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Whistleblower Protection Assessment

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Introduction

The present report has been prepared under the “**Blow the Whistle**” project. It reflects the results of a first in-depth study of whistleblowers (hereafter - WB) protection on national level and is aimed at supporting a wider campaign undertaken in several European countries.

For the purposes of this report the following definitions will be used. A Whistleblower is best defined as a person who in good faith discloses a wrongdoing in the organization (i.e. not just personal dissent). A Whistleblower is usually an employee of the organization, or external stakeholder, e. g. a contractor’s employee. There is usually no financial incentive or reward.

The wrongdoing report is (usually) to be made confidentially and internally first; the Whistleblower may (conditionally) go to the media if no action is taken, or is unsatisfied with outcome, or it is obvious that no action will be taken.

The present report is based on the following methodology:

- *Desk research:*
 - Analysis of official documents and reports related to the anti-corruption instruments and their implementation, including WB protection tools;
 - Academic articles and working papers of a number of organizations regarding diverse questions, ex. reporting lines, issue of remuneration, formulation of wrongdoing, etc.;
 - Data from recent sociological and legal studies referring to a context of the WB protection problem in Bulgaria (ex. UNCAC report, Global Integrity Country Report, ALAC Baseline study, Global Corruption Barometer 2009, etc.).
- *Legal review:*
 - A comparative analysis of international instruments and national legislation in place;
 - Assessment of the legal framework, i.e. laws containing provisions relevant to whistle blowing.
- *Data collection & Questionnaires:*
 - Public sector was approached by two questionnaires: first one deals with internal reporting capacities and was sent out to the Parliament, the Government, their subsidiary entities, as well as Ministries and their subsidiary

agencies. The second one deals with whistleblower hotlines and was sent to all public institutions operating such services for both their employees and the general public (the list of all the institutions and the two questionnaires are provided in the annexes).

The responses of public administration bodies are analyzed in the section on organizational culture. In addition, rules governing the ethical conduct and WB reporting in the private sector were addressed in a questionnaire sent over to 10 leading Bulgarian companies.

- *Focus group discussions:*

A number of meetings were held with the deputy chairman of the Anti-corruption commission of the Parliament, also with the representatives of the private sector, in particular from those companies that have well-developed WB systems.

PART A: Overview of Whistleblower Protection Rules and Protection in Practice

1. Legal provisions

In Bulgaria there is no free standing Whistleblower (WB) protection law. Besides this, there is no special Anticorruption law. Both anticorruption legislation and the regulation of WB could be found in different laws which makes the rules dispersed, separated and sometimes with serious discrepancies.

Bulgaria is a party to major international anti-corruption conventions, i.e. the United Nations Convention against Corruption (UNCAC) and two Conventions adopted by the Council of Europe: Civil Law Convention on Corruption (CoE Civil Law Convention) and Criminal Law Convention on Corruption (CoE Criminal Law Convention). Thus, Bulgaria has undertaken certain commitments concerning WB protection (based on Article 33 of UNCAC and Article 9 of CoE Civil Convention). In addition, the issue of whistleblowing was subject of evaluation within the monitoring carried out by the Group of States against Corruption (GRECO) and OECD Working Group on Bribery in International Business Transactions.

As mentioned above, the regulation of WB could be found in different laws. The general regulation of WB in the public sector is provided by the Administrative Procedure Code (APC)¹ - the right to file signal for corruption and infringements as well as the general protection from persecution of a WB. In addition the APC provides for the procedure of filing a report and the obligation of the body to conduct internal check.

Some of the definitions of the criminal offences that could be subject to WB are regulated by the Criminal Code².

¹ In force from 12.07.2006, Prom. SG. 30/11 Apr 2006.

² Prom. SG. 26/2 Apr 1968, corr. SG. 29/12 Apr 1968, amend. SG. 92/28 Nov 1969, amend. SG. 26/30 Mar 1973, amend. SG. 27/3 Apr 1973, amend. SG. 89/15 Nov 1974, amend. SG. 95/12 Dec 1975, amend. SG. 3/11 Jan 1977, amend. SG. 54/11 Jul 1978, amend. SG. 89/9 Nov 1979, amend. SG. 28/9 Apr 1982, corr. SG. 31/20 Apr 1982, amend. SG. 44/5 Jun 1984, amend. SG. 41/28 May 1985, amend. SG. 79/11 Oct 1985, corr. SG. 80/15 Oct 1985, amend. SG. 89/18 Nov 1986, corr. SG. 90/21 Nov 1986, amend. SG. 37/16 May 1989, amend. SG. 91/24 Nov 1989, amend. SG. 99/22 Dec 1989, amend. SG. 10/2 Feb 1990, amend. SG. 31/17 Apr 1990, amend. SG. 81/9 Oct 1990, amend. SG. 1/4 Jan 1991, amend. SG. 86/18 Oct 1991, corr. SG. 90/1 Nov 1991, amend. SG. 105/19 Dec 1991, suppl. SG. 54/3 Jul 1992, amend. SG. 10/5 Feb 1993, amend. SG. 50/1 Jun 1995, amend. SG. 97/3 Nov 1995, amend. SG. 102/21 Nov 1995, amend. SG. 107/17 Dec 1996, amend. SG. 62/5 Aug 1997, amend. SG. 85/26 Sep 1997, amend. SG. 120/16 Dec 1997, suppl. SG. 83/21 Jul 1998, amend. SG. 85/24 Jul 1998, suppl. SG. 132/5 Nov 1998, amend. SG. 133/11 Nov 1998, amend. SG. 153/23 Dec 1998, amend. SG. 7/26 Jan 1999, amend. SG. 51/4 Jun 1999, amend. SG. 81/14 Sep 1999, amend. SG. 21/17 Mar 2000, amend. SG. 51/23 Jun 2000, amend. SG. 98/1 Dec 2000, suppl. SG. 41/24 Apr 2001, amend. SG. 101/23 Nov 2001, amend. SG. 45/30 Apr 2002, amend. SG. 92/27 Sep 2002, amend. SG. 26/30 Mar 2004, amend. SG. 103/23 Nov 2004, amend. SG. 24/22 Mar 2005, amend. SG. 43/20 May 2005, amend. SG. 76/20 Sep 2005, amend. SG.

The Law for the Civil Servants³ regulates the role of the Inspectorates within the ministries as the main bodies competent to receive signals for corruption and infringements and to perform internal checks.

All public officials, including civil servants, are under the obligation to immediately report criminal offenses that have come to their knowledge to the investigating authorities, as well as to take the necessary steps to preserve the evidence of the crime (Art. 205, para.2 of the Criminal Procedure Code). The inspectors, who are entrusted with exercising control over the implementation of legislation in the field of civil service, are also obliged to notify the public prosecutor about any violations found during their inspections.

The internal audit units also have the obligation to inform the head of their administration when they find data of fraud committed during their inspections, and if no action is taken afterward to inform the public prosecutor (Art. 30 of the Internal Audit Act). An obligation to inform the public prosecutor is imposed on the National Audit Office (NAO) in cases where the performed audit reveals data that a crime has been committed. In such cases, the audit materials or the audit report is submitted to the public prosecution office by decision of the NAO (Art. 52 of the National Audit Office Act).

However, specific reporting obligations are not part of the Code of Conduct for Civil Servants. One exception is that such obligations are specifically in place in the code of conduct developed by the Ministry of Interior. Therefore, there is a problem with making the reporting of corruption a part of the culture of civil servants. In addition, reporting illegal activity to the superior is seen as a bad habit (due to the context of the past). Where there is no protection of whistle-blowers, the lack of a culture that encourages reporting could be a problem.

The Law on Prevention and Detection of Conflict of Interests⁴ regulates the WB and the procedure for filing a signal and performance of internal checks for cases related to conflict of interest. Although this is a procedure that could only be applied to signals for conflict of interests, it is elaborated in detail and could be used for the development of similar systems for WB in other laws.

86/28 Oct 2005, amend. SG. 88/4 Nov 2005, amend. SG. 59/21 Jul 2006, amend. SG. 75/12 Sep 2006, amend. SG. 102/19 Dec 2006, amend. SG. 38/11 May 2007

³ Law for civil servants, in force from 27.08.1999 amend. SG. 35/12 May 2009.

⁴ Law on prevention and detection of conflict of interests, in force from 01.01.2009, amend. SG. 26/7 April 2009.

The Law on Protection of Persons Threatened in Connection with Criminal Proceedings⁵ refers only to persons that are witnesses in criminal procedures. It does not apply to WB and internal disclosure channels.

The Labour Code and Law for the Civil Servants contain no regulation on WB⁶.

The poor state of WB related norms was also recently confirmed by the Global Integrity Report 2008 on Bulgaria. The score is very low for WB measures in place, the general score being 56 out of 100.⁷ Moreover, figures differ when it comes to assess the protection from recrimination regulations: with a score 6 out of 100, this is the lowest score among all the indicators in the study. Such a score can only point into the existing deficit of legal provisions providing for effective WB protection policy.

2. Whistleblowing in Practice

The level to which the WB protection has become a common practice in Bulgaria has been assessed through the analysis of data from the following sources:

- Regulations and practices in public institutions regarding persons reporting internal malfeasance (internal WB): for this purpose, a questionnaire was sent to a number of public institutions and the results are commented on in the next section; a focus group discussion with representatives of Inspectorates was also organized;
- Regulations and practices in private companies regarding persons reporting internal malpractice (internal WB): codes of ethics of private companies were examined, looking if conditions for WB are in place and the results are summarized in the next section;

⁵ Law on protection of persons threatened in connection with criminal procedure Prom. SG. 103/23 Nov 2004, amend. SG. 82/10 Oct 2006, amend. SG. 33/28 Mar 2008

⁶ Prom. SG. 26/1 Apr 1986, prom. SG. 27/4 Apr 1986, amend. SG. 6/22 Jan 1988, amend. SG. 21/13 Mar 1990, amend. SG. 30/13 Apr 1990, amend. SG. 94/23 Nov 1990, amend. SG. 27/5 Apr 1991, amend. SG. 32/23 Apr 1991, amend. SG. 104/17 Dec 1991, amend. SG. 23/19 Mar 1992, amend. SG. 26/31 Mar 1992, amend. SG. 88/30 Oct 1992, amend. SG. 100/10 Dec 1992, amend. SG. 69/4 Aug 1995, suppl. SG. 87/29 Sep 1995, suppl. SG. 2/5 Jan 1996, suppl. SG. 12/9 Feb 1996, suppl. SG. 28/2 Apr 1996, amend. SG. 124/23 Dec 1997, suppl. SG. 22/24 Feb 1998, amend. SG. 52/8 May 1998, amend. SG. 56/19 May 1998, amend. SG. 83/21 Jul 1998, suppl. SG. 108/15 Sep 1998, amend. SG. 133/11 Nov 1998, amend. SG. 51/4 Jun 1999, suppl. SG. 67/27 Jul 1999, amend. SG. 110/17 Dec 1999, amend. SG. 25/16 Mar 2001, amend. SG. 1/4 Jan 2002, amend. SG. 105/8 Nov 2002, amend. SG. 120/29 Dec 2002, amend. SG. 18/25 Feb 2003, amend. SG. 86/30 Sep 2003, amend. SG. 95/28 Oct 2003, amend. SG. 52/18 Jun 2004, amend. SG. 19/1 Mar 2005, amend. SG. 27/29 Mar 2005, amend. SG. 46/3 Jun 2005, amend. SG. 76/20 Sep 2005, amend. SG. 83/18 Oct 2005, amend. SG. 105/29 Dec 2005, amend. SG. 24/21 Mar 2006, amend. SG. 30/11 Apr 2006, amend. SG. 48/13 Jun 2006, amend. SG. 57/14 Jul 2006, amend. SG. 68/22 Aug 2006, amend. SG. 75/12 Sep 2006, amend. SG. 102/19 Dec 2006, amend. SG. 105/22 Dec 2006, amend. SG. 40/18 May 2007, amend. SG. 46/12 Jun 2007

⁷ Global Integrity Report 2008: Bulgaria. Available online: <http://report.globalintegrity.org/Bulgaria/2008/scorecard>

- External WB possibilities via “hotlines”: questionnaires were sent to public institutions maintaining such lines in order to assess their operational capacities, receive information on cases, as well as recent statistics.
- Media: media monitoring of articles that cover cases treated as WB.

General observations

There is no specific regulation establishing an internal mechanism for reporting and no centralized system exists, but there are many inspectorates in state institutions that are entrusted with collecting and investigating signals of corruption. Such mechanisms exist in the Ministry of Interior, the Ministry of Finance and the Ministry of State Administration and Administrative Reform. The inspectorates can receive information not only from the civil servants but also from citizens.

No special whistle-blower protection is afforded to those who report corruption. A draft law has been under preparation within the Ministry of Labour and Social Policy and Ministry of State Administration and Administrative Reform in 2007 but it never came into life as legislative act. Currently there are cases where persons against whom charges were filed for corruption or other criminal offenses or misconduct, started proceedings against the person who made the charges. In this context, whistle-blower protection is more than necessary.

Despite numerous formal mechanisms for reporting corruption, there have not been any important cases exposed as a result of their activity. There is no independent study on how many of the complaints are considered and how quickly. The general public has little trust in the existing reporting mechanisms.

So far, there have not been any important investigations into cases of corruption exposed as a result of the activity of the existing reporting mechanism.

3. Organizational Culture

Public sector:

From the results of a questionnaire sent to public institutions asking them about the possibilities of internal reporting, no unanimous conclusions could be drawn. Institutions indicate various channels for disclosure: particular person/personnel are appointed to receive reports; heads of departments are in charge of this function; top executives are to be directly contacted. Also, majority of ministries has a hotline,

intended for both internal and external use. Employees can call and report their concerns anonymously or can choose to only benefit from confidential treatment. Some Ministries also indicated, that written notification can be submitted anonymously by putting them in a special mailbox at the workplace

Table 1 Results from the questionnaires

| WB protection instruments at place | Type of administration | | |
|--|---|--|--|
| | Ministry (% of ministries listed in Annex 1) | Regional Administration (% of RA listed in Annex 1) | Local Administration (%of LA listed in Annex 1) |
| Rules of Conduct of officials and employees in place | Code of Conduct of State Administration Employees | Code of Conduct of State Administration Employees | all |
| Anti-corruption programme in place with rules encouraging internal report (WB) | 70% | 90% | 65% |
| Internal disclosure channels at place | 100% | 100% | 70% |
| External disclosure procedures at place | none | none | none |
| Unit to deal with WB reports at place | 90% | none | none |
| Confidentiality | 90% | 40% | 40% |
| Feed-back information to the WB provided | 100% | 100% | 100% |
| Register of WB cases at place | 10% | none | none |
| Number of WB reports during the last year | 0 | 0 | 0 |

Data from questionnaires sent to public institutions is revealing a variety of practices relevant to whistleblowers protection. All maintain communication channels enabling the reporting of unfair workplace practices such as anonymous telephone lines or e-mail addresses. Organizational practices differ among different types of administrations: the ones specialized with the management of EU structural funds have adopted internal rules for whistleblower protection. The later include clear steps and procedures on disclosure, based on limited burden of proof; disclosure to a specially designated structure/person; feedback. Nevertheless, no administration has reported the receipt of any internal whistleblower signal for the previous year (2008).

Private sector:

Private sector companies apply different approaches. The approach differs according to the size of the evaluated company and the ownership. Larger companies linked to foreign capital or otherwise influenced by western business culture have established internal system of disclosure of illegitimate practices which is laid down in detail in their Codes of Ethics; they organize trainings for employees and have mechanisms for the implementation of such provisions in place. Medium-size companies owned by local businessmen perform the disclosure of illegitimate practices either through HR departments or through the internal security control systems.

4. Cultural Context: What is the Public Attitude towards the Act of Whistleblowing?

The public attitude is rather negative towards whistle-blowing: data from the Global Corruption Barometer 2009 reveals a large proportion of the population being reluctant to report corruption related cases (82%). Main reasons include the wide shared conviction that reporting will not bring for any change (72%), fear that reporting will lead to reprisal (12%). Because of the lack of a reporting culture with positive connotations, the "whistleblower" is all too often seen as a traitor or assimilated with a police informer. The effects of "neighbor society" still prevail in small and medium size communities.

PART B: Extent of Whistleblowing Protection Rules and Their Application in Practice

As mentioned above, there is no special law on whistleblowing in Bulgaria. The current regulation concerning whistleblowing could be defined as dispersed and very general. The existing whistleblower protection rules are based on general legal principles or specific regulations in various laws.

- Subject matter/definition of wrongdoing

The subject matter of whistleblowing could be found in Art.107, para.4 of the Administrative Procedure Code (APC). The Code does not contain a definition of the wrongdoing that could be subject to a claim of a whistleblower. Instead of a general definition, the Code contains a non-exhaustive enumeration of infringements that could be subject of signals of whistleblowers according to the Code's procedure. Some of the infringements have legal definitions that could be found in different laws, mainly in the Criminal Code.

The APC enumerates the type of infringements, including criminal offences, for which a claim could be filed under the procedure provided by its Chapter 8. It is important to mention that the rules established by Chapter 8 "shall not be applied for the proposals and the signals, for which consideration and decision another procedure is provided by another law" (Art.107, para.2).

According to Art.107, para.4 of the APC reports may be filed for: abuse of power and corruption, bad management of state or municipal property or other unlawful or inexpedient acts or omissions of administrative bodies and public officials in the respective administrations. The above mentioned wrongdoings should be of such nature as to affect state or public interests, rights or legitimate interests of other persons.

As obvious from the above-mentioned legal text, the APC provides for a wide number of infringements that could be subject of whistleblowing and some of them, such as the abuse of power and the bad management of public property, are incriminated in the Bulgarian Criminal Code and have legal definitions⁸.

The Bulgarian legislation does not provide for a legal definition of corruption. The Criminal Code does not use the term corruption in the definitions of the criminal

⁸ All definitions of the above mentioned crimes could be found in Annex 1, attached to the current report.

offences it regulates. The Code takes a different legislative approach of establishing as criminal offences corruption-type behavior instead of corruption itself. The scope of the so-called “corruption crimes” is very broad. In particular, the Criminal Code establishes as criminal offences the active and passive bribery in the public and private sector as well as the trading in influence⁹

Besides that, there are a big number of other criminal offences that could also be considered as corruption-related crimes, such as the abuse of power, bad management of public or municipal property, misappropriation, embezzlement, etc.

In view of this it could be acknowledged that when a person reports corruption it could encompass a big number of crimes and infringements that fall in the generally accepted definition of corruption of TI, namely “misuse of entrusted power in order to obtain private gain”.

The law sets a condition about the effect of the alleged infringement and the scope of the wrongdoing – it should be such that it affects state or public interests, rights or legitimate interests of other persons.

The Law on the Conflict of Interest also contains regulations related to the subject matter of whistleblowing, although the regulation is limited to the notifications for different cases of conflict of interests. Under the Law, the scope of wrongdoings that could be subject to reports or signals comprises all infringement of its provisions that are related to the conflict of interest, including infringements concerning the incompatibilities and revolving doors (pantouflage) restrictions (Art. 24). The law defines the conflict of interest as a situation when a person holding public office has a private interest which may affect the impartial, objective fulfillment of his legal authority or obligations on duty.

- **Scope of personnel coverage**

According to the Bulgarian legislation every person can notify corruption.

⁹ The Criminal Code provides for the following definitions of corruption crimes:

Active bribe: Art. 304 “Who offers, promises or gives a gift or any other benefit whatsoever to an official in order to fulfill or not an activity related to his office, or because he has fulfilled or not such activity.

Passive bribe: Art. 301”An official who requests or accepts a gift or any other benefit whatsoever, which is not due, in order to perform or not an act on business or because he has or has not performed such an activity shall be punished for bribery”.

Trading in influence: Art. 305a ” Who mediates the commitment of some of the acts under the preceding paras, unless the act represents a more severe crime”.

The Administrative Procedure Code (APC) provides for every natural or legal person (citizens and organizations), as well as for the ombudsman, the right to inform about corruption (Art. 109).

The Conflict of Interest Law explicitly stipulates that everyone who has information about a person holding public office who infringes a provision of this Law may submit a report on conflict of interest (Art. 24, para.1).

According to paragraph 2 of Art. 24 of the Law also anyone who has evidence of violation of Art. 21 or Art. 22 (revolving doors restrictions) may submit a report on conflict of interest. Moreover, according to paragraph 2 of Art. 24 of the Law, anyone who has evidence of violation of Art. 21 or Art. 22 (revolving doors restrictions) may submit a report on conflict of interest¹⁰.

- **Internal disclosure channels**

In general, the whistleblowing regulation in Bulgaria could be assessed as dispersed and fragmented. The same could be said about the regulation of the internal disclosure channels. Several laws refer to the regulation of such internal channels for disclosure of information but none of them establishes an entire and well-functioning system for internal disclosure channels and for protection of the whistleblowers.

According to the general regulations the whistleblower could decide whether or not to make a proposal for the improvement of the organization the activity of the bodies to which claims could be filed or for decision of other matters that fall within their competence. These actions, however, do not constitute typical incidents of whistleblowing but rather a procedure for receiving recommendations and proposals for improvement of the way the system and the administration are functioning.

The general rule established by the Administrative Procedure Code (APC), as far as the internal channels for disclosure are concerned, is that a whistleblower could file a signal to an administrative body or to another body that carries out public and legal functions (Art. 107 para. 1). The APC does not specify the concrete administrative body that is competent to receive the signal and do the internal check. It is the obligation of the relevant administration to designate such a body. The claims for corruption generating from the ministries and the public administration should be

¹⁰ For full text of articles from the cited laws, please see Annex 1.

addressed to the relevant (inspectors) within the (ministries). There is also an option to address a claim for corruption to the General Inspectorate which is under the auspices of the Prime Minister and acts as an anticorruption commission. For the other administrative institutions, for example agencies, the administrative body in charge of receiving signals is the authority of appointment, usually the minister or the director.

According to Art.119 of the APC, the signals shall be filed to the bodies, who directly manage and control the bodies or the official, which unlawful or inexpedient actions or inactions are reported. The reporting person may file the signal also through the body, about whose action or inaction he/she complains. Copies of the signals may be sent also to the higher bodies.

There is flexibility of the form in which the signal could be filed. According to (Art. 111 para. 1) the report may be written or oral. It could be filed by telephone, telex, fax or e-mail. As far as the person is concerned the signal could be filed in person or by an authorised representative.

The internal procedure for receiving claims requires that the claim is subject to registration. The APC does not provide for information with regard to the time frame for registering the information, but it could be presumed that the claim is registered immediately upon receipt.

The APC provides for the option to request the whistleblower to file the claim in writing as well as to meet definite requirements. However, the law does not go in details as to the type of additional requirements that could be set. According to the regulation in Art. 111, para. 3 the whistleblower “shall be given respective explanations”. No anonymous signals shall be subject of proceeding, according to the regulation in the APC.

Art. 121 of the APC provides for a term for pronouncement on the tip. According to this regulation the decision on the claim shall be taken no later than within a two months period upon its receipt. Given particularly important reasons impose that, the term may be prolonged by the higher body, but not by more than a month, while the claimant shall be notified thereof. Administrative sanctions (fines) may be imposed upon public officials for failure to consider or forward claims to the competent authorities (Art. 303 of the APC).

The procedure that is described above regulates the general rules for filing a claim but it does not provide for the regulation of a channel for disclosure and establishes neither a system for internal checks nor a system for protection of whistleblowers. Thus the legislative approach is such that the APC provides for the general framework and the legal foundations for the establishment of the system for protection of whistleblowers. In detail this protection system is supposed to be developed by the secondary legislation, namely within the internal rules and regulations of the relevant structures (ministries, agencies etc.). The in-depth analysis of such internal regulations indicates that no such system has been developed so far.

The Civil Servant Law¹¹ regulates the office relationship between the state and the civil servants. The inspections under this law may be considered as another disclosure mechanism within the public administration. Under (Art. 127, para. 2) of the Civil Servant Law the Inspectorates assist the Minister of Public Administration and Administrative Reform in the fulfilment of his control powers on the implementation of the law. The inspectors carry out general and specialised checks according to annual plan, approved by the Minister of Public Administration and Administrative Reform, as well as sudden checks following signals by the chiefs of the inspectorates in the administrative structures and the trade unions or upon appeal by civil servants (Art. 128). Within the framework of their competences, they are authorised to require from the bodies of appointment explanations and full access to all necessary documents, papers and data, as well as to be informed directly by the civil servants on all issues relevant for the exercise of the control duties. In order to prevent and stop infringements of the legislation for the civil servants, the inspectors issue obligatory prescriptions to the body of appointment for removal of the violations Art. 131.

The functions and regulations described above are part of the general framework of prevention of corruption. This regulation is obviously basic and not sufficient to establish a system for protection of whistleblowers. The rules from the Civil Servant Law are part of the general regulation and form a basis for the establishment of such a system, but do not provide for the system itself.

¹¹ Civil Servant law, on force since 27.08.1999, last amended изм. State Gazette No.35/12.05 2009r

The file of information for conflict of interest is regulated by the Law on Prevention and Detection of Conflict of Interests which contains another part of the regulation of the internal channels for disclosure. The regulation is limited in scope as it only covers the conflict of interest and does not encompass any other irregularities, infringements and corruption crimes. So far there has been no evaluation of the way the system works due to the fact that the Law on Conflict of Interest has only been in force since March 2009 and the procedure is quite recent.

It should be mentioned that the comparative analysis between the general mechanism (regulated in the APC) and the special mechanism (regulated by the Law on Conflict of Interest) indicates some differences in the regulation. None of the internal regulations provides for regulation on the clear steps and procedures on disclosure, based on limited burden of proof, e.g. based on “genuine suspicion”. There are no internal rules about disclosure which should be made to supervisor/manager first. Finally, there is no explicit regulation on the case where a WB is not satisfied how to make disclosure higher-up (e.g. HR officer, corporate complaints unit).

As far as the reports for conflict of interest are concerned the Law on Conflict of Interest provides the general framework of the procedure in which information for conflict of interest should be filed. This regulation is more detailed, compared to the regulation found in the APC, but as mentioned above it is relevant for a limited scope of infringements – namely the situations related to conflict of interest. Yet it could be used as a model for further development of the general whistleblower regulation in the future.

Under Art. 24, para. 3 of the Law on Conflict of Interest the report should be submitted to the body of election or appointment, or to the relevant commission. Art.25 of the Law on Conflict of Interest defines the respective bodies/commissions which deal with the signals about conflict of interest. As it is mentioned, for the high level public officials (such as the president, Constitutional judges, prime-minister, ministers, presidents of Supreme Court and the Prosecutor General, members of the National Audit Office, etc.) the competent authority/body to deal with the report is a permanent (standing) Committee at the National Parliament. For deputy ministers, high level local authorities – the competent body is the Chief Inspectorate at the Council of Ministers; for the municipal counsellors and mayors – a standing

commission of municipal counsellors. As far as the heads of Courts and prosecution offices in the country and the judges and the prosecutors are concerned the body competent to receive claims is a Commission at the Supreme Judicial Council. For all civil servants the competent authorities are the relevant inspectorates or official of the body of election/appointment.

According to Art. 23, para. 4 of the Law on Conflict of Interest, a claim for conflict of interest could be filed only in written form and should be registered. After its registration, the signal for conflict of interest is subject to an internal check by the competent authority. The check includes gathering of evidence to support the signal by the authority and interviewing the official with the alleged conflict of interest. During the process of gathering of evidence the competent authority is allowed to request for additional information and documents from the official concerned. The competent authority is also entitled to require information from public authorities, the judiciary and all other institutions. They are obliged to provide the requested information within 14 days.

According to the Law on Conflict of Interest, the internal check should be completed within two months. The competent authority issues a report with the findings. If there is evidence for a crime,, the information should be sent to the prosecution office.

- **External disclosure channels**

Art. 205 of the Criminal Procedure Code establishes two different levels of reporting obligations respectively for the citizens and public officials. Under para. 1 of Art. 205 those citizens who know about committed criminal offences are “socially” obliged to immediately inform the investigating authorities or another public authority. On the other hand, in the same situation the public officials should inform the investigating authority and undertake the necessary measures in order to preserve the data/proofs of crime. The aforesaid reporting obligations are applied in case of any criminal offences, including corruption-related offences.

In practice, if a whistleblower has information about a corruption crime he/she could file the claim directly to the Ministry of Interior, the Prosecution Office, or, in the case of serious high level political corruption – to the National Security Agency which is under the direction of the Prime Minister.

Another option, not explicitly mentioned in legal regulations is to approach the General Inspectorate at the Council of Ministers in case the inspectorate at the relevant Ministry is not taking any actions. This option is possible for the reports for conflict of interest, which is explicitly mentioned in the Law on Conflict of Interests.

A whistleblower may also approach the Ombudsman but only as far as the claims for maladministration are concerned.

None of the above mentioned rules/laws contains explicit regulation on the clear steps and procedures on disclosure, the burden of proof, and the use of the criteria “reasonable belief”.

A whistleblower could report to different institutions that have established hotlines and receive information for corruption. Most of them are set up within the ministries and more precisely, within the Inspectorates which are competent according to the law to receive claims for internal infringements or corruption. Currently there are such hotlines at the Ministry of Interior, Ministry of Social Care, Ministry of Health as well as at the Ministry of Education.

For cases of corruption within the judiciary, the whistleblowers could approach the Inspectorate at the Supreme Judicial Council (Art.54 of Law on Judiciary), which is designed especially to receive such claims and to do internal checks within judiciary. The law doesn't specify the way in which the judicial inspectorate could be approached. Usually the signal is submitted by letter. Another option is to send the claim to the Supreme Judicial Council itself or to the Anticorruption Commission at the Supreme Judicial Council.

Signals for corruption may be sent to the Anticorruption Commission set up at the National Assembly.

Whistleblowers may also contact advisory telephone lines of civic associations or individual governmental agencies or, inter alia, attorneys, the media or civic associations, which in some cases may represent the whistleblower in court.

None of these channels are equipped with a special system for protection of whistleblowers and thus the whistleblower should count on the contact persons' good will not to reveal his/her personality.

- **Additional disclosure channels**

As far as the additional disclosure channels are concerned no regulatory framework exist which would lay out in detail the steps and procedures on disclosure, the burden of proof or other specific issues.

Reporting to non-governmental organizations is formalized through the Advocacy and Legal Advice Center (ALAC), operated by TI-Bulgaria. Operating for more than two years the ALAC has received only two whistleblowing-related notifications, one coming from a public official and one reported by the private sector.

Trade Unions have no hotlines.

Media are also perceived as a possible channel for disclosure, but is not looked at very favorably due to potential bias and taste for scandals.

- **Confidentiality**

The Administrative Procedure Code does not contain any explicit rules on how to guarantee the confidentiality of the claim.

According to Art. 130 from the Civil Servant Law the inspectors are obliged to keep in secret the confidential data, which have become known to them in connection with exercising the control and to keep in secret the source, from which information for violation of the official duty has been received.

Some regulations on the confidentiality can be found in Chapter seven of the Law on Prevention and Detection of Conflict of Interest. According to Art. 32 the persons competent to consider the signal for conflict of interest are obliged not to reveal the personality of the whistleblower or facts and data related to the signal. They are also obliged to prevent any unauthorised access of third persons to documents related to the claim.

However, it should be mentioned that anonymous signals are not taken into consideration by most of the administrations. In this respect it should be mentioned that, according to the APC Art. 111, para. 4, no anonymous signals are taken into consideration for the purpose of administrative proceedings.

According the Law on Conflict of Interest (Art.25, para.3), if the signal about conflict of interest is anonymous, the competent body/commission has the discretion to decide whether to examine or to ignore it.

- **Time scale**

The Administrative Procedure Code (APC) regulates a time scale/statute of limitations for whistleblowing. Art. 111, para. 4 stipulates that no proceedings shall be instituted on claims concerning infringements committed before more than two years.

- **Protection against reprisal/retaliation**

The Bulgarian legislation provides for general rules of protection of whistleblowers which can not be considered as a comprehensive system for protection against reprisal or retaliation.

Pursuant to Art. 108, para. 2 of the Administrative Procedure Code (APC) no person can be persecuted only for filing a claim under this law, i.e. including for filing a claim for corruption.

Under Art. 32 of the Law on Conflict of Interest those who report conflict of interest may not be persecuted solely for this reason (para. 1). The persons assigned to examine such reports have to propose to the competent administrative heads concrete measures to preserve the dignity of the whistleblower, including measures to prevent any actions whereby the whistleblower would be subject to mental or physical harassment (para. 3). In addition, a person who has been discharged, persecuted or in respect of whom any actions leading to mental or physical harassment have been taken because she/he submitted a report is entitled to compensation for material/economic and non-economic/non-material damages incurred following relevant court procedure. Thus, the Law on Conflict of Interest refers to the compensation which could take place under Civil Law. In particular, the whistleblower who has suffered damage as a result of reporting conflict of interest would have the right to initiate an action in order to obtain compensation or such damage. In that case the civil law institute of the “unauthorized damaging” would be used (Art. 45 of the Law on Contracts and Obligations). Finally, it should be mentioned that the described mechanism of protection could be applied only in relation to whistleblowers reporting conflict of interest.

A general protection against reprisal can also be found in the Criminal Code.

Beside the above-mentioned regulation there are no other special rules for protection of whistleblowers.

- **Right to refuse**

Bulgarian legislation provides a general framework regarding the refusal of participation in illegal activities.

The Civil Servant Law stipulates that the civil servant is not obliged to perform an illegal order when it contains an obvious infringement.

The Labour Code provides just for the general right of an employee to refuse to perform an assignment in a case where a serious and immediate hazard arises for his life and health (deleted: exist). This regulation however does not apply to Whistleblowers 12.

The Criminal Code provides for general regulation in Art. 16 according to which an action shall not be considered a criminal offence if it has been committed in fulfilment of an illegitimate official order, given by the established procedure, if it does not suppose a crime obvious to the perpetrator.

- **Legal liability**

It is the Criminal Code that regulates the general responsibility for slander. Any individual can file such a complaint.

An employer always has the right to protect its good name and reputation and may, where appropriate, have recourse to a court. A natural person (individual) may solicit protection of his/her personal rights.

The regulations relating to whistleblowing do not contain any rules for legal liability of a person who files false information for corruption.

- **Whistleblowers` participation**

The regulations for whistleblowing contain obligation for the competent body to inform the whistleblower about the results of the check based on his/her report. Both the

¹² Refusal of the Employee to Perform an Assignment (Labour Code)

Art. 283. (Amend., SG, No 100/1992) An employee shall have the right to refuse performance or to stop work when, informing without delay his immediate manager. In these cases the continuation of work shall be permitted only after the elimination of the hazard, upon the order of the employer or the immediate manager

Administrative Procedure Code (APC) and the Law on Conflict of Interest provide the possibility for the whistleblower to participate in the procedure after filing a signal.

According to the Administrative Procedure Code (APC) the competent body to which the claim is addressed has the right to clarification of the case. Art. 114, para. 1 stipulates that the decision on a proposal or a signal shall be taken once the case will have been clarified and after the explanations and objections of the interested persons will have been taken into account. Those bodies to whom proposals and claims (were filed), shall explain to the (claimants) (i.e. whistleblowers) their rights and obligations. For the establishment of the facts and the circumstances the competent authorities may use all the means which are not prohibited by the law (Art. 114, para. 3 of APC). The means for clarification of the case are to be determined by that body competent to pronounce the decision, unless another normative act prescribes the proof to be made in a definite way or by definite means (para. 4). In addition the organisation is obliged to hand out the requested documents, data and explanations within the period stipulated by that administrative body that is competent in the specific case. The citizens shall be obliged to submit the requested documents and to give data, unless that may harm their rights or legitimate interests or offend their dignity. According to para.7 when the requests are unlawful or ungrounded, or may not be satisfied upon objective reasons, the reasons/motives for the decision to reject the signal should be mentioned.

Under the Administrative Procedure Code, when considering favourably the claim, the competent body should undertake immediately measures on eliminating the admitted violation or inexpedience, for which shall notify the claimant (i.e. the whistleblower) and the other interested persons (Art.122, para.1 of APC). When the competent body does not recognise the grounds for the information, within one month after its filing, it shall send it together with its explanations to the respective higher body, for which shall notify the claimant (Art.122, para2 of APC). According to Art.123, para.1 of the APC, the decision upon the report shall be in writing, shall be grounded and shall be announced to the claimant within 7 days period after its pronouncement. Under Art.123, para.1 of APC, the decision on the signal must: a) be written, b) provide for reasons/motives for the respective decision; and c) be forwarded to the person who has submitted the signal not later than 7 days after the decision has been taken.

In case the decision affects) rights or legitimate interests of other persons, it shall be announced also to them. When the information has been referred to the competent body by a Member of Parliament, a municipal councillor, a state body, a body of the local self-government or the mass media, they also shall be notified about the decision.

- **Independent review**

The regulation of the Administrative Procedure Code (APC) does not provide for independent review of the notifications for corruption or other irregularities. According to Art. 124 of the APC the decision pronounced upon a filed claim shall not be a subject to appeal. In addition, claims filed again on a matter on which (a decision has already been made), shall not be considered, unless they are related to the execution of the decision or are grounded on new facts and circumstances.

The Law on Conflict of Interest provides for a judicial decision concerning the existence of conflict of interest of certain categories of high level officials (Art. 27). The Supreme Administrative Court establishes the conflict of interest of the high level public officials upon a check performed by the competent commission at the parliament. According to the law the internal check for conflict of interest results in a report within two months after the registration of the information. The report is the basis for establishment of existence or non-existence of conflict of interest. The president (chairperson) of the administrative body (commission) competent according to Art. 25, para. 2(1) to issue the report is obliged to send the report to the Supreme Administrative Court with request to establish the existence of conflict of interests. A prosecutor is involved in the procedure before the Court. The Court can either declare conflict of interest and imposes the administrative sanction provided by the law or declare that there is no conflict of interests in the relevant case. The decision of the Court should be appealed according to the general procedure of the APC. For the other categories of public officials the competent body to establish the existence or non-existence of conflict of interests is the body of appointment or the competent administrative court.

- **Offered remedies**

As described above in the section “Protection against reprisal/retaliation”, the whistleblower has the right to compensation in case of termination of employment, in

case he/she was persecuted or if he/she was subject to actions leading to physical or moral harassment for filing a complaint. In addition, the Labour Code and Civil Servant Law provide also for regulation for the protection against unlawful dismissal. There is no direct referral to whistleblowing as reason for dismissal, but this general regulation could be used as a remedy in the absence of specific rules.

According to Art. 344 of the Labour Code employee shall be entitled to contest/challenge the lawfulness of dismissal before the employer or in a court and demand:

1. Recognition of dismissal as unlawful and its repeal;
2. Reinstatement to her/his previous position;
3. Compensation for the period of unemployment due to dismissal;
4. Revision of the grounds for dismissal, entered in his service record or other documents.

Under Art.121 of the Civil Servant Law, the civil servant is entitled to the same right before the body of appointment or the court (except the reinstatement to the previous position).

According to the Labour Code and Civil Servant Law the employer/body of appointment may cancel on his/her own initiative the order of dismissal prior to taking the case to trial by the employee/civil servant.

In case of unlawful dismissal the employee or the official has a right to compensation from the employer for the time of unemployment which must not exceed the amount of six monthly salaries. Compensation is due also in case the employee has been replaced and subsequently performed less paid job, as well as if he/she has not been admitted to (return to) work place following the reinstatement to the position (Art. 225 of the Labour Code).

The legislation does not provide for specific administrative remedies to compensate a whistleblower.

PART C: Key Results and Recommendations

1. Key findings

- There is no free-standing whistleblower protection law, although generic provisions are provided in the Administrative Procedure Code (applicable to the public administration sector). Following GRECO and OECD recommendations, in 2006-2007 the government considered the introduction of specific legislation for protection of whistleblowers in both the public and private sector but failed to prepare and submit a draft law. It seems that the authorities believed that there was no need for a separate law and that the legislative initiatives in this field would be based on the “sectoral approach”;
- A certain degree of general legal protection exists for whistleblowers: e.g. the protection against unlawful dismissal established by the Labour Code and the Civil Servant Law as well as the right to compensation for damage provided by the Law on Contracts and Obligations in the domain of civil law. Nevertheless the ground for development of effective mechanisms for guaranteeing whistleblowers against retaliation is not provided;
- Recent developments include the introduction of the whistleblower protection provisions within the Prevention and Disclosure of Conflict of Interests Act (Law on Conflict of Interest). However this regulation is applicable only in case of conflict of interest reporting;
- At present, protection of whistleblowers is neither on the political agenda nor in the general public focus;
- No mechanisms for effective whistleblower protection are in place;
- No court practice is available.

2. Key recommendations

- To adopt amendments to the Labour Code and Civil Servant Law providing for the specific rights of whistleblowers in employment relations and public administration, i.e. in both private and public sector. The amendments may introduce special (unlimited) liability of the employer/body of appointment for unfair dismissal of the whistleblower. The regulation could establish the conditions for enforcement of the protection, e.g. that the report be made “in good faith” and/or “in public interest”. However, introduction of good faith criteria, which does not impose the protection, should be established as well in the legislation. The amendments to the Labour Code and Civil Servant Law could address also the additional remedies available to whistleblowers in case of damage suffered. In any case, it would be necessary to establish clear correlation between the existing whistleblowers provisions and the relevant amendments in order to avoid difficulties in the interpretation/implementation of the legislation;
- To consider the establishment of clear reporting guidelines/procedures (also in the secondary legislation) based on the “stepped” approach under which, firstly, the internal disclosures are encouraged, and secondly, disclosures to the independent regulators, including law enforcement authorities. In considering the regulation of the disclosure channels, account should be taken of the existing reporting obligations (e.g. under the Criminal Procedure Code);
- To consider the establishment of whistleblowers signals registers and internal monitoring procedures implemented by the relevant inspectorates.

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- List of Laws:
 - o the Law on Civil Servants
 - o the Labour Code
 - o the Code of Criminal Procedure
 - o the Criminal Code
 - o the Law on Disclosure and Prevention of Conflict of Interests
 - o the Law on Environmental Protection
 - o the Law on Consumer Protection
 - o the Law on Ombudsman Institution
 - o the Law on State Administration
 - o the Law on Protection of Persons Threatened in Connection with Criminal Procedure

ANNEX 1: LIST OF INSTITUTIONS – QUESTIONNAIRE ON WHISTLEBLOWER PRACTICES

1. State Administration

- Agency for Social Support
- Ministry of Defense
- Ministry of Environment Protection
- Ministry of Agriculture and Food
- Ministry of Economy and Energy
- Ministry of Regional Development
- Ministry of Culture
- Ministry of State Administration and Administrative Reform
- Ministry of Justice
- Ministry of Finance
- Ministry of Culture
- Ministry of Labor and Social Policy
- Ministry of Education and Science

- State Agency of Youth and Sport

2. Regional Administration

- RA Sliven
- RA Stara Zagora
- RA Rousse
- RA Varna
- RA Blagoevgrad
- RA Vidin
- RA Pleven

3. Local Administration

- LA Vetovo
- LA Sofia
- LA Kazanlak
- LA Varna
- LA Veliko Tarnovo
- LA Plovdiv
- LA Hissar
- LA Pomoria
- LA Peshtera

ANNEX 2: LIST OF INSTITUTIONS – FOCUS GROUP DISCUSSION ON WB PRACTICES

- Agency for Social Support
- Ministry of Defense
- Ministry of Environment Protection
- Ministry of Agriculture and Food
- Ministry of Economy and Energy
- Ministry of Regional Development
- Ministry of Culture
- Ministry of State Administration and Administrative Reform
- Ministry of Justice
- Ministry of Finance
- Ministry of Culture
- Ministry of Labor and Social Policy
- Ministry of Education and Science
- State Agency of Youth and Sport

ANNEX 3

DEFINITIONS OF CORRUPTION OFFENCES REGULATED BY THE CRIMINAL CODE

Article 225c

(1) A person who, while working for a legal entity or sole proprietor, requests or receives a gift or any undue advantage, or accepts an offer or a promise of gift or advantage, in order to perform or to fail to perform an act in breach of his/her duties in the course of business activity, shall be punished by deprivation of liberty for up to five years or fine of up to 20 000 Leva.

(2) A person who, in the course of business activity, offers, promises or gives a gift or any kind of advantage to a person who works for a legal entity or sole proprietor in order to perform or to fail to perform an act in breach of his/her duties, shall be punished by deprivation of liberty for up to three years or fine of up to 15 000 Leva.

(3) The punishments provided in the preceding paragraphs shall be imposed also where, with the consent of the person mentioned in paragraph 1, the gift or advantage have been offered, promised or given to another person.

(4) A person who mediates for perpetrating any action under the preceding paragraphs, if the perpetrated action does not represent a graver crime, shall be punished by deprivation of liberty for up to one year or fine of up to 5 000 Leva.

(5) The object of the crime shall be forfeited in favour of the state or, where it is missing, a sum equal to its value shall be adjudged.

Article 219

An official who does not take enough care of the management, administration, handling or preservation of the entrusted property, as well as for the assigned job, thus causing a substantial damage, destruction or squandering of the property or other considerable damages to the enterprise or to the economy.

Article 220

(1) (amend. – SG SG 75/06, in force from 13.10.2006) An official who deliberately concludes unprofitable transaction, thus causing a substantial damage to the economy or to the establishment, enterprise or organisation he represents, shall be punished by imprisonment of up to five years, whereas the court can rule revoking of right according to Art. 37, para 1, item 6.

Article 282

(1) (Amend., SG 28/82; amend. – SG SG 75/06, in force from 13.10.2006) An official who violates or does not fulfil his official duties, or exceeds his authority or rights with the purpose of obtaining for himself or for somebody else benefit or to cause somebody else damage which can cause major harmful damages, shall be punished by imprisonment of up to five years, whereas the court can also rule revoking of rights according to Art. 37, para 1, item 6, or corrective labour.

Article 282a

(New, SG 62/97) An official who, in the presence of the conditions stipulated by a normative act, necessary for issuance of special permit for carrying out certain activity, refuses or delays its issuance beyond the law determined terms shall be punished by imprisonment of

up to three years, a fine of up to five hundred Leva and revoking of right according to art. 37, para 1, item 7.

Article 283

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

Article 283b

(New, SG 62/97; Suppl., SG 92/02) An official who obstructs or frustrates the exercising by the owners of their rights restored according to the Law for restoration of the ownership of expropriated real estates, according to the Law for restoration of the ownership of some expropriated real estates according to the Law for the territorial and urban development, the Law for planned building of populated areas, the Law for the urban development of populated areas, the Law for the state real estates and the Law for the ownership, and according to the Law for the ownership and tenure of agricultural lands and the Law for indemnification of owners of expropriated real estates, the Law of privatisation and post-privatisation control or through enforced judicial acts related to another law shall be punished by imprisonment of two to six years.

Article 285

An official who deliberately admits commitment by a person subordinated to him of a crime related to his office or work shall be punished by the penalty stipulated for the committed crime.

Article 288

(Amend., SG 50/95; amend. – SG SG 75/06, in force from 13.10.2006) A body of the authority who fails to fulfil in due time the functions required by the office regarding the criminal proceedings or in any other way frustrates such proceedings with the purpose of releasing another from a punishment due for him by a law shall be punished by imprisonment of one to six years and by revoking of right according to art. 37, para 1, item 6.

Article 289

(Amend., SG 62/97; amend. – SG SG 75/06, in force from 13.10.2006) Who persuades an official of the investigating bodies or of the prosecution or the judiciary bodies to violate his official duty related to the jurisdiction shall be punished by imprisonment of up to five years or by corrective labour or by public reprobation.

Article 291

(1) (Amend., SG 62/97) Who helps a person who has committed a crime to escape or frustrate criminal proceedings against him, or to remain unpunished, without having had an agreement with that person before the commitment of the crime itself, shall be punished for harbouring by imprisonment of up to five years, however by a punishment no more severe than the stipulated for absconding.

Article 295

(Amend., SG 50/95; amend. – SG SG 75/06, in force from 13.10.2006) A body of the authority who, with the purpose of saving another from punishment or to delay the fulfilment of the punishment, fails to fulfil an enacted conviction, if by virtue of his office he has been obliged to do the necessary for the enforcement of the sentence, shall be punished by imprisonment of up to six years, whereas the court can deprive him of the right according to art. 37, para 1, item 6 or by corrective labour.

Article 299

(amend. – SG SG 75/06, in force from 13.10.2006) An official who, without authorisation, releases or lets a prisoner to escape shall be punished by imprisonment of up to five years, whereas the court can deprive the culprit from the right according to art. 37, para 1, item 6.

Article 301

(1) An official who requests or receives a gift or any undue advantage, or accepts an offer or a promise of gift or advantage, in order to perform or to fail to perform an act connected with his/her service, or because he has performed or failed to perform such an act, shall be punished for bribery by deprivation of liberty for up to six years and fine of up to 5 000 Leva.

(2) If the official has perpetrated any action under paragraph 1 in order to break, or for having broken his/her service, where this breach does not constitute a crime, the punishment shall be deprivation of liberty for up to eight years and fine of up to 10 000 Leva.

(3) If the official has perpetrated any action under paragraph 1 in order to commit or because of having committed another crime in connection with his/her service, the punishment shall be deprivation of liberty for up to ten years and fine of up to 15 000 Leva.

(4) In the cases of the preceding paragraphs, the court shall rule deprivation of the rights under Article 37, sub-paragraphs 6 and 7.

(5) The punishment provided in paragraph 1 shall be imposed also on foreign public official who requests or receives bribe, or accepts an offer or a promise of bribe.

Article 302

For bribery committed:

1. by a person holding a responsible official position, including judge, court assessor, public prosecutor or investigating magistrate;

2. through blackmail in abusing the official position;

3. for a second time, and

4. on a large scale,

the punishment shall be:

a) in the cases of Article 301, paragraphs 1 and 2 - deprivation of liberty from three to ten years, fine of up to 20 000 Leva and deprivation of rights under Article 37, sub-paragraphs 6 and 7.

b) in the cases of Article 301, paragraph 3 - deprivation of liberty from three to fifteen years, fine of up to 25 000 Leva and confiscation of up to one half of the culprit's property, and the court shall rule deprivation of rights under Article 37, sub-paragraphs 6 and 7.

Article 302a

For bribery in particularly large amounts, representing a particularly grave case, the punishment shall be deprivation of liberty from ten to thirty years, fine of up to 30 000 Leva, confiscation of the whole or part of the culprit's property and deprivation of rights under Article 37, sub-paragraphs 6 and 7.

Article 303

In accordance with the differences under the preceding articles, the official and the foreign public official shall also be punished where, with their consent, the gift or advantage have been offered, promised or given to another person.

Article 304

- (1) A person who offers, promises or gives a gift or any kind of advantage to an official in order that the official perform or not perform an act connected with his function, or because he/she has performed or has not performed such an act, shall be punished by deprivation of liberty for up to six years and fine of up to 5 000 Leva.
- (2) If in connection with the bribe the official has broken his official duties, the punishment shall be deprivation of liberty for up to eight years and fine of up to 7 000 Leva, where this breach does not constitute a graver punishable crime.
- (3) The punishment provided in paragraph 1 shall be imposed also on a person who offers, promises or gives a bribe to a foreign public official.

Article 304a

A person who offers, promises or gives a bribe to an official holding a responsible official position, including judge, court assessor, public prosecutor or investigating magistrate, shall be punished by deprivation of liberty for up to ten years and fine of up to 15 000 Leva.

Article 304b

- (1) A person who requests or receives a gift or any undue advantage, or accepts an offer or a promise of gift or advantage, in order to exert influence over the decision-making of an official or a foreign public official connected with his/her service, shall be punished by deprivation of liberty for up to six years or fine of up to 5 000 Leva.
- (2) A person who offers, promises or gives a gift or any undue advantage to another person, who asserts that he/she is able to exert influence under paragraph 1, shall be punished by deprivation of liberty for up to three years or fine of up to 3 000 Leva.

Article 305

- (1) The punishments for bribery under the preceding articles shall also be imposed on an arbitrator or an expert, appointed by a court, institution, enterprise or organisation, where they perpetrate such actions in connection with their activity, as well as on the person who offers, promises or gives such a bribe.
- (2) The punishments for bribery under the preceding articles shall also be imposed on a defence counsel, where he/she perpetrates such actions in order to help in ruling criminal or civil case in favour of the adverse party or to client's prejudice, as well as on the person who offers, promises or gives such a bribe.

Article 305a

A person who mediates for perpetrating any action under the preceding articles, if the perpetrated action does not constitute a graver crime, shall be punished by deprivation of liberty for up to three years and fine of up to 5 000 Leva.