

PLOVDIV UNIVERSITY

PAISIY HILENDARSKI

TSVETANKA HUGASYAN

**CONFLICT OF INTERESTS AND COUNTERACTION
OF CORRUPTION IN THE STATE ADMINISTRATION**

ABSTRACT

**OF DISSERTATION FOR
AWARD OF A SCIENTIFIC DEGREE
"DOCTOR OF ADMINISTRATIVE LAW AND
ADMINISTRATIVE PROCESS"**

PLOVDIV, 2021

The reason for choosing the topic are dictated by the fact that corruption is one of the most debated problems facing all societies. With the acceleration of globalization and the expansion of the range of cooperation, this phenomenon is seen not only as an obstacle to the national development of individual countries, but also as a serious threat to international relations in all their diversity.

Therefore, the fight against corruption is on the agenda of a number of international organizations and financial institutions such as the United Nations (UN), the World Bank (WB), the Organization for Economic Co-operation and Development (OECD), the Council of Europe (CoE), the European Union (EU), etc. Anti-corruption has established itself as a major field of activity for many national and international non-governmental organizations, within which civil society upholds modern standards for transparency and publicity of state institutions, and contributes to the prevention of corruption in all public sectors. At the same time, a number of countries around the world are adopting comprehensive programs and measures to reduce corruption risks in the context of public sector reform and establishment of standards of integrity in international economic relations.

Corruption, which is often associated with conflicts of interest, is one of the most serious threats to democracy in Republic of Bulgaria (RB) as well. It destroys the rule of law, undermines citizens' trust in democratic values, and hinders the development of the market economy. The country has a serious and ongoing problem with corruption at all levels of government and the judiciary. External assessments and analyses by NGOs and the European Commission show a serious lack of strategic vision and capacity of anti-corruption institutions, and the mechanisms used to overcome the existing problems.

External observers outline the following consequences of the current levels of corruption in Bulgaria:

- ☞ High-level corruption is a major factor in shaping the corrupt environment and hinders the effective implementation of anti-corruption policies and measures;
- ☞ Political corruption undermines the electoral process and the basic principles of democracy - free and fair elections;
- ☞ Corruption in public procurement and regulatory authorities undermines the principles of a market economy and a competitive market environment;
- ☞ Corruption in the judiciary and law enforcement institutions reduces the security of citizens and negatively affects the market principles of the economy;
- ☞ Corrupt practices, in the sectors of government most affected by corruption, reduce the quality of life of citizens.

The relevance of the study stems from the fact that the problems of corruption and conflict of interest in the public administration are causing a growing response among the Bulgarian public. That is why there is a need for an objective assessment and research in order to clarify and limit the problems, as well as to provide objective information for further actions and work in the administration.

With the entry into force in 2018 of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act (CCUAAFA) and my many years of experience in the field of public administration aroused my interest in the implementation of the law and writing this paper.

The aim of the research is to study the possibilities for preventing conflicts of interest and counteracting corruption in the state administration, as well as possible changes in the Bulgarian legislation.

The object of study are the levels of corruption in its various forms, the public attitudes to take action to overcome them, and the activities of the new unified anti-corruption body in the implementation of CCUAAFA.

The subject of research are the possible measures for prevention and detection of the existence of conflict of interests and corrupt practices in the state administration.

In fulfillment of the set goal the following **tasks** are formulated:

1) To study the theoretical formulations and regulations in connection with the conflict of interests and corruption as phenomena in the state administration;

2) To monitor the levels of corruption in Republic of Bulgaria through the indices for its measurement;

3) To formulate opportunities for counteraction and better detection of conflicts of interest and corrupt practices;

4) To study the new anti-corruption legislation and the ways of its implementation.

The thesis defended in the study is that definite, bold and large-scale measures are needed in order to get out of the closed circle of dependencies in which citizens, companies, civil servants, politicians and magistrates find themselves. Gradual and partial attempts to counter corruption cannot lead to the desired results, as the highly corrupt environment and high-level corruption minimize their effect. Integrated actions of the anti-corruption institutions in the country are needed, based on formulated clear vision and strategic priorities for overcoming the considered problems.

The methodology of elaboration of the dissertation includes a set of research tools, including a review of the specialized scientific literature in the field of conflict of interest and corruption in the state administration; study of reports, articles and scientific publications in connection with the researched issues; analysis of the normative documents regulating the disclosure of conflict of interests and corrupt practices; monitoring the prospects for the formation and development of anti-corruption awareness in public circles aimed at intolerance and improvement of anti-

corruption legislation; systematization of data, analysis, synthesis, formulation of conclusions and summaries.

Scientific contribution of the dissertation work

This dissertation is the first comprehensive study of the new national anti-corruption legislation and the first more detailed analysis of the issue. The theoretical formulations and the normative regulation in connection with the conflict of interests and corruption as phenomena in the state administration are studied; the levels of corruption in Republic of Bulgaria have been monitored through the indices for its measurement; the possibilities for counteraction and better detection of conflict of interests and corrupt practices are considered; a comprehensive study of the new anti-corruption legislation and the ways of its implementation has been made.

In connection with the above research, conclusions and proposals have been made, which can contribute both to the development of the new anti-corruption legislation, its refinement, including supplementing and amending the legislation, as well as its application in the field of public administration.

In fulfillment of the set goal and the formulated tasks the dissertation work is structured in an introduction, four chapters, and a conclusion. The content of the dissertation includes a list of abbreviations, figures and bibliography used. The volume of the work is 239 pages.

The introduction to the work indicates the already mentioned goals and subject of the research, its relevance in connection with counteraction, prevention and detection of conflict of interests and corruption in the state administration is noted.

Chapter One examines conflict of interest and corruption as phenomena in public administration. The concepts of conflict of interest and corruption, scope and their characteristics are clarified in sequence. Conflict of interest is a legal matter that is key to the proper functioning of the rule of law and ensuring good and fair

governance. The legislation in this area aims to solve a major problem facing any government - increasing the confidence of citizens as a factor for the stability of government¹. In fact, the prevention and detection of conflicts of interest are two different procedures that have specific objectives and are the subject of independent research. The mechanisms for application of the first ensure the prevention of the conflict of interest, and the procedure for establishment has the task of detecting and sanctioning already committed violations.

The legislation regulating the issues related to the conflict of interests is contained in the already repealed Law on Prevention and Establishment of Conflict of Interest (LPECI)², whose provisions are incorporated in the new Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act³, entered into force in early 2018.

It should be noted that in our legal theory there is no formulated unified concept of "conflict of interest" as a legal phenomenon according to current regulations. At the theoretical level, it is defined as a conflict, a collision of private and public interest in connection with the performance of duties of an authorized person.

The Organization for Economic Cooperation and Development provides the following definition: „*Conflict of interest implies a conflict between official duties and the private interest of the employee, in which his personal interests could unduly affect the performance of his official duties and responsibilities.*“⁴. This definition is also accepted in our legal doctrine.

¹ Nikolov, Nikolay. The conflict of interests in Bulgarian law, Sofia: Fenea, 2012, ISBN 978-954-9499-76-6, p. 9.

² Prom. SG, no. 94 of 31 October 2008, revoked. SG, no. 7 of 19 January 2018;

³ Prom. SG, no. 7 of 19 January 2018, amended SG, no. 69 of 4 August 2020, supplement. SG, no. 70 of 7 August 2020, supplement. SG, no. 12 of 12 February 2021;

⁴ Managing Conflict of Interest in the Public Sector. Organization of Economic Cooperation and Development, Paris, 2005, ISBN: 92-64-01822-0 (42 2005 12 1P).

In Art. 2 of LPECI and respectively in Art. 52 - 54 of CCUAFA contains the general factual composition of "conflict of interest", but the legal definition formulated there does not reveal all the characteristics of the institute and is not commensurate with the legal definitions of crime (Art. 9 of the Criminal Code - CC⁵) or administrative violation (Art. 6 of the Administrative Violations and Penalties Act - AVPA⁶).

Nikolay Nikolov makes an attempt to derive a concept that contains guidelines for community, with our familiar legal institutes in different branches of law, to emphasize the specifics of the Bulgarian conflict of interest, and to support the application of the institute. The aim is for the sought-after concept to reflect only the substantive side of the institute in question. In this regard, the author first derives its essential elements, namely⁷:

1) Conflict of interest is an ***act***. It is a fact of objective reality, not a subjective attitude to a certain objective fact.

2) The act should have been committed by a ***specific subject*** of law. The perpetrator of a conflict of interest can only be an authorized person.

3) Conflict of interest is an ***administrative violation***. This means that it bears the generic characteristics of the term "administrative violation".

In this sense, all exhaustively defined in Art. 6 of the Administrative Violations and Penalties Act elements of the legal definition of a such, relate to it:

- ☞ It is a violation of the established order of government;
- ☞ It was committed culpably, intentionally or recklessly;
- ☞ It has been declared punishable by an administrative penalty.

⁵ Prom. SG, no. 26 of 2 April 1968, amended. SG, no. 44 of 13 May 2020, supplement. SG, no. 88 of 13 October 2020.

⁶ Prom. SG, no. 92 of 28 November 1969, amended. and supplement. SG, no. 13 of 14 February 2020

⁷ Nikolov, Nikolay. Conflict of Interest ..., 31-34.

4) As an administrative violation, the conflict of interests takes place only in connection with and in the ***exercise of public authority***.

5) In case of conflict of interests, a ***private interest (benefit)*** within the meaning of Art. 2 of LPECI and respectively Art. 53 - 54 of CCUAFA in favor of the authoritative perpetrator of the administrative violation or a person related to him is gained.

Based on the presented components, N. Nikolov formulates the following concept of the conflict of interests according to the current legislation: “*The conflict of interests is an act of a person holding a public office within the meaning of Art. 3, items 1-25 of LPECI, which has been declared by the law an administrative violation, has been committed in the exercise of public authority and in connection with which the authorized or other person related to him has a private interest that may affect the impartial and objective exercise of his powers*”⁸.

The author also derives some general characteristics of the "conflict of interests" as a legal phenomenon, arising specifically from Bulgarian law, including:

1) Conflict of interest is primarily a ***state activity***. Bulgarian legislation regulates relations and cases of conflict of interest only in the public sector.

2) In a narrower sense, the prevention and establishment of the conflict of interests according to the Bulgarian law are functions of the ***state government***.

3) ***The purpose*** of the conflict of interests as an institution of Bulgarian law is to create mechanisms for normal and independent of private interests functioning of state institutions. This regulation finds global application, as it is valid for the entire state apparatus.

4) The prevention and establishment of a conflict of interests are two relatively ***independent lines*** in the legal framework and the overall state activity in connection

⁸ Nikolov, Nikolay. Conflict of Interest ..., 35-36.

with the conflict of interests. However, there is a direct connection and interdependence between them.

Prevention covers a system of rules aimed at limiting and preventing conflicts of interest among public officials. All of them establish administrative obligations for these persons - some are in the form of prohibitions, i.e. adherence to inaction in certain situations, while others require the declaration of certain facts and circumstances in order to control the activities of a certain person, and others require certain procedural conduct (suspension of powers) at the initiative of the authorized person or of a competent authority⁹.

In many respects, actions to prevent conflicts of interest are more important than establishing one. Prevention is always a step in the right direction, as it can eliminate the commission of an illegal act and the application of sanctions.

The function of establishing a conflict of interest is regulated by procedural norms. This system includes stand-alone proceedings to establish serious infringements constituting a conflict of interest. It also includes the second phase of the proceedings - the sanctioning of an established conflict of interest, which is done by issuing a decision by the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission (CCUAAFC).

5) Conflict of interest is a matter of *administrative law and process*:

- ☞ Conflict of interest is an independent legal institute.
- ☞ The observance of the rules for prevention of conflicts of interests and the establishment of such is a state activity carried out by the established CCUAAFC.
- ☞ The relations that arise in connection with the prevention and detection of conflicts are authoritarian relations - for their regulation the legislator uses the authoritarian method, implemented by a specific state body - CCUAAFC.

⁹ Nikolov, Nikolay. Conflict of Interest, 39.

☞ In the course of the procedures for establishing and sanctioning the conflict of interests, decisions shall be issued by administrative act typical for the administrative and administrative-penal law, which is an act for establishing a violation and penal decrees.

☞ The regulation of the conflict of interests is a manifestation of the matter of administrative control established and developed in the administrative law. The commission itself, which carries out external control in this area, can be defined as a regulator of conflicts of interest.

6) Conflicts of interest *are not* abuse of power, crime, corruption or incompatibility.

☞ According to Bulgarian law, conflict of interest, as a legal construction, is a form of abuse of power.

☞ Conflict of interest is not a crime within the meaning of the Criminal Code. It is a specific administrative violation and in this sense is lower than the crime in the hierarchy of offenses under Bulgarian law. The main difference between the two legal institutes is the degree of public danger.

☞ Conflict of interest is not corruption. In a narrow criminal sense, corruption is the commission of one of the components of the crime of bribery. There are fundamental differences between these compositions and the administrative-penal regulations relating to conflicts of interest, in terms of content, subject of the benefit, etc.

☞ Incompatibility and conflict of interest are two radically different institutes in terms of factual composition, consequences, procedure for establishment and sanctioning, competent authorities establishing their existence, etc.

7) Conflict of interest proceedings are a form of *administrative control*. It is carried out by a specialized state body in respect of officials. The control is strictly specialized and concerns only the presence or absence of a conflict of interest, in the

performance of duties or exercise of public powers by the controlled persons - civil servants, listed exhaustively in the law.¹⁰

In view of the content of the exercised control influence in the course of the proceedings under CCUAAFA - it is of the supervision type. The definition of the type of control is of great practical importance in view of the content of the Commission's powers in the proceedings in front of it. The exercise of supervisory control functions only means that the Commission should assess the relevant facts in respect of which proceedings have been instituted only in the light of their legality. It cannot establish the presence or absence of a conflict of expediency, in view of the rules of morality.

The term "*corruption*" comes from the Latin word "*corruptio*", which means "*corruption, exhaustion, poor condition, lying, and bribery*". Over the years, the scope of this concept has expanded, its scale, areas of distribution and forms, the range of corruption crimes, and potential perpetrators. The following are used as definitions of corruption: abuse of official power to achieve private goals; damage to the public interest in the name of personal interests; illegal exchange of money or services for the performance of certain official actions, etc.

In practice, the term "corruption" is used with different, often unclear content. In fact, there is no universal and generally accepted definition of this phenomenon.

In the post-World War II period, the international community has faced the problem of the spread of corruption globally. In recent years, corruption has become a global threat not only to the economic development and security of individual countries, but also to international relations, human and civil rights, and the world economy and politics in general. Various forms of abuse of power for personal or group gain, to the detriment of the public interest, can have serious consequences,

¹⁰ Nikolov, Nikolay. Conflict of Interest..., 47-48.

especially for developing countries seeking to establish free market economic relations. Corruption schemes violate the rights of citizens in individual countries because they violate fundamental constitutional rights. Corruption at the state level violates the rights of citizens enshrined in the Constitution of Republic of Bulgaria, which leads to a violation of the public and state interest. These internal vicious practices have an impact abroad as well, spreading internationally.

In order to curb corruption, a number of anti-corruption measures have been taken aimed at drafting international legal acts. They prove to be effective tools for unifying different national standards and creating a universal legal framework.

The subject of analysis in this paper will be international law, European and national acts, as an attempt to solve the increasingly serious problems associated with the development of corruption, and the spread of corrupt practices. The most effective approach is to consistently improve and approximate the anti-corruption legislation of the states, as a result of their accession to international legal acts in this field.

The international legal framework in this area has become more comprehensive and in-depth in recent decades, thanks to the efforts of organizations such as the Council of Europe, the Organization for Economic Cooperation and Development, the European Union, the Organization of American States (OAS), the African Union (AU), The United Nations¹¹, etc.

UN is of the greatest importance for the new system of international treaties, as the goals and principles of the organization are embodied in the Charter of the UN¹². This Charter is the only international act whose provisions are binding on all

¹¹ See in More detail about the UN Borisov, Orlin, Irena Ilieva and others. Universal international bodies. Sofia: UNIVERSITY PUBLISHING HOUSE St. Kliment Ohridski, 2009, 165-166.

¹² Adopted at the San Francisco Conference on 26 June 1945, effective since 24 October 1945.

countries in the world and will affect the international legal regulation of the system of international relations¹³.

However, at this stage there is still no generally accepted definition of corruption, which seriously complicates the study of the problems associated with this phenomenon.

The most famous definition was created by the international organization Transparency International, according to which corruption is "*abuse of power to gain personal gain*"¹⁴. It concerns both corruption in the public and private sectors. With regard to the public sector, the definition refers to both major political and administrative corruption. Corrupt practices are also observed in the private sector - in business, in the media and in civil society organizations¹⁵.

In the European legal framework, the term "corruption" is defined in two ways - directly by regulating a legal definition, and indirectly by outlining the framework of corruption crimes and possible perpetrators, i.e. by formulating definitions of various concepts related to corruption offenses or defining the possible subjects of such offenses¹⁶.

For the first time, a legal definition is given in the **Civil Law Convention on Corruption of the Council of Europe**, adopted on 04.11.1999. Art. 2 of it states that corruption is "*the solicitation, offering, giving or acceptance, directly or indirectly, of a bribe or any other undue benefit or promise of a such that affects the proper performance of any obligation or conduct required from the recipient of the bribe,*

¹³ See in more detail about the system of international relations Boyadzhieva, Nadia. International Relations. Sofia: Albatross, 2017, ISBN 978-954-751-126-2, 450-452.

¹⁴ Transparency International's website ("Transparency International"), available at: <www.transparency.org>, last visited on 01.12.2020.

¹⁵ Kovacheva, Diana. Anti-corruption: International legal aspects. Sofia: Institute of State and Law at the Bulgarian Academy of Sciences, 2016, ISBN: 978-945-9583-32-8, p. 11.

¹⁶ Analysis of the bodies for prevention and counteraction of corruption in Republic of Bulgaria, Sofia: Center for prevention and counteraction of corruption and organized crime, 2017.

the non-due benefit, or the promise of such”¹⁷. The definition created for the purposes of the Convention is exhaustive and can be used by states as a legal definition of corruption offenses.

This Convention has important international and national legal significance in both the public and private sectors. According to Art. 4, the persons who have suffered damages as a result of corruption, may seek full compensation for these damages, including losses, lost profits and non-pecuniary damages. When a corruption crime has been committed by an official, in the performance of his official duties, the injured party has the right to file a claim for compensation against the state.

Another international act of important legal importance in this field is the **Criminal Law Convention on Corruption of the Council of Europe**, adopted on 27 January 1999¹⁸. It indirectly defines the concept of corruption by regulating the types of corruption crimes (various forms of bribery and trading in influence) and the subjects of potential corruption. Art. 2 of this convention regulates in detail the active and passive bribery, which are based on similar definitions in national and international acts.

The purpose of the Convention is to regulate the widest possible range of corruption offenses, thus ensuring the transparent, fair and impartial work of the state administration in all member states to it. It has an important role in unifying the criminal law of the States to it. Its provisions criminalize acts of corruption, regulate

¹⁷ Done at Strasbourg, 4 November 1999, ratified by a law adopted by the 38th National Assembly on 10 May 2000 (SG, no. 42 of 23 May 2000). It has been ratified by 45 member states of the Council of Europe, but also by non-member states - the United States, Mexico, Japan and Canada. Promulgated, SG, no. 102 of 21 November 2003, in force for Republic of Bulgaria since 1 November 2003.

¹⁸ Done at Strasbourg, 27 January 1999, ratified by a law adopted by the 38th National Assembly on 12 April 2001 (SG No. 42 of 27 April 2001). It has been ratified by a total of 45 countries, of which 44 are CoE member states and Belarus. Promulgated, SG, no. 73 of 26 July 2002, in force for Republic of Bulgaria from 1 July 2002.

separate approaches to the investigation and punishment of perpetrators of corruption crimes and improve international cooperation¹⁹.

The UN Convention against Corruption²⁰, adopted by the UN General Assembly on 29 September 2003, is a multilateral international treaty. It is defined as an international act of universal character, whose provisions cover the most important components for combating corruption - prevention, sanction and training.

The Convention addresses the transnational nature of acts of corruption, the need for international cooperation, and the confiscation of illegally acquired property²¹. Its provisions also address issues related to anti-corruption bodies, the role of civil society, and the independence of the judiciary. The objectives of this Convention include the following: 1) to promote and strengthen measures to prevent and effectively combat corruption; 2) to encourage and support international cooperation; 3) to promote integrity and accountability, as well as good governance of public affairs and property.

This international act is based on a multidisciplinary anti-corruption strategy, which includes four pillars: prevention; criminalization and law enforcement; international cooperation and confiscation of property²². All member states to it are obliged to implement anti-corruption strategies, which are based on corruption risk assessment and analysis. As well as to create anti-corruption bodies that are independent and impartial in the performance of their functions.

The UN Convention for the first time introduces the possibility to hold legal entities accountable for corruption, regulated in Art. 26 of the same. There is an

¹⁹ Kovacheva, Diana. Anti-corruption ..., p. 62.

²⁰ Ratified by a law adopted by the 40th National Assembly on 03.08.2006 (SG, no. 66 of 15 November 2006). To date, 178 countries are parties to the Convention. Promulgated, SG, no. 89 of 3 November 2006, in force for the Republic of Bulgaria since 20 October 2006.

²¹ Kovacheva, Diana. Anti-corruption ..., p. 41.

²² Technical Guide to the United Nations Convention against Corruption. United Nations Office on Drugs and Crime, Vienna, New York, 2009.

obligation for States Parties to the convention to provide for this in their national legislation.

This international legal act contains a special provision for criminal prosecution, sentencing and sanctioning of corruption offenses, including for immunity (Article 30).

In addition to the above categories, the UN Convention regulates bribery in the public sector. It contains a legal definition of "official", which includes all categories of persons holding public office in the executive, judiciary and legislature. This definition is analogous to that given in the **Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development**²³. Continuity is related to the goal of the UN Convention to unify existing standards and to enable the achievements in the regulation of the fight against corruption to reach as many countries as possible worldwide²⁴.

The given definition of transnational corruption, provided for in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, is also important for the development of the international legal framework. In accordance with Art. 1 of this Convention, corruption is *“the intentional offering, promise or giving to any person any undue monetary or other benefit, directly or through an intermediary, to a foreign official, for that official or for a third party in order to perform or not perform an action in connection with the performance of his official duties, in order to obtain or retain a transaction or other undue benefit in the performance of international trade”*²⁵.

²³ Adopted in Paris on 17 December 1997, within the framework of the Organization for Economic Cooperation and Development (Promulgated, SG No. 61 of 6 July 1999).

²⁴ See Kovacheva, Diana. Anti-corruption ..., p. 44.

²⁵ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Negotiating Conference on 21 November 1997, entry into force 15 February 1999.

In the context of distinguishing between “big” (political) and “small” (everyday) corruption, it is important to mention the definition created by the World Bank. It refers to *"political corruption perpetrated by persons holding senior state, political or managerial positions, persons making important decisions that may have a significant impact on certain policies, the spending of significant public funds, or the development of the state"*. The World Bank offers one of the most accurate and comprehensive definitions of particularly severe forms of corruption, namely: *"Mastering the main levers of government in the executive, legislature and judiciary by private economic interests, which have a serious impact on decision-making processes in their own favour through illegal and often covert forms of pressure or influence."*

This definition very clearly describes the essential characteristic of political corruption - it undermines the foundations of the state and blocks the ability of institutions to work independently and effectively.

In addition to implementing anti-corruption instruments, states need to establish and implement codes of conduct that have a preventive function against corruption. They should comply with the **International Code of Conduct for Public Officials**²⁶.

In the European legal framework, the concept of corruption is defined in two ways - directly by regulating a legal definition, and indirectly by outlining the framework of corruption crimes and possible perpetrators, i.e. by formulating definitions of various concepts related to corruption offenses, or defining possible subjects of such offenses²⁷.

²⁶ See Annex to UN General Assembly Resolution 51/59 of 12 December 1996.

²⁷ Analysis of the bodies for prevention and counteraction of corruption in Republic of Bulgaria. Sofia: Center for Prevention and Counteraction to Corruption and Organized Crime, 2017.

In the Bulgarian legislation the terms “corruption”, “corruption crimes”, “corruption behaviour”, “corruption actions” are used in criminal, civil and administrative acts of different scope, subjects and content.

With the adoption of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act (CCUAAFA)²⁸, in Art. 3, para. 1 of the same, the legal definition is formulated: “*Corruption within the meaning of this law is present when as a result of the held high public position the person abuses power, violates or does not perform official duties for the purpose of direct or indirect gain of undue material or intangible benefit for himself/herself or for others*”.

Anti-corruption legislation is generally in place, but challenges remain. Corruption and related crimes are regulated in the special part of the Criminal Code of Republic of Bulgaria. In overall, the implementation of Council Framework Decision 2003/568/JHA on combating corruption in the private sector can be considered satisfactory²⁹. It is important to note that in Bulgaria only individuals can be held criminally liable. Legal entities are subject only to administrative (non-punitive) sanctions within the meaning of Administrative Offenses and Penalties Act. In recent years, in various reports and analyses, the Bulgarian system of criminal procedure law has been repeatedly pointed out as an obstacle to the effective investigation and prosecution of high-level corruption³⁰. This issue is also addressed by the „Anti-Corruption Fund Foundation“, which states that the formalism of criminal proceedings hinders the development of innovative and original investigative strategies³¹.

²⁸ Prom. SG, no. 7 of 19 January 2018, amended SG, no. 69 of 4 August 2020, supplement. SG, no. 70 of 7 August 2020, supplement. SG, no. 12 of 12 February 2021

²⁹ Done at Brussels, 22 July 2003.

³⁰ Technical report accompanying the Report of the Commission to the European Parliament and the Council on Bulgaria's progress under the Cooperation and Verification Mechanism (SWD (2019) 392 final).

³¹ Information provided by the Anti-Corruption Fund Foundation for the Rule of Law Report 2020 - COM (2019) 355 final.

On the basis of the information provided by the national authorities, several shortcomings in the legal framework have been identified, such as the promotion of good faith conduct by excluding criminality or the imposition of lesser sentences, in cases where perpetrators of the crime of “*bribery*” voluntarily report it and cooperate with the investigating authorities³².

Scientific doctrine states that “*in fact, this is where the main difficulty in defining corruption is rooted.*” It is pointed out that the CC and other laws cannot define the concept, as corruption is not an act but a compound and complex multi-layered phenomenon, i.e. “*it is impossible to do this by one provision in one law that contains exhaustive (final) definition*”³³.

Both international and EU acts have a key role in implementing effective measures for prevention, counteraction and fight against corruption in Republic of Bulgaria. In recent years, a number of strategic documents have been adopted, containing definitions of the phenomenon of corruption, its scope and content. These documents can be divided into two main groups:

☞ Strategic documents with a direct focus on the prevention, counteraction and fight against corruption: National Strategy for Counteraction to Corruption (2001) and its Implementation Program; Strategy for Transparent Governance, Prevention and Counteraction to Corruption (2006-2008); Integrated Strategy for Prevention and Counteraction to Corruption and Organized Crime (2009); Strategy for Prevention and Counteraction to Corruption in the Judiciary (2013); Methodology for Corruption Risk Assessment, on which the Inspectorates work, developed and improved in 2010- 2014; Strategic Guidelines for Counteraction and Fight against

³² Information provided by Bulgaria on the Rule of Law Report 2020

³³ Gruev, Lazar and Boris Velchev. Criminal law aspects in the fight against corruption. Sofia: Center for the Study of Democracy, Coalition 2000, 2000, ISBN 954-477-090-9.

Corruption (2015-2020); National Strategy for Counteraction and Fight against Corruption (2015-2020).

☞ Strategic documents on various special sectors of indirect importance for the fight against corruption: National Strategy for Prevention and Combating Irregularities and Fraud Affecting the Financial Interests of the European Union; Updated Strategy for Continuing the Reform of the Judiciary; National Strategy for Development of the Public Sector procurement, the Common e-Government Strategy, as well as the individual sectoral strategies³⁴.

Attempts are also made in the regulations of various institutions to define the concept of corruption, its scope and the following negative consequences:

☞ Improper use of public resources, improper performance of public service for direct or subsequent benefit.

☞ Behaviour that results in an unfair use of power or position that results in someone being put in a better position than another.

☞ Corruption is divided into petty and large, administrative and political. It spreads to the judiciary and the executive.

☞ Corruption creates a negative international image of the country and repels foreign investment, which has a direct impact on economic development and the well-being of citizens.

☞ Corruption is the enemy of the development of a democratic European state.

The analysis of the legislation shows that the regulation of corruption in the Bulgarian legal system is fragmented and covers regulations of different ranks. In addition, there are frequent changes in the legislation regulating the activities of the bodies for prevention, counteraction and fight against corruption. This is a

³⁴ Analysis of the bodies for prevention and counteraction of corruption..., 2017.

prerequisite for the emergence of differences in concepts, gaps, or unbalanced horizontal and/or vertical connections and interaction between the authorities, and duplication or gaps in the regulation of the functions of the bodies for prevention and counteraction of corruption.

Based on the comparative legal analysis of the concept of corruption as a multi-layered complex phenomenon, as well as the numerous international, European and national anti-corruption acts, it is concluded that they are an indicator of the significance of the problem. However, they prove to be an insufficient means of counteracting corruption. The consequences of the destructive effects of corruption are not only political, they are economic and social. For this reason, constant international cooperation is needed, both in the creation of legal norms in this area, and in their implementation, in order to achieve the targeted result of optimizing and establishing a unified anti-corruption framework.

The same chapter examines the factors that generate corruption crime at the national and international levels. There is unanimity on the negative consequences of corruption, which include, but are not limited to, feelings of injustice, inefficiency of institutions, distrust of citizens, waste of public resources, repulsion of investment and business, political instability, and in some cases repressive actions against the population and limited opportunities for conducting public policies³⁵.

Proceeding from the basis of human nature and having in mind the way of functioning of a democratic society, as the most general factors underlying the attitudes for corrupt behaviour, the following can be pointed out³⁶:

³⁵ Williams, Robert, (Ed.). Explaining corruption: The Politics of Corruption 1, Elgar Reference Collection, Cheltenham UK Northampton, MA, USA, 2000, pp. 182-183.

³⁶ Lazarova - Tagareva, Vanya. Nature and main characteristics of corrupt practices. - In: Reports from the scientific conference "Transformation of the Armed Forces in the modern security environment", held at the Faculty of National Security and Defense on 20 and 21 May 2015. Sofia: Military Academy "G.S.Rakovski", Yearbook 2015, no. 2, 189-190.

human selfishness; human weakness; ignorance; poor upbringing; the desire for a better way of life; low income; unfair competition; political demagoguery; uncontrollable power; the bureaucracy and its discretion power; lack of information; lack of rules; lack of time; the lack of balance between law, morality and justice - “The three supports” on which this balance is based and which should outline its contours are the political class, free media and civil society in the face of non-governmental organizations.

As can be seen, only part of the preconditions for corruption could be blamed on the State and the administration it has created. The rest of the corruption pressure can be carried out by any person, any social group, any business entity.

At the highest political level, corruption is a product of relations of authority themselves. The monopolized ability to make government decisions, combined with the lack of control and accountability, creates a wide field for corrupt practices.

Another prerequisite for the emergence of corruption is public tolerance of the phenomenon. The lack of political and state will to combat this phenomenon is also a prerequisite for the emergence and implementation of corrupt practices.

There are other widespread beliefs about the root causes that provoke corrupt behavior: the cause of corruption is morality, traditions and people's psychology, in the poor organization of administrative activity and in weak internal control, in the structuring and functioning of administration.

After all, the reasons are complex. Monopoly in decision-making, insufficiently precise and clear administrative rules and procedures, poorly organized and inefficient administrative activity, insufficient transparency in the performance of administrative activities and services, weak and inefficient control, lack of civil control, general tolerance for corruption and attitudes towards taking bribes - all these reasons to one degree or another affect and entangle the complex causal knot of corruption.

The power conferred on civil servants in the field of public administration is the main reason used to satisfy personal or group interests. It is the work and the term in which a person holds a position that is the reason for the maximum benefit. To take advantage of the influence and potential of the position. Civil servants often have access to valuable information, exercise control functions, and impose penalties and sanctions. All this creates a precondition for corruption.

The forms of corruption are extremely diverse and have found application in all areas of public, political and cultural life of society as a whole.

Attention is paid to the economic and social aspects of the conflict of interest and corrupt practices.

The current problem of conflict of interest is related to the violation of ethics and norms of administrative behaviour, as a result of the realization in practice of parallel economic and corporate interests.

Conflicts of interest are a common social phenomenon. The doctrine examines in detail the legal conflict as a type of social one³⁷. It is defined as "*any social conflict that takes place in the field of legal regulation and in which specific parties (holders of rights and obligations) are bound by legal relations.*"³⁸

As a public relation, corruption manifests itself in the form of unregulated social exchange. From an economic point of view, the spread of corruption is subject to classical market principles. Higher demand (expressed in terms of the number of bribe-givers and the amount offered) and limited supply (the existence of operational autonomy of a public sector employee for decision-making) also induce greater corruption. The "corruption price" (the size of the bribes) are naturally directly related to the value of the expected benefit³⁹. The equivalent of the requested service

³⁷ Nikolov, Nikolay. Conflict of interest..., p. 29.

³⁸ Кудрявцев, В. Н. Юридический конфликт. - Государство и право, 1995, № 9, с. 9. (Kudryavtsev, V.N. Legal conflict. - State and Law, 1995, No. 9, p. 9.)

³⁹ Nonchev, Andrey. Corruption as public ..., p. 27.

can be money, material values, services of special value, etc. Thus, corrupt practices are specific economic relationships in which both parties have an interest. They are alternatives to legal market mechanisms, erode normal relations, and distort the criteria for the effectiveness of economic decisions.

The efficiency of state institutions in this aspect is one of the main factors for assessing the competitiveness of an economy, and hence - one of the main factors generating economic growth.

Finally, some of the most important negative effects that corruption mechanisms have on the economy are as follows:

- ☞ The costs of transactions are increasing (bribery is a kind of informal "tax") and uncertainty in the economy (business rules are unclear and unstable);

- ☞ Long-term foreign and domestic investments are hindered (uncertainty and frequent changes in the “rules of the game” do not allow for long-term business planning);

- ☞ European aids and funds are reduced or inefficient in their spending due to diversion in favour of private interests;

- ☞ People's abilities are incorrectly directed to rent-seeking activities and not to production or creative activities;

- ☞ Sectoral priorities and technological solutions in the government's activity are distorted (eg. negotiating large defense or infrastructure sites at the expense of the development of education or the health network);

- ☞ Companies from the “bright” sector are shifting to the shadow economy (involved in corrupt networks, companies find it difficult to avoid their future corrupt services);

- ☞ Tax rates are constantly rising (the desire to avoid paying taxes leads as a consequence - less revenue and hence - an attempt by the state to compensate for the lack of funds by increasing taxes);

☞ The foundations of the legitimacy of the state are undermined (the provision of public services is shifted from the legitimate state bodies to random or organized corruption networks). Corruption, as a complex and multifaceted phenomenon, is a negation of fair competition in the economic sphere, demotivates entrepreneurship, stimulates the shadow economy and economic crime, worsens public services and aggravates the social burden of citizens. In this way, it contributes to widening the gap between rich and poor and becomes a direct threat to the democratic foundations of society.

The last part of Chapter One examines corruption as a process that develops and improves, in the presence of imperfect opportunities for prevention of lawbreakers and those who have turned their backs on social ethics, covering the period from antiquity, through the transition, to the present day. A historical overview of the phenomenon of corruption, existing since ancient times, defined as "social evil" through the eyes of the famous Roman philosopher Cicero, has been made. His thesis in this direction determines the unstable situation of the state, as a result of non-implementation and non-compliance with the laws. He puts at the root human psychology, especially greed. The Roman poet Ennius defined corruption as the immorality of strong people, and Tacitus as a violation, circumventing the law with tricks and bribes.

The concept of "corruption" was finally established in the XV-XVI centuries. Since then until today, it has been accepted that this is bribery and venality of the bureaucracy, unscrupulousness, demoralization, and the fall of civil servants, as well as of public and political figures. It was not until the 18th century that it was observed in many countries that established corrupt practices and relations began to hinder the normal development of societies.

After the World War II, party influence increased, which led to an increase in party corruption. The parties gradually began to receive money from large companies

and corporations, and in return the latter secured the protection of their interests. All this is gradually becoming an international problem due to the fact that bribery of senior officials is becoming a widespread practice. Many countries are starting to fight these abuses.

The new history of Bulgaria is experiencing several changes in the corruption model. The first Bulgarian capitalism imposed a simple and direct way to plunder the state, to blur the line between personal and public, between private and state.

The highest levels of corruption are reported in Third World countries and most of the former socialist countries. In the 1990s, official crimes and unprecedented corruption began to swirl with particular force. All this did not circumvent our country. The basis for the creation of corrupt practices, with a favorable environment for development, is illegal privatization (denationalization). Without distinguishing between government, judiciary and mafia is a serious precondition for the spread of huge corruption. During the transition period, with the implementation of privatization from state to private property in all spheres of the economy, a favorable environment for the development of corruption was created.

Chapter Two includes monitoring of the level of corruption in Bulgaria and measurement indices containing up-to-date data from surveys of public attitudes. Corruption monitoring is based on two basic approaches. The first of them registered the commission of corrupt actions by representatives of various political, economic and social groups. This is done either by obtaining anonymous confessions for participation in corrupt practices, or by providing information about corruption pressure. Using this approach gives the closest to reality idea of the intensity of corrupt behaviour. The second approach involves registering people's subjective perceptions of the prevalence of corruption in a given area (among certain areas of public life, institutions, socio-professional groups, individuals, etc.). In this case, the information is of an evaluative nature and does not directly measure the objective

scale of corrupt practices. However, this type of data reveals the dominant public attitudes, which are a significant factor in shaping individual behavioural strategies. In addition, they show how the degree of penetration of corruption in public relations affects the value system of the individual. It can be assumed that the propensity to commit corrupt practices is higher when people are convinced that they are operating in a "corrupt" environment⁴⁰.

In addition to the data collected through the Corruption Monitoring System (CMS) as a diagnostic tool, information on the spread of corruption is also contained in departmental statistics (police and judiciary).

Given the available data, the most reliable indicator of the implementation of anti-corruption legislation is the number of people convicted of the most common corruption crimes, such as bribery and abuse of power. The levels of corruption observed in 2014 are the highest in the last 15 years. The CMS data show that more than one in four Bulgarian citizens admits to having paid a bribe at least once in the last year. Over the years, there has been moderate progress and changes depending on the political cycle: the level of prevalence decreases during the first 1-2 years of ruling of each new government, and then returns to higher values. The decrease in the level of prevalence during the first years of government is mainly due to the measures they initially take to curb corruption, combined with restraint on the part of the administration; at a later stage, these factors are displaced by established corruption channels, clientelism and favouritism. The main reason is that not enough is being done to improve the governance model in the country so that corruption among civil servants at all levels can be combated. Perceptions of employee corruption and the overall corruption environment in the country explain some aspects of the problem of the ineffectiveness of the fight against corruption - the

⁴⁰ Nonchev, Andrey. Corruption as public..., p. 19.

institutions that should be leading in this fight are those that are assessed as the most corrupt. In this regard, they face two challenges - to combat corruption through punitive measures and policies (to identify and prosecute it), while at the same time opposing the phenomenon among their own employees.

With the adoption of the new anti-corruption act in early 2018, a single body was created - the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission. It was created by merging several existing structures – Unlawfully Acquired Assets Forfeiture Commission, Commission for the Prevention and Establishment of Conflicts of Interest, a unit of the National Audit Office, BORCOR, and a specialized directorate of State Agency for National Security (SANS), which had different types and intensity of anti-corruption powers. As a result of these legislative changes, a new legal and institutional framework has emerged. Subsequently, jurisdiction in high-level corruption cases was transferred to the Specialized Criminal Court, and such cases are investigated under the supervision of the specialized prosecutor's office.

The conferral of supervisory and sanctioning powers on the new body, which significantly affect the legal sphere of the individual, requires guarantees of the independence of the institution, as well as compliance with the rule of law, division of powers, and constitutional right to protection and property rights. Problems with legislation and enforcement practices have been identified by the ACF (Anti-corruption Fund) and other independent expert civil society organizations. Attention is drawn to cases of selective and contradictory application of the law, which raise doubts about politically motivated inspections. Significant attention is given to the functions for establishing conflicts of interest. The lack of efficiency in the activity of the Commission for the Prevention and Establishment of Conflicts of Interest, throughout the period of its existence is emphasized, as well as the negative practices in the use of the body as a tool of political orders.

The establishment of the anti-corruption commission was publicly justified by high public expectations for combating high-level corruption, in response to the recommendations of the European Commission (EC). After its establishment, there is a significant discrepancy between expectations, commitments and their legal framework. The main deficit of the law is the mechanical combination within one institutional structure of different functions and activities - administrative-punitive, ascertaining (verification of discrepancies in the property declarations), operative-investigative (Special Investigative Tools), analytical, and preventive. This negatively affects the efficiency of the body. The assigned functions and powers of the body are primarily of an administrative rather than criminal nature.

Due to the lack of investigative powers, the anti-corruption commission could hardly meet expectations.

Since Bulgaria's accession to the EU in 2007, reforms in the country in areas involving justice and corruption have been monitored by the Commission through the Cooperation and Verification Mechanism (CVM), which serves as a transitional measure to facilitate Bulgaria's ongoing efforts to reform the judiciary and strengthen the fight against corruption and organized crime⁴¹. Pursuant to the decision establishing the mechanism and in accordance with the opinion of the Council, the operation of CVM will be terminated when all indicators applicable to Bulgaria are satisfactorily met⁴².

Based on the information in the Report (2018), it is concluded that Bulgaria has made significant progress, with the greatest importance in our country are the legislative changes. However, the mechanical combination within one institutional structure of different functions and activities, such as: administrative-punitive,

⁴¹ Following the conclusions of the Council of Ministers of 17 October 2006 (13339/06), the mechanism was established by Commission Decision of 13 December 2006 (C (2006) 6570).

⁴² Council Conclusions on the Cooperation and Verification Mechanism, 12 December 2017, available at: <<https://data.consilium.europa.eu/doc/document/ST-15587-2017-INIT/bg/pdf>>, last visited 02.12.2020

ascertaining (verification of discrepancies in property declarations), operative-investigative (Special Investigative Tools), analytical and preventive, is perceived as a main shortcoming of CCUAAFA ⁴³.

Based on the survey, an analysis of the levels of corruption in Bulgaria in recent years has been performed. The public attitudes for counteracting corruption, as well as the methods for prevention have been studied. A separate point studies the preventive nature of the declarations under Art. 35 of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act (CCUAAFA) as a means of counteracting corruption. The research aims to clarify issues of important public importance: 1) The preventive role of the declarations under Art. 35 of CCUAAFA as an effective means for preventing conflicts of interest and counteracting corruption; 2) Significant importance of the created registers under Art. 169, para 1 of CCUAAFA; 3) Consequences of non-submission of declarations under Art. 35 of CCUAAFA, in case of submission of incorrect data, in case of established discrepancies - imposition of sanctions on the declarants; 4) The practice of CCUAAFC for initiated proceedings on the grounds of art. 108, para 5 and para 6 of CCUAAFA, on the basis of an entered into force act for established conflict of interests and unsubmitted declaration of property and interests. The International Corruption Perceptions Index has also been studied in detail. In the latest Transparency International Corruption Perceptions Index (2019), Bulgaria scored 43 out of 100 points and ranked last in the EU and 74th worldwide⁴⁴. According to the latest Eurobarometer corruption survey, it turned out that 80% of Bulgarians surveyed believe that corruption is widespread in their country (the EU average is 71%)⁴⁵, this opinion is shared by 85% of companies (the EU average is 63%). According to the survey, 51% of the surveyed

⁴³Pushkarova, Iva and Atanas Slavov. Anti-corruption institutions: trends and practices. Sofia: ACF, May 2019, p. 5, available at: <https://acf.bg/wp-content/uploads/2019/05/doklad_BG_web.pdf>, last visited 02.12.2020

⁴⁴ Corruption Perceptions Index. Sofia: Transparency International, 2020 (for 2019).

⁴⁵ Special Eurobarometer survey No. 502: Corruption.

representatives of the business community, corruption is a problem for business development in the country. Generally, 28% of respondents feel personally affected by corruption in their daily lives (the EU average is 26%). According to the survey, 63% of respondents do not believe that there have been enough successful prosecutions to deter people from corrupt practices (the EU average is 36%). Last but not least, only 13% of company representatives answered that individuals and businesses caught bribing a senior official had received an appropriate penalty (the EU average is 31%)⁴⁶.

Chapter Three covers opportunities for counteraction and better detection of conflicts of interest and corrupt practices, the need for further action against conflicts of interest and corruption. Republic of Bulgaria was one of the 17 founding members of the Group of States against Corruption (GRECO) in 1999 and has been actively involved in its activities since then. The aim of GRECO, as set out in its Charter, is to increase the capacity of Member States in the fight against corruption through a dynamic process of mutual evaluation⁴⁷. It includes the evaluation procedures of Bulgaria for the three rounds for the periods 2001–2006 with 14 recommendations, 2004-2009 with 11 recommendations and the third round of evaluation, which started in 2007 with 20 recommendations. In the period up to 2012, the recommendations made have been implemented at a satisfactory level. In 2017, the GRECO report on the implementation by Bulgaria of the recommendations of the Fourth Round of Evaluation on the topics of corruption prevention regarding MPs, judges and prosecutors was published. A total of 19 recommendations were made in the Report.

According to the Report on Bulgaria's Progress on CVM in 2018, the European Commission is committed to helping Bulgaria to address these shortcomings, as well

⁴⁶ Express Eurobarometer survey No. 482: Businesses' attitudes towards corruption in the EU.

⁴⁷ Report of GRECO (Group of States against Corruption) on the implementation by Bulgaria of the recommendations of the Fourth Round of Evaluation on the Prevention of Corruption of MPs, Judges and Prosecutors, adopted during the 75th Plenary Session in Strasbourg, 19-23 June 2017.

as to regularly monitor the country's progress on specific indicators provided for this purpose through the *Cooperation and Verification Mechanism*. These indicators are interlinked and should be seen as an expression of the government's long-term political commitment to both citizens and other Member States. Most of these recommendations have been implemented satisfactorily and others have been partially implemented. Bulgaria's November 2018 Progress Report under the Cooperation and Verification Mechanism notes that significant progress has been made on the recommendations set out in the January 2017 Report. Although the Commission cannot yet conclude that any of the indicators is satisfactorily implemented at this stage, it remains of the opinion that with continued political leadership and determination to implement the necessary reforms, Bulgaria should be able to implement the remaining recommendations in the near future. However, this still requires a lot of work⁴⁸.

The Council of the European Union recommends that Bulgaria take the following actions in 2019 and 2020 ⁴⁹:

1. Improve tax collection through targeted measures in areas such as fuel and labour taxes.

To modernize the corporate governance of state-owned enterprises through the adoption and implementation of future legislation.

2. To ensure the stability of the banking sector by strengthening supervision, promoting adequate valuation of assets, including bank collateral, and promoting a functioning secondary market for non-performing loans. To ensure effective supervision and enforcement of anti-money laundering legislation. To strengthen the non-banking financial sector through the effective implementation of risk-based supervision, the implementation of recently adopted guidelines for assessment and

⁴⁸ Report on Bulgaria's progress under the cooperation mechanism..., 2018.

⁴⁹ Corruption Perceptions Index. Sofia: Transparency International, 2020 (for 2019).

supervision at group level. To fulfill the forthcoming roadmap for dealing with the identified gaps in the legislation for declaring bankruptcy. To promote the stability of the motor insurance sector by overcoming market challenges and remaining structural weaknesses.

3. To focus investment-related economic policy on research and innovation, transport, in particular its sustainability, water, waste and energy infrastructure and energy efficiency, taking into account regional differences, and improving the business environment.

4. To improve employability by strengthening skills, including digital skills. To increase the quality, relevance to the labor market and the inclusive nature of education and training, in particular for Roma people and other disadvantaged groups. To take measures for social inclusion by improving access to integrated social and employment services, and more effectively supporting minimum incomes.

5. To improve access to health services, including by reducing direct payments by patients and tackling the lack of medical specialists.

Transparent reporting by the Bulgarian authorities, on the one hand, and public and civilian control, on the other, will play an important role in undertaking monitoring at national level and in providing the necessary guarantees for continued adherence to progress and reform.

A separate section discusses the creation of a common institutional framework for prevention, counteraction and fight against corruption - four main models for building the institutional framework in the system of prevention, counteraction and fight against corruption⁵⁰. *Multi-purpose institutional model, in which we have a single body for prevention, counteraction and administrative prosecution of*

⁵⁰ Analysis of the bodies for prevention and counteraction of corruption in Republic of Bulgaria. Sofia: Center for Prevention and Counteraction to Corruption and Organized Crime 2017.

corruption, which provides a complete solution to the prevention and counteraction of corruption in a single body – it combines the functions of several agencies through horizontal integration; centralizes in itself all the necessary information about the actions taken in terms of prevention and fight against corruption. It covers high-level corruption in implementation of the CVM recommendation. In practice, the analysis of good practices shows that the countries with the highest rating according to the World Corruption Barometer have a multi-purpose institutional model.

The disadvantages of the model are the following:

- ☞ The new structure may be another inefficient bureaucratic organization;
- ☞ There is a risk of predominance of the repressive part over the preventive part - resources, attention and responsibility may be redirected from existing control institutions from priority areas of the reform;
- ☞ There is a risk of over-concentration of power - it can be used as a tool against political opponents;
- ☞ Partially complies with international standards established by the UN Convention against Corruption.

It is important to note that when defining the powers, purpose, scope and expected results of the new body, there should be compliance with the Anti-Money Laundering Measures Act⁵¹, transposing Directive 2015/849⁵². The latter addresses the decisive measures for detecting corruption to the competent institutions - SANS, Ministry of Interior, Prosecutor's Office, which have the powers and specialized tools.

⁵¹ Prom. SG, no. 27 of 27 March 2018, amended. SG, no. 7 of 26 January 2021.

⁵² Directive of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council, and Commission Directive 2006/70 / EC.

The concluding part of the Third Chapter deals with the priorities and measures set out in the National Strategies for Prevention and Counteraction of Corruption in Republic of Bulgaria for the period 2015-2020 and for the period 2021-2027.

The strategy aims to turn Republic of Bulgaria by 2020 into a country where petty corruption is significantly limited to the average levels for the European Union, high-level corruption not to remain unpunished, anti-corruption institutions to work effectively and to have a real preventive effect on corruption, and the perceptions and experiences of citizens and companies about the levels of corruption in Bulgaria to be significantly reduced. The *priorities* set out in the Strategy for the state policy for prevention and counteraction to corruption are as follows:

- 1) Building an effective system of anti-corruption bodies and units;
- 2) Counteracting corruption at the highest levels of government;
- 3) Counteracting political corruption with an emphasis on "electoral corruption";
- 4) Prevention and counteraction of corruption in the judiciary, the Ministry of Interior and the control bodies;
- 5) Liberation of citizens from "petty" corruption;
- 6) Creating an environment of public intolerance of corruption.

The fight against corruption has been declared a top priority of the government in its Governance Programme for the period 2017-2021⁵³.

The last **Chapter Four** focuses on the new anti-corruption legislation, the role of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission (CCUAAFC) and the implementation of the CCUAAFA in the fight against corruption.

⁵³ Government Programme of Republic of Bulgaria for the period 2017-2021

With the establishment of a single anti-corruption law, the aim is to expand the functions of the Commission, and hence the scope of the law. The powers and competencies of the Commission have been increased compared to those of the existing until recently Commission for the Prevention and Establishment of Conflicts of Interest, the Center for Prevention and Counteraction to Corruption and Organized Crime (BORCOR), the unit in the Court of Auditors, which receives and inspects the property declarations, and the specialized directorate at the State Agency for National Security for counteracting corruption among persons holding senior state positions. The powers and activities of the Commission are regulated in detail in the CCUAAFA. The verification of alerts, the initiated proceedings for establishing a conflict of interest, the verification of property status and the proceedings for confiscation of illegally acquired property on the basis of information and analysis by the relevant structural units of the Commission are regulated and easier to implement thanks to powers and good interaction with various state bodies referred to in Art. 24 and Art. 27 of CCUAAFA, namely: the Prosecutor's Office, the Ministry of Interior, the Bodies of the State Agency for National Security, the Revenue Bodies, the Customs Agency, the Chief Inspectorate of the Council of Ministers, the Inspectorate at the Supreme Judicial Council, the State Agency for Technical Operations, the State Intelligence Agency, Military Police Service. In implementation of the recommendations in the EC reports on the progress of Republic of Bulgaria under the Cooperation and Verification Mechanism (CVM), the CCUAAFA was adopted. The main goals set in the new legislation are aimed at protecting the interests of society by effectively combating corruption, preventing and limiting the opportunities for illegal acquisition and disposal of property, creating guarantees that persons holding senior public positions exercise their powers honestly and upright, ensuring a sense of justice among citizens; introduction of clear and efficient rules for civil confiscation of assets that are not directly related to the

specific crime; facilitating the confiscation of assets that will hamper criminal activities, protecting the economy from criminal elements and corruption, and restoring the profits made by criminals to public authorities providing services to citizens; creating an effective system for preventing corruption, which ensures that persons holding senior public positions perform their powers or duties honestly and upright in compliance with the Constitution and laws of the country, and in the interest of citizens and society.

Cases of conflict of interest and corruption established by CCUAAFC are studied, including penalties imposed on perpetrators, and confiscation of illegally acquired property.

In order a "conflict of interest" to be present, an existing private interest must be established in a definite way, which will affect the objective and impartial performance of the powers or duties of the person holding a public office and exercising power influenced by the private interest. The common feature in decisions with established conflict of interests is the established cumulative effect of the following circumstances - a person holding a public office, resp. a person holding a senior public office, the existence of a private interest that may affect the impartial and objective performance of his powers or duties and the exercise of powers influenced by the private interest.

In the decisions with established conflict of interests of public figures, local governments and local authorities, and on the basis of a thorough examination of the alerts and evidence collected, the Commission imposed fines in accordance with the rules laid down in the administrative-punitive provisions of CCUAAFA. The decisions specify a term for voluntary execution of the imposed fine. No act for establishing an administrative violation shall be drawn up for the administrative penal liability imposed by a decision, and no penal decree shall be issued. In all decisions of the Commission with an established conflict of interests, the provisions

detailed in Section II, Chapter Eight of the CCUAAFA have been violated. The proper implementation of the legislation, i.e. CCUAAFA has been established, which is of paramount importance.

With regard to the institute of civil forfeiture, the national legal framework should be in compliance with the Constitution of Republic of Bulgaria, international acts, including the European Convention on Human Rights, as well as EU law, introducing the necessary means to guarantee the right to protection and protection of property rights.

The Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act sets out the rules for counteracting, preventing and establishing a conflict of interest of persons holding public office, as well as forfeiture of illegally acquired property of persons who have acquired material goods through proven abuses and crimes committed for illicit enrichment. The scope of the law covers the legislature, the executive and the judiciary, as well as local self-government, and applies to all persons who are sole bodies, members of collegial bodies, employees in the administration or are appointed to senior positions by executive bodies.

A thorough comparative analysis of the legal means for counteracting corruption and proposals for future effective anti-corruption measures has been made.

In the end, it must be concluded that the achievement of balance at the national and international level can be done by the introduction of acceptable effective and efficient means against corruption policies, in order to eradicate selfish attitudes, prevent conflicts of interest and corruption in all areas, and proving and punishing the guilty.

This dissertation is aimed at clarifying the issues that concern the public in terms of preventing conflicts of interest and corrupt practices in public administration.

List of publications related to the dissertation

Hugasyan, Tsvetanka. Economic and social aspects of the manifestation of conflict of interest and corrupt practices. - In: Reports from the Annual University Scientific Conference (28-29 May 2020). Scientific field "Social, economic and legal sciences". Volume 9. Veliko Tarnovo: Publishing Complex of Vasil Levski National High School, 2020, ISSN 1314-1937, 37-46.

Hugasyan, Tsvetanka. Comparative legal analysis of the concept of corruption at national and international level. - In: Reports from the Annual University Scientific Conference (28-29 May 2020). Scientific field "Social, economic and legal sciences". Volume 9. Veliko Tarnovo: Publishing Complex of Vasil Levski National High School, 2020, ISSN 1314-1937, 47-56.

Hugasyan, Tsvetanka. The preventive nature of the declarations under Art. 35 of CCUAAFA as a means of counteracting corruption. - In: Reports from the Scientific Conference "Current Security Issues" (22-23 October 2020). Scientific field "Social and legal aspects of security and defense". Volume 3. Veliko Tarnovo: Publishing Complex of Vasil Levski National High School, 2020, ISSN 2367-7465, 86-95.