

Corruption and national security

Valentina Madzharova
Administrative head of the Specialized Prosecutor's Office
valentina_madzh@abv.bg

Abstract:

"National security" is a concept that for a long time does not only include the protection of the country's borders (land, air, sea) nor does it protect only the governmental bodies and power. National security is everything that favors and helps the development and sustainability of the Bulgarian identity. The economy has the strongest influence on the prosperity of modern-day people. Corruption has a major impact on the economy. Therefore, national security and corruption are directly related, the greater the corruption, the greater the breach in national security. Controlling corruption is possible only if a complex approach is taken - comprehensive revision of the legislation, comprehensive revision of the administrative and public capacity, easing and minimization of the powers of government officials.

Keywords: corruption, national security, economy

The purpose of the report is to prove the need to undertake a comprehensive system of legislative and organizational measures to deal with the phenomenon of corruption, including political corruption, so as to ensure an adequate response to all manifestations of national security in the country - economic, demographic, political. The topic of corruption has not stopped being relevant in the last decade. Many public figures and scientists have argued for the impact of corruption on national security. Already in 2013, Milka Yosifova advocated the opinion that organized crime, corruption and the monopolization of the economy are factors directly threatening national security.¹

In Art. 2 of the Treaty on European Union (EU), the rule of law and respect for it is defined as one of the fundamental values on which the Union is founded. Bulgaria is a country governed by the rule of law and is a member of the EU. Therefore, if the law is followed and politics serves the law and not the other way around, there should be no problem areas that undermine our national security. The reality is different, and this is so, because the most important factors for Bulgarian society, such as economy, education and social policy, lack a systematic approach. By Decision of 08.03.2011, the National Assembly adopts the National Security Strategy of the Republic of Bulgaria². Subsequently, by the Decision of 14.03.2018 of the National Assembly, the Updated National Security Strategy of the Republic of Bulgaria is adopted³. Both strategies aim to tackle poverty, social inequality, corruption and deal with the detrimental effect of lobbying legislative processes. However, instead of limiting corruption and developing the economy, in 2020 Bulgaria is in first place in terms of corruption among the member states of the European Union.⁴ There could be no other reason than one - in recent years in Bulgaria, law has served politics.

Declaratively, all persons holding high public positions consider the importance of corruption for our national security. On 19.03.2021 with Decision No. 235, the Council of Ministers adopts a National Strategy for Counteraction and Prevention of Corruption /2021 - 2027/.⁵ It is a curious fact that such a strategy, far from the developed democratic society of the USA, was adopted on 06.12 on the same year.⁶

Corruption can be classified according to many criteria - in terms of the sphere of action, in terms of the subject, in terms of the type of corrupt practice. A leading place, as far as it determines and limits corruption in the other units of public life, is occupied by corruption in politics. This corruption affects politically engaged

¹ M. Yosifova "Countering the corrupt elements of national security" 2013.

² SG, №.19 of 08.03.2011

³ SG, №.26 of 23.03.2018

⁴ Transparency International ranking

⁵ „Corruption is one of the most serious threats to the rule of law, democracy and human rights. Corruption undermines good governance and social justice, harms free competition, hinders economic development and threatens the stability of democratic institutions and the moral foundations of society. A particularly serious problem is corruption at the highest levels of power and among those employed in the public sector“

⁶ <https://www.whitehouse.gov/>

subjects, such as people's representatives, regional governors, municipal councilors. It finds expression most often and unfortunately most perniciously in the enactment of laws and by-laws serving specific individuals. The manifestation is also found in the organization of a campaign to buy voters, which has been relevant in recent years.

Rationally speaking, the fastest way to deal with the high-level corruption is through criminal law – charge of accusations. But since we are a country governed by the rule of law, in order to indict a criminally responsible entity, the first necessary condition is that the law allows this possibility, and the second is that sufficient evidence is gathered.

If these two conditions are present, yes - it could be assumed that the judicial system, and in particular the prosecutor's office, is "guilty" of not dealing with corruption.

The situation is different for the following reasons:

- Unreasonable closure of specialized jurisdictions;⁷;
- Frequent and chaotic legislative changes;
- Lack of predictability and legislative stability;

In addition to this rational approach being clearly dysfunctional, it is also destructive. The main argument for the creation of the specialized structures in 2011 is to make impossible the pressure and the attempt to influence the magistrates dealing with the worst crime in the country. At that time, this was a good basis for the "codification" of anti-corruption measures in the country, as well as those concerning national security. From its creation in 2012 to its closure in 2022, the specialized jurisdictions have come a long and complicated way, accompanied by frequent legislative and personnel changes. Consecutively, after amendments were made to the Code of Criminal Procedure, in 2015 they were assigned the cases under Chapter One of the Criminal Code "Crimes against the Republic", and in 2017, also the crimes of corruption at the highest levels of power. In fact, during the entire period of its existence, the Specialized Prosecutor's Office has worked under conditions of chronic personnel shortages, both for magistrates and court officials. This problem finds a partial solution, through the secondment mechanism, giving a temporary and fragmentary solution. There was no other prosecutor's office in Bulgaria that functioned in such a dire personnel situation. This inevitably led to a serious workload for the prosecutors, to the impossibility of traveling in the country when investigating organized gangs outside of Sofia, loss of daily contact and interaction with the operational services of the Ministry of Internal Affairs and the State Security Service, loss of effective control over investigations.

On 03.01.2012, the Specialized Prosecutor's Office began to function effectively with only seven appointed prosecutors and not a single investigator. At the beginning of 2013, 14 prosecutors worked, including an administrative head with a staff of 22, of which 8 commanders and 6 investigators, of which 1 commander, with a staff of 12. Almost throughout 2013, only 63% of the number of prosecutors and 50% of the number of investigators were employed. It was only in October-November 2013 that the Supreme Judicial Council competitions for prosecutors and investigators ended, as a result of which 13 more prosecutors and 4 investigators were appointed to the Specialized Prosecutor's Office. At the end of 2013, 19 prosecutors and 12 investigators worked in the Specialized Prosecutor's Office, of which 8 were permanently appointed, 4 were seconded. At the end of 2014, 17 prosecutors and 9 investigators were appointed to the Specialized Prosecutor's Office. On average, in 2014 there were 17.4 prosecutors or 79% of the staff and 10.08 investigators or 84% of the prosecution staff. As of 01.01.2015, the number of magistrates was 34, of which 22 were prosecutors (of which 1 was an administrative head and 1 was a deputy administrative head) and 12 were investigators in the Investigating Department of the Specialized Prosecutor's Office (ID at SPO), of them 1 full-time employee - head of the Investigating department. There were 17 full-time prosecutors employed (of which 1 full-time employee – administrative head). Employed full-time investigators are 9 (1 of them full-time number - head of the Investigating Department) in the Investigating Department at the Specialized Prosecutor's Office. The headcount of magistrates from the Specialized Prosecutor's Office as of 31.12.2015 is 34 full-time, of which 22 for prosecutors (including the administrative head and one deputy head of the administration) and 12 full-time investigators in the Investigating Department of the Specialized Prosecutor's Office (including the head of the Chief Prosecutor of the Specialized Prosecutor's Office). Employed prosecutor staff - 17 (of them 1 staff member for the deputy head of administration). There are 12 full-time positions for investigators (of which 1 full-time position is in charge of the Investigating department). The full-time number of magistrates as of 31.12.2016 is 48, of which 31 full-time prosecutors (including the administrative head and two deputies of the administrative head) and 17 full-time investigators in the Investigating Department of the Specialized Prosecutor's Office (including the head of the Specialized Prosecutor's Office). There are 21 employed prosecutor staff members (of which 1 staff member for the administrative head and two deputies of the administrative head). Employed full-time numbers for investigators are 11 (of them 1 full-time number – head of the Investigating department) in the Investigating Department of the Specialized Prosecutor's Office. As of 31.12.2017, the full-time number of prosecutors was 38, of which 28 were employed (including an administrative head and two deputies of the

⁷ SG, № 42 of 26.04.2022 in force from 28.07.2022r.

administrative head). In the Investigating Department at the Specialized Prosecutor's Office, the full-time investigators are 25, of which 12 are full-time employees (including the head of the Specialized Prosecutor's Office). As of 31.12.2018, the number of full-time prosecutors in the Specialized Prosecutor's Office is 49, of which 32 are employed (including three deputy heads of administration). In the Investigating Department at the Specialized Prosecutor's Office, the full-time of investigators are 40, of which the employed full-time numbers are 16 per investigator. As of 31.12.2019, the full-time number of prosecutors was 59, of which 48 were employed (including an administrative head and two deputies of the administrative head). In the Investigating Department at the Specialized Prosecutor's Office, the number full-time investigators is 51, of which 28 are employed full-time (of which 23 are investigators and 5 junior investigators). As of 01.01.2020, the number of full-time magistrates from the Specialized Prosecutor's Office is 110 full-time employees, of which 59 for prosecutors (of which 1 full-time employee - administrative head and 3 - for the deputy of the administrative head) and 51 (of them 1 head of the Investigating department, 39 investigators and 11 junior investigators) full-time numbers of investigators in the Investigating Department at the Specialized Prosecutor's Office. There are 48 full-time prosecutors employed (of them 1 full-time employee – administrative head and 2 – for the deputy of the administrative head). Employed full-time investigators in the Investigating Department at the Specialized Prosecutor's Office is 28 (of them 23 investigators and 5 junior investigators). As of 31.12.2020, the number of full-time prosecutors in the Specialized Prosecutor's Office is 67, of which 46 are employed by state (including the administrative head and four deputies of the administrative head). The full-time number of investigators is 58, of which 39 are full-time employees (including the head of the Investigating department, twenty-seven investigators and eleven junior investigators). As of 01.01.2021, the full-time number of magistrates from the Specialized Prosecutor's Office is 125 full-time, of which 67 full-time prosecutors (of which 1 – administrative head and 5 – for the deputy of the administrative head) and 58 (of them 1 head of the Investigating department, 41 investigators and 16 junior investigators) full-time investigators in the Investigating Department at the Specialized Prosecutor's Office. There are 46 employed prosecutor staff (of which 1 – administrative head and 4 – for the deputy of the administrative head). The employed full-time investigators in the Investigating Department at the Specialized Prosecutor's Office are 39 (of them 1 head of the Investigating department, 27 investigators and 11 junior investigators). As of 01.09.2021, the full-time number of prosecutors in the Specialized Prosecutor's Office is 67 full-time employees, of which 43 are employed by state (including the administrative head and four deputies of the administrative head). As of September 1, 2021, the full-time investigators are 58, of which 43 are employed by state (including the head of the Investigating department, thirty-two investigators and ten junior investigators). It was only in 2019 that the efforts made by the personnel body, the Supreme Judicial Council, to hold competitions were crowned with partial success, as the personnel problem was largely overcome. In the same time interval, the efforts made by the magistrates to work in the direction of corruption also began to yield results.



Diagram 1. Source: Annual reports for 2019, 2020, 2021 of the Specialized Prosecutor's Office www.prb.bg

In the analysis of these data, it is established that the percentage ratio of pre-trial proceedings of this category submitted to the court compared to those decided for the reporting year 2021. is 21.9%. For the previous year 2020, it was 18.48%. The data point to a drastic increase in the number of people brought to court for corruption before 2021.

Against the background of these objective facts, in the 47th, as it was in the 46th and 45th National Assembly, the arguments "in favor" of closing the specialized courts and prosecutor's offices are entirely political - they do not rest on any analysis, more less so on a comparative one. This is also because the campaign to close the specialized jurisdictions intensified after the expansion of competences in 2015 and 2017, including in relation to corruption. This is because they reached their peak after the Specialized Prosecutor's Office "reached out" to previously untouchable people, identified as representatives of the former nomenclature with enormous financial opportunities and influence, mayors of municipalities (nominated for the post or supported by parties), of heads of state agencies, members of the Council of Ministers, members of the parliament, members of the President's Administration.

Over the years, a serious problem in the work of the Specialized Prosecutor's Office, and in general in the government structures, has been determined by the many chaotic reforms. The Law on the National Security

State Agency has been amended 32 times since its adoption 14 years ago⁸. In reality, only this law is amended twice a year. The situation is similar with the Law on the Ministry of Interior. From the next reform in the "Security" sector and the amendments to the Law on the National Security State Agency and Law on the Ministry of Interior, with which the Directorate for the Combating Organized Crime was removed from the State Agency "National Security" and again separated as the Main Directorate "Combating Organized Crime" under the Ministry of Interior, which in its current form has been functioning de jure since 14.02.2015. Over the years, this office has been engaged by the legislator as being solely competent to carry out the investigation in the cases of the Specialized Prosecutor's Office. Significantly later in time, the staffing of General Directorate Combating Organised Crime was implemented in practice. As a result of the implemented reform, cases have been reassigned again - this time from the State Agency "National Security" through the Main Directorate "National police", and subsequently to the General Directorate Combating Organised Crime. Again, time was required for the new Investigating bodies to familiarize themselves with the cases and navigate the complex matter. As a result, the investigation in a number of cases has been delayed and it has come to the entry of the proceedings into the procedure under Chapter 26 of the Criminal Procedure Code⁹, as well as into the procedure for amending measures for non-abortion due to irregularity in the execution of procedural Investigating actions in the cases /something that currently monitors the cases of the closed Specialized Prosecutor's Office/. The process of structuring General Directorate Combating Organised Crime and its personnel strengthening in 2015 also caused serious problems in the implementation of operational work and the main activity of detection and countermeasures against organized crime in Bulgaria. During these periods, the Specialized Prosecutor's Office is not supplied with a sufficient amount of materials. Materials suitable for starting investigations were initially related to cases of neighborhood distribution of narcotic substances; usury; computer crimes. As a result of this restructuring, for a long period there was a lack of reported developments on activities such as human trafficking, corruption, drug trafficking. There were no developments from entire regions of the country such as Varna Region, Burgas Region, etc. Among the developments, there were also those for the so-called "significant persons". Only in 2016, this crisis is beginning to be overcome.

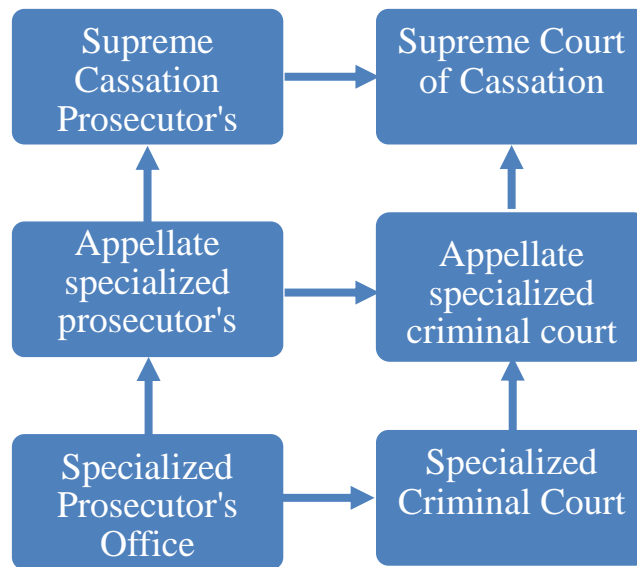


Diagram 2. Source: Judiciary Act

The need for judicial reform is more than urgent, because security in the country is greatly shaken. Shutting down the judiciary without reasonable assurance that this is the biggest and most pressing problem is destructive. In the country's magistrates, the feeling remained that the closure itself was caused by activeness on the part of the closed bodies, and not by passiveness. This is so because the specialized jurisdictions did not have, or did not apply, different legislation from the rest of the jurisdictions in the country. It is also because the

⁸ Promulgated, SG №. 109 of 20.12.2007, last amended in SG № 51 of 06/05/2020

⁹ Art. 368. (*) (amended, SG No. 63 of 2017, in force from 5.11.2017) (1) If, in the pre-trial proceedings, more than two years have passed since a certain person was brought as an accused for a serious crime and more than six months in other cases, the accused, the victim and the damaged legal entity can make a request to accelerate the investigation. These terms do not include the time during which the case was in court or was suspended on the basis of Art. 25.

specialized jurisdictions, according to the will of the legislator, did not issue final judicial acts. The relationship between the Specialized Prosecutor's Office and the Supreme Court of Cassation, on the one hand, and between the Specialized Criminal Court and the Supreme Court of Cassation, on the other hand, is the same as the relationships of any other district-level judicial authority.

The first argument that the closure of the specialized jurisdictions could be cited as an example of political corruption is that the specialized magistrates have proven the usefulness of their existence as bodies with competences on the territory of the entire country and beyond. What's more, results were achieved precisely in the national security segment, which are currently not achieved. The table below shows the work for crimes against under Chapter One of the Criminal Code.

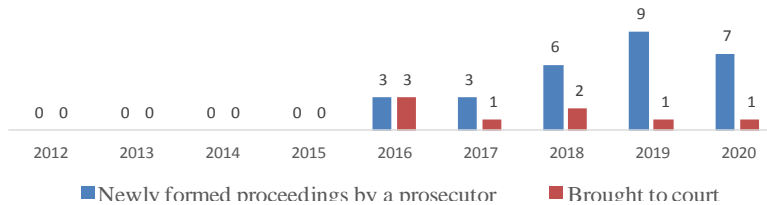


Diagram 3. Source - Annual reports of the Specialized Prosecutor's Office for 2016-2021, as well as reports of the PRB <https://prb.bg>

The independence of the judiciary is not a given but a continuous process. Law and politics are closely related. The rule of law is distinguished by the fact that politics serves the law, and not vice versa - the law of politics. In Austria, the work of the specialized prosecutor's office led to the resignation of a person holding a high public office in Germany at the end of 2020. The prosecutor's office also initiated and carried out Investigating actions directed against people holding high public positions. Neither in Austria nor in Germany, no one even less a politician, has even thought of closing the "special justice".

The second argument - a professional team of judges and prosecutors was created, with a high degree of qualification and specialization in countering organized crime, corruption, terrorism, crimes against the state. Each of them has been trained for this for years, specialized in a specific field of domestic and international organized crime.¹⁰

The third – the presence of acquittals. There are acquittals everywhere, and they are the guarantee of a functioning justice system. For the entire period of existence of the Specialized Prosecutor's Office, the people acquitted with a judicial act entered into force are a total of 112. During the first two years of the functioning of the specialized justice, there were no acquittals entered into force. In 2014, 6 people were acquitted by an effective court act, in 2015 – 15, in 2016 – 14, in 2017 – 27, in 2018 – 10, in 2019 – 20 and for 2020 – 20 people. In total, for the period, the relative share of acquitted persons with an effective court act (112) compared to all people

with an effective court act for the period (1,716) is 6.5%. As stated, in 2012 and 2013 there were no acquitted persons. This percentage was the lowest in 2014 (3.9% on average for District attorney's office – 6.1% and for Sofia City Prosecutor's Office this percentage is 12.9%). The following three years, the share of acquitted persons of Specialized Prosecutor's Office increased: for 2015 – 7.9% with an average for District attorney's office – 6.9% and for Sofia City Prosecutor's Office – 18.8%; for 2016 – 9.3% with 6.8% for District attorney's office and for Sofia City Prosecutor's Office – 16.9%; for 2017 – 9.1% with 6.0% for District attorney's office and for Sofia City Prosecutor's Office – 15%. The following year, 2018, the share for Specialized Prosecutor's Office of acquitted persons falls - 4.3%, compared to 4.8% for District attorney's office and 9.1% for Sofia City Prosecutor's Office. After that, this share increases again: for 2019 – 6.4% with 4.8% on average for District attorney's office and 11.7% for Sofia City Prosecutor's Office and in 2020 – 9.2% with 4.1% for District attorney's office and 8.0% for Sofia City Prosecutor's Office. No clear trend can be inferred from these data. It can be seen that the proportion of acquitted persons with an effective court act for Specialized Prosecutor's Office compared to all people with an effective court act has varied up and down over the years, and in most

¹⁰ The 2020 Eurojust Report explicitly mentions two cases involving the Specialized Prosecutor's Office, one of which was given as an example of exceptional good practice at the meeting of the Council of Ministers of Justice of the EU on the challenges posed by the pandemic in the field of international cooperation in criminal matters in 2020.

years it is above the average for district attorneys' offices, but significantly below that for the Sofia City Prosecutor's Office (except for 2020, when it is higher)¹¹

The legislative changes, which would help the effective investigation of corruption at the highest levels of power and organized crime, and hence the improvement of internal and external security, and ensuring conditions for economic prosperity, should be aimed at simplifying the criminal procedural rules. Moreover, the emphasis should not be placed on the consequence of the corrupt practice of the principle of committed crime - imposed punishment. The emphasis should be placed on prevention and immediately after that on personnel capacity.

Judicial reform should be part of the overall anti-corruption policy of the state, as well as a consequence of reforming many laws, including in the security sector. The fact that the draft law on publicity and registration of lobbyists and lobbying activities submitted to the 39th National Assembly was not considered at all is puzzling. Without such a law, with frequent changes in the legislation, which is an indisputable fact for the Bulgarian reality, it is very difficult to fight political corruption. Frequent changes in legislation are undoubtedly dangerous because they create periods that can be used by specific entities to obtain non-following benefits.¹² A vivid example is the "Father and Brother" case study, which gained popularity in the public sphere. As can be seen from the reasons of the Supreme Court of Cassation¹³, apparently a corrupt practice cannot find a criminal legal sanction due to legislative deficits in the field of public procurement and the conflict of interests.

To achieve the goal set in this report, I propose to undertake a comprehensive system of measures of a legislative and organizational nature to deal with the phenomenon of corruption, including political:

- Legislative - adopting a law on lobbying;
- Organizational - study of good practices in all spheres of public life of the countries with the lowest corruption index;
- Formation of a broad round table with the participation of practitioners and scientists from all spheres of public life in order to carry out a revision of all legislation;
- Creation of a system of mutually controlled units for anticipating potential corruption risks, as well as for administrative counteraction to existing ones;

Without prevention and without strengthening administrative capacity to fight corruption, this problem could not find a permanent solution. Criminal law uses the harshest form of state coercion, which is punishment. In this situation, talking about corruption as a fundamental evil that destroys economies and state foundations, it is obvious that punishment is a necessary, but not sufficient condition for dealing with the problem.

References

1. Yosifova, M. "Combating corruption as an element of national security" 2013
2. Annual reports of the Specialized Prosecutor's Office for 2016 – 2021
3. Criminal Procedure Code
4. Decision 79 of 17.08.2016 in Criminal Case 194/2016 II n.o. Supreme Court of Cassation
5. Eurojust Report 2020
6. Judiciary Act
7. Law amending and supplementing the Law on the Judiciary
8. Law on public procurement adopted in 2016
9. National Security Strategy of the Republic of Bulgaria
10. National Security Strategy of the Republic of Bulgaria
11. Updated national security strategy of the Republic of Bulgaria
12. www.prb.bg
13. <https://transparency.bg/>
14. <https://www.whitehouse.gov/>

¹¹ www.prb.bg

¹² Law on Public Procurement adopted in 2016. and modified 22 times to date

¹³ Decision 79 of 17.08.2016 in Criminal Case 194/2016 II n.o. Supreme Court of Cassation