



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS



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Evaluation Report on Bulgaria

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I. INTRODUCTION

1. Bulgaria was the seventeenth GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter, "GET") was composed of Mme Jeannine DENNEWALD, Attachée de Justice, Ministry of Justice (Luxembourg, prosecution expert), Mr Sandor DUSIK, Principal counsellor, Ministry of Interior (Hungary, law enforcement expert); and Mr Norbert JANSEN, Senior Prosecutor, Staatsanwaltschaft Kleve (Germany, policy expert). This GET, accompanied by a member of the Council of Europe Secretariat, visited Sofia from the 18 to 21 September 2001. Prior to the visit the GET experts were provided by the Bulgarian authorities with a comprehensive reply to the Evaluation questionnaire (document Greco Eval I (2001) 27) as well as with copies of the relevant legislation.
2. The GET met with officials from the following Bulgarian authorities and institutions: the Ministry of Justice (Deputy Minister, Department for International Legal Cooperation, Department for Mutual Legal Assistance), Ministry of the Interior (National Service on Combating Organised Crime, National Security Service Inspectorate, Department of International Cooperation, Department of Legal Affairs), Bureau of Financial Investigation, Prosecutor General's Office (Investigation Department, Department on Prosecution of Organised Crime and Corruption, Council on Criminological Research at the Prosecutor General's Office), Ministry of Finance (General Tax Directorate, Customs Directorate), Specialised Investigation Service, National Assembly (Parliamentary Committee of Legal Affairs, Parliamentary Committee of Internal Security and Public Order, Department of Legal Affairs), Court of Auditors.
3. Moreover, the GET met with representatives of Transparency International and Coalition 2000.
4. It is recalled that GRECO agreed, at its 2nd Plenary meeting (December 1999) that the 1st Evaluation round would run from 1 January 2000 to 31 December 2001, and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:
 - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
 - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
 - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
5. Following the meetings indicated in paragraphs 2 and 3 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Bulgarian authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Bulgaria, the general anti-corruption policy, the institutions and authorities in charge of combating it -their functioning, structures, powers, expertise, means and specialisation- and the system of immunities. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Bulgaria is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by

GRECO to Bulgaria in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

6. Bulgaria has a surface of 110.993 km². The total population is approximately 8 million, of whom 85 per cent ethnic Bulgarians. Other ethnic groups are Turks (9,7%) Roma (3,4%) and others. Bulgaria has land borders with Romania, The Federal Republic of Yugoslavia, The Former Yugoslav Republic of Macedonia, Greece and Turkey and it has coastline to the Black Sea.
 7. Bulgaria is a Parliamentary Republic. The first free elections were organised in 1991 and the present Constitution was adopted in July the same year. It features all basic principles of modern constitutionalism. The Constitution provides for a multi-party parliamentary system and free elections. Moreover, it provides for a traditional division between the legislative, executive and judicial powers. The Head of State, the President, is directly elected by the people for a term of five years for a maximum of two terms. The National Assembly is a one-chamber Parliament comprising 240 delegates, elected for a period of four years. The Prime Minister and the Government (Council of Ministers) are elected by Parliament, which generally has a strong position, including direct control over the activities of the Government.
 8. Bulgaria has since the early 1990's benefited from co-operation and assistance programmes for strengthening democratic values (including anti-corruption) in public administration of the Council of Europe and became a member of the said organisation in 1992. Bulgaria is striving towards European integration and has applied for membership of the European Union. At the same time Bulgaria maintains close relations to and interests in former allied east European countries, and plays a role for the stability in the Balkan region.
 9. Bulgaria faced serious economic crises 1996-97. Since then Bulgaria has made a lot of progress towards becoming a market economy. The business climate has improved in recent years. However, there is still need for a more developed regulatory framework, for example with regard to licensing, tax and customs regimes¹. Bulgaria is considered by the European Commission as being close to having a functioning market economy². Moreover, real economic growth has significantly accelerated in recent years. The average per capita income in 2000 was at 24 per cent of the EU average. The unemployment rate was about 19 per cent in 2001.
- a. The phenomenon of corruption and its perception in Bulgaria**
10. Corruption is an important problem in Bulgaria. There are indications that the public sector is affected to a large extent by this phenomenon. Authorities, such as police and customs are often mentioned, however, also other professions, often those of the public sector where the officials have close contacts with the public are perceived among the most corrupt. Moreover, the bureaucracy in Bulgaria is generally described as slow and measures, such as bribery, are often used to speed up bureaucratic procedures. This picture corresponds to surveys carried out by various non-governmental organisations. A series of corruption scandals have recently been exposed in media and the public has become more sensitive to the problem: surveys show that

¹ The GET was informed after its visit that 21 laws were submitted to Parliament in 2001 aimed at facilitating or eliminating various registration and licensing regimes. Moreover, an interdepartmental group was established by the Government in March 2002 aimed at improving the business climate with regard to licensing and registration regimes.

² European Commission 2001 Regular report on Bulgaria's progress towards accession.

a majority of the population believe that corruption is widespread and the general tolerance is likely to decrease.

11. In Bulgaria there is a large number of non-governmental organisations active in questions relating to the problems of corruption. Some of these are very active in the monitoring field. Among them are Transparency International and Coalition 2000 the most well known.
12. *Coalition 2000* assessed in 2000 that the spread of corruption in Bulgaria was rather stable or slowly decreasing. The score was 6,6 (September 2000) on a scale from 0 (absence of corruption) to 10 (highest possible level of corruption). The Coalition 2000 survey places corruption as one of the top five concerns of the Bulgarian society (together with unemployment, low income, poverty and crime in general).
13. Bulgaria received its first *Transparency International* ranking in June 1998 with a score of 2.9 on a scale from 1 (most corrupt) to 10 (least corrupt). The index ranked Bulgaria 66th of 85 countries studied, indicating a high level of corruption. In 1999 Transparency International placed Bulgaria 63rd of 99 countries, with a score of 3.3. The Transparency International's ranking in 2000 placed Bulgaria on 52nd place of 90 countries, with a score of 3.5. In 2001, Bulgaria was on 47th place (jointly with Croatia and the Czech Republic) of 91 countries, with a score of 3.9.
14. The Bulgarian authorities consider corruption as a serious problem and various "policy packages" have been adopted. In 1998 the Bulgarian Government adopted the Integrated National Strategy on Combating Crime, containing the essence of the State policy for efficient crime fighting in general, and in particular, against corruption. With regard to corruption the following objectives were given:
 - establishing uniform state policy for implementing the functions of the state;
 - creation of a system for administrative control and sanctions concerning implementation of the law and administrative procedures;
 - modernising the legal framework and to provide for stricter criminal liability for all forms of corruptive practices;
 - establishing clear rules and standards for administrative services;
 - developing co-ordination between the activities aimed to combat corruption;
 - establishing a register for financial and property status of public officials.
15. In fulfilment of the objectives of the National Strategy, Bulgaria implemented between 1998 and 2001 a number of measures. In particular, the efforts were directed towards accession to international anti-corruption instruments (Council of Europe and OECD) and participation in the monitoring of such instruments. Moreover, Bulgaria also focused on regional co-operation and to the adoption of legislative measures for implementation of the international anti-corruption standards.
16. A draft national strategy for combating corruption was pending before the Government at the time of the visit of the GET³.

³ On 1 October 2001 (after the visit of the GET) the Council of Ministers (the Government) adopted a National Strategy on Combating Corruption, focusing on four areas: 1) creating an institutional and legal environment to curb corruption, 2) anti-corruption reform in the judiciary, 3) curbing corruption in the economy and 4) anti-corruption co-operation on a wider scale (government institutions, non governmental organisations and media). The Strategy deals with transparency between the public and the private sector, special measures are planned for areas with particular concern, such as customs and local

17. A variety of laws with regard to anti-corruption measures, in particular to regulate public administration, have been enacted in recent years: the law on Administration, law on Administrative Services to Natural and Legal Persons, law on Civil Servants, law on the Judiciary, law on the Ministry of the Interior, law on Property Disclosure by Persons Occupying Senior Positions in the State, law on Public Internal Financial Control, law on Public Procurement, law on Access to Public Information, law on Political Parties, law on Defence and Military Forces.
18. In addition to legislation concerning the functions of public officials, a number of Codes of Conduct have also been developed in recent years, for example concerning civil servants, judges and customs officials.
19. The GET was informed that of the approximately 60 000 persons employed in the public sector (not covering staff of the Ministries of the Interior and Defence), only 5 000 have been given civil servant status and that this, to a large extent, is limited to higher officials (N.B. the reform of the public sector, including granting of status, has not been completed). Whereas staff without civil servant status are covered by ordinary employment law, whose provisions are the same as for persons working in the private sector, the established civil servants enjoy certain safeguards as to security of employment and career, but also certain obligations and disciplinary measures. (It should be noted that according to information provided by Transparency International to the GET, the number of employees in the public and para-public sectors were 500 000.)

Criminal Law and Corruption

20. The Criminal Code of Bulgaria provides for several crimes that would amount to corruption offences within the meaning of Council of Europe instruments. The most common corruption offences are bribery and malfeasance.
21. The key anti-corruption provisions are provided for in Section "Bribery", Chapter Eight "Crimes against the Activities of State Authorities and Public Organisations" of the Criminal Code. This section includes provisions, which criminalise active and passive bribery of domestic public officials (including among others members of Parliament), active bribery of foreign public officials as well as mediation in bribery. Furthermore anti-corruption provisions are included in Section "Malfeasances" (breach of official duties or exceeding of powers for the purpose of obtaining undue advantages) and in Section "Economic crimes" (receipt of undue advantage for performed work or rendered service) of the Criminal Code. Passive bribery in the private sector is criminalised.
22. According to the Criminal Code (Art 301 and 303) as applied by the courts, the intentional action of officials, who directly or through an intermediary, receive undue valuable (material) advantage for themselves or for a third party, to act or refrain from acting in accordance with their duty or in the exercise of their functions in breach of the official duties constitutes *passive bribery*. The request and consent to receive a bribe were established as a criminal offence in 2000.

authorities. Moreover, an Action Plan for the implementation of the National Strategy was adopted by the Government in February 2002, providing for a timetable of the implementation as well as the division of responsibility between the ministers involved. In addition a Commission on the Co-ordination of the implementation has been established under the chairmanship of the Minister of Justice. The Commission is in particular entrusted with analysing and monitoring of undertaken anti-corruption measures.

23. Moreover, the Criminal Code stipulates (Art 304) that the intentional action to give, directly or through an intermediary, a material advantage to an official or to a foreign public official for himself or for a third party to act or refrain from acting in accordance with his/her duty or in the exercise of his/her functions in breach of the official duties, or because s/he has acted or refrained from acting, constitutes *active bribery*. The promising and offering of a bribe to domestic officials and foreign public officials was established as criminal offence in 2000 (Art 304a).
24. The sanctions for passive bribery of domestic officials are imprisonment one to six years and could lead to deprivation of the right to hold a certain public office and/or deprivation of the right to exercise a certain profession or activity (Art 301). In serious cases of passive bribery of domestic officials the punishment is imprisonment (10 to 30 years for the most serious cases), deprivation of the above mentioned rights and may also include confiscation of the whole or part of the offenders property (Art 302, 302a). The only sanction for active bribery of domestic and foreign officials is imprisonment (maximum seven years) (Art 304, 304a). The object of active and passive bribery is seized in favour of the state (Art 307a). Proceeds of the crime may be forfeited.
25. Trading in influence is not criminalised in Bulgaria. However, the case where an official receives an undue advantage in order to exert an improper influence over the decision-making of another official, is criminalised (Art 283). The sanction is imprisonment up to three years.
26. Corruption committed in an organised manner, is not considered as an aggravating circumstance, nor is it dealt with as a separate offence. On the other hand in cases of money laundering, the fact that the crime is committed by a group or an organisation, would be an aggravating circumstance (Art 253).
27. The establishment, participation, management or participation in a criminal organisation is characterised as organised crime (Art 321, 321 a). Moreover, court practice has developed definitions of what is meant by a "criminal group" and a "criminal organisation".
28. Money laundering is established as a separate criminal offence under the Criminal Code (Art 253). Any offence can be considered as a predicate offence in relation to the prosecution of money laundering.
29. The penal legislation only provides for criminal liability of physical persons. It could be added that there was an attempt to introduce "administrative liability" of legal persons in 2000; however, the draft bill was only examined in the first reading by Parliament⁴.

International Cooperation

30. Bulgaria has ratified the Council of Europe Civil and Criminal Law Conventions on Corruption. It has also ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

⁴ The GET was informed that a working group was established in February 2002 within the Ministry of Justice to preparing draft amendments to the Law on Administrative Offences and Sanctions with a view to introducing administrative liability of legal persons (monetary sanctions) for bribery, money laundering, and trading in influence committed for their needs by their leading officials.

31. Bulgaria is a contracting party to the European Convention on Mutual Legal Assistance in Criminal Matters, the European Convention on Extradition, the Convention on the Transfer of Sentenced Persons, etc. Moreover, Bulgaria is bound by a large number of different bi-lateral agreements in the field of judicial cooperation, including with neighbouring countries. As far as police co-operation is concerned, Bulgaria has concluded a number of bilateral agreements on police assistance, as well as two trilateral agreements (Bulgaria-Turkey-Romania and Bulgaria-Greece-Romania). Bulgarian legislation provides for the possibility of giving effect to requests for mutual legal assistance in criminal matters and enables the making of legal assistance requests in criminal matters. The internal rules on mutual assistance in criminal matters are contained in the Criminal Procedure Code. Mutual assistance rules are set out in Section "Legal Assistance in Criminal Matters" (Art.461-466 of the Criminal Procedure Code). These provisions deal with grounds for mutual legal assistance (international treaty or reciprocity), scope of grounds for refusal (prejudice to sovereignty, security, public order or other essential interests protected by law), appearance of witnesses and experts before foreign judicial authorities, contents of the request, competent authority (Ministry of Justice unless otherwise stipulated by international treaty), execution of the request and expenses. It should be added that the relevant provisions of the Bulgarian law concerning mutual legal assistance are applied unless otherwise stipulated in an international treaty. The rules on extradition are contained in the Criminal Procedure Code (Arts.435-441). These rules are applicable unless otherwise stipulated in an international treaty (Art 441).
32. The GET was informed that from a theoretical point of view, the limited scope of the definition of the bribery advantage could be an obstacle for giving effect to requests for extradition and mutual legal assistance in corruption cases, where the dual criminality (double incrimination) rule is observed (reservation made by Bulgaria to the European Convention on Mutual Assistance in Criminal Matters), but forthcoming amendments to the Bulgarian Criminal Code should eliminate this problem. There are no statistics available on mutual legal assistance with regard to corruption.

b. Bodies and institutions in charge of the fight against corruption

33. The competencies of public institutions in the field of prevention, investigation, prosecution and adjudication of criminal offences, including corruption, is shared between the public authorities and their tasks in this field are governed by legislation. The specialisation in corruption is relatively limited.
34. At the level of *Parliament* there is a committee dealing with legislation against corruption, "the Permanent Committee on Legal Affairs".
35. At the *Governmental* level, the Ministries of the Interior, Finance and Justice have different functions and tasks (normally through their competent services) in respect of prevention and disclosure of corruptive practices, the preparation of legal framework and international co-operation with the relevant bodies of other States and international organisations.
36. The *Judiciary*, which in Bulgaria comprises investigation authorities, the prosecution office and the courts, are entrusted with the investigation, prosecution and adjudication of corruption offences.

b1. The Ministry of the Interior / Police

37. The various police functions are carried out under the direct responsibility of the Ministry of the Interior, which is led by the Minister, three Deputy Ministers and a Secretary General. The Minister (and the Deputies) represent the political dimension, which includes the implementation of State policies, interaction with other public bodies, international cooperation, budget and social protection of all staff (including the police), according to the law. The Secretary General is the highest professional official in the Ministry, responsible for the overall coordination of operational police activities of the various police services, including in the field of international police assistance. The Secretary General is appointed/dismissed by the President of the Republic following a proposal by the Government. Information on the number of staff within the Ministry of the Interior was not made available to the GET. The Ministry of the Interior is composed of the following National Services:
- National Service of Security;
 - National Service of Police;
 - National Service on Combating Organised Crime;
 - National Service of border police;
 - National Service of Gendarmerie`
 - National Service of Fire and Urgent Security.
38. In addition, there are general and specialised directorates for co-ordination and service functions, available to the other services according to the following:
- Directorate for coordination and analytical information;
 - Directorate of operative questing;
 - Directorate for operational and technical information;
 - Directorate of information and archives;
 - Directorate of inspection
 - Directorate of human resources.
39. These structures do not include any specialised directorate dealing exclusively with corruption cases. Instead, all of them are involved in the fight against this phenomenon. The National Service on Combating Organised Crime (hereafter "NSCOC") is responsible for the fight against corruption when it is linked to organised crime or to money laundering.
40. With regard to anti-corruption measures, the GET was informed⁵ that the Ministry of the Interior had created "hot lines" (telephone) for complaints of corruption with regard to the Ministry and there are reception hours twice per month for citizens to report their complaints and suspicions as regards Ministry officials. The control system also provides for on site inspection by mobile units. All the staff of the Ministry of the Interior submits declaration every year on the state of their property. These declarations are kept in the personal files of the members of staff and only their superiors are checking them. There is no established system of processing these declarations in order to detect any suspicious increase in personal belongings.

⁵ In October 2001 (after the visit of the GET), the Council on the co-ordination of the fight against corruption was established within the Ministry of the Interior, headed by the Vice Minister. The Council supervises activities against organised crime and corruption. In addition, the GET was informed that a system was being introduced making it possible for all services of the Ministry of the Interior to follow the processing of complaints against the police by the public.

i) Specific bodies of the Ministry of the Interior

a. *The National Service of the Police*

41. The National Service of the Police is organised within the Ministry of the Interior. The number of police staff was not provided to the GET by the Bulgarian authorities. The Director of the National Police is appointed by the President of the Republic upon proposal from the Government. The Police Chiefs of the various regions of Bulgaria and the Chief of the Police in Sofia are all appointed by the Minister of the Interior, following proposal of the Secretary General. In addition the Minister appoints all police officers (officer grades) when these enter the Ministry/the police. Basic grade police staff is appointed by the Head of the Service. Corruption offences are dealt with by the Economic crime department of the police.
42. Representatives of the Ministry of the Interior expressed the opinion to the GET that there is a very good co-ordination between the Police, the Investigation and the Prosecution in general and in particular as concerns the fight against corruption. The functions of each authority are defined by law, so there is no need for a specific co-ordinating body. They also expressed the opinion that the law enforcement bodies have enough legal means to fight corruption.
43. However, it was also mentioned that the Police have no direct access to databases of the Tax Authority; the Police can obtain such information only with the consent of the Prosecutor, although technically it is already possible to have direct access as they are using the same technical platforms. This way of proceeding was reported as slowing down the procedure.

b. *National Service on Combating Organised Crime ("NSCOC")*

44. The National Service on Combating Organised Crime is also a body of Ministry of the Interior, in charge of countering the criminal activity of local and cross-border criminal structures (*Art. 89 of the Law on the Ministry of Interior*). It carries out - independently or in co-operation with other specialised bodies – operative searching, information and organisational activities in order to counter organised crime which sometimes comprises corruption offences as well, within state or municipal administration (*Art. 90, para. 1/10*). The NSCOC officers determine, control and furnish documentary evidence of the activity of officials who co-operate with criminal organisations, as well as find and trace the proceeds from crime committed by officials (*Art. 72 of the Rules on Implementation of the law on the Ministry of Interior*). The NSCOC is composed of one Central Directorate and 28 regional branches.
45. Since February 1999, a specialised *Anticorruption Unit*⁶ consisting of 9 officers, has been operational within the NSCOC. This Unit carries out its anticorruption task through 28 regional branches.
46. The requirements for recruitment of officers to the NSCOC are a high legal or economic education and at least five years of work as an officer of the Ministry of the Interior. In addition, applicants must undergo specific tests.

⁶ By order of the Minister of the Interior (November 2001), this unit was transformed into the "Department on Combating Corruption" and the number of staff was increased. The Department was entrusted with anti corruption measures within the Ministry of the Interior as well as public administration.

c. *National Service of Security (NSS)*

47. The National Service of Security ("NSS") within the Ministry of Interior is specifically assigned to intelligence activities for supervision, detection, countering and prevention of criminal offences against national security, also including corruption and other threats to the state authorities in which foreign services or organisations are involved (*Art. 46, para. 1/9 of the Law on the Ministry of Interior*). In 1994, a special unit responsible for fighting corruptive practices within the state administration, in particular within the Ministry of the Interior, was created within the NSS.

d. *The Directorate of Inspection*

48. The *Directorate of Inspection (DI)* carries out its anti-corruption activities under the direction of the Secretary General of the Ministry of the Interior (the highest professional position in the Ministry). A unit "Counteraction against Corruption within the Ministry of the Interior" was established in the *DI* in 1998. This Unit is entrusted with the co-ordination of the activities concerning the reception and the detection of the warnings of corruption within the Ministry of the Interior as well as with the supervision over the relevant investigations. Every three months the directors of the national services inform the Unit of relevant investigations and every three months the *DI* prepares reports on all alleged cases of corruption and the conclusions of the inspections carried out.
49. It should be added that there are also specialised internal control units within the Border Police entrusted with the prevention and detection of corruptive acts of these officials.

ii) *Special investigative techniques*

50. The Criminal Procedure Code (Articles 111a-111c) provides for the use of technical means for gathering evidence (special investigative techniques, "SIT"). A Law on Special Investigative Techniques was adopted in 1997. Bugging in private or public premises, telephone tapping, other interceptions of communications (mail, fax, e-mail), electronic surveillance, observation, controlled delivery, anonymous informants and searches may be used in cases of corruption. Special investigative means may only be applied if approved by the court following the request from the police or prosecutor's office.
51. According to the Law on Special Investigative Techniques, the national and territorial services of the Ministry of the Interior (including the police), two special services of the Ministry of Defence, the National Intelligence Service, the Investigation Service (investigating magistrates) and the Prosecution Service can use the SIT, but only under the condition that the maximum sanction of the criminal offence in question is more than five years of imprisonment (ie a "serious offence").
52. There are two specialised departments within the Ministry of the Interior, the Directorate of Technical Information and the Directorate of Operational Inquiry, which are entrusted with the operational technical activities for detection of crime and preparation of relevant means of evidence.

iii) *Training within the Ministry of the Interior*

53. The Bulgarian Police Academy provides for junior and senior police officers training. Three other training centres provide initial, continuation and specialist training of police officers. Within the Ministry of the Interior special training is provided for officials involved in prevention and

detection of corruption. The officers from the regional units attend practical courses organised by the NSCOC. The training is aimed at detecting corruptive behaviour indicators, criminal procedure aspects of gathering and checking of evidence, tactical analysis of data, co-ordination with operative units responsible for preliminary (out of criminal procedure) inquiry of organised groups. Every year a five days workshop is organised with the participation of all specialised officers.

54. Bulgaria is a member of the Central European Police Academy (CEPA) and has also participated in training organised by the International Law Enforcement Academy (ILEA) both located in Budapest, where many Bulgarian police officers have been trained in various law enforcement subjects.
55. Representatives of the Ministry of the Interior expressed to the GET their satisfaction with the level of training and the commitment of the members of the staff.

b2. The Judiciary (judges, prosecutors and investigating magistrates)

56. Bulgaria has a system of a "unified judiciary", consisting of the courts, the prosecution service and the investigation service, administered under the Supreme Judicial Council and the Ministry of Justice. Reform of the system is presently being discussed⁷.
57. The Supreme Judicial Council is a body consisting of 25 members (11 elected by the Parliament; 11 designated by the judiciary, the President of the Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General) which is chaired by the Minister of Justice (who has no vote). It is responsible for appointments within the judiciary and has also responsibility for managing the judiciary's budget. The Supreme Judicial Council elects the investigating magistrates, the prosecutors and the judges. The Presidents of the Supreme Courts and the Prosecutor General are appointed by the President of the Republic on a motion of the Supreme Judicial Council.
58. Judges, prosecutors and examining magistrates are confirmed in their posts after having served a three-year probationary period. Thereafter, they can be dismissed only for reasons stated in law, such as criminal conviction, incapacity to carry out duties or as a result of disciplinary proceedings (see para. 66). Their work is overseen by the Supreme Judicial Council.
59. The independence of the judiciary (judges, prosecutors and investigating magistrates) is provided for in Article 117 of the Constitution in a number of ways. Firstly, in the performance of their functions, all judges, court assessors, prosecutors and investigating magistrates shall be subject only to the law (Art.117, paragraph 2 of the Constitution, and Art 13 of the law on the Judiciary). Moreover, in performing their functions, the prosecutors and the investigating magistrates shall proceed from the law and the evidence collected in a case, judged according to their conscience and free inner conviction (Art.14 of the Law on Judiciary). The independence of judges, prosecutors and examining magistrates, are also regulated in the Criminal Procedure Code. "The court and the bodies conducting the pre-trial proceedings take their decisions by reason of their inner conviction based on objective, comprehensive and thorough examination of all circumstances relevant to the case, being guided by the law" (Art.16 of the Criminal Procedure Code). The operative independence of the investigative body is provided for in

⁷ On 1 October 2001 a strategy reform of the judiciary was adopted by the Government, with the overall aim to develop European standards (and to prepare for EU membership).

Art.201 of the Criminal Procedure Code under which “the investigating magistrate shall, within his/her powers, independently decide what investigative actions must be conducted”. In order to defend his/her autonomy and inner conviction the investigating magistrate may object to the written instructions and rulings of the superior prosecutor (Article 178, paragraph 2 of Criminal Procedure Code).

60. Officials of the preliminary investigative body, a prosecutor or a judge who violate their official duty in connection with the exercise of justice, may be punished by deprivation of liberty one to six years. (Art. 288 of the Criminal Code).
61. Under the Law on the Judiciary the “Inspectorate” at the Ministry of Justice is entrusted with the organisation of the training of judges, prosecutors and investigating magistrates. The training is performed in the form of 3-4 day courses (seminars).
62. The Centre for Training of Magistrates (an NGO with participation of the Ministry of Justice) organises seminars for judges, prosecutors and investigating magistrates also in the field of corruption and money laundering. The GET was informed that the transformation of this NGO into a public institution, Magistrate School, is being discussed.

i) Courts

63. There is largely a three level court hierarchy in Bulgaria; 22 district courts, six courts of appeal and the Supreme Court of Cassation. There is also a Supreme Administrative Court. The total number of judges in Bulgaria is 1741, including 99 in Sofia City Court, 145 in Sofia District Court, 32 in the military courts, 87 in the Courts of Appeal, 487 in the Regional Courts and 891 in the District Courts. In addition, there are 66 judges in the Supreme Court of Cassation and 56 in the Supreme Administrative Court.
64. Judges are appointed until retirement age. For their first appointment, they must, however, have successfully completed their legal training and passed an entry examination. Although judges' grade and seniority are taken into account in promotions, there are no other objective criteria for the promotions established.
65. The members of the Constitutional Court, the Supreme Court of Cassation and the Supreme Administrative Court, the Prosecutor General and prosecutors at the Supreme Courts are among those required to declare their personal fortunes, together with their spouses and under aged children, pursuant to the legislation on the publication of information on the assets of persons occupying senior posts in the Government service.
66. Disciplinary measures against judges are decided by a collegial body, the Disciplinary Council. The main sanctions are reduction in salary, removal and, the most severe, dismissal.
67. The GET was informed that the court procedures were generally slow and that often cases were sent back to investigation by the courts for reasons of incomplete investigations.
68. The GET was informed that 170 corruption related cases were brought before court in 2000.

ii) Public Prosecution Service

69. The Public Prosecution Service was established as a part of the judiciary in 1991. The *Prosecutor General* is appointed for a seven-year term, by the President of the Republic following a proposal from the Supreme Judicial Council. The Prosecutor General is the guardian of legality and gives “procedural guidelines” to the prosecutors. The prosecution authorities comprise the Prosecutor General's Office, six appeal court departments and 22 regional departments. The total number of public prosecutors in Bulgaria is 1001.
70. The criminal procedural activities of the Prosecutor's Department are governed by the Code of Criminal Procedure. The Service has three areas of responsibility: to lead and supervise the pre-trial investigation phase, to protect the state's interests before courts and a general obligation for the respect of the law.
71. The Prosecutor General's office has a specialist corruption unit, which deals with the supervision of all corruption cases.
72. The GET was informed that a main problem currently facing the Prosecution service is the heavy workload and the inadequate material and human resources.

iii) Investigation service

73. A third institution, in addition to the courts and the prosecution service, within the Bulgarian judicial system is the *Investigation Service*, which consists of investigating magistrates. It is part of the judiciary since 1995⁸ and its structure as an independent body was dissolved in 2000. Currently there are 28 regional investigating services, following the structure of the Prosecution service. These are tasked to investigate most offences, including corruption. In addition, there is a *Specialised Investigation Service*, which is a highly centralised body aimed at investigating particularly serious crime, which may also involve corruption offences, and mutual assistance cases. There is in total 939 investigating magistrates.
74. Since 2000, the Specialised Investigation Service has been responsible for investigating:
- offences against Bulgaria committed abroad, and offences committed by Bulgarians abroad;
 - cases in which another government asks Bulgaria for mutual assistance in a criminal case (but not ones where Bulgaria asks another state for mutual assistance in a criminal case, since such cases fall solely within the jurisdiction of the Prosecutor General);
 - the offences of money laundering, crimes against humanity and corruption where state security is concerned;
 - any other offences, when the Prosecutor General so requests.
75. The staff of the Specialised Investigation Service is appointed by the Supreme Judicial Council on the recommendation of the Director of the Service and must have at least eight years' professional experience in the legal field.
76. The GET was told that there is a debate in Bulgaria whether the Investigation Service should be a part of the Judiciary or not.

⁸ The Investigation service previously belonged to the Ministry of the Interior.

b3. Criminal investigation and adjudication of corruption

77. *A "social" obligation is introduced in the Criminal Procedure Code for every person (citizen) to report committed crimes to public authorities (Art.174, paragraph 1). Moreover, public officials "where they come to know about a committed offence"..." must report to the body of preliminary proceedings and take the necessary measures for the preservation of the general set-up and data about the crime" (Art. 174, paragraph 2 of the Criminal Procedure Code).*
78. The co-operation between law enforcement authorities is governed by the Criminal Procedure Code, the law on the Ministry of the Interior as well as interagency and internal instructions. There are instructions, issued by the Minister of the Interior and the Minister of Finance, on the co-ordination of the activities of the police authorities and customs, tax and financial investigation authorities. These instructions are based on the relevant provisions of the Law on Customs, the Tax Procedure Code (Art.233) and the Law on Measures Against Money Laundering. There is no special body for this co-ordination.
79. The co-operation between the Police, the Prosecution and the Investigating Service is regulated in the Criminal Procedure Code. The prosecutor may assign preliminary inspection to the police in order to collect and check relevant data and the police authorities are obliged to transmit data collected during the investigation to these bodies. In cases of serious offences, also concerning corruption offences, joint teams of police officers, examining magistrates and prosecutors are established.
80. The rules and principles governing the investigation and prosecution of corruption related offences are the same as for any other offence. They are laid down in the Criminal Procedure Code. The Bulgarian criminal justice system is based on the principle of mandatory prosecution, including cases relating to corruption, except some offences, such as slander. Legal grounds for initiating preliminary proceedings are:
- information to the prosecutor or the investigator (examining magistrate) on a committed crime;
 - information on a committed crime published in the media;
 - appearance of the perpetrator in person before the prosecutor or the examining magistrate, confessing a committed crime;
 - direct discovery by the prosecutor or the examining magistrate of signs of a committed crime.
81. The prosecutor may decide to discontinue a case on the basis of the law (amnesty, prescription, another case pending on the same matter, the death of the offender, lack of evidence, etc). Such a decision may be appealed to court by the defendant or the victim.
82. Corruption offences are normally being investigated by the regional investigation services. Exceptionally, serious crime, which may include corruption, might be dealt with by the Specialised Investigation Service. All investigations are, however, supervised by the Prosecution Service.
83. The Prosecution Service monitors the lawfulness of the pre-trial investigation and can also "take over" a case for investigation within the prosecution service. The prosecutor brings a case to court and represents the State at court.

84. The Courts deal with corruption offences in the same manner as any other criminal case. There are no courts or judges specialised in corruption.

b4. Other institutions

i) Ministry of Finance

85. The *Financial Investigation Bureau ("FIB")* is an autonomous administrative unit, accountable to the Minister of Finance, responsible for, *inter alia*, collecting, processing, disclosing, keeping and analysing information on suspicious transactions reports from other bodies (see para. 87) which have obligations to report to the FIB. After processing the reports, the FIB transmits them to the prosecutor's office.

86. The GET was informed by representatives of the *FIB* that the relationship between corruption and money laundering in Bulgaria is obvious and that legal persons were involved to a large extent. The GET was subsequently informed by the Bulgarian authorities that there exist no objective data justifying the suspicion of such a relation.

87. An extensive number of institutions, potentially vulnerable to money laundering, including banks and non-banking financial institutions (money exchange offices fall within this category), insurers, investment companies and intermediaries, persons organising games of chance, notaries, stock exchanges and stockbrokers, auditors and chartered accountants are obliged to report suspicious transactions. The *FIB* is working to establish guidelines for these bodies on the detection of suspicious transactions and organises training for them. Representatives of the *FIB* told the GET that the introduction of criminal liability of legal persons would be the best way to tackle the issue of corruption when it is linked to money laundering.

ii) *The Customs Agency*

88. Following several years of problems within the customs authority, a reorganised Customs Agency was established in August 2001 and a new Head of the Agency was appointed. The GET was told, for example, that during the last four years, there had been no case of prosecution for corruption offences committed by officials of the Customs in Bulgaria, and the reason given was that the system was not efficient enough. The new Customs Agency was created as an autonomous body. The Customs Agency is responsible to the Minister of Finance.

89. As a first step the Head of the Agency had replaced the management staff both at central and local levels. The GET was informed by the Head of the Agency that the Customs will have a new start in Bulgaria and that a strategy against the internal corruption was considered of vital importance. Several measures of a preventive character are underway, with support from abroad (EU). A strategy on the combat of corruption is being developed, including *inter alia* training of staff. Moreover, the drafting of a Code of Ethics for customs officers was in the final stages. The GET was also informed that the new Customs administration requires that customs officers declare the amount of money they bring before and after their shift.

90. The GET was told that material assistance is urgently needed in the restructuring of the organisation of the Customs Office.

iii) *The Tax authority*

91. The Tax authority has its own internal control of corruption, the Inspectorate Department and an internal security department. In addition, other anti corruption measures, such as a telephone line open to the public ("hot line") and reception of the public at the Tax authority every week are in place. Furthermore, corruption cases are published in their monthly bulletin.

iv. *National Audit Office*

92. The organisation, powers and activity of the National Audit Office are laid down in the National Audit Office Act⁹. The Audit Office examines *inter alia* the lawful and expedient execution of the State budget, the municipal budgets and other budgets adopted by Parliament. The Audit office also examines the proceeds from the privatisation process, other funds, their allocation and expenditure.

93. The National Audit Office comprises a Chairman and 10 members, appointed and dismissed by Parliament for a term of 9 years. The chairman may not be re-elected. The Audit office adopts an annual plan on its control activities which shall be accomplished through regular examinations. Ad hoc examinations may be ordered by the Chairman. Up to three extraordinary Examinations may be carried out upon decision of the National Assembly.

94. When the Audit office finds indications of crime during its audit work, it has an obligation to submit the facts to the prosecution service.

c. Immunities

95. The Constitution of the Republic of Bulgaria, the Law on the Judiciary and some other laws provide for immunity to various extent concerning the following categories of persons:

- Members of Parliament
- the President and the vice President of the Republic
- members of the Constitutional Court
- judges, prosecutors and examining magistrates
- judge-bailiffs, registering judges
- candidates for Parliamentary seats.

96. According to Article 69 of the Constitution, *Members of Parliament* may not be prosecuted for speeches and votes cast in Parliament (non-liability). This immunity is unlimited in time and cannot be lifted. According to Article 70, MP's also enjoy immunity with respect to the initiation of any criminal investigation, arrest, detention and criminal proceedings (inviolability), except if arrested in the act of committing (*in flagrante delicto*) a serious crime. In such a case there is no need to lifting the immunity, however, the Parliament should be notified. The Parliament (or between sessions its Chairman) may lift the immunity in other cases only when the crime is qualified as serious. The Public prosecutor submits the proposal to lift the immunity to Parliament and the proposal is examined by the Commission for Parliamentary Ethics before a decision is taken by the Assembly.

⁹ On 4 December 2001, a new Law on the National Audit Office was adopted. This provides, in addition to the ordinary auditing of state organs, for the auditing of funds from the European Union by the National Audit Office and obliges that Office to submit the audit results, including indications of crime to the relevant EU bodies.

97. The *President of the Republic* and the *vice President* may not be held liable for acts committed in the performance of their duties (inviolability), except for high treason and violation of the Constitution. In such cases procedure of impeachment is provided for. The President of the Republic and vice President cannot be detained nor can criminal proceedings be initiated against them.
98. According to Article 147 of the Constitution, *members of the Constitutional Court* enjoy the same inviolability-immunity as members of Parliament. The immunity of a constitutional court judge may be lifted by the Constitutional Court, provided that the Prosecutor General submits sufficient information about the suspicions and the crime is serious.
99. According to Article 132 of the Constitution, *judges, prosecutors and examining magistrates* enjoy inviolability-immunity as members of Parliament. However, according to Article 134 of the Law on Judiciary, the immunity of judges, prosecutors or examining magistrates is lifted by the Supreme Judicial Council, and the immunity with regard to prosecution may be lifted also for crimes which are not qualified as serious (see para. 51). Consent is not required in situations of *flagrante delicto*, in what case the Supreme Judicial Council or, in between its session, the Minister of Justice, is notified without delay. A motivated request for lifting the immunity from prosecution or detention may be submitted to the Supreme Judicial Council by the Prosecutor General.
100. The Law on the Judiciary provides that *judge-bailiffs* and *registering judges* may not be detained or prosecuted without consent of the Minister of Justice. The consent is not required if the person at question is caught in *flagrante delicto* (Articles 157 and 162).
101. According to Article 53 on the Law on Election of Members of Parliament, *registered candidates for parliamentary elections* and their observers may not be detained or prosecuted (inviolability) during the pre-election campaign, that is 30 days, except where detected while committing a serious crime (*in flagrante delicto*).

III. ANALYSIS

a. **Policy to prevent and combat corruption**

102. The GET noted that corruption in Bulgaria is a widely spread phenomenon and that the public authorities were fully aware of this situation as well as of its dangers. The GET furthermore took note of several important efforts made by the Bulgarian authorities in order to improve the existing situation. At the same time the GET noted that Bulgaria still has a long way to go before it can be stated that the corruption situation is under sufficient control.
103. The GET observed that no comprehensive statistical information on corruption relating cases, at the various stages of the criminal justice process, was available in Bulgaria. As such information was considered an essential basis for the setting up of efficient and well targeted measures in the fight against corruption at all levels, the GET recommended Bulgaria to establish a system of collection and processing of data with regard to the investigation, prosecution and adjudication of corruption offences as well as with regard to mutual assistance in cases of corruption.

104. Another area of concern, however, strongly linked to collection and processing of data, is that of research. The GET considered objective research as a key element for the understanding of the phenomenon of corruption, its spread, forms, etc, at the same time as it is an indispensable tool for putting in place efficient measures against corruption. Indeed, this is particularly important when national programmes against corruption are being considered. The GET therefore recommended the Bulgarian authorities to promote objective research on corruption with a view to developing a precise picture of the situation in the country and in particular institutions.
105. As mentioned above, the GET observed that the authorities met with were concerned about the existence of corruption. However, the lack of a well co-ordinated and comprehensive national programme for the fight against corruption was an obvious obstacle to well targeted measures against this phenomenon. It would thus be useful to establish such a programme, which - in addition to repressive elements at the level of law enforcement - should include a preventive and educational long term approach *vis-à-vis* the authorities as well as towards the wider public. A national programme should provide a co-ordinated approach among the different authorities involved and create homogeneous anti-corruption policies in public administration. The responsibility of the implementation of a national programme should preferably be given to a body specifically tasked for the co-ordination. The GET therefore recommended the Bulgarian authorities to develop a national programme for the fight against corruption, including preventive and repressive perspectives and to assign the overall co-ordination of its implementation to a body especially tasked for that purpose.
106. As regards the development of legislation for the fight against corruption, the GET noted that Bulgaria has passed through a period of major legislative upheaval, which has still not come to an end. It is true that there have been several amendments especially to the Criminal Code and to the Criminal Procedure Code which in principle now provide for the necessary means to investigate, prosecute and adjudicate some corruption offences and pass adequate sentences. However, this process is still going on. For example, there is need for more legislation with regard to licensing, tax and customs regimes. Moreover, the GET took note of the fact that activities such as trading in influence were not criminalised in Bulgaria and that criminal responsibility for legal persons was not incorporated into the law. The GET considered that there was still need for substantial improvements of the legislation and that there might even be need to enact ad hoc legislation to deal with immediate problems as they arise. The "legislative inflation" in Bulgaria is thus likely to continue and the feeling of uncertainty as to the law and a certain number of legal shortcomings, are logical consequences of a great number of successive amendments. Criminals and criminal groups may take advantage of these shortcomings. The GET therefore recommended the Bulgarian authorities to continue the efforts in developing an efficient anti-corruption legal framework, in order to avoid, to the extent possible, "legal lacunas" which may be used for corruption purposes.
107. Moreover, the GET observed that the number of corruption cases transmitted to the courts seemed to be quite limited, which could be a token of a criminal justice system, in particular at the investigation and prosecution stages, that lack suitable efficiency. The GET commented this more in detail with regard to the institutions concerned, see below.
108. The GET was also concerned about the reform process concerning the reorganisation of public service functions. Only few of the public employees had been given civil servant status, and to a large extent only to the higher officials. Public employees carrying out the same duties could have different status in Bulgaria. Taking into account the scope of the present evaluation, the

GET only observed that those carrying out the same functions should as a main rule have the same status.

b. Bodies involved in fighting corruption

b1. Ministry of the Interior/police

109. As a starting point, the GET noted that most of the police functions were organised in various Services under the responsibility of the Ministry of the Interior. These bodies were closely interlinked with the structures of the Ministry. For example, appointments to the Police concerning officer grades are carried out within the Ministry (and not by the police); overall State policy concerning budget and staffing matters is carried out by the Minister. The Secretary General has a coordinating and operational function as well as a monitoring role over the police. The GET was accordingly concerned about a lack of organisational autonomy of the Police and the more specialised services in Bulgaria, having in mind Guiding Principle 3. The GET therefore recommended that the organisational structures of the police and other specialised services involved in the fight against corruption be reconsidered with a view to establishing a higher degree of organisational autonomy of these bodies.
110. The GET noted with satisfaction that the National Service on Combating Organised Crime (NSCOC) also dealt with corruption cases when these were linked to organised crime and that an anti-corruption unit had been established within the NSCOC. However, the National Service of Police, had no specialisation at all with regard to “simple” cases of corruption. This shortcoming, seen in the light of the massive corruption existing at all levels in Bulgaria, was in conflict with Guiding Principle 7. The GET therefore recommended that a specialisation on the problem of corruption be developed within the Police and that it be provided with the necessary tools, including access to information from other authorities, to enable it to perform an efficient work. In this respect the GET observed for example that the Police have no direct access to databases of the tax authorities, although technically it would be possible.
111. The GET observed that the Law on Special Investigative Techniques provided the investigation authorities with sufficient powers in terms of tools for an efficient fight against corruption without excessive interference with fundamental human rights.
112. Moreover, the GET noted that the establishment of The Directorate of Inspection for the control of the internal corruption in most law enforcement bodies under the Ministry of the Interior was a positive development, provided it has the necessary independence from the Ministry as well as from the various bodies under its control.

b2. The Judiciary

113. The GET took note of the particular structure of the Judiciary in Bulgaria, which was described as a “unified “ system comprising judges, prosecutors and investigators. There is a debate in Bulgaria on reform of this system which is closely linked to the preparations for accession of Bulgaria to the European Union. The scope of the evaluation limits, however, the GET to consider the system as it is and from the viewpoint of its efficiency in the fight against corruption.
114. The GET was aware that the Investigation service had been part of the Judiciary only since 1995 having previously been included in the investigation branch of the Ministry of the Interior. The operative independence of the investigative body is provided for in Art. 201 of the Criminal

Procedure Code, according to which the investigating magistrate shall, within his/her powers, independently decide what investigative actions must be conducted. However, in practice the functional competence of the Investigating Service during the preliminary investigations seemed to be uncertain. In particular, the role and powers *vis-a-vis* the prosecution was not clear to the GET. The Investigation Service had been gradually dismantled and there was very little co-operation between the Prosecution and the Investigation, as a result of which the latter's skills and resources were not used to best advantage. Furthermore, there were no investigating magistrates that were specialised in corruption offences in the Investigation Service. As a result, the prosecutor may instead assign preliminary research directly to the NSCOC or to the police in order to collect and check relevant data, which could lead to a further reduction of the importance and competence of the Investigation Service. With regard to the Specialised Investigation Service, which would be dealing with more serious cases of corruption, there had been no cases assigned to this body over the last six month prior to the visit of the GET.

115. In conclusion, the GET considers that the handling of cases of corruption within the existing judicial structures could be considerably improved. This may call for either a revision of the existing system and procedures or a better definition of the various tasks within the existing structures. The GET recommended that the role of the Investigation Service be better defined and that the relation/co-ordination between the Prosecution and the Investigation Service be reconsidered, also in the light of the tasks of the law enforcement bodies. The GET observed that fundamental changes in the composition of the Judiciary might be another possibility for a more efficient criminal justice system.
116. Staff within the Judiciary (judges, prosecutors and investigating magistrates) are all being trained during ad hoc seminars by the Centre for Training of Magistrates, which is an NGO. Furthermore, under the Law on the Judiciary the "Inspectorate" at the Ministry of Justice is entrusted with the organisation of the training of magistrates. The education is performed as 3-4 day courses. The GET observed that only few of the staff participated and, whether there had been any specific training concerning problems of corruption at all, could not be clarified. It was of the opinion that this training was clearly inadequate. The GET therefore recommended that the training of judges, prosecutors and investigating magistrates be institutionalised and that programmes concerning corruption with regard to the specific needs of each professional category be established.
117. Moreover the GET was concerned about the lack of staff at the prosecution as well as with regard to judges. It recommended the Bulgarian authorities to provide the Prosecution Service and the Courts with adequate number of staff.

b3. Criminal investigation and adjudication of corruption

118. The GET was struck by the information that the criminal justice system was not enough efficient with regard to the level of corruption in the country. It was informed that the criminal justice process was slow and that the courts often had to return cases to the prosecution for reasons of incomplete investigations. Generally, there seems to be a slow procedure at all levels. Part of the problem is certainly a general lack of resources, however, the GET was of the opinion that a higher degree of professionalism/specialisation with regard to corruption at the level of the investigating authorities would improve the investigation and adjudication of corruption cases. This would also contribute to speedier pre-trial proceedings as well as those before the courts. The GET recommended that corruption cases throughout the investigation be dealt with by departments specialised in such cases in order to increase the quality and the speed of the pre-

trial investigation and thus provide for quicker court proceedings and adjudication. To this end the GET also recommended to establish specialised departments for corruption cases at the regional levels of the Investigation Service and the prosecution offices.

b4. Other bodies / customs

119. The GET welcomed the creation of the Customs Agency as an independent body. This was considered as an important step after several years of mal administration and massive corruption. As the new organisation and the management staff had recently been put in place, it was not possible for the GET to judge its efficiency. It took, however, note of the expressed need for material assistance to this body. It also welcomed the on-going work concerning the drafting of an ethical code for customs officials and recommended the Bulgarian authorities to develop ethical codes /guidelines against corruption for all public officials.

c. Immunities

120. The GET was concerned about the rather wide scope of immunities in Bulgaria. It was fully aware that the wide use of immunities in several transitional countries was considered an important tool for the protection of the independence of certain institutions. This situation prevailing in young democracies like Bulgaria could, however, have a negative impact on the fight against corruption and a fair balance between the two interests should be found. The GET recommended Bulgaria to consider a reduction of the list of categories of officials covered by immunity to a minimum.

121. The GET noted that there exist no clear indications on the nature and the use of immunities in Bulgaria. Guidelines for the various bodies deciding on whether or not to lift the immunity would be a useful tool to prevent immunities from being abused. The GET recommended that guidelines for the lifting of immunities be established, with a view to a uniform application of the rules. Such guidelines should recall that, as a rule, immunity should be an exception and should not be maintained if there is evidence that the suspect used his/her official position to gain undue advantage. They should clarify that immunity is not to be used as a personal privilege but attached to a particular function.

IV. CONCLUSIONS

122. Bulgaria appears to be importantly affected by corruption. This situation is clearly linked to Bulgaria as a transitional country. There is a general lack of data available on corruption and the research concerning this phenomenon could be improved. Moreover, there is a need to develop a national programme on the fight against corruption, where not only repressive measures but also prevention and public awareness elements are included. It is hoped that the recently adopted National Strategy for Combating Corruption carries the needed initiatives in this respect. In addition, the creation of a body for the co-ordination of an overall strategy against corruption would be an advantage. Bulgaria has made more progress in developing a legal framework for combating corruption, than is the case with the implementation of the laws. The judicial system seems to be in need of an overview and clarification as to the functions of its various components and their efficiency, in particular the co-ordination between the bodies at the investigation level. The criminal procedure is slow and there are relatively few cases of corruption adjudicated in comparison with the estimated levels.

123. In view of the above, GRECO addressed the following recommendations to Bulgaria:
- i. to establish a system of collection and processing of data with regard to the investigation, prosecution and adjudication of corruption offences as well as with regard to mutual assistance in cases of corruption;
 - ii. to promote objective research on corruption with a view to developing a precise picture of the situation in the country and in particular institutions;
 - iii. to develop a national programme for the fight against corruption, including preventive and repressive perspectives and to assign the overall co-ordination of its implementation to a body especially tasked for that purpose;
 - iv. to continue the efforts in developing an efficient anti-corruption legal framework, in order to avoid, to the extent possible, "legal lacunas" which may be used for corruption purposes;
 - v. that the organisational structures of the police and other specialised services involved in the fight against corruption be reconsidered with a view to establishing a higher degree of organisational autonomy of these bodies;
 - vi. that a specialisation on the problem of corruption be developed within the Police and that it be provided with the necessary tools, including access to information from other authorities, to enable it to perform an efficient work;
 - vii. that the role of the Investigation Service be better defined and that the relation/co-ordination between the Prosecution and the Investigation Service be reconsidered, also in the light of the tasks of the law enforcement bodies;
 - viii. that the training of judges, prosecutors and investigating magistrates be institutionalised and that programmes concerning corruption with regard to the specific needs of each professional category be established;
 - ix. to provide the Prosecution Service and the Courts with an adequate number of staff;
 - x. that corruption cases throughout the investigation be dealt with by departments specialised in such cases in order to increase the quality and the speed of the pre-trial investigation and thus provide for speedier court proceedings and adjudication;
 - xi. to establish specialised departments for corruption cases at the regional levels of the Investigation Service and the prosecution offices;
 - xii. to develop ethical codes /guidelines against corruption for all public officials;
 - xiii. to consider a reduction of the list of categories of officials covered by immunity to a minimum;
 - xiv. that guidelines for the lifting of immunities be established, with a view to a uniform application of the rules.

124. Moreover, the GRECO invites the authorities of Bulgaria to take account of the observations made by the experts in the analytical part of this report.
125. Finally, in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Bulgaria to present a report on the implementation of the above-mentioned recommendations before 31 December 2003.