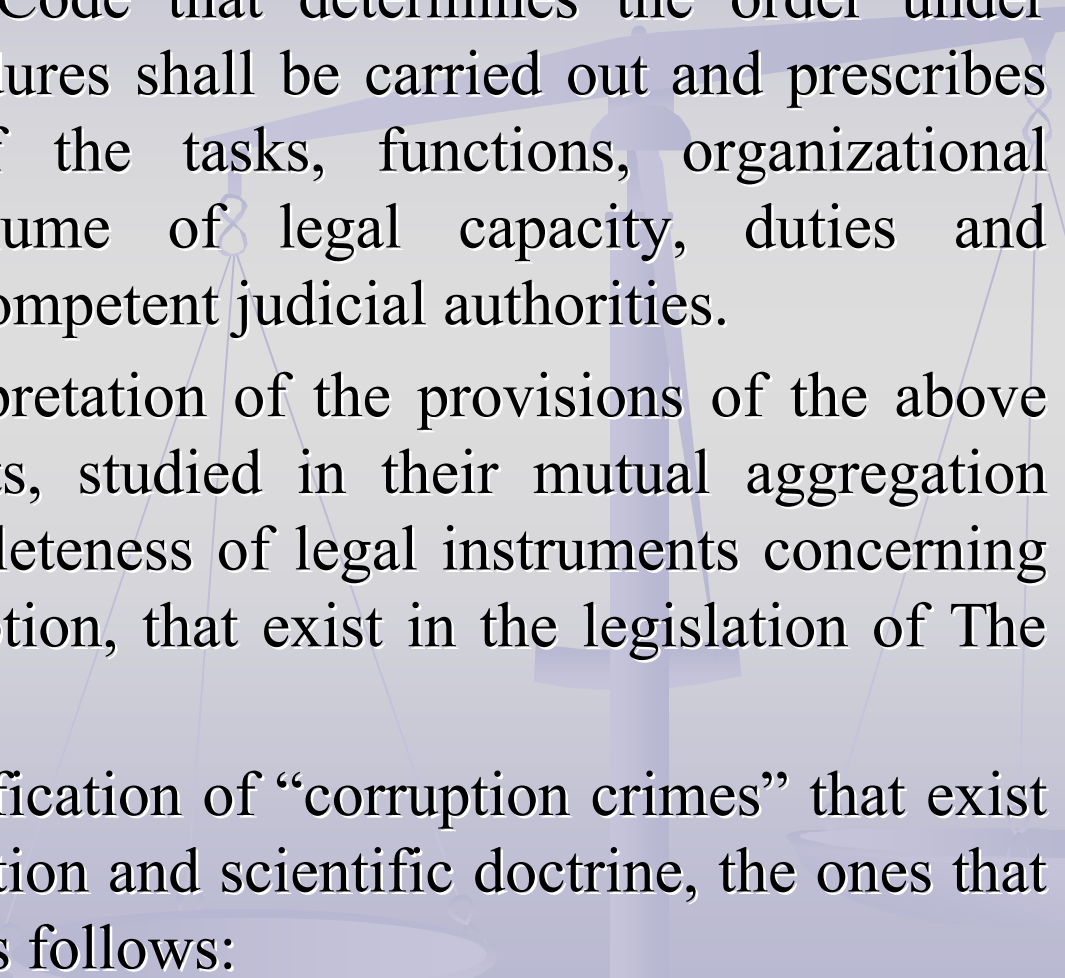
- The Convention binds ratifying countries to criminalize corrupt practices, develop institutions to prevent corrupt practices and prosecute offenders." (International Law in Brief)
- Representatives from the governments of more than 100 countries got together in 2003 in Mérida, Mexico, to sign the first international and legally binding agreement for fighting corruption. Today the United Nations Convention against Corruption is signed by 140 countries and ratified by 61 of them. It went into effect on 14th December 2005 pursuant to the ordinance of Article 68.
- *Article 68 (1) which reads as follows: "1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization. 2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later."*
- **Status:** Signatories: 140, Ratifications/Accessions: 61.

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- The special UN Convention is the first global act in the fight against corruption, which begets legal consequences. Alongside the measures for prevention, incrimination and international cooperation the Convention calls for higher public sensitivity in regard to corruption.
 - Fighting corruption is not a priority of any region, group of states or a separate state. The aspects of this fight are too complex and many-sided. It has been known for a long time that every specific criminal activity requires a specific counteraction tools. Regretfully in the last few years counteracting corruption obviously did not take into consideration all special features of this phenomenon, which explains the so far unconvincing results.
 - There is no doubt, that if we try opposing corruption with the means we have used in the past, results are not to be any different, despite the will of the three branches of power – legislative, executive and judicial – to face off corruption crimes.

4. Anti-corruption legislation in Bulgaria:

■ 4.1. General principles and fundamental rules:

- According to Article 4 Paragraph 1 from The Constitution of The Republic of Bulgaria “The Republic of Bulgaria shall be a law-governed state. It shall be governed by the Constitution and the laws of the country”.
- Therefore, the legal frame that determines the essential principles and defines the organizational relationships within the judicial system branch, concerning the competent authorities and the variety of legal instruments in the fight against corruption consists of:
- The Constitution, as the supreme law of the state, which provisions has a direct application and delineates the general principles and fundamental rules of the judiciary.

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- The Judicial System Act, as an organizational law that regulates in a more precise manner the structure of the judicial authorities, their statute, competence and tasks.
 - The Penal Procedure Code that determines the order under which the penal procedures shall be carried out and prescribes detailed regulation of the tasks, functions, organizational relationships and volume of legal capacity, duties and responsibilities of the competent judicial authorities.
 - The analysis and interpretation of the provisions of the above stated legal instruments, studied in their mutual aggregation would reveal the completeness of legal instruments concerning the fight against corruption, that exist in the legislation of The Republic of Bulgaria.
 - According to the classification of “corruption crimes” that exist in the Bulgarian legislation and scientific doctrine, the ones that have a major role are, as follows:

■ **PENAL CODE**

- Prom. SG. 26/2 Apr 1968, corr. SG. 29/12 Apr 1968; last amend. SG. 88/4 Nov 2005

■ Chapter six.

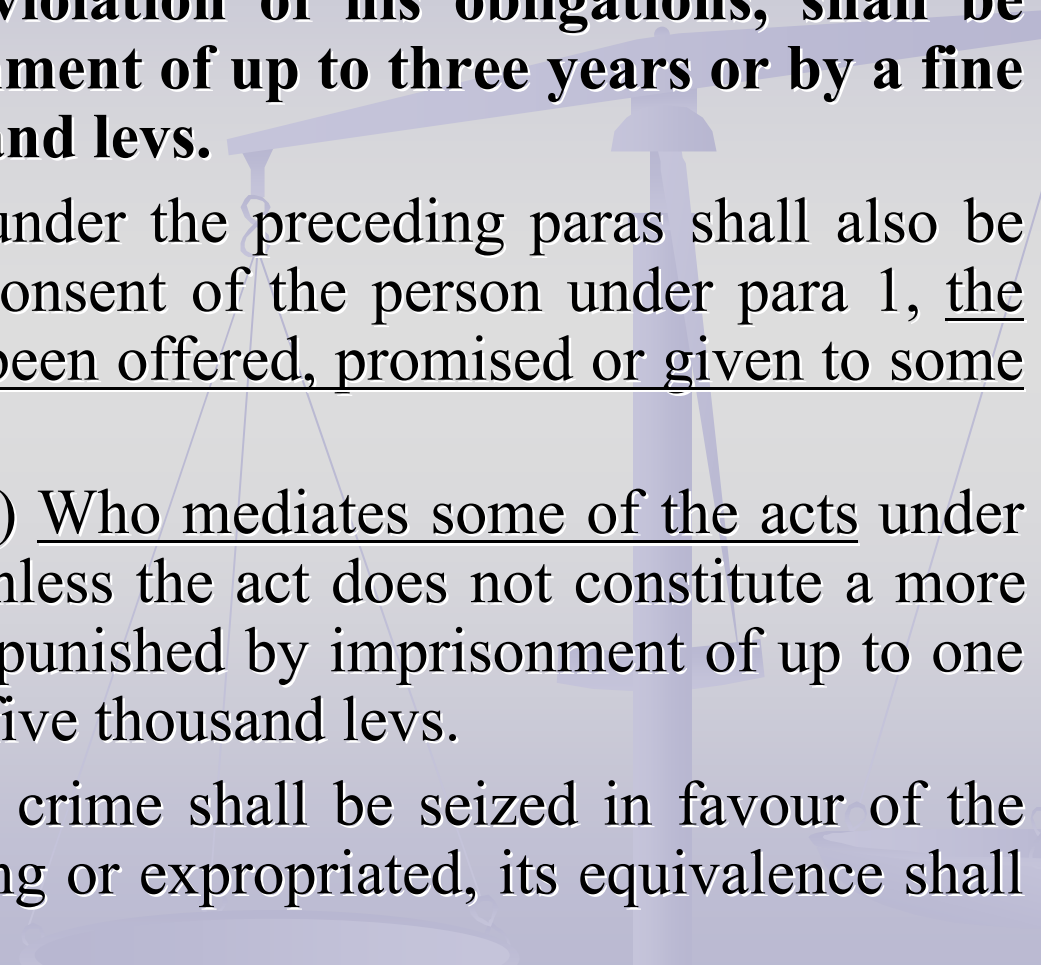
■ **OFFENCE AGAINST THE ECONOMY**

■ Section I.

■ **GENERAL PROPERTY OFFENCES**

- **Art. 225b.** (New, SG 28/82) (1) (Amend., SG 10/93; amend., SG 92/02) **Who receives property benefit which is not due for performed work or provided service, unless the act represents a more serious crime, shall be punished by imprisonment of up to two years and by a fine of one hundred to three hundred levs.**

- (2) If the act under the preceding para is committed again or the benefit is large in size the punishment shall be imprisonment of up to three years.
- (3) (Amend., SG 10/93; amend., SG 92/02) In minor cases under para 1 the punishment shall be a fine of one hundred to three hundred levs, imposed through administrative channels.
- (4) The subject of the crime shall be seized in favour of the state.
- **Art. 225c. (New, SG 92/02) (1) Who, in fulfilment of a job for a corporate body or sole entrepreneur, requests or receives a gift or whatever benefit which is not due, or accepts an offer or promise for a gift or benefit in order to fulfil or not fulfil an act in violation of his obligations in carrying out trading activity, shall be punished by imprisonment of up to five years or by a fine of up to twenty thousand levs.**

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- (2) **Who, in carrying out trading activity, offers or gives a gift or whatever benefit to a person working for a corporate body or sole entrepreneur in order to fulfil or not fulfil an act in violation of his obligations, shall be punished by imprisonment of up to three years or by a fine of up to fifteen thousand levs.**
 - (3) The punishments under the preceding paras shall also be imposed when, by a consent of the person under para 1, the gift or the benefit has been offered, promised or given to some one else.
 - (4) (amend., SG 26/04) Who mediates some of the acts under the preceding paras, unless the act does not constitute a more severe crime, shall be punished by imprisonment of up to one year or a fine of up to five thousand levs.
 - (5) The subject of the crime shall be seized in favour of the state, and if it is missing or expropriated, its equivalence shall be awarded.

- Chapter eight.

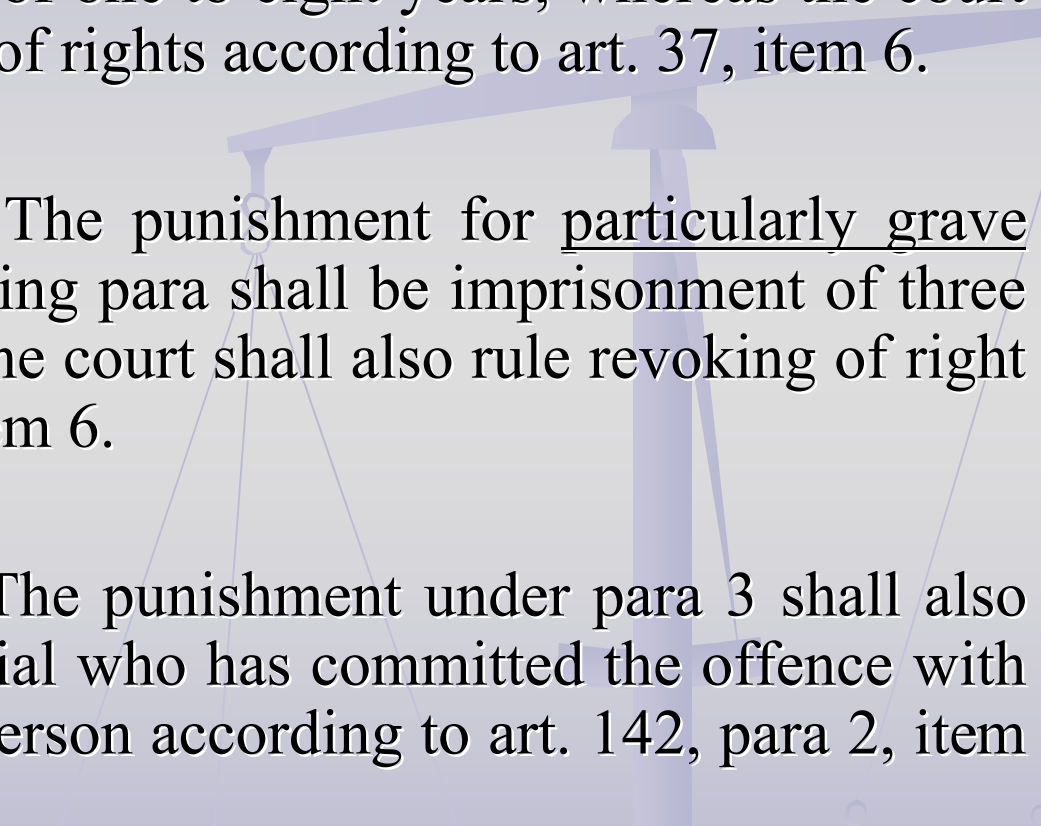
OFFENCES AGAINST THE ACTIVITY OF STATE BODIES, PUBLIC ORGANISATIONS AND PERSONS PERFORMING PUBLIC DUTIES

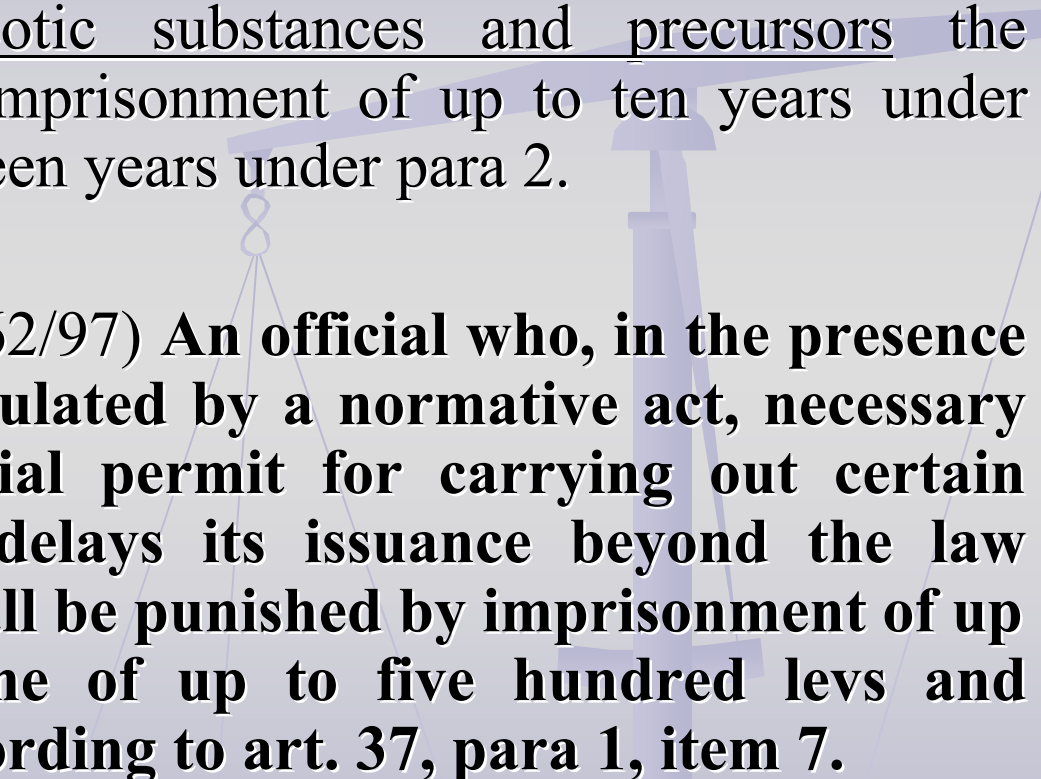
(Title amend. SG 43/05, in Force from 1st of September 2005)

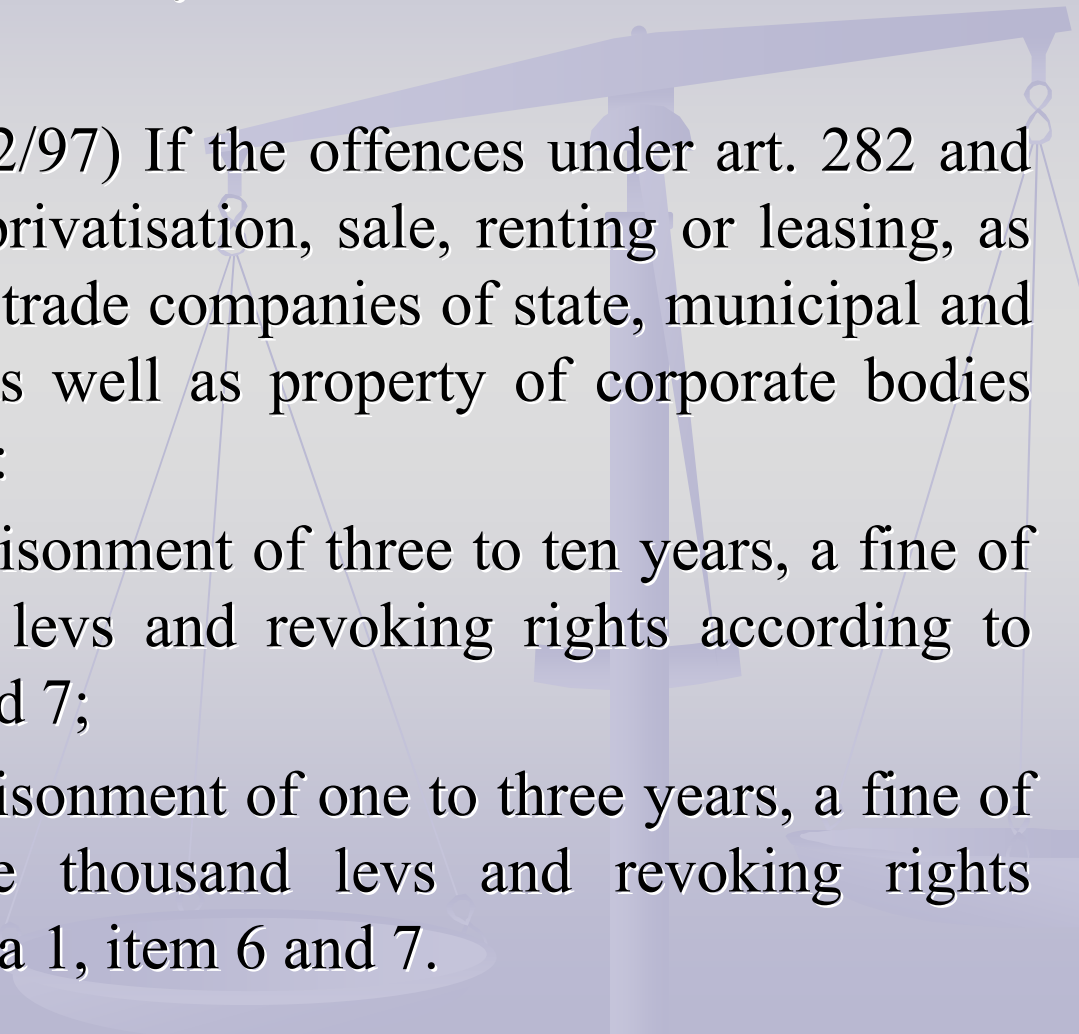
Section II.

Criminal Breach of Trust

- **Art. 282. (1) (Amend., SG 28/82) An official who violates or does not fulfil his official duties, or exceeds his authority or rights with the purpose of obtaining for himself or for another benefit or to cause somebody else damage which can cause major harmful damages, shall be punished by imprisonment of up to five years, whereas the court can also rule revoking of rights according to art. 37, item 6, or corrective labour.**

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- (2) (Amend. and suppl., SG 89/86) If the act has caused substantial consequences or it has been committed by a person who occupies an important official position the punishment shall be imprisonment of one to eight years, whereas the court can also rule revoking of rights according to art. 37, item 6.
 - (3) (New, SG 89/86) The punishment for particularly grave cases under the preceding para shall be imprisonment of three to ten years, whereas the court shall also rule revoking of right according to art. 37, item 6.
 - (4) (New, SG 62/97) The punishment under para 3 shall also be imposed to an official who has committed the offence with the participation of a person according to art. 142, para 2, item 6 and 8.

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- (5) (New, SG 21/00) If the act under the preceding paras is related to exercising control over the production, processing, storing, trade in the country, the import, export, transit and accountancy of narcotic substances and precursors the punishment shall be imprisonment of up to ten years under para 1 and three to fifteen years under para 2.
 - **Art. 282a.** (New, SG 62/97) **An official who, in the presence of the conditions stipulated by a normative act, necessary for issuance of special permit for carrying out certain activity, refuses or delays its issuance beyond the law determined terms shall be punished by imprisonment of up to three years, a fine of up to five hundred levs and revoking of right according to art. 37, para 1, item 7.**



- **Art. 283.** (Amend., SG 26/73, SG 28/82) **An official who uses his official position in order to provide for himself or for somebody else unlawful benefit shall be punished by imprisonment of up to three years.**

- Art. 283a. (New, SG 62/97) If the offences under art. 282 and 283 are related to the privatisation, sale, renting or leasing, as well as the inclusion in trade companies of state, municipal and cooperative property, as well as property of corporate bodies the punishment shall be:

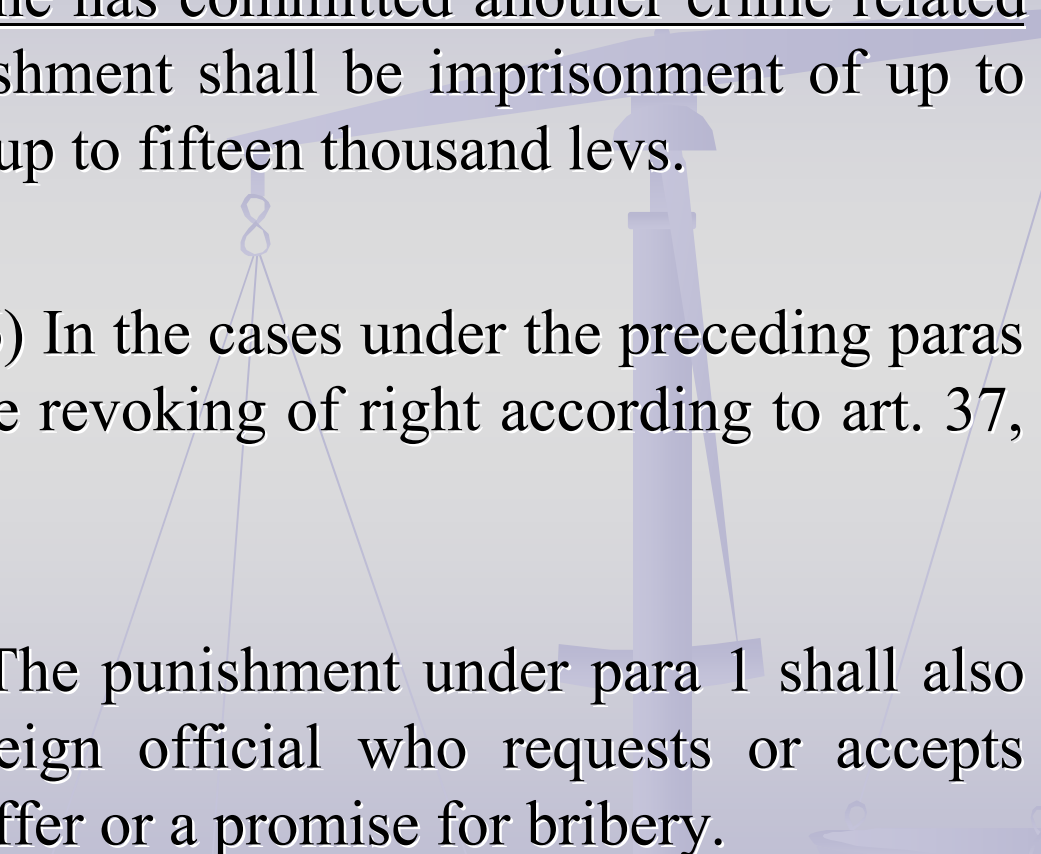
- 1. under art. 282 - imprisonment of three to ten years, a fine of three to five thousand levs and revoking rights according to art.37, para 1, item 6 and 7;

- 2. under art. 283 - imprisonment of one to three years, a fine of one thousand to three thousand levs and revoking rights according to art. 37, para 1, item 6 and 7.

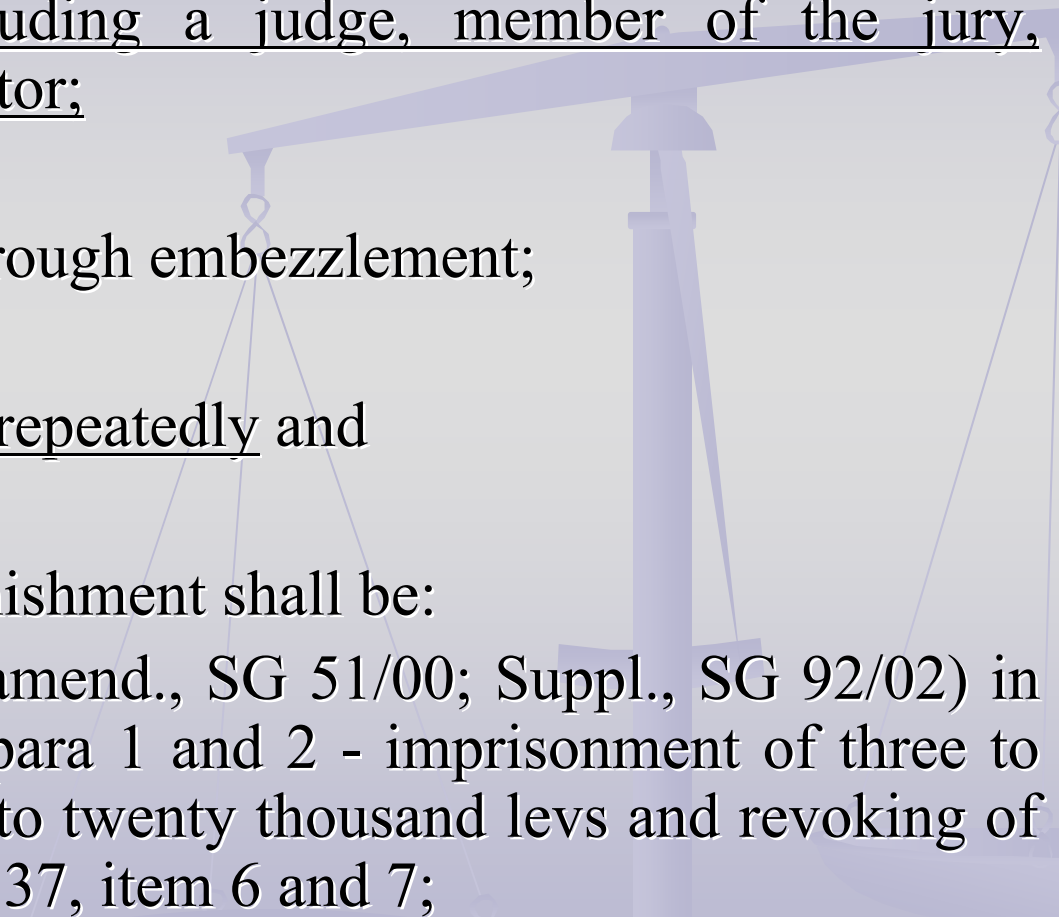
Section IV

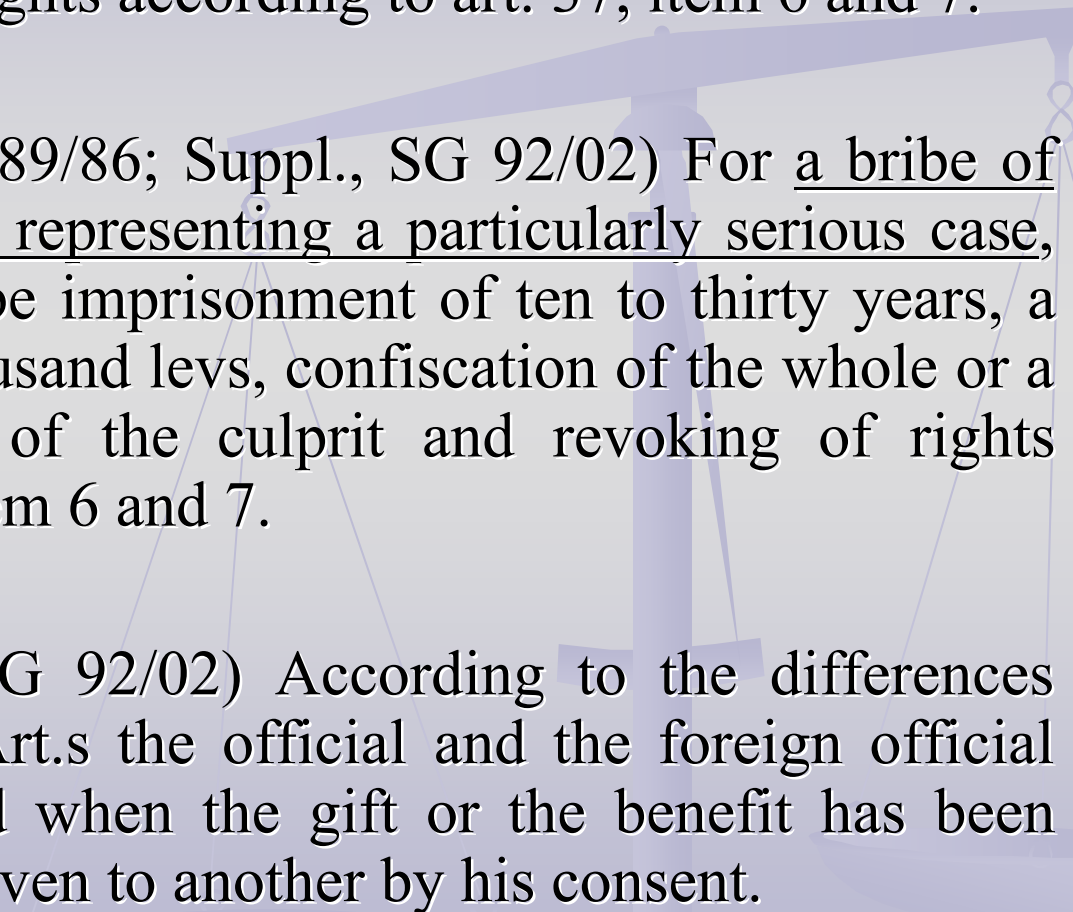
Bribery

- Passive Bribery:
- **Art. 301. (1) (Amend., SG 51/00; Amend., SG 92/02) An official who requests or accepts a gift or any other benefit whatsoever, which is not due, in order to perform or not an act on business or because he has or has not performed such an activity shall be punished for bribery by imprisonment of up to six years and a fine of up to five thousand levs.**
- (2) (Amend., SG 51/00; Amend., SG 92/02) If the official has committed some of the acts under para 1 in order to offend or because he has offended his office, if this offence does not represent a crime, the punishment shall be imprisonment of up to eight years and a fine of up to ten thousand levs.

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- (3) (Amend., SG 95/75; SG 51/00; Amend., SG 92/02) If the official has committed some of the acts under para 1 in order to commit or because he has committed another crime related to his office, the punishment shall be imprisonment of up to ten years and a fine of up to fifteen thousand levs.
 - (4) (Amend., SG 89/86) In the cases under the preceding paras the court shall also rule revoking of right according to art. 37, item 6 and 7.
 - (5) (New, SG 92/02) The punishment under para 1 shall also be imposed on a foreign official who requests or accepts bribery or accepts an offer or a promise for bribery.

■ **Art. 302. For a bribery made:**

- 1. (Suppl., SG 92/02) by a person who occupies a responsible official position, including a judge, member of the jury, prosecutor or investigator;
 - 2. through extortion through embezzlement;
 - 3. (amend., SG 28/82) repeatedly and
 - 4. in large size, the punishment shall be:
 - a) (suppl., SG 89/86; amend., SG 51/00; Suppl., SG 92/02) in the cases of art. 301, para 1 and 2 - imprisonment of three to ten years, a fine of up to twenty thousand levs and revoking of rights according to art. 37, item 6 and 7;
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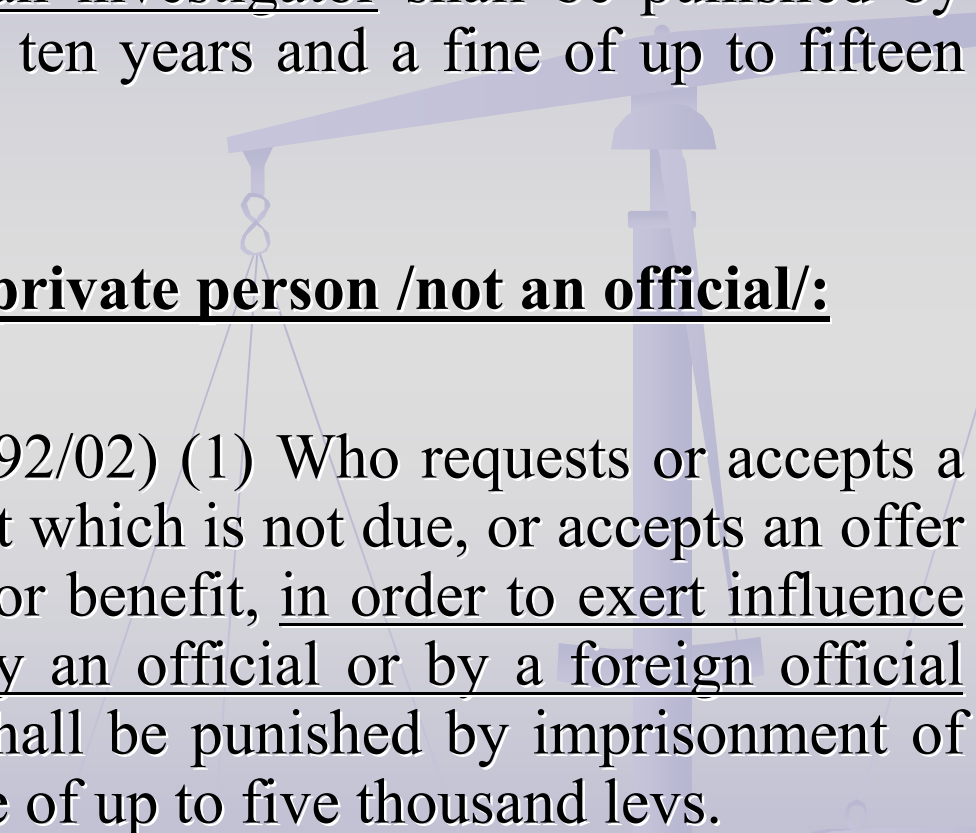
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- b) (amend., SG 89/86; Suppl., SG 92/02) in the cases of art. 301, para 3 - imprisonment of three to fifteen years, a fine of up to twenty five thousand levs and confiscation of up to one seconds of the property of the culprit, whereas the court shall also rule revoking of rights according to art. 37, item 6 and 7.
 - **Art. 302a.** (New, SG 89/86; Suppl., SG 92/02) For a bribe of particularly large size, representing a particularly serious case, the punishment shall be imprisonment of ten to thirty years, a fine of up to thirty thousand levs, confiscation of the whole or a part of the property of the culprit and revoking of rights according to art. 37, item 6 and 7.
 - Art. 303. (Amend., SG 92/02) According to the differences under the preceding Art.s the official and the foreign official shall also be punished when the gift or the benefit has been offered, promised or given to another by his consent.

- **Active Bribery:**

- **Art. 304.** (Amend., SG 92/02) (1) Who offers, promises or gives a gift or any other benefit whatsoever to an official in order to fulfil or not an activity related to his office, or because he has fulfilled or not such activity, shall be punished by imprisonment of up to six years and a fine of up to five thousand levs.

- (2) If, in connection with the bribery, the official has violated his official obligations the punishment shall be imprisonment of up to eight years and a fine of up to seven thousand levs, where this offence does not constitute a more severe crime.

- (3) The punishment under para 1 shall also be imposed to those who offer, promise or give a bribe to a foreign official.

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- **Art. 304a.** (New, SG 51/00; Amend., SG 92/02) Who offers, promises or gives a bribe to an official occupying a responsible position, including to a judge, a member of the jury, a prosecutor or an investigator shall be punished by imprisonment of up to ten years and a fine of up to fifteen thousand levs.
 - **Passive Bribery by a private person /not an official/:**
 - **Art. 304b.** (New, SG 92/02) (1) Who requests or accepts a gift or whatever benefit which is not due, or accepts an offer or a promise of a gift or benefit, in order to exert influence in taking a decision by an official or by a foreign official related to his office, shall be punished by imprisonment of up to six years or a fine of up to five thousand levs.

■ **Active Bribery by a private person /not an official/:**

- (2) Who offers, promises or gives a gift or whatever benefit which is not due to a person maintaining that he can exert influence according to para 1 shall be punished by imprisonment of up to three years or a fine of up to three thousand levs.
- **Art. 305.** (Amend., SG 92/02) (1) The punishments for bribery under the preceding Art.s shall also be imposed on an arbitrator or an expert, appointed by a court, establishment, enterprise or organisation, if he commits such acts in connection with his assigned task, as well as on those who offers, promises or gives such a bribe.
- (2) The punishments for bribery under the preceding Art.s shall also be imposed on a defender or a client when they commit such acts in order to help settlement in favour of the opposite party or to the detriment of the client a criminal or civil case, as well as on the one who offers, promises and gives such a bribe.

- **Mediation of bribery:**

- **Art. 305a.** (New, SG 28/82; Amend., SG 92/02) **Who mediates the commitment of some of the acts under the preceding paras**, unless the act represents a more severe crime, shall be punished by imprisonment of up to three years and a fine of up to five thousand levs.
- **Art. 306.** (Amend., SG 92/02) **Not punished shall be the one who has offered, promised or given a bribe if he has been blackmailed by the official, the arbitrator or by the expert to do that or if he has informed the authorities immediately and voluntarily.**

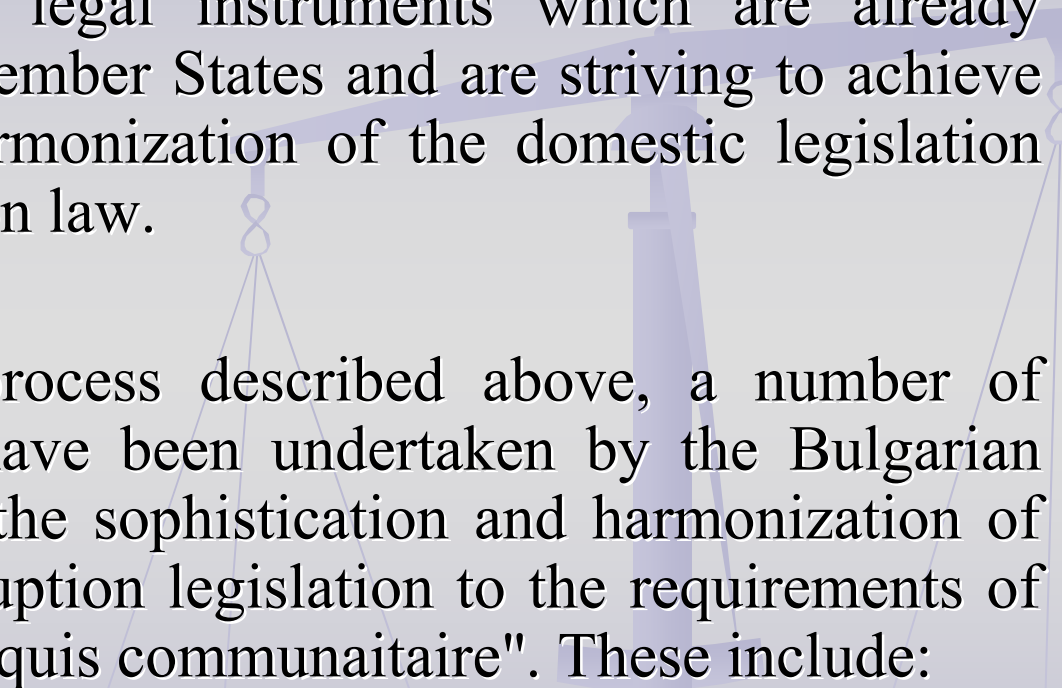
- Provocation of bribery:

- **Art. 307.** (Amend., SG 51/00) **Who intentionally creates circumstances or conditions in order to provoke offering, giving or receiving of a bribe with a purpose of doing harm to those who gives or receives the bribe shall be punished for provoking a bribe by imprisonment of up to three years.**

- Art. 307a. (New, SG 28/82; Amend., SG 92/02) The subject of the crime under this section shall be seized in favour of the state, and if it is missing its equivalence shall be adjudicated.

4.2. Legal instruments and relevant legislative acts:

- By signing the Accession Treaty in 2005, Bulgaria has joined the European Union on January 1st, 2007 and has become a Member State, incorporating the considerable volume of legitimate rights and obligations to follow.
- An essential obligation that results the Bulgarian accession to the EU is the harmonization of domestic legislation with the EU laws, as well as cooperation between the local judicial authorities in criminal matters and the relevant organizational structures within the Union itself. More precisely meeting the specific requirements of the principles and good practices of mutual legal assistance and strengthening the development further on.

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- In order to accomplish the requirements of the EU Treaty rules the Bulgarian authorities have adopted in recent years a number of important legal instruments which are already implemented in the Member States and are striving to achieve and cope with the harmonization of the domestic legislation and the European Union law.
 - As a result of the process described above, a number of legislative measures have been undertaken by the Bulgarian authorities, regarding the sophistication and harmonization of the domestic anti-corruption legislation to the requirements of the European Union "acquis communautaire". These include:

■ **Law for the Audit Office:**

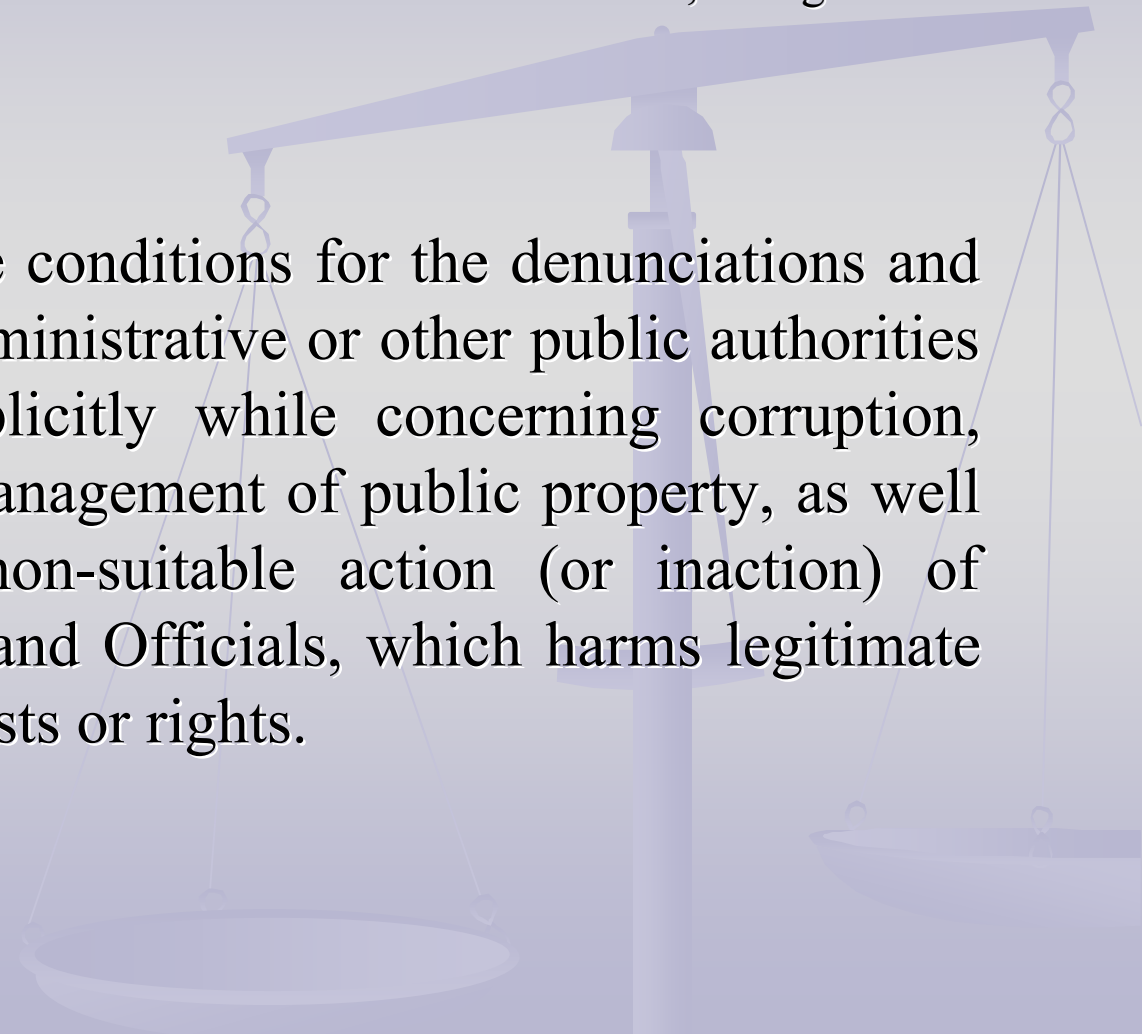
- Published in the State Gazette as follows: SG № 109 -12/18/01 Modifications: SG № 45 – 04/30/02; SG № 31 – 04/04/03; SG № 38 – 05/11/04; SG № 34- 04/19/05; SG №105 – 12/29/05; SG № 24 – 03/21/06; SG № 27 – 03/31/06; SG № 33 – 04/21/06; SG №37 – 05/05/06.
- This law regulates the audit of public finance by the Bulgarian National Audit Office, which is an independent body auditing the State Budget, the budget of the State social insurances, the budget of the National Health Insurance Fund, the municipal budgets and other budgets, voted by the Parliament.
- The Audit Office inspects public expenditures covered by the central budget as well as by extra-budgetary funds, the management of the national debt, the incomes from privatization and concession and also their redistribution and spending, the financial reports of the local authorities, the financial activities of the political parties, etc.

■ **Law for the State Financial Inspection:**

- Published in the State Gazette as follows: SG №33 – 04/21/06, modified: SG №52 – 07/21/06.
- This law regulates the protection of public financial interest exercised by the State Financial Inspection Agency. The Agency inspects the observation of the normative acts regulating the fiscal and economic activity as well as the accountancy of State-financed bodies; State-owned enterprises; trading societies with a restrictive part of State or municipality-owned capital, legal persons whose debts are granted with State or municipal property; persons which benefit of financial support from State or municipal budgetary funds; extra-budgetary funds or accounts; on the basis of international treaties or EU programs; persons which benefit of financial support from State-owned enterprises as far as the spending of the funds is concerned.

■ **Administrative Procedure Code**

- Published in the State Gazette as follows: SG № 30 – 04/11/2006, in vigor since July 12, 2006.
- This code provides the conditions for the denunciations and other reports to the administrative or other public authorities to be formulated explicitly while concerning corruption, abuse of power, mismanagement of public property, as well as other illegal or non-suitable action (or inaction) of administrative bodies and Officials, which harms legitimate public or private interests or rights.

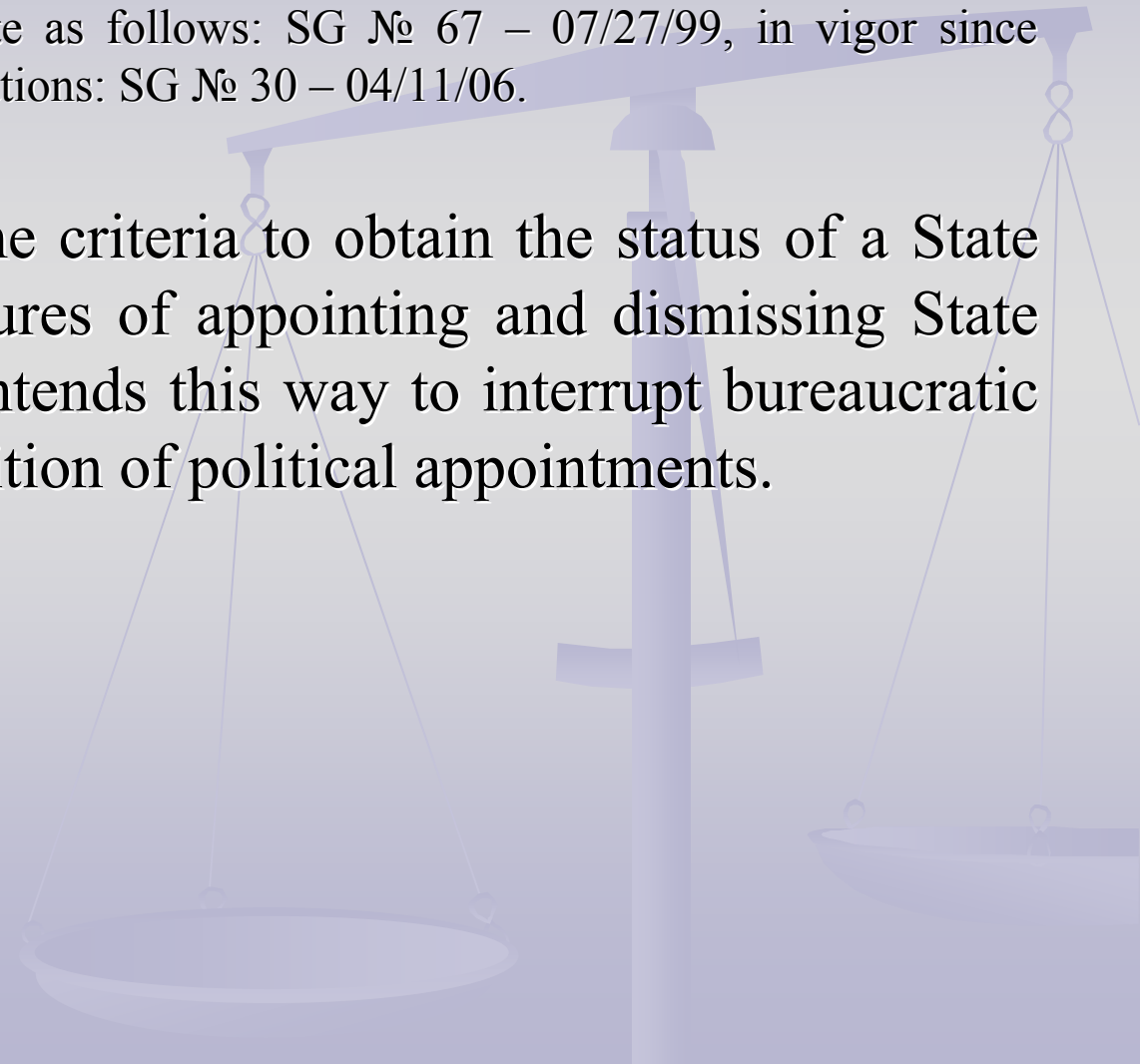


■ Law for the Administration

- Published in the State Gazette as follows: SG № 130 – 11/05/98, modified: SG № 69 – 08/25/2006.
- The 1998 Law thoroughly described the structure of the administration, the distribution of prerogatives among the different bodies of the Executive and the principles and functionality of its design. The recent modifications concerning the reform in public administration aim to set a legal frame in order to achieve the construction of an independent as well as professional administration. The modifications also aim at the establishment of a specialized body, an Inspectorate General with the administration of the Council of Ministers, subject directly to the Prime Minister. This body is entitled to verify reported cases of corruption in bodies within the Executive or committed by State Officials. The results are then reported to the Prime Minister.

■ **Law for the Civil Servant**

- Published in the State Gazette as follows: SG № 67 – 07/27/99, in vigor since August 27, 1999, last modifications: SG № 30 – 04/11/06.
- The law enumerates the criteria to obtain the status of a State Employee, the procedures of appointing and dismissing State Employees. The law intends this way to interrupt bureaucratic continuity and the tradition of political appointments.



■ Law for Access to Public Information

- Published in the State Gazette as follows: SG № 55 – 07/07/00, last modifications: SG № 59 – 07/21/06.
- The law was adopted in 2000 as a part of a set of regulations, aiming at further democratization and sophistication of the State machine and the building of a transparent Administration. It is important to note that, while the access to information concerning the public institutions has been granted by the Constitution (Art. 41, &2) it was in fact heavily restricted until the adoption of this law. The most important purpose of the Access to Public Information Law is to provide a basis on which citizens may obtain information in order to participate in the process of evaluating policies.

■ **The Regulation for the Structure and the Activity of the Ombudsman**

- (modified: SG № 45 – 05/31/05)
- Provides the basis for the reports of corruption to be kept on special record.

■ **Law for the Measures against Money Laundering**

- Prom. SG. 85/24 Jul 1998, amend. SG. 1/2 Jan 2001, amend. SG. 31/4 Apr 2003, amend. SG. 103/23 Dec 2005, amend. SG. 105/29 Dec 2005, amend. SG. 30/11 Apr 2006

■ **Law for the Measures against Financing Terrorism**

- Prom. SG. 16/18 Feb 2003, amend. SG. 31/4 Apr 2003, amend. SG. 19/1 Mar 2005



- **Law of Divestment in Favour of the State of Property Acquired from Criminal Activity**

- Prom. SG. 19/1 Mar 2005, amend. SG. 86/28 Oct 2005, amend. SG. 105/29 Dec 2005

- **Law for Publicity of the Property of Persons Occupying High State Positions**

- Prom. SG. 38/9 May 2000, amend. SG. 28/19 Mar 2002, amend. SG. 74/30 Jul 2002, amend. SG. 8/28 Jan 2003, amend. SG. 38/11 May 2004, amend. SG. 105/29 Dec 2005, amend. SG. 38/9 May 2006

- **Law for the Special Intelligence Devices**

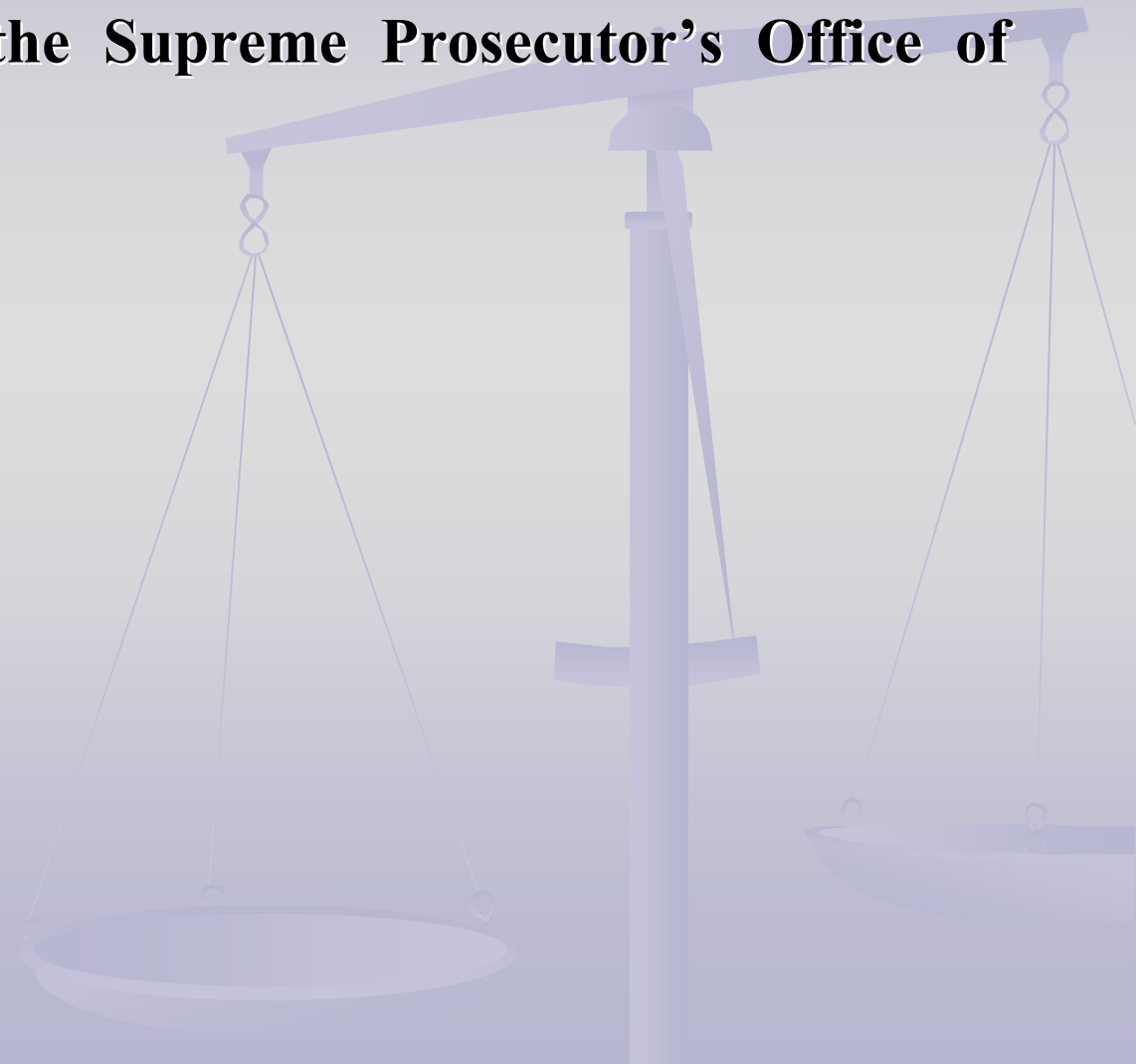
- Prom. SG. 95/21 Oct 1997, suppl. SG. 70/6 Aug 1999, amend. SG. 49/16 Jun 2000, amend. SG. 17/21 Feb 2003, amend. SG. 86/28 Oct 2005, amend. SG. 45/2 Jun 2006, amend. SG. 82/10 Oct 2006, amend. SG. 109/20 Dec 2007

5. Anti-corruption authorities in Bulgaria:

- Hardly anyone can think that corruption can be opposed only through the means of punitive repression. Criminal law is only one tool available to the state in this aspect. However, if the prevention measures needed are not taken, seeking penal responsibility is doomed to be an inefficient counteraction measure. It is of utmost importance to create such a legal environment which to a greatest extent would remove the conditions and the reasons for the existence of the phenomenon of corruption. However, as long as in the Prosecution's competences are primarily the measures related to seeking criminal accountability for corruption crimes, we shall stop mostly on these.

- **5.1. Structure and Activities of the Specialized Department “COUNTERING ORGANIZED CRIME AND CORRUPTION” at the Supreme Prosecutor’s Office of Cassation:**

- **STRUCTURE:**



GENERAL PROSECUTOR

**SPECIALIZED DEPARTMENT
“COUNTERING ORGANIZED CRIME AND CORRUPTION”
AT THE SUPREME**

**SECTOR
“COUNTERING
ORGANIZED CRIME”**

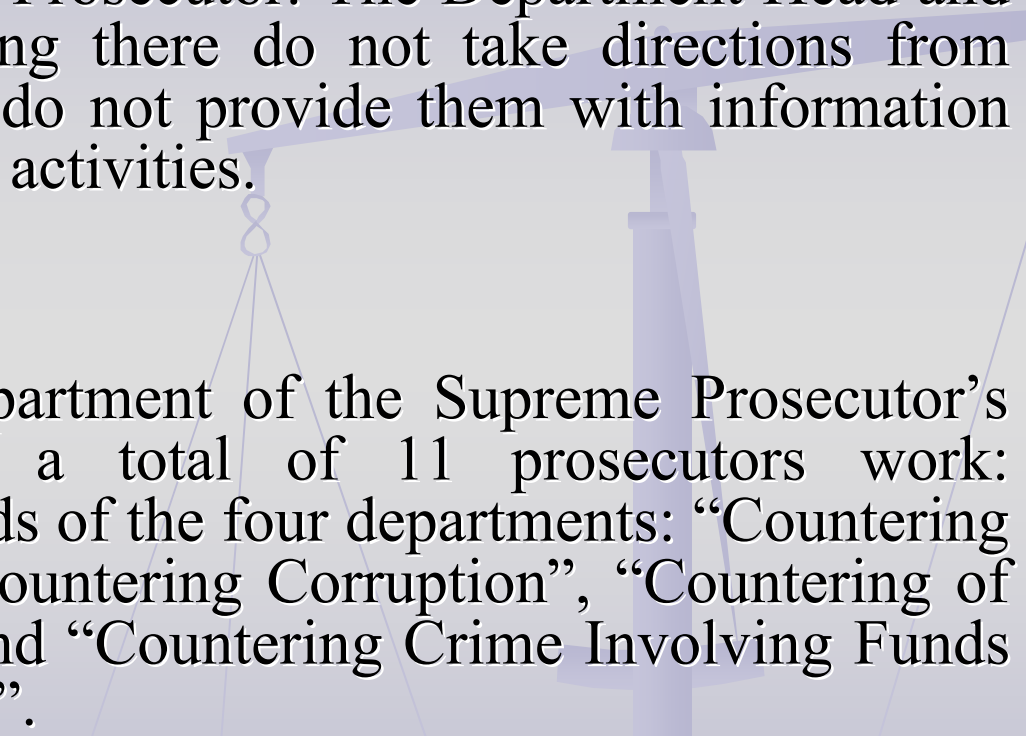
**SECTOR
“COUNTERING
CORRUPTION”**

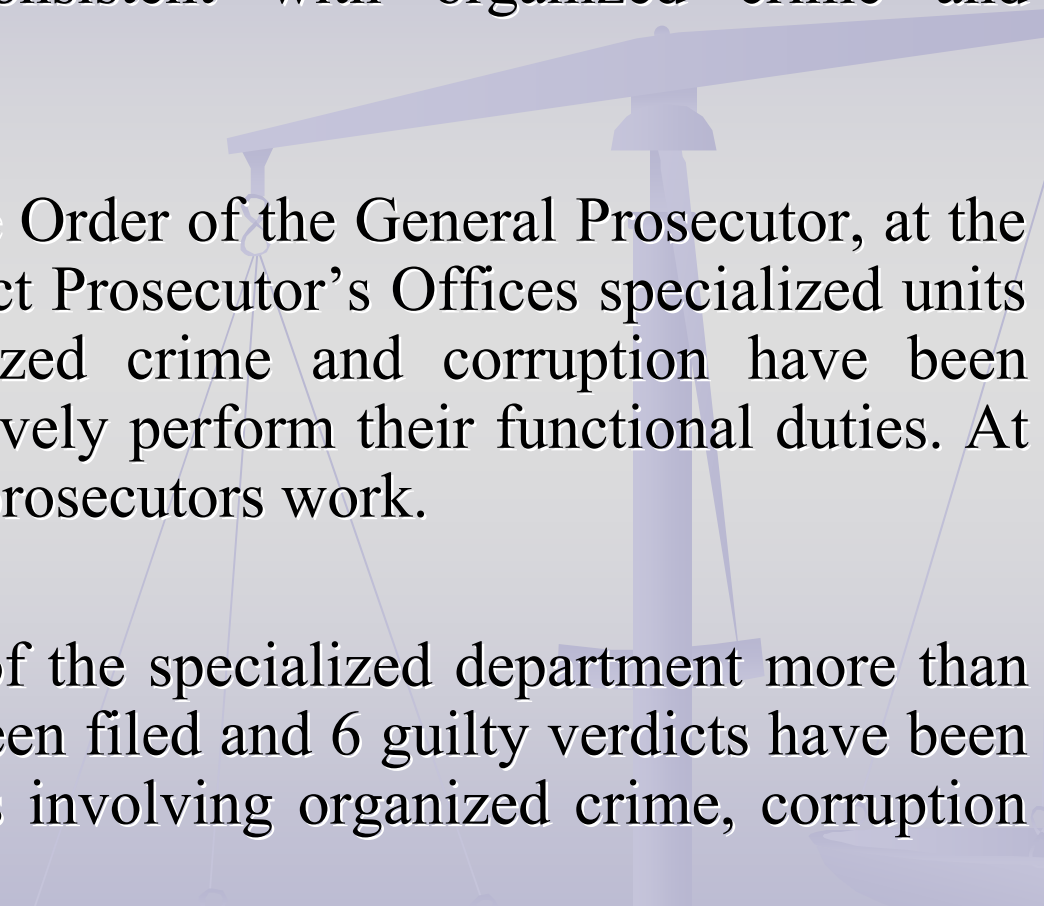
**SECTOR
“COUNTERING CRIME
INVOLVING FUNDS
FROM THE EUROPEAN UNION”**

**SECTOR
“COUNTERING OF
MONEY LAUNDERING”**

**APPELLATION PROSECUTORS’ OFFICES
SPECIALIZED UNITS (DEPARTMENTS)**

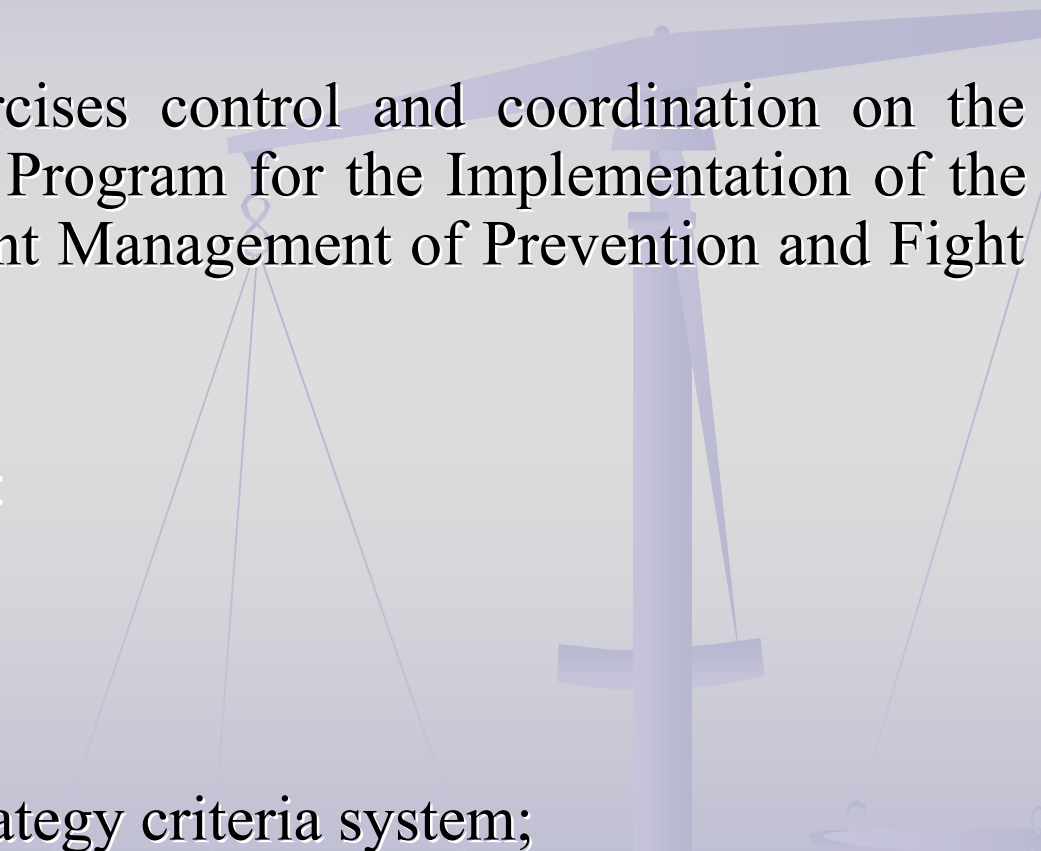
**DISTRICT PROSECUTOR’S OFFICES
SPECIALIZED UNITS (DEPARTMENTS)**

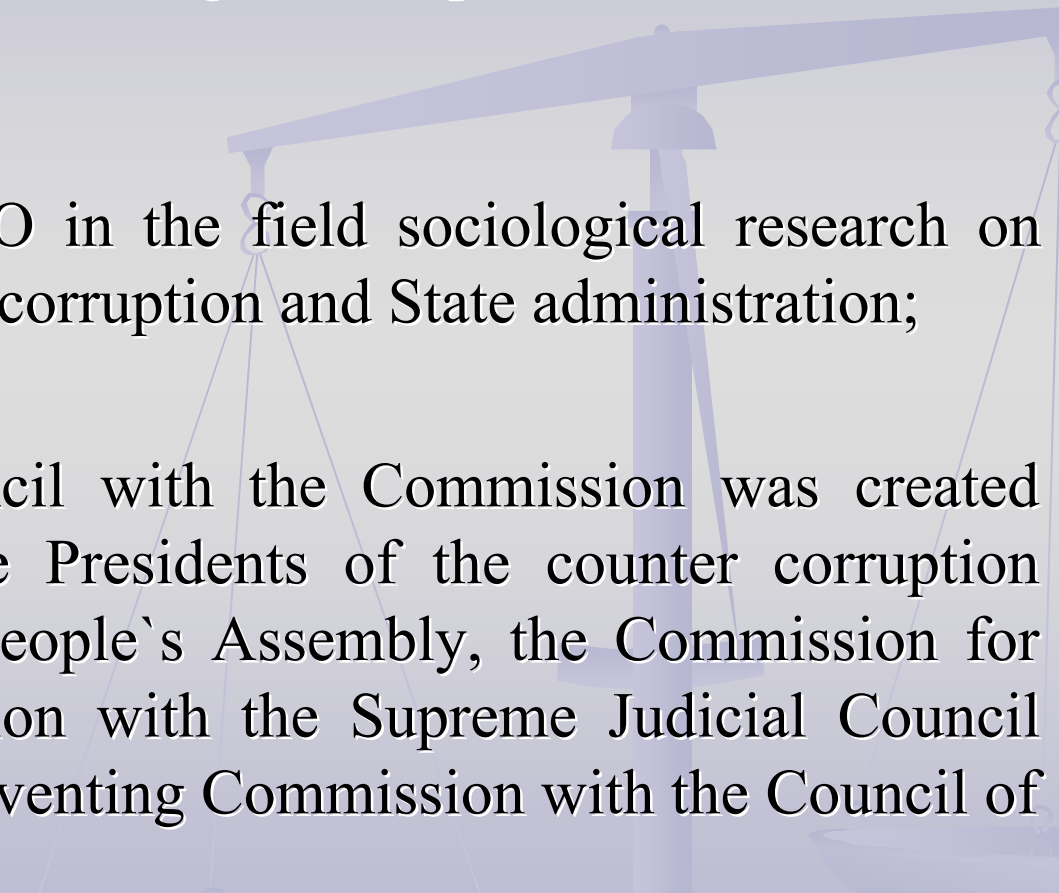
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- The specialized department “Countering Organized Crime and Corruption” was created with an Order of the General Prosecutor № JIC - 905/23.03.2006. The department reports directly to the General Prosecutor. The Department Head and the prosecutors working there do not take directions from other prosecutors and do not provide them with information about the department’s activities.
 - At the specialized department of the Supreme Prosecutor’s Office of Cassation a total of 11 prosecutors work: Department Head, heads of the four departments: “Countering Organized Crime”, “Countering Corruption”, “Countering of Money Laundering” and “Countering Crime Involving Funds of the European Union”.

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- The Department's main task is exercising leadership and supervision of the adherence to legal norms in pre-trial proceedings on correspondences and cases instituted for criminal offences, consistent with organized crime and corruption.
 - In compliance with the Order of the General Prosecutor, at the Appellation and District Prosecutor's Offices specialized units for countering organized crime and corruption have been established, which actively perform their functional duties. At the units specified 83 prosecutors work.
 - Since the structuring of the specialized department more than 40 indictments have been filed and 6 guilty verdicts have been pronounced for crimes involving organized crime, corruption and money laundering.

5.2. Structure and Activities of the Commission on “PREVENTING CORRUPTION” with the Council of Ministers of Bulgaria:

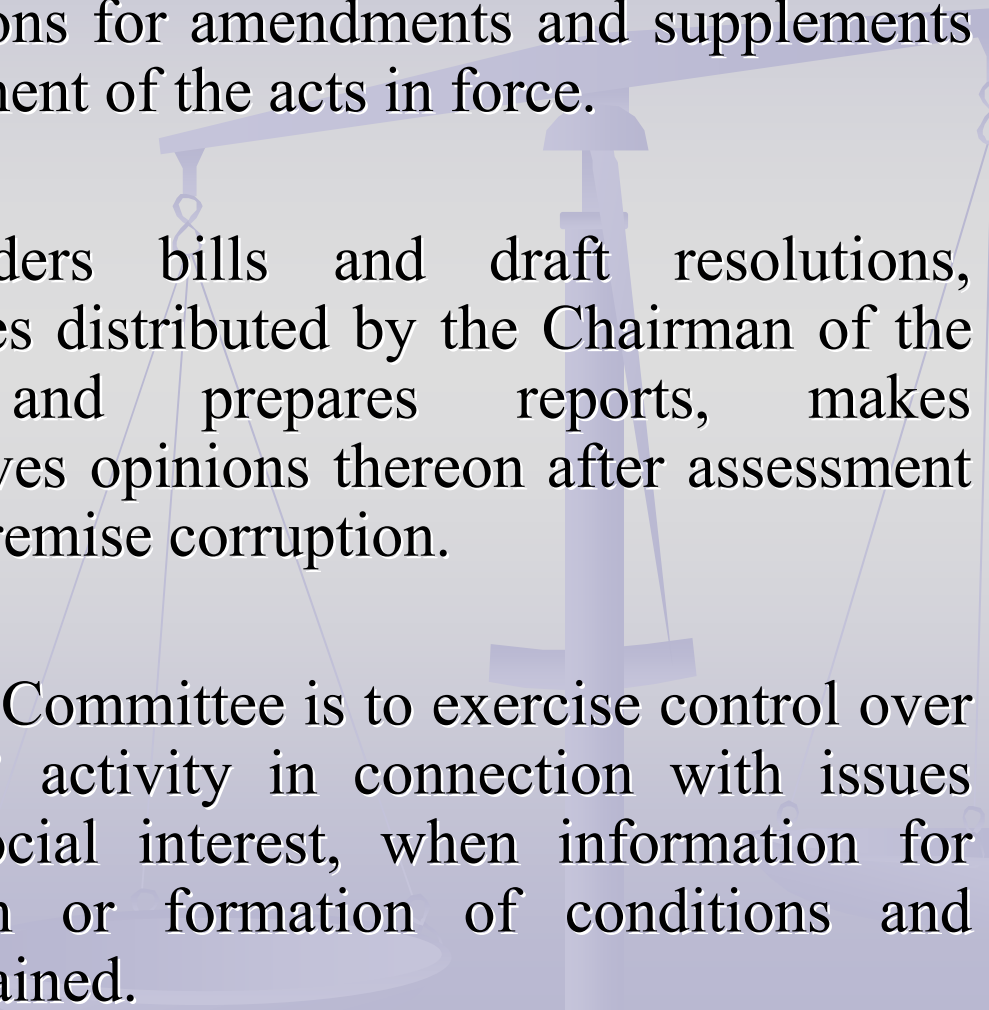
- The Minister of Interior acts as President of The Commission.
- The Minister of Justice and the Minister of State Administration act as Vice-Presidents.
- Members of the commission are: the Ministers of Finance, European Issues, the Depute Ministers of Education and Science, Public Health, the President of the Chamber of Accounts, the Director of the Internal Financial Control State Agency with the Ministry of Finance, the Director of the Financial Investigation Agency with the Minister of Finance, the Executive Director of the National Incomes Agency, the Director of the National Customs Agency with the Ministry of Finance, the Secretary of the Security Council with the Council of Ministers, the Director of the Strategic Planning and Management Directorate with the Administration of the Council of Ministers, the Director of the Coordination Issues Directorate on the European and the International Monetary Institutions, with the Administration of the Council of Ministers.

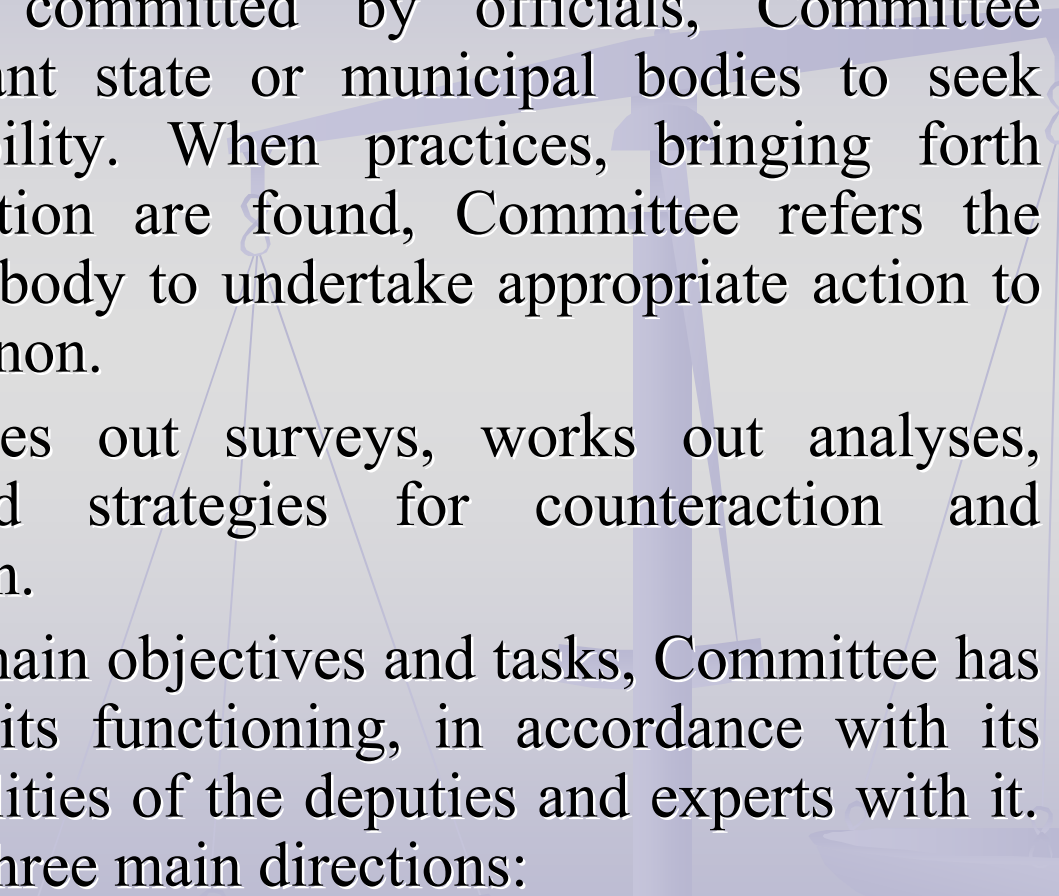
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- The Commission establishes the objectives of the State counter corruption policies and provides the decisions necessary to the struggle against corruption as well as the relations with foreign partners.
 - The Commission exercises control and coordination on the implementation of the Program for the Implementation of the Strategy for Transparent Management of Prevention and Fight against Corruption.
 - Its tasks are as follows:
 - Information analyses;
 - Approbation of the Strategy criteria system;

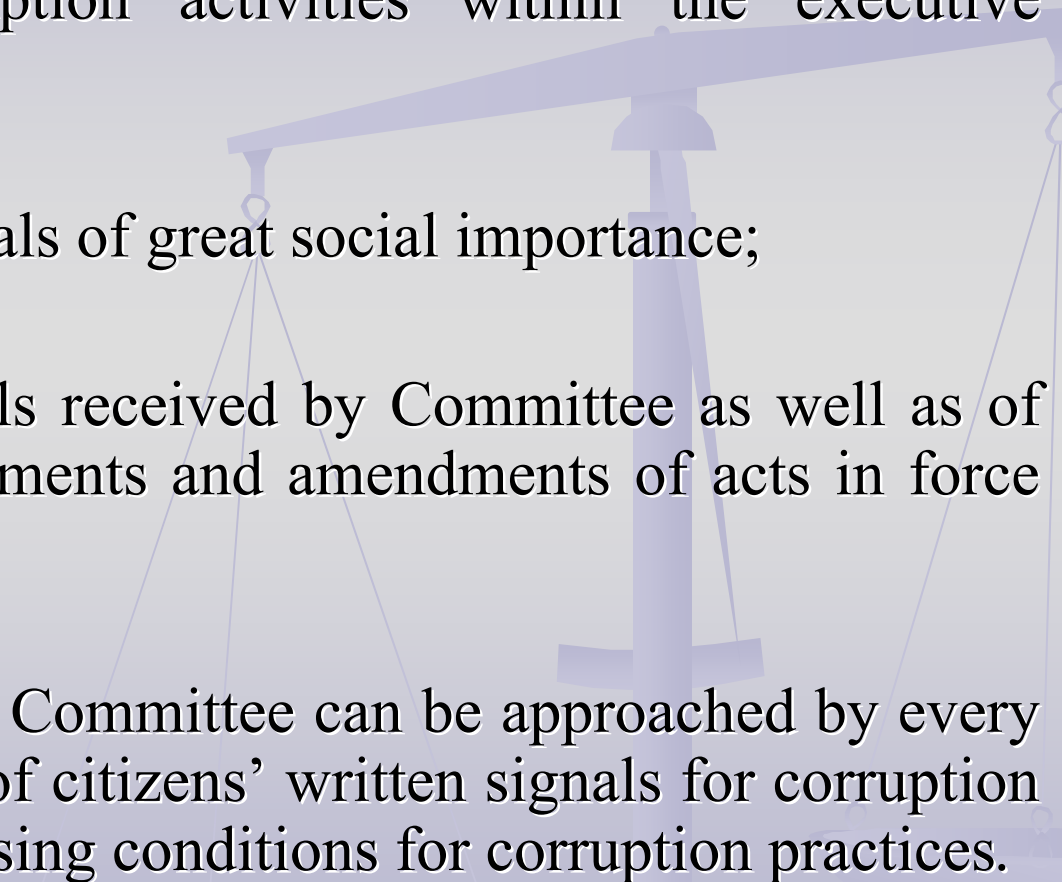
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- Synthesis of the counter corruption measures results;
 - Semestrial Report paper writing. The Report is submitted to the Council of Ministers;
 - Cooperation with NGO in the field sociological research on public opinion towards corruption and State administration;
 - A Coordination Council with the Commission was created recently, featuring the Presidents of the counter corruption Committee with the People's Assembly, the Commission for Fight against Corruption with the Supreme Judicial Council and the Corruption Preventing Commission with the Council of Ministers.

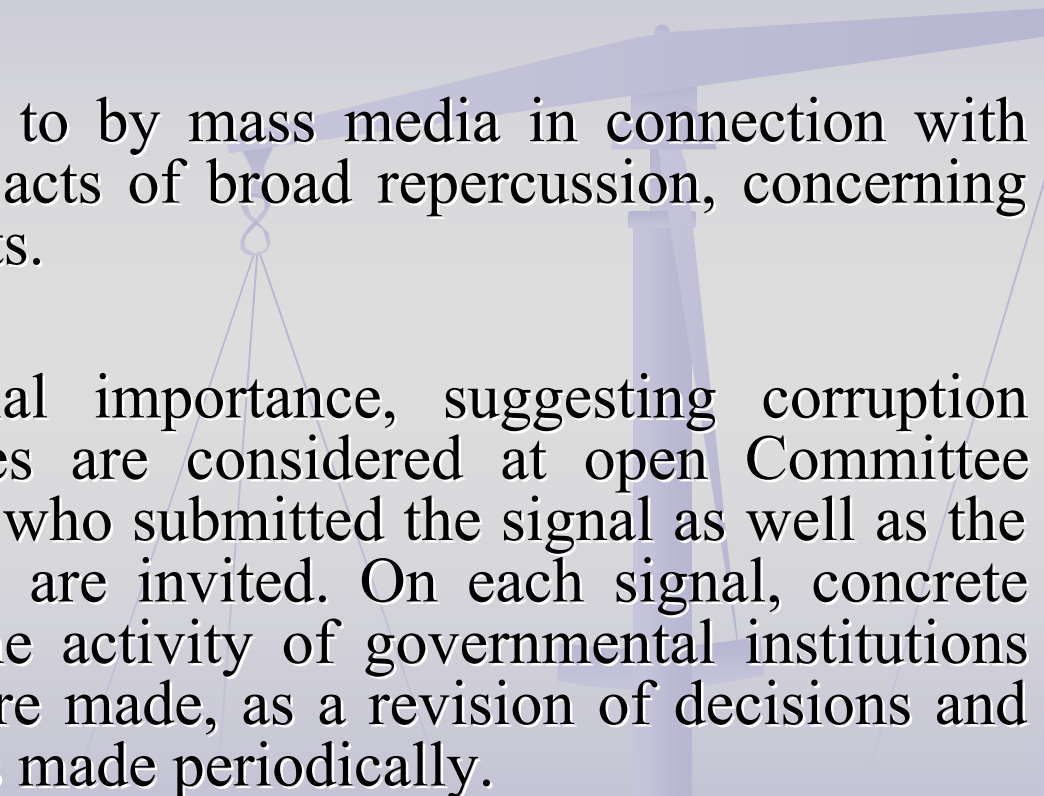
5.3. Structure and Activities of “Combating Corruption Committee” with the National Assembly:

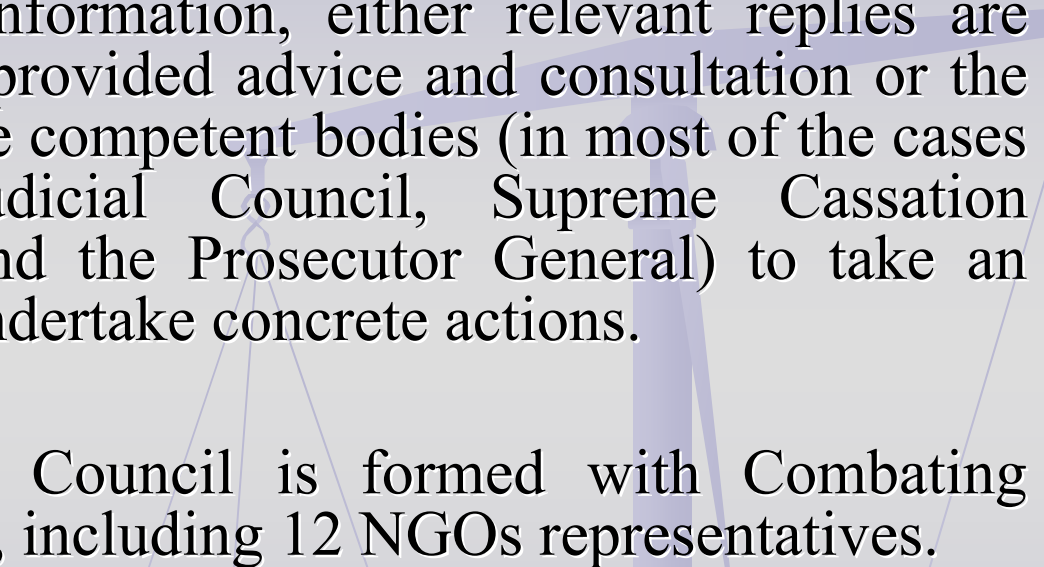
- The Combating Corruption Committee was constituted by a decision of the National Assembly of the Republic of Bulgaria on 24 August 2005.
- The Combating Corruption Committee consists of 17 members - a Chairman, 3 Deputy Chairmen and 12 members, representatives of different parliamentary groups.
- The Combating Corruption Committee’s Objective is counteraction and restriction of corruption by prevention and overcoming corruption practices.
- The Committee, as a body of the National Assembly, assists the coordination between the separate authorities (legislative, executive and judicial) in connection with their activity in the sphere of corruption counteraction and restriction and implementation of the National Strategy for Combating Corruption.

- 
- Committee's main task is to gather information for the effectiveness and implementation of legislation in force and to state the reasons and conditions for corruption acts in certain spheres of social importance and to work out well-grounded statements with suggestions for amendments and supplements or for technical improvement of the acts in force.
 - The Committee considers bills and draft resolutions, declarations and addresses distributed by the Chairman of the National Assembly and prepares reports, makes recommendations and gives opinions thereon after assessment that current regulations premise corruption.
 - Another main task of the Committee is to exercise control over executive power bodies' activity in connection with issues concerning state and social interest, when information for offences and corruption or formation of conditions and premises for such are obtained.

- 
- When signals for corruption acts and practices are obtained and data for eventual crimes found, Committee refers the information gathered to the relevant executive and judicial power bodies, so that they undertake the appropriate measures. When offences are committed by officials, Committee approaches the relevant state or municipal bodies to seek disciplinary responsibility. When practices, bringing forth conditions for corruption are found, Committee refers the matter to the relevant body to undertake appropriate action to liquidate this phenomenon.
 - The Committee carries out surveys, works out analyses, recommendations and strategies for counteraction and restriction of corruption.
 - On the basis of these main objectives and tasks, Committee has created a system for its functioning, in accordance with its authorities and the abilities of the deputies and experts with it. This system works in three main directions:

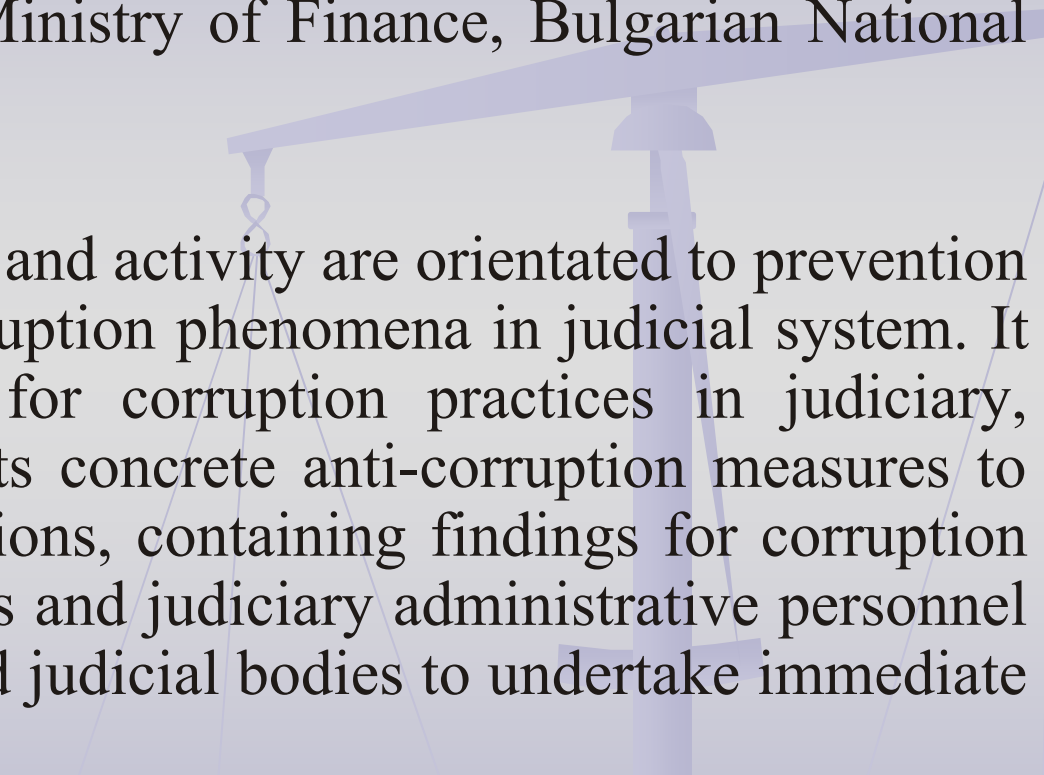
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- Amendments of acts;
 - Parliamentary control over issues connected with corruption conditions and corruption activities within the executive power;
 - Work on concrete signals of great social importance;
 - A register of all signals received by Committee as well as of suggestions for supplements and amendments of acts in force was created.
 - Combating Corruption Committee can be approached by every adult citizen or group of citizens' written signals for corruption acts or activities premising conditions for corruption practices.

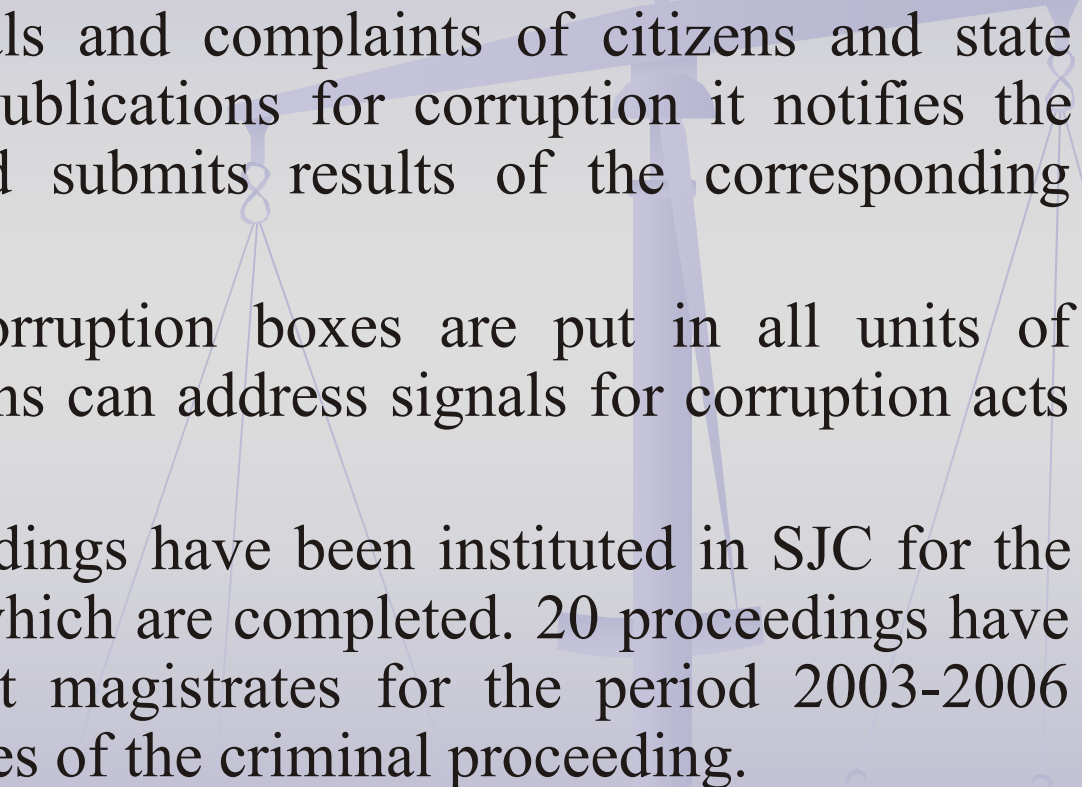
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- Committee does not consider signals from anonymous authors, except for the cases when documents, indicating perpetration of corruption act or presence of corruption conditions, are applied.
 - Committee is referred to by mass media in connection with signals for corruption acts of broad repercussion, concerning state and social interests.
 - Signals of high social importance, suggesting corruption activities and practices are considered at open Committee meetings, where those who submitted the signal as well as the institutions concerned, are invited. On each signal, concrete decisions related to the activity of governmental institutions and local authorities are made, as a revision of decisions and their implementation is made periodically.

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- Signals for corruption, having more private character, are considered by Committee's experts and collaborators and after gathering additional information, either relevant replies are prepared and citizens provided advice and consultation or the matter is referred to the competent bodies (in most of the cases to the Supreme Judicial Council, Supreme Cassation Prosecutor's Office and the Prosecutor General) to take an attitude towards and undertake concrete actions.
 - A Consultative Civil Council is formed with Combating Corruption Committee, including 12 NGOs representatives.

5.4. Structure and Activities of “Combating Corruption Committee” of the Supreme Judicial Council:

- Combating Corruption committee of the Supreme Judicial Council (SJC) is connected with implementation of activities defined in the Strategy for Combating Corruption in judicial system and the Strategy Implementation Plan.
- The committee was formed in 2005. It is permanently active subsidiary body of SJC. Committee’s Chairman is the Deputy Chairman of the Supreme Court. It consists of 5 members, assigned by decision of SJC. Committee holds regular meetings every week.

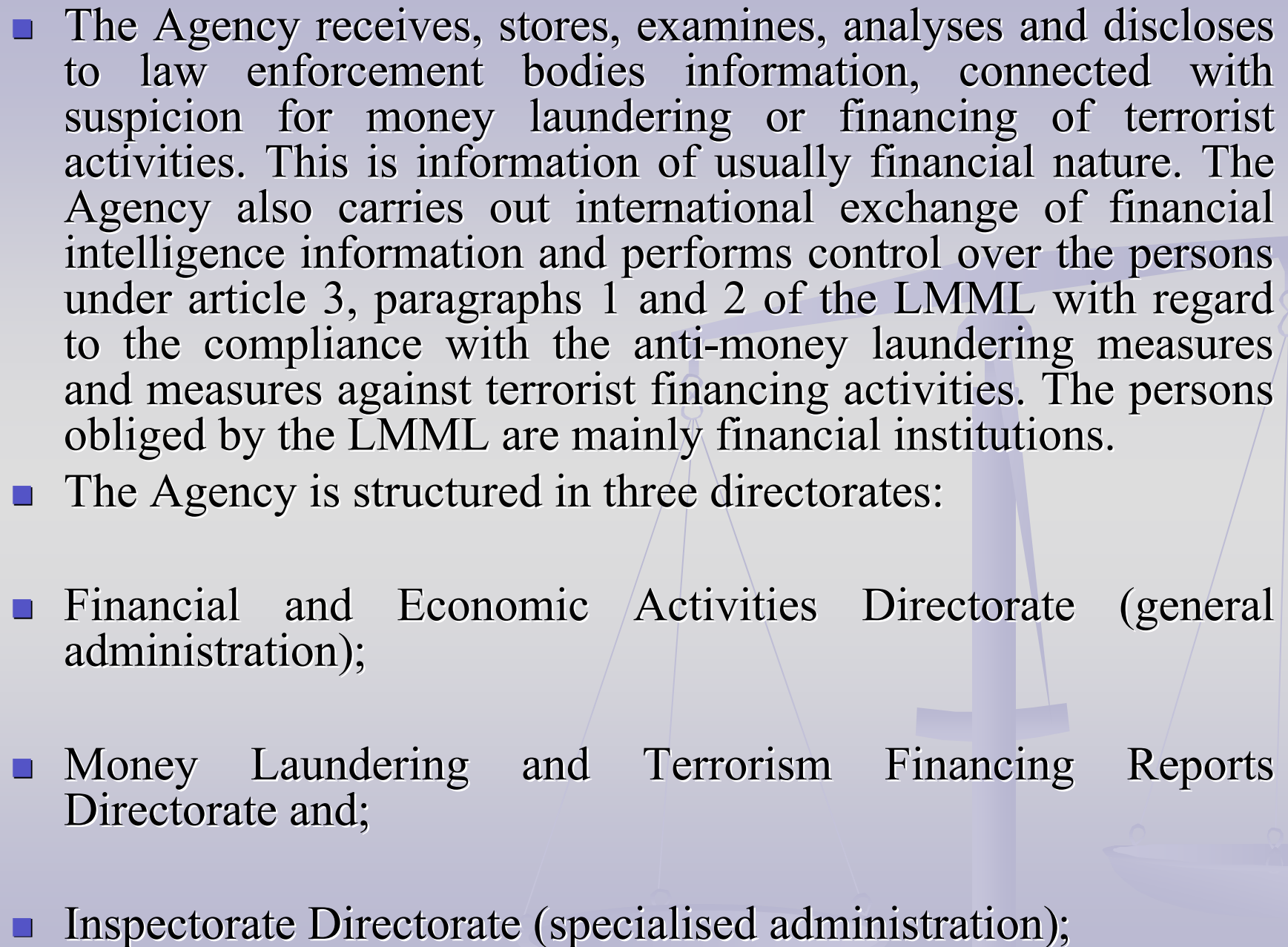
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- It cooperates with Combating Corruption Committee of the National Assembly, Commission on the Prevention and Counteraction of Corruption of the Council of Ministers, as well as with the relevant bodies of the Ministry of Justice, Ministry of Interior, Ministry of Finance, Bulgarian National Audit Office, NGOs.
 - Committee's objective and activity are orientated to prevention and countering of corruption phenomena in judicial system. It analyses information for corruption practices in judiciary, works out and suggests concrete anti-corruption measures to SJC. Committee decisions, containing findings for corruption behavior of magistrates and judiciary administrative personnel are reported to SJC and judicial bodies to undertake immediate disciplinary measures.

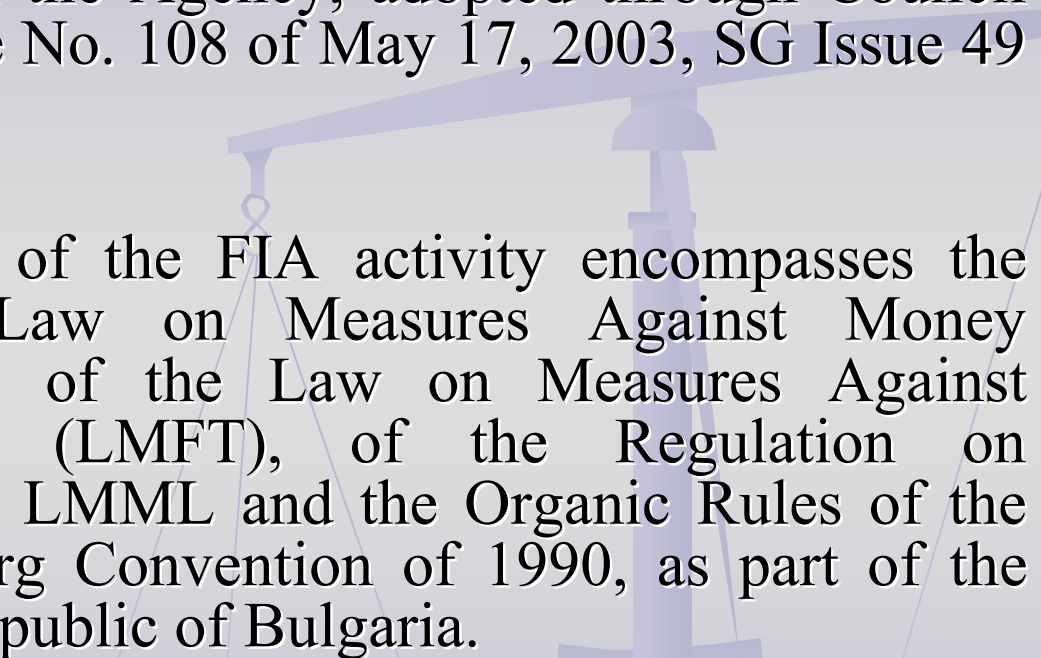
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- At every three months Committee prepares report for its activity and summarizes results from verifications which could be found on the SJC Internet site / <http://www.vss.justice.bg> /.
 - Committee is authorized to carry out verifications for corruption acts at concrete signals and complaints of citizens and state bodies. After media publications for corruption it notifies the competent bodies and submits results of the corresponding verification to SJC.
 - With that end anti-corruption boxes are put in all units of judiciary, where citizens can address signals for corruption acts and practices.
 - 35 disciplinary proceedings have been instituted in SJC for the last two years, 21 of which are completed. 20 proceedings have been instituted against magistrates for the period 2003-2006 being in different phases of the criminal proceeding.

5.5. Structure and Activities of the Financial Intelligence Agency (FIA)

http://www.fia.minfin.bg/index_en.php

- The Financial Intelligence Agency (FIA) was established in 2001 by virtue of the Law on Amendments and Complements to the Law on Measures against Money Laundering (LMML).
- It is an independent state administration at the Minister of Finance, a legal person, located in Sofia. The Agency has no territorial structures. Its activity starts with the adoption of its Organic Rules upon approval of the Council of Ministers in February 2001. In the time 1998 - 2001, before the Agency establishment, the financial intelligence was performed by a general administration, later on - directorate of the Ministry of Finance. Up to March 2003 the name of the Agency was Agency 'Financial Intelligence Bureau'. Through the amendments of the LMML adopted March 2003 by the Parliament the Agency 'Financial Intelligence Bureau' was restructured and became Financial Intelligence Agency.

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- The background of the slide features a faint, light blue watermark of a scale of justice, symbolizing law and equity. The scale is positioned centrally, with its vertical pillar and horizontal beam visible. The pans of the scale are slightly tilted, and the overall image is semi-transparent, allowing the text to be clearly legible.
- The Agency receives, stores, examines, analyses and discloses to law enforcement bodies information, connected with suspicion for money laundering or financing of terrorist activities. This is information of usually financial nature. The Agency also carries out international exchange of financial intelligence information and performs control over the persons under article 3, paragraphs 1 and 2 of the LMML with regard to the compliance with the anti-money laundering measures and measures against terrorist financing activities. The persons obliged by the LMML are mainly financial institutions.
 - The Agency is structured in three directorates:
 - Financial and Economic Activities Directorate (general administration);
 - Money Laundering and Terrorism Financing Reports Directorate and;
 - Inspectorate Directorate (specialised administration);

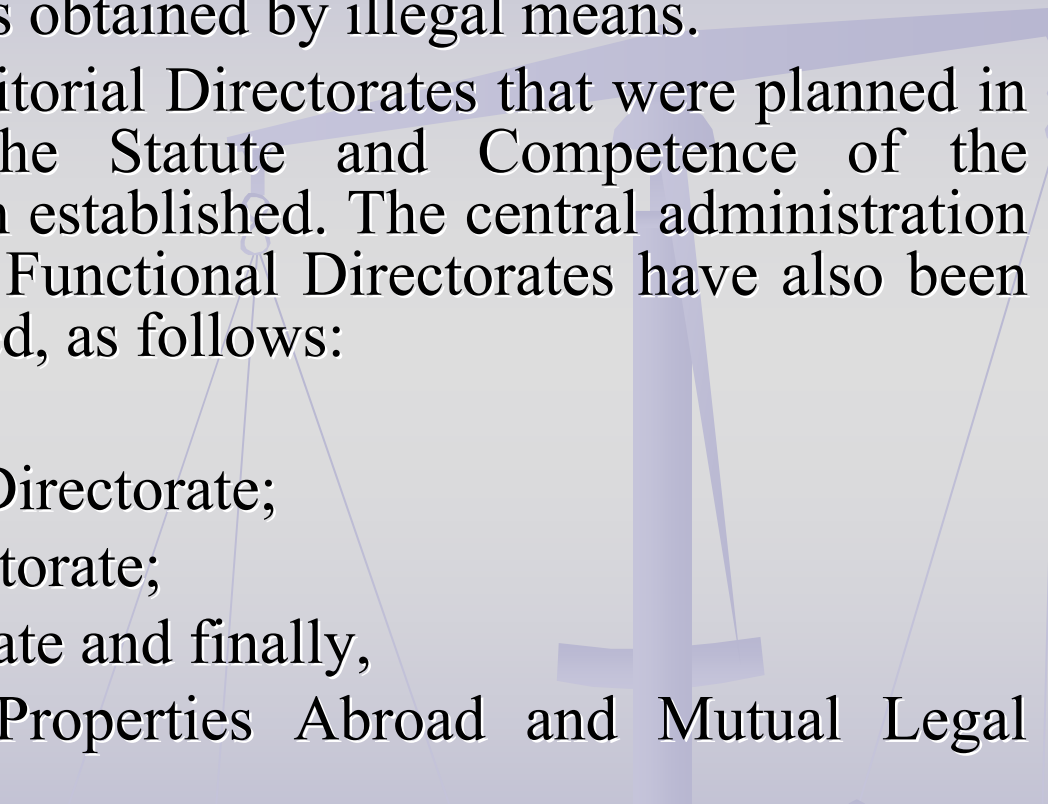
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- The functions of the directorates are determined by the Organic Regulation of the Agency, adopted through Council of Ministers Ordinance No. 108 of May 17, 2003, SG Issue 49 of May 27, 2003.
 - The legal framework of the FIA activity encompasses the ordinances of the Law on Measures Against Money Laundering (LMML), of the Law on Measures Against Financing Terrorism (LMFT), of the Regulation on Implementation of the LMML and the Organic Rules of the FIA and the Strasbourg Convention of 1990, as part of the domestic law of the Republic of Bulgaria.

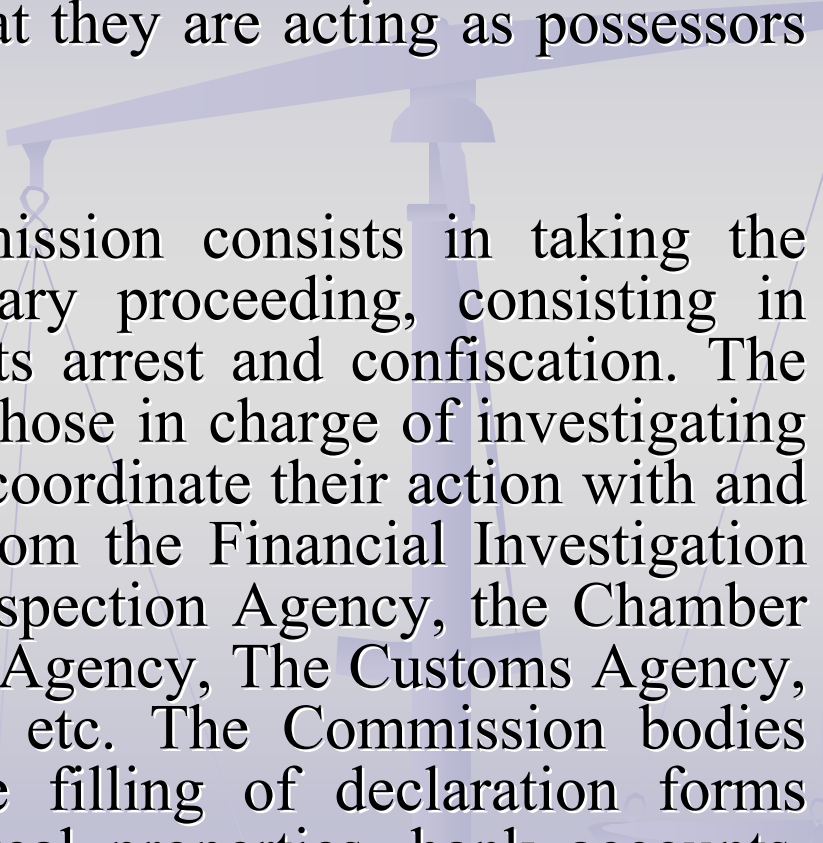
- Additional instruments of importance to the activities of FIA include the acts of the European Union (The First and the Second Directives against money laundering, respectively Council Directive 91/308/EEC on Prevention of the Use of the Financial System for the Purposes of Money Laundering, and Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001, amending Council Directive 91/308/EEC on Prevention of the Use of the Financial System for the Purposes of Money Laundering) as well as some international standards, like the FATF Revised Forty Recommendations against money laundering and the Nine Special Recommendations of the same organization against financing of terrorism.
- Financial Intelligence Agency is a full member of the EGMONT Group, the international organization of the financial intelligence services with over 100 members from all over the world. The aim of EGMONT Group is to assist and facilitate the financial intelligence information exchange.

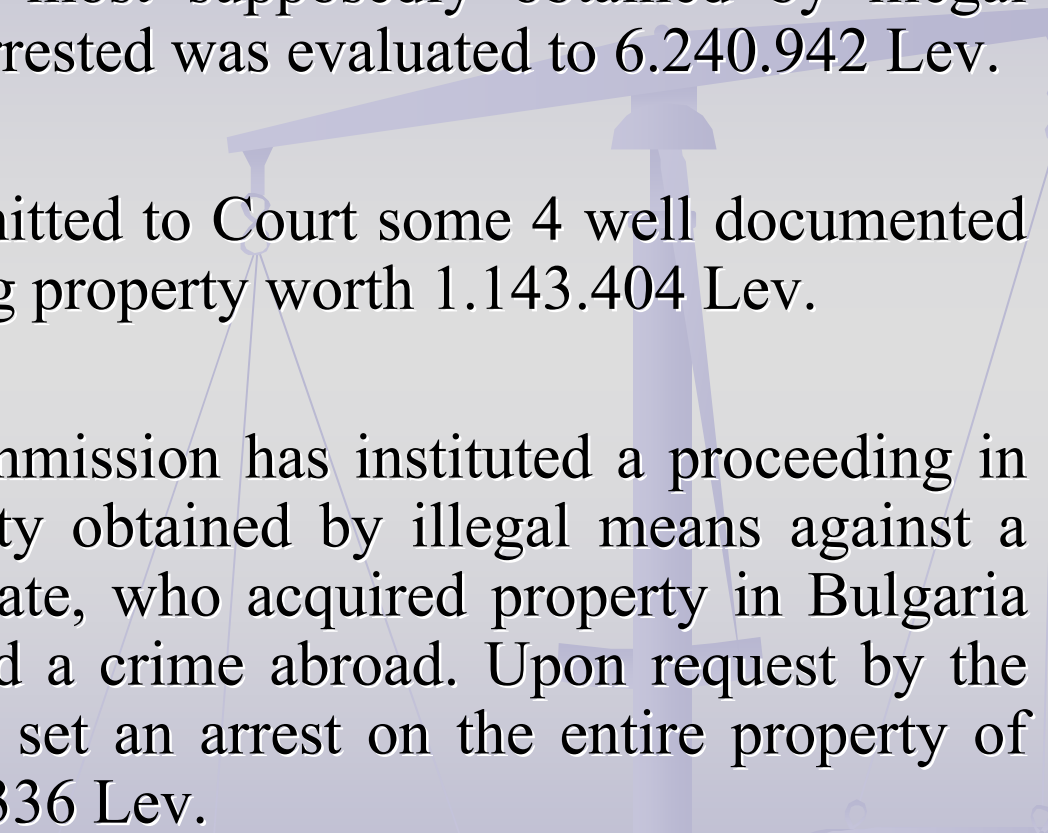
5.6. Structure and Activities of the Illegal Properties Investigating Commission

(also known as the "Kushlev" Commission, named after its President, Mr. Kushlev)

- The Illegal Properties Investigating Commission was established on 08/08/2005. The Commission is a State body, of a total of five members, including a President and a Vice President. The President is appointed by the Prime Minister; the Vice President and two of the members are elected by the Parliament and one of the members is appointed by the President of the Republic. The mandate of the members lasts for five years and they can be reappointed only once.
- A Secretary General coordinates the activities of the Commission through both special and general Administration Units, organized in Functional and Territorial Directorates.

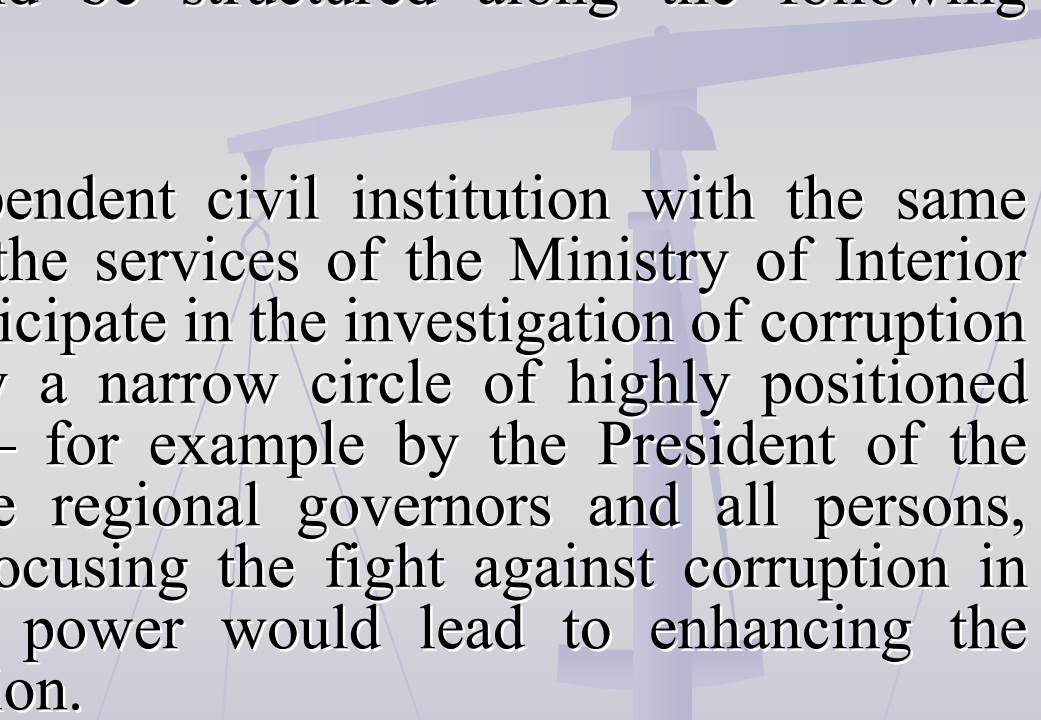
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- Territorial Directorates are involved in detecting and investigating of illegally obtained properties. They are the units in charge of collecting evidence as well as representing the Commission in Court, as an actor in the procedure of seizing those properties obtained by illegal means.
 - Up to now all the Territorial Directorates that were planned in the Regulation on the Statute and Competence of the Commission have been established. The central administration units, grouped in four Functional Directorates have also been already fully established, as follows:
 - Analysis and Reports Directorate;
 - Active Measures Directorate;
 - Confiscations Directorate and finally,
 - Detection of Illegal Properties Abroad and Mutual Legal Assistance Directorate.

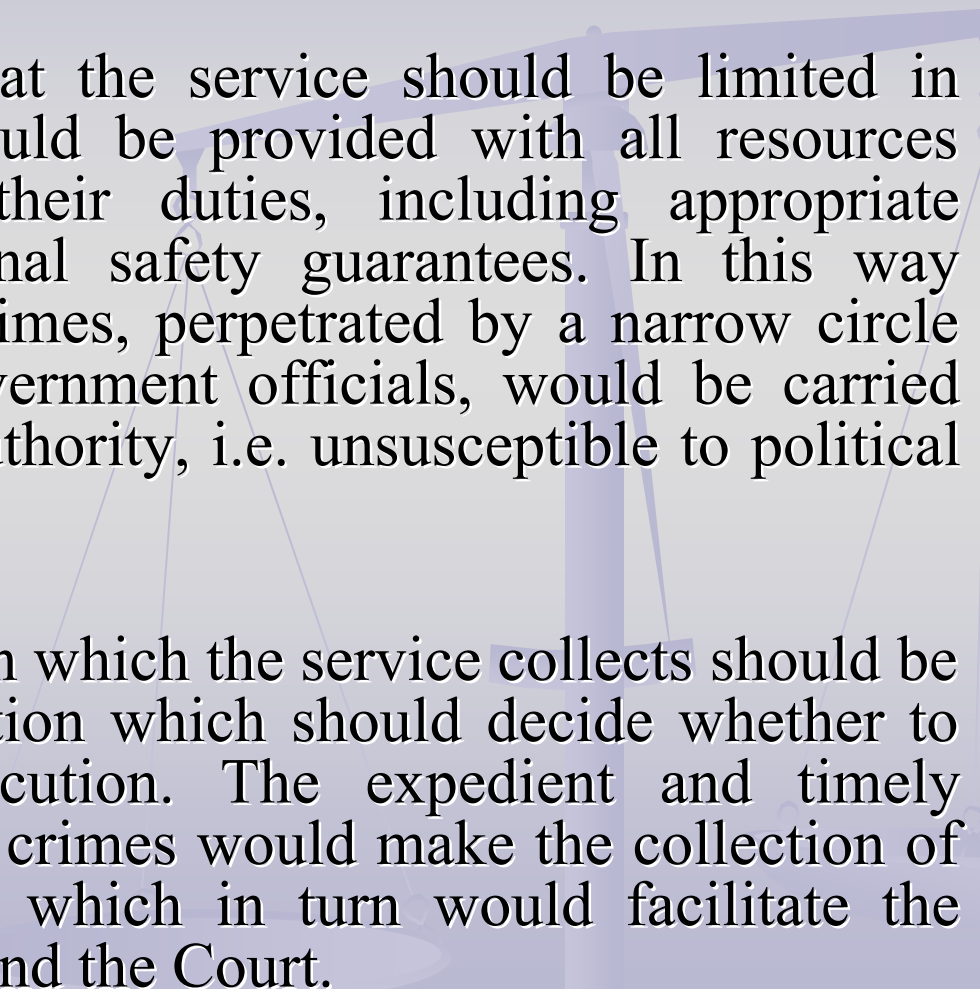
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- The Commission operates in defense of public interest in the frame of procedures, consisting of investigating, arresting and seizing property obtained by illegal means of an amount exceeding 60.000 Lev (~€30.000). Close relatives of the person under investigation as well as parent companies may also be controlled if proved that they are acting as possessors on behalf of the main actor.
 - The main task of the Commission consists in taking the decision to begin a preliminary proceeding, consisting in tracking illegal property and its arrest and confiscation. The bodies of the commission are those in charge of investigating and collecting evidence. They coordinate their action with and receive detailed information from the Financial Investigation Agency, the State Financial Inspection Agency, the Chamber of Accounts, The Privatization Agency, The Customs Agency, the National Income Agency, etc. The Commission bodies have the right to require the filling of declaration forms concerning both mobile and real properties, bank accounts, securities, etc. The Commission or the Directors of the Territorial Units may require lifting of bank secrecy.

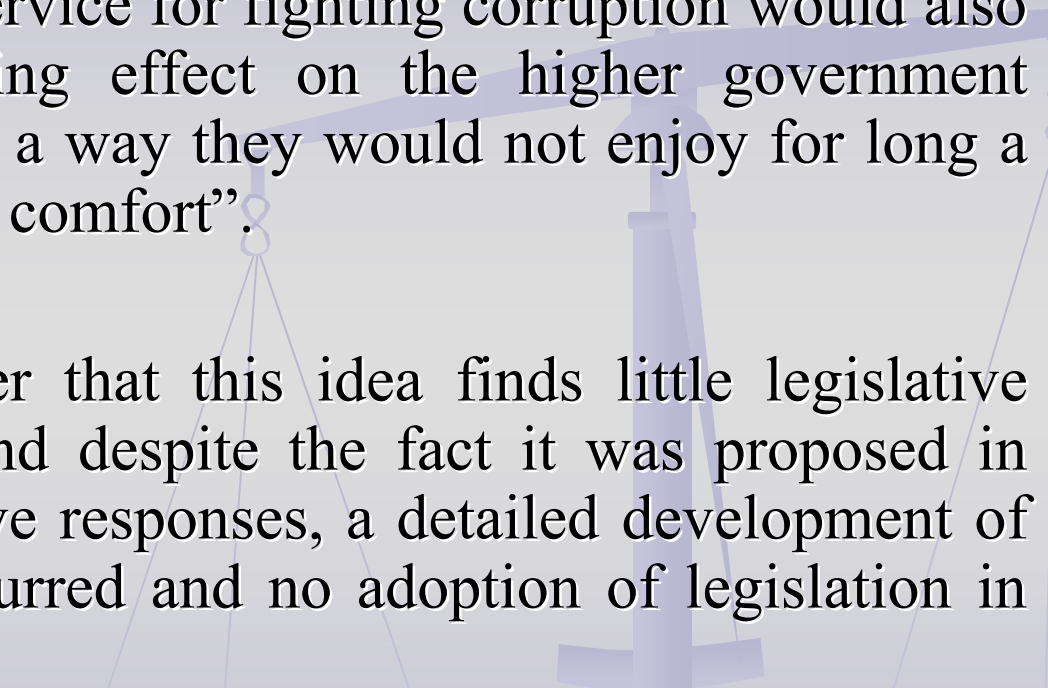
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- Up to now the Commission has initiated 63 proceedings in tracking, arresting and seizure of property. Eighteen of those 63 proceedings led to decisions to request the Court to order an arrest of property most supposedly obtained by illegal means. The property arrested was evaluated to 6.240.942 Lev.
 - The Commission submitted to Court some 4 well documented requests of confiscating property worth 1.143.404 Lev.
 - In June 2006, the Commission has instituted a proceeding in order to detect property obtained by illegal means against a citizen of a foreign State, who acquired property in Bulgaria after having committed a crime abroad. Upon request by the commission the Court set an arrest on the entire property of this person worth 678.336 Lev.

Reform of the judiciary and anti-corruption as challenges of the EU accession process

- A basic deficiency in countering corruption is the delay in uncovering corruption crimes. Their essence, the fact that both sides as a rule have an interest in concealing the bribe given or received, does not facilitate uncovering these crimes, which prevents the prosecution from implementing its prosecutorial function. Apart from this, corruption in the higher realms of power is often politically coloured, which to a certain degree is an obstacle to the unhindered action of the investigating authorities /the Ministry of Interior/ – because their actions may harm persons from the political leadership of the country, or representatives of the opposition, which in turn may be interpreted as a political repression.

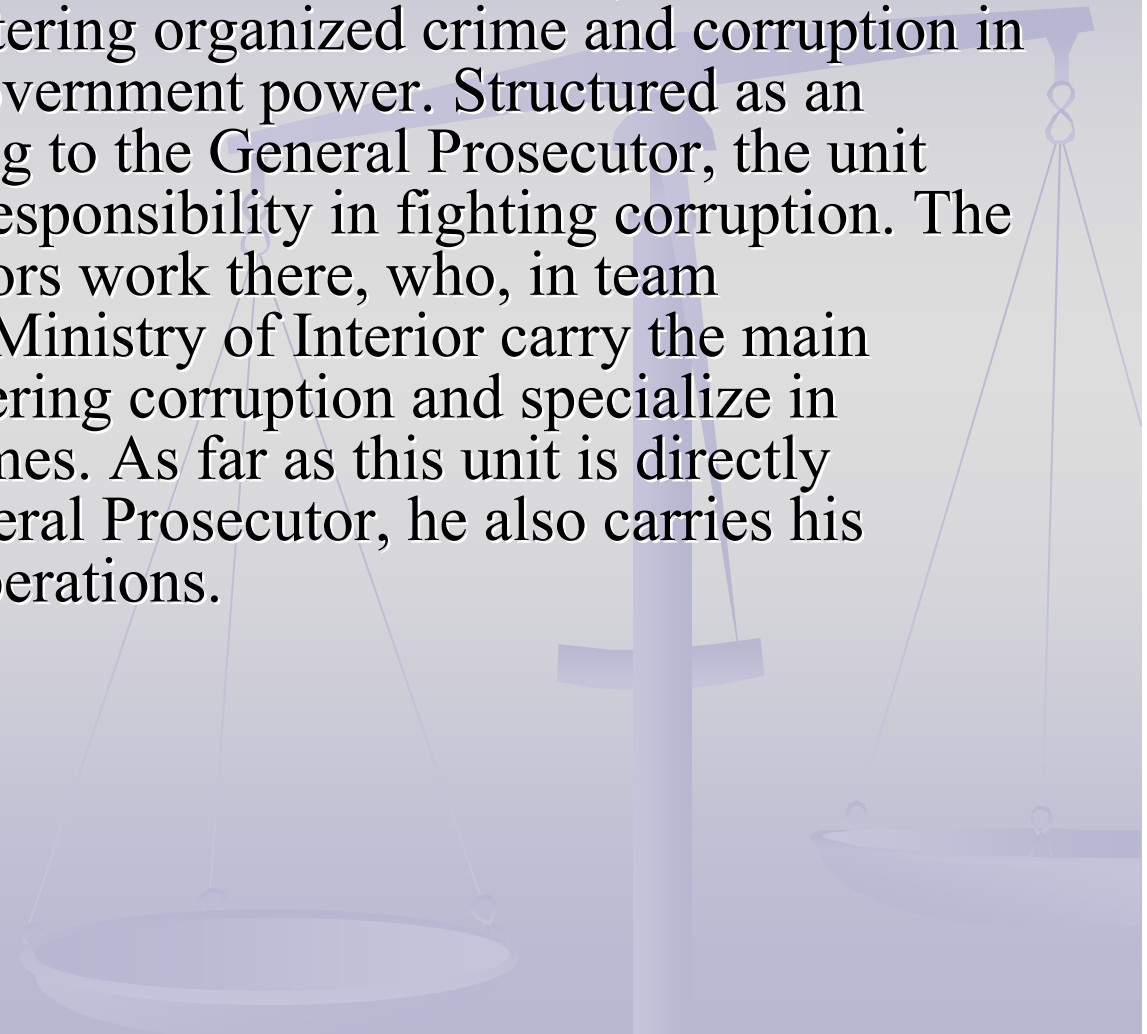
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- It seems obvious, that if a single **independent service for fighting corruption in the higher realms of government power** is created, a part of these problems shall be solved. Such a service should be structured along the following principles:
 - It should be an independent civil institution with the same functions as some of the services of the Ministry of Interior and empowered to participate in the investigation of corruption crimes, perpetrated by a narrow circle of highly positioned government officials – for example by the President of the Republic down to the regional governors and all persons, enjoying immunity. Focusing the fight against corruption in the higher realms of power would lead to enhancing the efficiency of its operation.

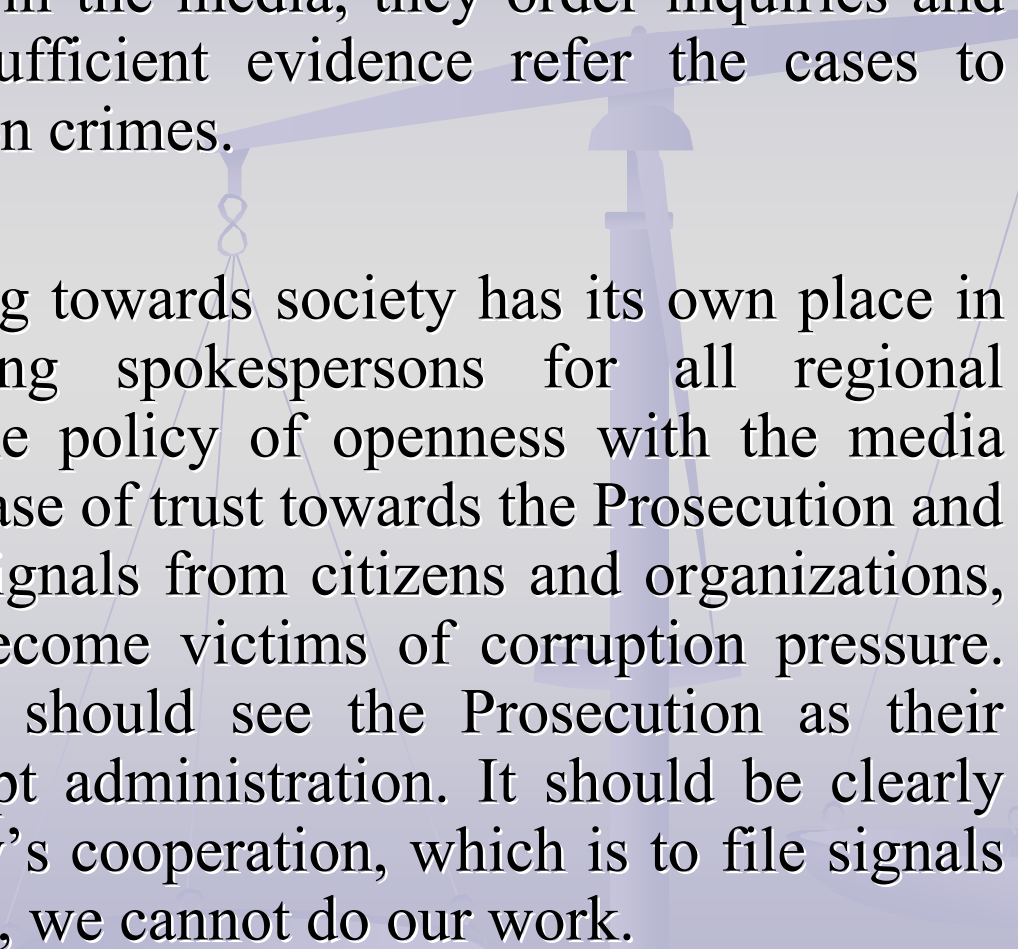
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- The head of this service should be selected by the Parliament with a certain mandate, different from that of the National Assembly itself, so that a newly elected Parliament cannot remove him.
 - The personnel working at the service should be limited in number, however it should be provided with all resources needed for executing their duties, including appropriate remuneration and personal safety guarantees. In this way uncovering corruption crimes, perpetrated by a narrow circle of highly positioned government officials, would be carried out by an independent authority, i.e. unsusceptible to political pressure or protections.
 - All evidence of corruption which the service collects should be sent over to the Prosecution which should decide whether to begin a criminal prosecution. The expedient and timely uncovering of corruption crimes would make the collection of evidence more efficient, which in turn would facilitate the work of the Prosecution and the Court.

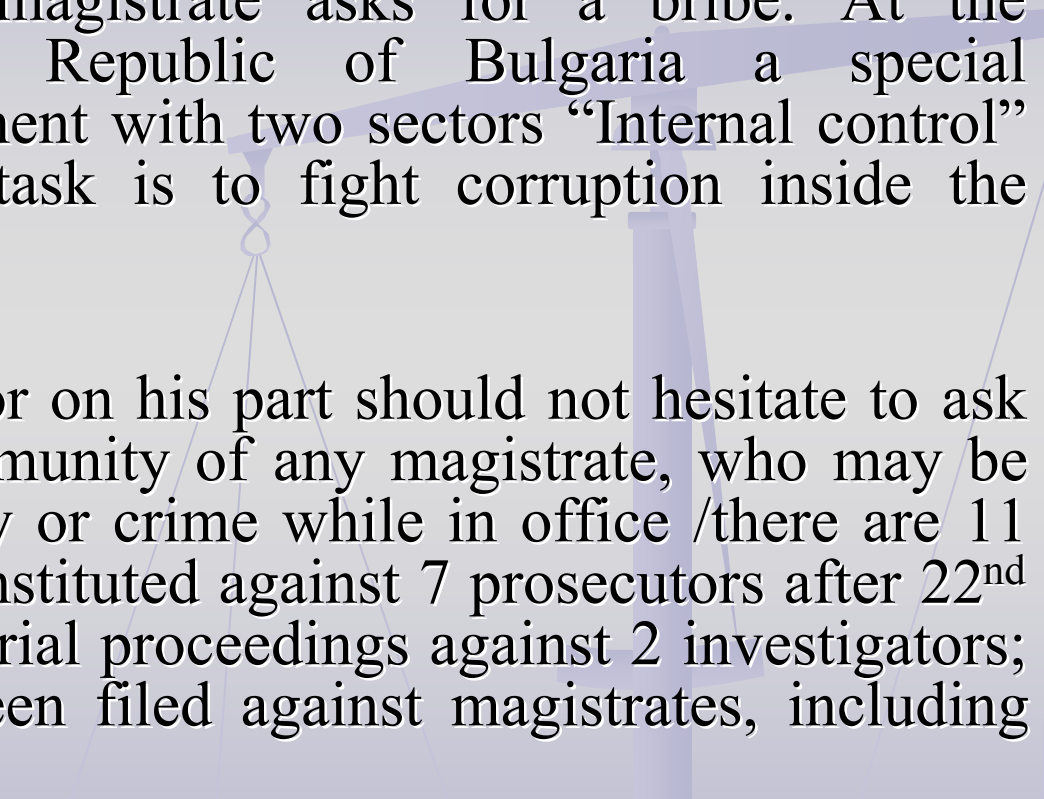
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- The service should present a yearly report about its activities to the National Assembly. The existence and functioning of such an independent service for fighting corruption would also have a strong deterring effect on the higher government officials, since in such a way they would not enjoy for long a “politically guaranteed comfort”.
 - It is a different matter that this idea finds little legislative support in Bulgaria and despite the fact it was proposed in 2003, receiving positive responses, a detailed development of the concept never occurred and no adoption of legislation in this respect took place.

- This deficiency may be partly compensated with a few **measures**:
- 1. Preserving and enhancing the operative interaction between the Prosecution and the Ministry of Interior, which is a precondition for efficient operation. In June of the previous year an Instruction was signed, which regulates the organization and the way of implementing interaction and teamwork between the Prosecution of the Republic of Bulgaria and the Ministry of Interior in countering organized crime.
- During the work of these joint investigative teams evidence is collected about eventual money laundering or corruption activity of the members of the criminal group.
- On 25th September 2006 an Instruction for interaction was signed between the authorities for the establishment of property, acquired through criminal activity, the organs of the Ministry of Interior, the organs of the Ministry of Finance, the Prosecution and the Investigation, which unites the effort of all these institutions for finding and confiscating any property, acquired through criminal activity.

- 2. In some countries like Italy, Spain, Romania there are specialized prosecutor's offices for fighting corruption. In Bulgaria a special internal unit was established, which took the responsibility for countering organized crime and corruption in the higher realms of government power. Structured as an entity, directly reporting to the General Prosecutor, the unit allows to personalize responsibility in fighting corruption. The best prepared prosecutors work there, who, in team collaboration with the Ministry of Interior carry the main responsibility in countering corruption and specialize in proving corruption crimes. As far as this unit is directly subordinate to the General Prosecutor, he also carries his responsibility for its operations.

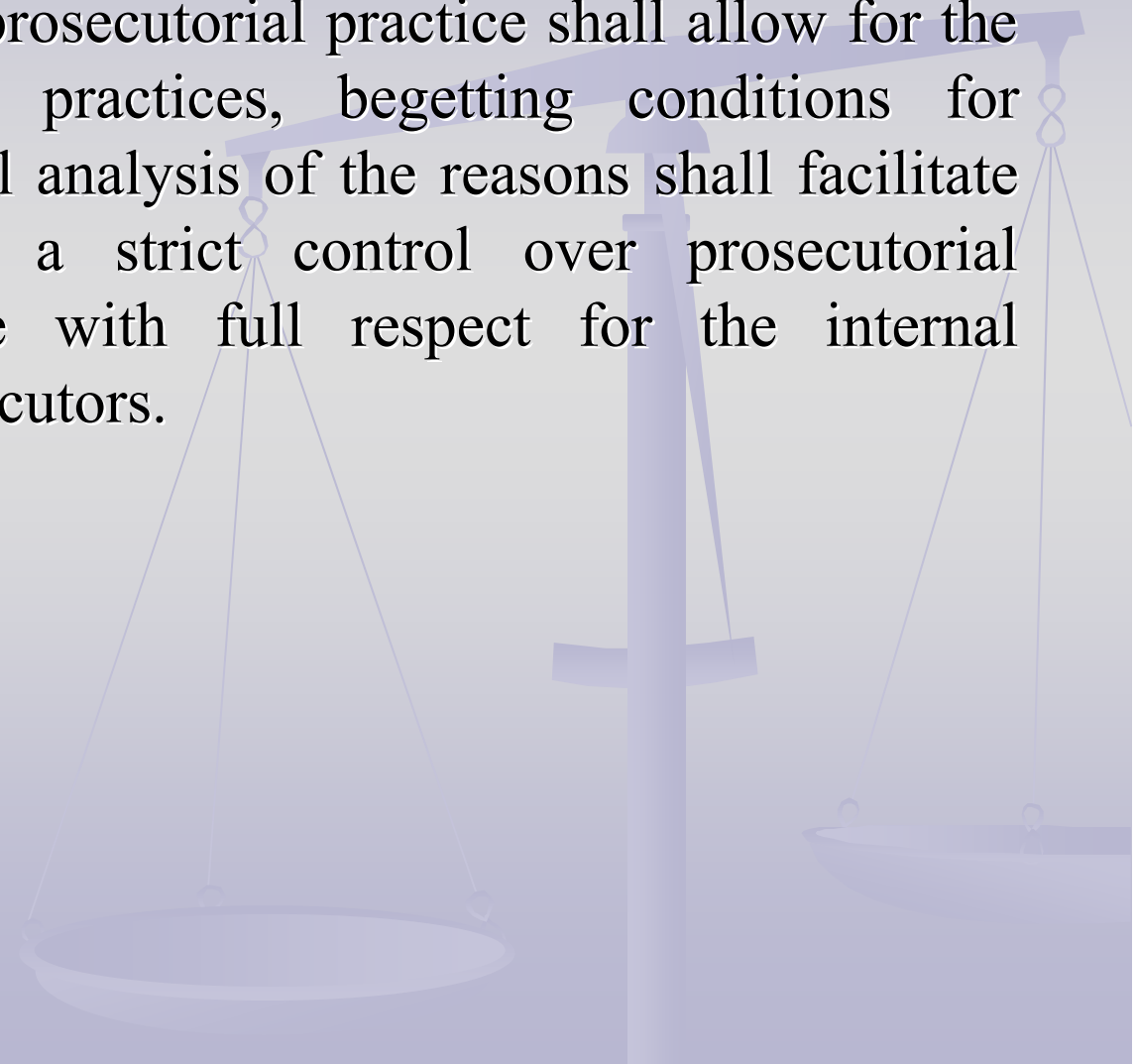


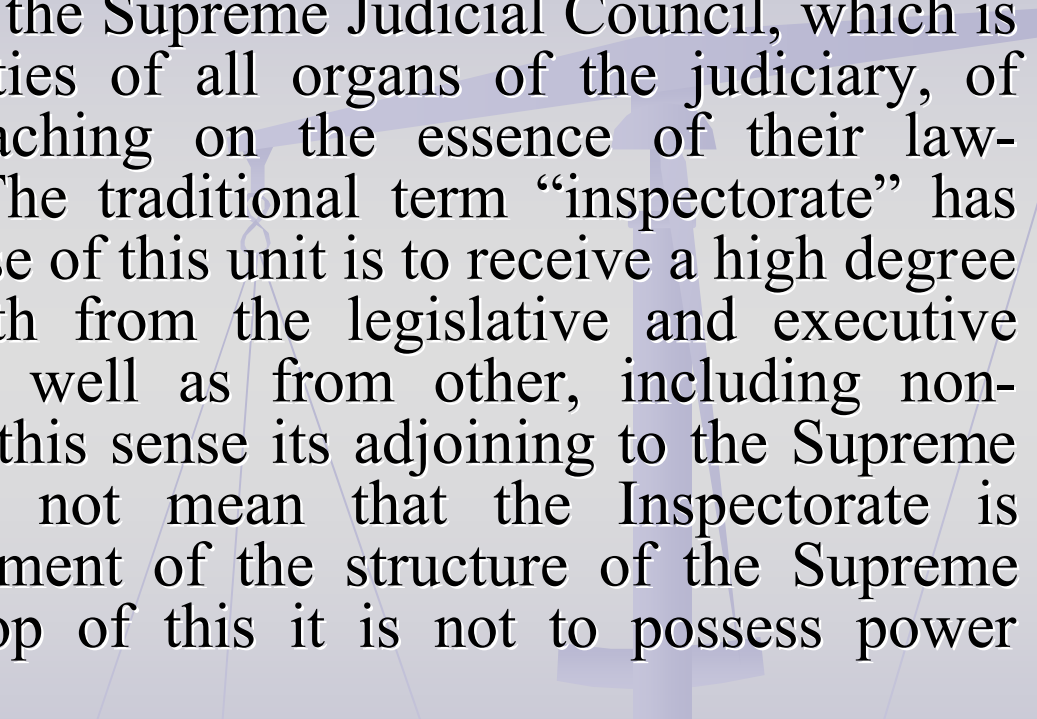
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- 3. The existence of such a unit allows for a more active role in uncovering corruption crimes. The prosecutors specialized in corruption crimes carefully analyze the signals from citizens and non-governmental organizations, from Bulgarian and foreign businesses and in the media, they order inquiries and upon availability of sufficient evidence refer the cases to themselves on corruption crimes.
 - 4. Prosecution's opening towards society has its own place in this aspect. Appointing spokespersons for all regional prosecutors' offices, the policy of openness with the media should lead to the increase of trust towards the Prosecution and from there – to more signals from citizens and organizations, whenever they have become victims of corruption pressure. Citizens and investors should see the Prosecution as their protector against corrupt administration. It should be clearly stated – without society's cooperation, which is to file signals about corruption crimes, we cannot do our work.

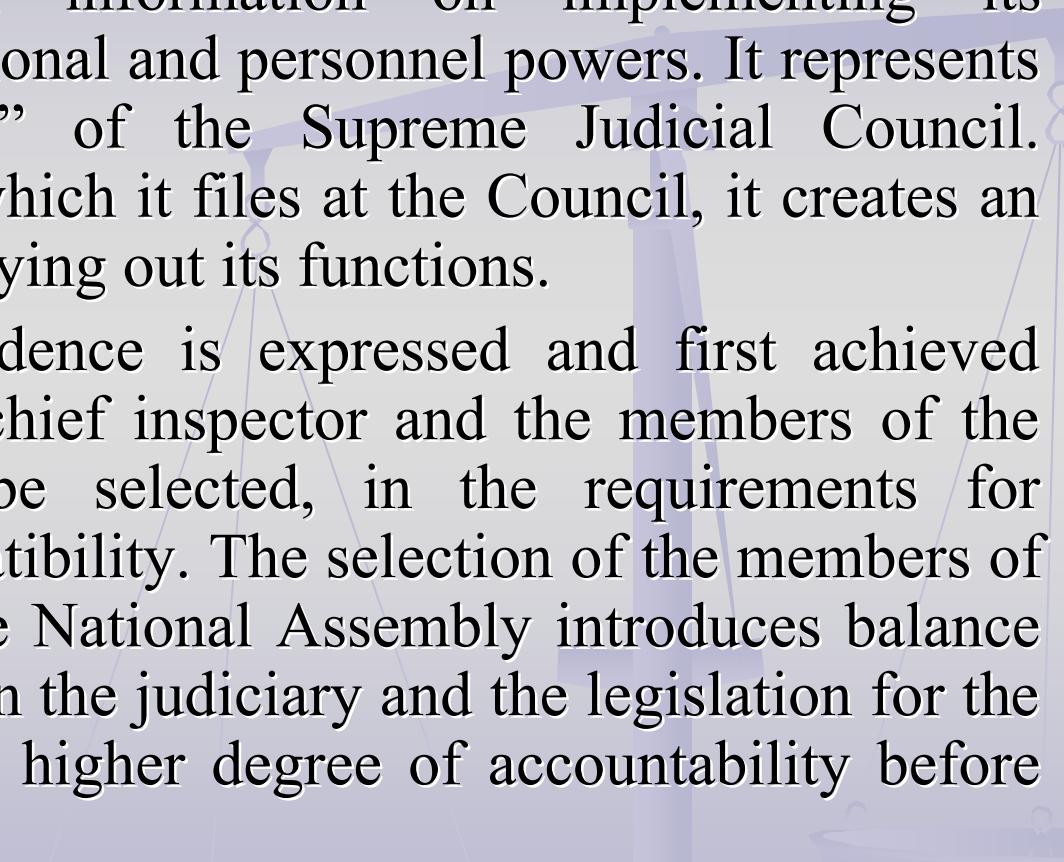
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- 5. A periodical conduction of a “clean hands” operation inside the judicial system shall allow us to oppose corruption inside the judiciary. This is only possible with cooperation from the part of the citizenry which should not hesitate filing their signals whenever a magistrate asks for a bribe. At the Prosecution of the Republic of Bulgaria a special “Inspectorate” department with two sectors “Internal control” and “Audit”, whose task is to fight corruption inside the judicial system.
 - The General Prosecutor on his part should not hesitate to ask for the removal of immunity of any magistrate, who may be incriminated in bribery or crime while in office /there are 11 pre-trial proceedings instituted against 7 prosecutors after 22nd February 2006; 3 pre-trial proceedings against 2 investigators; 7 indictments have been filed against magistrates, including judges/.

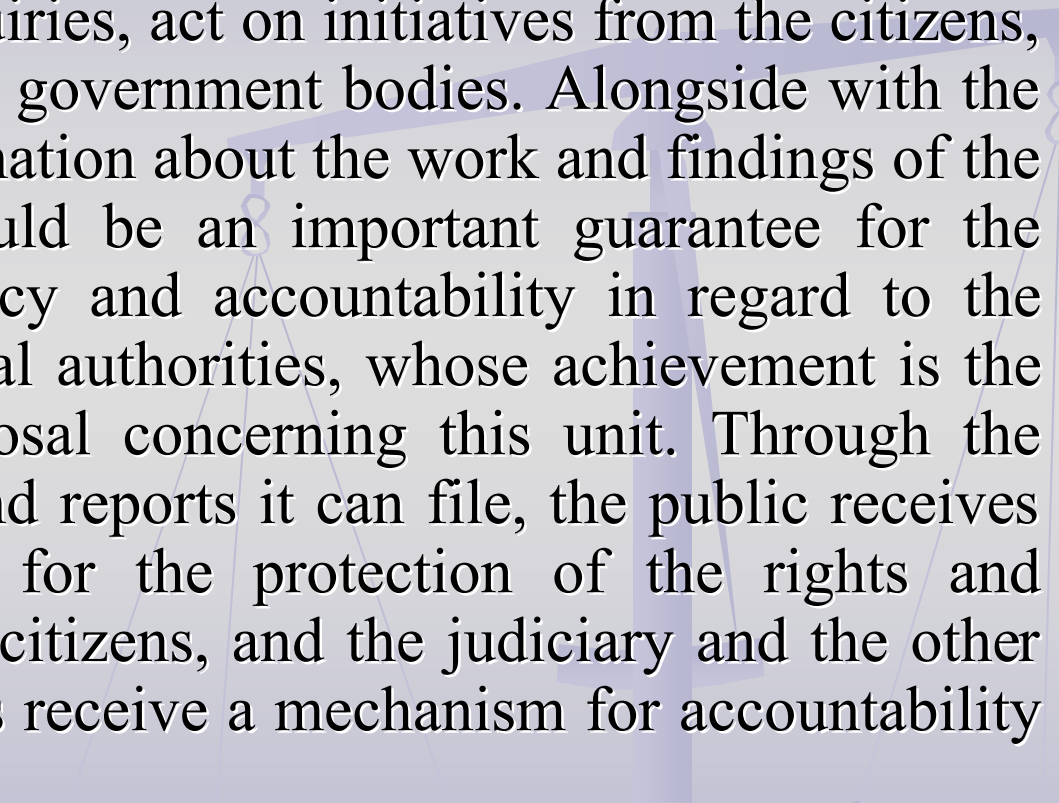
- 6. While mentioning the question about the immunity of magistrates we should immediately add that the immunity of members of Parliament is no obstacle to seeking criminal accountability. The General Prosecutor shall make requests for removing the immunity of any member of Parliament the moment when there is sufficient evidence collected about a corruption crime, perpetrated by the latter, without any unsubstantiated delay, without any selectivity /currently the members of Parliament in Bulgaria, whose immunity is removed are 11, while the indictments filed against deputies are 6; a large number of the requests of the General Prosecutor for permission for institution of criminal prosecution against members of parliament for crimes perpetrated by them while tending to their duties/.

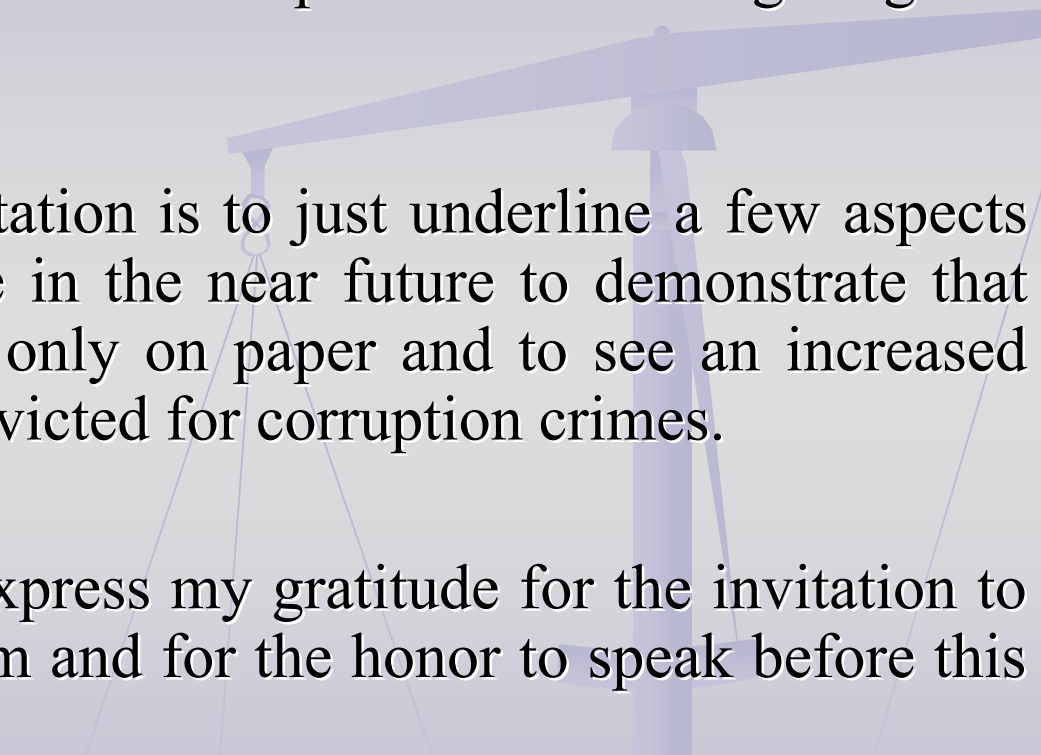
- 7. Periodical audit of prosecutorial practice shall allow for the identification of the practices, begetting conditions for corruption. The careful analysis of the reasons shall facilitate taking measures for a strict control over prosecutorial operations, of course with full respect for the internal conviction of the prosecutors.



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- Currently, high on Bulgaria's agenda are the debates surrounding the amendment of the Constitution of the country, where an important detail is the constitutional regulation of a new structure as part of the Supreme Judicial Council, which is to supervise the activities of all organs of the judiciary, of course, without encroaching on the essence of their law-enforcement activity. The traditional term "inspectorate" has been used, as the purpose of this unit is to receive a high degree of independence – both from the legislative and executive branches of power as well as from other, including non-institutional factors. In this sense its adjoining to the Supreme Judicial Council does not mean that the Inspectorate is purported to be an element of the structure of the Supreme Judicial Council, on top of this it is not to possess power authority.

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- The Inspectorate in practice facilitates carrying out this activity by the Supreme Judicial Council as it is responsible for collecting substantial information on implementing its disciplinary, organizational and personnel powers. It represents an impartial “insight” of the Supreme Judicial Council. Through the reports, which it files at the Council, it creates an objective basis for carrying out its functions.
 - Stressing the independence is expressed and first achieved through the way the chief inspector and the members of the Inspectorate should be selected, in the requirements for eligibility and incompatibility. The selection of the members of the Inspectorate by the National Assembly introduces balance and interaction between the judiciary and the legislation for the purpose of attaining a higher degree of accountability before society.

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- On the other hand, the essence of the powers of the Inspectorate is crucially important, since the Inspectorate may, besides its regular inquiries, act on initiatives from the citizens, from legal entities and government bodies. Alongside with the public access to information about the work and findings of the Inspectorate, this should be an important guarantee for the objectivity, transparency and accountability in regard to the activities of the judicial authorities, whose achievement is the objective of the proposal concerning this unit. Through the signals, suggestions and reports it can file, the public receives additional guarantees for the protection of the rights and legitimate interests of citizens, and the judiciary and the other government authorities receive a mechanism for accountability and control.

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- The presented so far does not exhaust all the existing tools and mechanisms in the Bulgarian legislation and legal practice in countering corruption, neither the possibilities for fighting this phenomenon.
 - The aim of the presentation is to just underline a few aspects of our work. We hope in the near future to demonstrate that our intentions are not only on paper and to see an increased number of persons convicted for corruption crimes.
 - In conclusion let me express my gratitude for the invitation to participate in this forum and for the honor to speak before this professional audience.

■ **THANK YOU ONCE AGAIN!**

